

AUGUST 6, 2017

ATTN: THE HONORABLE DANIEL E SHEAROUSE
CLERK, SOUTH CAROLINA SUPREME COURT
P.O. BOX 11330
COLUMBIA, SC 29211

ORIGINAL

FROM: BOBBY JOE BARTON, #163629

RECEIVED

AUG 11 2017

S.C. SUPREME COURT

Re: BOBBY JOE BARTON V. STATE OF SOUTH CAROLINA

: APPELLATE CASE NO. 2016-000995

: LOWER COURT CASE NO. 2014-CP-235047

COVER LETTER

: DEAR MR. SHEAROUSE,

ATTACHED ARE TWO (2) COPIES OF THE APPENDIX AND PROOF OF SERVICE SHOWING THE APPENDIX HAVE BEEN NUMBERED, CORRECTED, ALONG WITH DESIGNATION OF MATTERS HAVE BEEN SERVED UPON THE THE RESPONDENT AS PROVIDED BY RULE 267(d) AS REQUIRED BY RULE 243(d) & (f) MAILED AND ADDRESSED TO:
@ DESHAWN H. MITCHELL, ASSISTANT ATTORNEY GENERAL, P.O. BOX 11549, COLUMBIA, SC 29211. THE PETITIONER HAVE FULFILLED ALL HIS OBLIGATION FOR CORRECTION OF THE APPENDIX, I RESPECTFULLY REQUEST THAT THE HONORABLE COURT TO ACCEPT THE APPENDIX IN GOOD FAITH AND REMOVE HIS CASE FROM AN INACTIVATED STATUS TO ACTIVE AND ORDER RESPONDANT TO ANSWER HIS PETITION.

RESPECTFULLY SUBMITTED

Bobby Joe Barton
BOBBY JOE BARTON
REPRESENTATION PRO SE

THE STATE OF SOUTH CAROLINA RECEIVED
IN THE SUPREME COURT

AUG 11 2017

S.C. SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY
COURT OF COMMON PLEAS

THE HONORABLE DANIEL D. HALL, CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2016-000995

BOBBY JOE BARTON PETITIONER,

V.

STATE OF SOUTH CAROLINA. RESPONDENT.

APPENDIX

BOBBY JOE BARTON
PERRY CORR. INST.
430 OAKLAWN RD.
PELZER, SC 29669

REPRESENTATION, PRO SE

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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
DANIEL D. HALL, CIRCUIT COURT JUDGE
CASE NO: 2014-CP-23-5047.

BOBBY JOE BARTON. APPELLANT,

V.

STATE OF SOUTH CAROLINA. RESPONDENT.

DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL

APPELLANT PROPOSES THE FOLLOWING BE INCLUDED IN THE RECORD ON APPEAL.

- (1.) ARREST WARRANTS
- (2.) TRUE-BILLED INDICTMENTS
- (3.) TRIAL TRANSCRIPT PAGES: TR. PAGES 1-THRU-276 (COMPLETE TRANSCRIPT)
TR. 6, II. 1-THRU-TR. 16, II. 1-12, TR. 175, II. 5-18, TR. 209, II. 14-THRU-TR. 210, II.
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2-THRU-TR. 167, II. -23, TR. 171, II. 5-25 (*ESP. 14-25), TR. 70, II. 16-THRU-

Tr. 89, II, -3, Tr. 133, II, 13-THRU-Tr. 134, II, -5, Tr. 145, II, 9-THRU-Tr. 156, II, -8, Tr. 153, II, 25-THRU-Tr. 154, II, -21, Tr. 153, II, 1-8, Tr. 44, II, 14, 15, Tr. 123, II, 4-20, Tr. 129, II, 1-THRU-Tr. 130, II, -22, Tr. 64, II, 13-THRU-Tr. 68, II, -5, Tr. 51, II, 4-13, Tr. 51, II, 4-8, Tr. 24, II, 5-THRU-Tr. 266, II, -15,

(4.) P.C.R. HEARING TRANSCRIPT: TR. PAGES 1-THRU-105 (COMPLETE TRANSCRIPT) 1-15, 16-66, 67-72, 73-87, 82-104, & 105.

(5.) APPLICANT'S EXHIBITS:

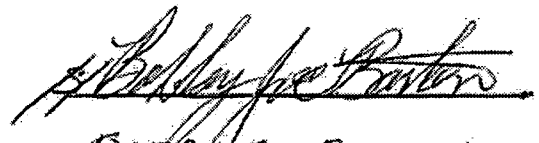
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(6.) P.C.R. ORDER OF DISMISSAL, PAGE 1-THRU-18 (475-492)
(COMPLETE ORDER OF DISMISSAL)

(7.) TRANSCRIPT OF ACCURACY HEARING (COMPLETE TRANSCRIPT)
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- 8.) MOTION TO SUPPLEMENT THE RECORD TO CONFIRM TO THE
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- 9.) MOTION TO WITHDRAW. (EXHIBIT-#11 564
(FROM LOWER COURT))

I CERTIFY THAT THIS DESIGNATION CONTAINS NOTHING
IRRELEVANT TO THIS APPEAL. MAILED ON 7th DAY OF AUGUST,
2017.



BOBBY JOE BARTON
PERRY CORR. INST.
430 OAKLAWN RD.
PELZER, SC 29669

REPRESENTATION PRO SE

CC: DeShawn H. Mitchell, Esquire
BOBBY JOE BARTON, PRO SE

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 09-GS-23-10018
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Bobby Joe Barton,	)	
	)	
Defendant.	)	
	)	

August 9-10, 2010
Greenville, South Carolina

B E F O R E:

HONORABLE EDWARD W. MILLER, Judge.

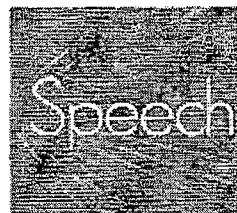
A P P E A R A N C E S:

L. MARK MOYER, Esquire
Attorney for the State

SUSANNAH ROSS, Esquire
Attorney for the Defendant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

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produced via



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P R O C E E D I N G S

(WHEREUPON, the proceeding begins on the 9th day of August, 2010 at approximately 11:36 a.m.)

THE COURT: Y'all tell me what POWDCVC is?

MR. MOYER: Possession of a Weapon During the Commission of a Violent Crime.

THE COURT: Okay.

MS. ROSS: Judge, uh, we've had some issues with hybrid representation to come up. I've advised my client to wait until we draw a jury before he makes his motions, but he tells me he's ready to go.

MR. BARTON: May I get the bailiff to take -- bring this to you, sir?

THE COURT: Yeah.

MR. BARTON: Appreciate it. Thank you very much. A copy of this, this, this is one for Ms. Ross, this is one for the Solicitor.

THE COURT: You sent me one and a copy? Is that what you sent me?

MR. BARTON: The reason --

THE COURT: This the same document?

MR. BARTON: The reason it's -- yes, sir.

THE COURT: Okay. Uh, I'll be happy to make the original a Court's exhibit.

1 **MR. BARTON:** Yes, sir.

2 **THE COURT:** And, uh, I'll just tell you, uh,
3 this thing is dated August 6th. When did you get
4 notice of the trial date, Ms. Ross?

5 **MS. ROSS:** Uh, about two weeks ago.

6 **THE COURT:** Okay. Let him know about it?

7 **MS. ROSS:** Yes, I did.

8 **(WHEREUPON, Court's Exhibit 1 is marked for**
9 **identification purposes.)**

10 **THE COURT:** All right. Uh, Mr. Barton, you
11 are entitled, under the Constitution, to be
12 represented by a competent attorney. You are
13 represented by a competent attorney. You are not
14 allowed to pick and choose who you get. So Ms.
15 Ross has been appointed to you. She is an
16 experienced, intelligent, zealous advocate. And,
17 uh, absent some other showing, I'm going to deny
18 your motion. You're certainly not getting
19 another lawyer. Okay.

20 **MR. BARTON:** May I speak?

21 **THE COURT:** Yes, sir.

22 **MR. BARTON:** Uh, --

23 **THE COURT:** Stand up when you speak to me.

24 **MR. BARTON:** Yes, sir. As I said, uh,
25 regardless, Ms. Ross has breached confidentiality

1 of my case. And if you want -- if you would like
2 to go on record with that, then you can, sir.
3 You are the judge. I'm not trying to be rude or
4 smart to you. I'm just being very honest with
5 you. She has breached confidentiality of my
6 case. I have been known about it. Only
7 information that only she and I known at that
8 specific time, she divulged it. I'm making that
9 known to the court. I'm going on record.

10 There are other motions, but I think that
11 takes precedence and priority. So you are the
12 judge. I'm not trying to be smart with you. I
13 been in front of you before. Like you said, you
14 make that decision, but I also ask you to let
15 that be known that I said that she has breached
16 confidentiality.

17 **THE COURT:** What has she done to breach your
18 confidentiality?

19 **MR. BARTON:** Uh, you would like for me to
20 say it on court?

21 **THE COURT:** Raise your right hand. You
22 swear to tell the truth?

23 **MR. BARTON:** Yes, I do, sir.

24 **THE COURT:** Okay. You made this motion in
25 open court.

1 **MR. BARTON:** Yes, sir.

2 **THE COURT:** If you want to substantiate it,
3 you better ---

4 **MR. BARTON:** Yes, sir.

5 **THE COURT:** I mean, it's up to you. You
6 might want to consult with her about what you are
7 going to tell me before you say it, but --

8 **MR. BARTON:** I don't need to consult because
9 she already know what it is, and I'm fixing to
10 tell you. Once -- once I got charged with this
11 and the female that's implicated me in this
12 robbery, she made a statement that I was somebody
13 that she had met somewhere who was always trying
14 to be with her. She didn't like me like that. I
15 told Ms. Ross that this was an ex-live-in common
16 law wife. I was not a stranger to this lady.
17 This lady make it seem like I was somebody who
18 she never known, who she never -- she lived with
19 me for over two years.

20 I told Ms. Ross, let's make a file against
21 her. I'll show you the address, show the address
22 where she and I both live in together, listed and
23 documents and some statements of past
24 allegations. I told Ms. Ross that and I gave her
25 papers and I showed it to her.

1 She turn around and told Investigator Jarvis
2 at the preliminary hearing, asked him did he know
3 that. Why would she ask him -- that was something
4 that we was going to use as an element of
5 surprise in this court. No one knew that she and
6 I lived together. She didn't tell them that.
7 She made them think that she was a stranger to me
8 and that's what he thought.

9 **THE COURT:** Okay. And that's what you are
10 upset about?

11 **MR. BARTON:** I think ---

12 **THE COURT:** Anything else?

13 **MR. BARTON:** I think it is a breach of
14 confidentiality. I'm pretty much sure it is
15 because they did not know that. What I told her
16 was in the strictest of confidence. I didn't
17 tell him. I told her.

18 **THE COURT:** Okay.

19 **MR. BARTON:** She is my attorney. By law,
20 she is not allowed to divulge that to anyone
21 without my consent.

22 **THE COURT:** Okay. Thank you.

23 Ms. Ross, anything you want to say?

24 **MS. ROSS:** Judge, my recollection of that
25 was that it was in the context of a motion to

1 reconsider the bond.

2 **MR. BARTON:** No, sir.

3 **MS. ROSS:** And that was part of that.

4 Otherwise, that was something that I was not
5 given in confidentiality. I simply asked him
6 that question of Jarvis. If, in fact, I did ask
7 it in the prelim, I don't have independent
8 recollection. If I did, I would simply ask that
9 question to see if he could investigate that
10 route. I don't think that was confidential
11 information. Certainly, their witness is this
12 woman and they could find that information out
13 from her as well.

14 **THE COURT:** Okay.

15 **MS. ROSS:** I think a lot of the issue here
16 is simply hybrid representation. I'll just show
17 you the file of material that's been provided by
18 my client. I have gone over with him a number of
19 times the rules on hybrid representation that he
20 can either represent himself or I will represent
21 him. I'm prepared to go forward and represent
22 him today. I think he has a lot of strength to
23 his case.

24 He's argued about his case quite a bit.
25 Throughout the representation, he's been

1 apparently setting up PCRs, threatening me about
2 what will happen if I don't file his motions and
3 file the motions that he wants, how he wants
4 them. So I would like just a ruling on that to
5 make sure we all know on the table who represents
6 who and how this process works.

7 **THE COURT:** Okay. Yes, Mr. Barton.

8 **MR. BARTON:** Yes, sir. She changed the
9 whole issue. It has nothing to do with hybrid
10 representation. I said she breached
11 confidentiality in my case. And I told her --

12 **THE COURT:** Okay.

13 **MR. BARTON:** I told her in confidence. They
14 did not know that. I told her for the simple
15 reason that --

16 **THE COURT:** You've said all that. You've
17 said all that. Okay.

18 Ms. Ross, is this the first you've heard of
19 this issue?

20 **MR. BARTON:** No, it's not.

21 **THE COURT:** Just a minute, sir.

22 **MS. ROSS:** The formal complaint, he had not
23 told me anything about the formal complaint. He
24 had complained a number of times before that I
25 should not have questioned or should not have

1 brought out in any way. I think I made part of
2 the bond -- motion to reconsider bond the fact
3 that the victim, uh, -- that this witness had
4 lied about the prior relationship. I put that in
5 the motion to reconsider bond. Mr. Barton has
6 complained at length about that as his complaint
7 about me not getting medical records of this
8 witness that, of course, can't be gotten under
9 regulations and a number of other complaints.
10 But as far as the formal complaint, I did not
11 know that was coming today.

12 **THE COURT:** Okay. Well, Mr. Barton, Ms.
13 Ross is your attorney. I'm not going to give you
14 another attorney. This case is going forward.
15 The jury is out there. We're going to pick this
16 jury. Do you want her to represent you or do you
17 want to represent yourself?

18 **MR. BARTON:** Well, Judge, since you are the
19 judge, sir, and it's your courtroom, you do any
20 way you see fit.

21 **THE COURT:** So you don't have any input on
22 that?

23 **MR. BARTON:** Evidently I don't because I --

24 **THE COURT:** No, sir. I just asked you.

25 **MR. BARTON:** I know.

1 **THE COURT:** You want Ms. Ross to continue as
2 your attorney or do you want to represent
3 yourself?

4 **MR. BARTON:** First of all, I asked that you
5 acknowledge that she breached confidentiality ---

6 **THE COURT:** No, sir.

7 **MR. BARTON:** --- in my case.

8 **THE COURT:** No, sir. Let me just tell you
9 something. I'll ask you this question one more
10 time. Do you want Ms. Ross -- what is your
11 desire? Do you want Ms. Ross to represent you or
12 do you want to represent yourself?

13 **MR. BARTON:** I don't want her to represent
14 me.

15 **THE COURT:** So you want to represent
16 yourself?

17 **MR. BARTON:** I'm telling you, sir, that I do
18 not want her to represent me because she breached
19 my case. That's my answer. Now, you do what you
20 want, sir.

21 **THE COURT:** That's not an answer to my
22 question.

23 **MR. BARTON:** Okay.

24 **THE COURT:** Ms. Ross, these are obviously
25 difficult circumstances, but I, for the benefit

1 of Mr. Barton, in spite of his complaints, I'm
2 going to ask that you continue to represent him.
3 Okay?

4 **MS. ROSS:** And I'm prepared to go forward.
5 I'll be happy to do that.

6 **THE COURT:** All right. Anything from the
7 State?

8 **MR. MOYER:** I just want to put one thing on
9 the record. Everything the Defendant said -- he
10 said nothing that I wasn't aware of. I did not
11 -- I gained all that information through
12 independent means. I wasn't at this supposed
13 hearing, bond hearing or preliminary hearing when
14 that came out. I just want the court record to
15 reflect that that's not surprising, anything he
16 said. And that was not based on anything Ms.
17 Ross said.

18 **THE COURT:** You learned that information
19 about him living with this woman, this witness
20 independently?

21 **MR. MOYER:** That's correct.

22 **THE COURT:** Did you learn it from her?

23 **MR. MOYER:** Yes, from her and from the
24 investigator telling me what she told him.
25 Nothing -- I didn't learn anything from anything

1 Ms. Ross said.

2 **THE COURT:** One last comment, Mr. Barton.

3 **MR. BARTON:** Yes, sir. When Ms. Ross did
4 that -- that is not true. He did not know. She
5 did, that on November the 12th. And Ms. Rice had
6 not told Investigator Jarvis that. It should be
7 not he transcripts. He answered no, I did not
8 know that. Neither did they know that.

9 **THE COURT:** Okay.

10 **MR. BARTON:** That is not the truth. That
11 was November the 12th in this courthouse.

12 **THE COURT:** Your motion is denied.

13 All right. Is the jury out there? You
14 ready?

15 **THE BAILIFF:** Yes, sir.

16 **THE COURT:** Okay.

17 **MS. ROSS:** Judge, may we approach?

18 **THE COURT:** Sure.

19 (WHEREUPON, a bench conference is held off the
20 record at approximately 11:48 a.m.)

21 (WHEREUPON, the bench conference concludes at
22 approximately 11:49 a.m.)

23 (WHEREUPON, the jury panel enters at approximately
24 11:49 a.m.)

25 **THE COURT:** All right. Good morning, Ladies

1 and Gentlemen. Welcome up here to Courtroom
2 number 4. My name is Ned Miller. I am one of
3 the 13th Circuit judges. I'm based here in
4 Greenville. It's a pleasure for me to be with
5 you. I am handling a term of General Sessions
6 court, which is also known as criminal court. As
7 you obviously are aware, we are here to pick a
8 jury. Before we get into the actual process of
9 picking a jury, I'm going to introduce the case
10 to you and ask you a few questions to qualify to
11 you to serve on this particular case. I know you
12 all have all been qualified to serve in general,
13 but now we need to make sure you are qualified to
14 serve in this case and that you, in this case,
15 can be fair and impartial jurors who could follow
16 the law in the case as I'll give it to you
17 throughout the course of the case and render a
18 decision based on the law and the evidence.

19 Let me introduce the case to you. It is the
20 State of South Carolina versus Bobby Joe Barton.
21 I want to tell you that this is an indictment
22 with two separate counts. Count 1 is for Armed
23 Robbery. It alleges that Bobby Joe Barton did in
24 Greenville County on or about July 25th of 2009,
25 while armed with a deadly weapon or while

1 alleging either by action or words he was armed
2 while using a representation of a deadly weapon
3 or any object which a person present during the
4 commission of the robbery would reasonably
5 believe to be a deadly weapon, took, by means of
6 force or intimidation, goods or monies described
7 as wallet and US currency from the person or
8 presence of Edwin Perez.

9 Count 2 is Possession of a Weapon during the
10 Commission of a Violent Crime. It alleges that
11 Bobby Joe Barton did in Greenville County on or
12 about the 25th day of July 2009 possess or
13 visibly display a knife during the commission or
14 attempted commission of a violent crime, and that
15 is armed robbery. Both of these counts are
16 against the laws of the State of South Carolina.

17 I want to tell you, Ladies and Gentlemen,
18 that the, uh, -- Mr. Barton -- the allegations
19 contained in this indictment is just that, they
20 are just that. They are just allegations, and
21 you should take no -- make no presumption, take
22 no inference from the fact that an indictment is
23 issued in this case. It is just a document which
24 allows the charges in this case to wind its way
25 through the judicial system to arrive here in

1 court for disposition.

2 I also want to tell you that every person in
3 this country and in this state and in this
4 courtroom who is charged with a crime is presumed
5 innocent unless and until the State can prove
6 them guilty beyond any reasonable doubt of each
7 and every element of each offense that that
8 person is charged with. The burden is always on
9 the State. And a person charged with a crime is
10 always presumed to be innocent. So please keep
11 that in mind throughout the course of this, uh,
12 proceeding. I will tell you that to these
13 allegations, Mr. Barton has pled not guilty. So
14 please keep that in mind.

15 Now, before I go forward to ask you the
16 questions which would qualify you to serve in
17 this case, I would ask that the attorneys
18 involved please stand and introduce themselves
19 and their client.

20 **MR. MOYER:** My name is Mark Moyer. I am an
21 Assistant Solicitor here in Greenville County. I
22 will be representing the State in this case.

23 **THE COURT:** Thank you.

24 Ms. Ross.

25 **MS. ROSS:** Hi. I am Susannah Ross, and I

1 represent Bobby Barton.

2 **THE COURT:** All right. Thank you very much.

3 All right. Ladies and Gentlemen of the jury,
4 is there any member of the jury panel who is
5 related by blood or marriage or who has a
6 business, personal or social relationship with
7 any of the attorneys involved in this case or any
8 member of the 13th Circuit Solicitor's Office?
9 If so, please stand. (No response.)

10 Is there any member of the jury panel who is
11 related by blood or marriage or who has a
12 business, personal or social relationship with
13 either Mr. Bobby Joe Barton or the alleged victim
14 in this case, Mr. Edwin Perez? If so, please
15 stand. (No response.)

16 I'm going to read a list of potential
17 witnesses. I ask you to pay attention to this.
18 I'm going to need to know the same information
19 about these folks. Of course, Mr. Edwin Perez,
20 Amilcar Perez, Patricia Rice, J.A. Lanford with
21 the Sheriff's Office, Mike Jarvis with the
22 Sheriff's Office, Tracy King with the Sheriff's
23 Office, Johnny M. Brown with the Sheriff's
24 Office, Greg Hawkins and Dr. Lori Van Wallendael.
25 All right. Is there any member of the jury panel

1 who is related by blood or marriage or who has a
2 business, personal or social relationship with
3 any of those potential witnesses whose names I
4 have just read? If so, please stand. (No
5 response.)

6 Is there any member of the jury panel who has
7 any knowledge about the events that are alleged
8 in the indictment? If so, please stand.
9 (No response.)

10 Is there any member of the jury panel who --
11 family member or friend who has ever been charged
12 with or the victim of this type of offense? If
13 so, please stand. (No response.)

14 Is there any member of the jury panel who is
15 aware of any bias or prejudice towards either the
16 State or the defense? If so, please stand.
17 (No response.)

18 Is there any member -- any member of the jury
19 panel who is a member of or a contributor to a
20 group whose primary concern is the promotion of
21 law enforcement or victim's rights? Examples
22 would be MADD, SADD or CAV. If so, please stand.
23 (No response.)

24 Is there any member of the jury panel who
25 knows of any reason whatsoever why you should not

1 serve in this case with particular emphasis on
2 your ability to be fair and impartial to both the
3 State and the defense and to follow the law as I
4 will give it to you throughout the course of this
5 trial? If so, please stand. (No response.)

6 Okay. Anything further?

7 **MR. MOYER:** Not from the State, Your Honor.

8 **THE COURT:** Other than -- anything else
9 other than we've discussed, Ms. Ross?

10 **MS. ROSS:** No, Your Honor.

11 **THE COURT:** Okay. All right. Thank you
12 very much. Let's strike the jury.

13 **THE CLERK:** As I call your name, please stand.
14 Number 229, Stefani Young.

15 What says the State?

16 **MR. MOYER:** Please present Ms. Young.

17 **THE CLERK:** What says the defense?

18 **MS. ROSS:** Please seat Ms. Young.

19 **THE CLERK:** Please have a seat in the jury
20 box.

21 Number 45, Tammy Crooks.

22 What says the State?

23 **MR. MOYER:** Please present Ms. Crooks.

24 **THE CLERK:** What says the defense?

25 **MS. ROSS:** Please seat Ms. Crooks.

1 **THE CLERK:** Please have a seat in the jury
2 box.
3 135, Karen Leveille.
4 What says the State?
5 **MR. MOYER:** Please present Ms. Leveille.
6 **THE CLERK:** What says the defense? 135.
7 **MS. ROSS:** Please excuse Ms. Leveille.
8 **THE CLERK:** Thank you. You are excused from
9 this case.
10 59, Loucrisus Dyches.
11 What says the State?
12 **MR. MOYER:** Please excuse the juror in this
13 case.
14 **THE CLERK:** Thank you. You are excused from
15 this case.
16 84, James Guirl.
17 What says the State?
18 **MR. MOYER:** Please present Mr. Guirl.
19 **THE CLERK:** What says the defense?
20 **MS. ROSS:** Please seat the juror.
21 **THE CLERK:** Please have a seat in the jury
22 box.
23 188, Steven Sherbert.
24 What says the State?
25 **MR. MOYER:** Please excuse the juror in this

1 case.

2 **THE CLERK:** Thank you. You are excused from
3 this case.

4 183, Hayley Rogers.

5 What says the State?

6 **MR. MOYER:** Please present Ms. Rogers.

7 **THE CLERK:** What says the defense?

8 **MS. ROSS:** Please excuse Ms. Rogers.

9 **THE CLERK:** Thank you. You are excused from
10 this case.

11 101, Robert Holland.

12 What says the State?

13 **MR. MOYER:** Please excuse the juror from
14 this case.

15 **THE CLERK:** Thank you. You are excused from
16 this case.

17 138, Marsha Henson.

18 What says the State?

19 **MR. MOYER:** Please present Ms. Henson.

20 **THE CLERK:** What says the defense?

21 **MS. ROSS:** Beg the Court's indulgence.

22 Henson with an H?

23 **THE CLERK:** Yes.

24 **MS. ROSS:** I'm not seeing her name on my
25 jury list. I would ask that she be excused at

1 this time.

2 **THE COURT:** Okay.

3 **THE CLERK:** Thank you. You are excused from
4 this case.

5 Number 53, Ruth Devorsey, Devorsey.

6 What says the State?

7 **MR. MOYER:** Please present Ms. Devorsey.

8 **THE CLERK:** What says the defense?

9 **MS. ROSS:** Please seat Ms. Devorsey.

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

12 Number 158, Deborah Nissim.

13 What says the State?

14 **MR. MOYER:** Please present Ms. Nissim.

15 **THE CLERK:** What says the defense?

16 **MS. ROSS:** Please seat Ms. Nissim.

17 **THE CLERK:** Please have a seat in the jury
18 box.

19 55, Brian Diksen.

20 What says the State?

21 **MR. MOYER:** Please present Mr. Diksen.

22 **THE CLERK:** What says the defense?

23 **MS. ROSS:** Please excuse the juror.

24 **THE CLERK:** Thank you. You are excused from
25 this case.

1 98, Patrice Hoerster.

2 What says the State?

3 **MR. MOYER:** Please present Ms. Hoerster.

4 **THE CLERK:** What says the defense?

5 **MS. ROSS:** Please excuse the juror.

6 **THE CLERK:** Thank you. You are excused from
7 this case.

8 160, Susan Orders.

9 **THE COURT:** Okay. Ms. Orders, thank you for
10 disclosing the fact that, in fact, you know our
11 Solicitor Bob Ariail. Is that correct?

12 **THE JUROR:** Long time.

13 **THE COURT:** Okay. Would the fact that you
14 know him, would that impair your ability to be
15 fair and impartial in the trial of this case?

16 **THE JUROR:** No.

17 **THE COURT:** Could you follow the law as I
18 would give it to you throughout the course of the
19 trial?

20 **THE JUROR:** Yes.

21 **THE COURT:** Would you be able to set aside
22 any personal relationship you have with Mr.
23 Ariail so that you could be fair and impartial in
24 this case?

25 **THE JUROR:** Yes.

1 **THE COURT:** All right. Thank you very much.

2 All right.

3 **MR. MOYER:** Please present Ms. Orders.

4 **THE CLERK:** What says the defense?

5 **MS. ROSS:** Thank you. Please excuse Ms.

6 Orders.

7 **THE CLERK:** Thank you. You are excused from

8 this case.

9 41, Elizabeth Collins.

10 What says the State?

11 **MR. MOYER:** Please present Ms. Collins.

12 **THE COURT:** What says the defense?

13 **MS. ROSS:** Please seat the juror.

14 **THE CLERK:** Please have a seat in the jury

15 box.

16 184, Yvonne Ruby.

17 What says the State?

18 **MR. MOYER:** Please present Ms. Ruby.

19 **THE CLERK:** What says the defense?

20 **MS. ROSS:** Please seat the juror.

21 **THE CLERK:** Please have a seat in the jury

22 box.

23 Number 92, John Hastings.

24 What says the State?

25 **MR. MOYER:** Please present Mr. Hastings.

1 **THE CLERK:** What says the defense?
2 **MS. ROSS:** Please excuse the juror.
3 **THE CLERK:** Thank you. You are excused from
4 this case.
5 Number 39, Frances Coker.
6 What says the State?
7 **MR. MOYER:** Please present Ms. Coker.
8 **THE CLERK:** What says the defense?
9 **MS. ROSS:** Please seat the juror.
10 **THE CLERK:** Please have a seat in the jury
11 box.
12 Number 164, David Phillips.
13 What says the State?
14 **MR. MOYER:** Please present Mr. Phillips.
15 **THE CLERK:** What says the defense?
16 **MS. ROSS:** Please seat the juror.
17 **THE CLERK:** Please have a seat in the jury
18 box.
19 Number 197, Nichole Stagg.
20 What says the State?
21 **MR. MOYER:** Please excuse the juror in this
22 case.
23 **THE CLERK:** Thank you. You are excused in
24 this case.
25 147, Clinton Meyer.

1 What says the State?

2 **MR. MOYER:** Please present Mr. Meyer.

3 **THE CLERK:** What says the defense?

4 **MS. ROSS:** Please seat the juror.

5 **THE CLERK:** Please have a seat in the jury

6 box.

7 Number 57, Ashley Downer.

8 What says the State?

9 **MR. MOYER:** Please present Ms. Downer.

10 **THE CLERK:** What says the defense?

11 **MS. ROSS:** Please seat the juror.

12 **THE CLERK:** Please have a seat in the jury

13 box.

14 Number 79, Derek Greco.

15 What says the State?

16 **MR. MOYER:** Please present Mr. Greco.

17 **THE CLERK:** What says the defense?

18 **MS. ROSS:** Please excuse the juror.

19 **THE CLERK:** Thank you. You are excused from

20 this case.

21 Number 107, Robert Ingram.

22 What says the State?

23 **MR. MOYER:** Please present Mr. Ingram.

24 **THE CLERK:** What says the defense?

25 **MS. ROSS:** Please excuse the juror.

1 **THE CLERK:** Thank you. You are excused from
2 this case.

3 Number 35, Lisa Campbell.

4 What says the State?

5 **MR. MOYER:** Please present Ms. Campbell.

6 **THE CLERK:** What says the defense?

7 **MS. ROSS:** Please seat the juror.

8 **THE CLERK:** Please have a seat in the jury
9 box.

10 **THE COURT:** All right. An alternate, one
11 and two.

12 **THE CLERK:** Number 199, Gail Stevens.

13 What says the State?

14 **MR. MOYER:** Please present Ms. Stevens.

15 **THE CLERK:** What says the defense?

16 **MS. ROSS:** Please seat the juror.

17 **THE CLERK:** Please have a seat in the jury
18 box.

19 **THE COURT:** All right. Any exception or
20 objection to the jury or the panel pursuant to
21 Batson?

22 **MR. MOYER:** Not from the State.

23 **MS. ROSS:** Not from the defense.

24 **THE COURT:** Okay. All right. Uh, Ladies
25 and Gentlemen, we thank you all. We've got two

1 distinct groups. I know one group -- same joke.
2 I apologize to everybody that has to listen to
3 this week after week. One group thinks they won
4 the lottery and one thinks they've lost. I think
5 that I know which way each of you think. Let me
6 just tell you that I think the group that was
7 selected won the lottery because they get an
8 opportunity, uh, to participate in our justice
9 system. It's a justice system that belongs to
10 everybody in this country, every citizen. They
11 get a chance to be where the rubber meets the
12 road. It's a great privilege. It's a great
13 responsibility and a great opportunity. I hope
14 that everyone, at some point, gets an opportunity
15 to do it.

16 But having said that, you all who did not get
17 selected, uh, I am, uh, at this time, uh, get to
18 tell you you are free to go. We ask you to call
19 back at six o'clock to next determine -- to
20 determine when you next need to report or call
21 back again. Thank you very much.

22 (WHEREUPON, the jury panel exits at approximately
23 12:14 p.m.)

24 THE COURT: Okay. Ladies and Gentlemen, I
25 am sincere when I say I think you all are the

1 lucky ones here in the courtroom because it is a
2 great responsibility and opportunity and
3 privilege to serve as a juror in our justice
4 system. It's not an easy job, but it's one that
5 every citizen and every person is qualified to
6 perform. We are happy to have you here and, uh,
7 that you are participating with us in this case.

8 I want to tell you that in this case or in
9 every jury trial, criminal or civil, what we have
10 is a dispute about the facts in the case which
11 can't be resolved in any other fashion except to
12 ask a jury to come up here and listen to the
13 facts as they are presented here in the courtroom
14 and listen to the law as I will give it to you
15 here in the courtroom and render and decision
16 which resolves this dispute. That is your job.

17 You all might think, well, gosh, no job
18 training, how do I figure this out. Well,
19 everyone is qualified to do this. And, uh, I
20 know that you are too. I want to tell you though
21 that there are certain things you need to keep in
22 mind throughout the course of the trial which are
23 -- will help you in your job and also are
24 required of you in your job. That is to remember
25 that every person who is charged with a crime is

1 presumed innocent unless and until the State, who
2 has the burden of proof always, unless and until
3 the State can prove them guilty beyond a
4 reasonable doubt of each and every element of
5 each offense that a person is charged with. So
6 keep that in mind. Those are extremely important
7 rights. They corner, sort of, the foundation of
8 our justice system, criminal justice system --
9 system. Excuse me. And they go a long way
10 towards providing a lot of the freedom that we
11 enjoy in this country. So protect them here.
12 That protects them for this case and for every
13 other citizen in our state.

14 I want to also remind you that the indictment
15 that I read to you, uh, is not evidence. You
16 shouldn't make any presumptions or take any
17 inference from the fact that an arrest warrant or
18 an indictment is issued in this case. Those are
19 just the formal documents which allow the case to
20 wind its way through the system to arrive here
21 for resolution about this dispute. So don't make
22 any presumption and don't take any inference from
23 that.

24 I would tell you that the evidence is
25 generally received in one of three ways in court.

1 The one that probably is the most -- jumps to
2 mind is that people testify in court and they
3 testify from the witness stand. There is another
4 type of evidence, which would be introduction of
5 tangible documents or items. Then the third
6 possible way would be through stipulation of the
7 attorneys where they agree that a fact is beyond
8 dispute and you should accept that it's true.
9 Those are the three general ways that evidence is
10 received in the courtroom. I want to tell you
11 that it is received here. And when it is
12 received, it is subject to constitutional
13 scrutiny by all sides so that what you are
14 hearing is appropriate and proper evidence.

15 Now, you can divide a trial into as many ways
16 as you would like. If you watch some of these
17 television series or you read some of the books
18 that are out there, they do divide them into
19 minuscule little parts. They dissect it down to
20 the molecule, if you will. But for our purposes,
21 I divide it into five parts. You will sort of
22 have an idea, sort of a roadmap, procedurally
23 where we are in the trial.

24 The first part will be the opening statements
25 to you by the attorneys. Those are brief, non-

1 argumentative statements to you. The second part
2 of the trial is the meat and potatoes of every
3 case. That is the presentation of the testimony
4 and the evidence in the case. The third part of
5 the trial would be, when all the evidence is in,
6 the attorneys make their closing arguments to
7 you, when they advocate their position. The
8 fourth part of the trial will be when I give you
9 the law as it applies to this case. The fifth
10 part of the case will be the, uh, when you all
11 retire to your jury room to deliberate this case
12 and resolve the dispute. They are not of equal
13 length. As you can imagine, in most cases, the
14 presentation of the testimony and evidence is the
15 longest part of the trial. But that will give
16 you an idea of where we are as we proceed through
17 the case.

18 I will ask you to do probably many things in
19 the case. There are three main things I ask you
20 to do. The first one is that you keep an open
21 mind throughout the course of the trial. We go
22 through all these -- the questioning of the
23 jurors to qualify you, to ensure that you are
24 fair and impartial, that you don't come into the
25 courtroom with any preconceived notion about how

1 the case ought to be decided or what, uh, is true
2 or not true until you have heard the evidence.
3 You all will swear an oath in just a minute to
4 set aside any of your preconceived notions and
5 biases to judge this case fairly and impartially
6 on the law and the evidence.

7 The second thing I will ask you to do is, uh,
8 not to discuss this case with anyone. Don't talk
9 about it with the bailiffs. Don't talk about it
10 when we break for lunch with whoever you might
11 see or might talk to on the phone. Don't talk
12 about it among yourselves until the conclusion of
13 the case when the, uh, -- you all are free to
14 deliberate.

15 You might ask why, because you are here to
16 resolve the dispute, so why can't we talk about
17 it? Well, uh, if you went home -- if this case
18 goes overnight and you go home tonight and you
19 are with someone who you love and trust or
20 friends or someone who you perhaps don't even
21 like or trust and they make a comment to you
22 about this case, that might impact your frame of
23 mind with respect to the case. Those people are
24 not making the sacrifices that are you making to
25 come sit up here and listen to this testimony and

1 evidence. They are not taking an oath to judge
2 it fairly and impartially. Don't let anything
3 outside the courtroom come into play and
4 contaminate your thought processes with respect
5 to this case.

6 The third thing I'd ask you to do is to pay
7 attention throughout the course of the trial.
8 That may seem really simple, but we all know it's
9 human nature to sort of perhaps daydream a little
10 bit -- I'm guilty, probably more guilty than most
11 people. But if you do allow yourself to be
12 distracted in some fashion, when you deliberate
13 at the end of the case, you may find out that
14 when you were distracted, that that was a
15 critical part of the case and it might inhibit
16 you and impair your ability in your discussions
17 with your fellow jurors at the conclusion of the
18 case. It all seems pretty simple, but I ask you
19 to please abide by those things and everything
20 else that we ask you to do as well.

21 I would tell you that you, the jury, are the
22 sole judges of the facts in this case and in
23 every case. A trial judge, by law, is not
24 allowed to have an opinion about the facts. So
25 don't think by anything I might say or do

1 throughout the course of the trial that I have an
2 opinion about the facts. The law does not allow
3 it, and I do not. You all are the sole judges of
4 the facts, who to believe, what to believe, and
5 those types of things.

6 I will tell you that that same law that makes
7 you the sole judges of the facts makes me the
8 sole judge of the law. If you think you have any
9 idea about what the law is or what the law should
10 be, you will swear an oath to set aside your own
11 opinion and apply the law precisely as I state it
12 to you throughout the course of the trial.

13 Now, I'm going to excuse you in just a second
14 and ask you to perform a task for me, your first
15 tasks. Actually, we'll hold off on that. We are
16 going to -- I'm going to tell you that
17 occasionally, from time to time throughout the
18 course of the trial, I may excuse you from the
19 courtroom or I may invite the attorneys to
20 approach the bench to discuss something. We are
21 not -- we are trying perhaps to hide something
22 from you. We are not trying to deceive you. It
23 may be that we are going to be discussing some
24 point of law or some piece of proposed evidence
25 that may or may not be admissible. Of course,

1 you can understand that if it is not admissible,
2 you all should not hear it. That's why we do it.
3 We are not trying to deceive you. We're just
4 trying to insure that what you hear is
5 constitutionally protected and appropriate for
6 you.

7 I am going to ask you all -- well, let's go
8 ahead and do it. I'm going to put you all under
9 oath, send you back to the jury room and ask you
10 to see if you can select a foreperson from among
11 the original, the first twelve.

12 So, if you will, Rene.

13 **THE CLERK:** Please stand and raise your right
14 hand. The correct response to the oath is "I
15 will". You shall well and truly try the case
16 2009-GS-23-10018, State versus Bobby Joe Barton
17 indicted for Armed Robbery and Possession of a
18 Weapon during the Commission of a Violent Crime,
19 and a true verdict render according to the law
20 and the evidence so help you God. I will?

21 **(WHEREUPON, each juror responds.)**

22 **THE COURT:** All right. Y'all head on back
23 to the jury room. We'll get back with you in
24 just a few minutes.

25 **(WHEREUPON, the jury exits at approximately**

1 12:25 p.m.)

2 **THE COURT:** Okay. Anything we need to take
3 up before we crank it up?

4 **MR. MOYER:** I think we have a Neil v.
5 Biggers, uh, hearing that we have to have. There
6 was a photo lineup used.

7 **THE COURT:** Okay.

8 **MS. ROSS:** We move to suppress the
9 identification.

10 **THE COURT:** Okay. Uh, maybe we should cut
11 them loose for lunch.

12 All right. Mr. Cooke, would you go tell them
13 they don't have to do their election until they
14 come back from lunch. Tell them we have some
15 matters we have to discuss. I'm going to give
16 them a two-hour lunch. Tell them to be back at
17 2:30. Okay?

18 **THE BAILIFF:** Okay.

19 **THE COURT:** Okay.

20 **MR. MOYER:** Ready, Your Honor?

21 **THE COURT:** Yes, sir.

22 **MR. MOYER:** Okay. The State will call
23 Investigator Tracy King to the stand.

24 **TRACY KING**

25 having first been sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. MOYER:

Q All right. Uh, state your full name.

A Alvin Tracy King.

Q And where do you work?

A I work for the Greenville County Sheriff's Office. I'm assigned to the Armed Robbery Unit.

Q Okay. How long have you been in law enforcement?

A 15 years.

Q Has that all been with the Sheriff's Office?

A Yes, sir.

Q How long have you been an investigator?

A Uh, 10 years.

Q Okay. All right. Now did you conduct a photographic lineup display in this case?

A I did.

Q When did you do that lineup?

A That was on January the 8th of this year.

Q Okay. And were you aware that the incident took place July the 25th of last year?

A At the time, I was not, but yes.

Q Okay. You didn't have any involvement in this case other than this lineup, right?

A That's correct.

1 Q So it was about four or five months after the
2 fact?

3 A That's correct.

4 Q All right. Now, did you put the photo lineup
5 together?

6 A I did.

7 Q And how many photographs were displayed in
8 that lineup?

9 A Six photos.

10 Q Was the Defendant included in the lineup?

11 A Yes, he was.

12 Q And the photograph you got of him was taken
13 on what date?

14 A It was on the arrest date of 8/4 of '09.

15 Q That was the date he was actually arrested
16 for this charge?

17 A That's correct.

18 Q He was arrested on other evidence other than
19 this photo lineup?

20 A To my knowledge, yes.

21 Q Okay. Uh, now, were the other five persons
22 in the lineup all similar in physical description to
23 the Defendant?

24 A They were.

25 Q As in sex and race and facial hair and so

1 forth?

2 **A** And age, yes, sir.

3 **Q** Would you explain to the Court how -- first
4 off, let me ask this, who did you show this photo
5 lineup to?

6 **A** I showed it to the victim, Edward -- Edwin
7 Perez.

8 **Q** Okay. And you already said it was July the
9 8th of this year.

10 **A** January the 8th.

11 **Q** I'm sorry. January the 8th.

12 **A** That's correct.

13 **Q** And what was the time?

14 **A** Uh, it was in the morning a little bit after
15 10:00, 10:00 a.m.

16 **Q** Okay. And where did this take place?

17 **A** My office in the basement of the Law
18 Enforcement Center.

19 **Q** All right. Now you already told us you
20 didn't have any participation in the case prior to
21 this date.

22 **A** That's correct.

23 **Q** How about after the case?

24 **A** Just the photo lineup.

25 **Q** Just the photo lineup?

1 **A** Yes, sir.

2 **Q** Okay. Now what was the reason you got
3 involved?

4 **A** Investigator Jarvis called me on this
5 particular date, advised me that the victim in the
6 case was to be at the Law Enforcement Center. He
7 advised me that he was at home sick and requested that
8 I put together a photo lineup and show it to the
9 victim.

10 **Q** Other than that conversation, you weren't
11 aware of any details in the case other than that
12 conversation?

13 **A** No, sir. I was not.

14 **Q** Okay. You don't speak Spanish, do you?

15 **A** No.

16 **Q** How did you communicate with Mr. Perez

17 **A** Mr. Perez, uh, -- Investigator Jarvis
18 informed me that Mr. Perez was bringing his brother
19 along with him who spoke English.

20 **Q** Okay. And so you, uh, communicated with Mr.
21 Perez then through his brother?

22 **A** Yes, that's correct.

23 **Q** And did his brother speak good English?

24 **A** Yes, yes.

25 **Q** And were you able to communicate with him?

1 **A** Absolutely. Very clearly.

2 **Q** Okay. What did you tell Mr. Perez through
3 his brother before you showed him the lineup?

4 **A** I informed him that I had put together six
5 pictures that I was going to show him. I requested
6 that, uh, he point out anyone he recognized and
7 explain to me how he recognized them. I informed his
8 brother to inform him that he should not feel in any
9 way, shape or form that he has to pick out anybody.
10 Then, at that point, I handed him the photo lineup
11 upside down and advised his brother to let him know
12 that whenever he was ready, he could turn it over and
13 take a look at it.

14 **Q** Okay. That's what you told him. Did you go
15 through with it like you just explained to us?

16 **A** That's correct.

17 **Q** What did Mr. Perez do when you gave him the
18 photo lineup?

19 **A** He turned the photo lineup over. I watched
20 him looking over the lineup. You could see him go
21 from left to right, top to bottom. He was looking
22 over the photos. When he got to the center photo,
23 which was the Defendant in this case, that's the
24 position he was in, the center bottom row, he stopped,
25 pointed at him and said that's him in Spanish, which

1 is what the brother translated to me.

2 **Q** Okay. But you saw him actually point at the
3 photograph?

4 **A** I did.

5 **Q** So he pointed at the picture of Bobby Barton?

6 **A** That's correct.

7 **Q** Is he the Defendant in this case?

8 **A** That's correct.

9 **Q** The Defendant seated over here in the defense
10 chair. Did you, at any time during this procedure,
11 exert any pressure on Mr. Perez to pick somebody out
12 of the lineup?

13 **A** Absolutely not.

14 **Q** Or in any way influence his decision on who
15 to select?

16 **A** No, sir.

17 **Q** How certain or how confident did Mr. Perez
18 appear to you?

19 **A** He appeared very confident.

20 **Q** Did you make any mark or did you ask him to
21 do anything to the photo lineup to indicate his
22 choice?

23 **A** I did. Through his brother, who translated
24 for me, I advised him that I needed him to circle the
25 photograph he had just pointed to and also sign below

1 that photo.

2 (WHEREUPON, State's Exhibit 1 is marked for
3 identification purposes.)

4 BY MR. MOYER:

5 Q All right. I'm going to hand you what's been
6 marked as State's Exhibit number 1. I'll ask you to
7 take a look at it. Do you recognize what I just
8 handed you?

9 A I do.

10 Q What is that?

11 A This is the six-picture photo lineup that I
12 displayed to the victim.

13 Q Okay. How do you recognize it?

14 A This is, uh, -- this is the one that I put
15 together. It's also got my signature as well as the
16 victim's signature, date, and, uh, time on it.

17 Q Okay. Does it -- is it in substantially the
18 same condition now as it was when you showed it to Mr.
19 Perez on January the 8th of 2010?

20 A It is.

21 Q Okay. You don't see any additions,
22 deletions, changes or anything ---

23 A No.

24 Q --- to that form?

25 MR. MOYER: All right. Your Honor, at this

1 time, I would move to have State's Exhibit number
2 1 entered into evidence for purposes of this
3 hearing.

4 **MS. ROSS:** No objection.

5 **THE COURT:** All right.

6 (WHEREUPON, State's Exhibit 1 is admitted into the
7 record.)

8 **MR. MOYER:** And please the Court, I will
9 hand this up to the Court.

10 **THE COURT:** Okay.

11 **MR. MOYER:** Uh, I have no further questions
12 for this witness at this time.

13 **THE COURT:** Okay. Cross.

14 **CROSS-EXAMINATION**

15 **BY MS. ROSS:**

16 **Q** Okay. Uh, Investigator King, are you aware
17 that January 8th, 2010th date was the date of a second
18 bond hearing for Mr. Barton?

19 **A** No, ma'am.

20 **Q** Okay. And, uh, why were you called in to do
21 the photo lineup instead of Jarvis?

22 **A** Uh, Investigator Jarvis was sick that day.
23 He informed me that he had already had it set up for
24 the victim to appear at the Law Enforcement Center on
25 that day. Investigator Jarvis was sick and at home

1 that day.

2 Q So he made no mention to you that that was
3 the actual date of a second bond hearing?

4 A No, ma'am. I have no knowledge of that.

5 Q All right. And you said you prepared the
6 photo lineup?

7 A That's correct.

8 Q Now, the initial description of the
9 perpetrator in this case was a black male, 25 to 30
10 years old. That was not what you were putting in this
11 lineup, was it?

12 A No, ma'am.

13 Q What was -- what was the characteristics that
14 you were putting in this lineup?

15 A Well, I was advised to, uh, -- I was advised
16 the name of the Defendant on that day to enter him
17 into a photo lineup.

18 Q Uh-huh.

19 A At that point in time, I used the actual
20 computer-generated matches to the Defendant. In other
21 words, we've got an option while building photo
22 lineups ---

23 Q Right.

24 A --- to allow the computer itself to provide
25 several similar or -- similar characteristics as far

1 as age, uh, and physical descriptions. I used that
2 option this case. It provides several hundreds,
3 sometimes thousands of similar photos. At that point,
4 I just went through and picked out similar photos of
5 the Defendant.

6 Q All right. So when you prepared this lineup,
7 you were preparing it with Bobby Barton as a suspect
8 in mind?

9 A That's correct.

10 Q Are you aware that Mr. Barton's photograph is
11 lighter or more overexposed than the other photographs
12 in the lineup?

13 A No.

14 Q And, uh, you stated that Mr. Perez did not
15 speak English. Who wrote out the affidavit on the
16 photograph identification?

17 A I did.

18 Q Now, were there any other witnesses to that
19 besides you?

20 A Mr. Amilcar Perez, the victim's brother.

21 Q All right. And no other officers, correct?

22 A Correct.

23 Q And the affidavit was not notified --
24 notarized?

25 A That's correct.

1 Q All right. Now, uh, are you aware of "mug
2 shot" magazine?

3 A I am.

4 Q Let me show you a copy that was provided to
5 me in the August 8th -- excuse me, August 10th "mug
6 shot" magazine. Uh, who is that pictured on page 3 of
7 "mug shot" magazine?

8 A That's the Defendant, Mr. Barton.

9 Q Isn't that, in fact, the exact same
10 photograph that you used in the photographic lineup on
11 page 3 of "mug shot" magazine?

12 A That's a rough copy, but it appears to be
13 his.

14 Q All right. And I'd also turn your attention
15 to page 8 of "mug shot" magazine. Who is the one
16 person on that page charged with Armed Robbery?

17 A Patricia Rice.

18 Q And are you aware that she was the co-
19 Defendant in this case?

20 A I learned that today.

21 Q Now, in fact, out of Greenville, if you would
22 just care to look through the "mug shot" magazine of
23 August 8th, are there any other Armed Robbery mug
24 shots in the Greenville area? It might take you a
25 little while to go through.

1 **A** (Reviewing).

2 **Q** I'll say in the Greenville area. They go on
3 to other areas of the state.

4 **A** Okay. I was going to say. I haven't seen
5 other than the Patricia Rice.

6 **Q** All right. So in that magazine, it was the
7 co-Defendant Patricia Rice and Bobby Barton are the
8 only mug shots showing an Armed Robbery?

9 **A** That's correct.

10 **Q** And "mug shot" magazine does put a name and
11 the charge next to the mug shot?

12 **A** Yes.

13 **Q** All right. Are you aware of the idea that if
14 someone sees a picture once and gets that picture in
15 their mind, that later in a photographic lineup, they
16 might pick out that same picture again?

17 **A** It is possible, yes.

18 **Q** All right. And as far as lineup, you chose
19 not to do, uh, a photographic identification procedure
20 where you took one picture at a time and show them one
21 at a time ---

22 **A** That's correct.

23 **Q** --- to Mr. Perez? All right. And you
24 prepared a supplemental report and it wasn't signed by
25 the reporting officer, was it?

1 **A** Say it again please.

2 **Q** In your supplemental report, it wasn't signed
3 by a reporting officer or dated, was it?

4 **A** It's dated and it's got my initials on it.

5 **Q** This is what he's talking about.

6 **A** Well, that copy doesn't have it on there.
7 But I do have my name. It's got the date and my
8 initials.

9 **Q** All right. So your copy does reflect that?

10 **A** That's correct.

11 **Q** And as far as beyond the photo lineup itself,
12 that was the extent of your involvement?

13 **A** That's correct.

14 **MS. ROSS:** Okay. I've got nothing further.

15 **REDIRECT EXAMINATION**

16 **BY MR. MOYER:**

17 **Q** Just a couple of quick followup questions.
18 The procedure that you used in this case for showing
19 the photo lineup, is that the procedure that you have
20 always used?

21 **A** It is.

22 **Q** As far as showing six photographs on a single
23 page?

24 **A** That's correct.

25 **Q** Is that the standard procedure used by the

1 Sheriff's Office?

2 **A** Pretty much, yes.

3 **Q** As far as you are aware, is that what all the
4 investigators use when they show a photographic
5 lineup?

6 **A** Unless there is extensive or exigent
7 circumstances, that's the exact procedure we use.

8 **Q** Under normal circumstances?

9 **A** Correct.

10 **Q** That's what you use. Uh, have you ever used
11 any other kind?

12 **A** I have.

13 **Q** Frequently?

14 **A** No. Absolutely not.

15 **Q** Just some situation where you weren't able to
16 use this six-person lineup?

17 **A** That's correct.

18 **MR. MOYER:** Okay. That's all.

19 **THE COURT:** All right.

20 **MS. ROSS:** Just briefly.

21 **THE COURT:** Sure.

22 **RECROSS-EXAMINATION**

23 **BY MS. ROSS:**

24 **Q** One thing. Uh, in a normal case when you put
25 together a photographic lineup, don't the pictures

1 match the description the victim gave of the subject
2 that they were after?

3 **A** That would depend on the information obtained
4 during the investigation.

5 **Q** All right. With an initial description of a
6 black male in his mid-20's or early 30's, wouldn't you
7 normally put together a lineup showing black males in
8 their mid-20s to early 30's?

9 **A** Again, if we get information to support that,
10 we would.

11 **Q** And as far as your knowledge of the case, was
12 there any call by Mr. Perez or any reports by Mr.
13 Perez changing his initial description?

14 **A** Not to my knowledge.

15 **MS. ROSS:** I've got nothing further.

16 **THE COURT:** All right. Thank you, sir. You
17 can step down.

18 **MR. MOYER:** The State would call Edwin Perez
19 and the State would also have to call Ms. Teresa
20 Sampson as interpreter.

21 **THE COURT:** Okay.

22 **MR. MOYER:** Mr. Perez.

23 **THE COURT:** Ask him to place his left hand
24 on the Bible.

25 **EDWIN PEREZ**

1 having first been sworn, testifies as follows:

2 **THE CLERK:** Please have a seat. Please have a
3 seat.

4 **DIRECT EXAMINATION**

5 **(WHEREUPON,** the following answers are given by the
6 interpreter.)

7 **BY MR. MOYER:**

8 **Q** All right. Mr. Perez, uh, where you the
9 victim of a robbery on the night of July the 25th of
10 2009?

11 **A** Yes..

12 **Q** Were you shown a photographic lineup on
13 January the 8th of 2010 to see if you could identify
14 the man who robbed you?

15 **A** Yes.

16 **Q** Did you meet with this investigator,
17 Investigator King, at the Law Enforcement Center to do
18 that?

19 **A** Yes.

20 **Q** Was your brother, Amilcar, with you?

21 **A** Yes.

22 **Q** Did he translate for you what Investigator
23 King was saying?

24 **A** Yeah, he told me that someone was going to
25 show me.

1 Q Okay. Mr. Perez, I want to show you State's
2 Exhibit number 1. Can you recognize that?

3 A Yes. This one.

4 Q Okay. Is this the photographic lineup that
5 you were shown by the investigator?

6 A Yes.

7 Q Now, when the investigator handed you that
8 photographic lineup, did he ask you to see if you
9 could recognize anybody in the lineup?

10 A Yes.

11 Q Which one did -- did you recognize somebody?

12 A Yes.

13 Q And which photograph did you recognize?

14 A This one.

15 Q Is it the one that is circled on that?

16 A Yes.

17 Q When you were shown that photo lineup, were
18 you absolutely sure that was the person who had robbed
19 you?

20 A Yes.

21 Q Okay. Did you look over all those
22 photographs carefully?

23 A Yes.

24 Q Did you pick them out yourself without any
25 influence by other people?

1 **A** Yes -- no, by myself. I did it myself.

2 **Q** Okay. I'm going to ask you a couple of
3 questions about the robbery itself.

4 **A** Yes.

5 **Q** When you were robbed, did you get a good
6 enough look at the man who robbed you and recognize
7 him later?

8 **A** Yes.

9 **Q** Where did the robbery happen?

10 **A** Behind my trailer.

11 **Q** Tell us what he did to you, how he robbed
12 you.

13 **A** Yes, he came and then he pushed me to the
14 ground and he got out his pocketknife.

15 **Q** Okay. What did he do with the pocketknife?

16 **A** He put it right there. Right here. And then
17 he took my wallet.

18 **Q** And right here being where? Your neck?
19 You're pointing to your neck?

20 **A** Yes.

21 **Q** And did this happen late at night?

22 **A** Yes, at night.

23 **Q** It was dark outside?

24 **A** Yes, it was dark.

25 **Q** Were there, uh, any lights around that

1 enabled you to see at all?

2 **A** Yeah, there were lights outside.

3 **Q** Okay. And you remember where the lights
4 were, what kind of lights they were?

5 **A** Yeah, just by the entrance of the trailer.
6 Right next to the entrance.

7 **Q** Now, the man who robbed you, had you ever
8 seen this man before that day?

9 **A** A little bit, not too much.

10 **Q** Okay. More than one time?

11 **A** Maybe two or three.

12 **Q** Okay. Where had you seen him?

13 **A** Just passing by, walking by.

14 **Q** Did he live in your neighborhood?

15 **A** Nearby. I think behind.

16 **Q** Okay. And by your neighborhood, I mean, you
17 lived in a trailer park, right?

18 **A** Yes.

19 **Q** All right. Now, isn't there a path that goes
20 from the neighborhood behind you that goes -- a
21 shortcut that goes through your trailer park to a
22 convenience store?

23 **A** Yeah, there is a shortcut there, but it
24 doesn't go to my trailer. It goes through another
25 trailer.

1 **Q** Okay. But it's close, it's nearby your
2 trailer?

3 **A** Yes.

4 **Q** It goes through your trailer park?

5 **A** Yes.

6 **Q** And it's common for people from the other
7 neighborhood to walk through that shortcut?

8 **A** Yes.

9 **Q** And that's where you had seen him before?

10 **A** Yes.

11 **Q** Now, when he robbed you, he obviously, from
12 what you described, was very close to you.

13 **A** Yes, nearby.

14 **Q** Okay. When he was robbing you, how close was
15 he to you?

16 **A** He was on top of me.

17 **Q** All right. So he got actually right up to
18 your face?

19 **A** Yes.

20 **Q** Now, after this happened, did a police
21 officer show up?

22 **A** No, I dial.

23 **Q** You dialed the police officer? Okay. And
24 your brother also spoke to the police officer.

25 **A** Yes, because they returned the phone call.

1 Q Okay. And a police officer came out and
2 talked to you that night.

3 A Yes, they arrived.

4 Q Did the police -- how did you talk to the
5 police officer? Did he speak Spanish?

6 A No.

7 Q So you had to speak to him through your
8 brother?

9 MR. PEREZ: Sí.

10 BY MR. MOYER:

11 Q Let me ask you a couple of questions about
12 this photo lineup. When you recognized the person in
13 that photographic lineup, did you tell the police
14 officer who you picked?

15 A Yes. When I went to see him.

16 Q Okay. Yes. What did you do -- what did the
17 officer ask you to do to the picture on that lineup?

18 A He asked me to circle.

19 Q Now, on the night this robbery happened, how
20 old did you think the man was who had robbed you?

21 A Maybe 30 or 40, somewhere around in there.

22 Q Okay. Is that what you tried to tell the
23 police officer through your brother?

24 A Yes.

25 Q Okay. You see the person who robbed you in

1 the courtroom here today?

2 **A** Yes.

3 **Q** Is it in the man in the blue shirt seated
4 over here?

5 **A** Yes.

6 **Q** Okay. And, uh, do you know now that he's
7 actually 52 years old?

8 **A** I don't know. I didn't know that.

9 **Q** Okay. So 30 to 40 was your best guess on how
10 he looked?

11 **A** Yeah, I just calculate.

12 **Q** Now, did you see a photograph of the person
13 who robbed you after the robbery took place?

14 **A** Yes.

15 **Q** How did you see this photograph?

16 **A** I saw in something, I don't know what it's
17 called, that I found on the floor.

18 **Q** Is it a magazine?

19 **A** Yes.

20 **Q** Is it a magazine that has lots of different
21 pictures of mug shots in it?

22 **A** Yes.

23 **Q** When you saw that magazine, uh, were there
24 any police officers or any, any, any police officers
25 at all with you when you saw that magazine?

1 **A** No.

2 **Q** So you were by yourself or with family?

3 **A** With my brother.

4 **Q** Okay. And you just opened the magazine up
5 and started looking through it?

6 **A** Yes.

7 **Q** And you saw the Defendant in this case, his
8 picture in that magazine?

9 **A** Yes.

10 **Q** But no police officers or government people
11 had anything to do with you seeing it?

12 **MS. ROSS:** At some point, I would object to
13 leading.

14 **THE COURT:** Hang on.

15 **MR. PEREZ:** No.

16 **THE COURT:** Okay. Hang on. All right.
17 Try not to lead so much.

18 **BY MR. MOYER:**

19 **Q** Did any -- let me rephrase the question.
20 Were there any police officers or government people
21 around when you saw this magazine?

22 **A** No.

23 **Q** Now, did you see him any time -- you saw him
24 in the picture, but other than in the picture and
25 other than today, did you see him any other times

1 after the robbery?

2 **A** No.

3 **Q** Not at any court hearings or anything like
4 that?

5 **A** No.

6 **MR. MOYER:** Okay. That's all I have for
7 now, Your Honor.

8 **THE COURT:** All right.

9 **MR. MOYER:** One moment please. I'm sorry.

10 (Pause.)

11 Nothing else at this time, Your Honor.

12 **THE COURT:** All right. Cross.

13 **CROSS-EXAMINATION**

14 **BY MS. ROSS:**

15 **Q** You said you dialed 9-1-1. You hung up the
16 phone, didn't you, before talking?

17 **A** Yes, I did call, but they couldn't understand
18 me because they were speaking in English.

19 **Q** Okay. And then when 9-1-1 called back, they
20 spoke to your brother, correct?

21 **A** Yeah, they returned the phone call and my
22 brother answered.

23 **Q** And your brother was there translating for
24 you when the police arrived at the scene, correct?

25 **A** Yes.

1 Q Now, was your brother there during the
2 incident at the house?

3 A No.

4 Q And, uh, you stated that you had, uh, seen,
5 uh, the person around the neighborhood for sometime
6 before this incident occurred. Is that right?

7 A Yes.

8 Q Yet, when you talked to police, you said
9 nothing about having seen the person around before.

10 A Yeah, I mean, I've seen him once in a while,
11 not to many -- not in too many occasions.

12 Q On the night of the incident, you had been
13 drinking quite a bit, hadn't you?

14 A About six beers.

15 Q Would it surprise you that the officer
16 described you as grossly intoxicated?

17 A No, not too much.

18 Q Now, the investigator, Jarvis, came out to
19 see you like five, more like 10 days after the
20 incident, correct?

21 A Yes.

22 Q And at that time, you talked about the female
23 person who was there and identified Patricia Rice.

24 A Yes.

25 Q And you described her as a 50-year old

1 female, correct?

2 **A** No.

3 **Q** All right. So it's your testimony that you
4 didn't describe the other person there at the robbery
5 as a skinny black female about 50 years old?

6 **A** Yeah, that woman, yes.

7 **Q** In fact, you drove around and picked her out
8 in the area, in the neighborhood?

9 **A** Yes.

10 **Q** Now, at that time, you did not tell
11 Investigator Jarvis that you had seen the black male
12 who had robbed you in the area, did you?

13 **A** That what had happened or what?

14 **Q** At that time, you didn't change your
15 description of the black male who you said robbed you,
16 did you?

17 **A** No.

18 **Q** And you did not say I mean to say he was 50
19 just like the female?

20 **A** No, never.

21 **Q** All right. Now, after that time, Patricia
22 Rice was arrested. Were you aware of that?

23 **A** Yes.

24 **Q** And you were aware of that because the
25 officers have to keep you updated on what happens in

1 your case, correct?

2 **A** Yes.

3 **Q** And at that time, they told you that Bobby
4 Barton had been arrested as well.

5 **A** The officer told me that they were going to
6 arrest him.

7 **Q** All right. Now, after being told that they
8 were going to arrest him, you saw this "mug shot"
9 magazine?

10 **A** No, I seen it before, before they came.

11 **Q** You seen it before? What do you mean when
12 you say "when they came"?

13 **A** Okay. No, what happened was when they
14 arrested him, then I saw the picture of him. It was
15 showing that he was arrested.

16 **Q** Okay. And is this the picture you saw?

17 **A** Yes.

18 **Q** Was that around the time this magazine came
19 out in August? Around the time of the incident?

20 **A** No, this magazine has been around for a long
21 time.

22 **Q** Okay. But when you saw the picture in this
23 magazine, was it close to the time of the incident?

24 **A** I saw it, uh, when he was arrested. After he
25 was arrested.

1 Q All right.

2 A About two weeks.

3 Q Isn't this the same picture on the photo
4 lineup as this picture in this magazine?

5 A Yes.

6 MS. ROSS: I've got nothing further.

7 **REDIRECT EXAMINATION**

8 **BY MR. MOYER:**

9 Q Just a couple of quick followup questions.
10 When you saw that magazine, did you know Bobby
11 Barton's name when you saw the magazine?

12 A No. I recognize but I didn't know his name.

13 Q Okay. And can you read English?

14 A No, I understand a little.

15 Q When you looked at these pictures, you could
16 see the pictures, but could you read the names and the
17 other words on that magazine?

18 A No, I just seen but I couldn't read.

19 Q You saw the picture but you couldn't read any
20 words with it?

21 A Yes.

22 Q Okay. When you saw that magazine, did you
23 know he had been arrested yet?

24 A Yes.

25 MS. ROSS: That's been asked and answered.

1 **BY MR. MOYER:**

2 **Q** So you knew he had been arrested, but you
3 didn't know his name, right?

4 **A** Yeah, well, the officer told me that he was
5 arrested, but I didn't know the name.

6 **MR. MOYER:** Okay. That's all.

7 **RECROSS-EXAMINATION**

8 **BY MS. ROSS:**

9 **Q** Just one thing. You stated you found the
10 "mug shot" magazine with your brother, correct?

11 **A** Yes.

12 **Q** And did you talk to your brother about what
13 was in the magazine?

14 **A** No. I just said in my mind that I saw him.

15 **Q** And you stated you had seen him around the
16 neighborhood before, correct?

17 **A** Before.

18 **Q** You had seen that face before?

19 **A** Yes.

20 **Q** After seeing that face in "mug shot"
21 magazine, you didn't call the police and tell them
22 anything knew about your case, did you?

23 **A** No.

24 **MS. ROSS:** I've got nothing further.

25 **THE COURT:** Okay. You may step down. Thank

1 you.

2 **MR. MOYER:** Your Honor, I believe that's all
3 of the testimony I will have ---

4 **THE COURT:** Okay.

5 **MR. MOYER:** --- at this time.

6 **MS. ROSS:** We have one witness, an expert
7 witness to present at this time.

8 **THE COURT:** Okay.

9 **MS. ROSS:** Can we have a brief moment before
10 she goes?

11 **THE COURT:** Yes. Let's take about five
12 minutes, three minutes. How long do you
13 anticipate her testimony is going to be?

14 **MS. ROSS:** 15 or 20 minutes.

15 **(WHEREUPON, a short recess is taken.)**

16 **MS. ROSS:** We'll call Lori Van Wallendael.

17 **LORI VAN WALLENDAEL**

18 having first been sworn, testifies as follows:

19 **DIRECT EXAMINATION**

20 **BY MS. ROSS:**

21 **Q** Dr. Van Wallendael, what do you do?

22 **A** I'm an Associate Professor of Psychology at
23 the University of North Carolina at Charlotte.

24 **Q** Okay. And you are retained to be here today
25 by the defense, by me, is that correct?

1 **A** That is correct.

2 **Q** All right. Do you have an area of expertise
3 that you've been studying in your capacity as a
4 psychologist?

5 **A** Yes, I do.

6 **Q** What is that area?

7 **A** That area is eyewitness memory.

8 **Q** Okay. Have you written or published any
9 papers in that area?

10 **A** Yes, I have.

11 **Q** What would those papers be?

12 **A** Most recently, I've had chapters in Handbook
13 of, uh, Eyewitness Psychology, Psychology of Law
14 books. I've also published in peer-reviewed journals.

15 **Q** All right. Have you ever testified as an
16 expert in the area, uh, of psychology, specifically
17 witness identification and recollection?

18 **A** Yes, I have.

19 **Q** How many times have you actually testified in
20 that area?

21 **A** Probably about 20.

22 **MS. ROSS:** Uh, I would move that Dr.
23 Wallendael be recognized in the area of
24 eyewitness identification at this time.

25 **THE COURT:** Voir dire?

1 **MR. MOYER:** No, Your Honor. I will not
2 object for purposes of this hearing although I'm
3 not waiving whether I will or not at ---

4 **THE COURT:** You testified 20 times. Were
5 you qualified as an expert 20 times?

6 **THE WITNESS:** Yes.

7 **THE COURT:** And where were those?

8 **THE WITNESS:** North Carolina, South
9 Carolina, Georgia, District of Columbia, West
10 Virginia, I believe.

11 **THE COURT:** Okay. All right. Go ahead.

12 **BY MS. ROSS:**

13 **Q** All right. Uh, Dr. Van Wallendael, have you
14 had an opportunity to review the discovery in this
15 case?

16 **A** Yes, I have.

17 **Q** Also were you in the courtroom today when you
18 heard the testimony of Investigator King and Mr.
19 Perez?

20 **A** Yes.

21 **Q** Now, based on your review of the discovery
22 and listening to that testimony, do you have an
23 opinion as to the, uh, trustworthiness and the
24 reliability of witness identification, uh, in this
25 case?

1 **A** There is several factors in this case that
2 make me doubt the reliability of the identification in
3 this case.

4 **Q** Can you discuss those factors at this time?

5 **A** Sure. First, uh, the reports describe the
6 victim as being highly inebriated at the time of the
7 incident. Much as we don't like to see inebriated
8 people behind the wheel, the same kinds of effects
9 that make a person a poor driver can also make a
10 person a poor rememberer basically when they are under
11 the influence of alcohol. There are a number of
12 studies that show that people who are under the
13 influence of alcohol do not take in as much
14 information about a scene, uh, do not recollect and
15 really, uh, even encode the information as it is
16 happening. They are less likely to be able to provide
17 a good description and more likely to make a false
18 identification in a lineup situation.

19 **Q** All right. Is there anything else that would
20 make you question the reliability of this, uh,
21 identification?

22 **A** The witness was in, uh, a less than optimal
23 circumstance as most witnesses are in a situation.
24 There was certainly some threat to the victim's life
25 in terms of a knife and a threat with that knife.

1 Researchers and eyewitness memory often talk about
2 what we call the weapon focus effect which is
3 basically, uh, a very natural effect where a person
4 who is under threat is paying more attention to the
5 weapon and to trying to get out of the situation alive
6 basically than they are to the face of the
7 perpetrator. As a result, when there is a weapon
8 present, there is a decreased likelihood of a correct
9 identification and a greater likelihood of a false
10 identification.

11 **Q** All right. Now, you heard the testimony that
12 the, uh, victim spoke to law enforcement about 10 days
13 later or a week or so after the incident and then gave
14 a, uh, a better description of the female that was
15 there?

16 **A** Right.

17 **Q** Now, would the fact that he had no better
18 description of the male have any affect on your --

19 **MR. MOYER:** I would object as reliance on
20 facts not in evidence.

21 **THE COURT:** I thought she asked a question,
22 did he give them any new information.

23 **MS. ROSS:** I did ask the victim that
24 question.

25 **THE COURT:** Yeah. Go ahead.

1 **BY MS. ROSS:**

2 **Q** Did the fact that the victim later had a, uh,
3 more of one co-Defendant but not the other bring into
4 question the identification of this particular one of
5 Mr. Barton any more or less?

6 **A** Well, to someone who studies memory, it's not
7 surprising that he might be able to give a better
8 description of the person who was not, in fact,
9 holding him at knife point. But it also suggests
10 that, in fact, there was less attention being paid to
11 the male and less detail available to the victim's
12 memory.

13 **Q** Now, as far as the actual procedure of the
14 photo lineup that was presented, are there any
15 problems that you see with that that could create a
16 substantial likelihood of misidentification?

17 **A** Well, the major thing that I see is the fact
18 that the witness did have this prior exposure to mug
19 shot --

20 **MR. MOYER:** Your Honor, I would object to
21 this based on the fact that the prior exposure,
22 there was no state action involved at all. That
23 would not be something that the court would take
24 into consideration for purpose of this
25 determination.

1 **THE COURT:** Yeah. I'll keep that in mind.

2 Go ahead with your questioning.

3 **BY MS. ROSS:**

4 **Q** Okay. Uh, now as far as whether or not there
5 was state action involved and the victim seeing "mug
6 shot" magazine, would that exposure affect -- would
7 that have any affect on Mr. Perez picking Mr. Barton
8 out of -- this same mug shot out of a photo lineup?

9 **A** Yeah. First of all, the fact that there was
10 not state involvement or that this exposure to "mug
11 shot" magazine was not under any kind of a controlled
12 circumstance actually makes the situation worse. We
13 don't really know how long he looked at those photos
14 in the "mug shot" magazine or what he might have
15 discussed with his brother and so forth. All we know
16 is there was a prior exposure to that photo. We do
17 have a number of studies that suggest that if you look
18 at mug shots and you are exposed to a photo
19 previously, then you see that photo in a lineup later,
20 you are much more likely to have a sense of
21 familiarity with that photo and not necessarily to be
22 recognizing the perpetrator but to be recognizing the
23 prior exposure to the photograph.

24 **Q** Now, is there a name for that?

25 **A** We sometimes refer to it as mug shot effects.

1 We sometimes refer to it as what we call transference.
2 In general terms, what happens is we transfer a memory
3 from one setting to a idea of a memory from a
4 different context. You see the face. The face is
5 familiar. You think the fact is familiar because you
6 remember him as the perpetrator, but, in fact, you may
7 be remembering just that you've seen that photo
8 before.

9 **Q** All right. And, uh, Investigator King
10 testified that when he handed the photo lineup to Mr.
11 Perez, I believe he stated, uh, we prepared a photo
12 lineup. Was there anything suggestive about that
13 presentation of a photo lineup?

14 **A** There were a few things that were perhaps not
15 what you call best practices. One of the key things
16 is that typically the best practice for putting a
17 lineup together and the standard practice would be to
18 choose the photos based on the witness' description
19 initially. We tend to think of the witness' initial
20 description as probably the most accurate, the least
21 prone to being contaminated by additional information
22 or simply by forgetting.

23 So that initial description of a black male,
24 25 to 30, I believe is what I read in the report,
25 would normally be what you would populate the, uh,

1 lineup with. The problem, obviously, is if you did
2 that and your suspect is a man in his 50's, the
3 suspect is going to stand out like a sore thumb. What
4 might have been done is perhaps a mixture of photos
5 that matched the Defendant and photos that matched the
6 initial description. But given the exposure to "mug
7 shot" magazine in between, there probably isn't a lot
8 really that the officer could have done to have
9 alleviated that problem even if the lineup were
10 constructed a little differently.

11 Q All right. Now with the exposure to "mug
12 shot" magazine, would you expect a witness who sees a
13 perpetrator to contact law enforcement saying that
14 they seen them at the time of viewing a mug shot --

15 MR. MOYER: I would object to being outside
16 of the area of what she's an expert in.

17 THE COURT: Yeah. I think I'm going to have
18 to agree to that.

19 MS. ROSS: All right.

20 BY MS. ROSS:

21 Q Just viewing, uh, the testimony and the
22 discovery, can you give an opinion about whether there
23 is substantial likelihood of misidentification in this
24 case?

25 A I would say there is a much more -- a much

1 higher than usual probability of this identification
2 given the witness' state of intoxication and given
3 the, uh, exposure to "mug shot" magazine.

4 **MS. ROSS:** All right. I've got no further
5 questions.

6 **CROSS-EXAMINATION**

7 **BY MR. MOYER:**

8 **Q** So they are the two factors that you are
9 basing this on?

10 **A** Those are the main ones.

11 **Q** Okay. A couple of questions. You don't know
12 how intoxicated the victim was, do you?

13 **A** No.

14 **Q** Obviously -- I'm sorry. Obviously, you
15 weren't there?

16 **A** No.

17 **Q** You didn't meet with them. So you have no
18 idea really how much he drank or how intoxicated he
19 was.

20 **A** No, I only know what's in the report and what
21 he said here today.

22 **Q** Are you also aware that about a week after
23 the fact, he was able to correctly identify the female
24 who was with the Defendant in this incident. You
25 aware of that?

1 **A** Yes.

2 **Q** Okay. And just to make sure we're on the
3 same page with the facts, the Defendant and this
4 female walked up to the victim at night and after a
5 short conversation, the Defendant robbed the victim.
6 Those are the facts basically as you understood them?

7 **A** Yes. That's what I've read.

8 **Q** And as you understood those facts and what
9 you are basing your opinion on, the female basically
10 just stood there?

11 **A** Yes.

12 **Q** And the male had some interaction with the
13 victim and then robbed him?

14 **A** Yes, from what I understand.

15 **Q** He was actually able to correctly pick out,
16 while driving down the street, pick out the female who
17 had been with the Defendant that night, correct?

18 **A** Yes.

19 **Q** Okay. Now, you talked about -- All right.
20 As far as the, uh, -- as far as the photo lineup --
21 I'm sorry. As far as this "mug shot" magazine, do you
22 not find it somewhat compelling that someone who
23 happened to just look through a magazine with, I don't
24 know, maybe hundreds of photographs was able to see
25 the person who robbed him. Does that not lend some

1 credence to his identification?

2 **A** It depends on whether that photo was in some
3 way familiar from other aspects. As the victim
4 claims, he had seen this person in his neighborhood or
5 this person lives nearby. There might be some sense
6 of familiarity with the photo from other contexts.

7 **Q** And are you suggesting that a normal person
8 of normal intelligence would just pick somebody out
9 and accuse them of an Armed Robbery just because they
10 happen to know that person?

11 **A** Unfortunately, it happens all the time.

12 **Q** Okay. Uh, and now as far as what you
13 described as a better array of photographs that could
14 have been shown, obviously, you are not trying to say
15 that would have been better to have the defendant's
16 picture along with a group of 25-year-olds?

17 **A** No, definitely not.

18 **Q** And you also were not aware of what the prior
19 description was, are you?

20 **A** Uh, what I was told was just that it was a
21 black male, 25 to 30.

22 **Q** And that's based on a police report?

23 **A** Yes.

24 **Q** And are you aware that that description came
25 about through conversation between a non-Hispanic

1 person and the victim who is Hispanic speaking only?

2 **A** Yes.

3 **Q** So are you aware of the fact that this
4 description came from intermediary, not from Mr.
5 Perez?

6 **A** Yes.

7 **Q** Some people have a hard time judging other
8 peoples ages than others, don't they?

9 **A** Yes.

10 **Q** And you are not trying to tell us that this
11 identification was wrong. You don't know, do you?

12 **A** No. I can not say that.

13 **Q** You can not say whether you agree with that
14 or not?

15 **A** No.

16 **MR. MOYER:** All right. I have nothing
17 further.

18 **THE COURT:** Ms. Ross?

19 **MS. ROSS:** Uh, nothing further.

20 **MR. MOYER:** I'm sorry. Actually, I do have
21 one other question. Would you spell your last
22 name please?

23 **THE WITNESS:** Sure. V-A-N, space, W-A-L-L-
24 E-N-D-A-E-L.

25 **MR. MOYER:** Okay. Thank you.

1 **THE COURT:** Uh, are you aware of any
2 circumstances similar to this where the
3 identification was correct?

4 **THE WITNESS:** Yes.

5 **THE COURT:** And, uh, you said that, uh, when
6 asked if people get -- pick out someone that they
7 had seen previously in identification, you said
8 it happens all the time. Out of those
9 circumstances, how many of those are correct?

10 **THE WITNESS:** Well, it's hard to put a
11 percentage on it. Typically, when we do these
12 kinds of studies in a laboratory, we try to
13 control the situation so that all other things
14 being equal, exposure to a mug shot leads to more
15 false IDs than nonexposure. In field studies,
16 what we typically find is that people make false
17 identifications 25, 30, 35 percent of the time
18 without such prior exposure. So...

19 **THE COURT:** Okay. Without the prior
20 exposure?

21 **THE WITNESS:** Right. Without the --
22 basically, uh, just, you know, a straightforward
23 situation of trying to identify someone that you
24 would have seen briefly.

25 **THE COURT:** What about with the prior

1 exposure?

2 **THE WITNESS:** With the prior exposure, it's
3 typically a higher rate. So in a particular
4 situation, you might get, let's say, 20 percent
5 false identifications in a lab. When you expose
6 people to mug shots before the lineup, you tend
7 to get, you know, maybe 10 percent more. So it
8 goes up maybe 20 percent to 30 percent.

9 **THE COURT:** Okay. Do you have any empirical
10 data in the same type of study where the person
11 making the identification had previously seen the
12 person in the mug shot? Or is that -- have you
13 done --

14 **THE WITNESS:** There are, uh, -- there are
15 other studies that address some of those issues,
16 but I haven't seen the combination put together.

17 **THE COURT:** Okay. And so -- Okay. That's
18 all I have. Anything else that y'all want to
19 ask?

20 **REDIRECT EXAMINATION**

21 **BY MS. ROSS:**

22 **Q** Doctor, just one question. I do have this
23 mug shot exposure effects article.

24 **A** Yes.

25 **Q** I read through it. I didn't really find a

1 real number.

2 **A** Yeah, frequently you don't. Frequently, what
3 you find is (inaudible).

4 **Q** (Inaudible).

5 **THE COURT:** Wait. Wait. Wait. Just one at
6 a time.

7 **BY MS. ROSS:**

8 **Q** It says something to the effect of the --
9 increasing the false alarm rate is both 70 percent
10 larger and has greater long run trust -- can you
11 interpret this?

12 **A** Yeah. Basically, in plain English --
13 unfortunately, we tend to write this things in terms
14 of probability of it happening by chance and
15 statistical testing and so forth. The plain English,
16 uh, explanation is that when you expose somebody to a
17 mug shot, you have -- you have a more serious problem
18 with increasing the false alarm rate than with
19 decreasing the chance of a, uh, of a correct
20 identification. So the worse problem that we get from
21 mug shots is the fact that you are increasing the
22 chance that someone is going to make a false ID.

23 **MS. ROSS:** All right. Thank you.

24 **THE COURT:** The only other -- are those in
25 -- are those in laboratory settings?

1 **THE WITNESS:** Yes.

2 **THE COURT:** Is that right? All right. I
3 don't have anything else. Anything else? (No
4 response.)

5 All right. Thank you, ma'am. You can step
6 down. Can we release her from subpoena?

7 **MS. ROSS:** Yes. Well, I'd like to discuss
8 that.

9 **THE COURT:** Okay. All right. Anything
10 else?

11 **MS. ROSS:** Judge, I would just briefly
12 argue. Under Neil v. Biggers, the first test,
13 the first prong is what I see as being the more
14 state action aspect of the identification was the
15 action by the state unduly suggested. That's
16 where we got through State v. Moore, the
17 opportunity to view, degree of attention, the,
18 uh, accuracy of prior description, level of
19 certainty and length of time. Then there's --
20 those factors go through the second inquiry which
21 is whether under the totality of the
22 circumstances there is substantial likelihood of
23 misidentification. That doesn't have anything to
24 do with how Mr. Perez got "mug shot" magazine.

25 I did hear testimony that he had been

1 informed that someone else had been arrested. He
2 did get "mug shot" magazine afterwards. It was
3 the only other arrest in there for an armed
4 robbery. And it's also Patricia Rice. The other
5 one in there was the person that he had actually
6 picked out. There would be a natural inclination
7 to go to the one other armed robbery charge and
8 see that same picture once again. Mr. Perez said
9 he had seen--

10 **THE COURT:** Let me interrupt. Your argument
11 is that the in-court identification should not be
12 allowed because of suggestive out-of-court
13 issues, is that right?

14 **MS. ROSS:** Yes. I think that is true, but
15 then there is also a second inquiry whether due
16 process issues, whether there is a substantial
17 likelihood of misidentification. That's outlined
18 in State v. Turner, State v. Moore.

19 **THE COURT:** What about State v. Tisdall
20 where it is a non-governmental ---

21 **MS. ROSS:** Right.

22 **THE COURT:** --- issue?

23 **MS. ROSS:** Here, I think the identification
24 process, whether it's governmental or not,
25 there's still a violation of due process there.

1 I think that -- we'd argue that regardless of the
2 state action, that would come in here.
3 Certainly, by using the same lineup that the
4 victim had been exposed to before. The same
5 picture.

6 **THE COURT:** All right. I'm not going to
7 find that this -- first of all, I'm going to find
8 that his exposure to the "mug shot" magazine,
9 which is not admitted, is not the result of
10 governmental action. Then, Dr. Van Wallendael's
11 testimony is that her only -- and I didn't get it
12 as being written in concrete, 30 percent of these
13 IDs are wrong. The way I understood it, 20
14 percent in a laboratory setting. She said the
15 estimate goes up 10 percent out of the
16 laboratory. So only 30 percent are wrong, if
17 that is correct.

18 So I'm going to find that the identification
19 made in this case was not corrupted by the
20 victim's exposure to "mug shot" magazine which
21 was not the result of the State's action. I'm
22 going to find that the lineup itself is
23 appropriate. I know that if they had, in fact,
24 done what the doctor suggested and put three
25 young men and three of the men who were in there

1 in the lineup, that would have been a big issue
2 for the defense. I think that covers it.
3 Anything else?

4 **MS. ROSS:** No.

5 **THE COURT:** Okay.

6 **MS. ROSS:** Not regarding this. There are
7 some other pretrial.

8 **THE COURT:** Okay. What are they? Let's get
9 it done. The jury is going to be back in 55
10 minutes.

11 **MS. ROSS:** All right. Well, Judge, I have a
12 motion to quash the indictment under Rule 3. It
13 wasn't indicted within 90 days of the Rules of
14 Criminal Procedure. Also, my client expressed
15 concern that the, uh, wording of the warrant that
16 led to the indictment by the officer suggested
17 that, uh, the victim, uh, identified Mr. Barton
18 before he, in fact, had been identified. So he
19 had an objection to the wording. It was unduly
20 suggestive. It didn't reflect the evidence in
21 the State's possession at that time.

22 **THE COURT:** Mr. Moyer?

23 **MR. MOYER:** As for the warrant itself, that
24 is not a matter that really should be addressed
25 by this court. Any potential error for that

1 would be corrected by the indictment being passed
2 down. As to the actual date of the indictment,
3 this is a procedure that's been in place for a
4 number of years. The case was actually filed
5 within the 90 days and the defense got a copy of
6 the indictment. When the defense informed us
7 there was going to be a trial, not a plea, then
8 the case was sent to the Grand Jury. That's a
9 procedure that's been in place in this county for
10 a number of years. We would argue that is fully
11 in compliance with the rules and practice of this
12 jurisdiction.

13 **THE COURT:** And that's based on the number
14 of indictments in Greenville County. Greenville
15 County is the -- don't we have the highest
16 incidents of arrests in the state?

17 **MR. MOYER:** I believe that is correct, Your
18 Honor.

19 **THE COURT:** In order to ensure that the
20 cases that are presented to the Grand Jury are
21 not summarily rubber stamped, so to speak, the
22 Solicitor's office has adopted a policy that
23 indictments are only presented when it's
24 understood that the case is going forward to
25 trial. Is that right?

1 **MR. MOYER:** That is right, Your Honor.

2 **THE COURT:** And is that -- the purpose of
3 that to insure that the Grand Jury is not
4 overwhelmed by the number of cases and can look
5 at these cases or give them more attention?

6 **MR. MOYER:** That's correct, Your Honor.
7 There was an issue several years ago. And to
8 correct that issue that was brought up by the
9 defense bar, that was the policy that was put
10 into place so that the Grand Jury could have more
11 time to fully evaluate the cases that are before
12 them.

13 **THE COURT:** Okay. I'm going to deny those
14 motions.

15 **MS. ROSS:** All right. Judge, at this time,
16 we move to sequester the witnesses.

17 **THE COURT:** Any objection to that? I don't
18 see why not. Okay. We'll do that. So tell the
19 attorneys just to instruct their witnesses, the
20 witnesses who are being sequestered, not to
21 discuss their testimony prior to their testimony
22 and don't talk about it with whoever has
23 testified when they come out. If they stay in
24 the courtroom after they've testified, they will
25 not be available for any reply testimony that

1 might come up or anything like that.

2 **MR. MOYER:** I'll keep my lead investigator
3 and my victim ---

4 **THE COURT:** Okay.

5 **MR. MOYER:** --- in the courtroom.

6 **THE COURT:** All right. Anything else?

7 **MS. ROSS:** Judge, I think we visited the
8 issue of hybrid representation right thoroughly.
9 There were some decisions that I made regarding
10 pretrial information. My client asked me to get
11 some medical records of the victim. I did not do
12 that due to HIPAA regulations. We can not
13 subpoena medical records. Also getting the files
14 of investigators, I did not feel it was necessary
15 in this case to do that. Uh, let's see.
16 Anything else you wanted me to do?

17 **MR. BARTON:** I had motions.

18 **MS. ROSS:** He had a number of --

19 **MR. BARTON:** Motions I would like for you to
20 rule on, sir, if you don't mind.

21 **MS. ROSS:** That have been filed.

22 **MR. BARTON:** Yes, sir.

23 **THE COURT:** What are they, Ms. Ross?

24 **MS. ROSS:** Speedy trial motion.

25 **MR. MOYER:** Your Honor, before we get into

1 that, I have a notebook this thick full of
2 motions from the Defendant. Before we start
3 plying through all of those, I think the court
4 should recognize that Ms. Ross is his attorney of
5 record and any motions should come from her.

6 **THE COURT:** All right. Were they served on
7 the court?

8 **MR. MOYER:** They may have been filed.

9 **MS. ROSS:** They have been filed.

10 **MR. MOYER:** Some of them have been filed in
11 the clerk's office.

12 **THE COURT:** You are protected on those. I
13 have already ruled on the issue of hybrid
14 representation. Ms. Ross is an extremely
15 competent criminal defense attorney. She has
16 made strategic decisions about how to proceed
17 with this case. She is certainly well qualified
18 to do that. Your motions have been filed with
19 the court. Your issues are protected. All
20 right. Anything else? (No response.)

21 Okay. Well, y'all just -- we have 50
22 minutes. Have a nice lunch.

23 **(WHEREUPON, a lunch recess is taken at**
24 approximately 1:40 p.m.)

25 **(WHEREUPON, the Court resumes at approximately**

1 2:39 p.m.)

2 **THE COURT:** Okay. I got a note from the
3 jury that the foreman that has been elected is
4 James Guirl, G-U-I-R-L.

5 Teresa, let's make that a Court's Exhibit.
6 Thank you.

7 **(WHEREUPON, Court's Exhibit 2 is marked for**
8 **identification purposes.)**

9 **THE COURT:** Anything else before we bring
10 the jury back?

11 **MR. MOYER:** The only issues that I can think
12 of, Judge, is that I have two lay witnesses.
13 Both of whom have been arrested several times. I
14 would like to take up outside the presence of the
15 jury what charges the defense may intend to
16 impeach them on or argue.

17 **THE COURT:** Well, tell me what they are.

18 **MR. MOYER:** Are there any?

19 **MS. ROSS:** Yeah. The victim, Mr. Perez, he
20 had a DUI, is that right?

21 **MR. MOYER:** Uh-huh.

22 **MS. ROSS:** My understanding is it's a DUI
23 first. I wasn't intending on --

24 **THE COURT:** Okay.

25 **MS. ROSS:** However, Patricia Rice has a '06

1 CDV that she brought against Mr. Barton. I think
2 that's relevant. I'm going to ask about that. I
3 would like to.

4 **THE COURT:** So it's not -- she hadn't been
5 convicted of a crime?

6 **MS. ROSS:** She actually was convicted in
7 2001 of a CDV, but she also brought one against
8 Bobby Barton in 2006 and then did an affidavit
9 not to prosecute on that saying it didn't happen.
10 I think that is huge that she changed her story
11 about that CDV. I have discussed this with my
12 client and would like to question her about that.
13 In her statement, she also states in this case
14 that she didn't know Mr. Barton. In fact, they
15 lived together. We do intend to bring in those
16 two CDVs and a false information charge.

17 **THE COURT:** What about the first CDV?

18 **MS. ROSS:** The first CDV, I believe, is
19 relevant under 611(b). It goes to a credibility
20 issue. Being convicted of a CDV, she knew the
21 procedure of how someone makes an allegation and
22 then they are arrested. She knew the procedure
23 that she could get Mr. Barton, in her allegation
24 against him, arrested by alleging that she was in
25 fear of harm.

1 **THE COURT:** That's kind of a stretch, Ms.
2 Ross.

3 What does the State say about that?

4 **MR. MOYER:** I don't see how that's going to
5 be an issue that she knows the procedure.

6 **THE COURT:** I know the procedure. You call
7 the police.

8 **MS. ROSS:** Well, uh, 611(b), the wording
9 says relevant to any issue in this case including
10 credibility of a witness. I think her conviction
11 of a CDV would go to her credibility, especially
12 here when she's making an allegation as well in
13 prior CDV. We would argue that that goes to
14 credibility.

15 **MR. MOYER:** Rule 609 covers that.

16 **THE COURT:** I don't see -- Rule 611(b) does
17 not expand the limits placed on it in 609. That
18 first CDV, no. The second one now, if she, you
19 know -- what about the second one?

20 **MR. MOYER:** The only thing that's going to
21 happen, Judge, is she's going to say that, yes,
22 she instigated the CDV charge against the
23 Defendant but then she decided she wasn't going
24 to prosecute.

25 **THE COURT:** That's not really a conviction

1 of a crime. It's not -- you know, I think it is
2 -- we have to wait and see but I think it is
3 relevant. She said originally that, uh, she
4 didn't know him. That's certainly impeachable.

5 **MR. MOYER:** I don't know where that come
6 from.

7 **THE COURT:** We have to cross that bridge
8 when we come to it, but that's really not a 609
9 issue.

10 **MR. MOYER:** I agree.

11 **THE COURT:** Okay.

12 **MR. MOYER:** Then there is a false
13 information charge in 2008 that would certainly
14 go to her credibility as a witness.

15 **THE COURT:** Mr. Moyer nods consent. He
16 didn't look like he was happy about it but he did
17 nod consent. Okay. Anything else before we
18 bring them? (No response.)

19 Nope?

20 **MS. ROSS:** Nothing.

21 **THE COURT:** All right. Got all the
22 sequestered witnesses? Okay. And I did tell
23 them that y'all are making brief non-
24 argumentative opening statements?

25 **MR. MOYER:** They'll be brief.

1 **THE COURT:** Brief, non-argumentative.

2 **MS. ROSS:** Can't tell you that.

3 **THE COURT:** Judge Pyle used to just "Call
4 your first witness". He ever do that to you?
5 You were around about long enough.

6 **MR. MOYER:** Oh, yeah. Yeah. He's used to
7 let me give longer.

8 **THE COURT:** Yeah, cause we softened him up.
9 (WHEREUPON, the jury enters at approximately
10 2:46 p.m.)

11 **THE COURT:** All right. Ladies and
12 Gentlemen, welcome back. I hope you had a
13 pleasant lunch. It was a long lunch break. We
14 had some things to tend to which I think will
15 probably save time in the long run. But welcome
16 back.

17 Mr. Guirl, thank you for agreeing to serve as
18 foreperson.

19 As I told you, we are about ready to embark
20 on the first part of the trial. That is the
21 opening statements of the attorneys. Okay.

22 **MR. MOYER:** Thank you, Your Honor. May it
23 please the Court.

24 **THE COURT:** Yes, sir.

25 **MR. MOYER:** Mr. Foreman, Ladies and

1 Gentlemen of the jury, I just have a couple of
2 opening remarks to bring out to you before we
3 jump right into this trial, which we will hear in
4 just a couple of moments. As you've heard me
5 introduce myself earlier, my name is Mark Moyer.
6 I'm an Assistant Solicitor here in Greenville
7 County. My job is to represent the State in
8 criminal cases like the one that is before you
9 now.

10 You've heard the indictment read to you. You
11 know a little bit about it. You are here today
12 because on the night of July the 25th, the
13 allegations are that this defendant did rob a
14 young man by the name of Edwin Perez who is
15 seated on the back row. Robbed him, held a knife
16 against his throat and stole a wallet containing
17 \$500 worth of cash from him.

18 You are going to hear from Edwin Perez in
19 just a couple of minutes. You are going to hear
20 that Edwin was a 26-year old guy. He lives here
21 in Greenville County. You are going to hear he's
22 a hard-working guy. He works landscaping all day
23 out in the hot sun. You are going to hear that
24 the day this happened was a Friday night. Edwin
25 Perez had just been paid. He had a good wad of

1 cash. He had got his check cashed. He had \$500
2 in his wallet. You are going to hear that Edwin
3 did not have to work the following day. The
4 following day was a Saturday.

5 Like many young people, Friday night, he's
6 going to drink a few beers. You're going to hear
7 that he wasn't out at a bar. He wasn't in any
8 trouble. He wasn't out driving. He stayed at
9 his home, a trailer down on the southern end of
10 the county. He was having a few beers hanging
11 out at the trailer with his friends. About
12 midnight, his friends left. He went and hung out
13 outside the trailer finishing up his beer.
14 You're going to hear that that's when he got
15 robbed. He was all alone.

16 You're going to hear that two people
17 approached him. The testimony is going to be
18 that this defendant and another woman by the name
19 of Patricia Rice approached him and, after a very
20 brief conversation, you're going to hear that
21 this defendant pulled a knife, held it to Edwin's
22 throat and stole -- robbed him of his wallet and
23 \$500 cash that was in the wallet.

24 You're going to hear testimony that Edwin had
25 seen these people before, especially the female,

1 Ms. Rice. Uh, there was a neighborhood behind
2 his, a shortcut through Mr. Perez's trailer park
3 where people from this neighborhood would often
4 walk to get to a convenience store that's over on
5 White Horse Road. You're going to hear that Mr.
6 Edwin Perez has seen these people several times.

7 You are going to hear that about a week
8 later, this investigator, Investigator Jarvis,
9 got Mr. Perez and took him out in his car and
10 said let's see if we can find that woman who was
11 there when you got robbed. You're going to find
12 that they found her. You are going to find that
13 Investigator Jarvis began speaking to this woman,
14 Patricia Rice. She told Investigator Jarvis
15 right then and there that the person who robbed
16 Mr. Perez was this defendant, Bobby Barton.

17 You are also going to hear that several
18 months later, Edwin Perez actually identified
19 this defendant in a photo lineup. You're going
20 to hear that he's going to be able to tell you
21 that he is absolutely sure that this defendant is
22 the person that held that knife to his throat and
23 robbed him.

24 I anticipate this to be a relatively short
25 case. The state, we have about six witnesses to

1 call, all of whom will be fairly short. I will,
2 uh, tell you this by way of warning, Mr. Perez is
3 going to require an interpreter when he
4 testifies. He will be the first witness. I will
5 warn you, it will be a bit tedious,
6 unfortunately. But he will be the only witness
7 who will require, uh, an interpreter.

8 Now, at the end of this case, I'll have a
9 chance to talk to you again. At that time, I
10 will have the opportunity to argue to you why the
11 evidence and the testimony you heard in this case
12 points beyond any reasonable doubt that this
13 defendant is the person who robbed Edwin Perez.
14 But for now, all I ask you is to listen closely
15 to all this testimony, use your common sense and
16 your good judgement to weigh that evidence and,
17 then, at the end of the case, do justice. Thank
18 you.

19 **MS. ROSS:** Thank you. May it please the
20 Court.

21 **THE COURT:** Yes, ma'am.

22 **MS. ROSS:** Ladies and Gentlemen of the jury,
23 my name is Susannah Ross. I represent Bobby
24 Barton who is sitting right over there. Now,
25 he's been armed -- he's been charged with Armed

1 Robbery and that is a serious crime in the State
2 of South Carolina. He's pled not guilty to that
3 crime. Now, the State has the burden of proving
4 him guilty beyond a reasonable doubt before he's
5 guilty of that crime. He's not guilty. He's
6 pled not guilty because he's not guilty. I would
7 ask you to watch the evidence the State presents
8 in this case.

9 I can tell you right now this is an
10 eyewitness case. That's all it's about. Once
11 the State went and picked out Pat Rice, Patricia
12 Rice, she gave a statement and she named Bobby
13 Barton. That's why Bobby Barton is here today
14 because she named him. Month, months later, the
15 victim picked out Bobby Barton from a lineup.
16 This identification procedure was very tainted by
17 prior exposure of the victim to Mr. Barton and
18 that very same photograph of Mr. Barton that was
19 shown to him in the eyewitness lineup months and
20 months later. Now, as far as that, the State
21 stops. That is the extent of evidence that they
22 present -- that I suspect they will present to
23 you here today.

24 Eyewitness testimony is not everything. It
25 can be very tainted under the circumstances. I

1 ask you to look for those circumstances and at
2 that those circumstances as you hear the case
3 before you today. In looking towards that, know
4 that the State has to prove guilt beyond a
5 reasonable doubt. They are not going to be able
6 to do that today. There's not the other evidence
7 there that needs to be there for you to find Mr.
8 Barton guilty of a crime. Thank you.

9 **THE COURT:** Okay.

10 **MR. MOYER:** Your Honor, at this time, the
11 State would call Mr. Edwin Perez to the stand and
12 also Ms. Teresa Sampson as his interpreter.

13 **THE COURT:** Okay. Place you under oath
14 first and then Mr. Perez.

15 **THE CLERK:** Do you solemnly swear that you
16 will actively interpret the language requested in
17 this courtroom of the witness without additions
18 thereto or detractions therefrom or any other
19 amendments of your own interpretation so help you
20 God?

21 **THE INTERPRETER:** Yes, I do.

22 **EDWIN PEREZ**

23 having first been sworn, testifies as follows:

24 **THE CLERK:** Please have a seat.

25 **DIRECT EXAMINATION**

1 **(WHEREUPON,** the following answers are given by the
2 interpreter.)

3 **BY MR. MOYER:**

4 **Q** Mr. Perez, state your full name.

5 **A** Edwin Perez, Perez.

6 **Q** How old are you?

7 **A** 26 years old.

8 **Q** Are you married?

9 **A** No.

10 **Q** What kind of work do you do?

11 **A** Landscaping.

12 **Q** How long have you been doing landscaping
13 work?

14 **A** Seven years.

15 **Q** You also -- you work on lawn mowers some
16 also?

17 **A** No.

18 **Q** Some of the lawn mowers that belong to the
19 landscaping business, do you work on some of those?

20 **MS. ROSS:** Objection. Asked and answered.

21 **THE COURT:** Go ahead.

22 **THE WITNESS:** No.

23 **BY MR. MOYER:**

24 **Q** Okay. Now, let me draw your attention to the
25 early morning hours of July the 25th, 2009.

1 **A** I went to work on that day.

2 **Q** Okay. Where did you live on that day?

3 **A** Trailer number [REDACTED]

4 **Q** And what road is that on?

5 **A** Randall [sic].

6 **Q** On Randolph Street?

7 **A** Yes.

8 **Q** And can you show that on a map?

9 **A** Yes.

10 **(WHEREUPON, State's Exhibit 2 is marked for**
11 **identification purposes.)**

12 **BY MR. MOYER:**

13 **Q** Let me show you State's Exhibit number 2.

14 Can you -- take a look at that for a minute. Can you
15 recognize that?

16 **A** Yes.

17 **Q** And what is that a picture of?

18 **A** Where -- it's a picture of where I live, my
19 trailer.

20 **Q** Okay. Is this a true and accurate
21 representation of the area where you lived on July
22 25th, 2009?

23 **A** Yes.

24 **MR. MOYER:** At this time, I move to have
25 State's Exhibit number 25 [sic] entered into

1 evidence.

2 MS. ROSS: No objection.

3 THE COURT: All right. Without objection.

4 COURT REPORTER: He said State's Exhibit 25.

5 It's 2.

6 THE COURT: State's Exhibit 2.

7 MR. MOYER: Is that what I --

8 THE COURT: You said 25.

9 THE INTERPRETER: You said --

10 MR. MOYER: Did I? I'm sorry.

11 (WHEREUPON, State's Exhibit 2 is admitted into the
12 record.)

13 BY MR. MOYER:

14 Q Okay. Mr. Perez, would you please step down
15 and point out to the jury the trailer where you lived
16 July 25th, 2009.

17 A Right there.

18 Q Okay. All right. We'll refer to it again
19 later, but thank you. You may have a seat. Now, this
20 trailer where you lived, is that in Greenville County?

21 A Yes.

22 Q How long have you lived there?

23 A Seven years.

24 Q Who did you live there with?

25 A With two brothers.

1 **Q** Okay. And that's who you lived with July
2 25th of 2009?

3 **A** Yes.

4 **Q** Okay. Is that the night you were robbed?

5 **A** Yes.

6 **Q** Did this happen there at the trailer?

7 **A** Behind my trailer.

8 **Q** Okay. And what time -- was it during the
9 daytime or in the nighttime when this happened?

10 **A** Night.

11 **Q** Tell us what you were doing that night before
12 you got robbed.

13 **A** I was in the back just drinking some beers.

14 **Q** You remember what day of the week this was?

15 **A** Friday.

16 **Q** Had you worked that day?

17 **A** Yes.

18 **Q** Did you have to work the next day, Saturday,
19 or were you going to be off?

20 **A** Yes, but I didn't go.

21 **Q** But you didn't go. Okay. Did your brother
22 and friends stay there for the whole night or did they
23 leave at some point?

24 **A** My brothers stayed there because they lived
25 there, but inside. They were inside.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL
RECEIVED

CERTIORARI TO GREENVILLE COUNTY AUG 11 2017

COURT OF COMMON PLEAS S.C. SUPREME COURT

THE HONORABLE DANIEL D. HALL, CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2016-000995

BOBBY JOE BARTON. PETITIONER,

V.

STATE OF SOUTH CAROLINA. RESPONDENT.

CERTIFICATE OF SERVICE

THE HEREBY UNDERSIGNED CERTIFIES THAT A TRUE COPY OF THE
APPENDIX AND DESIGNATION OF MATTER IN THE ABOVE REFERENCED
CASE HAS BEEN SERVED UPON: DESHAWN H. MITCHELL, ESQUIRE
ASSISTANT ATTORNEY GENERAL. P.O. BOX 11549, COLUMBIA, SC 29211

I FURTHER CERTIFY THAT ALL PARTIES
REQUIRED BY RULE TO BE SERVED HAVE BEEN
SERVED THIS 7th, DAY OF AUGUST, 2017.

CC: DANIEL E. SHEARHOUSE, ESQUIRE

BOBBY JOE BARTON, PRO Se

Bobby Joe Barton Pro Se

BOBBY JOE BARTON, #163629

PERRY CORR. INST.

430 OAKLAWN RD.

PELZER, SC 29669

REPRESENTATION PRO Se

1 **Q** Okay. So your brother went inside?

2 **A** Yes.

3 **Q** Had there been anybody else there having a
4 drink with you?

5 **A** My brother -- my brother and other friend.

6 **Q** Okay. Did your other friend stay there or
7 did he leave too?

8 **A** He left.

9 **Q** Okay. So you were there by yourself?

10 **A** Yes.

11 **Q** Now, can you identify today the man who
12 robbed you?

13 **A** Yes.

14 **Q** Do you see him here in the courtroom?

15 **MS. ROSS:** Judge, I object.

16 **THE INTERPRETER:** Yes.

17 **THE COURT:** Same ruling. Go ahead.

18 **BY MR. MOYER:**

19 **Q** Okay. Would you please point him out?

20 **A** He's over there.

21 **Q** Is it the man in the blue suit? I'm sorry.
22 Blue shirt?

23 **A** Yes.

24 **Q** Okay. Now, uh, tell us how he -- how did he
25 rob you? How did it come about that you got robbed?

1 **A** I was outside. All of a sudden, he came. He
2 pushed me down with a pocketknife. He took my wallet.

3 **Q** Okay. Did you see the knife?

4 **A** No, because he put it right here.

5 **Q** Tell us what you mean by "here". Against
6 your neck?

7 **A** Yes, right here.

8 **Q** So if you didn't see the knife, how do you
9 know he had a knife?

10 **A** I felt it.

11 **Q** Did the knife cut you?

12 **A** No.

13 **Q** When you felt the knife against your throat,
14 how did that make you feel?

15 **A** I got really scared.

16 **Q** And, uh, did -- when he walked -- when he
17 came up to you, did he rob you right away? Was there
18 a period -- was he there for a minute or two before he
19 robbed you?

20 **A** He came. He knocked me down. He pushed me
21 down to the floor. Then, uh, I yell and then he took
22 my wallet and he left.

23 **Q** Okay. Now, where was your wallet?

24 **A** On that side, on the right side.

25 **Q** In your pocket?

- 1 **A** Yes.
- 2 **Q** Your front pocket or your back pocket?
- 3 **A** The back.
- 4 **Q** All right. Now, had you been paid that day?
- 5 **A** Yes.
- 6 **Q** And you had money?
- 7 **A** Yes, 500.
- 8 **Q** Was that in your wallet?
- 9 **A** Yes.
- 10 **Q** Uh, now, how did he get the wallet from you?
- 11 **A** He took his hand inside my pocket.
- 12 **Q** What did he do after he got the wallet away
- 13 from you?
- 14 **A** I yell. He ran.
- 15 **Q** He ran and you yelled?
- 16 **A** Uh-huh.
- 17 **Q** Now, was anyone with him when he came up?
- 18 **A** Yes, a girl. A lady.
- 19 **Q** Did she walk up there with him?
- 20 **A** She came very slowly. Then she told me,
- 21 "He's your friend. He's not going to rob you."
- 22 **Q** Okay. And, uh, that took place before he
- 23 robbed you?
- 24 **A** No, after he ran, she told me that.
- 25 **Q** Okay. And then she left? After, uh, --

1 after he ran, did she leave as well?

2 **A** Yeah, she start walking slowly and she was
3 just telling me those things as she was walking away.

4 **Q** Okay. What did she do while the robbery was
5 taking place?

6 **A** She was just standing there.

7 **Q** Okay. She walked up to you with this
8 defendant before the robbery?

9 **A** Yes, both of them came close to me.

10 **Q** Okay. Did they stand there and talk to you
11 before they robbed you?

12 **A** Yeah. They were standing there.

13 **Q** How long were they standing there before they
14 robbed you?

15 **A** About a minute. One minute.

16 **Q** Okay. Did you recognize this woman who was
17 with the Defendant who robbed you?

18 **A** Yes.

19 **Q** How did you recognize her?

20 **A** Once in a while, she used to pass by.

21 **Q** Okay. And she would pass through the trailer
22 park?

23 **A** Yeah, nearby.

24 **Q** Did you know her name?

25 **A** No.

1 Q Had you ever spoken to her as far as you
2 know?

3 A No, just I've seen her.

4 Q Okay. Now, can you show us on this map where
5 she used to walk.

6 A Like back here on that road.

7 Q Can you point it out for us again? Okay. Is
8 there a trail?

9 A Yes.

10 Q Where does the trail go?

11 A It goes all the way to here.

12 Q Over those railroad tracks?

13 A Yes, the railroad tracks.

14 Q Over to this neighborhood on the other side
15 of the railroad track?

16 A Yeah. All the way to this corner right here.

17 Q Okay. Thank you. You can have a seat. Now,
18 how about the Defendant? Had you ever seen him before
19 the night you got robbed?

20 A Once in a while.

21 Q Okay. So how many times -- did you see him
22 as many times as you had seen her?

23 A No, I used to see the woman more, more often.
24 She used to pass by more often and him not so much.

25 Q Any idea how many times you had seen him?

1 **A** About twice. I seen him about twice.

2 **Q** Would it be in the same area, around that
3 shortcut?

4 **A** Yeah, this same shortcut.

5 **Q** What did you do after you arrived and the man
6 and woman ran away?

7 **A** I called the police.

8 **Q** Were you able to talk to the police?

9 **A** No. They couldn't understand. I hang up.

10 **Q** I'm sorry.

11 **A** I hang up. Then they called me back.

12 **Q** Okay. When they called back, who spoke to
13 the police?

14 **A** My brother.

15 **Q** Did you wake your brother up?

16 **A** Yes.

17 **Q** Were you the only person outside when this
18 robbery took place?

19 **A** Yes.

20 **Q** Just you, the Defendant and this woman?

21 **A** Yes.

22 **Q** Did the officer come to your trailer?

23 **A** Yes. He arrived.

24 **Q** Did this officer speak Spanish?

25 **A** No.

1 Q How did you talk to him?

2 A My brother interpreted for me.

3 Q Okay. Now, the night this, uh, -- all right.

4 A week or so later, did you meet with this detective,
5 Detective Jarvis?

6 A Yes.

7 Q Were you able to talk to him?

8 A With him?

9 Q Yes.

10 A Yes. Yeah, he asked me to, uh, go and see if
11 I see that lady that I knew.

12 Q So he speaks Spanish?

13 A Yes.

14 Q All right. So did you go for a ride with
15 this police officer?

16 A Yes.

17 Q You were going out to see if you could find
18 this woman?

19 A Yes.

20 Q While you were with the officer in his --
21 were you in his police car?

22 A We, uh, saw her. She got in a car and we
23 followed them.

24 Q You saw her -- when you were out with the
25 police officer, did you see the woman who was with the

1 Defendant?

2 **A** Yes.

3 **Q** Did you tell Investigator Jarvis that that
4 was the woman who was with the man who had robbed you?

5 **A** Yes.

6 **Q** You saw her get in the car you said?

7 **A** Yes, she got in the car.

8 **Q** And the police stopped the car?

9 **A** We follow them first for a while.

10 **Q** You remember this investigator going over --
11 did you see him go over and talk to her?

12 **A** Yes.

13 **Q** Did you stay in the police car?

14 **A** Yes.

15 **Q** Were you later shown a photographic lineup so
16 you could identify the person who robbed you?

17 **A** Yes.

18 **Q** This was in January of 2010?

19 **A** Yes.

20 **Q** Okay. Where did you go to look at this
21 photographic lineup?

22 **A** Over there. Just down there.

23 **Q** To the police station?

24 **A** Yes.

25 **Q** Could the police officer you met with on this

1 day, could that police officer speak Spanish?

2 **A** No.

3 **Q** How were you able to have a conversation with
4 him?

5 **A** I was with my brother.

6 **Q** Okay. And your brother speaks English?

7 **A** Yes.

8 **Q** Did he help you to understand what the police
9 was saying?

10 **A** Yes.

11 **Q** Now, I'm going to show you what's been marked
12 as State's Exhibit 1.

13 **A** Yes.

14 **Q** I want you to take a look at that and tell me
15 if that's the photographic -- the photographs you were
16 shown by the officer January of 2010?

17 **A** Yes.

18 **Q** Okay. And, uh, are you able -- is your
19 signature on that?

20 **A** Yes.

21 **Q** And did you make any other marks on that
22 document?

23 **A** Yes, sir.

24 **Q** You made the circle?

25 **A** Yes.

1 **Q** Does it look the same essentially now as it
2 did when you were shown that photo lineup in January
3 of 2010?

4 **A** Yes.

5 **Q** You don't see anything changed on it?

6 **A** No.

7 **MR. MOYER:** Your Honor, at this time, we
8 would have State's Exhibit 1 entered into
9 evidence.

10 **THE COURT:** Subject to the previous
11 objection.

12 **(WHEREUPON,** State's Exhibit 1 is admitted into the
13 record.)

14 **BY MR. MOYER:**

15 **Q** Mr. Perez, when the officer handed that
16 photographic lineup to you, did he ask you to see if
17 you could recognize anybody?

18 **A** Yes.

19 **Q** All right. When you looked at that
20 photographic lineup, did you recognize anybody?

21 **A** Yes.

22 **Q** And what, uh, what did you, uh, -- what did
23 you recognize when you looked at that photographic
24 lineup?

25 **A** I recognized him right away from the time of

1 the robbery.

2 Q Okay. So you recognized the person who
3 robbed you?

4 A Yes.

5 Q Did you tell the officer who it was?

6 A When they asked me?

7 Q Yes. Did you point out to the officer and
8 show him which person you picked out?

9 A Yes.

10 Q Okay. And, uh, what did the officer ask you
11 to do?

12 A To put a circle around it.

13 Q Did you sign it also?

14 A Yes, and to sign it.

15 Q Okay. I'm going to ask you to step down
16 again and we'll show the jury and ask you to, if you
17 could, show the jury which of the pictures you pointed
18 out.

19 A Yes, the one with the circle.

20 Q Okay. Thank you. Please have a seat again.
21 When you looked at those photographs, did you look at
22 all the pictures carefully?

23 A Yes.

24 Q Were you sure that he was the one who robbed
25 you, absolutely sure?

1 **A** Yes.

2 **Q** Did the detective influence your decision at
3 all or did you pick them out on your own?

4 **A** I saw it.

5 **Q** Okay. Now, I'm going to ask you a few more
6 questions about the night that you got robbed. When
7 this happened, this happened at night, didn't it?

8 **A** Yes.

9 **Q** Was there enough light around in order for
10 you to be able to see his face well enough to
11 recognize him later?

12 **A** Yes.

13 **Q** What kind of light was there that enabled you
14 to see him?

15 **A** There was a small light, but it was well lit.

16 **Q** There was a small light on your trailer or
17 street light or what?

18 **A** To the right. On the right side of the
19 trailer. Yes, a street light. No, right next to the
20 trailer.

21 **Q** You could see his face well enough to
22 recognize him later?

23 **A** Yes.

24 **Q** Now, when he robbed you, you already
25 described that he came close enough to take your

1 wallet out of your pocket.

2 **A** Well he push me down.

3 **Q** He pushed you down. So he was very close to
4 your face?

5 **A** Yes.

6 **Q** He was close enough that he was holding the
7 knife next to your throat?

8 **A** Yes.

9 **Q** So his face was right next to yours?

10 **A** Yes.

11 **Q** Now, did the beer you were drinking that
12 night make you too intoxicated to remember what the
13 person looked like?

14 **A** No.

15 **Q** Okay. And you didn't have any trouble
16 picking out the female later, did you?

17 **A** Yeah, I know. I knew that woman, I mean,
18 I've seen that woman.

19 **Q** Same thing, you've seen him too, right?

20 **A** Yes, once. Once, I think.

21 **Q** The night this happened, how old did you
22 think the Defendant was?

23 **A** About 30 or 40.

24 **Q** And you remember the officer -- you remember
25 the officer -- when the officer was asking you to

1 describe him, do you remember -- is that what you
2 tried to tell the officer as far as how old he was?

3 **A** Yes.

4 **Q** Okay. And you weren't able to speak to this
5 officer --

6 **MS. ROSS:** Your Honor, I would object to the
7 leading at this point.

8 **BY MR. MOYER:**

9 **Q** I'll retract that question. When you spoke
10 to the officer the night of the robbery, did that
11 officer speak Spanish?

12 **A** No.

13 **Q** So you had to communicate using your brother
14 as an interpreter?

15 **A** Yes.

16 **Q** Okay. Now, after the night of the robbery,
17 did you, uh, ever see or speak to the woman who was
18 with the robber at a later time?

19 **A** No.

20 **Q** Just the night that she was arrested?

21 **A** Yes.

22 **Q** When you were with Investigator Jarvis?

23 **A** Yes, that day.

24 **Q** But you didn't talk to her that day?

25 **A** No.

1 Q Now, did you see the Defendant again after
2 that day?

3 A No.

4 Q Okay. Did you see any pictures of him after
5 that day?

6 A I saw him after he was arrested.

7 Q Tell us about the picture that you saw.
8 Where did you see it?

9 A We found this paper where there were a lot of
10 pictures in it. We found it on the floor.

11 Q Found it on the floor of what?

12 A On the grass. Since I cut grass, I saw it on
13 the grass.

14 Q Okay. And did you look through that
15 magazine?

16 A Yes.

17 Q And this magazine, you remember the name of
18 it?

19 A No.

20 Q Does "mug shot" magazine sound right?

21 A Yeah, I think so.

22 Q That magazine, did it have like a whole bunch
23 of different pictures in it?

24 A Yes.

25 Q Maybe hundreds of pictures?

1 **A** Yeah, more.

2 **Q** You looked through that magazine?

3 **A** Yes.

4 **Q** Was this maybe a few weeks after you got
5 robbed?

6 **A** I think after he was arrested.

7 **Q** So that was a few weeks after you got robbed?

8 **A** Yeah, because when I got robbed, I'm not
9 quite sure how long did it pass before.

10 **Q** Okay. And when you looked through that
11 magazine, you saw a picture of this defendant in
12 there?

13 **A** Yes.

14 **Q** Okay. When you saw his picture, were you
15 sure that was him?

16 **A** Yes.

17 **Q** Now, can you read -- let me retract that
18 question. When you were looking through that
19 magazine, did you know the name of the person?

20 **A** No.

21 **Q** At that time, you didn't know his name?

22 **A** No.

23 **Q** Can you read English?

24 **A** No.

25 **Q** All these pictures in that magazine, you

1 couldn't read their names or you couldn't read what
2 charges were by the names?

3 **A** I mean, a little bit but not too much.

4 **Q** Mainly, you were just looking at the
5 photograph?

6 **A** Yes.

7 **Q** Now, Mr. Perez, do you understand how
8 important it is that you correctly pick out the person
9 who did this to you?

10 **A** Yes.

11 **Q** Okay. You know how serious this is?

12 **A** Yes.

13 **Q** And, uh, once again, you have picked out this
14 defendant as the person who robbed you. Are you
15 absolutely sure that that man seated over there is the
16 person who robbed you?

17 **A** Yes.

18 **Q** Please answer any questions.

19 **CROSS-EXAMINATION**

20 **BY MS. ROSS:**

21 **Q** Now, Mr. Perez, the night of the incident,
22 your brother was there in the trailer, correct?

23 **A** Yes, inside.

24 **Q** Were both brothers inside or just one?

25 **A** Both of them were inside.

1 Q And someone called 9-1-1 and hung up the
2 phone.

3 A Me.

4 Q And then immediately, 9-1-1 called back,
5 correct?

6 A Yes.

7 Q At that point, one of your brothers spoke to
8 the 9-1-1 operator, correct?

9 A Yes.

10 Q And your brother was actually talking to you
11 and translating at the time you spoke to the 9-1-1
12 operator, correct?

13 A Yes.

14 Q Now, your brother understands Spanish and can
15 translate what you say, correct?

16 A Yes.

17 Q And the night of this incident, you describe
18 a 25 to 30-year-old black male as the person who
19 robbed you?

20 A No, I said between 30 and 40.

21 Q Now, did the officer at the scene, was he
22 speaking Spanish with you?

23 A He spoke in English, but my brother was
24 interpreting for me.

25 Q So your brother who speaks English and

1 Spanish was interpreting, correct?

2 **A** Yes.

3 **Q** Now, you said you were outside, you weren't
4 inside drinking beer that night?

5 **A** Yes.

6 **Q** And this was midnight or so?

7 **A** Yeah, around 11:00 or midnight, somewhere
8 around there.

9 **Q** You said you had your wallet with all your
10 cash, all the money you owned in your pocket outside
11 that night?

12 **A** Yes.

13 **Q** Now, did your trailer have a lock on it?
14 Could you lock the door to your trailer?

15 **A** Yes.

16 **Q** Now, your trailer has sort of decks at the
17 front and the back, correct?

18 **A** Yeah, concrete.

19 **Q** Are they on the ground or are they raised up
20 where the door is?

21 **A** On the floor where the grass is.

22 **Q** Okay. Now, uh, you stated that you were
23 pushed down, is that correct?

24 **MR. PEREZ:** Sí.

25 **BY MS. ROSS:**

1 **Q** And you stated that you didn't see a weapon
2 but a knife was held to your throat?

3 **A** Yes.

4 **Q** All right. Now, there was a woman there ---

5 **A** Yes.

6 **Q** --- who you later picked out with
7 Investigator Jarvis, correct?

8 **A** Yes.

9 **Q** And you are aware that she was arrested as
10 being part of this robbery against you, right?

11 **A** Yes.

12 **Q** You were also aware that after her arrest,
13 the man was arrested as well, correct?

14 **A** Yes, they told me. The police officer told
15 me.

16 **Q** Was this after Ms. Rice was arrested, the
17 woman you picked out?

18 **A** Yes.

19 **Q** So you knew that along with Ms. Rice, another
20 suspect, who was a male, was arrested in your case?

21 **A** Yeah, because she was the one who said that
22 she knew who had robbed me.

23 **Q** All right. And you knew this because the
24 police told you that because you were the victim?

25 **A** Yes.

1 Q And the police have to keep the victim
2 informed of the status of the case?

3 A Yes.

4 Q Now, you knew this when you took a look at
5 this "mug shot" magazine?

6 A Yes.

7 Q And on page 8 of this "mug shot" magazine,
8 there is a picture of Patricia Rice?

9 A Yes.

10 Q And you saw that before when you looked at
11 "mug shot" magazine?

12 A When she was arrested, she was put on that
13 magazine.

14 Q And you suspected that the other person that
15 she picked out would be in the magazine as well?

16 A Yes.

17 Q And on page 3, it is Bobby Barton?

18 A Yes.

19 Q Are you aware that he was the only other
20 person in this magazine from Greenville charged with
21 Armed Robbery?

22 A No.

23 Q Now, you said that you don't read English,
24 correct?

25 A No.

1 Q But your brother does, doesn't he?

2 A Yes.

3 Q When you looked at this magazine, he looked
4 at it as well, didn't he?

5 A Yes.

6 Q And y'all -- you discussed it, correct?

7 A Yes.

8 Q Now, a week after the incident, I just want
9 to ask you about meeting with Investigator Jarvis.

10 A Yes.

11 Q Now, at that point, you had, uh, -- you told
12 him you had seen the women involved in the incident,
13 correct?

14 A Yes.

15 Q And he could speak Spanish?

16 A Yes.

17 Q Yet, you said nothing about seeing the man
18 there?

19 A No.

20 Q And you said nothing about changing, giving a
21 more detailed description of the man there?

22 A No.

23 Q Now, it wasn't until January, about five
24 months later that you looked at this photo lineup.

25 A Yes.

1 **Q** At that point, could Investigator King speak
2 English -- I mean, Spanish?

3 **A** You mean the one where I went to see, no.

4 **Q** And your brother was interpreting then?

5 **A** Yes.

6 **Q** And at that point, you picked out this
7 photograph, right?

8 **A** Yes.

9 **Q** Now, isn't that the exact same photograph as
10 this one from "mug shot" magazine that you had seen
11 earlier?

12 **A** Yes.

13 **Q** You can see the white hair on the top in the
14 center there?

15 **A** Yes.

16 **Q** Now, at that time, you did not tell
17 Investigator King that you had seen the picture
18 before, did you?

19 **A** No.

20 **MS. ROSS:** I've got no -- I've got no
21 further questions.

22 **THE COURT:** Any redirect?

23 **MR. MOYER:** Just a couple of questions.

24 **REDIRECT EXAMINATION**

25 **BY MR. MOYER:**

1 **Q** Now, uh, when you saw that "mug shot"
2 magazine, are you the one who picked him out of the
3 magazine?

4 **A** Yes.

5 **Q** You are the one who saw him in the magazine,
6 not your brother?

7 **A** Yeah, it was me.

8 **Q** In fact, your brother didn't see him the
9 night of the robbery, did he?

10 **A** No.

11 **Q** He wasn't there?

12 **A** No.

13 **Q** Before you saw the man's picture in that
14 magazine, did your brother read all the names of the
15 people in the magazine?

16 **MS. ROSS:** Objection. He doesn't know what
17 his brother did or didn't do.

18 **THE COURT:** Wait --

19 **MR. MOYER:** No, no. Let me rephrase the
20 question.

21 **THE COURT:** Okay.

22 **BY MR. MOYER:**

23 **Q** Before you saw the Defendant's picture in the
24 "mug shot" magazine, did your brother read out loud to
25 you the names of all the people in the magazine?

1 **A** No.

2 **Q** Before you saw the Defendant's picture in the
3 "mug shot" magazine, did your brother read what all
4 the different criminal charges were in the book?

5 **A** No.

6 **Q** So you saw him and then told your brother?

7 **A** Yes. Yeah.

8 **Q** Thank you.

9 **MR. MOYER:** I have noth --

10 **MS. ROSS:** Just --

11 **MR. MOYER:** I'm sorry.

12 **MS. ROSS:** Just one more thing.

13 **RECROSS-EXAMINATION**

14 **BY MS. ROSS:**

15 **Q** Uh, when did you tell the Solicitor that you
16 had seen the picture in "mug shot" magazine?

17 **A** No, I didn't tell him.

18 **Q** Did you tell the police officers or anyone
19 from the State?

20 **A** No.

21 **MR. MOYER:** Just one quick followup.

22 **REDIRECT EXAMINATION**

23 **BY MR. MOYER:**

24 **Q** You told us that the first time we met with
25 you, didn't you? When we met with you, didn't you

1 tell us --

2 **A** Yes, once I -- you came with Monica.

3 **Q** And it was the first time you met with us?

4 **A** Yes.

5 **Q** Okay. Thank you. Nothing.

6 **THE COURT:** Okay. You can step down.

7 **MR. MOYER:** The State would call
8 Investigator Tracy King.

9 **TRACY KING**

10 having first been sworn, testifies as follows:

11 **DIRECT EXAMINATION**

12 **BY MR. MOYER:**

13 **Q** All right. Would you please state your full
14 name?

15 **A** Alvin Tracy King.

16 **Q** Where do you work?

17 **A** Greenville County Sheriff's Office.

18 **Q** How long have you been in law enforcement?

19 **A** 15 years.

20 **Q** Has that all been with Greenville County
21 Sheriff's Office?

22 **A** It has.

23 **Q** And what is your position?

24 **A** I work in the Armed Robbery Unit.

25 **Q** How long have you been in investigations with

1 the Greenville County Sheriff's Office?

2 **A** Ten years.

3 **Q** Now, did you conduct the photographic lineup
4 display that was used in this case?

5 **A** I did.

6 **Q** When did you do that?

7 **A** That was on January the 8th of this year.

8 **Q** Did you put that photographic lineup
9 together?

10 **A** I did.

11 **Q** How many photographs were displayed?

12 **A** Six photos.

13 **Q** Was this defendant included in the lineup?

14 **A** He was.

15 **Q** Where was his picture in that lineup?

16 **A** He was positioned in the lower center of the
17 six, commonly known as the number five position.

18 **Q** The photograph that you got was taken on what
19 date?

20 **A** It was taken on his arrest date of 8/4 of
21 '09.

22 **Q** Okay. And that was from when he got arrested
23 in this actual case?

24 **A** That's correct.

25 **Q** Now, the other five people in this lineup,

1 were they all similar in physical description to the
2 Defendant such as sex, race, uh, age, facial hair and
3 so forth?

4 **A** Yes, sir.

5 **Q** And who did you show the photo lineup to?

6 **A** To Mr. Edwin Perez.

7 **Q** Where did this take place?

8 **A** In my office in the basement of the Law
9 Enforcement Center.

10 **Q** Now, had you had any participation in this
11 case prior to showing this lineup?

12 **A** No, sir.

13 **Q** Did you have any participation after that
14 day?

15 **A** No.

16 **Q** How did you get involved?

17 **A** I was notified by Investigator Jarvis that he
18 was out of the office, he was home sick on this
19 particular day, and that the victim was scheduled to
20 come into the office for a photographic lineup.

21 **Q** Other than that conversation, were you aware
22 of any details of this case?

23 **A** No.

24 **Q** You don't speak Spanish now, do you?

25 **A** No.

1 Q So how -- you communicated with Mr. Perez
2 through a brother of his, is that right?

3 A Yes, sir.

4 Q Now what did you tell Mr. Perez through his
5 brother before showing him the lineup?

6 A I advised him that I had put together six
7 photos. I advised him if he recognized anybody in
8 these photos to point them out to me and to advise me
9 how he knew them. I also advised him that he didn't
10 have to point anybody out. He didn't have to feel
11 pressure to pick anybody.

12 Q Tell us how you showed that photo lineup to
13 Mr. Perez?

14 A Once I explained this to him through his
15 brother, I handed the photo lineup to him upside down
16 with the photos facing downward to where he couldn't
17 see them. I advised him, when he was ready, to flip
18 them over, look them over and if he recognized anybody
19 to point them out and tell me why.

20 Q All right. So did you in anyway exert any
21 pressure on Mr. Perez to pick somebody out of the
22 lineup?

23 A No, sir.

24 Q Did you indicate to him that he had to pick
25 somebody out of the lineup or that he didn't have to?

1 **A** No, sir.

2 **Q** Did you in any way influence his decision as
3 to which photograph he ended up choosing out of that
4 lineup?

5 **A** I did not. No.

6 **Q** Tell us what happened when you gave the photo
7 lineup to Mr. Perez.

8 **A** After I handed the photo lineup to him, like
9 I said, it was faced down. Mr. Perez turned it over.
10 And again, due to the fact that I couldn't understand
11 what he was saying, I watched him as he went over the
12 photo lineup. I could see his eyes go from left to
13 right starting at the top. When he got to the bottom
14 row, I saw him immediately stop and put his finger on
15 the middle picture on the bottom row.

16 **Q** Okay. How confident or how certain did he
17 appear to you to be regarding this decision?

18 **A** He appeared very confident. He put his
19 finger on there and stated something in Spanish as
20 soon as he got that photo.

21 **Q** Okay. And by indicating that photo, was he
22 indicating to you that this was the person who had
23 robbed him?

24 **A** That's correct.

25 **Q** Did you make that clear with him?

1 **A** I did.

2 **Q** Okay. You asked him about that?

3 **A** I asked him through his brother. Actually he
4 stated to me. Uh, I asked him if that's the guy. He
5 said yes. I said, well, how do you know this guy. He
6 said that's the guy that robbed me, that's the one
7 that took my wallet.

8 **Q** All right. Let me show you State's Exhibit
9 number 1 that's already in evidence. Is this the
10 photographic lineup that you used with Mr. Perez?

11 **A** It is.

12 **Q** It has your signature on the form?

13 **A** Yes, sir.

14 **Q** It has the date and time?

15 **A** Yes, sir.

16 **Q** The circle around the middle photograph on
17 the bottom, that was made by?

18 **A** By Mr. Perez.

19 **Q** By Mr. Perez. Okay. That's his signature?

20 **A** That's correct.

21 **Q** The picture that he circled, is that the
22 picture of this defendant in this case, Bobby Barton?

23 **A** That's correct.

24 **Q** All right. Please answer any questions the
25 Defendant would have.

CROSS-EXAMINATION

1
2 **BY MS. ROSS:**

3 **Q** Okay. So you showed this lineup about five
4 months after the incident?

5 **A** Yes, ma'am.

6 **Q** At this point, Mr. Perez came in with his
7 brother Amilcar Perez who was translating everything?

8 **A** That's correct.

9 **Q** And was Mr. Perez speaking English to you
10 when he said this is the guy?

11 **A** No.

12 **Q** But that was being translated through ---

13 **A** His brother.

14 **Q** --- his brother? Now, as far as, had you
15 heard the 9-1-1 call or anything like that in this
16 case?

17 **A** No, ma'am.

18 **Q** But you would recognize, even translated
19 through his brother, that anything that was said could
20 come in as an excited utterance, could be brought in
21 if it happened right after the event?

22 **MR. MOYER:** Object to that question. Calls
23 for a legal conclusion.

24 **THE COURT:** Yeah. I'll sustain that.

25 **BY MS. ROSS:**

1 Q Now, uh, when you were preparing the lineup,
2 you were not trying to match the initial description
3 given?

4 A No.

5 Q You were trying to match pictures that looked
6 like Bobby Barton?

7 A That's correct.

8 Q Are you aware of why Bobby Barton was a
9 suspect in the case?

10 A At that time, no. That was just the
11 information provided to me by Investigator Jarvis.

12 Q Are you aware now?

13 A To my knowledge, there was a co-Defendant.

14 Q So you weren't given anything like a criminal
15 description sheet to match or anything like that?

16 A No.

17 Q And what does this one say?

18 **MR. MOYER:** Objection, Your Honor. It's
19 hearsay and relevance. There's no relevance. He
20 already testified why he took the photographs.

21 **THE COURT:** I don't know what the document
22 is.

23 (WHEREUPON, Ms. Ross approached the bench.)

24 **BY MS. ROSS:**

25 Q Uh, when a case is made in an Armed Robbery,

1 there is normally a criminal description sheet filed.

2 Are you aware of that?

3 **A** Completed by uniform patrol, yes.

4 **Q** All right. And, uh, did you receive this
5 one, the one in this case?

6 **A** No.

7 **Q** So you weren't matching that description?

8 **A** No.

9 **Q** Can you tell the jury what that description
10 is?

11 **MR. MOYER:** I object.

12 **THE COURT:** I will sustain that.

13 **MS. ROSS:** All right. Nothing further on
14 that.

15 **BY MS. ROSS:**

16 **Q** Did you notice when you set up this photo
17 lineup that that picture was a little bit lighter than
18 the other pictures?

19 **A** I did not.

20 **Q** That wasn't something that you had planned?

21 **A** Absolutely not. I can't control the, uh, --
22 I don't know if you would say the tint or the colors
23 of the copier machine.

24 **Q** But it was the same photograph, the mug shot
25 from the arrest of Mr. Barton in early August,

1 correct?

2 **A** That's correct. That's the most recent
3 photograph.

4 **Q** And are you familiar with "mug shot"
5 magazine?

6 **A** I am.

7 **Q** Is that the same exact photograph that
8 appears on page 3 of "mug shot" magazine?

9 **A** Again, it's poor quality, but it appears to
10 be the same photo, yes.

11 **Q** All right. And on page 8 of this magazine is
12 the co-Defendant, Patricia Rice, is that correct?

13 **A** That's correct.

14 **Q** Are there any other Armed Robbery charges
15 from Greenville in that?

16 **MR. MOYER:** Your Honor, I have to object to
17 something that's not into evidence. I object to
18 him being referred to a document that he has no
19 firsthand knowledge of. That's not in evidence.

20 **THE COURT:** Overruled. He can look at it
21 and answer the questions.

22 **THE WITNESS:** As long as it hasn't changed,
23 there's not.

24 **BY MS. ROSS:**

25 **Q** All right. So there's two charges of Armed

1 Robbery crimes and that is Patricia Rice and Bobby
2 Barton?

3 **A** Correct. Male and female.

4 **Q** Thank you. Are you aware that the date, uh,
5 this lineup that was given five months later was
6 scheduled for a hearing in Mr. Barton's case?

7 **A** At the time, no.

8 **MR. MOYER:** I object to relevance.

9 **THE COURT:** Well, maybe she can make it
10 relevant. I don't know.

11 **BY MS. ROSS:**

12 **Q** Do you know of a phenomenon called
13 transference about eyewitness identification?

14 **A** I learned a little bit about it earlier.

15 **Q** Isn't it possible that if someone sees a
16 photograph at one point in time and sees the same
17 photograph later, it could trigger a false
18 identification?

19 **MR. MOYER:** I object. No foundation.

20 **THE COURT:** I sustain that. That's asking
21 for an expert opinion. He wasn't qualified as an
22 expert.

23 **MS. ROSS:** All right. I've got no further
24 questions.

25 **MR. MOYER:** Nothing further, Your Honor.

1 **THE COURT:** All right. Thank you, sir. You
2 can step down.

3 **MR. MOYER:** The State calls Deputy Langford.

4 **JUSTIN LANGFORD**

5 having first been sworn, testifies as follows:

6 **THE CLERK:** State your first name please.

7 **THE WITNESS:** Justin Langford.

8 **THE CLERK:** Okay.

9 **DIRECT EXAMINATION**

10 **BY MR. MOYER:**

11 **Q** All right. Deputy Langford, would you please
12 state your full name?

13 **A** Justin Alexander Langford.

14 **Q** Okay. Where do you work?

15 **A** Greenville County Sheriff's Office.

16 **Q** How long have you worked -- how long have you
17 been in law enforcement?

18 **A** Three years.

19 **Q** Has it all been with the Sheriff's Office?

20 **A** Yes.

21 **Q** What was your position in July of 2009?

22 **A** Uniform patrol.

23 **Q** Let me ask you to get a touch closer to that
24 microphone to make sure we can hear you. And what are
25 your duties as a uniform patrol officer?

1 **A** We basically are the first responders to
2 incidents, domestic disputes, armed robberies,
3 homicides, anything like that. We are in the marked
4 patrol cars, so y'all see us the most when we deal
5 with everyday problems of the world, I guess.

6 **Q** Okay. Now, did you get the call to respond
7 to the armed robbery, this incident that we are before
8 the court today?

9 **A** Yes.

10 **Q** What was the nature of the call when it came
11 out?

12 **A** Uh, we received a 9-1-1 hangup call the
13 initial time, so we were all headed to that area. As
14 we were still on the way, we got word that it was
15 actually an armed robbery had occurred. That's when
16 we responded to the area and met up with the victim.

17 **Q** Okay. Tell us where you actually responded.

18 **A** The trailer park?

19 **Q** Yeah. The day, I mean, the address. Do you
20 remember?

21 **A** I don't remember the exact address. It was
22 off of Randolph Drive.

23 **Q** Did you put it in your report?

24 **A** Yes.

25 **Q** If you had a chance to look at your report,

1 would that refresh your memory?

2 **A** Yes.

3 **Q** Is that a copy of your report?

4 **A** Yes, sir. ■ Randolph Street, Lot ■.

5 **Q** Okay. Is that in Greenville County?

6 **A** Yes, sir.

7 **Q** Can you -- would you step down and take a
8 look at the aerial map we have, right?

9 **A** Yes.

10 **Q** Can you show the jury -- let me move it
11 actually closer to the jury. Could you point out to
12 the jury the area you responded?

13 **A** This is Randolph, Randolph right here. I
14 believe Mr. Perez's trailer was one of these three
15 right here, I believe. It was right in that area
16 right there.

17 **Q** Okay. You can have a seat for me. Uh, what
18 was the date?

19 **A** (No response.)

20 **Q** Once again, would it help you ---

21 **A** Yes.

22 **Q** --- to take a look at your report?

23 **A** Yes. July 25th, 2009.

24 **Q** What time was it that you, uh, responded to
25 that location?

1 **A** Shortly after midnight.

2 **Q** Now, you met with Mr. Perez, the victim in
3 the case?

4 **A** Yes, sir. Yes, sir.

5 **Q** Do you speak Spanish at all?

6 **A** No, sir.

7 **Q** Any of the other officers who were out there
8 with you all speak Spanish?

9 **A** No, sir. Not anyone that was working with us
10 at the time.

11 **Q** Okay. So how did you communicate with Mr.
12 Perez?

13 **A** We found out that his brother who was inside
14 the trailer spoke English. So we had him come
15 outside. He was a big help for us.

16 **Q** All right. So you were communicating through
17 him. What was the description you got of the person
18 who had robbed him?

19 **A** It was a black male between 5'8 and six-foot
20 wearing all black. The age limits were between 20 to
21 30 years old, black male.

22 **Q** You said -- was it 20 or 25?

23 **A** 25 to 30, I'm sorry.

24 **Q** This is all accomplished, not by talking to
25 the victim himself, but talking to the, uh, his

1 brother, correct?

2 **A** Yes.

3 **Q** Would you admit that communicating this way
4 is difficult and is certainly not ideal having to
5 speak through somebody?

6 **A** Oh, yes, sir. If I could have, if I knew how
7 to speak Spanish, it would have been a lot more clear
8 cut. We would have been able to move forward with the
9 process a lot quicker than we did.

10 **Q** Was the conversation also made a little
11 difficult due to the fact that Mr. Perez had been
12 drinking?

13 **A** Yes. That didn't help. We kept at him. We
14 were able to get what we needed at the time.

15 **Q** You made a notation that you knew he to be
16 intoxicated.

17 **A** Yes.

18 **Q** Did you speak to him, uh, just that night
19 after this incident happened or did you have any other
20 followup interviews with him?

21 **A** No, sir. Just that night.

22 **Q** So you didn't speak to him under any other
23 circumstances other than right after the incident took
24 place when he had been drinking and was using his
25 brother as an interpreter?

1 **A** Yes.

2 **Q** You didn't take a written statement from him?

3 **A** No, sir. We don't take written statements
4 from intoxicated individuals.

5 **Q** So there is nothing for him to review and to
6 sign and say whether that was accurate or inaccurate?

7 **A** No, sir.

8 **Q** So you essentially spoke to him and then
9 related that through his brother and then, later that
10 night, wrote a report?

11 **A** Yes.

12 **Q** Now, had you ever spoken to or met Mr. Perez
13 before?

14 **A** No, sir.

15 **Q** Had you spoken to him since?

16 **A** No, sir.

17 **Q** How long had you been work -- how long had
18 you worked that area now?

19 **A** All three years I've been with the sheriff's
20 office.

21 **Q** And is it mostly Hispanics in that trailer
22 park?

23 **A** Yes, sir.

24 **Q** You got -- have you had many calls in that
25 trailer park?

1 **A** No, sir. It's usually a generally quiet
2 area. I mean, we'll have the initial or usual alarm
3 call or something. But for the most part, you know,
4 they keep to themselves and we don't have any problems
5 out of them.

6 **Q** Now, we talked a little bit about a path or a
7 shortcut that leads up to that trailer. You remember
8 taking the -- seeing that?

9 **A** Yes, sir.

10 **Q** Can you kind of point out on the map where
11 that shortcut or trail kind of goes from and ends up?

12 **A** It goes back behind these trailers. You can
13 hardly see it. It runs over the railroad tracks and
14 then back into the dead end right here.

15 **Q** Okay. And where does that end up taking you?
16 I think you can see a road at the top right hand
17 corner, but what road does that go to?

18 **A** Lanford and Papermill.

19 **Q** Okay. Actually, I'm talking about the other
20 direction.

21 **A** Oh, White Horse Road.

22 **Q** White Horse Road?

23 **A** Yes, sir.

24 **Q** And is it right over there that people in the
25 general community might have an interest in going over

1 there for?

2 **A** There's a Breakers gas station at Augusta
3 Road and White Horse. Besides that, there's nothing
4 else open at that time of night on that road.
5 Everything shuts down pretty early.

6 **Q** Okay. All right. That's all the questions I
7 have. Please answer any questions the defense may
8 have.

9 **CROSS-EXAMINATION**

10 **BY MS. ROSS:**

11 **Q** Just quickly on the Breakers. Isn't it true
12 that the Breakers closes at 11:00?

13 **A** Yes, ma'am. I believe so. I don't know the
14 exact time.

15 **Q** You said you don't speak Spanish, but you had
16 an interpreter that night?

17 **A** Yes, ma'am.

18 **Q** In the form of Mr. Perez's brother who did
19 speak English, right?

20 **A** Yes.

21 **Q** And did you have any problem communicating
22 with him?

23 **A** For the most part, it was pretty cut and dry.
24 You know, we asked him the questions and we got the
25 answers that we needed.

1 Q Isn't it true he described the person as
2 having black pants and a black shirt?

3 A Yes, ma'am.

4 Q And he did describe, he stated 25 to 30 years
5 old as the age?

6 A Yes, ma'am.

7 Q And like you said, black male, 5'8 to 6 feet
8 tall?

9 A Yes, ma'am.

10 Q And he was able to say that there was \$500 in
11 the wallet?

12 A Yes, ma'am.

13 Q And that a wallet was stolen and all that.
14 Now, when you went out to the trailer, was there a
15 fence or anything around the trailer?

16 A No, ma'am.

17 Q And, uh, was there a raised front or back
18 porch on the trailer?

19 A No, ma'am. Not where Mr. Perez was sitting.
20 He was sitting at the, uh, I guess, the back of the
21 trailer where he was.

22 Q The back facing towards the woods?

23 A No, ma'am. I guess facing towards Randolph,
24 if that makes any sense.

25 Q Okay. Would you agree that he was extremely

1 intoxicated?

2 **A** Yes, ma'am.

3 **Q** And you wrote that because that's the way he
4 was?

5 **A** Yes, ma'am.

6 **Q** And to the point where you were having a
7 difficult time gathering any information?

8 **A** No, ma'am. The only difficult part we had
9 getting information from him was just because of
10 language barrier. Even though he was intoxicated the
11 amount that he was, when he was speaking to his
12 brother, he was able to give us the information
13 without having to repeat himself or have us ask
14 multiple times what it was.

15 **Q** Okay. Now, you wrote an incident report at
16 the time that night, correct?

17 **A** Yes, ma'am.

18 **Q** On that incident report, you stated that you
19 were having difficulty getting information from the
20 victim because he was extremely intoxicated, correct?

21 **A** Yes, ma'am. That's what I wrote.

22 **Q** And there you did mention because of a
23 language barrier. Now, were you there -- wasn't a dog
24 called out to the scene?

25 **A** Yes, ma'am.

1 Q Were you there during that tracking?

2 A Yes, ma'am. I went on the track.

3 Q Wasn't the track lost? Wasn't that
4 consistent with a drive off?

5 A I can't say yes or no on that.

6 Q Now, uh, was there any testimony about the
7 victim screaming or making any kind of, uh, sound or
8 comment when this robbery allegedly occurred?

9 A I'm not sure.

10 Q Did any neighbors come out and say anything?

11 A No.

12 Q So no neighbors said they heard anything?

13 A No, ma'am.

14 Q What would you say the distance between one
15 trailer and the next would be?

16 A Uh, I would have to say where she's sitting
17 to where they are sitting. It's not very far.

18 Q All right. Would you say the trailers are
19 pretty close together and a lot of them in that park?

20 A Oh, yes, ma'am.

21 Q Would you say that there are a good many
22 people living in that area?

23 A Yes.

24 Q Yet did the brother or the brothers in the
25 house say they saw anything?

1 **A** No, ma'am, not to us when we went out there.

2 **Q** All right. Did the victim have a cut on his
3 neck or any kind of bruising on his body?

4 **A** No, ma'am.

5 **Q** All right. I've got nothing further.

6 **MR. MOYER:** Nothing further, Your Honor.

7 **THE COURT:** Okay. You can step down. Thank
8 you.

9 Mr. Foreman, Ladies and Gentlemen of the
10 jury, it's, uh, we've been going about an hour
11 and a half. Let's take a short afternoon break.
12 Please don't discuss the case. We'll be back in
13 about five minutes.

14 **(WHEREUPON, the jury exits at approximately**
15 4:04 p.m.)

16 **THE COURT:** Okay. We'll take a break.

17 **(WHEREUPON, a short recess is taken at**
18 approximately 4:04 p.m.)

19 **(WHEREUPON, the Court resumes at approximately**
20 4:22 p.m.)

21 **THE COURT:** Y'all ready?

22 **MR. MOYER:** Yes, sir.

23 **THE COURT:** Okay. How much -- who you got?
24 Tell me.

25 **MR. MOYER:** I have three witnesses, Your

1 Honor, Richard Rice, Johnny Brown and Mike Jarvis.

2 THE COURT: Okay. How long are they going
3 to take?

4 MR. MOYER: I think I'll be finished by
5 5:00.

6 THE COURT: Okay. Somebody might mess it up
7 with her concise cross-examination.

8 Mr. Barton, you satisfied with Ms. Ross now?
9 She's doing a real good job.

10 Okay. Let's get them.

11 A really good job. Pardon my grammatical
12 error.

13 (WHEREUPON, the jury enters at approximately
14 4:24 p.m.)

15 THE COURT: All right, Mr. Moyer.

16 MR. MOYER: Thank you, Your Honor. The
17 State would call Patricia Rice.

18 PATRICIA RICE

19 having first been sworn, testifies as follows:

20 DIRECT EXAMINATION

21 BY MR. MOYER:

22 Q Okay. Ms. Rice, would you please state your
23 full name?

24 A My name is Patricia Rosalyn Rice.

25 Q And how old are you?

1 **A** I'm 53.

2 **Q** Okay. Now, you got arrested for armed
3 robbery in this case, didn't you?

4 **A** Yes, sir.

5 **Q** And your charge was dismissed?

6 **A** Yes, sir. They were.

7 **Q** You know that it's over with?

8 **A** Yes, sir.

9 **Q** You know that what you say today in court --
10 what you say in court and whether or not you cooperate
11 will not change things?

12 **A** Yes, sir. I do.

13 **Q** You understand that? I also ask you about
14 this, a few years ago, in 2008, you got a criminal
15 conviction for lying to the police about your name,
16 didn't you?

17 **A** Yes, sir.

18 **Q** You got picked up by the police and you gave
19 a false name instead of your real name, isn't that
20 right?

21 **A** Yes, sir.

22 **Q** Okay. Now, let me take you to the night of
23 July the 25th of 2009. Were you present that night
24 when the robbery took place in the trailer park?

25 **A** Yes, I was.

1 Q And who did this robbery?

2 A Bobby Joe Barton.

3 Q And Bobby Joe Barton here in this courtroom?

4 A Yes, he is.

5 Q Is he the man seated in the blue shirt over
6 there?

7 A Yes, he is. Yes, he is.

8 Q Okay. Now, how long have you known Mr.
9 Barton?

10 A Around 10 years.

11 Q You met about 10 years ago?

12 A 2001, yes.

13 Q Were y'all just friends or was it ever more
14 than that?

15 A He was my boyfriend.

16 Q Okay. Did y'all ever live together?

17 A Yes, we did.

18 Q Just one time or did you live together more
19 than one time?

20 A We lived together a couple of times.

21 Q Been kind of boyfriend and girlfriend on and
22 off over the past 10 years?

23 A That's correct.

24 Q So even after you stopped living with him,
25 you been romantically involved with him after that

1 time?

2 **A** Yes, sir.

3 **Q** Okay. Now, the night this incident happened,
4 where did you first see Bobby Joe Barton?

5 **A** He was walking along (inaudible).

6 **Q** Come a little bit closer to the microphone.

7 **A** We met up with each other.

8 **Q** Where did you meet up with him?

9 **A** I was coming from the store.

10 **Q** You were coming from the store?

11 **A** Yes.

12 **Q** The store on White Horse Road?

13 **A** Yes.

14 **Q** Where were you going?

15 **A** Just walking.

16 **Q** Just walking and you came across Mr. Barton?

17 **A** That's right.

18 **Q** Did y'all walk together?

19 **A** Yes.

20 **Q** Did you go through the trailer park?

21 **A** Yes, we did.

22 **Q** And why were you going through the trailer
23 park?

24 **A** It's a shortcut.

25 **Q** It's a shortcut to where?

1 **A** A shortcut to go across the tracks to get on
2 the other side.

3 **Q** Across the railroad tracks?

4 **A** Yes.

5 **Q** Were you going to the neighborhood on Lanford
6 Drive and Papermill?

7 **A** That's correct.

8 **Q** That's where you were headed?

9 **A** Yes, sir.

10 **Q** Is that a common shortcut?

11 **A** Yes, it is.

12 **Q** Did you used to stay over in that area?

13 **A** I did.

14 **Q** A good bit?

15 **A** I lived there at one time.

16 **Q** You lived there at time?

17 **A** Uh-huh.

18 **Q** Did the Defendant live over there or stay
19 over there some times?

20 **A** Not on that particular side.

21 **Q** He would go over there sometimes too?

22 **A** A lot of people hang out there.

23 **Q** A lot of people hang out there. Mr. Barton
24 would hang out there some too?

25 **A** Sometimes.

1 **Q** Now, when you came across, uh, Mr. Barton,
2 y'all started walking together through the trailer
3 park?

4 **A** Yes, sir.

5 **Q** And did Bobby Barton, before he did the
6 robbery, did he say anything about he was going to do
7 any kind of robbery?

8 **A** No, he did not.

9 **Q** So y'all walked up to, uh, -- you recognize--

10 **MS. ROSS:** Judge, I object to the leading.

11 **THE COURT:** Try not to lead so much.

12 **THE WITNESS:** I just remember his face.

13 **BY MR. MOYER:**

14 **Q** Okay. Uh, y'all walked up to -- did y'all
15 walk up to a trailer that night?

16 **A** We was walking through there.

17 **Q** Okay. And you saw somebody near the trailer?

18 **A** Yes.

19 **Q** What did you see Bobby Barton do?

20 **A** I didn't see him do nothing in particular.
21 It was dark. It just happened.

22 **Q** What did you see happen?

23 **A** I didn't really see nothing. I just seen him
24 take off running. And I heard that man -- I guess it
25 was him. I heard him make a noise.

1 Q You heard what man make a noise?

2 A I guess it would be that -- Mr. Perez is his
3 name?

4 Q Okay.

5 A I guess it would be him.

6 Q You heard him make a noise?

7 A Just like somebody screaming a little bit.

8 Q Did y'all walk up to that man first? Did
9 y'all walk over to where he was?

10 A Yes.

11 Q Was he by himself when y'all saw him?

12 A I would like to say he was.

13 Q Okay. And he was drinking beer?

14 A I wasn't. He was drinking beer.

15 Q Yeah, this man.

16 A That's correct.

17 Q He was drinking beer?

18 A Uh-huh.

19 Q And you and Bobby Barton walked up there.
20 Did y'all stop when he got up to where he was?

21 A Close to where he was. I was kind of off a
22 little bit. I was waiting on him.

23 Q Okay. And you saw Bobby Barton go over to
24 near where the Defendant was?

25 A That's correct.

1 Q And when he got over near where Mr. Perez
2 was, what did you see Bobby Barton do?

3 A They was just talking. I didn't really just
4 see him do anything. Like I said, it happened so
5 fast.

6 Q Okay. Well, you remember talking to a police
7 officer after the incident took place. You got
8 arrested, didn't you?

9 A Exactly.

10 Q About a week later?

11 A Exactly.

12 Q And you talked to the police officer and, uh,
13 -- you talked to the police officer about what
14 happened that night, didn't you?

15 A Yes.

16 Q Did the police officer ask you who did the
17 robbery?

18 A Yes, he did.

19 Q Did the police officer ask if you were there?

20 A Yes, he did.

21 Q And did you tell the police officer you were
22 there?

23 A Sure did.

24 Q Did you tell the police officer who did the
25 robbery?

1 **A** I did.

2 **Q** Who did you tell the police officer did the
3 robbery?

4 **A** Bobby Joe Barton.

5 **Q** What did you tell the police officer Bobby
6 Joe Barton did to the victim?

7 **A** I couldn't say exactly what he did to the
8 victim. I couldn't see. He had his back turned.

9 **Q** Okay. Now, who had his back turned?

10 **A** Bobby had his back turned. I couldn't see no
11 one's face. It happened so fast.

12 **Q** Okay. Well, so he had his back turned
13 between you and the victim?

14 **A** Yes.

15 **Q** And so was he close to the victim?

16 **A** Yes.

17 **Q** Was he right up on the victim?

18 **A** Yes.

19 **Q** And what did you hear the victim say?

20 **A** He just let out a scream or a sound.

21 **Q** Like a scream. And what did you hear Bobby
22 -- what did you hear Bobby Barton say?

23 **A** Just turn it a loose.

24 **Q** He said turn it loose?

25 **A** Something to that effect.

1 Q Something to that effect, but turn it loose?

2 A Yes.

3 Q And after he said that, what did you see
4 Bobby Joe Barton do?

5 A I didn't see him do nothing. He just took
6 off.

7 Q Did he stay there?

8 A He took off running.

9 Q He took off running. And you told that to
10 the officer that night or when you got arrested,
11 right?

12 A I did.

13 Q And you remember you also told the officer
14 that he jacked him up against the trailer, didn't you?
15 Didn't you tell him that?

16 A If I said that, I said something to that
17 effect. I couldn't exactly see what he was doing, but
18 it was something being done.

19 Q Something being done. And he had him over
20 there right by the trailer?

21 A Yes.

22 Q And by saying jacked him up against the
23 trailer, is that an accurate description of what he
24 did to him?

25 A To the best of my memory.

1 Q Okay. So because Bobby Barton's back was
2 towards you, you couldn't see his hands, could you?

3 A I couldn't.

4 Q And it was dark out there?

5 A It was.

6 Q Could you tell whether or not he had anything
7 in his hand, any kind of weapon?

8 A I couldn't tell.

9 Q You couldn't see his hands?

10 A I couldn't see it.

11 Q Okay. And what did you do after Bobby Joe
12 Barton ran off?

13 A I turned around and then I stopped. I
14 thought what am I running for. I declined my running.
15 I didn't do anything.

16 Q So you started running and stopped?

17 A At the end. I panicked. I did, because it
18 scared me.

19 Q So you knew something bad had just happened?

20 A Of course.

21 Q So you stopped and you then -- you didn't
22 stay around for the police though, did you?

23 A No, I didn't. I just walked on home.

24 Q Now, you got arrested for this about a week
25 later, right?

1 **A** I did.

2 **Q** August 3rd of 2009?

3 **A** Yes.

4 **Q** And you know it was this detective right here
5 that arrested you?

6 **A** Yes.

7 **Q** And did this investigator start questioning
8 you right away about the robbery?

9 **A** He did.

10 **Q** Did you tell him right away that Bobby Joe
11 Barton was the one who did it?

12 **A** I did.

13 **Q** You told him that because it's true?

14 **A** Because it's true.

15 **Q** Okay. Please answer any questions that the
16 defense may have.

17 **CROSS-EXAMINATION**

18 **BY MS. ROSS:**

19 **Q** Okay. This happened in July, not in August,
20 right?

21 **A** That's correct.

22 **Q** And you didn't go to the police then in July,
23 did you?

24 **A** No, I did not.

25 **Q** And you didn't give any statement or anything

1 to the police until you were actually arrested ---

2 **A** Exactly.

3 **Q** --- and charged with Armed Robbery?

4 **A** Exactly.

5 **Q** So it was when you were arrested and being
6 charged with Armed Robbery that you gave a statement
7 implicating Bobby Joe Barton?

8 **A** That's right.

9 **Q** Now, you stayed in jail on that charge for
10 how long?

11 **A** 11 months.

12 **Q** All right. And so after 11 months, you were,
13 uh, released?

14 **A** Finally.

15 **Q** And this was right before Bobby Joe was
16 scheduled for trial, the weekend before you were
17 released?

18 **A** Right.

19 **Q** And, uh, isn't it true that you told Bobby's
20 brother that, uh, that you were testifying because
21 they could bring the charges back against you?

22 **A** No, that's not why I said that. I felt like
23 it was very unfair to be put in that position and for
24 me to spend almost a whole year in jail for something
25 I did not do.

1 Q And you feel that if you didn't testify, you
2 would have the charges brought back against you?

3 A Not at all. I understood that mine were
4 dismissed and that it's over for me.

5 Q Isn't that what you told Bobby's brother?

6 A No. I don't recall telling him anything like
7 that.

8 Q All right. In the statement you gave, uh,
9 you weren't really involved in the incident according
10 to the statement?

11 A No, I was not. I wasn't planning to rob
12 anybody. That's not my M.O. I don't rob people.

13 Q All right. But you named Mr. Barton, right?

14 A I did.

15 Q And you said that you had just left Breakers
16 or Pumpers?

17 A I did. I walked through that way.

18 Q And you were walking through that cut in the
19 road?

20 A Uh-huh.

21 Q And didn't you say that Bobby Barton seemed
22 to be talking Spanish with Mr. Perez?

23 A He speaks Spanish. He does speak Spanish. I
24 know.

25 Q In your statement, didn't you say that they

1 were sitting and talking?

2 **A** Uh-huh.

3 **Q** And drinking beers together?

4 **A** Uh-huh.

5 **Q** And you said that though you couldn't see
6 much, what you saw was Bobby's back jacking Mr. Perez
7 up on the trailer?

8 **A** Something to that effect.

9 **Q** Did you see a knife?

10 **A** No, I didn't see a knife.

11 **Q** Did you see a wallet?

12 **A** I saw something look like a wallet. I'm not
13 sure. I can't remember.

14 **Q** Would it surprise you in your statement you
15 said you didn't see a knife or a wallet?

16 **A** Well, the reason I said this about the
17 wallet, because on my warrant, it has what happened to
18 the man, why I was charged with Armed Robbery, a
19 wallet of \$500 or something like that. That's the
20 reason I knew that.

21 **Q** In your statement though, you didn't know
22 nothing about a wallet, right?

23 **A** I don't remember. I could listen to
24 something and tell you the man said or what it is on
25 my warrant.

1 Q I just want to know, you didn't see a wallet
2 that night?

3 A I don't know what I saw. I saw something. I
4 didn't know if it was a wallet or what at that time.

5 Q All right. And you didn't mention that in
6 your statement though because you were scared about
7 getting charged, getting yourself in trouble?

8 A No, I'm not scared of anything, ma'am. I did
9 not rob anyone.

10 Q But you were charged with that?

11 A I was charged with it. I sure was.

12 Q Now, uh, you lived with Bobby Barton around
13 2006?

14 A That's correct.

15 Q And, uh, you made a charge against him for
16 Criminal Domestic Violence, is that correct?

17 A I have.

18 Q And then you later signed an affidavit not to
19 prosecute?

20 A I did.

21 Q And said that I prosecuted him for something
22 that was an accident, not intentional, right?

23 A I felt like he had done his time and that was
24 old so let him go.

25 Q Okay. But you signed that affidavit?

1 **A** I did.

2 **Q** All right. Now, when you were arrested for
3 this charge, you were in a car with two other men,
4 right?

5 **A** I was in a car with one person.

6 **Q** With one other person?

7 **A** I was the rider.

8 **Q** And you had a crack pipe on you, didn't you?

9 **A** I did.

10 **Q** And you weren't charged with that?

11 **A** I wasn't charged with that, no, I wasn't.

12 **Q** And you were being cooperative with the
13 police?

14 **A** That's right.

15 **Q** And you didn't get that charge?

16 **A** That's right.

17 **Q** Isn't it true that Bobby's family owned
18 property in that area?

19 **A** As far as I know.

20 **Q** All right. And, uh, --

21 **MS. ROSS:** Beg the Court's indulgence.

22 **BY MS. ROSS:**

23 **Q** Now, isn't it true too that you have an
24 alcohol and drug problem yourself?

25 **A** In the past, I've had one. Not now.

1 Whatever my character is, it has nothing to do with
2 this. I didn't rob anyone.

3 Q All right. We're not talking about what you
4 did or didn't do, it's about what you allege Bobby
5 Barton doing or not doing. Now, you had been charged
6 with False Information to Police in the past, haven't
7 you?

8 A That's correct.

9 Q And at that time, you were arrested and you
10 were highly intoxicated as well?

11 MR. MOYER: I object to --

12 THE COURT: Yeah, this has gone past the
13 scope of 609.

14 MS. ROSS: All right.

15 BY MS. ROSS:

16 Q You were arrested and charged with False
17 Information to Police?

18 A That's correct.

19 Q And isn't it true that you gave a false name
20 at that time?

21 A I did.

22 Q Isn't it true that at the time, you gave a
23 false name to avoid arrest on a bench warrant?

24 A Exactly.

25 Q All right. To get yourself out of trouble,

1 you gave false information in the past?

2 **A** Yeah, I've done that. It has nothing to do
3 what I'm speaking of now.

4 **MS. ROSS:** I've got nothing further.

5 **REDIRECT EXAMINATION**

6 **BY MR. MOYER:**

7 **Q** Quick question for you. So one of the times
8 you were living with Bobby Barton, you called the
9 police on him for domestic violence?

10 **A** That's correct.

11 **Q** Did he commit the domestic violence against
12 you?

13 **A** Sure.

14 **Q** But you signed something so that they
15 wouldn't prosecute it?

16 **A** It had been some time ago. He had already
17 been incarcerated for something else. He had made
18 time for that. That was in the past. Let it go.

19 **Q** And you love Bobby Barton?

20 **A** Yeah, I loved him.

21 **Q** You have loved him over the years?

22 **A** Uh-huh.

23 **Q** So when you signed that affidavit, were you
24 saying it wasn't true?

25 **A** No, I wasn't --

1 **Q** Did he actually assault you?

2 **A** Yes, he did. I wasn't saying it wasn't true.
3 I just feel like sometimes enough is enough. A person
4 need another chance.

5 **MR. MOYER:** Okay. Nothing further.

6 **THE COURT:** Okay.

7 **RECROSS-EXAMINATION**

8 **BY MS. ROSS:**

9 **Q** Just a few questions. Going back. Uh, in
10 your statement you gave to police, you said that Bobby
11 Barton is always trying to be around you --

12 **MR. MOYER:** Your Honor, I objection. This
13 is not responsive.

14 **THE COURT:** It's not in response to
15 redirect.

16 **MS. ROSS:** Well, he just asked about loving
17 her or not. She had her testimony about that.
18 Her statement before was --

19 **THE COURT:** Well, don't -- if it's in there,
20 you can ask it, but limited to the scope of
21 redirect.

22 **BY MS. ROSS:**

23 **Q** Now, in that statement, you said he was
24 always trying to be around you but you don't like him
25 like that. Isn't that what you said in your

1 statement?

2 **A** Not anymore.

3 **Q** But in your statement, you said "he's always
4 trying to be around me and wanting to be with me, but
5 I don't like him like that".

6 **A** Well, that's correct. If I said it, I said
7 it.

8 **MS. ROSS:** All right. Nothing further.

9 **MR. MOYER:** That was not responsive. It
10 does cause me to call up a question for new
11 material.

12 **THE COURT:** That wasn't new material. You
13 asked about their relationship. She followed up
14 with quotes in the statement. Okay.

15 Thank you, ma'am. You can step down.

16 **THE WITNESS:** Thank you.

17 **MR. MOYER:** The State would call Johnny
18 Brown.

19 **JOHNNY BROWN**

20 having first been sworn, testifies as follows:

21 **DIRECT EXAMINATION**

22 **BY MR. MOYER:**

23 **Q** All right. Would you please state your full
24 name.

25 **A** Johnny Michael Brown.

1 **Q** And where are you employed?

2 **A** Greenville County Sheriff's Office.

3 **Q** How long have you worked for Greenville
4 County Sheriff's Office?

5 **A** Since 1999.

6 **Q** Okay. You have any law enforcement prior to
7 that?

8 **A** Two years in Buncombe County, North Carolina.

9 **Q** Okay. What is your, uh, position now with
10 the Sheriff's Office?

11 **A** I am a full-time special deputy with the U.S.
12 Marshals Fugitive Task Force.

13 **Q** Okay. And what are your duties?

14 **A** To go out, locate and apprehend violent
15 fugitives within Spartanburg, Greenville, Anderson,
16 Pickens.

17 **Q** Now, did you arrest the Defendant in this
18 case, Bobby Barton?

19 **A** I did.

20 **Q** What was the date of that?

21 **A** August 4th, 2009.

22 **Q** Okay. And what time of day was it that you
23 arrested him?

24 **A** Mid-morning.

25 **Q** And where did you go to look for him?

1 **A** Over on Papermill and Lanford.

2 **Q** And is that area displayed on this map that's
3 in evidence, State's Exhibit number 2?

4 **A** Yes.

5 **Q** Would you just point out to the jury the area
6 that you were --

7 **THE COURT:** You may step down, Officer.

8 **THE WITNESS:** Thank you, sir.

9 We had received information from Investigator
10 Jarvis that the Defendant was in the area of
11 Papermill and Lanford. Out on this area.

12 **BY MR. MOYER:**

13 **Q** And so how did you go about finding him?

14 **A** Myself and my partner, Deputy Hawkins, went
15 with some of the uniform patrol units that were on
16 duty that morning and kind of saturated this area.
17 Went up to a couple of houses up here with some people
18 that were outside in the yard working, some of the
19 people out here that were outside their apartments,
20 asked if they had seen the suspect or the defendant
21 around. Kept patrolling this area. At one point, I
22 parked my car in here.

23 **Q** What road is that?

24 **A** Papermill right here. My partner had walked
25 up. People in this area, after we talked to them,

1 just kind of went inside and left the area. I saw
2 some people standing up here. I sent my partner to go
3 up there to talk to them while I stayed in this area
4 and watched, from my rearview mirror, the back of the
5 car and anybody that would walk along on the road.

6 Q Okay. What do you mean by on this trail?

7 A There's all kind of trails that cut through
8 the apartments, especially going back over here across
9 the railroad tracks to the apartments and back on all
10 these little cut-throughs back in here to all these
11 little side streets that you don't see on the map.

12 Q Okay. So when you pulled up on Papermill,
13 you said you were looking in your rearview mirror.
14 Did you see anything?

15 A Yes, sir. Right about here, I saw a guy run
16 behind the back of my vehicle approximately 30 to 40
17 feet in this general direction. I backed up. Got out
18 of the car. Asked the guy that was actually kind of
19 walking at a brisk pace, which turned out to be the
20 Defendant. I had his picture. So as soon as he
21 turned around, I knew it was him. I told him to walk
22 back to the car, where I placed him under arrest.

23 Q So he was coming -- tell us again from what
24 direction he was coming.

25 A I was parked right in here. My partner was

1 up in here trying to cut through this way.

2 Q From those -- are they apartments?

3 A Yes, sir.

4 Q Okay. He was heading over towards the
5 trailer park?

6 A Towards the railroad tracks.

7 Q So you can have a seat.

8 A Okay.

9 Q When you saw him, uh, I'm sorry. When you
10 approached him, you were able to recognize him as the
11 person that you were trying to apprehend?

12 A I didn't approach him. I got him to approach
13 me.

14 Q Okay.

15 A As soon as he turned around and I shouted out
16 for him to come here, he turned around. I recognized
17 it being the Defendant. I had him walk back to the
18 car. I got on the radio with the uniform patrol units
19 in the area and my partner that I had the Defendant
20 walking to me, the suspect, and placed him under
21 arrest.

22 Q Okay. Uh, just for the record, is that
23 person here in the courtroom today?

24 A Yes, he is.

25 Q Point him out.

1 **A** Yes, sir. Blue shirt.

2 **Q** The Defendant, Bobby Barton, in the blue
3 shirt?

4 **A** Yes, sir.

5 **Q** Now, when you arrested him, did you pat him
6 down or search him at all?

7 **A** I did.

8 **Q** What, if anything, did you find?

9 **A** A knife, lock blade knife in one of the front
10 pockets of his pants.

11 **Q** What did you do with the knife?

12 **A** Uh, took it into position to pass off to the
13 investigator.

14 **Q** Did you pass it off to the investigator?

15 **A** I did.

16 **Q** When did you do that?

17 **A** Later that -- approximately, maybe an hour or
18 so later when I met with Investigator Jarvis. We
19 always offer the opportunity for the suspect to speak
20 to the --

21 **Q** So you met with Investigator Jarvis?

22 **A** Correct. I did.

23 **Q** Was it Investigator Jarvis you gave the knife
24 to?

25 **A** Yes, sir.

1 Q If you would, take a look at State's Exhibit
2 number 3. If you would, hold it down below the bar
3 because it's not in evidence yet.

4 A Okay.

5 Q Take a look at that and tell us if you can
6 recognize what that is.

7 A (Reviewing). Do you have the Property and
8 Evidence sheet for this? (Pause.) Yes, sir. This is
9 the knife.

10 Q Okay. That's the knife you gave to
11 Investigator Jarvis?

12 A Yes, sir.

13 Q Okay. All right. Now, the time that you
14 collected it, did you know that the knife was the
15 weapon that had been used in this robbery?

16 A No, sir.

17 Q Did you not have any involvement in the case
18 prior to this date or after this date?

19 A No, sir. At that time, I believe, uh, --
20 usually now, when we investigate cases, we find out
21 whether a gun or knife or any kind of weapon was used
22 in the crime when we go out to look for them, for our
23 safety. I don't believe I had asked at that time. I
24 don't know whether anything was used. So I didn't
25 know until I spoke to Investigator Jarvis down in the

1 Armed Robbery office that that might be the possible
2 weapon that was used.

3 **Q** Please answer any questions the defense may
4 have.

5 **A** Yes, sir.

6 **CROSS-EXAMINATION**

7 **BY MS. ROSS:**

8 **Q** All right. Now, could that be used as a
9 hunting or fishing knife, the serrated blade knife
10 that you took?

11 **A** Yes, ma'am.

12 **Q** All right. Essentially, it's a pocket knife.
13 It's not open all the time or in a sheaf or anything.
14 It's a pocket knife that opens.

15 **A** Front blade.

16 **Q** All right. You were informed by Investigator
17 Jarvis that a suspect, Bobby Barton, would probably be
18 in the area of Papermill?

19 **A** Yes, ma'am.

20 **Q** That's a high drug area, isn't it?

21 **A** Correct.

22 **Q** In a high drug area, isn't that where often
23 you would pat down and do searches because it is more
24 likely that people would have weapons?

25 **A** Correct.

1 Q And sometimes they might be used in self-
2 defense or not?

3 A Correct.

4 Q Now, that day, you saw Bobby Barton and he
5 approached you at your request?

6 A Correct. After he kind of ran behind my
7 vehicle toward the wood line and the woods, I saw him
8 running in my rearview mirror. I guess because I was
9 facing the front, toward the front, looking north on
10 Papermill, I guess he didn't think I was watching in
11 my rearview mirror. So when I saw him run back behind
12 the vehicle, I actually backed my vehicle up and got
13 out. Saw him kind of in the woodline and told him to
14 come back.

15 Q I thought you said something about walking
16 fast.

17 A Walking fast.

18 Q Okay. Now, what time of day was this?

19 A Mid-morning.

20 Q What was Mr. Barton wearing?

21 A I don't remember. A t-shirt, maybe jeans.

22 Q All right. Did you arrest him at that time?

23 A Yes, we did.

24 Q Would a look at the detention center records
25 of his clothing ---

1 **A** Yes, ma'am.

2 **Q** --- would refresh your memory?

3 **A** Okay. (Reviewing). Okay.

4 **Q** Okay. So what was he wearing at the time?

5 **A** A white t-shirt, tan pants, I believe it
6 says.

7 **Q** And, uh, are you aware again what time of day
8 that was?

9 **A** Mid-morning, I want to say.

10 **Q** Was a Mexican ID found on Mr. Barton?

11 **A** I can't recall.

12 **Q** If it was, wouldn't it be reflected on this
13 sheet or taken into evidence?

14 **A** Any property that I took off Mr. Barton would
15 be given to Investigator Jarvis.

16 **Q** Okay. And was there a Mexican ID taken off
17 Mr. Jarvis? I mean, excuse me, off Mr. Barton?

18 **A** I don't think -- I don't think so. If it's
19 on here, I don't see it.

20 **MR. MOYER:** Your Honor, objection. No
21 foundation for that document to be in front of the
22 officer.

23 **THE COURT:** I thought it was his property --
24 P&E sheet from the jail. Isn't that what it is?

25 **MR. MOYER:** This officer had nothing to do

1 with that.

2 **THE COURT:** Well, she asked him about it,
3 about his clothing, no objection. So go ahead.

4 **BY MS. ROSS:**

5 **Q** Wasn't he searched incident to arrest?

6 **A** Correct.

7 **Q** And did you find \$500 in cash on Mr. Barton's
8 person?

9 **A** If that's what it says in the detention
10 checklist.

11 **Q** Does it say that?

12 **A** You have to forgive me. I've never -- we
13 usually don't handle these.

14 **MR. MOYER:** Your Honor, I renew my
15 objection. This document is hearsay.

16 **THE COURT:** Uh, yeah. He doesn't use it.
17 You can ask him what he collected from it, but he
18 can't remember.

19 **BY MS. ROSS:**

20 **Q** All right. What did you collect from Mr.
21 Barton?

22 **A** According to this --

23 **THE COURT:** Well, don't -- not according to
24 that sheet. That's what the objection was. If
25 you can remember independently.

1 **THE WITNESS:** I can not.

2 **THE COURT:** Okay.

3 **BY MS. ROSS:**

4 **Q** Uh, did you have any independent recollection
5 of a large amount of cash being found on Mr. Barton?

6 **A** No, ma'am.

7 **Q** And, uh, Mr. Barton did not attempt to evade
8 you once you caught his attention and put him under
9 arrest?

10 **A** Correct.

11 **MS. ROSS:** All right. I've got nothing
12 further.

13 **MR. MOYER:** Nothing further.

14 **THE COURT:** Okay. Thank you. You can step
15 down.

16 **MR. MOYER:** The State would call
17 Investigator Mike Jarvis.

18 **THE COURT:** Okay.

19 **MIKE JARVIS**

20 having first been sworn, testifies as follows:

21 **DIRECT EXAMINATION**

22 **BY MR. MOYER:**

23 **Q** Okay. Investigator Jarvis, uh, state your
24 full name.

25 **A** Michael Steven Jarvis.

1 Q And where are you employed?

2 A Greenville County Sheriff's Office.

3 Q And how long have you been in law
4 enforcement?

5 A 15 years.

6 Q Has it all been with the sheriff's office?

7 A Yes.

8 Q What is your position with the sheriff's
9 office?

10 A Currently, investigator with the Family
11 Violence Unit.

12 Q And what was your position in August of 2000
13 -- July and August of 2001?

14 A At that time, I was an investigator with the
15 Armed Robbery Unit.

16 Q And you were assigned this case?

17 A Yes.

18 Q Let me ask you, did you meet with Mr. Perez
19 in an attempt to make an identification in this case?

20 A I did.

21 Q What was the date of that?

22 A I met with him on August the 3rd of 2009.

23 Q Did you take it as described earlier?

24 A Yes.

25 Q What was the purpose of that?

1 **A** He had given me an additional description to
2 what I read in the original report that was taken by
3 Deputy Lanford of the female. He made mention that he
4 had seen her in the past. He believe that she hung
5 out in the area behind where he lived at across the
6 railroad tracks. I asked him if he minded if we -- if
7 he saw her again, would he recognize her. He said
8 that he could recognize her.

9 **Q** And you were able to speak to Mr. Perez. You
10 speak Spanish?

11 **A** Yes.

12 **Q** And now so did he go in your vehicle?

13 **A** Yes. I put him in my car. We drove around.
14 We went, uh, down White Horse to South Fairfield. I
15 had to kind of go around a loop, uh, because where he
16 was saying that she normally hung out at, I couldn't
17 just drive straight there. So I had to drive around
18 and went down South Fairfield and turned left onto, I
19 believe, it's Papermill Road. As we were driving down
20 Papermill Road, to our left, there was a group of four
21 people. There was three black males and a black
22 female. He -- as we were passing by, he immediately
23 pointed out the black female standing there to the
24 left and said that was the female.

25 **Q** Okay. Will you show us on the map where it

1 was that you saw him?

2 **A** Sure.

3 **Q** Saw her.

4 **A** The victim was here. I couldn't drive over
5 here. This was the area that he said she hung out at.
6 I had to go back out to white -- went back out here
7 and went to White Horse Road and came down South
8 Fairfield. As soon as you cross the railroad tracks,
9 Papermill Road. As we were coming down Papermill
10 Road, right down -- I want to say right around in here
11 where these trees are is where that group of four
12 people was standing. One of them was Patricia Rice.

13 **Q** Okay. Thank you. When you saw her, what --
14 when he pointed her out, what did y'all do?

15 **A** I was in an unmarked car, a Blazer with
16 tinted windows. So I had a uniform patrol come to the
17 area. Before they could get there, she got into a
18 vehicle. I followed the vehicle until a uniform
19 patrol could stop the vehicle and we could make
20 contact with Ms. Rice.

21 **Q** All right. And so was Ms. Rice taken out of
22 the car that she had been in?

23 **A** Yes.

24 **Q** And so it was Ms. Rice, the woman who
25 testified just a few minutes ago?

1 **A** That's correct. She was the passenger in the
2 vehicle.

3 **Q** Did you speak to her at that time?

4 **A** I did.

5 **Q** You talked to her about that robbery with Mr.
6 Perez?

7 **A** Yes.

8 **Q** Did she tell you who the man was that robbed
9 Mr. Perez?

10 **A** Yeah. She said it was Bobby Joe Barton.

11 **Q** Prior to that time, did you have a name, this
12 name or any idea of the identity of who the male was
13 that did the robbery prior to speaking with Ms. Rice?

14 **A** No, sir. Not prior to speaking with her.

15 **Q** Was this conversation out with her on the
16 street before you took her to the Law Enforcement
17 Center?

18 **A** Yes, before I took her to the Law Enforcement
19 Center, she had already told me that Bobby Joe Barton
20 was the person who had committed the robbery.

21 **Q** Now, were you present the following day,
22 August the 4th, when the Defendant was arrested?

23 **A** I was in the area. I was helping the other
24 deputies attempt to locate Mr. Barton. I was not
25 present when Deputy Brown located the Defendant. I

1 heard him call over the radio that he had located him
2 and he had him in custody. I drove over and met him
3 over at his vehicle.

4 **Q** Okay. Uh, you saw the Defendant that day?

5 **A** Yes.

6 **Q** Now, does he look any different now than he
7 did then?

8 **A** His hair was a little shorter and not as much
9 gray hair. It looks like he was a little bit heavier.
10 I remember him being a little bit stockier that day
11 than he looks now.

12 **Q** Now, did you talk to Deputy Brown or did you
13 take anything from Deputy Brown?

14 **A** Yeah, uh, later that day, Deputy Brown
15 advised me or once we got back to the office because
16 he and his partner drove the Defendant back to the Law
17 Enforcement Center. Once they got back to the office,
18 he advised me that during the search, he had located a
19 pocket knife on Mr. Barton. I told him that the
20 victim had said that he had been robbed with the
21 knife. So I took possession of that knife from Deputy
22 Brown.

23 **Q** And would you take a look at State's Exhibit
24 number 3? Can you tell us what that is?

25 **A** That's the, uh, pocket knife that Deputy

1 Brown gave me that day.

2 **Q** Okay. Is that in substantially the same
3 condition now as it was when you received it back on
4 August 4th of 2009?

5 **A** Yes.

6 **MR. MOYER:** Your Honor, at this time, we ask
7 State's Exhibit number 3 be entered into
8 evidence.

9 **MS. ROSS:** No objection.

10 **THE COURT:** All right. Without objection.

11 **(WHEREUPON, State's Exhibit 3 is marked and**
12 **admitted into the record.)**

13 **BY MR. MOYER:**

14 **Q** Okay. Would you show that to the jury?

15 **A** Sure. It's a regular pocket knife. It opens
16 up like that. It's got a serrated edge.

17 **Q** Thank you. You can close it again. Please
18 answer any questions the defense may have.

19 **CROSS-EXAMINATION**

20 **BY MS. ROSS:**

21 **Q** Investigator Jarvis, you are the lead
22 investigator on this case?

23 **A** Correct.

24 **Q** Correct? And you are familiar with pretty
25 much all aspects of the case?

1 **A** Pretty much.

2 **Q** Now, you didn't take \$500 into evidence on
3 this case?

4 **A** No, ma'am.

5 **Q** And Mr. Barton, in fact, was not arrested
6 with any kind of cash, was he?

7 **A** I'm not aware of any money that he had on
8 him.

9 **Q** Wouldn't that be part of your investigation
10 if he did happen to be arrested with the same amount
11 of cash or something?

12 **A** Yes.

13 **Q** The same with the Mexican ID card?

14 **A** That's correct.

15 **Q** None of that was involved in this case as far
16 as what was found on Mr. Barton when he was arrested?

17 **A** Correct.

18 **Q** What was found was the knife that you -- the
19 pocket knife that you just showed the jury?

20 **A** Yes, ma'am.

21 **Q** Now, was there blood or prints or anything on
22 that knife connecting it to Mr. Perez?

23 **A** No.

24 **Q** Now, this was a 9-1-1 hangup. Did you hear
25 the 9-1-1 hangup in the case?

1 **A** Yes.

2 **Q** Now, there is no mention of a specific amount
3 of money taken on that 9-1-1 call, is there?

4 **A** I listened to the 9-1-1 call. I didn't hear
5 any mention of any amount of money taken.

6 **Q** All right. Isn't it true that the victim,
7 Mr. Perez was communicating with his brother who was
8 on the phone speaking English to the 9-1-1 operator?

9 **A** That's what I understand from reading the
10 report, yes.

11 **Q** Okay. Now, uh, and the, the reporting
12 officer's report that the victim was extremely
13 intoxicated was not challenged by anything that you
14 found in the case?

15 **A** What do you mean by that?

16 **Q** It's consistent with what you heard on the 9-
17 1-1 tape and what everyone said in the investigation
18 that the victim, Mr. Perez, was intoxicated?

19 **A** I heard the 9-1-1 tape, but I don't know who
20 the person was on the other end of the line. I don't
21 know the answer to that question.

22 **Q** But we know that it was the victim's brother,
23 another Perez, who was speaking English?

24 **A** Correct.

25 **Q** Now, uh, anything -- was there anything said

1 on the 9-1-1 tape inconsistent to what the reporting
2 officer gave as far as a description of anyone?

3 **MR. MOYER:** Objection. Hearsay.

4 **MS. ROSS:** Judge, I have established that he
5 was the investigating --

6 **THE COURT:** He was the lead investigator.
7 Go ahead.

8 **THE WITNESS:** I listened to the tape. A lot
9 of it, uh, I couldn't understand. Some of it was
10 in Spanish. The person who called is talking to
11 somebody in the background. But even with my
12 knowledge of Spanish, I could not make out what
13 they were saying.

14 **BY MS. ROSS:**

15 **Q** All right. But you would have remembered, I
16 guess, if there was anything said about the victim
17 having seen the person who did this around before.

18 **A** Yes.

19 **Q** Was anything like that on the 9-1-1 tape?

20 **A** No, I didn't hear that on the tape.

21 **Q** Was there anything about saying it was a 50-
22 year-old on the 9-1-1 tape?

23 **A** I did not hear that.

24 **Q** It was more consistent with what the
25 reporting officer testified to?

1 **A** I can't remember that part.

2 **Q** All right. Now, uh, on August 3rd, you went
3 out and you met with Mr. Perez.

4 **A** Yes.

5 **Q** At that point, he called you out. Is that
6 why you went back to see him?

7 **A** You said the victim called me?

8 **Q** Yeah.

9 **A** I couldn't get ahold of him by phone.

10 **Q** Okay.

11 **A** So I drove out to his house to see if I could
12 make contact with him in person. The only numbers
13 that I had listed for him, I couldn't make contact
14 with him. So I drove out there to see if I could
15 speak with him in person.

16 **Q** At that point, didn't he say that a male and
17 female ran when he started screaming the night of the
18 incident?

19 **A** Correct.

20 **Q** He told you that he, in fact, thought he
21 could take you to the female?

22 **A** Right.

23 **Q** And he had no further description of the male
24 involved in the incident at that point?

25 **A** That's correct.

1 Q And that description, the initial one, was
2 the 25 to 30-year-old black male?

3 A Correct.

4 Q But he did say he seen a Skinny 50-year-old
5 female in the area?

6 A Correct.

7 Q And in fact, he went and identified Patricia
8 Rice ---

9 A Correct.

10 Q --- to you? And did you actually arrest her?

11 A Yes.

12 Q And, uh, she, in fact, at that time, did have
13 a crack pipe in her pocketbook?

14 A Correct.

15 Q And, uh, that she was not charged with that,
16 but she was charged with the armed robbery?

17 A Correct.

18 Q And only at that point did she give a
19 statement implicating Bobby Barton?

20 A No, she implicated Bobby Barton before she
21 was ever placed under arrest.

22 Q Before she was placed under arrest?

23 A Yes.

24 Q So before you searched her pocketbook or took
25 her out of the car or anything?

1 **A** No, I got her out of the car, started talking
2 to her and she implicated Bobby Barton. That's when I
3 asked her for her consent to search her person.

4 **Q** Isn't it true that you were questioning her
5 about her involvement in an armed robbery?

6 **A** Correct. And also trying to identify who was
7 with her.

8 **Q** All right. And you, in fact, ended up
9 charging her with that armed robbery believing that
10 her part in that was enough to make that charge?

11 **A** Correct.

12 **Q** All right. Now, uh, she stated that she
13 never saw a knife, correct?

14 **A** Correct.

15 **Q** And that she never saw a wallet.

16 **A** Correct.

17 **Q** Now, she also stated that what she saw was
18 someone being jacked up and being told "Turn it
19 loose"?

20 **A** Yes.

21 **Q** Okay. And she, in fact, was released from
22 jail on these charges?

23 **A** Correct.

24 **Q** Now, you, in fact, arrested Bobby Barton in
25 the area of Papermill and Lanford. Not you, but the

1 other officer.

2 **A** Right. As a matter of fact, it was almost in
3 the exact same area that we had observed Patricia Rice
4 the day that he -- the day that the victim picked her
5 or saw her standing there on the side of the road.

6 **Q** And you had been told to look for Mr. Barton
7 in that area as well?

8 **A** Correct.

9 **Q** And he had been seen around that area,
10 possibly resided in that area as well?

11 **A** Correct.

12 **Q** But Mr. Perez, when he talked to you about
13 Patricia Rice, never said anything about seeing the
14 perpetrator around the area when he spoke to you, did
15 he?

16 **A** No, he did not.

17 **Q** Now, uh, is there -- just going back to Mr.
18 Barton's arrest, uh, it's not illegal to carry a
19 pocket knife, is it?

20 **A** No.

21 **Q** Okay. As far as the knife that you found on
22 Bobby Barton, there is no description of any knife to
23 match that to or not in this case, is there?

24 **A** No.

25 **Q** Now, uh, did you keep Mr. Perez informed

1 about the status of this case against him?

2 **A** I told him the day that I arrested Patricia
3 Rice that she had implicated, that she had identified
4 another person and that there would probably be
5 another arrest coming in the near future.

6 **Q** And in fact, there was another arrest a few
7 days later?

8 **A** Right. I believe it was the next day.

9 **Q** And isn't that information also public
10 information on the computer if someone wanted to go
11 online and look up arrest?

12 **A** Yes. I mean, once they get arrested, yes.

13 **Q** And we heard some testimony prior, I don't
14 think we need to review it again, about "mug shot"
15 magazine, correct?

16 **A** Correct.

17 **Q** Now, did, uh, Mr. Perez call you in August
18 and say I seen the guy who attacked me in this "mug
19 shot" magazine?

20 **A** No, he did not.

21 **Q** And in fact, he never knew about that until
22 much, much later?

23 **A** Correct.

24 **Q** And you weren't there -- you didn't really
25 have anything to do with this photo lineup is my

1 understanding?

2 **A** No, I was out sick that day.

3 **Q** Now, as far as this picture, this doesn't
4 look like a black male 25 to 30 years old, does it?

5 **A** The picture of who?

6 **Q** Any of the pictures in this photo lineup, for
7 that matter.

8 **A** No.

9 **Q** There's gray hair?

10 **A** Correct.

11 **Q** In this case, there was no DNA or anything
12 involved in this case or any physical evidence
13 involved in this case, is there?

14 **A** No, ma'am.

15 **Q** And are you familiar with any DNA exoneration
16 where people with DNA were proven not guilty?

17 **A** No.

18 **Q** You never heard of that happening?

19 **A** Oh, I've heard of it happening, yes.

20 **Q** Are you aware that that often happen -- the
21 convictions happen due to eyewitness identification?

22 **MR. MOYER:** Objection, Your Honor.

23 Relevance and this is outside the scope of his
24 personal knowledge.

25 **THE COURT:** Yeah. How is this relevant?

1 **MR. MOYER:** There's no evidence in this
2 case --

3 **MS. ROSS:** Judge, it's relevant in that this
4 is purely an eyewitness case.

5 **MR. MOYER:** There has been no evidence in
6 this case that there's anything that could be --

7 **THE COURT:** Yeah. I would sustain the
8 objection.

9 **MS. ROSS:** All right. I've got no further
10 questions.

11 **THE COURT:** All right. Any followup?

12 **MR. MOYER:** One quick followup.

13 **REDIRECT EXAMINATION**

14 **BY MR. MOYER:**

15 **Q** Did you give -- when you spoke to Mr. Perez,
16 you told him about Ms. Rice being arrested. Did you
17 ever give him Bobby Barton's name as a suspect?

18 **A** No, sir.

19 **Q** You never gave him that?

20 **A** No, sir.

21 **Q** Okay. Thank you.

22 **THE COURT:** Okay. Step down.

23 **THE WITNESS:** Thanks, Your Honor.

24 **MR. MOYER:** Your Honor, at this time, the
25 State would rest.

1 **THE COURT:** Okay. All right. Mr. Foreman,
2 Ladies and Gentlemen of the jury, we have not
3 concluded the trial obviously, but it is 5:15.
4 It's a good time to break and let y'all go home
5 for the evening.

6 Please remember what I said. Do not discuss
7 the case. We know it is human nature to want to
8 talk about it. I promise you if you are going
9 home to some family or friends, it is human
10 nature that they are going to want to ask you
11 about it. It is extremely important that you
12 explain to them that you can't do that. You have
13 sworn an oath to do it.

14 Aside from the fact that you would be in
15 contempt of court if you did it, it is vitally
16 important that you protect the rights of the
17 parties in court by not talking about it. We
18 don't want, uh, -- nobody asked those people to
19 come into court, nobody asked them to make the
20 sacrifices you are making and nobody wants their
21 opinion. We want your opinion and yours alone.

22 So y'all have a good night. Don't go to the
23 scene. Don't go on the internet and research
24 anything. We'll see you back at 9:30 in the
25 morning. Okay.

1 (WHEREUPON, the jury exits at approximately
2 5:16 p.m.)

3 **THE COURT:** Anything before we break?

4 **MS. ROSS:** Nothing from the defense.

5 **THE COURT:** All right. Let's just do this,
6 Mr. Barton, just please consider yourself to
7 still be under oath for the purpose of these
8 questions. You have an absolute right to
9 testify. You have equal absolute right not to
10 testify. If you decide not to testify, your
11 refusal to testify can not be held against you in
12 any form or fashion. I will give a strong charge
13 to the jury to that effect. If you desire, I
14 won't say anything about it. I'll leave that up
15 to you and your attorney to decide how to proceed
16 with that. I want you to know that you need to
17 think overnight about whether or not you are
18 going to testify. Talk with your attorney about
19 it and make that decision because in the morning,
20 we are going to need to know.

21 If you decide that you are going to testify,
22 if you have any prior criminal history with any
23 offenses that qualify under the South Carolina
24 Rules, then they will -- the State will be
25 allowed to examine you to impeach your

1 credibility with respect to any of those
2 convictions and we'll determine what they are, if
3 any, in the morning. Okay? You have any
4 questions you need to ask me about that?

5 **MR. BARTON:** You saying do I have any to ask
6 you now? I heard you.

7 **THE COURT:** Right now. Do you have any
8 questions you need to ask me about your right to
9 testify?

10 **MR. BARTON:** No, sir. Oh, no, sir. I
11 apologize.

12 **THE COURT:** Okay. All right. 9:30 in the
13 morning then.

14 **(WHEREUPON, the Court recessed for the day at**
15 approximately 5:18 p.m.)

16

P R O C E E D I N G S

1
2 (WHEREUPON, the Court resumes on the 10th day of
3 August, 2010 at approximately 9:44 a.m.)

4 MS. ROSS: Here, no one actually saw a
5 knife. There is no evidence that this knife is
6 relevant to this case. The victims didn't see
7 it. The alleged eyewitness didn't see it either.
8 Mere suspicion is not enough. I'm sure
9 jurisdiction was established, but I never heard
10 the words "in Greenville County" that I recall.
11 But I'd certainly leave that up to your judgement
12 on that. So I would move for a directed verdict
13 at this time.

14 THE COURT: Mr. Moyer.

15 MR. MOYER: My response is I did
16 specifically ask the victim where he lived and he
17 did say. As for the directed verdict, the victim
18 clearly said from the very beginning that it was
19 a knife. So there would be certainly be
20 evidence, I would argue, that it should go to the
21 jury.

22 THE COURT: All right. I think it is a
23 question of fact, so I'm going to deny the motion
24 for directed verdict. I do think he did
25 establish, uh, jurisdiction. I'm pretty sure I

1 remember hearing that.

2 Yes, Mr. Moyer?

3 **MR. MOYER:** One other thing I would ask, I
4 think I would concede under the facts of the case
5 that the lesser included offense of Strong Arm
6 Robbery should be charged.

7 **THE COURT:** Well, she didn't ask for it.

8 **MS. ROSS:** I have a request.

9 **THE COURT:** She hadn't rested.

10 **MS. ROSS:** Yeah, I've got jury instructions
11 here, but when the time comes. Uh, and it's my
12 understanding that we will not testify and not
13 present a defense in the case.

14 **THE COURT:** All right. Is that correct, Mr.
15 Barton? If you would, stand and raise your right
16 hand for me.

17 You swear to tell the truth, the whole truth
18 and nothing but the truth?

19 **MR. BARTON:** Yes, sir.

20 **THE COURT:** Okay. Have you had -- remember
21 what I talked to you about yesterday, about
22 testifying?

23 **MR. BARTON:** Yes, sir. I have been speaking
24 to my counsel and we made a decision that I would
25 not testify.

1 **THE COURT:** Okay. You understand you have a
2 perfect right to testify?

3 **MR. BARTON:** Yes, sir. Uh, --

4 **THE COURT:** I'm sorry. Go ahead.

5 **MR. BARTON:** It doesn't matter. It doesn't
6 matter.

7 **THE COURT:** Okay. You sure? Just tell me
8 what you want to tell me. You have any questions
9 about your right to testify? Is there any
10 hesitancy in your mind about your decision?

11 **MR. BARTON:** No, sir.

12 **THE COURT:** Okay.

13 **MR. BARTON:** No, sir.

14 **MS. ROSS:** Okay. And I'm just talking to my
15 client. If you will note, we did not request a
16 charge for Strong Arm Robbery.

17 **THE COURT:** All right. You don't want one?

18 **MS. ROSS:** That's his request.

19 **THE COURT:** Okay.

20 **MR. MOYER:** Your Honor, I would request it.

21 **THE COURT:** Well, what -- is there evidence
22 in the record that he --

23 **MR. MOYER:** There's evidence in the record
24 that he stole, uh, that he robbed the victim,
25 used force or intimidation to rob. The victim

1 gave testimony that he felt what he believed to
2 be a knife against his throat but he didn't see
3 the knife. The witness did not see the knife. I
4 think the jury could get hung up on the fact that
5 perhaps, although there's evidence there could
6 have been a deadly weapon involved, the jury
7 could have doubt. I think, under the facts of
8 the case, of this case, that Strong Arm Robbery
9 should be charged.

10 **MS. ROSS:** Judge, just in response, in light
11 of that position with the State, I renew my
12 motion to dismiss the Possession of a Weapon
13 during a Violent Crime charge that is alleged
14 here.

15 **THE COURT:** He's not conceding that he
16 didn't have a knife. He's just conceding that
17 you have raised that issue to such a level that
18 he's concerned the jury might find that there
19 wasn't a weapon. You do want identification
20 charged? You asking for identification?

21 **MS. ROSS:** Yes, and Request number 7 goes
22 specifically to that.

23 **THE COURT:** Right. Do you want a charge on
24 his failure to testify?

25 **MS. ROSS:** Yes.

1 **THE COURT:** Anything else?

2 **MS. ROSS:** Nothing from the defense.

3 **THE COURT:** Circumstantial evidence? I
4 don't think there's really -- no. Okay. There
5 is no -- it would be circumstantial evidence
6 about the knife since nobody saw it. Am I right?

7 **MR. MOYER:** Well, he directly felt it. But
8 my understanding is -- I don't have the case with
9 me. But as far as the charge, there shouldn't be
10 a distinction made between circumstantial and --

11 **THE COURT:** No, I mean, that's what the
12 charge is. I don't think it's -- do you want it?

13 **MS. ROSS:** I don't even think the knife was
14 circumstantial evidence. He had a knife. It
15 doesn't match the description. It's not
16 anything --

17 **THE COURT:** What description is there?

18 **MS. ROSS:** There's not. So I don't even
19 think it's circumstantial evidence.

20 **THE COURT:** It's pretty -- you know, the
21 circumstances are he felt something on his neck.
22 But I won't charge it. I think I'll charge
23 Strong Arm Robbery. I think there's evidence in
24 the record that would justify that.

25 **MS. ROSS:** We're going to object to that.

1 **THE COURT:** Okay. All right. Anything
2 else?

3 **MR. MOYER:** I don't think so, Judge.

4 **MS. ROSS:** No, Your Honor.

5 **THE COURT:** Okay. Y'all ready to go?

6 **MR. MOYER:** Ready, Judge.

7 **MS. ROSS:** Ready, Your Honor.

8 **(WHEREUPON,** the jury enters at approximately
9 9:54 a.m.)

10 **THE COURT:** All right. Ladies and Gentlemen
11 of the jury, welcome back. Hope y'all had a
12 pleasant evening. I'm going to tell you, if you
13 remember my little opening comments to you
14 yesterday about the five parts of the trial, we
15 have concluded the second part of the trial. All
16 the testimony and all the evidence that is going
17 to be presented is admitted at this time.

18 The next part of the trial that we are about
19 to engage in is the closing arguments of the
20 attorneys. I asked you to pay close attention so
21 far throughout the course of the trial. I ask
22 you to continue to do that during the arguments
23 of these fine attorneys.

24 **MR. MOYER:** Thank you, Your Honor. May it
25 please the Court.

1 **THE COURT:** Yes, sir.

2 **MR. MOYER:** Good morning, Ladies and
3 Gentlemen. As the judge just told you, we are
4 now, uh, finished with the testimony phase of the
5 trial and we are moving on to the argument phase
6 of the trial. I will not be long, but this is
7 not a long trial. There's no reason to spend an
8 enormous amount of time going over what you heard
9 just a couple of hours yesterday anyway.

10 What this means though is that the testimony
11 phase of the case is closed and there can not be
12 anymore evidence or testimony presented. I
13 sometimes see jurors in cases wanting to get more
14 information after they start deliberation,
15 deliberating on a case. That can not take place.
16 Sometimes the jurors, they want witness
17 statements or police reports. Things like that
18 can not happen. Except in very rare situations,
19 the Rules of Evidence do not allow for
20 introduction of things like statements and police
21 reports and so forth. So the testimony you heard
22 yesterday is what you will use to decide this
23 case in just a few moments.

24 Now, as you decide the case, I think the
25 first question you have to ask yourself is was

1 there an armed robbery. Secondly, you are going
2 to move on to is this defendant, Bobby Barton,
3 the one who committed that armed robbery. Very
4 quickly, I think we can dispense of the first
5 question, was there an armed robbery in this
6 case.

7 The judge is going to tell you and explain to
8 you the law on Armed Robbery in just a few
9 minutes. He's going to tell you that essentially
10 an armed robbery is taking goods or monies,
11 properties, from another person through force or
12 intimidation while armed with a gun, a knife,
13 brass knuckles, I believe, is in the statute or
14 any other, uh, any other instrument that can be
15 used as a deadly weapon. That would be an armed
16 robbery.

17 So in this case, you've heard testimony from
18 Edwin Perez that a knife was pressed to his
19 throat when he was robbed. I would argue to you
20 that I think that would be something that would
21 be unmistakable. If you feel a blade pressed
22 against your throat, you would know what that
23 was. Edwin Perez didn't see the knife, but he
24 acted as if there was a knife against his throat
25 and allowed himself to be robbed and his wallet

1 with \$500 was taken from his pocket. We also
2 know that a knife was found in the possession of
3 this defendant just about a week later when he
4 was arrested.

5 I think it is unmistakable that even though
6 Edwin Perez can't tell you he saw the knife and
7 even though Patricia Rice who testified said she
8 didn't see the knife because his back was to her,
9 a knife was used. Edwin Perez could feel it and
10 he said in the very beginning that a knife was
11 used.

12 Ladies and Gentlemen, if, when you are
13 deliberating this case, you decide that in your
14 opinion there was not sufficient evidence to
15 believe that there was a knife used, then you
16 have a lesser included offense to consider and
17 that would be Strong Arm Robbery. Strong Arm
18 Robbery or just common-law robbery and it's even
19 called Highway Robbery, all terms for the same
20 crime, means there was an armed robbery but there
21 wasn't a weapon used. It would be taking goods
22 or money from another person by force or
23 intimidation. So I would argue to you that you
24 will find, when you begin your deliberations,
25 that there was an armed robbery in this case.

1 The second question you have to decide is is
2 this defendant, Bobby Barton, the one who
3 committed this crime. More specifically, you
4 have to ask yourself is did the testimony we
5 heard yesterday, does that prove beyond a
6 reasonable doubt that this defendant is the one
7 who committed the crime. As you've heard already
8 and His Honor is going to instruct you, the
9 burden of proof in criminal cases is beyond a
10 reasonable doubt. I ask you at this point,
11 Ladies and Gentlemen, to not make more of that
12 than it is. The law is not beyond any doubt.
13 The law does not put that burden on the State,
14 otherwise, I don't think anyone could ever be
15 convicted.

16 The law is not, as I heard somebody misquote
17 it once, beyond a shadow of a doubt. It's beyond
18 a reasonable doubt. That's the same burden of
19 proof that is used in all criminal cases, no
20 matter how seemingly insignificant. For example,
21 a traffic ticket. If you went to magistrate's
22 court and asked for a jury trial for a speeding
23 ticket, you couldn't be held responsible for that
24 unless you were guilty, unless the evidence
25 showed beyond a reasonable doubt. The same way

1 all the way up to the most serious crimes that we
2 have, a capital murder case.

3 Let's talk about how the evidence shows
4 beyond any reasonable doubt that this defendant
5 is the person who robbed Edwin Perez. The type
6 of evidence you've heard in this case comes in
7 the form of testimony, eyewitness testimony. You
8 heard from an eyewitness, Patricia Rice. You
9 heard from the victim, Edwin Perez, that this
10 defendant is the one who robbed him.

11 Quite truthfully, if there had been any other
12 witnesses, I doubt the trial ever would have
13 happened. People don't commit crimes like this
14 when there are other witnesses. It was certainly
15 understandable that there wasn't other people
16 around. This was late at night. It's midnight
17 in this small little trailer park. This happened
18 very quickly. You heard Patricia Rice said this
19 was over so quickly. This is the kind of crime
20 that even if other people had heard something
21 going on, it would have happened too quickly for
22 anyone to come around and see it happening while
23 it was taking place.

24 What we also know about this, this took place
25 in a mobile home in July. What do we know about

1 a mobile home in July is that there's going to be
2 a lot of window air conditioners going on. So
3 even if there had been any noise taking place out
4 there in the mobile home park, it's unreasonable
5 to think that anyone would have heard.

6 This isn't the kind of case like a burglary
7 or a rape that's going to leave behind evidence
8 like fingerprints or DNA. This is also not the
9 kind of case that one would have what you would
10 call Hollywood evidence. No one can go out to
11 the crime scene and waive a wand around and
12 gather DNA or evidence. This is the kind of
13 case, like so many others, that is solved by
14 talking to eyewitnesses.

15 So let's talk about the two eyewitnesses in
16 this case. First, Patricia Rice. Patricia Rice
17 told you, Ladies and Gentlemen, from the witness
18 stand that this is the person who committed this
19 crime. In order for you to discount her
20 testimony, you would have to believe that she
21 lied, that she lied to the officer on the scene
22 when this initially happened, that she then lied
23 when she was interviewed by the officer later on
24 and that she took the stand and lied.

25 Before accepting that, someone who lied so

1 blatantly like that, let's think about
2 motivations. What motivation would Patricia Rice
3 have to lie that you heard about in this case? I
4 want you to think for a minute, how much would
5 you have to absolutely pay another person in
6 order to frame that person for a serious crime?
7 How you would have to loath and hate and despise
8 a person to do that, knowing the ramifications.

9 This isn't a situation analogous to the
10 criminal conviction you have heard talk about
11 with her where she gave false information to
12 police once about her own name when she was
13 trying to avoid getting picked up herself. This
14 is a situation of framing another person for a
15 very, very serious crime.

16 On the contrary, all the evidence that you
17 heard yesterday was actually to the contrary of
18 that. The evidence was that she was actually
19 quite fond of this defendant. Let's think about
20 what we've heard. First of all, she is walking
21 with him close to midnight in a dark trailer park
22 in the area that you have heard actually has a
23 lot of crime in it. She trusts and likes him
24 well enough to do that.

25 We also know that she knew him for some ten

1 years. They had an on-again/off-again romantic
2 relationship. You even heard that one time he
3 committed an assault, a domestic violence against
4 her that she cared enough for him that later on,
5 when it came time for court, she said, "No, I
6 think you've been punished enough. I want to
7 give you a second chance." She liked him enough
8 for that as well. In all indications, her
9 relationship with him was one of, at the very
10 minimum, fondness, but at the very most, perhaps
11 love. Not the kind of person that you would lie
12 about.

13 Consider also how this identification came
14 about. Remember, when she was first stopped by
15 Investigator Jarvis, she had no notion that this
16 was coming. This was not the kind of situation
17 where she received a telephone call from police
18 and said, "Hey, would you come down here and talk
19 to us about this crime. We think you might have
20 some information. You might have been a
21 witness." Giving her time to think up a story.
22 Giving her time to mull it over.

23 No, she was stopped. Investigator Jarvis got
24 out and talked to her. And immediately, before
25 Investigator Jarvis found that drug paraphernalia

1 on her, before he even told her she was going to
2 be charged, she said Bobby Barton was the one who
3 did it. Then when she was caught with the
4 paraphernalia and then when she was, uh, actually
5 charged with this crime, she continued saying
6 Bobby Barton was the one who did this.

7 Think about it in this light. At this stage
8 of the game, she wants to curry favor with the
9 police, right? She wants the police on her side
10 because she's been charged with a serious crime.
11 Why would you risk telling the police the wrong
12 person committed this crime not knowing whether
13 that person could be exonerated later through
14 other means or found out you're lying? When you
15 are going to tell the police about an instance
16 like that, when you want the police to be on your
17 side, you are going to tell them the truth.

18 Then you also heard that she -- you heard her
19 testify in court yesterday with no charges
20 hanging over her head, no reason to lie. She
21 knows the charges can not be brought back against
22 her. She said that very clearly. She has
23 nothing to gain or lose. She continued to say
24 that this defendant, Bobby Barton, with whom she
25 had lived, was the person who committed the

1 crime.

2 Let's move on now, finally, to the second
3 witness. Edwin Perez. Edwin Perez was the
4 victim of this case. He also said that this
5 defendant was the robber. Well, we know he
6 wasn't lying, right? He has no reason to lie and
7 say Bobby Barton was the one who did it. Bobby
8 Barton didn't do it. He didn't really know Bobby
9 Barton. He had seen him maybe once or twice in
10 the neighborhood, but he doesn't have anything
11 against him. He has no reason to lie. So in
12 order to discount his statement or his testimony,
13 you would have to believe that he was mistaken.
14 You would have to believe that he is mistaken.

15 So let's talk about that. First off, he's
16 testified in court that he is sure that this
17 person seated in the courtroom, Bobby Barton, is
18 the one who robbed him. He said he understood
19 the significance of what he was saying. He
20 understands how important it is.

21 We also know, and you heard a little bit
22 about this photograph in the magazine, this "mug
23 shot" magazine. We know that after the Defendant
24 was arrested, that a mug shot was taken of him
25 obviously and it was published in this magazine

1 that you've heard about that has hundreds of
2 photographs of different people who had been
3 charged with crime. Edwin Perez found a copy of
4 it. I think he said it was lying on the ground
5 where he was working or whatever, but he started
6 leafing through it and he sees the Defendant's
7 photograph.

8 Keep in mind, at this point, he was very
9 clear to say he did not know the name of the man
10 who had been robbed. He did not know Bobby
11 Barton's name. Investigator Jarvis testified
12 that he did not tell Edwin Perez the name of
13 Bobby Barton. So when Edwin Perez was looking
14 through that magazine, keep in mind also he
15 doesn't read English. Even if he knew the name,
16 he couldn't read. He wouldn't be able to read
17 the name. He wouldn't be able to read the
18 charges. He was very clear that he did not --
19 his brother who speaks English did not look at
20 that magazine until after he was looking through
21 it and saw the man who robbed him and he showed
22 his brother.

23 As you know from this photo lineup that was
24 introduced, police lineups have six pictures in
25 them. That's a standard police photographic

1 lineup as you've heard Investigator King testify
2 to yesterday. Six photographs. This "mug shot"
3 magazine has hundreds and he saw this defendant
4 in it and he picked him out.

5 Now, you heard some questions on cross-
6 examination yesterday from the defense leaving
7 one perhaps to believe that Edwin -- that you
8 should hold it against Edwin Perez that when he
9 saw the "mug shot" magazine for not calling the
10 police and telling them "I saw him". Just take
11 one moment to think about how unreasonable that
12 expectation would be for any victim. Any victim
13 who has been a victim of, say, a bank robbery or
14 something or on the news that night sees the
15 person on the news. There's no reason to think
16 that there's any obligation on your part to call
17 the police and say, oh, by the way, you know, I
18 saw him. The person is arrested.

19 Then, when you consider someone as
20 unsophisticated as Edwin Perez is, he sees the
21 magazine, he knows the person is arrested,
22 probably a feeling of relief. All right, the
23 police got him. And he moves on.

24 What about this initial description to
25 police? Mr. Perez testified in court yesterday

1 that the robber to him looked 30 or 40 years old.
2 The uniform officer who was out at the scene
3 wrote down that Mr. Perez told him that the
4 robber was 25 to 30 years old. We know the
5 Defendant was somewhat older than that. We don't
6 know an exact age. I don't think that ever came
7 out. We know he's somewhat older than that.

8 Now, I think under the circumstances, it's
9 completely reasonable. Again, remember how Edwin
10 talked about how dark it was out there that
11 night. It was only a little light on the trailer
12 from which he could see what was going on. He
13 had just been the victim of an armed robbery. He
14 just had a knife pressed against his throat.

15 Imagine those circumstances. Panic, fear,
16 the trauma you are under while you are trying to
17 talk to police. Once again, he is not speaking
18 to the officer himself. There's an intermediary
19 that he's trying to get all this information to.
20 The idea that somehow you would get down in the
21 police report that he's 25 to 30 years old is
22 completely understandable. It's also
23 understandable that we can't all judge people's
24 ages that well. We don't know how old people can
25 be. That's a very tricky thing to try to do.

1 But what can make us confident of this
2 identification is this point, no matter how much
3 he had to drink that night, no matter what he
4 told the officer, he was right about Patricia
5 Rice. If you remember, Investigator Jarvis took
6 Edwin Perez out in his car a week later. They
7 drove through that neighborhood that was across
8 the railroad tracks. Edwin Perez said, "That's
9 the woman. That's the woman who was there." And
10 it was. He was right. He got her right. There
11 is no reason to think that he didn't get the
12 Defendant right.

13 In conclusion, I want you to think about
14 this. Mr. Perez has more incentive than anybody
15 to pick the right person. Do you think if it
16 really was the wrong person in that "mug shot"
17 magazine or in his photographic lineup, if the
18 person in his mind really was some young 25 to
19 30-year-old guy, it's hard to imagine would be
20 hanging out with Patricia Rice, who, by the way,
21 is 50 years old.

22 Don't you think if anyone would stand up and
23 say, no, police, you got it wrong, it's really a
24 much younger guy, it's not him, Edwin Perez has
25 that incentive? If you've been robbed, you want

1 the real robber to be caught. You don't want
2 somebody you are not sure about. You're not
3 going to be flippant about that. You want the
4 real robber, the real person who put the knife
5 against your throat, you want that person caught.
6 You don't want the real robber out there running
7 around doing who knows what in a neighborhood
8 right next to yours. He, I would argue to you,
9 has more incentive than anyone.

10 Ladies and Gentlemen, lightning doesn't
11 strike twice. There are two completely separate
12 identifications of this defendant by two
13 completely and separate independent people who
14 had no contact with one another. Edwin Perez,
15 independently, chose this defendant. Patricia
16 Rice, independently said this defendant is the
17 one. The odds of that happening are not
18 realistic.

19 In addition to that, and I will just go over
20 this real quickly, but there's other
21 corroborating evidence. We know the Defendant
22 was arrested in that area where Patricia Rice
23 was, where Patricia Rice was arrested. We know
24 the Defendant was trying to evade the police when
25 the police were there on August the 4th of 2009.

1 The police officer saw him trying to go across
2 that very cut, that very shortcut into the
3 crossroad towards White Horse Road. We also know
4 he had a knife in his pocket.

5 Ladies and Gentlemen, I asked you at the
6 beginning of this case, I told you at the
7 beginning of the case that, at the end, I would
8 ask you to do justice in this case. Ladies and
9 Gentlemen, I firmly, sincerely argue to you at
10 this time that justice means holding this
11 defendant responsible for robbing Edwin Perez. I
12 ask you to find him guilty. Thank you.

13 **MS. ROSS:** Thank you, Your Honor.

14 Ladies and Gentlemen, you probably seen me
15 conferring with my client quite a bit during this
16 trial. He's charged with serious crimes. He's
17 pled not guilty. He's told you all he knows, and
18 that was that wasn't me. I wasn't there. Then
19 it's up to me to talk to these witnesses and get
20 out the evidence that shows that he wasn't there
21 for you to hear. That's why he's been conferring
22 with me. This is so serious to him.

23 I, too, would ask you to do justice. Justice
24 is requiring the state to prove guilt beyond a
25 reasonable doubt. The reason for that is, in

1 many cases, at midnight, if you are home alone,
2 you don't have an alibi. You can't put up a
3 defense.

4 Making the State prove guilt beyond a
5 reasonable doubt forces the State not to put
6 innocent people in jail. It makes you, the jury,
7 a group of citizens who have no reason to reward
8 anyone, no biases, hands it to you to make a
9 determination of whether that person is really
10 guilty or not. That determination, you took an
11 oath, can only be found when the State has proven
12 that guilt beyond a reasonable doubt.

13 Now, let's talk about this case. This was a
14 case where, as the State said to you, lightning
15 doesn't strike twice. How could this happen?
16 How could Bobby Barton be sitting there if he
17 wasn't guilty. That's essentially what the State
18 is saying. The reason he's there is because
19 Patricia Rice fingered him.

20 Ladies and Gentlemen, she did have a iron in
21 this case. She hated Bobby Barton. She brought
22 charges against him before, only to later lift
23 them. She's lied to police before to get herself
24 out of trouble. Patricia Rice has bias and
25 motive. The State got up and argued she wouldn't

1 lie. She said something about Bobby Barton
2 before she was arrested.

3 Ladies and Gentlemen, think about this
4 incident. Uh, Mr. Perez is driven in a police
5 car next to where Priscilla [sic] Rice is
6 standing with three men. Close enough so that he
7 can see her and ID her and points her out. That
8 was the testimony that you heard from her and the
9 officer, that she was ID'd in person by Mr.
10 Perez. Then a marked car comes up and pulls her
11 over. Of course, she knows what this is all
12 about. And she's got a crack pipe in her
13 pocketbook. She's got a crack problem, a drug
14 problem. She lives on the streets. She throws
15 out the name Bobby Barton. And I will submit to
16 you she throws him out because she knows there's
17 no retribution from him when she lies on him,
18 because she's done it before.

19 She lied about the CDV. He didn't come back
20 and punish her for having him arrested for
21 Criminal Domestic Violence. Now, if she lied on
22 a real person, a real drug dealer or someone in
23 the area, they might come back and punish her.
24 There might be some retribution if she lied on
25 the 25 to 30-year-old who probably did this. So

1 I would just point out she has a reason to
2 dislike Bobby Barton. She knows he lives in the
3 area. She said she knows he's in the area. She
4 knew he would be around. She knew that he
5 wouldn't get her after she lied on him. He was
6 an easy person, a scapegoat, an easy person to
7 point the finger at.

8 And Priscilla, excuse me, Pamela [sic] Rice
9 was experiencing this system. She had been on
10 the streets long enough to know how to deal with
11 the cops. What you do, if there's evidence
12 against you, you throw it on somebody else. And
13 it worked for her. Her crack pipe, she's not
14 charged with that. She gets out of her armed
15 robbery charge.

16 Now, the State has minimized her involvement,
17 just going along with the fact that she wasn't
18 involved. Ladies and Gentlemen, I submit to you
19 that if she's there and \$500 is stolen, she's
20 going to be buying crack with that \$500 and with
21 whoever stole it. She got part of what was
22 taken, if something was taken, if, in fact, Mr.
23 Perez just happened to be outside of his house
24 with \$500 in his pocket.

25 I don't want to miss anything. That's why

1 I'm looking at my notes. I'd point out too about
2 why would she come in here and testify. Why was
3 she just seeking justice? Ladies and Gentlemen,
4 right after the incident, she wasn't there. She
5 didn't come back from the incident and say, oh,
6 it happened like this, police officers.

7 Remember, they had lots of officers, dogs running
8 around the whole area? Pamela [sic] didn't come
9 back and say, oh, guys, I want justice to happen
10 so I got to tell you what happened. It was only
11 a week later when she is fingered and then picked
12 up and then arrested and then charged with armed
13 robbery herself that she does come back in here
14 and testify before you.

15 I point out, she was released from prison
16 about a month ago after being in for 11 months.
17 There was enough evidence for the State to keep
18 her in there for 11 months and only dismiss the
19 charges, I submit to you, in exchange for her
20 testimony against Bobby Barton.

21 She doesn't like it. She's the jilted woman.
22 She's the scorned woman. That's another reason
23 she came in. Kick the charges off of her and she
24 doesn't like Bobby. That's why she threw out his
25 name in the first place. She's not a credible

1 witness because she's got bias against Bobby
2 Barton and a motive to lie.

3 Now, let's talk about Mr. Perez. The missing
4 witness in all this, this is an eyewitness case,
5 but the missing witness, where was Mr. Perez's
6 brother? You heard that he was the translator.
7 He was the one on the 9-1-1 call. He was the one
8 on the phone. He's the one who translated 25 to
9 30 years. The State made a lot of he doesn't
10 understand Spanish, there was no one to
11 translate. The victim's brother spoke English.
12 He was the one translating. He was not here.

13 I submit to you he wasn't here because the
14 State has the burden of proof. They are bringing
15 their case. They are not going to bring in
16 someone who doesn't help their case. I will
17 submit that the brother knew that the victim, Mr.
18 Perez, did say 25 to 30 years old. That's what
19 the brother told the police on the scene. That's
20 why he wasn't here to testify.

21 He also wasn't here because he didn't hear a
22 scream. Now, I just ask you, you heard these
23 trailers are about this far from each other. The
24 State said something about air conditioning
25 units. I submit to you that possibly someone

1 would have a window open or someone would hear
2 screaming in a very close-quartered trailer room
3 area. Someone would hear some screaming. Now,
4 maybe they wouldn't be an eyewitness, but someone
5 would have come out and talk to police and say
6 I've heard that scream too or I saw somebody
7 running by my trailer or something.

8 There's nothing. No thrown down wallet. No
9 pawned wallet. No Mexican ID picked up. No
10 \$500. I submit to you that those things don't
11 exist and haven't been presented to you and the
12 State has not proven guilt beyond a reasonable
13 doubt or there would be something.

14 Now, that goes back to Mr. Barton. He's pled
15 not guilty. He's told you he's not guilty. The
16 State has to prove that beyond a reasonable
17 doubt. The reason there's nothing else here is
18 because, in fact, he's not guilty. He didn't
19 have that stuff. He didn't do this crime.
20 That's why there's nothing else there.

21 Now, let's talk more about this. When you
22 hear this -- in opening, I felt bad. When you
23 hear, you know, the victim picked him out of a
24 lineup, that sounds very bad until you hear about
25 the "mug shot" magazine. The "mug shot"

1 magazine, and, if you will remember, Investigator
2 King went through that magazine in front of you,
3 looked through and, under the Greenville arrests,
4 there were two arrests for armed robbery during
5 that time period. One was Pamela [sic] Rice.
6 And there was her picture with Armed Robbery, the
7 words, underneath. The other -- that was on page
8 8. The other was Bobby Barton who was on page 3
9 with this exact same photograph. He had been
10 arrested about 5 days before that magazine came
11 out. That exact same photograph was in "mug
12 shot" magazine.

13 You heard Mr. Perez's testimony that he saw
14 that picture in that magazine. That same
15 picture. Then he sees it again. He thinks that
16 must have been the guy. He thinks that must have
17 been the guy I've seen around my neighborhood all
18 the time. That's the one the police picked out.
19 That must be the guy.

20 Now, remember, you heard Investigator Jarvis
21 and Mr. Perez say that Mr. Perez was notified
22 about the arrest. This was a violent crime,
23 Armed Robbery. There's a Victims Rights Act. If
24 you are a victim, the police tell you when they
25 arrested the person who supposedly robbed you. I

1 submit to you the police give their name as well.
2 They just don't say someone, but we're not going
3 to give them the name. Mr. Perez knew the name
4 Bobby Barton. He also had the ability or could
5 have looked it up online if he had known. He was
6 somehow sophisticated enough to get the "mug
7 shot" magazine and go through it. That goes,
8 again, with the missing brother.

9 Ladies and Gentlemen, he was looking through
10 that magazine with his brother. This is Pamela
11 [sic] Rice. This is the woman that I picked out.
12 He and his brother were going over it. He's
13 like, here's the other armed robbery. Here's a
14 guy in the area. That must be the guy.

15 Now, eyewitness testimony is a very difficult
16 area. It's something that people get wrong a
17 lot. A lot of times, people mess up eyewitness
18 testimony. It's terrible because the brain isn't
19 like -- you think it's like a camera, it's not.
20 When someone is highly intoxicated to the point
21 where the police officer doesn't even take a
22 statement from him, you've got to have a question
23 there.

24 Now, even being so intoxicated, he says 25 to
25 30 years old. Now, that was not a mistake in

1 translation, the brother could have told you that
2 if the state had brought the brother in. That
3 was simply what Mr. Perez said at the time, 25 to
4 30 years old.

5 Now, this man here is not 25 to 30 years old.
6 Now, what happened with Mr. Perez is he finds out
7 Bobby Barton's arrested and then the memory
8 starts to go in place like someone who is highly
9 intoxicated and someone else says, "You won't
10 believe what you did last night. It was this."
11 Then the memory starts to come together after the
12 fact.

13 Now, there are a lot of things to support
14 that. Think back about Mr. Perez's testimony.
15 I'd like you to just think back to yesterday what
16 was said. If you will recall, he clearly had met
17 with the State a number of times and reviewed his
18 testimony. There were a lot of mistakes. He'd
19 answer the wrong thing and then it would be
20 corrected. He clearly reviewed that testimony.
21 Part of that reviewing testimony is whenever
22 someone comes on the witness stand and says this
23 is the guy who did it, you are supposed to be
24 confident. Otherwise, the State won't get a
25 conviction. You can't come in and be like, well,

1 I was really drunk and I'm not sure because the
2 State's not going to get a conviction.

3 So when you review a witness, that witness is
4 always going to say "I'm confident". So Ladies
5 and Gentlemen, I would just ask you to take that
6 for what it's worth knowing how inebriated he
7 was. Also knowing that he testified that he had
8 seen Bobby Barton around the neighborhood. He
9 had seen his attacker. At the time, he didn't
10 say that. Someone who knows the person who
11 attacked them would say that. Mr. Perez did say
12 that about Pamela [sic] Rice.

13 A week later, Mr. Perez is sober. He meets
14 with Investigator Jarvis. I think it's nine days
15 later, actually. At that point, he says, you
16 know, upon reflection, Pamela [sic] Rice, tall,
17 Skinny, 50-year-old was the one who was there.
18 Then he goes and picks her out because he's seen
19 him around, seen her around the neighborhood. At
20 that point, he does not change his description of
21 the attacker, the male. The description is still
22 25 to 30-year-old black male. He has no more
23 detail at that point. He doesn't say, "By the
24 way, I've seen him around." He doesn't say that.

25 Then, once he looks at "mug shot" magazine, a

1 couple of weeks after the incident, he never
2 calls him to say, "Hey, you got the right guy.
3 That is the guy." He never says that. What
4 happens is months later, during a hearing, they
5 finally show him a lineup. At this point, he's
6 had "mug shot" magazine for months, been looking
7 at it. He sees a familiar picture, the same
8 picture. The only other armed robbery charge
9 during that time.

10 Now, let's talk about the knife. This knife
11 is in evidence. I question the relevance of this
12 knife. No knife was identified. Mr. Perez never
13 saw a knife. He said he felt a knife on his
14 neck. Notice the reporting officer didn't see
15 any marks on his neck. I would ask you to take a
16 look at the knife. It's like a pocket knife.
17 Part of the blade is straight and part of the
18 blade is serrated. I'd just ask you to think to
19 yourself if it's hard enough to feel on your
20 neck, wouldn't there be something? Wouldn't
21 there be some bruise from being pushed down?

22 He said the wallet was in his back pocket.
23 Turned over, pulled wallet out of back pocket.
24 That's certainly not what Ms. Rice testified
25 happened. She said he was jacked up. So

1 completely different testimony about the details.
2 And the reason for that is because Bobby Barton
3 didn't do it and it didn't happen like that
4 because Mr. Perez has no real recollection of
5 what happened. He was very, very intoxicated.
6 Ms. Rice has a reason to get Bobby Barton. She's
7 just coming up with something. She's reading the
8 cops. What do you want? What do you want? And
9 she's giving them what they want to get herself
10 off.

11 Remember, it was a 9-1-1 hangup. Mr. Perez
12 would have you believe that he called 9-1-1.
13 They only speak Spanish, oops, and hangs up.
14 Ladies and Gentlemen, 9-1-1 has the capabilities
15 to handle Spanish speaking callers.

16 **MR. MOYER:** Your Honor, I'd object.

17 **THE COURT:** That's not in evidence.

18 **MS. ROSS:** Uh, calls 9-1-1 and then hangs
19 up. 9-1-1 calls back. Then they talk to his
20 brother. Nothing is given to suggest anything
21 but 25 to 30-year-old attacking him. Now, as far
22 as Investigator King, just going through some
23 testimony, he did the lineup on January 8th, much
24 later after the incident. He did look at this
25 "mug shot" magazine and go through it right in

1 front of you and see that there were only two
2 people with armed robbery charges. One being Ms.
3 Rice, who Perez knew was involved because he had
4 picked her out later, after the fact. Later
5 after the fact, she was involved. At that point,
6 he didn't change any of the story implicating
7 Bobby Barton. He was still saying 25 to 30-year-
8 old even then.

9 I point out Jackie Lanford told you that he
10 thought Breakers or Pumpers, the place down the
11 street. He was leaving and he came straight over
12 and saw Bobby on the way and all that, he said
13 the Pumpers probably closed around 11:00. This
14 happened a little after 12:00. Again, he's at
15 the scene. They took this seriously. They
16 called out the dogs, did investigation and came
17 up with nothing. No one else, no one heard the
18 scream. No one saw anything. No wallet thrown
19 down. No nothing.

20 Now, the State does have the burden of proof.
21 Like I said in the beginning, the reason for that
22 is to prevent innocent people from being
23 convicted of a crime. They did not show you what
24 they didn't want you to hear. Only what they
25 wanted you to -- that really -- there is stuff

1 out there. If this happened, there would be some
2 neighbors. You would be hearing from the brother
3 who would come in and say, oh, the police just
4 botched the description and botched everything.
5 The brother would be in here saying that if
6 that's what happened. But it's not. There was
7 no idea of a knife. If someone's robbed like
8 that on their back down, how did he get the
9 wallet so fast? How did he know the wallet was
10 there?

11 With what we have here -- I wasn't there. I
12 don't know -- but it's just as likely that this
13 was a case where the victim had lost his money or
14 engaged in drug activity or done something and
15 then had to explain it to his family. If he was
16 doing something like that, it wouldn't be
17 surprising that Pamela [sic] Rice would be the
18 person he was doing it with. She lived in the
19 area, knew where drugs were.

20 The fact that this thing about the 25 to 30-
21 year-old description, the initial description is
22 huge. There is no way this guy, Bobby Barton
23 could be mistaken for a 25 or 30-year-old. There
24 is just no way. And later, after the fact, when
25 there was time to clear up and say, oh, yeah, I

1 was wrong. I seen this guy in the area, Mr.
2 Perez never cleared that up. But when he
3 testified, he said he had seen him around in the
4 past and that he did know who he was. If he had
5 and Bobby Barton was the one who did this, he
6 would have said something at the time.

7 I'm just trying to make sure I didn't miss
8 anything. No ID found. Yes, Bobby Barton was
9 found with a knife. Perfectly legal knife to be
10 carrying. Not a knife that matched an initial
11 description. No blood on the knife. No scars or
12 marks on Mr. Perez. No ID pawned. Nothing
13 consistent or supporting this initial story.
14 This was a memory that was created later, after
15 the fact. It was implanted because that victim
16 saw a picture in "mug shot" magazine. He sees
17 Bobby Barton around. He sees that picture and
18 says, oh, that must be the guy. That is not a
19 memory of that was the guy that did this.

20 Now, I'm sure I forgot to say a lot of
21 things. I'd ask you -- I probably misstated some
22 things. So I would ask you to just make sure you
23 go by your recollection of what you heard those
24 witnesses say yesterday. Hold your oath. Hold
25 the standard of the State proving guilt beyond a

1 reasonable doubt. Ladies and Gentlemen, I find
2 that they didn't. I'd ask you to do the right
3 thing and find Bobby Barton not guilty. Thank
4 you.

5 **THE COURT:** All right. Ladies and Gentlemen
6 of the jury, during this trial, you and I have
7 certain duties to perform. As the trial judge,
8 it is my responsibility to preside over the trial
9 of the case and to rule on the admissibility of
10 the evidence that's offered during the trial. It
11 is also my duty to charge you the law applicable
12 to the case. It is your duty as jurors to accept
13 and apply the law as I now state it to you.

14 As I said in my opening comments, if you
15 think you have any idea as to what the law is or
16 what the law ought to be and it does not agree
17 with what I tell you the law is now, you must
18 forget your own ideas because you have sworn an
19 oath to accept and apply the law precisely as I
20 state it.

21 I would also remind you that in every case
22 tried in this court before a jury, you, the jury,
23 are the sole and exclusive judges of the facts.
24 A trial judge can not comment on or make any
25 statement about the facts in the case. So please

1 don't think anything I may have said or doing
2 throughout the course of the trial that I have an
3 opinion about the facts. I do not.

4 I would also instruct you that the fact that
5 the Defendant was arrested, charged and indicted
6 in this case is not evidence of guilt. Nor does
7 it create any presumption or inference of guilt.
8 These documents are simply the formal written
9 instruments which contain the charges made
10 against the Defendant. They serve as the
11 documents by which this case is processed and
12 brought into court.

13 The indictment in this case alleges two
14 separate offenses against the Defendant. The
15 charges are Armed Robbery and Possession of a
16 Weapon during the Commission of a Violent Crime.
17 Each count of the indictment charges a separate
18 and distinct offense. You must decide each count
19 separately from the evidence and the law
20 applicable to it, uninfluenced by your decision
21 as to any other count in the indictment.

22 The Defendant may be convicted or acquitted
23 of any or all of the offenses charged. That's
24 not quite accurate. I will explain that to you
25 with respect to Possession of a Weapon at the

1 time I charge you on that. You will be asked to
2 write a separate verdict of guilty or not guilty
3 of each count of the indictment.

4 Necessarily, you must determine the
5 credibility or believability of the witnesses who
6 have testified in the case. It becomes your duty
7 as jurors to evaluate the evidence and determine
8 which evidence convinces you that it is true. In
9 determining the believability of the witnesses,
10 you may believe one witness over several or
11 several over one. You may believe a part of the
12 testimony of a witness and reject the remaining
13 part. You may believe the testimony of a witness
14 in its entirety or reject that testimony in its
15 entirety. You may consider whether the witness
16 has an interest in the result of the trial,
17 whether the witness is prejudiced towards either
18 the State or the Defendant, the opportunity for
19 the witness to have seen the matters and things
20 about which the witness has testified and the way
21 the witness acts on the witness stand.

22 I would instruct you and I emphasize that the
23 fact that the Defendant did not testify is not a
24 factor to be considered by you in any way in your
25 deliberations on the question of the guilt or

1 innocence of the Defendant. It must not be
2 considered by you in any manner whatsoever.

3 Every citizen has the constitutional right to
4 remain silent. The assertion of this right must
5 not be considered by you in your deliberations.
6 The burden of proof is always on the State and a
7 defendant never is required to prove their
8 innocence.

9 Now, the Defendant has pled not guilty to the
10 indictment. That plea puts the burden on the
11 State to prove the Defendant guilty. A person
12 charged with committing a criminal offense in
13 South Carolina is never required to prove
14 themselves innocent. I charge you that it is a
15 cardinal and an important rule of the law that a
16 defendant in a criminal trial will always be
17 presumed innocent of the crime for which an
18 indictment has issued, unless guilt has been
19 proven by evidence satisfying you of guilt beyond
20 a reasonable doubt.

21 Now, reasonable doubt is the kind of doubt
22 which would cause a reasonable person to hesitate
23 to act. A reasonable doubt may arise from the
24 evidence which is in the case or from the lack or
25 absence of evidence in the case. You, the jury,

1 must determine whether or not reasonable doubt
2 exists as to the guilt of this defendant. The
3 state has the burden of proving each and every
4 element of a crime beyond a reasonable doubt.
5 Any reasonable doubt that you may have in your
6 deliberations should be resolved in favor of the
7 Defendant.

8 A sign -- an issue in this case is the
9 identification of the Defendant as the person who
10 committed the crime charged. The State has the
11 burden of proving identity beyond a reasonable
12 doubt. You must be satisfied beyond a reasonable
13 doubt the accuracy of the Defendant -- excuse me
14 -- the accuracy of the identification of the
15 Defendant before you may convict him.

16 Identification testimony is an expression or
17 belief or impression by -- expression of belief
18 or impression by a witness. You must determine
19 the accuracy of the identification of the
20 Defendant. You must consider the believability
21 of each identification witness in the same way as
22 any other witness.

23 You may consider whether the witness had an
24 adequate opportunity to observe the offender at
25 the time of the offense. This will be affected

1 by things like how long or short a time was
2 available to view, how far or close the witness
3 was, the lighting conditions and whether the
4 witness had the chance to see or know the person
5 in the past. Once again, I instruct you that the
6 burden of proof on the State extends to every
7 element of the crime charged and this
8 specifically includes the burden of proving
9 beyond a reasonable doubt the identity of the
10 Defendant as the person who committed this
11 offense or these offenses.

12 Now, armed robbery. The Defendant is charged
13 with Armed Robbery. In order to prove this
14 offense, the State must first prove beyond a
15 reasonable doubt that the Defendant took personal
16 property from the person or presence of another
17 person. Property is in the presence of a person
18 if it is within the person's reach, inspection,
19 observation or control so that the person could,
20 if not overcome with violence or prevented by
21 fear, keep possession of the property.

22 The State must also prove beyond a reasonable
23 doubt that the Defendant carried the property
24 away intending to permanently deprive the owner
25 of the property and to keep the property for the

1 Defendant's own use. The slightest removal of
2 the property or the complete possession of the
3 property, even for an instant, by the Defendant,
4 is sufficient to show a taking and carrying away
5 of the property. The taking and carrying away of
6 the property must have been done with violence or
7 by putting the owner of the property in fear of
8 violence.

9 Finally, the State must prove beyond a
10 reasonable doubt that the Defendant was armed
11 with a deadly weapon during the robbery or
12 alleged, either by action or words, that he was
13 armed while using a representation of a deadly
14 weapon or any object which a person present
15 during the commission of the robbery reasonably
16 believed to be a deadly weapon.

17 A deadly weapon is any article, instrument or
18 substance which is likely to cause death or great
19 bodily harm. Whether an instrument has been used
20 as a deadly weapon depends on the facts and the
21 circumstances of each case. The following are
22 examples of instruments which may be deadly
23 weapons: a pistol, a shotgun, a rifle, a dirk, a
24 dagger, a knife, a slingshot, metal knuckles, a
25 razor, gasoline, a fire bomb or molotov cocktail

1 and lighter fluid. A gun may be a deadly weapon
2 even if it is not operating.

3 Now, if you find that the State has failed to
4 prove the Defendant was armed with a deadly
5 weapon, you may then consider whether the State
6 has proved beyond a reasonable doubt that the
7 Defendant committed robbery. Now, in order to
8 prove robbery, the State must prove beyond a
9 reasonable doubt that the Defendant took the
10 personal property from the person or presence of
11 another person without that person's consent and
12 carried it away. Property is in the presence of
13 a person if it is within the person's reach,
14 inspection, observation or control so that the
15 person could, if not overcome with violence or
16 prevented by fear, retain possession of the
17 property.

18 The State must show that the Defendant
19 carried the property away with the intent to
20 permanently deprive the owner of the property and
21 to convert the property to the Defendant's own
22 use. Again, I tell you that the slightest
23 removal of the property or the complete
24 possession of the property, even for an instant,
25 by the Defendant, is sufficient to show a taking

1 and carrying away of the property. The taking
2 and carrying away of the property must have been
3 done by violence or by putting the owner of the
4 property in fear of violence.

5 The second count of the indictment is
6 Possession of a Weapon during the Commission of
7 or Attempt to Commit a Violent Crime. Now, the
8 State must prove beyond a reasonable doubt that
9 the Defendant was in possession of a firearm or
10 visibly displayed what appeared to be a firearm
11 or visibly displayed a knife during the
12 commission of a violent crime. In order to find
13 the, uh, Defendant guilty of Possession of a
14 Weapon during the Commission of a Violent Crime,
15 you must first find the Defendant guilty of
16 either committing a violent crime or attempting
17 to commit a violent crime. Armed Robbery is
18 defined as a violent crime under our law.

19 So you must consider each count independently
20 based on its own, on its own evidence and law as
21 it applies to that count. And you must decide
22 first whether or not the State has met its burden
23 of proof beyond a reasonable doubt that the
24 Defendant is guilty of Armed Robbery. If you
25 find that the Defendant is guilty of Armed

1 Robbery, then you go to Count 2, Possession of a
2 Weapon during the Commission of a Violent Crime.
3 So in order to convict the Defendant of Count 2,
4 Possession of a Weapon, you must first convict
5 the Defendant of Count 1, which is Armed Robbery.
6 If you find that the State has failed to prove
7 beyond a reasonable doubt that the Defendant was
8 in possession of a weapon during the commission
9 of the crime and you find the Defendant guilty of
10 Robbery, Strong Arm Robbery or Common-law Robbery
11 or Robbery, they are all the same, then you may
12 not consider Count 2. Okay. You move to Count 2
13 only if you find that the State has proven beyond
14 a reasonable doubt that the Defendant is guilty
15 of Armed Robbery.

16 Now, Mr. Foreperson, Ladies and Gentlemen of
17 the jury, there are two possible -- I think I
18 have explained the verdicts for you. But there
19 are two possible verdicts that you can reach as
20 to these counts. They are guilty or not guilty.
21 There is no significance in the order in which I
22 state them to you. One's got to go first.

23 We have prepared a verdict form which we will
24 send back into the jury room with you for you to
25 record your verdicts. I think they are self-

1 explanatory. If you have questions with respect
2 to how it works, please let me know. Again, I
3 remind you, you must consider the Armed Robbery
4 first. If you find guilt beyond a reasonable
5 doubt as to Count 1, Armed Robbery, then you move
6 to Count 2. If you find not guilty on Armed
7 Robbery, you may then consider Strong Arm
8 Robbery. But if that's the case, you do not go
9 to Count 2. There has to be a conviction on
10 Count 1, Armed Robbery, in order to move to Count
11 2, Possession of a Weapon during a Violent
12 Offense.

13 Now, I will tell you, Ladies and Gentlemen,
14 uh, that your verdict must be unanimous. All 12
15 must agree on the verdict. It can not be based
16 on sympathy, passion, prejudice, emotion or any
17 other consideration which is not in evidence in
18 the case. Remember, you have no friends to
19 reward and you have no enemies to punish.

20 Now, Mr. Foreperson, when you all have
21 reached a unanimous verdict, please signal to the
22 bailiffs. We will receive you back into the
23 courtroom and take your verdict at that time.

24 Now, I'm going to excuse you all back to your
25 jury room, but I'm going to ask you not to begin

1 your deliberations just yet. I have to go over
2 my charge on the law with the attorneys to make
3 sure I have not misstated something or omitted
4 something. When you receive the verdict form
5 along with the evidence in the case, you may
6 begin your deliberations. Okay. I will excuse
7 you all to the jury room with the exception of
8 Ms. Stevens.

9 I have to ask you to stay in the courtroom,
10 Ms. Stevens.

11 **(WHEREUPON, the jury exits at approximately**
12 10:49 a.m.)

13 **THE COURT:** Ms. Stevens, you are just as
14 qualified and paid just as close attention as all
15 the other 12. I wish I could send you back in
16 there to deliberate. The law only allows 12. So
17 I, at this time, am releasing you from your
18 service on this case and happy to tell you that
19 you will not be called again today, but I need
20 you to call back after 6 p.m. to find out when
21 you next need to report or come back. Okay?
22 Thank you for your service.

23 **(WHEREUPON, the alternate juror exits at**
24 approximately 10:50 a.m.)

25 **THE COURT:** All right. Any exceptions or

1 objections to the charge?

2 **MR. MOYER:** Nothing from the State.

3 **MS. ROSS:** Judge, I just have the, again,
4 objection to the Strong Arm Robbery charge.

5 **THE COURT:** Okay.

6 **MS. ROSS:** I didn't hear my Request number 2
7 specifically. I believe you mentioned
8 opportunity to observe, did not go through, uh,
9 whether the witness was paying careful attention.
10 3, 4, 5, 6 points on my Request number 7. I
11 would object to that and ask that those be, uh,
12 presented to the jury on evaluating witness
13 credibility.

14 **THE COURT:** Mr. Moyer, you want me to -- I
15 think it's adequately covered in the charge.

16 **MR. MOYER:** I think so, Your Honor. Clearly
17 you covered everything. As far as her, what is
18 it, number 3? Or number 2? His cloak, removing
19 a cloak, that's from a 1975 case. That's --

20 **THE COURT:** I think it's adequately stated.
21 It's noted for the record. Okay. Do y'all want
22 to look at the verdict form and make sure you are
23 satisfied with it? Good?

24 **MS. ROSS:** No objection.

25 **MR. MOYER:** Good.

1 **THE COURT:** Go ahead and take it on back and
2 let them begin deliberating.

3 All right. We'll be at ease. First, let me
4 just say for the record, good job by both
5 attorneys.

6 Ms. Ross, excellent work. Thank you.

7 **(WHEREUPON, a recess is taken at approximately**
8 10:51 a.m.)

9 **(WHEREUPON, jury deliberation begins at**
10 approximately 10:52 a.m.)

11 **(WHEREUPON, the Court resumes at approximately**
12 12:00 p.m.)

13 **THE COURT:** It reads transcript of Mr.
14 Perez's testimony. I have replied a transcript
15 can not be provided but the testimony can
16 replayed in its entirety or any portion thereof
17 and signed it. If y'all would like to look at
18 it, we will send it back to the jury and get
19 their response.

20 **MS. ROSS:** That looks fine to me.

21 **THE COURT:** Okay. Take it on back.

22 **COURT REPORTER:** It's 46 minutes.

23 **THE COURT:** Four to six?

24 **COURT REPORTER:** 46.

25 **THE COURT:** If they want the whole thing,

1 it's 46 minutes.

2 Gaynelle, would you go tell them, verbally
3 tell them that this entire testimony is 46
4 minutes long.

5 **THE BAILIFF:** Okay.

6 **(WHEREUPON, Court's Exhibit 3 is marked for**
7 **identification purposes.)**

8 **(WHEREUPON, the bailiff exits the courtroom at**
9 **approximately 12:01 p.m.)**

10 **(WHEREUPON, the bailiff enters the courtroom at**
11 **approximately 12:02 p.m.)**

12 **THE BAILIFF:** They are going to talk about it
13 and let you know.

14 **THE COURT:** Okay.

15 **(WHEREUPON, a recess is taken at approximately**
16 **12:05 p.m.)**

17 **(WHEREUPON, the Court resumes at approximately**
18 **12:54 p.m.)**

19 **THE COURT:** They, uh, want to be recharged --
20 Well, where is that note, Teresa? Could you
21 hand me that. Yeah.

22 Okay. They've sent out a question. Redefine
23 Armed versus Strong Arm Robbery. So I'm going to
24 bring them back and charge them. Okay.

25 Okay, Ms. Cooke.

1 (WHEREUPON, Court's Exhibit 4 is marked for
2 identification purposes.)

3 (WHEREUPON, the jury enters at approximately
4 12:55 p.m.)

5 **THE COURT:** All right. Mr. Foreman, Ladies
6 and Gentlemen of the jury, you have asked me to
7 redefine Armed versus Strong Arm Robbery. I'm
8 going to recharge you what I charged you before.
9 I'm going to tell you that Strong Arm Robbery is
10 a lesser included offense of Armed Robbery. The
11 elements are the same except that in Armed
12 Robbery, the State must prove beyond a reasonable
13 doubt that the Defendant was armed with a deadly
14 weapon which will be defined as I recharge this.

15 Armed robbery. In order to prove this
16 offense, the State must first prove beyond a
17 reasonable doubt that the Defendant took personal
18 property from the person or presence of another
19 person. Property is in the presence of a person
20 if it is within the person's reach, inspection,
21 observation or control so that the person could,
22 if not overcome with violence or prevented by
23 fear, keep possession of the property.

24 The State must also prove beyond a reasonable
25 doubt that the Defendant carried the property

1 away intending to permanently deprive the owner
2 of the property and to keep the property for the
3 Defendant's own use. The slightest removal of
4 the property or the complete possession of the
5 property, even for an instant, by the Defendant,
6 is sufficient to show a taking and carrying away
7 of the property. The taking and carrying away of
8 the property must have been done with violence or
9 by putting the owner of the property in fear of
10 violence.

11 Finally, the State must prove beyond a
12 reasonable doubt that the Defendant was armed
13 with a deadly weapon during the robbery or
14 alleged, either by action or words, he was armed
15 while using a representation of a deadly weapon
16 or any object which a person present during the
17 commission of the robbery reasonably believed to
18 be a deadly weapon.

19 A deadly weapon is any article, instrument or
20 substance which is likely to cause death or great
21 bodily harm. Whether an instrument has been used
22 as a deadly weapon depends on the facts and the
23 circumstances of each case. The following are
24 examples of instruments which may be deadly
25 weapons: a pistol, a shotgun, a rifle, a dirk, a

1 dagger, a knife, a slingshot, metal knuckles, a
2 razor, gasoline, a fire bomb or molotov cocktail
3 and lighter fluid. A gun may be a deadly weapon
4 even if it is not operating.

5 Now, if you find that the State has failed to
6 prove that the Defendant was armed with a deadly
7 weapon, you may then consider whether the State
8 has proved beyond a reasonable doubt that the
9 Defendant committed robbery, which is also known
10 as Strong Arm Robbery. In order to prove
11 robbery, the State must prove beyond a reasonable
12 doubt that the Defendant took the personal
13 property from the person or presence of another
14 person without that person's consent and carried
15 it away. Property is in the presence of a person
16 if it is within the person's reach, inspection,
17 observation or control so that the person could,
18 if not overcome with violence or prevented by
19 fear, retain possession of the property.

20 The State must show that the Defendant
21 carried the property away with the intent to
22 permanently deprive the owner of the property and
23 to convert the property to the Defendant's own
24 use. The slightest removal of the property or
25 the complete possession of the property, even for

1 an instant, by the Defendant, is sufficient to
2 show a taking and carrying away of the property.
3 The taking and carrying away of the property must
4 have been done with violence or by putting the
5 owner of the property in fear of violence.

6 Does that answer your questions? Okay.
7 Thank you. You may retire -- resume your
8 deliberations.

9 (WHEREUPON, the jury exits at approximately
10 1:00 p.m.)

11 THE COURT: All right. Any exception or
12 objection?

13 MR. MOYER: I do, Your Honor. When -- your
14 initial comment to the jury was that robbery is a
15 lesser included offense of Armed Robbery, the
16 only difference being that in Armed Robbery there
17 is possession of a deadly weapon. It would also
18 include the representation of a deadly weapon.

19 THE COURT: Well, I did say that, but I did
20 clear it up in my, in the actual charge itself.

21 MR. MOYER: Well, in the Armed Robbery
22 charge, but then before defining Robbery, Your
23 Honor said if failed to prove the Defendant was
24 armed with a deadly weapon, then you must
25 consider whether he is guilty of Common-law

1 Robbery. Once again, it should be, if the jury
2 fails to believe that the State proved beyond a
3 reasonable doubt that he was armed with a deadly
4 weapon or the representation of a deadly weapon.

5 I mean, I know your definition of Armed
6 Robbery included that terminology, but I think by
7 highlighting it in those two specific instances,
8 I think that's very -- I think it's important
9 from what the jury heard to, uh, -- I think
10 that's what they are focusing on, quite frankly.
11 And I think the jury needs to be clarified that
12 it's a weapon or the representation of a deadly
13 weapon.

14 **THE COURT:** Anything from the Defendant?

15 **MS. ROSS:** No, Your Honor.

16 **THE COURT:** Well, I think I covered it. I'm
17 going... all right. Bring them back in. I'll
18 just give them a brief recharge.

19 **MS. ROSS:** Judge, I would object to a
20 recharge. You charged them before on the
21 definition of Armed Robbery. This is only going
22 to highlight that.

23 **THE COURT:** Okay. We're off the record now.

24 **(WHEREUPON,** the Court went off the record at
25 approximately 1:02 p.m.)

1 (WHEREUPON, the jury enters at approximately
2 1:03 p.m.)

3 **THE COURT:** Ladies and Gentlemen, just out
4 of an abundance of caution, I want to make sure
5 that you understand that, uh, in order to prove
6 Armed Robbery, the State must -- one element is
7 the State must prove beyond a reasonable doubt
8 that the Defendant was armed with a deadly weapon
9 during the robbery or the Defendant alleged,
10 either by action or words he was armed while
11 using a representation of a deadly weapon or any
12 object which a person present during the
13 commission of a robbery reasonably believed to be
14 a deadly weapon. It's an element of Armed
15 Robbery.

16 If you find that the State has failed to
17 prove that the Defendant was armed with a deadly
18 weapon or with a representation of a deadly
19 weapon after having alleged that he was armed,
20 then you may consider whether or not, uh, he is
21 guilty of Strong Arm Robbery. So just remember
22 it's not, uh, just a deadly weapon, but it could
23 also be a representation of a deadly weapon once
24 the person has alleged that he was armed. Okay.
25 All right. Thank you very much.

1 **(WHEREUPON,** the jury exits at approximately
2 1:05 p.m.)

3 **THE COURT:** All right. Any exceptions or
4 objections?

5 **MS. ROSS:** Judge, I, again, would have
6 exception to that. It is highlighting that
7 aspect which is especially problematic in terms
8 of the fact that they had this witness up here
9 who supposedly understood no English. So having
10 made this allegation of "I'm armed with a deadly
11 weapon" would have almost been impossible in the
12 circumstance of this case.

13 **THE COURT:** Okay. All right. I just
14 charged them the law. All right. We'll be at
15 ease.

16 **(WHEREUPON,** jury deliberation resumes at
17 approximately 1:06 p.m.)

18 **(WHEREUPON,** a recess is taken at approximately
19 1:07 p.m.)

20 **(WHEREUPON,** jury deliberation concludes at
21 approximately 1:57 p.m.)

22 **(WHEREUPON,** the Court resumes at approximately
23 2:07 p.m.)

24 **(WHEREUPON,** the jury enters at approximately
25 2:08 p.m.)

1 **THE COURT:** Mr. Foreman, I understand y'all
2 have reached a verdict?

3 **THE JUROR:** We have.

4 **THE COURT:** All right. Would you hand it to
5 the bailiff please, sir.

6 **(WHEREUPON, the verdict form is passed to the**
7 **Court.)**

8 **THE COURT:** All right. If you would, please
9 publish that for us.

10 **THE CLERK:** The State versus Bobby Joe Barton,
11 as to the charge of Armed Robbery, we, the jury,
12 find the Defendant guilty. As to the charge of
13 Possession of a Weapon during the Commission of a
14 Violent Crime, we, the jury, find the Defendant
15 not guilty. This is your verdict so say you all?
16 **(WHEREUPON, each juror responds.)**

17 **THE COURT:** All right. Anything further of
18 the jury?

19 **MR. MOYER:** No, Your Honor.

20 **THE COURT:** From the defense?

21 **MS. ROSS:** No, Your Honor. I just renew my
22 prior.

23 **THE COURT:** Okay. Mr. Foreman --

24 **MS. ROSS:** At this point, I would like to
25 poll the jury.

1 **THE COURT:** All right.

2 **THE CLERK:** Ladies and Gentlemen, the verdict
3 that I just published was the verdict you reached
4 in the jury room. I ask you was it your verdict
5 then and is it your verdict now. As I call your
6 names, please answer yes or no. Stefani Young?

7 **THE JUROR:** Yes.

8 **THE CLERK:** Tammy Crooks?

9 **THE JUROR:** Yes.

10 **THE CLERK:** James Guirl?

11 **THE JUROR:** Yes.

12 **THE CLERK:** Ruth Devorsev?

13 **THE JUROR:** Yes.

14 **THE CLERK:** Deborah Nissim?

15 **THE JUROR:** Yes.

16 **THE CLERK:** Elizabeth Collins?

17 **THE JUROR:** Yes.

18 **THE CLERK:** Yvonne Ruby?

19 **THE JUROR:** Yes.

20 **THE CLERK:** Frances Coker?

21 **THE JUROR:** Yes.

22 **THE CLERK:** David Phillips?

23 **THE JUROR:** Yes.

24 **THE CLERK:** Clinton Meyer?

25 **THE JUROR:** Yes.

1 **THE CLERK:** Ashley Downer?

2 **THE JUROR:** Yes.

3 **THE CLERK:** Lisa Campbell?

4 **THE JUROR:** Yes.

5 **THE COURT:** All right. Mr. Foreman, Ladies
6 and Gentlemen of the jury, I want to thank you
7 for your service. I'm happy to tell you you are
8 done for the day. I know you will be happier
9 still when I tell you you are done for the week,
10 but I can't tell you that at this time. Y'all
11 are free to go. Please call back after six
12 o'clock. Thank you very much for your service.
13 **(WHEREUPON, the jury exits at approximately**
14 **2:11 p.m.)**

15 **THE COURT:** All right. Y'all got the
16 sentencing sheets? All right. Uh, I understand
17 there are any motions you want to make, Ms. Ross?

18 **MS. ROSS:** Judge, I'd just renew all my
19 prior motions and objections at this time. I
20 would motion for a verdict of not guilty despite
21 the jury's finding at this point.

22 **THE COURT:** All right. I'm going to deny
23 those motions.

24 Mr. Moyer, what can you tell me?

25 **MR. MOYER:** Care to hear his prior record,

1 Your Honor?

2 **THE COURT:** Yeah.

3 **MR. MOYER:** Okay. 1978, Larceny, Receiving
4 Stolen Goods and Betting; 1981, Disorderly
5 Conduct times two, Resisting Arrest, Damage to
6 City Property; 1986, Distribution of Cocaine;
7 1988, Shoplifting and Resisting Arrest with
8 Assault; 1988, Carrying a Pistol, Trespassing
9 After Notice; 1992, Fraudulent Check times three;
10 1992, Fraudulent Check, Obtaining Goods under
11 False Pretenses; 1992, Forgery, two more counts
12 of Fraudulent Check; 1995, Forgery; 2001, Petty
13 Larceny, Shoplifting times two; 2003, Assault and
14 Battery of a High and Aggravated Nature and
15 Simple Assault and Battery; 2007, Driving without
16 a License; 2007, Assault and Battery of a High
17 and Aggravated Nature, Possession of Cocaine and
18 2007 -- no, I'm sorry. I'm sorry. 2007, Assault
19 and Battery of High and Aggravated Nature.

20 **THE COURT:** Two counts?

21 **MR. MOYER:** Yes, sir. He also in Florida,
22 in 1996, has Possession of Cocaine, Possession of
23 Narcotics Equipment; 1996, Conviction for Robbery
24 in Florida; 1998, Conviction for Larceny in
25 Florida.

1 **THE COURT:** All right. Is all that true,
2 Mr. Barton?

3 **MR. BARTON:** No, sir.

4 **THE COURT:** Huh?

5 **MR. BARTON:** No, sir.

6 **THE COURT:** All right. Tell me what's not
7 true.

8 **MR. BARTON:** I don't have no 2007, no 2000
9 Assault and Battery, 2007 and, uh, I don't have
10 no Larceny in Florida.

11 **THE COURT:** He says no Aggravated Assault
12 and Battery in '07.

13 **MR. BARTON:** No, two of them. Two.

14 **MR. MOYER:** Okay. I'll concede maybe
15 there's just one.

16 **THE COURT:** Okay. There's no Larceny in
17 Florida.

18 **MR. BARTON:** I would like to ask --

19 **THE COURT:** Just a minute.

20 **MR. BARTON:** Yes, sir.

21 **MR. MOYER:** I have convictions from Florida
22 for Robbery, Possession of Cocaine. Well, I did
23 not get a sentencing sheet back from Florida on
24 that. It was on his RAP sheet, but we'll concede
25 to that.

1 **THE COURT:** Okay. I won't consider it. All
2 right. And how many days credit does he get in
3 jail?

4 **MR. MOYER:** I'm afraid I didn't add it up,
5 Judge.

6 **MS. ROSS:** He was arrested August 4th of
7 '09. So 371, I think.

8 **THE COURT:** That sounds right.

9 **MR. MOYER:** He was arrest August -- he's
10 been in jail since August the 4th of 2009. Today
11 is August the 10th.

12 **THE COURT:** All right. Now, Mr. Barton,
13 what do you want to tell me?

14 **MR. BARTON:** I would like to ask you are all
15 the motions that I put in, you said they are on
16 record, the motions that I filed prior to trial.
17 You said they all good? I just want to know.

18 **THE COURT:** They're all good?

19 **MR. BARTON:** I mean, what I'm saying are all
20 actually showing.

21 **THE COURT:** If you filed them, ---

22 **MR. BARTON:** Yes.

23 **THE COURT:** --- then they are in the file.

24 **MR. BARTON:** Okay.

25 **THE COURT:** We don't have hybrid

1 representation.

2 **MR. BARTON:** That wasn't what I was saying.

3 I just wanted to know were the motions good, on
4 file. Also I would like to know is as far as
5 witness credibility, anything dealing in effect
6 of honesty, would petty larceny also fall in that
7 category also? Is petty larceny, I just want to
8 know would that be considered to deal with
9 honesty. It's a just a question to the judge,
10 sir.

11 **THE COURT:** Well, I don't give advice.

12 **MR. BARTON:** Okay. Okay. Yes, sir. Yes,
13 sir. Yes, sir.

14 **THE COURT:** Okay. Ms. Ross, have anything?

15 **MS. ROSS:** Thank you, Your Honor. Since Mr.
16 Barton was in prison on this offense, he's
17 maintained his innocence and his desire to go to
18 trial. There were certainly arguments about bias
19 of the witnesses. I think those arguments were
20 made. I would point out that this charge, while
21 being serious, certainly, there was no cut or
22 injury here. I'd just beg the Court's leniency
23 on this, given the circumstances of this
24 particular case.

25 I would point out that Mr. Barton is 52 now.

1 He's got his GED. He's a lifelong resident of
2 Greenville. He has attended mental health, has
3 been diagnosed as Paranoid. He has attempted
4 suicide in the past. Given his age, any sentence
5 is going to be quite substantial ---

6 **THE COURT:** Yeah.

7 **MS. ROSS:** --- for him.

8 **THE COURT:** Yep. Well, the way I count it,
9 this would be his 31st conviction.

10 Mr. Moyer, anything you want to tell me?

11 **MR. MOYER:** Nothing else, sir.

12 **THE COURT:** What you want to tell me, Mr.
13 Barton?

14 **MR. BARTON:** I mean, uh, only thing I can
15 tell you is that I'm not guilty just like I said
16 when I came in here the first. That's all I can
17 tell you. Hopefully, I'll see somebody back
18 again. You know, probably won't be you. What I
19 mean is I'm going to appeal this. I'm going to
20 try to get back. That's what I mean. I don't
21 mean I'm going to see you outside walking around
22 because I wouldn't attempt to, like, threaten you
23 or nothing. What I mean by see again, come back
24 before the Court and try to get it overturned
25 just like what you told Mr. Moyer, you hope that

1 it didn't get reversed by what you just had done
2 earlier. That's what I meant. That's what I
3 meant by that, sir.

4 **THE COURT:** Okay.

5 **MR. BARTON:** With all due respect to you,
6 that's what I mean.

7 **THE COURT:** Oh, that's fine.

8 **MR. BARTON:** Okay.

9 **THE COURT:** 25 years. Good luck to you.

10 **(WHEREUPON, the Defendant is escorted from the**
11 **courtroom at approximately 2:29 p.m.)**

12 **THE COURT:** Ms. Ross, for the record, you
13 have discussed his right to appeal?

14 **MS. ROSS:** Yeah, and I'm getting that.

15 **THE COURT:** Okay. You are going to go ahead
16 and file the appeal?

17 **MS. ROSS:** Oh, yeah.

18 **THE COURT:** Okay. All right. I just wanted
19 to know on the record. Good. Thank you. Good
20 job by the way.

21 **MS. ROSS:** Thanks.

22 **(WHEREUPON, the proceedings conclude at**
23 **approximately 2:30 p.m.)**

24 **(END OF PROCEEDING)**

25

CERTIFICATE

276

1 I, the undersigned, Teresa B. Johnson, Official
2 Court Reporter for the Thirteenth Judicial Circuit of
3 the State of South Carolina, do hereby certify that
4 the foregoing is a true, accurate and complete
5 Transcript of Record of all the proceedings had and
6 evidence introduced in the trial of the captioned
7 case, relative to appeal, in the Court of General
8 Sessions for Greenville, South Carolina, on this 16th
9 day of December, 2010.

10 I do further certify that I am neither of kin,
11 counsel nor interest to any party hereto.

12
13
14
15 

16 Teresa B. Johnson

17 Official Court Reporter
18
19
20
21
22
23
24

WITNESSES

Michael Jarvis

Heaps

Greenville County Sheriffs Office

8/4/2009

ARREST WARRANT NUMBER

1478797, 1478798

ACTION OF GRAND JURY

TRUE BILL

Ann Swerette

Foreperson of Grand Jury

VERDICT

① GUILTY

② NOT GUILTY

James Cecil

Foreperson of Petit Jury

8/10/10
Date:

DOCKET NO. 2009-GS-23-

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February

TERM 2009¹⁰

THE STATE

vs.

BOBBY JOE BARTON

Indictment for

0139, 0549

ARMED ROBBERY AND POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

VIOLATION § 16-11-0330 and § 16-23-0490

ENTERED
ACCT.

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Bobby Joe Barton

AKA:

Sex: M Age: 52

DOB: SS#:

Address: EXT CT 35 B

City, State, Zip: GREENVILLE, SC 29601

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 THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2310018

A/W#: 1478797

Date of Offense: 7/25/2009

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd 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.

ATTEST:

Moyer, Mark

SC Bar# 64155

Defendant

Attorney for Defendant

SC Bar# 11215

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 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

in the State Department of Corrections. 371 DAYS

☐ 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

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)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCJA Surcharge)

County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (11/2009)

Presiding Judge

Judge Code:

Sentence Date:

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)BOBBY JOE BARTON, #163629)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2014-CP-23-0604

APPLICATION FOR

POST-CONVICTION RELIEF

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAID BY BRICKENSHIMER
2014 SEP 2 PM 1 59INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention @ 430 OAKLAWN RD, PELZER, SC 29669
PERRY CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence GREENVILLE COUNTY COURTHOUSE
305 E. NORTH ST, GREENVILLE, SC 29601 (1)
3. Name(s) of co-defendant(s) (if any) PATRICIA ROSALIND RICE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-23-10018
 - (b) ARMED ROBBERY
 - (c) "NOT APPLICABLE"
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) AUGUST 10, 2010
 - (b) TWENTY FIVE (25) YEARS

- (c) "NOT APPLICABLE"
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ A FINDING OF GUILTY BY JURY VERDICT
- (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. SC COURT OF APPEALS
- ii. SC COURT OF APPEALS REHEARING EN BANC
- iii. SC SUPREME COURT
- (b) the result in each such Court to which you appealed:
- i. CONVICTION AFFIRMED (C. App.) SEE ATTACHMENT #1
- ii. REHEARING DENIED (Ct. App.) SEE ATTACHMENT #2
- iii. WRIT OF CERTIORARI DENIED (S.C.) SEE ATTACHMENT #3 & 3(a)
- (c) the date of each such result:
- i. JANUARY 30, 2013
- ii. MARCH 20, 2013
- iii. JULY 11, 2014
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. PER CURIAM, SEE ATTACHMENTS #1
- ii. THERE IS NO BASIS FOR GRANTING A REHEARING; SEE ATTACHMENT #2
- iii. SEE COPY OF ORDER ATTACHED; ATTACHMENT #3 & 3(a)
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) "NOT APPLICABLE"
- (b) (N/A)
- (c) (N/A)
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- 5th 6th & 14th AMENDMENTS, SCA,
MY CONVICTION IS IN VIOLATION OF THE UNITED STATES CONSTITUTION
(a) AND THE SOUTH CAROLINA CONSTITUTION & LAWS OF THE STATE & DUE PROCESS VIOLATION
(b) INEFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL
(c) PROSECUTORIAL MISCONDUCT (PROSECUTORIAL MISCONDUCT)

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

- (a) SEE ATTACHMENTS: 10(2), 11(2) - THUR - 10(c) & 11(c)
(b) SEE ATTACHMENTS: 10(2), 11(2) - THUR - 10(c) & 11(c)
(c) SEE ATTACHMENTS: 10(2) & 11(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. "NOT APPLICABLE" N/A
ii. N/A
iii. N/A
iv. N/A
(b) the name and location of the Court in which each was filed:
i. "NOT APPLICABLE" N/A
ii. N/A
iii. N/A
iv. N/A
(c) the disposition thereof:
i. "NOT APPLICABLE" N/A
ii. N/A
iii. N/A

- iv. "NOT APPLICABLE"
- (d) the date of each such disposition:
- i. "NOT APPLICABLE"
- ii. "NOT APPLICABLE"
- iii. "NOT APPLICABLE"
- iv. "NOT APPLICABLE"
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. "NOT APPLICABLE"
- ii. "NOT APPLICABLE"
- iii. "NOT APPLICABLE"
- iv. "NOT APPLICABLE"
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. "NOT APPLICABLE"
- ii. "NOT APPLICABLE"
- iii. "NOT APPLICABLE"
- (b) the proceedings in which each ground was raised:
- i. "NOT APPLICABLE"
- ii. "NOT APPLICABLE"
- iii. "NOT APPLICABLE"
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) FIRST "1ST" APPLICATION
- (b) FIRST "1ST" APPLICATION
- (c) FIRST "1ST" APPLICATION
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NO
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- SUSANNAH CONYERS ROSS, ROSS & ENDERLIN, PA, 330 E. CUPPES ST, GREENVILLE, SC 29601
 - LANELLE CANTY DURANT, OFFICE OF APPELLATE DEFENSE, 1330 LADY ST., COLUMBIA, SC 29211
 - LANELLE CANTY DURANT, OFFICE OF APPELLATE DEFENSE, 1330 LADY ST., COLUMBIA, SC 29211
- (b) the proceedings at which each such attorney represented you:
- TRIAL COURT, GREENVILLE COUNTY COURTHOUSE, 305 E. NORTH ST., GREENVILLE, SC 29601
 - SC Ct. App. 1015 SUMTER ST. COLUMBIA, SC 29201
 - SC Sup. Ct. Post. Office Box 11330, COLUMBIA, SC 29211
19. State clearly the relief you seek in filing this application:
APPLICANT SEEKS THE FOLLOWING FROM HIS CONVICTION & SENTENCE REV. & REMAND (NEW TRIAL)
20. Are you now under sentence from any other court that you have not challenged?
APPLICANT IS NOT UNDER SENTENCE FROM ANY OTHER COURT

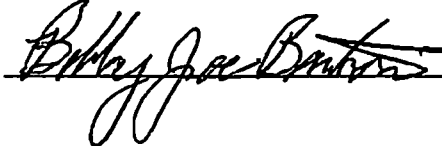
STATE OF SOUTH CAROLINA

County of

)
)
)

VERIFICATION

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



SWORN to and subscribed before me this 20th
day of August, 2014.

Nancy C. Michael (L.S.)
Notary Public

My Commission Expires: 1-23-2023

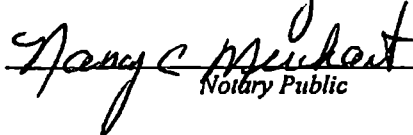
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

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

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

 #163629
Applicant

SWORN or affirmed to and subscribed before me this
20th day of August, 2014.


Notary Public

My Commission Expires: 1-23-2023

ATTACHMENTS OF APPLICATION FOR POST-CONVICTION RELIEF

10 & 11 GROUNDS FOR RELIEF WITH SUPPORTING FACTS

10(2) APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL - GUARANTEED BY THE FIFTH (5TH), SIXTH (6TH), & FOURTEENTH (14TH) AMENDMENTS TO THE UNITED STATES CONSTITUTION AND BY ARTICLE I §§ 3 AND 14 OF THE SOUTH CAROLINA CONSTITUTION AND THE LAWS OF THE STATE - DURING THE CRITICAL PRELIMINARY STAGE OF THE CRIMINAL PROCESS.

11(2.) SUPPORTING FACTS: TRIAL COUNSEL'S PERFORMANCE DURING THE CRITICAL PRELIMINARY STAGE OF THE CRIMINAL PROCESS PHASE WAS BOTH UNREASONABLE AND PREJUDICIAL, SEE "STRICKLAND V. WASHINGTON" 466 U.S. 668 (1984): COUNSEL'S ACTS OR OMISSIONS INCLUDED BUT NOT LIMITED TO THE FOLLOWING:

(1.) COUNSEL'S FAILURE TO FULLY COMMUNICATE THE FORMAL PLEA OFFER EXTENDED BY THE STATE, (COPY ATTACHED - EXHIBIT - A) SEE "DAVIE V. STATE," 381 SC 601, 675 S.E.2d 416 (2009), "CARUSO V. ZELINSKI," 689 F.2d 435 (1982), & "MISSOURI V. FRYE," ___ U.S. ___, 132 S.Ct. 1399, 182 L.Ed.2d 379 (2012) RULE 1.3, RULES OF PROFESSIONAL CONDUCT, RULE 407 SCACR

(2.) COUNSEL'S FAILURE TO KEEP CLIENT REASONABLY INFORMED ABOUT THE STATUS OF THE MATTER, RULE 1.4(2), RULES OF PROFESSIONAL CONDUCT, RULE 407 SCACR

(3.) COUNSEL'S FAILURE TO EXPLAIN A MATTER TO THE EXTENT REASONABLY NECESSARY TO PERMIT THE CLIENT TO MAKE INFORMED DECISIONS REGARDING THE REPRESENTATION, RULE 8.4(2), RULES OF PROFESSIONAL CONDUCT, RULE 407 SCACR

(4.) COUNSEL'S FAILURE TO COMPLY WITH REASONABLE REQUESTS FOR INFORMATION, RULE 1.4(2), RULE PRO. CONDUCT, RULE 407 SCACR

RULES OF PROFESSIONAL CONDUCT STATES COUNSEL HAS A DUTY TO COMMUNICATE FORMAL PROSECUTION OFFERS TO ACCEPT A PLEA OFFER ON TERMS AND CONDITIONS THAT MAY BE FAVORABLE TO THE ACCUSED. STANDARDS FOR PROMPT COMMUNICATIONS AND CONSULTATIONS RECOMMENDED BY THE AMERICAN BAR ASSOCIATION AND ADOPTED BY NUMEROUS STATE AND FEDERAL COURTS. COUNSEL VIOLATED RULE 8.4(2) & RULE 8.4(e) OF PROFESSIONAL RULES OF CONDUCT, RULE 407 SCACR

PAGE 1 OF 2 CONTINUATION NEXT PAGE.....

ATTACHMENTS OF APPLICATION FOR POST-CONVICTION RELIEF

10 & 11 GROUNDS FOR RELIEF WITH SUPPORTING FACTS

11(2) THE APPLICANT IS ATTACHING A COPY OF A TRUE EXACT COPY OF THE FORMAL PLEA OFFER (EXHIBIT A-ATTACHED) WITH THE APPLICATION SIGNED BY STATES' PROSECUTOR MARK MOVER. See: (Two (2) PAGE DOCUMENT ATTACHED)

COUNSEL'S PERFORMANCE WAS DEFICIENT AND HER REPRESENTATION FELL BELOW A REASONABLE STANDARD AND THE DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO FULLY COMMUNICATE THE FORMAL PLEA OFFER AND DENYING THE DEFENDANT THE RIGHT TO MAKE AN INFORMED DECISION WHETHER TO ACCEPT OR REJECT THE PLEA OFFER OF FIFTEEN (15) YEARS SUSPENDED TO EIGHT (8) YEARS, AND ARMED ROBBERY REDUCED TO COMMON-LAW ROBBERY RATHER THAN BE TRIED FOR ARMED ROBBERY AND AND A MUCH MORE SERIOUS OFFENSE AND SEVERER SENTENCE COMPARED TO COMMON-LAW ROBBERY AND A LESSER SENTENCE. COUNSEL'S OMISSION PREJUDICED THE DEFENDANT AS WELL AS VIOLATING HIS CONSTITUTIONAL RIGHTS OF THE CONSTITUTION OF THE SIXTH (6TH), FIFTH (5TH), & FOURTEENTH (14TH) AMENDMENTS AND THE CONSTITUTION OF SOUTH CAROLINA AND THE LAWS OF THE STATE AND DENYING HIM DUE PROCESS RIGHTS UNDER THE LAW OF FEDERAL AND STATE LEVEL.

THE APPLICANT STATES THAT HE WOULD HAVE ACCEPTED THE PLEA OFFER FROM THE STATE HAD HE BEEN FULLY INFORMED THAT THE FIFTEEN (15) YEARS WAS FOR COMMON-LAW ROBBERY AND NOT ARMED ROBBERY.

APPLICANT DOES INTEND TO AMEND THIS CLAIM WITH AFFIDAVITS DECLARATORY STATEMENTS, COURT DOCUMENTS, FORMAL COMPLAINTS CDPYS AND OTHER DOCUMENTS APPLICANT MAY BE ABLE TO RECEIVE THROUGH THE DISCOVERY PROCESS TO SUBSTANTIATE HIS CLAIM AND WILL SUBMIT THEM WITH THIS ISSUE AT A LATER STAGE IN THE POST CONVICTION PROCESS. PERSUASIVE AUTHORITY, See: 'ARIZONA V. DONALD', 10 P.3d 1193 (2000) 198 ARIZ. 406

RECEIVED

1/14/10

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8847
 Telefax: 864-467-8810



Greenville County Courthouse
 305 E. North Street, Suite 325
 Greenville, SC 29601-2185

Solicitor
Robert M. Ariail

1/11/2010

SUSANNAH ROSS
 GREENVILLE COUNTY COURTHOUSE
 ROOM 123 PUBLIC DEFENDER
 GREENVILLE, SC 29601

RE: Plea Offer for State v. Bobby Joe Barton

Dear Susannah Ross :

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The State will reduce the following:

Warrant Number: Charge:

1478797 Armed Robbery

plead to Charge:

to Common law robbery

The State will dismiss the following:

Warrant Number: Charge:

1478798 Possession of a weapon during violent crime

The State will make the following sentence recommendations/negotiation:

If defendant pleads guilty by the due date and agrees to cooperate with the prosecution of the co-defendant, if necessary, I will reduce the charge as indicated and recommend a sentence of 15 years, suspended on the service of 8 years, followed by probation. In the alternative, the defendant may plead without a recommendation. There will be \$500.00 restitution.

Other conditions/comments:

I have enclosed a copy of the sentencing sheet and restitution order.

(EXHIBIT-A) PAGE 1 of 2
 10(a) & 11(a)

Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 4/30/2010 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Yours very truly,


Mark Moyer
Assistant Solicitor

(EXHIBIT-A) PAGE 24/2
10(a) & 11(a)

ATTACHMENTS OF APPLICATION FOR POST-CONVICTION RELIEF

10 & 11 GROUNDS FOR RELIEF WITH SUPPORTING FACTS

10(b) APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL - GUARANTEED BY THE SIXTH (6TH) & THE FOURTEENTH (14TH) AMENDMENTS TO THE UNITED STATES CONSTITUTION AND BY ARTICLE I §§ 3 AND 14 OF THE SOUTH CAROLINA CONSTITUTION AND THE LAWS OF THE STATE - COUNSEL "OPENED THE DOOR" TO INVITED OTHERWISE IMPERMISSIBLE EVIDENCE DURING TRIAL.

11(b) SUPPORTING FACTS: TRIAL COUNSEL'S PERFORMANCE WAS DEFICIENT DURING TRIAL PHASE AND WAS UNREASONABLE AND PREJUDICIAL. See; "STRICKLAND V. WASHINGTON," 466 U.S. 668 (1984). COUNSEL'S ACTS OR OMISSIONS INCLUDED BUT NOT LIMITED TO THE FOLLOWING.

1.) TRIAL COUNSEL WAS CROSS-EXAMINING THE STATES WITNESS PATRICIA RICE AND ASKED HER DID SHE ACCUSE THE DEFENDANT OF COMMITTING A CRIMINAL DOMESTIC VIOLENCE UPON HER? (TR. 172, II. 12-25 & TR. 173, II. 1)

2.) STATE'S WIT PATRICIA RICE STATED "YES HE DID" AND WENT ON TO SAY THAT SHE LET IT GO (DROPPED CHARGES) BECAUSE "DEFENDANT HAD DONE HIS TIME." (TR. 172, II. 12-25 & TR. 173, II. 1)

3.) THE PROSECUTION TOOK ADVANTAGE OF COUNSEL'S ERROR IN FURTHERANCE TO BRING OUT DEFENDANT'S PRIOR CONVICTIONS, BAD ACTS, WRONGS, AND OTHER CRIMES. (TR. 175 II. 7-18 & TR. 176, II. 1-4)

4.) THE PROSECUTION EVEN ELABORATED FARTHER ONCE AGAIN WHEN HE TOLD THE JURY, THE DEFENDANT COMMITTED AN ASSAULT, A DOMESTIC VIOLENCE AGAINST THE STATES WITNESS PATRICIA RICE. (TR. 221, II. 2-6)

TRIAL COUNSEL'S PERFORMANCE WAS DEFICIENT BY "OPENING THE DOOR" FOR THE PROSECUTION TO BRING OUT BAD ACTS, WRONGS, UNSPECIFIED CONVICTIONS AND TO ATTACK DEFENDANT'S CHARACTER. See; "VAUGHN V. STATE," 362 S.C. 163, 607 S.E.2d, 72 (S.C. 2004). "DEFENSE COUNSEL "OPENED THE DOOR" UNDER INVITED REPLY DOCTRINE."

PAGE 1 of 2 CONTINUANCE NEXT PAGE.....

ATTACHMENTS OF APPLICATION FOR POST-CONVICTION RELIEF

~~10 & 11~~ GROUNDS FOR RELIEF WITH SUPPORTING FACTS

11(b) IN A CRIMINAL CASE THE STATE CANNOT ATTACK THE CHARACTER OF THE DEFENDANT UNLESS THE DEFENDANT HIMSELF FIRST PLACES HIS CHARACTER IN ISSUE. RULE 404(a) S.C.R.E.; See "MITCHELL V. STATE," 298 S.C. 186, 379 S.E.2d 123 (1989)

S.C. LAW PRECLUDES EVIDENCE OF A DEFENDANT'S PRIOR CRIMES, OR OTHER BAD ACTS TO PROVE THE DEFENDANT IS GUILTY FOR THE CRIME CHARGED EXCEPT TO ESTABLISH (1.) MOTIVE, (2.) INTENT, (3.) ABSENCE OF MISTAKE OR ACCIDENT (4.) A COMMON SCHEME OR PLAN, OR (5.) THE IDENTITY OF THE PERPETRATOR. RULE 404(b) S.C.R.E.; See: "STATE V. LYLES," 125 S.C. 406, 118 S.E. 803 (1923); EVEN IF EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS IS ADMISSIBLE AS EVIDENCE OF A COMMON SCHEME OR PLAN. IT MUST BE EXCLUDED IF ITS PROBATIVE VALUE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE. RULES OF EVID., RULES 403, 404(b)

See: "STATE V. BRITT," 235 S.C. 395, 111 S.E.2d 669 (S.C., 1959)
 "HELD THE ADMISSION OF TESTIMONY ATTACKING REPUTATION OF ONE OF THE DEFENDANTS, WHO DID NOT TESTIFY AND REFUSED A LIE DETECTOR TEST, TESTIMONY WAS STRICKEN AND INSTRUCTED TO DISREGARD. DEFENDANT DID NOT TESTIFY. "REVERSE AND REMANDED FOR NEW TRIAL""

COUNSEL'S PERFORMANCE WAS DEFICIENT AND HER REPRESENTATION FELL BELOW A REASONABLE STANDARD AND ALL PROBABILITY THAT BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT. COUNSEL'S ERRORS PREJUDICED THE DEFENDANT BY NOT OBJECTING TO INADMISSIBLE EVIDENCE ATTACKING HIS CHARACTER WHEN DEFENDANT DID NOT TAKE THE WITNESS STAND, NOR DID HE PUT HIS CHARACTER IN ISSUE. THE JURY USED THIS EVIDENCE DURING DELIBERATION IN DETERMINING HIS GUILT OR INNOCENCE. See: "UNITED STATES V. STROMBERG," 268 F.2d 256 (2ND CIR 1959)
 PERSUASIVE AUTHORITY

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END OF DOCUMENT.

ATTACHMENTS OF APPLICATION FOR POST-CONVICTION RELIEF

10 & 11 GROUNDS FOR RELIEF WITH SUPPORTING FACTS

10 (C) APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL - GUARANTEED BY THE SIXTH (6TH) AND FOURTEENTH (14TH) AMENDMENTS TO THE UNITED STATES CONSTITUTION AND BY ARTICLE I §§ 3 AND 14 OF THE SOUTH CAROLINA CONSTITUTION AND THE LAWS OF THE STATE - COUNSEL'S FAILURE TO MAKE AN CONTEMPORANEOUS OBJECTION ON THE RECORD TO IMPROPER TESTIMONY ENTERED INTO EVIDENCE AND FAILED TO REQUEST A CURATIVE CHARGE PRECLUDED APPELLANT FROM CLAIMING ERROR ON APPEAL.

11 (C) SUPPORTING FACTS: TRIAL COUNSEL'S PERFORMANCE WAS DEFICIENT DURING TRIAL PHASE AND WAS BOTH UNREASONABLE AND PREJUDICIAL. See: "STRICKLAND V. WASHINGTON" 466 U.S. 668 (1984) COUNSEL'S ACTS OR OMISSIONS INCLUDED BUT NOT TO THE FOLLOWING:

1.) COUNSEL FAILED TO OBJECT TO STATE WITNESS PATRICIA RKE NON-RESPONSIVE ANSWER STATING "THE DEFENDANT COMMITTED CRIMINAL DOMESTIC VIOLENCE UPON HER AND THAT DEFENDANT WAS INCARCERATED FOR SOMETHING ELSE AND DEFENDANT HAD MADE TIME FOR THAT, THAT WAS THE PAST. LET IT GO" (TR. 175 II, 7-18)

CHARACTER EVIDENCE IS NOT ADMISSIBLE TO PROVE THE ACCUSED POSSESSES A CRIMINAL CHARACTER OR HAS A PROPENSITY TO COMMIT THE CRIME WHICH HE IS CHARGED, RULES OF EVID., RULE 404(b), See: "STATE V. NELSON," 331 S.C. 1, 501 S.E.2d 716 (1998), RULE 404(b), S.C.R.E. STATES, "THE GENERAL RULE THAT EVIDENCE OF A PERSON'S CHARACTER OR A TRAIT OF CHARACTER IS NOT ADMISSIBLE FOR THE PURPOSE OF PROVING ACTION IN CONFORMITY THEREWITH ON A PARTICULAR OCCASSION." See: "U.S. V. MCBRIDE," 676 F.3d 385 (C.A. 4 (S.C. 2012))

As in "U.S. V. JOHNSON," 617 F.3d 286 (C.A. 4, S.C. 2010) "TESTIMONY THAT DEFENDANT ALLEGEDLY ENGAGED IN PRIOR DRUG TRANSACTIONS WAS NOT ADMISSABLE PRIOR BAD ACTS EVIDENCE AND ERROR IN ADMITTING PRIOR BAD ACTS EVIDENCE WAS NOT HARMLESS,

ATTACHMENTS OF APPLICATION FOR POST CONVICTION RELIEF

10 & 11 GROUNDS FOR RELIEF WITH SUPPORTING FACTS

11(C)..... IT ALSO CANNOT BE SAID THAT THE 404(B) ERROR COMMITTED BY COUNSEL IS HARMLESS BECAUSE COUNSEL (SUSANNAH ROSS) "OPENED THE DOOR" TO CHARACTER EVIDENCE TO BE USED BY THE JURY DURING DELIBERATION DETERMINING THE DEFENDANT'S GUILT OR INNOCENCE.

THE PROSECUTION TOOK ADVANTAGE OF COUNSEL'S ERRORS TO PAINT THE DEFENDANT IN A BAD LIGHT AS A WOMAN BATTERER AND A CONVICTED CRIMINAL BEFORE THE JURY WHICH CONSISTED OF NINE (9) WOMEN AND THREE (3) MEN. (TR. 175, IL 6-8) & TR. 221, IF. 2-7). COUNSEL'S PERFORMANCE DURING TRIAL WAS BOTH DEFICIENT AND PREJUDICIAL, IF NOT FOR COUNSEL UNPROFESSIONAL ERRORS, THERE IS A REASONABLE PROBABILITY THAT THE RESULTS OF THE OUTCOME WOULD HAVE BEEN DIFFERENT SINCE THE DEFENDANT DID NOT TAKE THE WITNESS STAND, NOR DID HE PLACE HIS CHARACTER IN ISSUE. COUNSEL'S ERRORS WAS VERY HARMFUL AND HIGHLY PREJUDICIAL.

SEE: "STATE V. ROBINSON," 305 S.C. 469, 407 S.E2d 404 (1991) HELD THAT "APPELLANT CANNOT COMPLAIN OF PREJUDICE FROM EVIDENCE TO WHICH HE "OPENED THE DOOR;" CAN NOT CLAIM PREJUDICE ON APPEAL.

IF NOT FOR COUNSEL'S DEFICIENT PERFORMANCE AND UNPROFESSIONAL ERRORS DEFENDANT'S BAD ACTS, WRONGS, AND UNSPECIFIED CONVICTIONS ATTACKING DEFENDANT'S CHARACTER WOULD NOT HAVE BEEN POSSIBLE TO PREJUDICE HIM HAD NOT COUNSEL COMMITTED THIS EGREGIOUS ERROR THERE WOULD BE A REASONABLE POSSIBILITY THE OUTCOME WOULD HAVE BEEN DIFFERENT?

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END OF DOCUMENT!

ATTACHMENTS OF APPLICATION FOR POST-CONVICTION RELIEF

10 & 11 GROUNDS FOR RELIEF WITH SUPPORTING FACTS

10 (d) APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL - GUARANTEED BY THE (5TH) FIFTH, SIX (6TH) AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND BY ARTICLE I §§ 3 AND 14 OF THE SOUTH CAROLINA CONSTITUTION AND THE LAWS OF THE STATE - DURING THE GUILT-OR-INNOCENCE PHASE OF HIS JURY TRIAL.

11 (d) SUPPORTING FACTS: PROSECUTOR FOR THE STATE COMMITTED MISCONDUCT DURING THE GUILT-OR-INNOCENCE PHASE OF DEFENDANT'S JURY TRIAL IN HIS CLOSING ARGUMENT REMOVING THE FUNDAMENTAL FAIRNESS OF TRIAL AND PREJUDICED THE JURY DURING THE ARMED ROBBERY TRIAL. See; STATE V. DWAFLEBAUM, 338 S.C. 441, 527 S.E.2d 105 (2000) PROSECUTOR'S ACTS BUT ARE NOT LIMITED TO THE FOLLOWING:

1.) THE PROSECUTOR INTENDED TO MANIPULATE, MISLEAD AND CONFUSED THE JURY CONCERNING THE DIFFERENCE BETWEEN ROBBERY AND ARMED ROBBERY. (TR. 216, II, 12-21) See; "STATE V. McCORD," 349 S.C. 477, 562 S.E.2d 689 (2002)

2.) THE PROSECUTOR INTENTIONALLY MISLEAD AND CONFUSED THE JURY CONCERNING THE "BURDEN OF PROOF" NOT BEING PLACED UPON THE STATE AND TO PROVE THE ELEMENTS OF A SPECIFIC CHARGE. (TR. 217, II, 10-15) See; "STATE V. McCORD," 349 S.C. 477, 562 S.E.2d 689 (2002)

3.) THE PROSECUTOR STATED HIS OPINION THAT STATES WITNESS PATRICIA RICE "HAD NO REASON TO LIE." (TR. 222, II, 18-23). THIS WITNESS HAD EVERY REASON TO LIE. THIS WITNESS WAS ARRESTED.
2.) SHE WAS CAUGHT WITH A "CRACK PIPE" (TR. 173, II, 2-16) POSSESSION OF DRUG PARAPHERNALIA (VIOLATION OF § 44-53-391) BUT WAS NOT CHARGED WITH IT. (3.) SHE WAS ARRESTED FOR ARMED ROBBERY (4.) SHE WAS FORMALLY TRUE-BILLED INDICTED ON FEBRUARY 16, 2010. (INDICTMENT NO. #2009-65-23-9564)

ATTACHMENTS OF APPLICATION FOR POST CONVICTION-RELIEF
10 & 11 GROUNDS FOR RELIEF WITH SUPPORTING FACTS

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11(d).....#5.) THE STATE DROPPED THE ARMED ROBBERY CHARGES AGAINST HER. SHE WAS RELEASED FROM GREENVILLE DETENTION CENTER ON JULY 9, 2010, ONE DAY AFTER SOLICITOR MARK MOYER AND HIS LEAD INVESTIGATOR CAME TO VISIT HER ON JULY 8, 2010. SHE HAD BEEN INCARCERATED ELEVEN^{9/14/11} ^{MONTHS} ^{A.B.} BEFORE AN AGREEMENT BETWEEN THE PROSECUTION CAME ABOUT AND THE ALLEGE ACCOMPLISANCE WAS RELEASED AND AGREED TO TESTIFY AGAINST DEFENDANT ON THE 12TH OF JULY, 2010 BUT HER CHARGES COULD NOT BE OFFICIALLY DISMISSED UNTIL JULY 13TH 2010. THEREFORE THE PROSECUTION HAD TO USE A REASON TO HAVE DEFENDANTS TRIAL PUT OFF ON JULY 12, 2010. (TR. 169, II, 9-25) PATRICIA RICE HAD EVERY REASON AND INCENTIVES TO LIE. THE PROSECUTION VIOLATED "A.B.A. STANDARD FOR CRIMINAL JUSTICE 3-5.8(b) (2ed. ed. 1980), THAT STATES "A LAWYER SHALL NOT..... STATE A PERSONAL OPINION AS TO....., THE CREDIBILITY OF A WITNESS.. . . ., OR THE GUILT-OR-INNOCENCE OF AN ACCUSED." Cf. MODEL RULES OF PROFESSIONAL CONDUCT, RULE 3.4(e); CODE OF PROFESSIONAL RESPONSIBILITY DR 7-106(C)(7)

(4) THE PROSECUTOR COMMITTED THE EXACT SAME MISCONDUCT WITH THE VICTIM (EDWIN PEREZ) IN HIS CLOSING ARGUMENT BY STATING THAT MR. PEREZ "HAD NO REASON TO LIE." (TR. 223, II, 5(b)-7). THE PROSECUTOR IS NOT AN EXPERT IN DETECTION OF LIEING, THE STATEMENT MADE WAS HIS PERSONAL OPINION AND BELIEF OF MR. MOYER. THIS IS A VIOLATION OF THE "A.B.A. STANDARD OF CRIMINAL JUSTICE 3-5.8(b) (2ed. ed. 1980). Cf. MODEL RULES OF PROFESSIONAL CONDUCT 3.4(e) AND THE CODE OF PROFESSIONAL RESPONSIBILITY DR 7-106(C)(7).

5) THE PROSECUTOR COMMITTED WHEN HE MADE REMARKS TO THE JURY INTENDING TO INCITE, INFLAME AND FREIGHTEN THEM BY STATING "YOU DON'T WANT THE REAL ROBBER OUT THERE RUNNING AROUND DOING WHO KNOWS WHAT IN "A NEIGHBORHOOD RIGHT NEXT TO YOURS." (TR. 228 II, 6-8). THESE REMARKS PREJUDICED THE DEFENDANT AND WERE INTENDED

ATTACHMENTS OF APPLICATION FOR POST CONVICTION RELIEF

10 & 11 GROUNDS FOR RELIEF WITH SUPPORTING FACTS

11(d)....., TO INCITE, INFLAME, AND FREIGHTEN THE JURY TO CONVICT THE DEFENDANT TO ENSURE HE WOULD NOT HAVE AN OPPORTUNITY TO EVER COME NEXT TO ANY NEIGHBORHOOD WHERE THE JURORS LIVE, THE PROSECUTOR CONTINUED TO COMMIT MISCONDUCT WITH HIS CLOSING ARGUMENTS AND VIOLATING THE A.B.A. STANDARDS FOR CRIMINAL JUSTICE 3-5.8(b)(2d.ed. 1980) OF MODEL RULES OF PROFESSIONAL CONDUCT 3.4(e) AND THE CODE OF PROFESSIONAL RESPONSIBILITY DR 7-106(C)(7)..... #2. THE PROSECUTOR SHOULD REFRAIN FROM ARGUMENTS WHICH WOULD DIVERT THE JURY FROM ITS DUTY TO DECIDE THE CASE ON THE EVIDENCE BY INJECTING ISSUES BROADER THAN THE GUILT OR INNOCENCE OF THE ACCUSED UNDER THE CONTROLLING LAW, OR BY MAKING PREDICTIONS OF THE CONSEQUENCES OF THE JURY'S VERDICT AND..... #3. THE PROSECUTOR SHOULD NOT USE ARGUMENTS CALCULATED TO INFLAME THE PASSIONS OR PREJUDICES OF THE JURY. See: "UNITED STATES V. BERGER", 295 U.S. 78, 55 S.Ct. 629 (1935) & "WEAVER V. BOWERSOX", 438 F.3d, 832, 840-41 (8th Cir. 2006) A PERSUASIVE AUTHORITY (DUE PROCESS VIOLATION)

(6) THE PROSECUTOR COMMITTED MISCONDUCT WITH HIS CLOSING ARGUMENTS WHEN HE STATED TO THE JURY "THAT THE DEFENDANT ATTEMPTED TO EVADE THE POLICE. (TR. 228, II, 23-25 & TR. 229, II, 1-3). THE PROSECUTOR WAS ASSOCIATING EVASION WITH FLIGHT AND FLIGHT IN ASSOCIATION WITH GUILT. See: "UNITED STATES V. FOUNTZ", 540 F.2d, 933 (4th Cir. 1976) & "UNITED STATES V. MYERS", 550 F.2d 1036, 1049 (5th Cir. 1977) CERT. DENIED 439 U.S. 847, 99 S.Ct. 147, 58 L.Ed. 2d, 149 (1978)..... THERE IS NO EVIDENCE IN THE RECORD TO SUPPORT THE COMMENT THAT THE DEFENDANT ATTEMPTED TO EVADE THE POLICE, NOR WAS THERE ANY CHAIN OF EVIDENCE. NEITHER WAS THERE A FOUNDATION LAID TO ESTABLISH THIS PREJUDICIAL REMARK IN ORDER TO ASSOCIATE EVASION/FLIGHT WITH GUILT AS THE PROSECUTION IMPLIED.... THE ARRESTING OFFICER JOHNNY BROWN TESTIFIED THAT THE DEFENDANT

ATTACHMENTS OF APPLICATION FOR POST-CONVICTION RELIEF

10 & 11 GROUNDS FOR RELIEF WITH SUPPORTING FACTS

11(d) DID NOT ATTEMPT TO EVADE HIM. (TR. 188, II. 7-10)

(7.) THE PROSECUTION COMMITTED PROSECUTORIAL MISCONDUCT IN DENYING THE DEFENDANT'S A RIGHT TO A FAIR TRIAL BY AN IMPARTIAL JURY IN A CRIMINAL PROSECUTION AS GUARANTEED BY THE SIXTH (6TH), FIFTH (5TH) AND FOURTEENTH (14TH) AMENDMENTS TO THE UNITED STATES CONSTITUTION AND BY ARTICLE I §§ 3 & 14 OF THE SOUTH CAROLINA CONSTITUTION AND THE LAWS OF THE STATE BY REMOVING THE FUNDAMENTAL FAIRNESS FROM HIS JURY TRIAL AND DENYING HIM DUE PROCESS OF THE LAW WHICH ENCOMPASSES EQUAL PROTECTION UNDER UNDER THE LAW. See: "GILCHRIST V. STATE", 350 S.C. 221, 565 S.E.2d, 281 (SC 2002), "UNITED STATES V. HARRISON", 716 F.2d, 1052 (4TH CIR. 1983), "KYLE V. WHITLEY", 514 U.S. 419, 453 (1995) & "BRADY V. MARY LAND", 373 U.S. 83 (1963) AS IN "UNITED STATES V. BERGER", 295 U.S. 78, 55 S.Ct. 629, 633, "THE COURT MADE CLEAR THAT THE ADVERSARY SYSTEM PERMITS THE PROSECUTOR TO PROSECUTE WITH EARNESTNESS AND VIGOR" IBID. "IN OTHER WORDS WHILE HE MAY STRIKE HARD BLOWS, HE IS NOT AT LIBERTY TO STRIKE FOUL ONES" IBID.

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ATTACHMENTS OF APPLICATION FOR POST-CONVICTION RELIEF

10 & 11 GROUNDS FOR RELIEF WITH SUPPORTING FACTS

10 (c) APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL - GUARANTEED BY THE SIXTH (6TH) AND FOURTEENTH (14TH) AMENDMENTS TO THE UNITED STATES CONSTITUTION AND BY ARTICLE I §§ 3 AND 14 OF THE SOUTH CAROLINA CONSTITUTION AND THE LAWS OF THE STATE - DURING THE APPEAL STAGE OF HIS ARMED ROBBERY PROCEEDING.

11 (c) SUPPORTING FACTS: APPELLATE COUNSEL'S PERFORMANCE WAS DEFICIENT DURING THE APPEAL STAGE WAS UNREASONABLE AND PREJUDICIAL. See; "EVITT V. LUCEY," 470 U.S. 1065, 105 S.Ct. 830 (1985) & "EZELL V. STATE," 548 S.E.2d 852, 345 SC 312 (2001). APPELLATE COUNSEL'S ACTS OR OMISSIONS INCLUDED BUT NOT LIMITED TO THE FOLLOWING:

1.) APPELLATE COUNSEL FAILED TO REQUEST THE PRELIMINARY HEARING TAPES COLLOQUY BETWEEN TRIAL COUNSEL AND STATES INVESTIGATOR MICHAEL JARVIS TO SUBSTANTIATE THE CLAIM THAT TRIAL COUNSEL VOLUNTEERED CONFIDENTIAL INFORMATION.

2.) APPELLATE COUNSEL FAILED TO POINT OUT SPECIFIC STATEMENTS IN TRIAL TRANSCRIPT WHERE TRIAL COUNSEL ADMITTED TO VOLUNTEERING CONFIDENTIAL INFORMATION. (TR. I, II, 5 (6) - 13) QUOTE: "VERBATIM," "I SIMPLY ASKED HIM THAT QUESTION OF JARVIS. IN FACT, I DID ASK IN THE PRELIM. I DON'T HAVE INDEPENDANT RECOLLECTION. IF I DID, I WOULD SIMPLY ASK THAT QUESTION TO SEE IF HE COULD INVESTIGATE THAT ROUTE."

UNDER NO CIRCUMSTANCE WOULD IT BE LOGICAL FOR THE DEFENSE COUNSEL TO PREPARE A DEFENSE FOR THE PROSECUTOR ASK AN ADVERSARY COUNSEL TO INVESTIGATE ON BEHALF FOR THE PROSECUTOR. DEFENSE COUNSEL COULD HAVE DONE AN

ATTACHMENTS OF APPLICATION FOR POST-CONVICTION RELIEF 10 & 11 GROUNDS FOR RELIEF WITH SUPPORTING FACTS

11(e) INVESTIGATION INDEPENDANTLY WITH HER PERSONAL INVESTIGATOR BUT INSTEAD DIVULGED CONFIDENTIAL INFORMATION TO THE ADVERSARIAL OPPOSITION MICHEAL JARVIS AND GAVE THE PROSECUTION TELEGRAPH WARNING AND NOTICE TO DO DAMAGE CONTROL OF THEIR STAR WITNESS PATRICIA RICE. THE PRELIMINARY HEARING TAPES WILL SUBSTANTIATE APPLICANT'S CLAIM OF CONFLICT BETWEEN ATTORNEY & CLIENT AND APPELLATE ATTORNEY WAS INEFFECTIVE FOR FAILING TO GET THIS TAPES. THE PRELIMINARY HEARING TAPES WILL REFLECT, THAT MICHEAL JARVIS TESTIMONY STATED UNDER OATH THAT 'HE DID NOT KNOW OF THE INFORMATION THAT DEFENSE COUNSEL WAS ASKING HIM ABOUT DEFENDANT AND PATRICIA RICE. HE ALSO STATED THAT HE DID NOT HAVE A STATEMENT STATING THAT 'THE DEFENDANT PUT A KNIFE TO THE VICTIM'S THROAT' NOR DID HE KNOW ANYTHING ABOUT ANY RELATIONSHIP BETWEEN DEFENDANT AND THE STATE WITNESS PATRICIA RICE.'

(3.) APPELLATE COUNSEL FAILED TO BRING OUT THE POINT THAT THE TRIAL JUDGE FAILED TO DO AN IN CAMERA QUESTIONING OF ALL FOUR (4) POTENTIAL WITNESSES IN THE COURTROOM THAT DAY. 1.) THE DEFENDANT, 2.) SUSANNAH ROSS, 3.) MICHEAL JARVIS, & 4.) PATRICIA RICE. APPELLATE COUNSEL FAILED TO BRING THIS INFORMATION TO THE APPELLATE COURT AND THAT THE TRIAL JUDGE DID NOT INTERVIEW MICHEAL JARVIS OR PATRICIA RICE TO WHOM THE CONFIDENTIAL INFORMATION WAS GIVEN AND MS. RICE WHOM WAS A PART OF THE INFORMATION. THE TRIAL TRANSCRIPT, THE RECORD OF THE COURT OF APPEALS AND THE WRIT OF CERTIORARI TO THE SUPREME COURT'S RECORD WILL REFLECT THE CLAIM.

APPELLATE COUNSEL'S PERFORMANCE WAS BOTH DEFICIENT AND PREJUDICIAL AND HER REPRESENTATION FELL BELOW A REASONABLE

ATTACHMENTS OF APPLICATION FOR POST-CONVICTION RELIEF

10 & 11 GROUNDS FOR RELIEF WITH SUPPORTING FACTS

11(e) STANDARD AND DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AT APPELLATE LEVEL AND IF NOT FOR COUNSEL'S UNPROFESSIONAL ERRORS THERE IS A GOOD PROBABILITY THE RESULTS OF THE OUTCOME WOULD HAVE BEEN DIFFERENT AND HER DEFICIENT PERFORMANCE PREJUDICED THE DEFENDANT.

THE APPLICANT BELIEVES HE HAS ADDITIONAL CLAIMS FOR POST CONVICTION RELIEF BUT DOES NOT YET HAVE COLLATERAL COUNSEL, NOR ACCESS TO THE DISCOVERY PROCESS OR THE FUNDS FOR EXPERT SERVICES TO INVESTIGATE THESE CLAIMS.

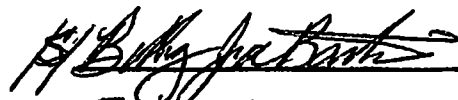
APPLICANT BRINGS TO THE ATTENTION OF THE COURT HE DESIRES TO AMMEND HIS P.C.R. APPLICATION AT SOME POINT OF THE PROCESS.

PAGE 3 4/3

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PROOF-OF-SERVICE

THE HEREBY UNDERSIGNED STATES
 UNDER THE PENALTY OF PERJURY THAT HE HAS
 SERVED AN APPLICATION FOR POST-CONVICTION-RE
 LIEF UPON "PAUL B. WICKESIMER, CLERK OF COURT"
 OF GREENVILLE COUNTY BY THE U.S. POSTAL SERVICE
 BY HAND DELIVERING IT TO PERRY'S CORRECTIONAL
 MAILROOM PERSONEL MS. CONWELL/MS. MERCHANT
 TO BE MAIL TO GREENVILLE COUNTY COURTHOUSE
 ON THE 2ND OF SEPTEMBER, 2014.



Bobby Joe BARTON #163629
 PERRY CORR. INST. (D-2B121)
 430 OAKLAWN RD
 PELZER, SC 29669

FROM: DUBBY J. BAKION #163621
 PERRY CORR. INST. (0-2-B-121)
 430 OAKLAWN RD.
 PELZER, SC 29669



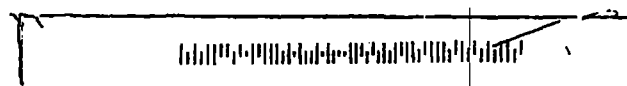
RECEIVED

SEP 02 2014

P.C.I. MAILROOM

ATTN: PAUL B. WICKENSIMER
 CLERK OF COURT
 GREENVILLE COUNTY COURTHOUSE
 305 EAST NORTH ST., RM. 224
 GREENVILLE, SC 29601-

LEGAL-MAIL



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2014-CP-23-5047
COUNTY OF GREENVILLE	)	
	)	
Bobby Joe Barton,	)	
S.C.D.C. No. 163629,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed September 12, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the February 2010 term of General Sessions for armed robbery (2009-GS-23-10018, count 1) and possession of a weapon during the commission of a violent crime (2009-GS-23-10018, count 2). Susannah C. Ross, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty only of armed robbery. On August 10, 2010, the Honorable Edward W. Miller sentenced the Applicant to twenty-five years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. LaNelle C. DuRant, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense

perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Barton, Op. No. 2013-UP-058 (S.C. Ct. App. filed Jan. 30, 2013). The South Carolina Supreme Court denied the Applicant's subsequent petition for writ of certiorari on July 11, 2014. The Remittitur was sent on July 25, 2014.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

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

1. Ineffective assistance of trial counsel:
 - a. Failed to fully communicate the formal plea offer.
 - b. Failed to keep the Applicant reasonably informed of the status of the plea offer.
 - c. Failed to explain the plea offer for the Applicant to make informed decision.
 - d. Failed to comply with reasonable requests for information.
 - e. "[O]pened the door" to prior bad acts between the Applicant and the witness.
 - f. Failed to object to inadmissible character evidence regarding prior bad acts.
 - g. Failed to make contemporaneous objection to improper testimony or request a curative instruction.
2. Ineffective assistance of appellate counsel:
 - a. Failed to request tape recordings of the preliminary hearing.
 - b. Failed to point out statements in trial transcript where trial counsel admitted to volunteering confidential information.
 - c. Failed to argue the trial judge failed to do an in camera questioning of the four witnesses in the courtroom.
3. Procedural Due Process.
4. Prosecutorial Misconduct:
 - a. Misled and confused the jury concerning the difference between robbery and armed robbery.
 - b. Misled and confused the jury concerning the burden of proof.

- c. Stated the victim and witness had no reason to lie.
- d. Made statements intended to incite or inflame the jury.
- e. Stated the Applicant attempted to evade police.
- f. Denied the Applicant an impartial jury trial.

In a "Motion to Amend and Supplemental Pleadings" filed December 14, 2014, the Applicant argued:

1. Ineffective assistance of trial counsel:
 - a. Failed to object to testimony.
 - b. Failed to object to the trial judge's appointment and use of an interpreter based on the failure to comply with the statute.
 - c. Failed to object to the use of an unsworn interpreter during the Neil v. Biggers hearing.
 - d. Advised the Applicant not to testify.
 - e. Failed to have the trial judge rule on whether the robbery conviction could be used against the Applicant to impeach him.
 - f. Advised the Applicant to terminate the services of an identification expert.
 - g. Failed to investigate.
 - h. Failed to cross-examine the victim as to the amount of alcohol he had consumed.
 - i. Failed to cross-examine the victim as to whether he had an alcohol problem.
 - j. Failed to cross-examine the victim as to whether he had been arrested for an alcohol-related offense.
 - k. Failed to cross-examine the victim as to the location of his brother.
 - l. Failed to cross-examine the victim as to whether he solicited the witness and the Applicant for prostitution.
 - m. Failed to cross-examine the witness about her background and character.
 - n. Failed to request the witness be treated as hostile.
 - o. Failed to cross-examine the witness as to whether she went to the victim's trailer for prostitution purposes.
 - p. Failed to cross-examine the witness as to whether she knew how much time she faced.
 - q. Failed to cross-examine the witness about whether she lied.
 - r. Failed to cross-examine the witness as to whether her charge would be dismissed.
 - s. Failed to cross-examine the witness as to whether she met with the Applicant and bought drugs with him.
 - t. Failed to argue a motion for evidentiary hearing and motion for suppression.

- u. Failed to enter into evidence the 911 tapes and police reports.
- v. Failed to refrain from using the word “mugshot” and failed to object when the State used this word.
- w. Created a conflict of interest between herself and the Applicant.
- x. Failed to properly cross-examine Edward Perez or Investigator Jarvis.
- y. Misled the jury in closing argument.
- z. Failed to request a cautionary instruction jury charge.
- 2. Prosecutorial misconduct:
 - a. Knowingly allowed police to use the exact same arrest photo to be used in the photo line-up when he knew the victim had the exact photo in his possession.”
 - b. Proceeded to trial upon the possession of a weapon during the commission of a violent crime charge.
 - c. Used perjured testimony.
- 3. Judicial misconduct:
 - a. Made prejudicial and condescending remarks to trial counsel.

III.

The Respondent asserts the Applicant’s allegation that his trial attorney was ineffective is without merit. The Respondent asserts the Applicant’s attorney rendered effective assistance well within the standard of “reasonableness within professional norms” for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must

overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830 (1985). In analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273,

276 (2009); Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999) (noting courts apply the Strickland test to determine if appellate counsel was deficient for failing to raise an issue and whether the defendant was prejudiced from the failure to raise the issue). Appellate counsel, however, is not required to raise every non-frivolous claim, but instead may select among them in order to maximize the likelihood of a favorable outcome. Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248.

V.

The Applicant has made allegations of trial court error and judicial misconduct. The Respondent submits the Applicant has not raised issues that are cognizable in a PCR action. Rather, these allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised these issues on appeal. The failure to do so has waived these allegations as grounds for relief.

VI.

The Applicant cannot prevail on his allegation of prosecutorial misconduct. “[T]he test

for reversible prosecutorial misconduct generally has two components: that (1) the prosecutor's remarks or conduct must in fact have been improper, and (2) such remarks or conduct must have prejudicially affected the defendant's substantial rights so as to deprive the defendant of a fair trial." United States v. Chorman, 910 F.2d 102, 103 (4th Cir. 1990). In order to establish prejudicial misconduct on the part of the prosecutor the alleged misconduct must have "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Darden v. Wainwright, 477 U.S. 168, 180-81, 106 S. Ct. 2464, 2471 (1986) (quotation omitted). This allegation must be dismissed.

VII.

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

VIII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

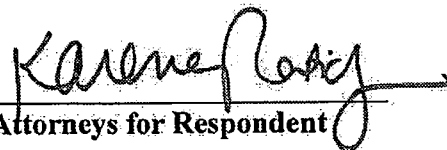
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

February 12, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS)

2014-CP-23-5047)

BOBBY JOE BARTON, 163629)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL)

STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Bobby Joe Barton, 163629
Perry Correctional Institution
430 Oaklawn Road
Pelzer SC 29669**

DATED this 12th day of February, 2015.


Judy A. C. Carey, Legal Assistant
For Respondent

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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P R O C E E D I N G S

THE COURT: All right. Ms. Ratigan?

MS. RATIGAN: Thank you, Your Honor. May it please the Court. This is the case of Bobby Joe Barton vs. The State of South Carolina. The docket number is 2014-CP-23-5047.

Mr. Barton was indicted for armed robbery and possession of a weapon during the commission of a violent crime. He was represented on these charges by Ms. Ross.

The case was brought to trial. Mr. Barton was found guilty only of the armed robbery charge.

On August 10, 2010, Judge Miller sentenced him to 25 years imprisonment. The case was appealed. The Court of Appeals affirmed his conviction and sentence in January of 2013.

Mr. Barton's appellate attorney then filed a petition for writ of certiorari to the South Carolina Supreme Court. The Supreme Court denied that petition in July of 2014. A remittitur was sent soon after.

This application was timely filed. The State is ready to proceed.

I would note that either Ms. Horlbeck or Mr. Barton or a combination of both have some motions to make. I'll turn it over to them.

I will, however, note, before I do that, this is the

1 third time the case has been put on the roster. It was
2 scheduled to be heard both in the October and the
3 December term, at which time, on both occasions, PCR
4 counsel requested a continuance to have additional time
5 to prepare the case. So as this is the third time on the
6 roster, the State is ready to proceed with the full
7 hearing today.

8 THE COURT: All right. Thank you.

9 Ms. Horlbeck, I'll be glad to hear from you.

10 MS. HORLBECK: Judge, there are a number of
11 witnesses that I subpoenaed on behalf of Mr. Barton. One
12 is Mr. Charlie Rick Childs, [REDACTED] Lanford Drive. And we
13 served a member of Mr. Childs' household on the 4th of
14 February of this year, and that witness has not shown up.
15 So I wanted to request a continuance for that reason,
16 Judge.

17 THE COURT: He was properly served?

18 MS. HORLBECK: Yes, sir. I do have that
19 documentation.

20 And the other thing I wanted to just briefly bring
21 to the Court's attention, really because Mr. Barton
22 wanted me to, apparently there was a FOIA -- there was a
23 motion before Your Honor regarding a FOIA request, and I
24 believe it was scheduled for the May 4th term of court
25 2015. And apparently it was heard by Your Honor. And

1 Mr. Barton just wanted me ---

2 THE COURT: Where did I hear that? In a week of
3 nonjury?

4 MS. HORLBECK: I believe so. Yes.

5 THE COURT: All right.

6 MS. HORLBECK: Mr. Barton had requested that a
7 property company, a rental property company provide him
8 the name of a potential witness who was living in an
9 apartment near the scene of the incident, and the motion
10 was denied. I believe that the property company
11 explained that they didn't have ownership of the property
12 since the '70s. And Mr. Barton just wanted me to bring
13 that to your attention.

14 I didn't realize -- Your Honor being from out of
15 town, I didn't realize that you had been involved in that
16 and I didn't know that there had been a FOIA request made
17 by my client. I was not present for that hearing, but
18 Mr. Barton attended. And I wanted to bring that to the
19 Court's attention as well.

20 THE COURT: All right. Well, as far as the first
21 motion to continue, I'm going to deny that motion. It
22 appears that it's based on the fact that a witness who
23 was properly served and subpoenaed is not present. I'll
24 certainly issue a contempt order or whatever I need to
25 because that individual is not here. But I deny your

1 motion to continue.

2 And I believe just the FOIA just appeared to be
3 information that you were just providing the Court.
4 There's not a motion based on that. I only have one
5 motion, the motion to continue.

6 MS. HORLBECK: Yes, sir.

7 THE COURT: All right. That's denied.

8 Any other motions?

9 MS. HORLBECK: Yes, your Honor. My client -- I have
10 made a funding motion for a transcript at the preliminary
11 hearing, and also I've made a funding motion for an
12 investigator to, obviously, assist me with finding some
13 of these witnesses that -- or one of the witnesses that
14 hadn't shown up today. Judge, I'm not trying to blame it
15 on my paralegal. Obviously, it's my fault because she
16 works for me. We did hand that to the wrong judge. We
17 -- I think that my paralegal has a -- we do a lot of
18 criminal law, and I think she naturally thinks that all
19 funding orders would go to Judge Miller, and she was
20 incorrect about that. Judge Miller was actually the
21 judge that heard the trial in this case.

22 So she handed those to him prior to Christmas. We
23 didn't hear anything from them. We contacted the office
24 and got them back. They were denied. Mr. Barton -- I
25 just foolishly didn't realize or didn't connect the two

1 and should have explained to her the correct judge to
2 hand the funding orders to that were denied. Mr. Barton
3 feels that that's -- I should not have handed those
4 funding orders to Judge Miller. He's likely right. And
5 I just wanted to renew those funding orders before Your
6 Honor.

7 And maybe I should connect the dots a little bit.
8 He wanted a transcript of the preliminary hearing because
9 he believes that the preliminary hearing -- at the
10 preliminary hearing, the investigator made some
11 statements when he testified that he then contradicted
12 during the trial of the case. That's why he believes
13 that those are important, that the transcript ---

14 THE COURT: Obviously, he believes that had he --
15 his attorney had that, then she would have had an
16 opportunity to impeach the detective at trial.

17 MS. HORLBECK: Yes, sir.

18 Mr. Barton also has a -- would like to have a few
19 words with the Court.

20 THE COURT: All right. Hold on just a minute,
21 Mr. Barton.

22 Anything else Ms. Horlbeck?

23 MS. HORLBECK: Let me just check with Mr. Barton.

24 THE COURT: Anything else?

25 MS. HORLBECK: That's all, Judge.

1 THE COURT: All right. I'll be glad to hear from
2 him if you're comfortable with him addressing the Court.

3 Let me ask you to stand up, Mr. Barton, just so I
4 can see your eyes good.

5 MR. BARTON: Yes, sir. I have glaucoma. You might
6 not be able to see them that good.

7 THE COURT: Well, I can see you. I've got bad eyes,
8 too, but I've got glasses. All right.

9 MR. BARTON: Yes, sir. How are you doing this
10 morning?

11 THE COURT: Good.

12 MR. BARTON: The reason why I wanted a copy of the
13 transcripts of the preliminary hearing is because
14 Investigator Michael Jarvis, he perjured himself. He
15 perjured himself when he went to get the warrant for
16 possession of a weapon, and I substantiated that.

17 I also filed some paperwork with the magistrate who
18 gave him the warrant for possession of a weapon, and I
19 showed her that when he came to her and said that he had
20 -- statement said that I am the person who put a knife to
21 the man throat, in actuality, he had no such statement.
22 And I sent the statement to the magistrate that he had,
23 which it did not substantiate what he swore to her to get
24 that warrant of a weapon.

25 So, now, I asked her at that point in time would she

1 reconsider bond. But what she did was she said, "No.
2 What I will do is I will give you a second preliminary
3 hearing, and then you can go back and straighten that
4 out."

5 THE COURT: Well, let me stop you there. You were
6 found not guilty on the possession of a weapon during the
7 commission of a violent crime, and I understand you
8 believe that you could impeach him possibly on other
9 issues if he perjured himself. But you were found not
10 guilty on the possession of a weapon during the
11 commission of a violent crime; is that correct?

12 MR. BARTON: Yes, sir. But what I do believe is by
13 -- by allowing him to bring that weapon into the trial,
14 that it somehow influenced the jury that some kind of way
15 is if he had a weapon when he was arrested, maybe he's
16 smart enough to not allow the person to see it even
17 though I made my counselor aware of the circumstances
18 before we went back to the second hearing.

19 But -- and I also filed -- I filed a motion for an
20 evidentiary hearing and a motion to suppress these
21 weapons, and the judge over the case said -- well, the
22 solicitor didn't want me to say anything about it but the
23 judge -- the solicitor said, "Well, we're going to let
24 your attorney make a decision if she wants to argue those
25 motions or not." And she -- she refused to argue them.

1 So therefore, with all due respect to the courts, I
2 believe that if you bring any object or anything into the
3 Court and you let the jury see it, then it's going to be
4 very difficult for you to tell the jury, saying, "I want
5 you to forget what you saw."

6 THE COURT: Well, whether it was admissible or not,
7 that's another issue. It may have been admissible even
8 if you hadn't gone -- if they hadn't gone forward with
9 possession during the commission of a violent crime.
10 That's something we might have to -- someone else may
11 have to determine.

12 Let me ask you this. What's the practical reality
13 of being able to obtain a transcript from a preliminary
14 hearing? In our county we don't -- there is no record of
15 preliminary hearings.

16 MS. HORLBECK: Judge, what they do in this county,
17 and we've actually received a letter from Donna Bearden,
18 they tape them, and she has provided a letter saying that
19 the tape is still available. And what we do is we hire a
20 reporting company, just a -- like I normally hire Cannon
21 Reporting, and they would get -- they would obtain the
22 tape from Ms. Bearden, transcribe it and provide it.

23 THE COURT: Well, then, how is that -- where is the
24 funding order? What's the status of the funding order?

25 MS. HORLBECK: It's here.

1 THE COURT: I don't think I have any authority to
2 sign a funding order. That would be your chief
3 administrative judge.

4 MS. HORLBECK: Yes, sir. But I've got the one that
5 was denied by the, arguably, wrong judge that I handed it
6 to.

7 THE COURT: Well, so did Judge Miller deny the
8 request?

9 MS. HORLBECK: Yes, sir. And he wasn't the admin
10 judge at the time.

11 THE COURT: I understand that. But, I mean, I think
12 he still has the authority as a ---

13 MS. HORLBECK: I don't think it's an authority
14 issue. I think the issue is that he heard the trial of
15 the case, and Mr. Barton says I should never have handed
16 it to Judge Miller in the first place.

17 THE COURT: All right.

18 MS. HORLBECK: He'd be right.

19 MR. BARTON: He shouldn't have nothing to do with
20 PCRs, anything dealing with me. And his fingerprints was
21 all over my trial from the day of arrest, two bonds
22 hearing, trial, the indictment. He should not have
23 anything to do with me at all.

24 THE COURT: I assume we have the other issue,
25 Ms. Horlbeck. Another attorney will soon have

1 Mr. Barton's case; is that correct?

2 MS. RATIGAN: Yes, sir. It was actually -- I was
3 going to bring to the Court's attention, Mr. Barton filed
4 a motion to relieve Ms. Horlbeck on December 23rd of
5 2015. He has subsequently requested a hearing date on
6 that motion. So at some point today, I think we need to
7 resolve whether or not he wants to go forward with
8 Ms. Horlbeck or wants to go pro se or what have you.

9 THE COURT: Let's do that right now.

10 MR. BARTON: Your Honor?

11 THE COURT: All right. Hold on just a second.

12 All right. So there is a -- well, let me talk to
13 you, Mr. Barton, about your attorney representation
14 issue. Forget about all the other stuff. You're here
15 today, and Ms. Horlbeck has been -- she represents you,
16 has been representing you. She was appointed to
17 represent you.

18 MR. BARTON: Yes, sir.

19 THE COURT: Now, you're not required to have a
20 lawyer to be present with you when you go forward.

21 MR. BARTON: And I understand that.

22 THE COURT: And the Court, in PCR cases, you don't
23 get the lawyer of your choice. She's been appointed to
24 represent you. Do you still want to go forward with her?
25 And I'm not going to appoint another lawyer to represent

1 you. Now, you can hire your own attorney, if you wish.
2 I will state, in all frankness or candor to you, I assume
3 if Ms. Horlbeck, you -- today, if you're still on the
4 case, because of your changing of jobs, then someone else
5 is likely to assume control of this case; is that
6 correct?

7 MS. HORLBECK: That's correct.

8 THE COURT: You don't know who that is?

9 MS. HORLBECK: I don't.

10 THE COURT: All right.

11 MR. BARTON: May I speak, sir?

12 THE COURT: Yes, sir.

13 MR. BARTON: We were having -- we were having little
14 problems and stuff like that, and I did file the
15 necessary papers. But she and I have talked. We've --
16 we've -- I've had a chance to talk with her, I'd say, a
17 couple of days ago and today. And if it's all right with
18 the Court, I decided to -- I'll let that go. I -- I'd
19 rather stay with her, if it's all right. There were --
20 there were problems which caused it, but I'm -- I'm
21 willing to forgo that.

22 And I understand. I'm never -- just like when I
23 came to trial before, I've never asked for nobody in
24 particular. I don't -- I don't understand where that
25 come from. But I'm willing to stay with her, if it's all

1 right. I'm willing to dismiss my motion to replace
2 counsel. You know, that's my decision. I'm not -- I'm
3 not trying to charge anything to the Court or whatever.
4 Ain't nobody pressuring me to do this or that. It was
5 just -- it was a big misunderstanding. We were not
6 communicating well. But now we are, you know.

7 And I talked to her about this downstairs. I talked
8 to her about it two days ago. And I said, "Well, I'll
9 make up my mind." I made up my mind, you know, and I'm
10 asking the Court to please allow her to stay on the case.

11 THE COURT: All right. Well, I'm going to allow her
12 to stay on the case. I'm going to deny your motion to
13 continue it. I'm going to deny the motion on the --
14 there's still the funding motion is still pending.
15 However, the case has been continued twice. We're in
16 position today where the State's ready. And so I'm going
17 to deny any motions to continue, and let's -- we're going
18 to proceed today. All right.

19 Are you ready, Ms. Ratigan?

20 MS. RATIGAN: Yes, Your Honor.

21 THE COURT: Ms. Horlbeck, you ready?

22 MS. HORLBECK: Yes, sir.

23 THE COURT: All right. Ms. Horlbeck, call your
24 first witness.

25 MS. HORLBECK: We'll call Bobby Barton to the stand.

1 Judge, he wanted me -- just out of an abundance of
2 caution, I thought it was raised in his original PCR
3 petition, but he wanted me to make sure that the Court
4 knew and that also part of his petition was the issue
5 that he's alleging his counsel failed to object to
6 improper testimony and inadmissible evidence.

7 He also wanted to make sure of the -- also included
8 in his PCR petition is an allegation that counsel failed
9 to object to the prosecution eliciting testimony of
10 explanation of mitigation or aggravating circumstances
11 surrounding the false statement conviction, which is
12 prejudicial.

13 THE COURT: Ms. Ratigan, do you have a position on
14 his request to include those allegations on his petition?

15 MS. RATIGAN: I would object to that. Ms. Horlbeck
16 filed an amended petition earlier this week on
17 February 16th that alleged eight additional issues, and
18 I'm prepared to go forward on these additional issues.
19 It doesn't necessarily sound like the issues being
20 brought to the Court today are included in that amended
21 petition, so we would object to any day-of-the-hearing
22 amendments.

23 THE COURT: All right. You're prepared to go
24 forward on the written amended application that was
25 handed to you seven days ago; is that correct?

1 MS. RATIGAN: Yes, Your Honor.

2 THE COURT: All right. Well, it seems to me as a
3 practical matter, whatever issues he raises through his
4 testimony, the Court will consider those, whatever they
5 are. But as far as any formal amending of the
6 application today here when we're ready to start, I'm not
7 going to allow that.

8 MR. HORLBECK: Okay.

9 THE COURT: All right?

10 MS. HORLBECK: All right. We'd call Mr. Barton to
11 the stand.

12 WHEREUPON,

13 BOBBY JOE BARTON

14 After having been duly sworn, testified as follows:

15 THE CLERK: Please state your full name for the
16 record.

17 THE WITNESS: My name is Bobby Joe Barton.

18 DIRECT EXAMINATION

19 BY MS. HORLBECK:

20 Q Mr. Barton, who represented you in the trial of this
21 case?

22 A Ms. Susannah Ross.

23 Q All right. And how long was she your attorney?

24 A From what I'm understanding, I think she was -- she
25 started -- she was hired, I think, on August 6, 2009, and

1 she represented me at the trial through August 2009 and
2 '10.

3 Q Okay.

4 A So that's about a year. A little over a year.
5 About a year.

6 Q Was she appointed or did you hire her?

7 A She was appointed.

8 Q Okay. All right. And were you incarcerated while
9 she represented you or were you -- had you posted bond?

10 A No. I stayed incarcerated the whole time.

11 Q All right. And did you and Ms. Ross have some
12 opportunities to discuss your case?

13 A Yes, ma'am.

14 Q All right. Do you remember how many times?

15 A I think probably about -- I remember she came and
16 visited me in the jail probably about the six -- so I
17 would say she probably came to see me at least -- came to
18 the jail to see me at least two time prior to -- prior to
19 January 29th. Approximately two times. And let me see.
20 She came back to see me July the 7th, July the 8th. So
21 she probably came to see me about -- about four --
22 approximately about four, maybe five times in jail.

23 Q Okay. All right. And did you and she discuss any
24 plea offers that had been made by the State?

25 A Well, I think it was on January 2010 Ms. Ross came

1 and pulled me from the county jail, and you know, and
2 brought me down to Pro V [phonetic]. And Ms. Ross told
3 me, say, "Well, they're offering you 15 years."

4 And I said, "What?"

5 She said, "They offered you 15 years."

6 And, you know, I got very angry about that. And so,
7 you know, me and her had some words. We had some words,
8 you know. They was very harsh words, but -- concerning
9 that she never went in no detail about -- about nothing
10 or whatever.

11 But if I'm -- if I'm not wrong, am I not to
12 establish what's going on with my case?

13 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
14 identification.)

15 Q Well, hold on. What I want to do is hand you this,
16 this is Applicant's 1, and just ask you to take a look at
17 that, okay?

18 A I already know what this is.

19 Q I know. I need you to put it on the record what is
20 Applicant's 1.

21 A This -- this is -- this is the plea offer that I
22 happened to get once I filed a matter in 2011 from Perry.
23 I never seen it prior to -- prior to now.

24 Q Okay.

25 A I've never seen it. That's the first time I ever

1 seen it.

2 Q All right. When Ms. Ross came to visit you, did she
3 hand you a copy of that plea offer that's summarized in
4 Applicant's 1?

5 A I've never seen -- I told you I've never seen it
6 until after I've been convicted and I'm at Perry February
7 2011. I've never seen it.

8 MS. HORLBECK: All right. Judge, I'd move this into
9 evidence.

10 MS. RATIGAN: No objection, Your Honor.

11 THE COURT: Applicant's 1 is admitted into evidence.
12 (WHEREUPON, Applicant's Exhibit No. 1 was admitted into
13 evidence.)

14 BY MS. HORLBECK:

15 Q All right. Mr. Barton, when you and Ms. Ross talked
16 about the State's plea offer, you're saying she never
17 handed you a copy of that plea offer?

18 A Yes, ma'am. She's -- she's never -- she never --
19 she never handed me a plea offer. I've never seen a plea
20 offer. She's never elaborated what a plea offer was for.
21 She never -- she never indicated that a plea offer was
22 for strong-armed robbery. She just said that they were
23 offering you 15 years. She never -- she's never -- she
24 never indicated that -- never indicated the terms nor the
25 conditions of a plea offer. All I ever know that was

1 they were offering me 15 years. I was charged with armed
2 robbery, and I know that I never committed an armed
3 robbery, so therefore, you know, I was not going to
4 accept no armed-robbery charge. I've never committed an
5 armed robbery.

6 Q Did she explain to you that the State was willing to
7 reduce the charge and have you plea to a reduced charge?

8 A Ms. Ross, as I say, she never explained the terms or
9 the conditions that -- that was a plea offer being made
10 to me for a lesser included offense of strong-armed
11 robbery. She never distinguished that there was -- there
12 was a distinction what was being offered to me was
13 strong-armed robbery. She never -- she never told me
14 that 15 years would be suspended to 8 years. She never
15 told me that they was going to dismiss the weapon charge.
16 She never told me that -- that it would be conditional
17 upon probation and, excuse me, for me to cooperate to
18 inform the Solicitor's Office of anybody that
19 participated in this.

20 Q All right. And, ultimately, what did you tell
21 Ms. Ross? What decision did you make about accepting
22 that offer?

23 A I never knew about this offer. What I told Ms. Ross
24 was I wasn't going to accept no 15 years for no -- I was
25 not going to accept no 15 years for no armed robbery

1 because I didn't commit an armed robbery.

2 Q Do you -- what do you -- tell the Court about your
3 decision. Do you believe your decision was knowing and
4 intelligently made?

5 A My decision was made upon not being informed with
6 enough information to make it an informed decision simply
7 because the fact was that I was never told that that was
8 going to be -- there was a plea offer made to me for a
9 lesser included offense of strong arm -- armed robbery.
10 All she ever told me was, "They're offering you 15
11 years," and it was just left like that in the air, me
12 being charged with armed robbery, believing they offering
13 me 15 years for armed robbery, you know.

14 And -- and like I say, I got -- I got -- I got angry
15 about it, you know. And I must be honest, you know. The
16 old suspenders are coming back now that I'm down there
17 for 25 years for armed robbery when, if I had known that
18 it was for strong-armed robbery, a lesser included
19 offense, then I would have accepted -- I would have
20 accepted it.

21 Q Okay. All right. And did you file an affidavit
22 about your plea offer?

23 A Yes, ma'am.

24 (WHEREUPON, Applicant's Exhibit No. 2 was marked for
25 identification.)

1 Excuse me. I have -- I have -- I have a -- I have
2 some things -- this -- that's kind of like -- it's kind
3 of like throwing me off. Because I'm not ---

4 THE COURT: Here's the thing, Mr. Barton.

5 THE WITNESS: Sir?

6 THE COURT: You answer your lawyer's questions.

7 THE WITNESS: Yes, sir.

8 THE COURT: We get through all that, and then if
9 there's some things that you want to say to the Court on
10 your own, we'll give you an opportunity to do that then.
11 All right? Right now she's got to put up evidence that I
12 have to listen to to make a decision on, but I can also
13 listen to you if you feel inclined to tell me something.
14 But right now, you need to answer her questions. All
15 right? Does that make sense, Mr. Barton?

16 THE WITNESS: Yes, sir. Yes, sir. It does. It's
17 just that I have not established why I'm here in the
18 court. And that's -- that's -- that's what doesn't seem
19 right.

20 THE COURT: That's your lawyer's job.

21 THE WITNESS: Yeah. That doesn't seem right, right
22 there.

23 THE COURT: All right.

24 BY MS. HORLBECK:

25 Q How about we get through this and then we'll

1 establish that, okay?

2 A Right.

3 Q All right. We can go back.

4 This is -- tell me -- that's Applicant's 2. Tell
5 me, what's in Applicant's 2?

6 A Yes, ma'am. This is an affidavit that I sit down
7 and that I swore to. And I had it notarized and stated
8 on the record that I was duly deposed, and that I was
9 appointed by Ms. Ross. And on July 29, 2010, she came
10 and told me that they were offering me 15 years without
11 going into details. And just like from A to F it said --
12 just like it says that I've written that she never
13 clarified that 15 years was for a plea offer of
14 strong-armed robbery. She never explained that the
15 15 years would be suspended to 8 years followed by
16 probation. She never explained that the State was --
17 wasn't saying that they would dismiss a weapon charge.
18 She never showed me, the applicant, the written plea
19 offer or that it had an expiration date because I never
20 even seen it. She never -- she never informed me the
21 chances of me going to court whether to winning or losing
22 or accepting a plea offer versus -- versus the charges
23 which I had. And she never made any more contact. I
24 never seen Ms. Ross again until July 7th. I never --
25 I've never seen her anymore at that time.

1 Like I say, had I known that it was a plea offer on
2 the table for this, yes, I would have accept this plea
3 offer rather than go to court and -- and wind up with
4 25 years.

5 MS. HORLBECK: Okay. Your Honor, we would ask that
6 this Applicant's 2 be moved into evidence.

7 MS. RATIGAN: I would object, Your Honor. I don't
8 think it's relevant. It's merely an affidavit that
9 summarizes the testimony he just gave the Court.

10 THE COURT: All right. I'm going to allow it in.
11 Applicant's Exhibit 2 is admitted into evidence.

12 (WHEREUPON, Applicant's Exhibit No. 2 was admitted into
13 evidence.)

14 BY MS. RATIGAN:

15 Q And, Mr. Barton, you wanted a chance to establish
16 why you're here?

17 A Yes, ma'am.

18 Q Go ahead.

19 A Yes, ma'am.

20 Q And then we'll kind of get back into what -- my
21 questions.

22 A Yes, ma'am.

23 Q Okay. Go ahead.

24 A I want to establish on the record that -- that I'm
25 -- you know, that I'm -- why I'm here today is contesting

1 that -- that my -- my incarceration that I'm being held
2 involuntarily, that -- that my Sixth Amendment and
3 Fourteenth Amendment right to the Constitution of the
4 United States and to Article 1, Section 3 of 14 to the
5 Constitution of South Carolina and the laws of these
6 states and the Fifth Amendment to the Federal
7 Constitution, that my Fifth Amendment rights have been
8 violated. And I'm also alleging that ineffective
9 assistance of counsel against my defense attorney, and
10 also prosecution of misconduct, the prosecution through
11 the lens of ineffective assistance of counsel.

12 THE COURT: All right. Thank you, Mr. Barton.

13 BY MS. HORLBECK:

14 Q All right. Now, you've also alleged that Ms. Ross
15 failed to keep you reasonably informed of the status of
16 your case and that she failed to provide a response to
17 your request for information. Tell the Court about that.

18 A Yes, ma'am. You know, as I had said that since I
19 never knew -- I never knew there was a plea offer such as
20 this plea offer in the first place. Only thing -- the
21 only plea offer that I ever known was -- was 15 years.
22 But concerning -- concerning that -- that I had been
23 charged with a weapon -- that I had been charged with a
24 weapon and stuff like that, I was trying to -- I mean,
25 give me a moment. I may look through these things right

1 here for a minute.

2 Q Sure.

3 A I was trying to get Ms. Ross to file a motion to
4 suppress the weapon. I was trying to get Ms. Ross to
5 argue an evidentiary hearing. And I also had those
6 motions in the court. But she refused to do that.

7 Ms. Ross, really, basically, she just stopped coming
8 to see me. She stopped coming to see me last -- like I
9 said, the last time I saw Ms. Ross when this plea offer
10 evidently was good, from what I can see, that she
11 received it on the 14th, and I can look on the back of it
12 when it says that they needed her answer by April the
13 30th. Ms. Ross came January -- January 29, 2010. I
14 never seen Ms. Ross again until July the 7th, four days
15 before I was supposed to go to trial. So the plea offer
16 has expired and everything else.

17 (WHEREUPON, Applicant's Exhibit No. 3 was marked for
18 identification.)

19 Q All right. Mr. Barton, I'm handing you a copy of
20 Applicant's 3. I just ask you to take a look and tell us
21 -- tell the Court what that is in Applicant's 3.

22 A This is a -- just give me a moment. This is -- this
23 is a Pro V visitation sheet showing where Ms. Ross came
24 and visited me. And, like I said, the last time -- the
25 last time I can see where Ms. Ross came and visited me is

1 from -- from January the 29th, she never came back again
2 until July the 7th.

3 Q January the 29th of what year?

4 A 2010.

5 Q All right.

6 A She never came back again until July 7, 2010. The
7 plea offer had expired. It had expired.

8 Q And then before January the 29th, had she come to
9 see you?

10 A Yeah. She came and see me, but I have to look.
11 It's October -- October 16, 2009.

12 MS. HORLBECK: Okay. Judge, we would move this into
13 evidence.

14 THE COURT: Ms. Ratigan?

15 MS. RATIGAN: We would object. It hasn't been
16 properly authenticated, and it's hearsay, Your Honor.

17 THE COURT: All right. I'll allow Applicant's No. 3
18 into evidence.

19 (WHEREUPON, Applicant's Exhibit No. 3 was admitted into
20 evidence.)

21 BY MS. HORLBECK:

22 Q Mr. Barton, did you request that Ms. Ross provide
23 you a copy of discovery prior to trial?

24 A Yes, ma'am.

25 Q All right. Do you know when you -- how did you make

1 that request? Was it in person? Was it by letter?

2 A Let me see. We went -- I don't know -- I don't know
3 -- I don't know how I made it, but I think I know when I
4 received it. That's how I was able to -- that's how I
5 was able to discover that Investigator Jarvis had
6 committed perjury. Because he was in there, because I
7 had the codefendant's statement, and she didn't say
8 nothing what he said when he went and got the warrant.

9 Q All right. Did you ---

10 A So that -- so that would have to be -- that would
11 have to be I went to -- I went to the first preliminary
12 hearing, I think, on 9/10. So I got -- I got it right
13 after -- right after September. Between September and
14 the beginning of October, that's when I got discovery.

15 Q All right. Is that before -- did you receive
16 discovery before or after your trial?

17 A Received it before, but it didn't -- it didn't have
18 none of that in it. It didn't have nothing in it, none
19 of that. It only had 12 pages.

20 Q All right. And so you're saying you received
21 discovery, but you didn't receive all the discovery that
22 the State had sent Ms. Ross?

23 A No.

24 Q Is that what you're saying?

25 A Yes, ma'am. No. I did not receive that. I only

1 had 12 page discovery. That was on the police -- police
2 reports. They were only police reports.

3 Q All right. What is it you're saying Ms. Ross did
4 not provide you -- what part of discovery did Ms. Ross
5 not provide you prior to trial?

6 A Evidently she didn't -- she didn't -- she didn't
7 show me this -- this plea offer.

8 Q But, I mean, we've been over the plea offer.

9 A Right, right.

10 Q What part of discovery? What parts of the paper
11 evidence the State provided are you alleging Ms. Ross did
12 not give you a copy of or share with you or review with
13 you?

14 A That's -- that's the only thing that I can, you
15 know, just -- just take because I don't know of anything
16 else that they had.

17 Q Okay. All right. Did you write Ms. Ross? Do you
18 recall writing Ms. Ross ---

19 A Yeah.

20 Q --- and requesting a copy of your entire file? Do
21 you remember that?

22 A I wrote that after I got to Perry ---

23 Q Okay.

24 A --- after I -- after I was convicted. After I was
25 convicted, I wrote -- I sent that, I think, about January

1 the 16th, and that was something like 2011. I sent her a
2 letter through the Public Defender's Office asking for a
3 complete client's file. And that's -- that's when I
4 recognized that. Prior to then, I hadn't seen nothing
5 else.

6 (WHEREUPON, Applicant's Exhibit No. 4 was marked for
7 identification.)

8 Q Mr. Barton, I'm handing you Applicant's 4, ask you
9 to take a look at that and tell us what that is.

10 A This is -- this is the -- this is a request for the
11 complete client file that I sent from Perry
12 January 6, 2011.

13 Q Who did you mail it to?

14 A I mailed this to Ms. Susannah Ross.

15 Q All right.

16 A And that's when I got the package back that I found
17 this in.

18 Q All right. After you mailed that letter, you
19 received a response from Ms. Ross?

20 A I received -- I received a response from her, the
21 Public Defender's Office.

22 Q Okay. Keep flipping some of the pages. What else
23 did you -- what else is included in Applicant's 4?

24 A Oh, I have a copy showing the date that when I got
25 -- when I got it returned from her.

1 Q When you receive discovery from her?

2 A Right.

3 Q What's the date of that?

4 A February 2, 2011.

5 Q All right. And tell us what that last page of
6 Applicant's 4 shows.

7 A That -- that's -- the last page is showing -- it's a
8 copy of the outer package showing when it was returned
9 and when it was received in my hand. And that's how I
10 became aware of what was -- the inside, the contents of
11 it.

12 MS. HORLBECK: Okay. Your Honor, we would move this
13 into evidence, Applicant's 4.

14 MS. RATIGAN: I have no objection.

15 THE COURT: Applicant's 4 is moved into evidence --
16 or is admitted into evidence.

17 (WHEREUPON, Applicant's Exhibit No. 4 was admitted into
18 evidence.)

19 BY MS. HORLBECK:

20 Q All right. At your trial, you've alleged that your
21 attorney failed to object to the prosecution soliciting
22 testimony about a false statement conviction?

23 A Yes, ma'am. Okay. Yes, ma'am. This is where the
24 prosecution brought in Patricia Rice as an accomplice.
25 She came in and testified against me and -- stating that

1 I'm the one who committed the robbery and how the act was
2 carried out and what happened, and then she turned around
3 and said that she went home, this and that. But she was
4 -- she's a witness for the State, and I'm sure that
5 before he put a witness up on the stand, that he should
6 be able to confirm this witness' testimony.

7 But just like I say, there is witnesses to show
8 where -- what Patricia Rice said that I did this and I
9 did that and then she went home, there are witnesses that
10 -- there are witnesses, you say one is here, who can
11 testify that Patricia Rice been with me all night long.

12 Q Okay.

13 A And -- and so, therefore, by him putting Patricia on
14 the stand to testify, it's either he knew that she was
15 going to testify falsely or he should have known.

16 Q All right. Well, the testimony was about a false
17 statement conviction, correct, or false information
18 conviction?

19 A Okay, okay. So now I'm a little bit throwed [sic]
20 off. No. Okay. What are you saying right now is that
21 it was ---

22 Q Whose conviction was that?

23 A Patricia Rice ---

24 Q Okay.

25 A --- the State witness.

1 Q Okay.

2 A The State witness for the State, Patricia Rice.

3 Now, Ms. Ross brought out that -- not Ms. Ross. But
4 Mr. Moyer brought out, he brought it out prior -- before
5 Ms. Ross, that Ms. Ross -- Ms. Patricia Rice had been
6 convicted of a false -- giving false statement in the
7 past. She admitted to -- to this saying she was sure
8 that he did. But Mr. Moyer -- Mr. Moyer violated rules
9 of the Court by eliciting testimony concerning this false
10 -- this false conviction, false statement conviction.
11 Because the rules of Court says that if a person is
12 convicted of a false statement, then -- then -- then the
13 prosecution cannot go in to elicit mitigating testimony
14 around the statement because it's been -- it's already --
15 she's already been convicted in one court. That's just a
16 maneuver used to lessen the impact with the jury because
17 Joseph -- with State vs. Joseph, State vs. Corn, and
18 State vs. Greg said that -- that -- that's inherently
19 prejudicial for them to try to go into because it's
20 already -- it's -- it's known that she -- she admitted to
21 -- to committing a false statement. So therefore, he
22 don't have to go into trying to water it down for the
23 jury to tell them what circumstances it was under.

24 Q Okay. Did Ms. Ross object?

25 A No. She failed to object to this.

1 Q All right. And tell me how that prejudiced or
2 impacted the outcome of your trial.

3 A How it prejudiced impact of trial is ---

4 Q Yes.

5 A --- simply because the fact that it's going before
6 the jury, and it's allowing him to violate the rules of
7 court saying that he is not to do this. And the jury is
8 taking this into consideration saying that, oh, this is
9 just a small thing.

10 Q Right. How do you think the outcome of your case
11 would have been different if Ms. Ross had objected?

12 A I believe the outcome of my case would have been
13 different had she not made those errors or made those
14 mistakes.

15 Q Okay. You believe the jury would have returned a
16 different verdict; is that what you're saying?

17 A I believe there's a good probability.

18 Q Okay. All right. You've also alleged a
19 confrontation clause issue. Tell the Court about that.

20 A Let me see. Let me look at a piece of paper here.
21 The victim, Mr. Edwin Perez, he was allowed to come in.
22 And Mr. Edwin Perez is supposed to be -- is Spanish
23 speaking only. He was able to come into court through an
24 interpreter and tell the Court the things that his
25 brother told the police concerning the case. And his

1 brother was not there for me to confront concerning
2 whether or not that you said this to the police or you
3 didn't say it.

4 Investigator King was allowed to come into the Court
5 and testify to the same thing, that Amilcar Perez --
6 Amilcar Perez told him this and told him that. And he
7 testified to the things that Amilcar Perez said.

8 Justin Lanford, he was able to come into the Court
9 and testify to the things that Amilcar Perez told him
10 concerning the crime, this and that. But Mr. Amilcar
11 Perez never was in the court for me to confront
12 concerning whether he said these things or not. And he
13 was there on the scene of the crime.

14 Q All right. So what you're saying, I just want to
15 make sure I understand, the victim spoke Spanish?

16 A The victim spoke Spanish, but the police didn't
17 speak no Spanish.

18 Q Right. So there was an interpreter?

19 A The brother.

20 Q Right. The victim's brother did the interpreting?

21 A So they say.

22 Q Okay. All right. And did the victim's brother ever
23 testify in the trial of your case?

24 A No, ma'am.

25 Q Did you discuss that issue with Ms. Ross prior to

1 trial?

2 A Ms. Ross? Well, this is what probably threw her
3 off, but she still should have objected. The solicitor
4 chose not to bring the witness in, and his name was
5 clearly -- his name was clearly on the potential witness
6 list.

7 Q All right. Do you know if Ms. Ross subpoenaed the
8 victim's brother to testify in the case?

9 A To my knowledge, she did not. To my knowledge, she
10 did not. But -- but the victim, Mr. Perez, gave
11 testimony to everything that his brother supposedly told
12 Officer -- Officer Justin Lanford. Officer Justin
13 Lanford testified to everything that Mr. Perez said to
14 him. And Officer King testified to everything that
15 Mr. Amilcar Perez told him that the victim was -- was
16 telling him. And my counsel, she failed to object to
17 this testimony that we had a right to confront this
18 witness.

19 (WHEREUPON, Applicant's Exhibit No. 5 was marked for
20 identification.)

21 Q All right. Mr. Barton, I'm handing you a copy of
22 Applicant's 5, just ask you to take a look at that and
23 tell us what that is.

24 A This is a copy of the State potential witness list.

25 Q All right. And is the victim's name on the State's

1 potential witnesses?

2 A Yes, ma'am. He's Name Number 2.

3 Q All right. And the victim's brother's name, is his
4 name on that list?

5 A The victim's brother is Number 2, Mr. Amilcar Perez.
6 The victim is Number 1, is Edwin Perez. Yes, ma'am.

7 MS. HORLBECK: All right. I'd move this into
8 evidence, Judge, or ask that this be moved into evidence.

9 MS. RATIGAN: No objection, Your Honor.

10 THE COURT: Applicant's 5 is admitted into evidence.

11 (WHEREUPON, Applicant's Exhibit No. 5 was admitted into
12 evidence.)

13 BY MS. HORLBECK:

14 Q All right. And how do you think -- the fact that
15 this witness wasn't subpoenaed, how do you think that
16 that changed the outcome of your trial, and how did it
17 prejudice your trial, your chances at trial?

18 A I believe that had counsel objected to this -- to
19 this type of testimony, that -- that her performance and
20 her proficial [phonetic] was both deficient and
21 prejudicial. Had she not did this and had she would have
22 objected, I believe there would have been a reasonable
23 probability the outcome would have been different.

24 THE WITNESS: May I have some water, please.

25 THE COURT: Yes, sir.

1 THE WITNESS: I'm having some problems, Judge. If
2 y'all don't mind. Excuse me.

3 THE COURT: Keep your seat.

4 BY MS. HORLBECK:

5 Q Mr. Barton, you've also alleged that your attorney
6 failed to object to a witness who perjured himself.
7 That's one of your allegations, correct?

8 A Yes, ma'am.

9 Q All right. Tell the Court about that.

10 A This is -- this is -- this is the one where the
11 State witness -- put Patricia Rice on the stand. And
12 Ms. Rice, she testified that -- she testified that I
13 grabbed Mr. Amilcar Perez, jacked him up, threw him up
14 against a trailer, and that's the way that she saw it.
15 Mr. Amilcar Perez never said that I jacked him up and
16 threw him up against the trailer. Mr. Amilcar -- not
17 Amilcar, but Mr. Edwin Perez, he said that I pushed him
18 down through his whole testimony, and in the end, she
19 said I ran off and she went home.

20 Q Who is she?

21 A Ms. Patricia Rice. She said that -- she said that I
22 ran off and she went home. And just like I said, I have
23 -- if you say -- one of the witnesses out there that can
24 substantiate Patricia Rice has never went home. Patricia
25 Rice has been with me all night long.

1 Q All right. Patricia Rice was the codefendant in
2 your case?

3 A Yes, ma'am.

4 Q All right. And Ms. Rice, was she also charged?

5 A Ms. Rice -- Ms. Rice was charged from the beginning,
6 but through -- I don't know -- I don't know -- I don't
7 know how you want to call it. I don't know if it was a
8 promise, alleged, suggested or implied, some otherwise,
9 but all I know is I walked -- when she came to see me on
10 July the 8th ---

11 Q Who?

12 A Ms. Ross came to the jailhouse to see me. And when
13 I came in, I never knew what Mr. Moyer look like. I had
14 no idea. I walked in. Patricia Rice was in there. They
15 tried to hide. Mr. Moyer and his investigator went in
16 there talking to her. I thought he was Chris Posey.
17 That's what I assumed. But that was on July the 8th.

18 And after their little whatever they had in the
19 little back room, whatever they had in there, she walked
20 out free that day right there. She walked out the next
21 day. The charges was dropped.

22 And, you know, through her testimony on the stand,
23 she testified that she was an accessory or accomplice or
24 a principal because of the very fact she admit to being
25 present, she admits to knowing what happened, and she

1 admits to not calling the police in an attempt to
2 suppress the evidence. But Mr. Moyer said he didn't make
3 no deal with her, he didn't make no promise with her or
4 whatever. But all of a sudden, now she wants -- she goes
5 home the next day and she testifies against me.

6 But she lies about what happened, how it happened,
7 and she lied about going home. She ain't never went
8 home.

9 Q Okay. Let me just back you up a little bit. Again,
10 Ms. Patricia Rice was the codefendant in your case,
11 right?

12 A Correct, correct.

13 Q Okay. And what is your position about what you and
14 Ms. Rice were doing on the night of the 25th and whether
15 or not she was with you or not with you?

16 A Ms. Rice -- Ms. Rice been with me the whole time.
17 Ms. Rice ---

18 Q On what night or day?

19 A July the 25th. From July the 25th from about 10:45
20 until 8 -- until 8:00 the next morning. No, no. From
21 10:45 July the 24th -- July the 24th till 8:00 the next
22 morning, July the 25th ---

23 Q All right.

24 A --- Ms. Rice been with me the whole time.

25 Q But Ms. Rice didn't testify to that, correct?

1 A No. She did not. She testified that she went home,
2 and she testified that things happened this way and
3 things happened that way. Ms. Rice -- Ms. Rice came --
4 Ms. Rice was there to see Mr. Perez out of a drug deal
5 and prostitution. That's the reason why Ms. Rice was
6 there.

7 Q All right. Well, who were you and Ms. Rice with, if
8 anybody? What did y'all do that night?

9 A Nobody -- nobody -- nobody was there. Nobody -- we
10 were together. Mr. Perez called Ms. Rice to come to his
11 place ---

12 Q Right.

13 A --- and I went with her.

14 Q Okay. And if you're saying that she didn't leave,
15 what is it you guys, you and Ms. Patricia Rice did that
16 night? Where were you?

17 A After we -- after we left Mr. Perez, Ms. Rice --
18 Ms. Rice met me at Jerome Diner's [phonetic] house within
19 -- within 15 minutes -- within 15 minutes of what's
20 happening happened. And me and her left there, and we
21 been -- we stayed out at a hangout spot all night long
22 using drugs, getting high.

23 Q Okay. All right. And did ---

24 A And -- and -- and Mr. Jones can -- he can attest to
25 seeing me and Ms. Rice with him, Brenda [sic] Davis,

1 Charles Child. We stayed with them all night long.

2 Q Right.

3 A Sandra Born [phonetic], and she died -- she's died
4 since then.

5 Q Okay. Did you discuss any of these witnesses with
6 Ms. Ross, any of these witnesses who could have come and
7 taken the stand and testified about Ms. Patricia Rice's
8 story being wrong?

9 A I basically -- I basically told Ms. Rice -- Ms. Ross
10 everything that happened. Ms. Ross, I don't really think
11 she's too much interested. I basically told her
12 everything that happened.

13 Q Did you give her the names of these witnesses?

14 A I gave her the name of several witnesses. She even
15 met one of the witnesses down at the jailhouse. She
16 probably forgotten.

17 Q Who did she meet down at the jailhouse?

18 A John Henry. John Henry. His name's John Henry. He
19 was -- he was -- when she first called me out, he was
20 already out there with her, and he told her he would tell
21 her what was happening, what was going on.

22 Q Okay. Did you ask Ms. Ross to contact Mr. Charles
23 Childs and speak with him?

24 A I don't believe -- I don't believe that I even
25 mentioned not -- not to contact her. I'm not going to

1 say that. I didn't -- I didn't ask her. But I've told
2 her about all these people and all these things.

3 Q All right. Did you give Ms. Ross Mr. Childs'
4 address or telephone number so that she ---

5 A I didn't have it.

6 Q Okay.

7 A I didn't have his address. I didn't have his
8 telephone number.

9 Q Did you ask her to investigate Mr. Childs and try to
10 locate him and talk to him?

11 A I asked her to try to investigate a lot of things,
12 just like from the distance from the store -- from the
13 store to -- to the crime scene. Because I told her ---

14 Q I'm just asking about Mr. Childs, though.

15 A Right. I don't -- I don't -- I can't really say
16 that.

17 Q Okay. How about Mr. Aaron Jones? Did you ask her
18 to contact him and talk to him about the case?

19 A I can't say that. I'm not -- I'm not going to say
20 that.

21 Q Okay. All right. How about Ms. Brandi Davis?

22 A No, no.

23 Q No what?

24 A No. I didn't -- I didn't tell her to contact these
25 -- not to contact them, but I done told her about all

1 these people and all this stuff that went down.

2 Q All right. And you said that Mr. -- you also
3 testified a couple of minutes ago about Mr. Moyer
4 visiting Ms. Rice. How do you know that happened?

5 A I saw him visually. Because I didn't know where --
6 just like I'm looking at him back there now.

7 Q What do you mean, you saw him visually? What did
8 you see?

9 A Okay. Okay. The Pro V, the office down in the
10 jailhouse, each time you come in it, you've got these
11 cubicles. It's about four or five cubicles. There was a
12 man and a lady. They were talking to Ms. Rice right
13 there. But I didn't know who he was. I didn't know he
14 was the prosecutor. I thought he was her attorney come
15 and visit her. How -- how I -- now I know who he --
16 Mr. Moyer is. When I come to the trial, I say, "This is
17 the same man who is prosecuting me who was down there
18 talking to her."

19 Q Okay.

20 A And him and an older -- an older white lady, a lady
21 that looks like she might be in her 50s and said is an
22 investigator when they was at trial, they both had her in
23 a cubicle.

24 (WHEREUPON, Applicant's Exhibit No. 6 was marked for
25 identification.)

1 Q Mr. Barton, I'm handing you Applicant's 6 and ask
2 that you take a look at that and tell us what it is.

3 A That's showing a visiting list the same day that I
4 came down in the cubicle about the same time with
5 Mr. Moyer and his -- Mr. Moyer's on here, and he came to
6 visit Patricia Rice at -- the time is 10:30. And it's
7 July 8, 2010, the same day that she came to see me.

8 MS. HORLBECK: All right. We'd ask that that be
9 moved into evidence, Judge.

10 MS. RATIGAN: Same objection as before, Your Honor.
11 It's hearsay.

12 THE COURT: Let me see it.

13 MS. RATIGAN: It hasn't been authenticated, and it's
14 not relevant whether or not the prosecuting attorney
15 visited with one of his witnesses prior to trial.

16 MS. HORLBECK: It is a copy that's certified for
17 court.

18 THE WITNESS: What I'm alleging is he -- he
19 allowed ---

20 THE COURT: All right. Don't say anything.

21 THE WITNESS: Yes, sir.

22 THE COURT: All right. I'll allow it in.

23 (WHEREUPON, Applicant's Exhibit No. 6 was admitted into
24 evidence.)

25 ///

1 (WHEREUPON, Applicant's Exhibit No. 7 was marked for
2 identification.)

3 BY MS. HORLBECK:

4 Q Mr. Barton, I'm handing you a copy of Applicant's 7,
5 and I just ask that you take a look at that and tell us
6 what that is.

7 A This is an affidavit -- this is something that came
8 from -- it came from Mr. Moyer, and it's going to Chris
9 Posey. And he's telling her -- telling him that he's
10 going to drop charges against Ms. Rice, you know. He
11 says with her approval. But from the way -- from the way
12 I understand it that once a person's indicted, the
13 prosecution don't -- don't supposed to have no more
14 contact with them no way, no type of interrogation
15 without the presence of a lawyer. Chris Posey definitely
16 was not there. He was not there. The only person that
17 was there was Mr. Moyer and his investigator. And
18 Ms. Rice had been formally indicted.

19 MS. HORLBECK: We move that into evidence, Judge.

20 MS. RATIGAN: I have no objection, Your Honor.

21 THE COURT: Applicant's 7 is admitted.

22 (WHEREUPON, Applicant's Exhibit No. 7 was admitted into
23 evidence.)

24 BY MS. HORLBECK:

25 Q All right. Now, back to Ms. Rice and her testimony.

1 Did your attorney make any objection or any argument
2 about the change -- or the change in the story? Did you
3 take the stand or anything to correct it? I don't think
4 you did.

5 A I didn't -- I didn't -- I didn't take the stand.
6 She -- neither did she make no objection. And she knew
7 he had been down there because once he left, I told her
8 that Patricia Ross is down there in the cubicle talking
9 to somebody, but I didn't -- I didn't know it was
10 Mr. Moyer. I didn't know he was the prosecutor.

11 So now she said -- she asked me, she said, "Are you
12 saying Patricia is in here with us now in a cubicle?"

13 I said, "Yeah. She down -- about four cubicles
14 down."

15 She said, "Well, I'm going to go down here, and I'm
16 going to go down here and talk to her." She went down
17 there to talk to her. And I don't know what was said,
18 but they talked.

19 Q Okay. All right. And did Ms. Ross, do you recall
20 whether or not Ms. Ross questioned Ms. Rice about a CDV
21 charge?

22 A I knew -- I know Ms. Ross, she brought that up at
23 trial.

24 Q All right. Who was the -- the CDV charge, was that
25 regarding Ms. Rice or was that regarding you?

1 A She was -- she brought -- she brought up that ---

2 Q Who is she?

3 A Ms. Ross. Ms. Ross brought up questioning Ms. Rice,
4 whether or not that she had charged me with a CDV charge
5 in the past.

6 Q Whether Ms. Rice had charged?

7 A Ms. Rice. Whether Ms. Rice.

8 Q Okay. All right. And did you have an allegation
9 about that line of questioning that Ms. Ross engaged in?

10 A Well, not really. Not that, no.

11 Q No? Is that an issue that you didn't want to ---

12 A No. I'm just saying, yeah, not that. Because, I
13 mean, you know, she -- she put that out there, so there
14 ain't -- ain't nothing I can say about that, you know.
15 I'm -- that's -- that's -- that's not the issue I'm
16 arguing.

17 Q I see. Go ahead.

18 A The issue -- the issue that -- what I just brought
19 up is about the perjured testimony on the stand against
20 Ms. Ross -- I mean against Ms. Rice. So therefore,
21 before I move to another -- before I move to another
22 issue, I think that needs to be closed up.

23 Q All right. Well, let's close it out.

24 A Yeah.

25 Q Whatever else you've got to say about that

1 particular issue, say it.

2 A What I'm saying is I believe that had not -- had she
3 objected to it, then -- or there's a reasonable
4 probability the outcome in my case would have been
5 different because I plainly told her that ain't had no
6 truth to it. That didn't have -- didn't have no truth.
7 But just like I say, Mr. Moyer, that was his witness.
8 That's the State witness that he put up and allowed her
9 to testify and to testify under perjury. Just like I say
10 Mr. Jones -- you say Mr. Jones, that Mr. Jones can verify
11 that Patricia Rice --

12 Q We'll get to that, okay?

13 A Right.

14 Q We'll let him testify.

15 All right. So are you ready to move on to the next
16 issue?

17 A Yes, ma'am.

18 Q All right. The issue, would that be the issue about
19 the testimony Ms. Ross elicited regarding a CDV charge?
20 No? What's your next issue then?

21 A My next issue is she failed to object to
22 impermissible testimony that was inadmissible when
23 Ms. Rice was on the stand and Mr. Moyer questioned her
24 about -- Mr. Moyer questioned her about dismissing
25 charges, something about a CDV. And she responded about

1 that I had been incarcerated, that I had been
2 incarcerated, I had been doing time. And, like I say,
3 that's -- that's a violation of the rules of evidence
4 because I never took the stand, I never put up any
5 evidence, and I never put up any character witness one
6 way or the other. And, you know, under the rules of
7 evidence, they're not allowed to attack my character.
8 That's like Lyles vs. State.

9 Q All right. And did Ms. Ross request a mistrial when
10 that testimony was elicited?

11 A Ms. Ross never objected, the judge never gave a
12 curative instruction, and that right there is clearly
13 prejudicial -- prejudiced the jury because, basically, it
14 took them away from what the real issue was, that I'm
15 being charged for armed robbery. Now they're exposing to
16 the jury that I've been incarcerated and I'm doing time
17 for something that's clearly not admissible one way or
18 the other. And then it's an unspecified crime.

19 Q Okay. All right. And how did that prejudice your
20 case and affect the outcome of your case? How would your
21 case, the outcome have been different if she had objected
22 or the case had been mis-tried?

23 A Well, I state that Ms. Ross' performance and
24 representation was deficient and prejudicial. Had she
25 not made those -- those errors, there's a reasonable

1 probability the outcome would have been different.

2 Q All right. Do you want to move onto the next issue?

3 A Yes, ma'am.

4 Q Okay. Which one is that?

5 A I'm trying -- I'm trying to see because -- because
6 you kind of like -- kind of like got me kind of like
7 thrown off a little bit.

8 THE COURT: Get Mr. Barton another cup of water. If
9 you'd pour him another cup of water.

10 THE WITNESS: Thank you, Your Honor. I appreciate
11 it.

12 The next issue that I would like to move onto is she
13 failed to object to -- she failed to object to the
14 prosecution on -- or causing the jury -- let me see. Let
15 me make sure I'm phrasing it right. The next one is
16 because she failed to object to the prosecution closing
17 statement intended to inflame the passions of the jury
18 through intimidation, and it prejudiced them. Because in
19 Mr. Moyer's closing remark, and it's in the transcript,
20 page 28 on line 3 and 8, he told the jury that they
21 wanted the real robber, but you didn't want him out in
22 the street doing God knows what in a neighborhood next to
23 yours. So he want to let them know that, basically, in
24 other words is, you know, you want -- you want to get him
25 because he'd be out there robbing in the neighborhood

1 next to yours. And, basically, that's -- that's what he
2 was using, some type of intimidation. And that's --
3 that's -- that's a violation of -- of the prosecution not
4 supposed to ---

5 BY MS. HORLBECK:

6 Q Did your attorney object to that ---

7 A No, ma'am.

8 Q --- or request a mistrial?

9 A She failed to object.

10 Q All right. How did that change the outcome of your
11 case?

12 A Had she objected to those -- those comments made by
13 the solicitor, there's a reasonable probability the
14 outcome would have been different.

15 Q Okay. All right. What else did you have to say
16 about that issue? Anything?

17 A No, ma'am. I'm just -- see, I had a little format,
18 but you kind of like done threw me off. So now I have to
19 try and look and see what we were going over and what we
20 hadn't gone over.

21 Q Well, let me just ask you some things. Did you also
22 have an allegation that your attorney failed to request a
23 missing witness jury instruction?

24 A Yes, ma'am.

25 Q All right. Tell the Court about that.

1 A The person that -- the man that's on the witness
2 list, Amilcar Perez, he has fingerprints through this
3 whole case from ---

4 Q And that's the victim's brother?

5 A That's the victim's brother.

6 Q Okay.

7 A From the time of the first responder -- from the
8 time of the first responder, he's been translating all
9 this stuff for all the police that's been on the case.
10 That's been documented through -- through to my trial.
11 Okay. Now, then he also goes down to the police
12 department, he translate through a photo lineup, this and
13 that.

14 Now, his brother cannot speak English. The police
15 he's dealing with can't speak Spanish. So everybody is
16 counting on him to come through this whole thing to tell
17 their side of the story.

18 But one reason that I believe that the solicitor
19 chose not to bring -- chose not to bring Mr. Amilcar
20 Perez in to testify is simply because the fact that he
21 would have hurt [sic] his case. He would have hurt his
22 case because Mr. Amilcar Perez gave the police a
23 description that the perpetrator, the robber, was 25 to
24 30 years old, and I'm 52 years old. And Mr. Justin --
25 the police officer Justin Lanford testified to that. By

1 him testifying to that to police and Ms. Ross asking,
2 "Are you sure this is what was said?" say, "Yes, I'm
3 sure," everybody in the case said that he speaks perfect
4 English, he speaks perfect Spanish, but somehow, they try
5 to get the victim Edwin Perez to change his sorry. Oh,
6 no, I didn't say that. So therefore, if he had have been
7 brought in -- he had have been brought in, he would have
8 hurt the case because he had done already gave the
9 statement ---

10 Q All right.

11 A --- that his brother told him that.

12 Q And when he didn't -- when that witness did not
13 testify, did you talk about that with Ms. Ross and talked
14 to her about requesting a charge about that?

15 A Ms. Ross -- Ms. Ross -- Ms. Ross knew this herself
16 simply because the fact she mentioned it -- she mentioned
17 it in her closing. She tried to tell the jury is that
18 they knew this man would hurt their case, that they knew
19 that if they had brought the brother in, he would have
20 hurt her case because she told him, said, "If my brother
21 got robbed, this and that, I surely would be there. He
22 can't speak English. I surely would be there to support
23 him on the day of trial."

24 Q Okay.

25 A But she failed to request the missing witness

1 charge.

2 Q Okay. And so the jury was never instructed ---

3 A No.

4 Q --- about that. All right.

5 And how do you think that changed or prejudiced the
6 outcome of your case?

7 A I believe that that prejudiced me that I know her
8 performance was deficient, and I believe that that
9 prejudiced me because had she requested this charge, then
10 the jury would have followed the instruction through the
11 judge of the charge, there's a reasonable probability the
12 outcome of my case would have been different.

13 Q All right. You also raised an allegation about
14 Ms. Ross not objecting to the wording and testimony of
15 *Mugshot Magazine* evidence?

16 A Yes, ma'am.

17 Q All right. Tell the Court about that.

18 A There's a case called State vs. Legare, L-E-G-A-R-E,
19 and any time that you come that it's been brought into
20 court and -- okay. Now, the judge ruled on my -- in my
21 -- in my Neil vs. Biggers hearing that this mug shot
22 thing was not going to be admitted. It was not going to
23 be admitted. So he done already told them that the mug
24 shot is not going to be admitted, but yet, though, when
25 they go into trial, the prosecution constantly using the

1 word "mug shot," "*Mugshot Magazine*." He used that word
2 eight times which has a negative connotation --
3 connotation. That implication implicates that a person
4 being locked up, put in jail, mug shot, that's -- because
5 that's where the picture come from. I think Ms. Ross
6 used the word 25 times.

7 Q Okay. All right. Just so we can explain the
8 relevance of the *Mugshot Magazine*, why is that important?
9 And what is *Mugshot Magazine*?

10 A *Mugshot Magazine* is the picture that -- that
11 somebody -- somebody, probably a police officer done
12 figure out a way to make some money, I'm just saying, to
13 print people that's get arrested. Like -- like I don't
14 know if you call them nosy people, people that read the
15 *Inquirer*, it's just something to read to keep up who's
16 been locked up or who's been put in jail, da, da, da, da.

17 And this -- this thing was never entered into
18 evidence. Ms. Ross took the mug shot, and she asked the
19 police, "Well, is this the picture here?" But the
20 solicitor objected, but the judge just, oh, well, he can
21 look at it.

22 But it's been clearly ruled that this is not into
23 evidence. It's not into evidence. Nobody attempted to
24 bring it into evidence, but they were allowed to -- he
25 was allowed to use the words.

1 Then the solicitor and defense witness, they agreed
2 that they wouldn't use the word "mug shot" because of the
3 negative connotation. They would just say "photos." And
4 they just threw "mug shot" around the whole time in
5 trial.

6 Q All right. Well, it's important because the
7 allegation is that the victim had seen your picture in
8 *Mugshot Magazine*. Is that true or not true?

9 A Sure, sure.

10 Q Is that what happened?

11 A Yeah. He -- he seen my picture. He saw -- he
12 had ---

13 Q Who's "he"? Who is "he"?

14 A Edwin Perez.

15 Q The victim?

16 A Edwin Perez ---

17 Q The victim?

18 A --- the victim. He somehow got his hand on a mug
19 shot of me in the *Mugshot Magazine* within the same month
20 -- within ten days of it being printed, and some kind of
21 way -- that was the same picture they used to identify me
22 in the photo lineup from -- from the mug shot.

23 Q Okay.

24 A So he had a picture at his house for five months.
25 He was able to study the picture very good ---

1 Q Okay.

2 A --- so when they did the photo layout on me, they
3 used the same picture, which, you know, is -- is
4 automatic. I mean, you know, I can see a picture of
5 anybody that I don't know, but if you keep showing me the
6 picture, I'm going to know it.

7 Q All right. Did the prosecutor provide a letter to
8 Ms. Ross with the *Mugshot Magazine* picture and also the
9 lineup shown to the victim, to your recollection?

10 A Yeah. From what I -- from what I seen -- from what
11 I've seen, the prosecutor told -- sent Ms. Ross a letter,
12 and she showed me the letter right before trial. I only
13 saw the letter right before trial.

14 (WHEREUPON, Applicant's Exhibit No. 8 was marked for
15 identification.)

16 Q Take a look at Applicant's 8 and let me know if
17 that's what you saw.

18 A Right, right, right.

19 Q Tell me, what's in Applicant's 8?

20 A This here is -- this is the letter from Mr. Moyer
21 telling Ms. Ross ---

22 Q And then flip the page. What's behind that first
23 page?

24 A --- that the victim had a picture of me through the
25 *Mugshot Magazine*. And that's what this is. This is a

1 picture of *Mugshot Magazine*, and this is the letter from
2 Mr. Mark Moyer saying that the victim had clearly
3 identified me as the person who committed the robbery
4 from the *Mugshot Magazine*.

5 MS. HORLBECK: Okay. And I would move that into
6 evidence, Judge.

7 MS. RATIGAN: I have no objection.

8 THE COURT: It's admitted.

9 (WHEREUPON, Applicant's Exhibit No. 8 was admitted into
10 evidence.)

11 MS. HORLBECK: Thank you, judge.

12 BY MS. HORLBECK:

13 Q All right. So you're objecting to the use of the
14 word "*Mugshot Magazine*"? Is that what your objection is?

15 A I'm just saying that she failed to object to the
16 wording of *Mugshot Magazine* when the judge told them
17 clearly that this was not admitted. The magazine -- if
18 the magazine is not admitted, then they shouldn't be able
19 to talk about the magazine.

20 Q Okay. All right. And how do you think that
21 prejudiced the outcome of your case?

22 A I believe that her performance and representation
23 was deficient, and I believe had she objected to this,
24 there's a reasonable probability the outcome of my case
25 would have been very different.

1 Q Okay. All right. And there was also an allegation
2 that you raised in your petition about Investigator Mike
3 Jarvis' testimony and counsel's failure to object to
4 that?

5 A Well, I was trying to -- that's -- that falls to --
6 that falls to the preliminary hearing. Because the
7 testimony that he gave in the preliminary hearing, he
8 didn't give those same preliminary -- he didn't give that
9 testimony in trial. He didn't give -- he changed the
10 whole different story.

11 Q Tell us, you were at the preliminary hearing,
12 correct?

13 A Yes, yes.

14 Q All right. What was the testimony at the
15 preliminary hearing?

16 A The testimony -- the testimony at the preliminary
17 hearing is that he testified that I was -- that he had --
18 that he had a statement from the codefendant that said
19 that I was the person who put the knife to the man's
20 throat, to the victim Edwin Perez' throat. And I know
21 from the statement that the codefendant, Patricia Rice,
22 gave, it didn't say that. It said that I never saw him
23 with a knife.

24 Q All right. Do you know what the -- did the victim
25 in the case make a statement, to your knowledge?

1 A Not -- the victim in the case testified into trial,
2 but I never seen a -- no sworn statement. He didn't have
3 no sworn statement. He didn't -- he didn't have none of
4 that when he went to the magistrate to get the warrant.

5 Q You mean sworn statement from the victim?

6 A No. The victim, I've never seen no sworn statement
7 from no victim. They got that then. They kept that,
8 too. As far as I know, I never seen no statement from no
9 victim. The only thing I know is what his brother
10 translated to Officer Lanford. And he was saying that
11 the perpetrator was 30 -- 25 to 30 years old. That's all
12 I know.

13 Q Uh-huh. Okay. All right. And so your allegation
14 is that Investigator Jarvis presented perjured testimony
15 or incorrect facts to get the warrant?

16 A It wasn't no incorrect fact. Investigator Jarvis,
17 he committed perjury because he know that -- he know that
18 the codefendant statement did not say that. He went back
19 in order to get -- to get to the highest degree of charge
20 that he could get, because it's hard to get an armed
21 robbery charge if you ain't got no weapon. I mean, I'm
22 not saying that -- I know the law says you can be
23 indicted for it, but if you ain't got no weapon, nobody's
24 seen no weapon, it's going to be pretty hard to get a
25 conviction. It's going to be pretty hard even to get the

1 indictment.

2 What I'm saying, he went with intention of malice to
3 tell the lady that he had -- he told us that I have a
4 statement from the codefendant, Patricia Rice, stated
5 Bobby Barton is the person who put the knife to the man
6 throat. He also testified to this in the preliminary
7 hearing. He testified in the first preliminary hearing.

8 And that's when I went back to the magistrate,
9 Letonya Simmons, and showed her that he didn't have what
10 -- that he -- that he lied to get this warrant. But she
11 signed it. So she set up for me to have a second
12 preliminary hearing. And that's where we had the
13 opportunity to even get that thrown out right there.

14 But ---

15 Q Okay. And did you file a complaint against
16 Investigator Jarvis and also a motion for an evidentiary
17 hearing and a motion to suppress improper evidence?

18 A Yes, I did. Yes, ma'am. But Ms. Ross refused to
19 argue them. She didn't want to look at nothing that has
20 to do with Investigator Jarvis.

21 (WHEREUPON, Applicant's Exhibit No. 9 was marked for
22 identification.)

23 Q All right. Mr. Barton, are these what you filed in
24 Applicant's 9? You can take that clip off as long as
25 you ---

1 A That looks like what it is. Yes, ma'am. That's --
2 that's what it is.

3 MS. HORLBECK: I just move these into evidence,
4 Judge.

5 MS. RATIGAN: I would object based on relevance,
6 especially because these are pro se filings that he
7 attempted to make while he was represented by Ms. Ross.
8 That's violating representation. She would have been
9 under no obligation to pursue any kind of pro se filings,
10 and I just don't think it's relevant to the issue at
11 hand.

12 THE COURT: Let me see it. Yeah. I'm not going to
13 allow 9 into evidence.

14 MS. HORLBECK: Thank you, Judge.

15 THE COURT: Tell you what. Let's take a break about
16 10 or 15 minutes.

17 (WHEREUPON, a recess is taken at 11:15 a.m.)

18 THE COURT: All right. We're back on the record of
19 Bobby J. Barton, Barton vs. State.

20 Ms. Horlbeck, you can continue with your questions.

21 BY MS. HORLBECK:

22 Q Mr. Barton, you also raised an allegation that
23 Ms. Ross failed to request a cautionary instruction
24 charge. Tell the Court about that.

25 A Yes, ma'am. Ms. -- my codefendant, Patricia Rice,

1 she qualifies as an accomplice, accessory or principal to
2 this crime through her own testimony of being present
3 when the crime took place. She knows what happened. And
4 she even admits out of her own mouth that she did not
5 contact the police or anybody, so, basically, she's
6 trying to conceal the crime -- or the alleged crime. So
7 therefore, she qualifies as an accomplice simply because
8 of the fact it says she can be qualified if she could
9 have been indicted, but she was not -- could have been.
10 She was indicted. So therefore, basically, the testimony
11 that she gave, even though it was perjured, she has some
12 type of -- she has some type of motivation for testifying
13 against me. And it should have been brought to the
14 jury's attention that her testimony should have been
15 taken with some type of caution.

16 Q Okay. And her failure -- Ms. Ross' failure to
17 request that instruction, how did that impact your -- the
18 outcome of your trial?

19 A Well, like I say, her performance concerning that,
20 it was deficient, and it prejudiced me simply because of
21 the fact had she made those -- made those requests for
22 those charge, there's a reasonable probability that the
23 outcome would have been different just like in Cavanetti
24 vs. United States.

25 Q Uh-huh. Okay. All right. What other allegations

1 did you have to make today?

2 A I'm trying to think. The one -- the other one that
3 -- that I was -- that I intended to make was prosecution
4 committed misconduct, and Ms. Ross failed to object to
5 allowing the prosecution to make the photo array -- photo
6 array layup on me fundamentally unfair simply because the
7 fact that the solicitor, being the head in charge of this
8 investigation of -- of my case, he had a duty and an
9 obligation to the police just like they have a duty
10 obligation to him, left hand know what the right hand's
11 doing at all time. He states on record -- he states on
12 record that he knew -- he knew that the victim had a
13 picture of me from the photo layup, and he readily admits
14 that, and he has a letter.

15 But the problem was that he had a problem with the
16 identification, 25 to 30. So in order -- in order to
17 bring me to trial, he had to substantiate identification
18 process. So therefore, five months later, they had to do
19 identification part of a photo array. He had a duty and
20 an obligation to contact the police to ensure that they
21 do not use the same photo of me that was in the mug shot
22 that he knew that the man had. He know by him not
23 identifying there was a reasonable probability that they
24 would use this photo if he didn't contact them knowing
25 that if the victim, Mr. Perez, seen this photo, it's

1 going to jump off of the page at him, this is the same
2 photo I got at home of him. This is the guy.

3 And then you've got police who can't speak English,
4 a victim who can't -- police who can't speak Spanish, a
5 victim who can't speak English, and a -- and a -- and a
6 mysterious brother who never surfaced but is always
7 talked about.

8 Q Okay. Did you have any other allegations to raise
9 that you haven't already discussed?

10 A No, ma'am. That's -- that's -- that's -- that's
11 basically it.

12 But still, like I say, had she objected to this,
13 this misconduct, there is a reasonable probability that
14 the outcome of my case would have been different because,
15 basically, he took off. There was nothing fair about it.

16 MS. HORLBECK: Okay. All right. Please answer any
17 questions Ms. Ratigan may have.

18 MS. RATIGAN: I have no cross, Your Honor.

19 THE COURT: All right. Thank you, Mr. Barton. You
20 can step down.

21 THE WITNESS: Thank you for that water Judge. I
22 appreciate it.

23 THE COURT: Thank you. Hope it made you feel
24 better.

25 MS. HORLBECK: Judge, we would call Mr. Mark Moyer.

1 WHEREUPON,

2 LESTER MARK MOYER

3 After having been duly sworn, testified as follows:

4 THE CLERK: State your full name for the record,
5 please.

6 THE WITNESS: Lester Mark Moyer.

7 DIRECT EXAMINATION

8 BY MS. HORLBECK:

9 Q Mr. Moyer, you were the prosecutor that prosecuted
10 Mr. Barton in the trial of this case?

11 A That's correct.

12 Q All right. And did you ever meet with the victim,
13 Mr. Edwin Perez, during the case?

14 A I did.

15 Q All right. And do you know what month and year,
16 just approximately, that you would have met with
17 Mr. Perez?

18 A The trial was August of 2010; is that correct?

19 Q Yes.

20 A Okay. It would have been either July or June. It
21 was in the months preceding. I don't know the exact
22 date.

23 Q Did you meet with Mr. Perez one time or more than
24 one time?

25 A I believe twice.

1 Q All right. And I think you said that Mr. -- or in
2 the letter you had said that Mr. Perez had told you soon
3 after that he had seen Mr. Barton's photograph in the
4 *Mugshot Magazine*?

5 A He did not tell me soon after, so I didn't know
6 about the *Mugshot Magazine* until just a month or two
7 before the trial.

8 Q Okay.

9 A Then we had some trouble finding him at first, and
10 then I had Investigator Jarvis go out and find him. And
11 so, like I said, the month or two leading up to the
12 trial, he came in and met with me. And it was at that
13 time that he told me that within a few weeks after the
14 arrest of this defendant, he was in this convenience
15 store. He just happened to be at the checkout line and
16 happened to pick up this *Mugshot Magazine*, looked through
17 it, and there he saw the guy who robbed him.

18 Q Okay.

19 A And at this point, the defendant had been arrested
20 based on the codefendant's statement.

21 Q Okay.

22 A So they arrested the codefendant. She identified
23 this defendant. This defendant was arrested, and that's
24 how his photo got in the *Mugshot Magazine*. And then the
25 victim just happened to see it.

1 Q All right. And when in all this did the victim --
2 was the lineup arranged for the victim to look at?

3 A The lineup -- I believe the lineup was in January.
4 I sent -- okay. After the preliminary hearing, which I
5 did not attend, I got notes back from the -- from my
6 coworker who handled it. And the notes -- from the
7 notes, I could see that this was going to be an identity
8 issue. I could see there were a lot of questions from
9 defense counsel about identity.

10 So at that point, I sent an e-mail to my
11 investigator. I said, "I think we probably ought to go
12 ahead and just do a photo lineup. It looks like identity
13 is going to be the issue."

14 And I think the photo lineup was done in January; is
15 that right? I sent the e-mail to the investigator
16 probably in November asking him to do that. I'm not sure
17 if you need to know those dates or not. If so, I could
18 look through ---

19 Q Go ahead. If you know them.

20 A It was in January that the photo lineup was done.
21 And that -- just within a -- I don't know.

22 Q January of 2010 or 2011?

23 A Well, the trial was 2010, right?

24 Q So January 2010.

25 A It would have been 2010.

1 Q Okay. And Mr. Barton was arrested -- do you
2 remember?

3 A I sent the e-mail to the investigator in November of
4 2009, and then the photo lineup -- we got the victim in
5 to do the photo lineup in January. I was not a part of
6 that. I was not present. They just sent me a copy of
7 the photo lineup afterwards.

8 Q All right. And what is the -- do you recall the
9 date of Mr. Barton's arrest?

10 A The arrest was in August of 2009.

11 Q Okay. All right. And I'm going to hand you
12 Applicant's 8, just ask you to take a look at that.

13 A Yes. That's the letter I wrote.

14 Q All right. And did you say in that letter that you
15 were advised -- the victim advised you shortly after
16 Mr. Barton's arrest that he had seen a photo of
17 Mr. Barton in *Mugshot Magazine*?

18 A Yeah. That's not what I said. I said the victim
19 told me that shortly after the arrest, he saw the
20 photograph. He didn't tell me shortly after. He told me
21 that -- so, I don't know. Maybe it's not worded as
22 clearly as it could be. But when I met with him in June
23 of 2010, at that time, he told that shortly after the
24 arrest took place is when he saw the photo lineup -- I
25 mean when he saw the *Mugshot Magazine*.

1 Q Okay. All right. But you didn't -- you're saying
2 you didn't find out about this *Mugshot Magazine* situation
3 until about a month prior to trial?

4 A It probably was -- exactly. It was June -- I sent
5 the letter June 25th, and I'm sure that was within days
6 of when I found out.

7 Q All right. And do you recall during the trial of
8 the case the victim stating that he found the *Mugshot*
9 *Magazine* photo in his yard, not in the store?

10 A I don't recall that. I thought he said he saw it at
11 the store. That's the way I remember it. But I have not
12 seen the transcript of the trial.

13 Q All right. And did you have any -- did you have any
14 concerns about the identification being faulty?

15 A I did not.

16 Q Okay. Did you believe that you had any kind of duty
17 or obligation to let the police know not to use this
18 *Mugshot Magazine* photo in the lineup that was shown to
19 the victim?

20 A Once again, when the lineup was shown, I didn't know
21 about the *Mugshot Magazine*. So I didn't -- so the lineup
22 was in January of 2010. I didn't know about the *Mugshot*
23 *Magazine* until June when I met with the victim. And
24 that's when he said that he had seen that *Mugshot*
25 *Magazine*. So . . .

1 Q You knew about Ms. Rice having a conviction for a
2 false statement or false information -- is it false
3 statement to police?

4 A I don't remember all the details.

5 Q Okay.

6 A But I did run a rap sheet, which I gave to
7 Ms. Ross.

8 Q Right.

9 A So whatever was on the rap sheet, I knew about.

10 Q Based on that conviction that she had on her rap
11 sheet, did you believe you had an obligation to -- did
12 you have any question about the truthfulness of her
13 testimony such that you had any concerns about her
14 perjuring herself?

15 A No, I did not. I met with her several times, and I
16 did not have any -- I did not have any doubts that she
17 was telling me the truth about that night.

18 MS. HORLBECK: That's all I have. Thank you.

19 THE COURT: Ms. Ratigan?

20 MS. RATIGAN: I don't have any cross, Your Honor.

21 THE COURT: All right. Thank you, Mr. Moyer. You
22 can step down.

23 THE WITNESS: Thank you, Your Honor.

24 MS. HORLBECK: Judge, we would call Mr. Aaron Jones.
25 He's out in the hall. I'll go grab him.

1 WHEREUPON,

2 AARON JONES

3 After having been duly sworn, testified as follows:

4 THE CLERK: Please state your full name for the
5 record.

6 THE WITNESS: All right. My name is Aaron Leonard
7 Jones, Junior.

8 DIRECT EXAMINATION

9 BY MS. HORLBECK:

10 Q Mr. Jones, do you know Bobby Barton?

11 A Yes, ma'am.

12 Q How long have you known Mr. Barton?

13 A Probably about 40 years.

14 Q All right. And how old are you just without ---

15 A I'm 54.

16 Q So you've known Mr. Barton for a while.

17 Do you also know Ms. Rice, Ms. Patricia Rice?

18 A Yes, ma'am.

19 Q Okay. And did you have the -- do you recall July
20 the 25th, 2009?

21 A Yes, ma'am.

22 Q Okay. Did you see Mr. Barton and Ms. Rice that day
23 or that night?

24 A Yes, ma'am.

25 Q All right. Tell me about that. What time -- what

1 time would you say that you saw Mr. Barton and Ms. Rice?

2 A It had to be about 1:00, 1:15, 1:30. Something like
3 that.

4 Q In the afternoon or evening?

5 A No, ma'am. It was at night.

6 Q All right. And where were you when you saw
7 Mr. Barton and Ms. Rice?

8 A I was over at a friend dude of mine house.

9 Q And speak up a little bit. I'm having a little
10 bit ---

11 A Yeah. I was over at a friend dude house of mine.

12 Q And make sure you speak slowly because it's a little
13 bit hard to understand you.

14 You said you were where?

15 A Over at a friend's house of mine.

16 Q Okay. And just speak into the microphone a little
17 bit.

18 Do you know the address of that -- of where you
19 were?

20 A No, ma'am. I can't remember the address, but I
21 stayed there about two years with him.

22 Q Okay. All right. And what was going on? How did
23 you have the opportunity to see Mr. Barton and Ms. Rice?

24 A Well, at this time in my life in 2009, I was -- I
25 was on drugs, and I had a -- a friend had a house, you

1 know, that people come and buy drugs at.

2 Q Right. Okay. All right. And so what was
3 Mr. Barton and Ms. Rice doing when you saw them? Where
4 were they?

5 A They had knocked on the door.

6 Q All right. And? And what happened when they
7 knocked on the door?

8 A Mr. Barton asked for me.

9 Q Okay. And?

10 A And I opened the door and let him in.

11 Q Okay. All right. And how long -- did Mr. Barton
12 and Ms. Rice, did they stay or did they leave right away?

13 A They stayed for about 40 -- probably about 40
14 minutes, 30 or 40 minutes.

15 Q All right. And when -- did they leave after about
16 30 to 40 minutes?

17 A Yes, ma'am.

18 Q All right. Did Mr. Barton and Ms. Rice leave
19 together?

20 A Yes, ma'am.

21 Q Do you know where Mr. Barton and Ms. Rice went after
22 they left?

23 A From what I understand, they went to this lady
24 house.

25 Q To a -- to where?

1 A To this lady trailer.

2 Q Okay. Do you know where that trailer's located?

3 A Yes, ma'am. She -- she died about two months ago,
4 the lady did.

5 Q Where's that lady's -- the dead lady's trailer?
6 Where was it located in relation to the residence you
7 were at that night of the 25th?

8 A If you -- I'd say about 50 yards. If you go through
9 the woods, you can come right to the -- to the trailer.

10 Q Okay. All right. And when Mr. Barton and Ms. Rice
11 left the residence where you were, where did they go, to
12 your knowledge?

13 A They went to that lady's trailer.

14 Q All right. And do you -- all right. And did you
15 ever see them again that night, Mr. Barton and Ms. Rice?
16 Did you see them at all the rest of the night?

17 A After -- after they left, I saw Bob about two times.
18 He came back about two times.

19 Q Okay. Did you see Ms. Rice?

20 A No. But I knew she was at the trailer.

21 Q How do you know?

22 A Because he told me that.

23 Q Okay. Who?

24 A Bob did.

25 MS. HORLBECK: Beg the Court's indulgence.

1 BY MS. HORLBECK:

2 Q Do you know how long Mr. Barton and Ms. Rice were
3 together the early morning hours of the 25th of July
4 2009?

5 A From my recollection, I think they stayed together
6 all that night till the next morning.

7 Q All right. How do you know that?

8 A Because I think I seen him. He came around to the
9 apartment around about 8:00 -- 7:30, 8:00.

10 Q In the morning of the 25th?

11 A Yes, ma'am. Yes, ma'am.

12 Q Okay. And so how do you know Ms. Rice was still
13 with him at that point?

14 A He told me that. I knew she was there because I
15 went by there later on.

16 Q And when you went by the trailer later on, who did
17 you see?

18 A Patricia was still with him.

19 Q Patricia Rice?

20 A Yes, ma'am.

21 Q All right. And when you say Patricia Rice was still
22 with Mr. Barton, where was she when she was still with
23 him?

24 A At the girl's trailer.

25 Q Okay. And they were -- Mr. Barton and Ms. Rice were

1 together?

2 A Uh-huh.

3 Q All right. As late as -- as late as what time on
4 the 25th?

5 A That had to be about 7:30, 8:00.

6 Q In the morning of the 25th?

7 A Yes, ma'am.

8 Q Okay. All right. And the -- I can't remember. I
9 think I asked you this. I can't remember what your
10 answer was. What was the address of the residence you
11 were at on the 25th, the early morning hours of the 25th?

12 A I don't know. Where I was living at?

13 Q Where you were staying when you saw Mr. Barton.

14 A I can't remember that.

15 Q Do you have just a street or something?

16 A What's the name of that road? I've been on it a
17 million times and walked it a million times.

18 Q If you don't know, that's all right.

19 A Yeah. I can't remember that.

20 MS. HORLBECK: All right. That's all I have. Thank
21 you.

22 THE COURT: Ms. Ratigan?

23 MS. RATIGAN: Thank you, Your Honor. May it please
24 the Court.

25 ///

CROSS EXAMINATION

BY MS. RATIGAN:

Q Mr. Jones, why do you remember this day in particular?

A Because 2009 I was living with my friend for about two years, and I -- I just about rented the house.

Q So you were there every single day for two years?

A Yes, ma'am.

Q You never left the house?

A Yes. I left the house. I came to jail a few times, you know.

Q But why do you remember this particular day of July 25th? How can you know for absolute certainty you were there?

A Well, how I remember it so vividly, because me and Bob go so back so far that when he knock at the door, me and him usually have some fun. So when he knocked that night, you know, I knew it was going to be we were going to have some fun.

Q So you definitely remember seeing him. But what I'm saying is how do you know it was this date and not, you know, July 1st or September 2nd? How do you know it was this day?

A That's a good question. But I know it was -- because when Bob came to my -- to my trailer, he had on

1 one shoe and one shoe off.

2 Q But why did that mean to you that it was July the
3 25th?

4 A I couldn't really give you an answer.

5 Q Okay. And your testimony is that you were doing
6 drugs at the time?

7 A Yes, ma'am. 2009.

8 Q Okay. So especially since you were on drugs at the
9 time, how can you be sure of either the date or the time
10 that Mr. Barton came to the trailer?

11 A Because he was on a -- it was on a Friday night, and
12 that's a pretty good night, you know. I remember a whole
13 lot. And plus I had about four other of my good friends
14 there, too.

15 Q But how do you remember it was at 1:15? Why do you
16 know it was that time in particular?

17 A Because my lady had came by about 12:30 just to
18 check up on me, and I stood outside with her for about
19 15 minutes. And I remember when she left, it was time
20 for me, you know, to party again because my lady was
21 gone. So ---

22 Q So even though you were on drugs at the time, you
23 remember all these dates and times pretty well?

24 A Yes, ma'am.

25 Q Okay. And your testimony is, during the nighttime

1 hours, you saw them -- you saw Ms. Rice and Mr. Barton
2 together for 30 minutes?

3 A Yeah. They stayed by the house about 30, 40
4 minutes.

5 MS. RATIGAN: That's all I have Your Honor,

6 MS. HORLBECK: Just briefly.

7 THE COURT: All right.

8 REDIRECT EXAMINATION

9 BY MS. HORLBECK:

10 Q To your knowledge, was Mr. Barton arrested and
11 charged with this offense shortly after you saw him?

12 A Yes, ma'am. I think about three -- three days or
13 so. Something like that.

14 MS. HORLBECK: Okay. All right. That's all I have.
15 Thank you.

16 THE COURT: All right. You can step down,
17 Mr. Jones.

18 THE WITNESS: Thank you.

19 THE COURT: Thank you.

20 MS. HORLBECK: That's all we have, Judge.

21 THE COURT: All right. Ms. Ratigan?

22 MS. RATIGAN: Thank you, Your Honor. We would call
23 Ms. Ross.

24 ///

25 ///

1 WHEREUPON,

2 SUSANNAH ROSS

3 After having been duly sworn, testified as follows:

4 THE CLERK: Please state your full name for the
5 record.

6 THE WITNESS: Susannah Conyers Ross.

7 DIRECT EXAMINATION

8 BY MS. RATIGAN:

9 Q Ms. Ross, do you recall representing Mr. Barton on
10 this charge?

11 A I do.

12 Q And were you appointed or were you retained?

13 A I was appointed.

14 Q Was that through the Public Defender's Office?

15 A Yes. I had a contract with them.

16 Q Did you file the usual Brady and Rule 5 motions?

17 A Yes.

18 Q Did you receive those materials from the State?

19 A Yes.

20 Q And to the best of your recollection or knowledge,
21 did you receive full discovery from the State?

22 A Yes.

23 Q Did you review those materials with Mr. Barton?

24 A Yes. My records reflect that on October 5th I wrote
25 "Pro V, defendant wants a copy of prelim, wants trial,

1 says not guilty, wants discovery."

2 Q What year would that be?

3 A Let's see. I think it was '09.

4 Q Okay.

5 A And so in response to that, I have a note from my
6 paralegal, "10/15 made a copy of discovery for SR to give
7 defendant." And then on 10/16, the next day, I wrote,
8 "Gave defendant copy of discovery." And I noted,
9 "Wouldn't shut up."

10 So I don't think we got a chance to actually review
11 the discovery together. I gave him a copy, and then he
12 would just go on and on about how it was wrong and what
13 was wrong with it.

14 Q Okay. During your meetings with Mr. Barton, did you
15 explain to him the elements and the sentence ranges for
16 armed robberies and the weapons charge?

17 A Yes.

18 Q Did Mr. Barton tell you his version of what had
19 happened that night?

20 A Yes.

21 Q Did he provide you the names of any witnesses that
22 he wanted you to contact?

23 A I have on 8/12 right after I was appointed, I have
24 "Pro V, PR and prelim," my bond request. "Guy in cell,
25 John Henry, knows about the case." And so I noted that.

1 And in response to that, I would have followed up,
2 but I don't have any independent recollection of what
3 happened. There are no notes to reflect my follow-up.
4 My guess is that he proved not, in my opinion, to give
5 something that would be worth bringing him in to testify.

6 Q Were you present a minute ago for Mr. Jones'
7 testimony?

8 A Yes.

9 Q Did Mr. Barton ever ask you to contact Mr. Jones, to
10 the best of your recollection?

11 A My notes don't reflect that, and so I don't recall.

12 Q I'm just going to go ahead and move through the
13 issues as Mr. Barton raised them. The first issue he
14 raised was about a plea offer. Do your notes reflect --
15 or let me back that up a little bit. Did you receive a
16 plea offer from Mr. Moyer?

17 A I did.

18 Q And what was the date of that offer?

19 A Let's see. I didn't grab an offer letter. I do
20 have a couple of just sentencing sheets.

21 MS. RATIGAN: Let me see if this might help.

22 May I approach, Your Honor?

23 THE COURT: Yes. You may.

24 BY MS. RATIGAN:

25 Q I'm handing you Applicant's Exhibit 1. Does that

1 look like the offer letter you received from Mr. Moyer?

2 A It sure does.

3 Q And what's the date of that letter?

4 A January 11, 2010.

5 Q And what was the substance of that offer? What was
6 the State willing to do?

7 A A strong arm. And at some point, I'm not sure if
8 it's on there, they were willing to do either a
9 recommendation of 15 suspended to 8 or straight up.

10 Q Do your notes reflect going to meet with Mr. Barton
11 to convey that offer?

12 A They do. On January 29, 2010, I wrote, "Pro V,
13 argument with defendant." And then, again, "Won't shut
14 up. Threatening to file charges against me. Tried to
15 explain plea offer. Said solicitor could kiss his ass."
16 So that was my notes from that day.

17 Then I got a letter on March 22nd, an e-mail from
18 Mark Moyer saying, "I'm going to assume he wants a trial
19 if he won't go ahead and sign up."

20 I have a March 25th note reflecting, "Defendant
21 refuses transport to discuss case." So he was refusing
22 to talk to me about the case.

23 And I do make my clients aware of the charges and
24 their plea offers. I'm very thorough about that and
25 understand that it's misconduct not to do that.

1 Q So you would have explained to him that this was
2 strong arm, this was different from armed robbery?

3 A Absolutely. And maybe I should have had more
4 specific notes on that, but I would have. And that
5 strong arm is the one that carries up to 15. He seemed
6 to testify, he might have a better recollection than I do
7 of that exact meeting, but I was talking about the
8 maximum for strong arm, not armed robbery.

9 Q Okay. At any point, did Mr. Barton ever ask you to
10 either get the offer back or say that he wanted to take
11 advantage of that offer?

12 A No. He had a couple bond cards where they would
13 have offered transport or to bring him up, and he was
14 adamant, no. Later on, no.

15 Q Now, the next issue, basically, had to do with
16 keeping him reasonably informed of the status of the
17 case. He stated that you stopped going to see him.
18 Would that be because he refused to see you?

19 A Yes.

20 And we do have -- again, the policy in the office
21 was you had to take phone calls. My policy has always
22 been upon first meeting to state if someone calls and
23 asks for a jail visit, I put or have my investigator or
24 assistant put the file in a special go-visit-at-the-jail
25 file that I have, which I'd go and visit about every

1 other week if someone was in there.

2 Q Now, your notes reflected that in March of 2010 he
3 refused transport to discuss the case. When is the --
4 when does your file reflect is the next time you went to
5 visit him or went to speak to him?

6 A July 9th.

7 Q And what was the purpose of that meeting?

8 A Just my notes just say, "Call solicitor. Ask him
9 for all codefendant plea offers." I was asking for a
10 color lineup copy, Pro V, defendant does not want to
11 testify and prefers no defense, to have final closing.
12 So I don't know if that answered the question.

13 Q Okay. That's good enough.

14 Let's see. Issue 3 was about discovery. In your
15 opinion, did you give Mr. Barton a full copy of his
16 discovery prior to trial?

17 A Yes.

18 And as far as a copy of the plea offer, I don't know
19 whether -- I didn't have the plea offer when I initially
20 gave him all the discovery.

21 Q So you don't know if that would have been in that
22 packet or not?

23 A No.

24 Q Issue 4, Mr. Barton states you did not object to
25 testimony by Ms. Rice regarding -- basically, the gist of

1 the argument seems to be that Mr. Moyer violated the
2 rules by eliciting testimony by Ms. Rice about that false
3 statement conviction. Was there any reason to object to
4 Mr. Moyer questioning of Ms. Rice on that issue?

5 A No. I didn't see any reason. If I missed
6 something, then . . .

7 Q Would Ms. Rice having a prior conviction for false
8 -- giving a false statement have been helpful to your
9 case, in your opinion?

10 A Yes.

11 Q Okay. The next issue is the confrontation clause
12 issue. Did Mr. Moyer ever state why he did not call the
13 victim's brother, do you remember?

14 A I don't remember.

15 Q Did you believe that the victim's brother would have
16 been an important witness for the trial?

17 A Not for the defense. I didn't believe he would help
18 the case.

19 Q Do you remember discussing the issue of the victim's
20 brother with Mr. Barton?

21 A I don't -- I don't have any -- there's nothing in my
22 notes about that.

23 Q Okay. Let's see. The next issue, Mr. Barton states
24 that, at one point, during one of your meetings with him,
25 that he also saw Mr. Moyer meeting with his codefendant

1 and that he told you about this. Do you recall that?

2 A Uh-huh. Yes.

3 Q And did you, in fact, confirm that Mr. Moyer had
4 been meeting with Ms. Rice?

5 A Yes.

6 Q And did you ascertain the reason behind that
7 meeting?

8 A Yes. I believe a couple days prior to that, and I
9 see a letter in my file, Mr. Moyer had told me that he
10 was dismissing charges against Ms. Rice. He attached a
11 letter he sent to Mr. Posey, Ms. Rice's defense attorney,
12 explaining his reasons for dismissing that charge, and
13 that it was a few days later that he met with her.

14 Q Did you see any basis for any kind of objection or
15 challenge based on the fact that the assistant solicitor
16 met with the codefendant?

17 A No. I mean, I think it's pretty clear he had
18 Mr. Posey's permission to meet with the codefendant.

19 Q Now, the next issue, Mr. Barton states that at one
20 point, Ms. Rice was questioned about dismissing the CDV
21 charge, and she stated that Mr. Barton had been
22 incarcerated. Do you recall that coming out at the
23 trial?

24 A I do. I looked over it in the transcript when he
25 said that.

1 Q And would it be correct that that appears to be on
2 redirect of Ms. Rice?

3 A Right. It was in response -- her response to one of
4 my questions, though I don't -- I didn't specifically ask
5 her to give that response. And I did not object. It
6 wouldn't -- maybe I should have, but when I'm asking
7 questions and I object to my own questions, I think it
8 looks bad and brings more attention to the statement than
9 it needs to. So sometimes it outlines it to the jury
10 that this is a big deal that they heard that when I stand
11 up and object and raise Cain about it.

12 Q So would you say that it was just kind of a quick
13 passing comment that she made?

14 A Yes.

15 Q Okay. Let's see. The next issue is that Mr. Moyer
16 stated in closing argument some comments that Mr. Barton
17 believes caused the jury to be inflamed. I believe it
18 had to do with do you want this type of person in your
19 neighborhood. Do you remember that happening during the
20 closing arguments, those comments by Mr. Moyer?

21 A I don't remember it, but I looked at it on the
22 transcript when he said that. And at first, when you
23 read it, on one page it looks like it might have been a
24 violation of the Golden Rule, but, however, when you go
25 back and see what he's talking about, he's talking about

1 the victim. He's not saying you would be worried about
2 your neighbors to the jury. He's saying a victim would
3 be worried to have this person in the neighborhood so
4 they wouldn't lie and finger someone else. So I don't
5 think, based on that, that it would have been
6 objectionable.

7 Q Okay. Let's see. The next issue is -- had to do
8 with the missing witness jury instruction. Did you ever
9 contemplate, because the victim's brother did not
10 testify, asking the judge to issue some kind of jury
11 instruction about that?

12 A No, I didn't.

13 Q Do you believe it would have been helpful to have
14 such an instruction?

15 A No. But I'll add, I put a note on 8/10, I think it
16 was the day of the trial, "Defendant refuses to let me
17 argue strong arm and ask for an instruction." I had been
18 suggesting to him that maybe, given the testimony at
19 trial, having the jury have an option of strong arm may
20 be helpful to him, and he said "no." So that was the
21 instruction that I left out that may have been helpful to
22 his case, but he didn't want me to argue that.

23 Q Okay. Let's see. The next issue had to do with the
24 *Mugshot Magazine*. Mr. Barton states that both you and
25 Mr. Moyer mentioned the magazine numerous times

1 throughout trial. You litigated this issue in the Neil
2 vs. Biggers hearing; is that correct?

3 A Yes.

4 Q And the judge ultimately decided that the lineup was
5 admissible; is that correct?

6 A Uh-huh.

7 Q But that the magazine was not; is that fair to say?

8 A Yes.

9 Q Okay. Do you recall there being mention of the
10 magazine after the Biggers hearing?

11 A Yes. I felt that was central to his defense.
12 Without the magazine, it would seem that the victim rode
13 around the neighborhood, pointed at the codefendant, they
14 found her, codefendant gave a statement against Bobby
15 Barton and then victim later picked out Bobby Barton from
16 a lineup, and he was picked up with a knife. So those
17 things were, I thought, some strong evidence. And the
18 only way I could discredit the lineup and the
19 identification of Mr. Barton was to argue that it was
20 just because of *Mugshot Magazine*.

21 Q And the next issue has to do with the preliminary
22 hearing. Were you present at the preliminary hearing?

23 A Yes.

24 Q Do you routinely order transcripts from preliminary
25 hearings?

1 A No.

2 Q Do you recall whether Investigator Jarvis'
3 statements at the preliminary hearing differed from his
4 testimony at trial?

5 A I don't recall. I do recall Mr. Barton's argument
6 about that, that the warrant was illegal. And I didn't
7 think there was merit to that argument.

8 Q And did you explain to Mr. Barton your reasoning
9 behind why you felt that was not a good argument?

10 A I would have attempted to. I don't have anything
11 specifically in my notes about that.

12 Q Would it be fair to say that it could sometimes be
13 difficult to engage with Mr. Barton about his case?

14 A Yeah, yes. And to the point where I had discussions
15 with John Mauldin, my boss at the time.

16 THE COURT: All right. Hold on just a minute.

17 MS. HORLBECK: He's got to use the restroom. Sorry.

18 THE COURT: All right. Let's take a quick break.

19 (WHEREUPON, a recess is taken at 12:13 p.m.)

20 THE COURT: For first the record, we took a short
21 break. Mr. Barton needed to be -- needed to go to the
22 restroom. He is now back in the courtroom. We didn't
23 do anything outside of his presence. He's back in his
24 seat.

25 And, Ms. Ratigan, you can resume your questions.

1 MS. RATIGAN: Okay. Thank you, Your Honor.

2 BY MS. RATIGAN:

3 Q I believe we were just discussing, Ms. Ross, that it
4 could be difficult to engage with Mr. Barton?

5 A It could be. And I discussed the issue with my boss
6 whose position was that, at that point, someone else --
7 it would just move on to someone else, and that as long
8 as I felt like I could defend him, that I needed to stay
9 with the case.

10 Q And did he subsequently file anything with the
11 office of disciplinary counsel?

12 A Yes. He filed a grievance.

13 Q And what was the disposition of that?

14 A It was dismissed.

15 Q All right. Two more issues that Mr. Barton raised
16 and then I'll be finished. His 12th issue was that you
17 should have requested a cautionary instruction charge,
18 basically, that the jury should be advised that Rice's
19 testimony should be taken with a form of caution. Is
20 that the type of charge you would ever request?

21 A No.

22 Q Do you believe it would have been a value in this
23 case?

24 A No.

25 Q Okay. And the last issue, Mr. Barton alleges there

1 was prosecutorial misconduct in this case because the
2 State knew that the photo used of him in the lineup was
3 the same photo as in the magazine. I'll take this in a
4 couple parts. Do you believe that constitutes
5 prosecutorial misconduct?

6 A No. I guess it could if he knew it was inherently
7 prejudicial, but I don't think that applied in this case.

8 Q Did you have any evidence before you or anything,
9 really, to indicate that Mr. Moyer was aware of this
10 magazine prior to the lineup being put together?

11 A No. In fact, I was surprised by the lineup. We
12 were in a bond hearing when suddenly this lineup came
13 in. I didn't even know a lineup had been made. And I
14 think that was before I heard anything about *Mugshot*
15 *Magazine*.

16 Q And Mr. Barton has made, both in his application and
17 today, some various allegations of various forms of
18 prosecutorial misconduct. In your opinion, was there
19 anything, any behavior by the State that rose to the
20 level that you could have made a viable objection based
21 on prosecutorial misconduct?

22 A I didn't believe there was.

23 MS. RATIGAN: That's all I have, Your Honor.

24 THE COURT: Thank you.

25 Ms. Horlbeck?

CROSS EXAMINATION

BY MS. HORLBECK:

Q All right. Ms. Ross, you said that there was a note, I think, that your secretary had placed in your file that Mr. Barton requested a copy of the prelim?

A Yeah. I think I remember -- I don't remember where that was. I think -- I wrote a note that on 10/5, Pro V, defendant wants a copy of prelim, wants trial, said not guilty, wants discovery.

Q All right. A copy of prelim, what would that mean? A transcript or ---

A Yeah. I guess a copy of the preliminary hearing.

Q All right. Did you and Mr. Barton discuss his reasons for wanting a copy of the transcript of the prelim?

A Probably, but I don't recall. It's not in my notes.

Q Okay.

A I mean, I would think so. And I don't -- possibly I should have gotten one, but I would have gotten one if I thought there was any merit to his -- the reasons for him wanting one.

Q Okay. Did you request any funding for a transcript of the preliminary hearing?

A No.

Q Okay. To your recollection -- and you've said were

1 -- you attended the preliminary hearing, correct?

2 A I did.

3 Q Okay. I didn't know if this was the time when --
4 sometimes I know there's other attorneys at the office
5 that will handle those.

6 A Right.

7 Q But it was you that handled this one?

8 A Yes.

9 Q All right. Do you recall any testimony from
10 Investigator Jarvis that contradicted his testimony at
11 trial?

12 A I haven't looked over his trial transcript, but I
13 believe his testimony just stuck basically to exactly
14 what was in discovery, which he was just reading what was
15 in discovery, which would have been that he got the
16 warrant based on what Ms. Rice had told him.

17 Q Okay. All right. Did you feel that there was any
18 reason to challenge the contents of the affidavit that
19 they fill out to obtain the warrant?

20 A No.

21 Q Okay. All right. And you've described in your
22 testimony that Mr. Barton filed a complaint against you
23 with disciplinary counsel. Is it fair to say that you
24 and Mr. Barton had some disagreements over how to handle
25 the case and how to best prepare the defense?

1 A Yes.

2 Q Okay.

3 A His allegation, he was saying that the fact that
4 Ms. Rice knew him from the past was a huge issue, and
5 this was going back and forth, that I let the -- you
6 know, I let the cat out of the bag by saying that. In
7 fact, the solicitor was aware of that and told me so, and
8 said so during the -- I think at the trial. So I did not
9 think that was much of an issue.

10 Q Okay. All right. Conversations with Mr. Barton,
11 were they -- was it difficult to explain things to him
12 and to give him information such as the plea offer when
13 you would meet with him and try to discuss things?

14 A Yes. Only when he started hearing something he
15 didn't like, he would start talking. So the idea that he
16 did not understand that strong arm was the plea offer is
17 ridiculous. I would have made it abundantly clear to
18 him, because I would have loved to have pled him and be
19 done with it and not have to deal with him through the
20 trial like I had to.

21 Q All right. And so when you visited him to explain
22 the plea offer, do you have a copy of the plea offer in
23 your file?

24 A I purged my files, so I did not see.

25 Q Okay. When you say --

1 A I haven't really looked specifically, but I might
2 have sent him a copy of it.

3 Q What does "purge the file" mean?

4 A Oh, that just means to take almost everything out of
5 it. I mean, it used to be huge, and I took everything
6 out of it and mailed it to him and threw away case law
7 that I didn't need or copies.

8 Q Okay.

9 A Sorry.

10 Q No. That's all right. I understand. All right.
11 But you visited with him, and you say that you reviewed
12 the plea offer with Mr. Barton, correct?

13 A Here. And here's a copy of it in the file.

14 Q Oh, okay. All right. So there is a copy of the
15 plea offer in your file?

16 A Uh-huh.

17 Q All right. And you -- from your recollection of
18 your discussion with Mr. Barton about the plea offer, you
19 believe he understood that the State had offered to
20 reduce the charge to common-law robbery?

21 A Yes. And I -- this was so long ago, but I think
22 what I was talking about, really should have done better,
23 note, "Tried to explain plea offer. He said solicitor
24 could kiss his ass."

25 What he was talking about is I was arguing with him

1 saying the solicitor's -- you know, he's saying, "I
2 didn't have a knife. I" -- blah, blah.

3 Q Right.

4 A And then I'm saying the solicitor's not arguing
5 that. They're saying common-law robbery.

6 Q Okay.

7 A And I was trying to get that across. And I think I
8 -- I'm pretty sure I did.

9 Q All right.

10 A I mean, I wouldn't have left without making sure he
11 had an understanding of that plea offer.

12 Q All right. Do you believe Mr. Barton understood
13 that armed robbery had a mandatory minimum of 10 and a
14 maximum of up to 30?

15 A Yes.

16 Q All right. And do you believe that Mr. Barton
17 understood that the common-law robbery, which is what the
18 State was offering, had a totally different sentence
19 range?

20 A Uh-huh.

21 Q All right.

22 A It was up to 15. And that's what he was testifying
23 to before.

24 Q All right. Did you also -- were you also able to --
25 there's a little paragraph down here about the sentence

1 that the State was willing to recommend. Do you believe
2 that Mr. Barton understood that after your discussion? I
3 think the specific sentence that the State wanted to
4 offer was 15 suspended to 8 followed by probation or he
5 could plead straight up with no recommendation.

6 A I would have tried to do that, but I didn't put it
7 in my notes so I don't want to lie. But I pretty much
8 make sure that I extend the plea offers to my clients.

9 Q All right. I don't know whether you remember this
10 or not. Do you remember whether you provided a copy of
11 the plea offer to Mr. Barton?

12 A I don't know. I don't -- I'm not sure that I did.

13 Q Okay.

14 A It wouldn't surprise me if I didn't.

15 Q All right. You testified that Mr. Barton mentioned
16 a John Henry, a witness named John Henry that he had ---

17 A Yeah. At our first meeting.

18 Q All right. Were you able to discuss or find John
19 Henry and interview him?

20 A I don't recall independently whether I did or not.
21 I think -- I think John Henry was in the cell in that
22 whole group of cells with him and that I just spoke to
23 him then.

24 Q All right.

25 A So that's -- that's what I think, but I don't -- you

1 know, honestly don't have -- I spend a lot of time there,
2 so I don't have an independent recollection of that. If
3 I thought there was a witness, you know, that said,
4 "Bobby Barton's not guilty of this, someone else did it,"
5 or even, "He was with me," or anything that would help
6 the case, I would have tried to get him.

7 Q All right. And you mentioned that Mr. Barton had
8 been bond carded a couple of times and that Mr. Barton
9 was adamant, and then I didn't hear the rest of your
10 sentence. What was he adamant about?

11 A He was refusing transport.

12 Q Okay.

13 A So they're trying to take him to court to plea or
14 for me to say, "This is the last chance." And sometimes
15 -- I don't see it in his file. Sometimes I'll get
16 clients to sign something saying -- I hate doing that to
17 them, and I don't have anything in the file that I did
18 that.

19 Q Okay.

20 A But he would -- he refused transport. He wouldn't
21 come.

22 Q Okay. All right. And did the victim have an
23 interpreter at trial?

24 A I don't remember. Probably so, but I don't
25 remember.

1 Q Okay. Was it your understanding that the victim's
2 brother would be subpoenaed to court to testify at the
3 trial by the State?

4 A Well, after I -- he was on the witness list.

5 Q Uh-huh. All right. And when the -- about the
6 solicitor's questions on redirect regarding the CDV
7 charge, did you object -- I understand your explanation
8 about him not objecting to your question or that it
9 elicited or that it ---

10 A Uh-huh.

11 Q --- brought out the witness' testimony, but did you
12 object to the solicitor's question on redirect or request
13 a mistrial?

14 A No. I thought it was my questioning on redirect,
15 but I'm not sure where she said something about he was in
16 jail at the time. I did not object to that, and I did
17 not request a mistrial.

18 MS. HORLBECK: All right. Beg the Court's
19 indulgence.

20 BY MS. HORLBECK:

21 Q Let me think about how I can phrase this. And you
22 may have answered this already. You -- did you -- were
23 there any -- anything from the jail, anything in writing
24 stating that Mr. Barton refused to be transported to
25 court or did -- how did you obtain that information that

1 Mr. Barton refused transport?

2 A I don't know. I would think that when I'm asking
3 somebody up here, you know, where is he or asking Allison
4 where is he, why didn't he get here, someone, one of the
5 deputies, someone told me he'd refused transport. I
6 wouldn't have just made it up. And it's kind of locked
7 in, you know, kind of the middle of these notes.

8 Q Okay. Was there anything in writing?

9 A Hu-uh.

10 Q Okay. Do you have anything with Mr. Barton's name
11 on it showing that he refused the plea offer, to accept
12 the State's plea offer?

13 A No.

14 MS. HORLBECK: Thank you. That's all I have.

15 MS. RATIGAN: That's all I have, Your Honor. And
16 the State would rest.

17 THE COURT: All right. Thank you. Ms. Ross, you
18 can step down.

19 All right. Anything further, Ms. Horlbeck?

20 MS. HORLBECK: No, Your Honor.

21 THE COURT: All right. We'll take this under
22 advisement. And that will conclude the hearing for
23 today. Thank you.

24 MS. RATIGAN: Thank you, Your Honor.

25 *****END OF TRANSCRIPT OF RECORD*****

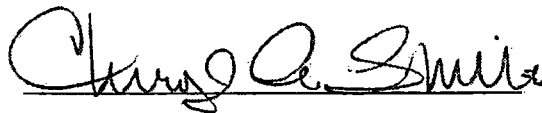
1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)4 COUNTY OF GREENVILLE)
5
6

7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 proceedings had and evidence introduced in the trial of
12 the captioned case, relative to appeal, in the Court of
13 Common Pleas for Greenville County, South Carolina, on
14 the 18th day of February, 2016.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.
17

18 June 20, 2016
19
20

21 
22

23 Cheryl A. Smith, CVR-M

24 Court Reporter
25

STATE OF SOUTH CAROLINA)

IN THE Common Pleas COURTCOUNTY OF Greenville)CASE NO(s). 2014-CP-23-5047

EXHIBITS RECEIPT

PLAINTIFF	<u>Bobby Barton</u>	PLAINTIFF'S ATTORNEY	<u>Cardine Horlbeck</u>
DEFENDANT	<u>State</u>	DEFENDANT'S ATTORNEY	<u>Karen Ratigan</u>
JUDGE	<u>Hall</u>	DATE OF HEARING	<u>2/18/16</u>

The following exhibits were received by me from Cheryl Smith, Court Reporter for the Thirteenth Judicial Circuit, on the 18th day of February, 2016.

They are, as follows:

ENTERED COMPUTER

Plaintiff / Petitioner / State Exhibits	Defendant / Respondent Exhibits	Court Exhibits
1 <u>Area offer</u> (ID/EV)	1 ID / EV	1
2 <u> Affidavit</u> (ID/EV)	2 ID / EV	2
3 <u>Visitation Sheet</u> (ID/EV)	3 ID / EV	3
4 <u>Letters from Bobby Barton</u> (ID/EV)	4 ID / EV	4
5 <u>State witness list</u> (ID/EV)	5 ID / EV	5
6 <u>GDC Inmate Visits</u> (ID/EV)	6 ID / EV	6
7 <u>7/10 letter from Mark Meyer to Christy</u> (ID/EV)	7 ID / EV	7
8 <u>Mugshot Magazine and cover letter</u> (ID/EV)	8 ID / EV	8
9 <u>Motions from Applicant</u> (ID/EV)	9 ID / EV	9
10 ID / EV	10 ID / EV	10
11 ID / EV	11 ID / EV	
12 ID / EV	12 ID / EV	
13 ID / EV	13 ID / EV	
14 ID / EV	14 ID / EV	
15 ID / EV	15 ID / EV	
16 ID / EV	16 ID / EV	
17 ID / EV	17 ID / EV	
18 ID / EV	18 ID / EV	
19 ID / EV	19 ID / EV	
20 ID / EV	20 ID / EV	
21 ID / EV	21 ID / EV	
22 ID / EV	22 ID / EV	
23 ID / EV	23 ID / EV	
24 ID / EV	24 ID / EV	
25 ID / EV	25 ID / EV	

Jan White
Clerk of Court

2-18-16
Date Received

RECEIVED
1/14/10

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

417

Telephone: 864-487-8647
Telefax: 864-487-8610



Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
Robert M. Ariail

1/11/2010

SUSANNAH ROSS
GREENVILLE COUNTY COURTHOUSE
ROOM 123 PUBLIC DEFENDER
GREENVILLE, SC 29601

RE: Plea Offer for State v. Bobby Joe Barton

Dear Susannah Ross:

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The State will reduce the following:

Warrant Number: Charge:

1478797 Armed Robbery

Plead to Charge:

to Common law robbery

The State will dismiss the following:

Warrant Number: Charge:

1478798 Possession of a weapon during violent crime

The State will make the following sentence recommendations/negotiation:

If defendant pleads guilty by the due date and agrees to cooperate with the prosecution of the co-defendant, if necessary, I will reduce the charge as indicated and recommend a sentence of 15 years, suspended on the service of 8 years, followed by probation. In the alternative, the defendant may plead without a recommendation. There will be \$500.00 restitution.

Other conditions/comments:

I have enclosed a copy of the sentencing sheet and restitution order.



Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 4/30/2010 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Yours very truly,


Mark Moyer
Assistant Solicitor

A F F I D A V I T

Affidavit in support that Trial Counsel did not adequately convey the State's formal plea offer to me;

Bobby Joe Barton, being duly sworn, deposes and say's:

- 1.) I am the applicant in the Post Conviction Relief application, and I make this Affidavit in support of my claim;
- 2.) I was formally charged with armed robbery and possession of a deadly weapon during the a violent crime on August 4, 2009;
- 3.) I was appointed Susannah C. Ross as Defense Counsel on August 12th, 2009. When she made the initial contact visit;
- 4.) On January 29th, 2010 appointed Attorney Susannah C. Ross stated to me that the prosecution were offering Fifteen (15) years without going into any details;
 - a.) Counsel never clarified the Fifteen (15) year Plea-Offer was for Common Law Robbery and not for Armed Robbery;
 - b.) Counsel never explained the Fifteen (15) years would be suspended to Eight (8) years, followed by probation;
 - c.) Counsel never explained the State would dismiss the Poss. of a deadly weapon;
 - d.) Counsel never showed the applicant the written Plea Offer or it's expiration date of April 30, 2010;
 - e.) Counsel never informed Applicant of His chances of winning a Jury Trial, versus accepting the Plea Offer for a Lesser Offense;
 - f.) Counselor Susannah C. Ross never made anymore contact with Applicant again until July 7, 2010.
- 5.) Applicant became aware of the Formal Plea Offer on February 2, 2011 after requesting client complete case file on January 6, 2011;
- 6.) Once receiving My case file and upon further examining the file's I learned that the States' Plea Offer was for Common-Law-Robbery and not for Armed Robbery as I was arrested and charged with: and:
- 7.) That if Counsel had properly explained that I'm faced with a serverer Offense and sentence if convicted following Trial, rather than accepting the Plea Offer of a Lesser Included Offense of Common-Law-Robbery, I would have accepted the Formal Plea Offer.



(a d d e n d u m)

W H E R E F O R E, The Plaintiff states that all the above
statements are factual and True.

1s/ 
Bobby Joe Barton #163629.
PERRY CORR. INST. (D-2-B-121)
430 OAKLAWN RD.
PELZER, SC 29669-9363.

Sworn To before Me this

9th, day of June, 2015
Tamara Ansell

Notary Public for South Carolina

My Commission Expires September 25, 2023

PJV004R

Greenville County Detention Center

Page 1 of 1

5/29/2014 5:22:30PM
Job Number 831822

Inmate Visits

421

Inmate 0241 BARTON, BOBBY JOE

Sex M Race B DOB [REDACTED]

Booked 08/04/2009

Cell

From Date	Time	To Date	Time	Type	Visitor	Status
08/06/2010	10:46	08/06/2010	11:38	Professional	ROSS, SUSANNAH	Visited
07/29/2010	10:23	07/29/2010	10:50	Professional	ROSS, SUSANNAH	Visited
07/08/2010	10:20	07/08/2010	11:52	Professional	ROSS, SUSANNAH	Visited
07/07/2010	10:35	07/07/2010	12:00	Professional	ROSS, SUSANNAH	Visited
01/29/2010	13:40	01/29/2010	14:56	Professional	ROSS, SUSANNAH	Visited
10/16/2009	12:46	10/16/2009	13:19	Professional	ROSS, SUZANNAH	Visited
10/05/2009	13:50	10/05/2009	14:55	Professional	ROSS, SUZANNAH	Visited
09/10/2009	14:14	09/10/2009	14:35	Professional	JONES, ANDREW	Visited
09/09/2009	10:30	09/09/2009	12:42	Professional	ROSS, SUZANNAH	Visited
08/12/2009	09:40	08/12/2009	10:40	Professional	ROSS, SUZANNAH	Visited

*****End of Report*****

GREENVILLE COUNTY
DETENTION CENTER - RECORDS
CERTIFIED COPY5/29/14
Current Date

421

JANUARY 6, 2011

(EXHIBIT-H) 4 PAGES

TO: SUSANNAH ROSS, P.D.

RECEIVED

OFFICE OF THE PUBLIC DEFENDER

JAN 07 2011

P.C.I. MAILROOM

FROM: BOBBY JOE BARTON #163629 (Q-1-208-B)

RE: REQUEST FOR COMPLETE CLIENT'S FILE

DEAR MS. ROSS,

AS A EX-CLIENT OF YOURS AND YOU
 BEING THE ATTORNEY THAT DEFENDED ME IN
 MY ARMED ROBBERY CHARGES, INDICTMENT
 NO. # 2009-GS-23-10018, I AM REQUESTING A
 COMPLETE CLIENT'S FILE WITH EVERYTHING
 THAT YOU HAVE. I AM REQUESTING NOTES, LETTERS,
 THE VICTIMS CRIMINAL HISTORY, RECORDS OF YOUR
 INVESTIGATORS FINDINGS, RECORDS OF THE TRIAL
 DOCKETS THAT I WAS PLACED ON FROM JULY 12 UP UNTIL
 AUGUST 9, 2009 AND ANY & EVERY RECORD IN MY FILE.
 AS A REMINDER THE STATE SUPREME COURT HAS
 HELD IN THE MATTER OF HADDOCK, 321 S.E.2D 601
(S.C. 1984) UNDER ATTORNEY AND CLIENT § 106
"CLIENT'S FILE BELONGS TO CLIENT AND
SHOULD BE RETURNED AT CLIENT'S REQUEST."
SUP. CT. RULES, RULE 32, CODE OF PROFESSIONAL

PAGE 1/2



RESPONSIBILITY DR 6-101(A)(3); RULES OF DISCIPLINARY PROCEDURE § 7 SUBDIVISION A(3). RESPECTFULLY SUBMITTED AND I ASK THAT YOU RESPOND IN A TIMELY MANNER.

SINCERELY,

Bobby Joe Barton, PROSE

CC: SUSANNAH ROSS, P.D.

JOHN I. MAULDIN, CHIEF P.D.

PAUL B. WICKENSIMER, CLERK OF COURT

BOBBY JOE BARTON, PROSE

RECEIVED

JAN 07 2011

PROOF-OF-SERVICE

P.C.L. MAILROOM

I HEREBY CERTIFY THAT ON THE 7TH DAY OF JANUARY, 2011, I SERVED THE FOLLOWING WITH A COPY OF "REQUEST FOR CLIENT'S FILE" TO SUSANNAH ROSS, P.D. - JOHN I. MAULDIN, CHIEF PUBLIC DEFENDER AND PAUL B. WICKENSIMER, CLERK OF COURT BY MAIL FROM PERRY CORRECTIONAL MAIL ROOM ADDRESSED AS FOLLOWS: OFFICE OF THE PUBLIC DEFENDER, 13TH STREET, GREENVILLE COUNTY COURTHOUSE (RM 123) #305 E. NORTH ST., GREENVILLE, SC 29601

Bobby Joe Barton

JANUARY 6, 2011

13TH CIRCUIT PUBLIC DEFENDER OFFICE
Greenville County Courthouse
305 E. NORTH ST. Suite 123
Greenville, SC 29601

TO: MR. JOHN I. MAULDIN, CHIEF PUBLIC DEFENDER
OFFICE OF THE PUBLIC DEFENDER

(429)

09-2213

FROM: BOBBY JOE BARTON #163629

25885

RE: REQUEST FOR COMPLETE CLIENT'S FILE FROM
ATTORNEY SUSANNAH ROSS; P.D.

: DEAR MR. MAULDIN,

AS AN EX-CLIENT OF THE PUBLIC DEFENDER'S OFFICE AND SUSANNAH ROSS REPRESENTED ME IN THE ARMED ROBBERY CHARGES, INDICTMENT NO. # 2009-GS-23-10018. I AM REQUESTING A COMPLETE CLIENT'S FILE WITH EVERYTHING THAT SHE HAS. I AM REQUESTING NOTES, LETTERS, DOCUMENTS, THE VICTIM'S CRIMINAL HISTORY, RECORDS OF YOUR INVESTIGATORS FINDINGS, RECORDS OF THE TRIAL DOCKETS THAT I WAS PLACED ON FROM JULY 12, UP UNTIL AUGUST 9, 2010, THE 911 RECORDS AND ANY & EVERY RECORD, ETC. IN MY FILE. AS A REMINDER THE STATE SUPREME COURT HAS HELD IN "THE MATTER OF HADDOCK, 321 S.E. 2d 601 (S.C. 1984)" UNDER ATTORNEY AND CLIENT CODE 106 "CLIENT'S FILE BELONGS TO CLIENT AND SHOULD BE RETURNED AT CLIENT'S REQUEST. SUP. CT. RULES, RULE 32, CODE OF PROFESSIONAL RESPONSIBILITY DR 6-101(A)(3); RULES OF DISCIPLINARY PROCEDURE § 7 SUBDIVISION A(3). RESPECTFULLY SUBMITTED AND I ASK THAT YOU RESPOND

PAGE 1/2

IN A TIMELY MANNER.

SINCERELY,

Billy Joe Barton, Pro Se

CC: SUSANNAH ROSS, P.D.

JOHN I. MAULDIN, CHIEF P.D.

PAUL B. WICKENSIMER, CLERK OF COURT

BOBBY JOE BARTON, PRO SE

PROOF-OF-SERVICE

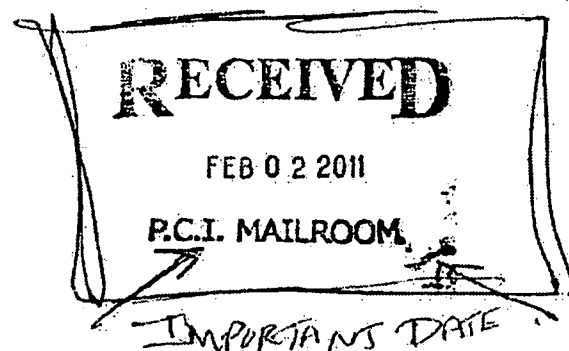
I HEREBY CERTIFY THAT ON THE 7TH DAY OF JANUARY, 2011. I SERVED THE FOLLOWING WITH A COPY OF "REQUEST FOR CLIENT'S FILE" TO SUSANNAH ROSS, P.D., - JOHN I. MAULDIN; CHIEF PUBLIC DEFENDER AND PAUL B. WICKENSIMER; CLERK OF COURT BY MAIL FROM PERRY CORRECTIONAL MAIL ROOM ADDRESSED AS FOLLOWS: OFFICE OF THE PUBLIC DEFENDERS, 13TH CIRCUIT, GVILLE COUNTY COURT-HOUSE (RM. 123), #305 E. NORTH ST., GREENVILLE, SC 29601

Billy Joe Barton

TR 3/II, 1-

4/26

13th Circuit Public Defender
Greenville County Courthouse
305 E. North Street, Suite 123
Greenville, SC 29601



Bobby Barton # 163629
PCI Q-2-B 15208
#430 Oaklawn Rd
Pelzer, SC 29669

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF GENERAL SESSIONS

The State)

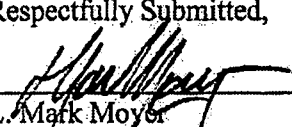
-vs-)

Bobby Barton,)
Defendant.)

STATE'S POTENTIAL
WITNESSES

1. Edwin Perez
2. Amilcar Perez
3. Patricia Rice
4. J.A. Lanford, Greenville County Sheriff's Office
5. Mike Jarvis, Greenville County Sheriff's Office
6. Tracy King, Greenville County Sheriff's Office
7. Johnny M. Brown, Greenville County Sheriff's Office

Respectfully Submitted,


L. Mark Moyer
Assistant Solicitor

Greenville, South Carolina



PJV004R

Greenville County Detention Center

Page 1 of 1

JMORAN

428

2/11/2016 10:47:14AM

Inmate Visits

Job Number 1364539

Inmate 0245 RICE, PATRICIA ROSALIND

Sex F Race B DOB [REDACTED]

Booked 08/03/2009

Cell

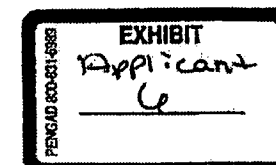
ID Pack# 0031656

From Date	Time	To Date	Time	Type	Visitor	Status
07/08/2010	10:00	07/08/2010	10:34	Professional	MOYER, MARK	Visited

*****End of Report*****

GREENVILLE COUNTY
DETENTION CENTER - RECORDS
CERTIFIED COPY

2-11-16 *[Signature]*
Current Date



429

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647
Teletac: 864-467-8610



Solicitor

Robert M. Ariall

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

July 9, 2010

Sent via US Mail and facsimile

Christopher T. Posey, Esquire
P.O. Box 426
Greenville, South Carolina 29602
Facsimile number: 233-5067

RE: State v. Patricia Rice
Warrant number I478795

Dear Chris:

As you know, I have been preparing for the armed robbery trial of Bobby Barton, scheduled for Monday, July 12. Your client, Patricia Rice, was charged with armed robbery along with Bobby Barton. My analysis of the case has led me to the conclusion that there is insufficient evidence to meet the burden of proof that your client is guilty of this charge. For that reason, I am dismissing the warrant.

With your approval, Ms. Rice has met with me to discuss the case. She has cooperated and is prepared to testify as a State's witness. However, I want to be clear that the reason for the dismissal is not because she has cooperated. And although I still intend to call Ms. Rice as a witness in the trial, the dismissal of the charge is not conditioned on her continued cooperation. Please feel free to call if you have any questions. With kind regards, I am

Truly Yours,

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

L. Mark Moyer
Assistant Solicitor



430

430

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

7-1-10

Telephone: 864-467-8647
Telefax: 864-467-8610



Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
Robert M. Ariail

June 25, 2010

Susannah Ross, Esquire
Greenville County Public Defender Office
Greenville County Courthouse
Room 123
305 East North Street
Greenville, South Carolina 29601

RE: State v. Bobby Barton

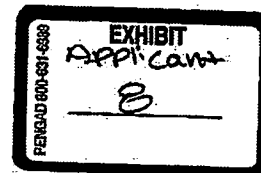
Dear Susannah:

The victim told me that shortly after the arrest of Bobby Barton, he saw Barton's photograph in the Mugshot magazine. I was able to get a copy of the August 10, 2009, edition of the magazine which contains the photograph of your client. I am enclosing it with this letter. With kind regards, I am

Truly Yours,

A handwritten signature in black ink, appearing to read "L. Mark Moyer", is written over the typed name.

L. Mark Moyer
Assistant Solicitor



MUGSHOT Magazine



Greenville Arrests

Sexual Conduct with Child

Willie D. Craine



Tim Kearns
Domestic Violence



Kenneth Knowles
Domestic Violence



Leven Lee
Domestic Violence



David Manteghi
Domestic Violence



Joshua Sanders
Domestic Violence



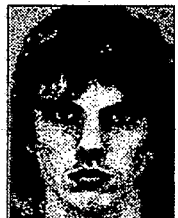
William Finch
Arson



Sergio Mendieta
Lewd Act On Child



Anthony Wallace
Criminal Sexual Conduct



James Benson
Peeping Tom



Daniel Cibulskis
Stalking



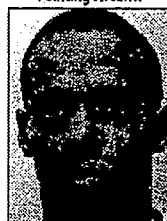
Tony Robinson
Felon Possession Of Firearm



Ed Holcombe
Pointing Firearm



Demetrius Jones
Pointing Firearm



James Hooker
Possession Of Firearm



Bobby Barton
Armed Robbery



Michael McClellan
Burglary



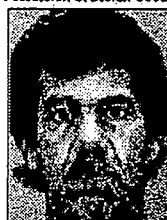
Richard McDowell
Burglary



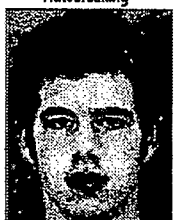
Anwar Doyle
Larceny



Mark Godfrey
Possession Of Stolen Goods



William Chambers
Autobreaking



John Austin
Shoplifting



Tommy Dooley
Shoplifting



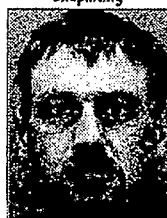
Isreal Escobar
Shoplifting



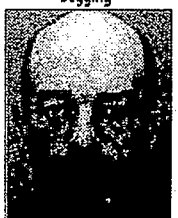
Charles Matt
Shoplifting



David Oneal
Shoplifting



Melvin Sims
Begging



GREENVILLE COUNTY SHERIFF'S OFFICE



Att King
*198/#620
01/08/10 1014 AM

Printed Friday, January 8, 2010 8:42 AM

(EXHIBIT-C) 5 PAGES & 5 EXHIBITS W/1 CERT. OF SERVICE

4333

FEBRUARY 14, 2010

TO: GREENVILLE COUNTY SHERIFF'S DEPT.
INTERNAL AFFAIRS DIVISION

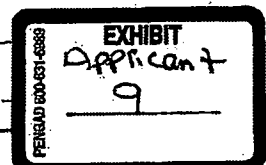
FROM: BOBBY JOE BARTON #241

RE: FORMAL COMPLAINT

TO WHOM IT MAY CONCERN,

I BOBBY JOE BARTON DO HEREBY WISH
TO FILE A FORMAL COMPLAINT WITH THE INTER-
NAL AFFAIRS DIVISION AGAINST SAID INVESTI-
GATOR MICHAEL JARVIS *484-622 OF THE GREEN-
VILLE SHERIFF'S DEPT. INVESTIGATION DIVISION
FOR OFFICIAL MISCONDUCT OPERATING IN BAD
FAITH OUTSIDE THE SCOPE AND PROFESSIONAL
ETHIC BECOMING AN OFFICER. THE COMPLAINTEE
STATES THAT HE CAN SUBSTANTIATE HIS CLAIMS JUST
AS SUBSTANTIATED IN "U.S. VS. GONZALEZ, INC.,
412 F.3d 1102, 1110-11 (9TH CIR. 2005) & U.S. VS. HAMMOND,
351 F.3d 765, 774 (6TH CIR. 2003). THE OFFICERS IN
BOTH CASES ACTED IN RECKLESSNESS CONCERNING MIS-
STATEMENTS AND FALSE STATEMENTS UNDER OATH
TO MAGISTRATE JUDGE L. T. SIMMONS ON AUGUST 3,
2009 IN OBTAINING A WARRANT FOR THE —

PAGE 1 of 5



COMPLAINTEFF FOR "ARMED ROBBERY". - CASE IN POINT, INVESTIGATOR M. JARVIS * 484-622 ARREST AN ALLEDGE CO-DEFENDANT NAME "PATRICIA RICE" FOR AN ALLEDGE "ARMED ROBBERY". MS. RICE IMPLICATED PLAINTIFF AS AN ACCOMPLICE.

MS. RICE GAVE A FIELD STATEMENT TO INV. M. JARVIS * 484-622 AS RECORDED ON A "GREENVILLE CO. SHERIFF'S SUPPLEMENTAL REPORT (#09000118309) ATTACHED (EXHIBIT-A). SHE STATES SHE NEVER SAW A KNIFE.

- UPON ARRIVING AT GREENVILLE CO. LAW ENFORCEMENT CENTER INV. M. JARVIS TOOK ANOTHER MIRANDARIZE STATEMENT FROM MS. RICE, SHE AGAIN IMPLICATES THE COMPLAINTEFF BUT STILL DENIES THE PLAINTIFF HAVING A KNIFE. (STATEMENT # 09-118309) ATTACHED (EXHIBIT-B) THE TIME REVEALS 12:45 PM ON AUGUST 3, 2009.

INV. M. JARVIS * 484-622 BEING ARMED WITH TWO STATEMENTS FROM ALLEDGE WITNESS "PATRICIA RICE" AN KNOWINGLY QUESTIONING HER HIMSELF. HE WENT BEFORE JUDGE L.T. SIMMONS WITH AN ARREST WARRANT AFFIDAVIT AND SWORE UNDER OATH THAT THE DESCRIPTION OF THE CRIME WAS WAS TRUE FROM CORROBORATION WITH WITNESS "PATRICIA RICE". IN PARAGRAPH DESCRIPTION, SENTENCE THREE -

OF WARRANT # I-478797 & # I-478798 (ATTACHED - EXHIBIT - C & D). INV. M. JARVIS FALSIFIED THESE AFFIDAVITS BY SWARING UNDER TO JUDGE L. T. STAMMONS THAT "QUOTE UNQUOTE, "THE DEFENDANT (BOBBY JOE BARTON) WAS POSITIVELY IDENTIFIED BY CO-DEFENDANT "PATRICIA RICE" IDENTIFYING THE DEFENDANT AS THE PERSON WHO PUT A KNIFE TO THE THROAT OF THE VICTIM AND ROBBED THE VICTIM OF HIS WALLET. THIS WARRANT AFFIDAVITS ARE FABRICATED IN PART AS CLAIMS OF A KNIFE. THE SOLE WITNESS IN BOTH STATEMENT DENIES VISUAL OF A KNIFE OR ANY OTHER WEAPON. THERE ARE NO WITNESS TO SUPPORT A WEAPON OF ANY CREDIBILITY.

THIS ACT WAS CLEARLY DONE IN RECKLESSNESS AND DISREGARD FOR JUSTICE AND IN BAD FAITH WITH MALICIOUS INTENT TO FALSELY PROSECUTE THE ACCUSED DEFENDANT WITH THE HIGHEST FORM OF ROBBERY "ARMED" WHICH IS A VIOLENT CRIME. HE ALSO THREW SOUND REASONING OUT THE WINDOW EVEN WHEN HIS WITNESS "PATRICIA RICE" STATES "SHE NEVER SAW ANY KNIFE YET THOUGH HE FABRICATED HER ACCOUNT IN ORDER TO SECURE AN ARMED ROBBERY WARRANT. EXHIBITS - A, B, C, D, & E, WILL SUBSTANTIATE OFFICIAL MISCONDUCT CLAIM AND OF PROFESSIONAL ETHICS RULES BECOMING AN OFFICER.

THE PLAINTIFF IN THIS ACTION SEEKS THAT THE

INTERNAL AFFAIRS DIVISION OF THE GREENVILLE COUNTY SHERIFF'S DEPT. INVESTIGATE MY CLAIMS AND UPON FINDING MY ASSERTION TO BE TRUTHFUL REPRIMAND THIS OFFICER AND PERSUADE HIM TO ADMIT HIS DELIBERATE WRONG DOINGS AND RECTIFY THE CHARGE TO THE ALLEGED PROPER CRIME THE DEFENDANT IS ACCUSED OF COMMITTING.

THE PLAINTIFF SEEKS TO HAVE THIS OFFICER TO BE REPRIMANDED TO THE HIGHEST LEVEL OF REPRIMAND BECAUSE "IF THE DEFENDANT ^(2ND) ~~COULD~~ ^(B.B.) BE CONVICTED OF ARMED ROBBERY, DEFENDANT COULD BE ELIGIBLE TO RECEIVE 25 YEARS TO LIFE SENTENCE". WHEN INV. M. JARVIS AFFIRMED THE TRUTHFULNESS OF HIS OATH TO JUDGE STIMMONS HIS INTENT WAS VERY APPARENT.

THE PLAINTIFF SEEK THAT THIS REPRIMAND BE DULY NOTED AND DOCUMENTED IN HIS PERSONEL FILE WITH HIS SIGNATURE REVEALING THAT HE OPENLY ACKNOWLEDGES HIS PUNISHMENT FOR HIS MISCONDUCT PRACTICE PERTAINING TO THIS CASE IN PARTICULAR.

THE PLAINTIFF STATES THAT THIS OFFICER HAS BEEN PLACED IN A POSITION OF TRUST AND THAT HE SHOULD BE HELD TO STANDARDS OF THE LAW LIKE EVERY OTHER CITIZEN.

HE SHOULD NOT BE ALLOWED TO CARRY OUT THE LAWS AS THEY DO NOT APPLY TO HIM, ETHICALLY OR OTHER WISE NOR BE ABOVE THE LAW BECAUSE HE IS PART OF THE LAW.

THE PLAINTIFF BELIEVES HE HAS PROVED HIS CLAIM AND SINCERELY PRAYS AND HOPE THAT THE INTERNAL AFFAIRS WILL COME TO A JUST DECISION AND APPROPRIATE ACTION ELIMINATING THE NEED TO PROCEED TO ANY LEVEL REMEDIES.

THANK YOU FOR YOUR ASSISTANCE RESOLVING THIS MATTER AND I LOOK FORWARD TO HEARING FROM YOUR OFFICE.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 16th DAY OF February, 2010
Colleen F. Rollins
NOTARY PUBLIC FOR S. CAROLINA
MY COMMISSION EXPIRES 10-17-2016

SINCERELY,
Bobby Joe Barton
BOBBY JOE BARTON, Pro Se

CC: G'VILLE CO. SHERIFFS DEPT. INTERNAL AFFAIRS DIV.
S. C. ATTORNEY GENERAL OFFICE
CLERK OF COURT (DOCKET #2009-GS-23)
BOBBY JOE BARTON

CERTIFICATE-OF-SERVICE

THE HEREBY UNDERSIGNED CERTIFIES
 THAT A TRUE AND EXACT COPY OF A FORMAL COM-BADGE
-PLAINT FOR OFFICIAL MISCONDUCT (M. TAYLOR) 484-622
 HAS BEEN MAILED TO GREENVILLE CO. INTERNAL AFFAIRS

ATTORNEY GENERAL OFFICE & CLERK OF COURT BY

THE UNITED STATES POSTAL AUTHORITY ON
FEBRUARY, 17 DAY, OF 2010, FROM
 THE GREENVILLE COUNTY DETENTION CENTER.
 (EXHIBIT-A, B, C, D, & E, ATTACHED)

SINCERELY,

Bella for Antura

SWORN TO AND SUBSCRIBED

BEFORE ME THIS 16th

DAY OF February, 2010

Colleen F. Rollins

NOTARY PUBLIC FOR SOUTH CAROLINA

10-17-2016

MY COMMISSION EXPIRES

Page #10

439

OF AGENCY I.D. Greenville County Sheriff's Office
SC0230000 SUPPLEMENTAL REPORT

CASE NUMBER

09000118309

☐ ORIGINAL REPORT ☒ STATUS CHANGE ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY

INCIDENT TYPE: **Armed Robbery** PATROL DISTRICT: **06** PAGE: **1** OF **1** PAGES

On 8/3/09, I attempted to make contact with the victim by telephone with no success. I responded to the incident location and made contact with the victim outside of his residence. I spoke with the victim at length about the incident. He stated that on the night of the incident, he was sitting outside of his residence, drinking beer. He stated that he was suddenly approached by an unknown black male and a black female. He stated that the black male put a knife to his throat and demanded his money. He stated that he gave the subject his money and then he started yelling. He said that when he started yelling, both the black female and the black male took off running. I asked him if he could describe either of the two subjects. He could not provide a whole lot further information on the male subject. He did however provide a better description of the female subject. He did state that she was familiar to him, and that she frequently walked through the trailer park, from the direction of Lanford Dr and Papermill Rd, just on the other side of the railroad tracks behind his residence. He described her as a skinny black female, about fifty years old, and that she usually wore her hair pulled back tight in a pony tail. He stated that she frequented the Lanford Dr and Papermill Rd area, which he knows to be a bad drug area. I asked him if he would recognize her if we rode around that area. He stated that he would. I drove the victim to the area. We turned on to Papermill Rd, from S. Fairfield Rd, and as we approached Landford Dr, we observed three black males and a black female standing out near the roadway by some trees. The female matched the description that he had initially given me. He quickly pointed out the female that was standing near the road as the female suspect who was with the black male when he got robbed. I kept an eye on the female and requested a marked unit to respond to the area to assist me in identifying this female. As C-28 (Deputy Brown) arrived on scene, I observed the female get in to the front passengers seat of a black, Chrysler Town and Country minivan. I followed the minivan until Deputy Brown could catch up to the vehicle and stop the vehicle. The vehicle was stopped on Evelyn Dr and Dixie Circle, after the driver failed to use a turn signal when turning right on to Evelyn Dr from S. Fairfield Rd. Deputy Brown made contact with the driver, while I made contact with the female passenger, who was identified as subject #1.

Subject #1: Patricia Rosalind Rice Black/Female Age: 53
DOB: [REDACTED]
Greenville, SC 29605 5'1"/100 Blk/Bro

Subject #1 Warrant: Armed Robbery

Warrant#I-478795

I asked for her verbal consent to search her purse for weapons and/or narcotics and she gave it. I found a crack pipe in the subjects purse. I advised the subject of her miranda rights and she advised that she understood her rights. I asked her about the night of the incident, and she did state that she had been present the night of the incident, but that she did not know what was about to happen. She stated that she was with subject #2, who she identified as the person with the knife who robbed the victim.

Subject #2: Bobby Joe Barton Black/Male Age: 51
DOB: [REDACTED]
Greenville, SC 29601 5'9"/185 blk/bro

Subject #2 Warrants: Armed Robbery

Warrant#I-478797

Possession of a Weapon During a Violent Crime Warrant#I-478798

She was placed under arrest and transported to the Greenville County Law Enforcement Center. I made contact with her in the Armed Robbery office. I again read her miranda rights, and she signed a waiver of rights and agreed to talk to me about the incident. She gave me a sworn statement about the incident. She admitted to being present during the robbery, but she said that she did not know what was about to happen. She states that she took off running when she saw subject #2 push the victim up against the trailer and tell him to "turn it loose". The victim, however, had indicated that she did not take off running, until after he started yelling. That she had been present with subject #2 up until then. Subject #1 identified subject #2 as the one who robbed the victim, but said that she never saw him with a knife during the incident. She did however state that she knows him to carry some type of hunting knife. I obtained the listed warrants for subjects #1 and #2. Subject #1 was arraigned and placed into detention in good condition. Warrants for subject #2 remain active.

EXHIBIT-A *

SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADMIN. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEARED UNDER 18 ☐ EX-CLEARED 18 AND OVER	
YES ☐ NO ☐		YES ☐ NO ☐							
REASON FOR EXCEPTIONAL CLEARANCE: ☐ OFFENDER DEATH ☐ NO PROSECUTION ☐ VICTIM/DECLINES COOPERATION ☐ EXTRADITION DENIED ☐ JUVENILE-NO ARREST									
REPORTING OFFICER(S)		DATE		UNIT NO. / STAR #		APPROVING OFFICER		DATE	
Inv Mike Jarvis *484		8/4/09		622		Sgt Tim Jones		8/4/09	
						FOLLOW-UP INVESTIGATION		☐ YES ☐ NO (OFFICER)	

DR-2-CA A.

3 copies

Page #16

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

09-118309

8/3/09

I, Patricia Rosalind Rice

Inv Mike Jarvis *484 622

do hereby give freely and voluntarily this statement to
and

who have identified themselves to me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement.

I am 52 years old, and I reside at:

I have a 11th grade education, and I can read and write.

I am giving this statement freely and voluntarily to Investigator Jarvis. I am in my right mind and know what I am doing. I am not under the influence of any drugs or alcohol at this time. I did have half of a beer early this morning at about 9:00AM, but that is it. It is about 12:45PM right now and I feel fine. I have not done any illegal drugs today, and I have not taken any prescription medicine today either.

About a week or so ago, on the weekend, I went up to the Pumpers at Hwy 25 and Augusta Rd. I don't know what time it was but I know that it was fixing to close, and it was night time. I was walking on my way back to my home, when I ran into a guy I know. His name is Bobby Joe Barton. I have known him since about 2001. He is always trying to be around me and wanting to be with me, but I don't like him like that. He started walking with me. We walked through a trailer park where a bunch of Mexicans live. Its a short cut to get to Lanford Dr and Papermill Rd. As we were walking, we saw a Mexican sitting out by one of the trailers. Bobby started talking to the Mexican, and it sounded like Bobby was talking in Spanish. The Mexican gave Bobby a beer and they sat there and drank it. I was telling Bobby that we needed to leave because I had to go to the bathroom. The next thing I know is that Bobby had the Mexican jacked up against the trailer, and Bobby was saying "turn it loose" I know that Bobby carries a hunting knife, and I didn't know what was going to happen, so I turned and ran. I didn't know he was going to rob the Mexican. I turned around and ran and got stuck in some bushes and lost my shoes, so I came back out of the bushes and walked back through the trailer park. I saw the Mexican and he was on the phone. I yelled at him that I didn't have anything to do with that, and he kept yelling at me "your friend, your friend!" I walked out to White Horse Rd, and I walked home to my house.

EXHIBIT-#B

-5 AUG 2009 15 49

I have read the above statement of 1 pages and it is true and correct as best I recall.

WITNESS:

XX

Inv Mike Jarvis *484 622

I HAVE RECEIVED A COPY OF THIS STATEMENT

XX

Sworn before me this day of 20

NOTARY PUBLIC FOR SOUTH CAROLINA

OF

Copies

ARREST WARRANT

I-478797

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE

09-118309

against

Bobby Joe Barton

Address [REDACTED] Ct Ext, Apt B35

GREENVILLE, SC 29601-

Phone. [REDACTED] SSN [REDACTED]

Sex M Race B Height 5 9 Weight 185

DL State SC DL # [REDACTED]

DOB [REDACTED] Agency ORI # SC0230000

Prosecuting Agency. Greenville County Sheriffs Office

Prosecuting Officer Michael Jarvis - 0484

Offense Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Offense Code 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Bobby Joe Barton
8-4-09J.M. Brown #542
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Magistrate 2
4 Mc Gee Street Room 116-B
Greenville, SC 29601

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant Michael Jarvis

being duly sworn deposes and says that defendant Bobby Joe Barton

did within this county and state on or about 07/25/2009

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Greenville

in the following particulars:

DESCRIPTION OF OFFENSE Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts

On 7/25/09, the victim states that he was robbed at knifepoint by a black male and a black female. During the course of the robbery, the suspects stole the victims wallet, containing approximately \$500 in U. S. Currency. The defendant was positively identified by the co-defendant Patricia Rice, identifying the defendant as the person who put a knife to the throat of the victim and robbed the victim of his wallet. This did occur at 16 Randolph St, Lot #24, which is located in Greenville County.

EXHIBIT-C

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street

Greenville, SC 29601-

Affiant's Telephone (864)467-5300

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/25/2009

defendant Bobby Joe Barton

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville

) as set forth below.

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 08/03/2009

Signature of Issuing Judge (L.S.)
James E. Hudson

Judge Code: 5031

Judge's Address 4 Mcgee Street, Room 116-B

Greenville, SC 29601-

Judge's Telephone (864)467-5302

Issuing Court ☒ Magistrate☐ Municipal☐ Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

441

DEFENDANT
COPYForm Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

441

ARREST WARRANT

I-478798

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE

09-118309

against

Bobby Joe Barton

Address: [REDACTED] Ct Ext, Apt B35

GREENVILLE, SC 29601-

Phone [REDACTED] SSN [REDACTED]

Sex M Race B Height 5 9 Weight 185

DL State SC DL # [REDACTED]

DOB [REDACTED] Agency ORI # SC0230000

Prosecuting Agency Greenville County Sheriffs Office

Prosecuting Officer Michael Jarvis - 0484

Offense Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Offense Code 0549

Code/Ordinance Sec. 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Bobby Barton

8-4-09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Magistrate 2

4 Mc Gee Street Room 116-B

Greenville, SC 29601

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

AFFIDAVIT

DEFENDANT
COPYForm Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant Michael Jarvis

who

being duly sworn deposes and says that defendant Bobby Joe Barton

did within this county and state on or about 07/25/2009

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts.

On 7/25/09, the victim states that he was robbed at knife point by a black male and a black female. During the course of the robbery, the suspects stole the victims wallet containing approximately \$500 in U. S. Currency. The defendant was positively identified by the co-defendant Patricia Rice, identifying the defendant as the person who put a knife to the throat of the victim and robbed the victim of his wallet. This did occur at 16 Randolph St. Lot #24, which is located in Greenville County.

EXHIBIT-D*

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street

Greenville, SC 29601-

Affiant's Telephone (864)467-5300

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/25/2009

defendant Bobby Joe Barton

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville

) as set forth below

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 08/03/2009

Signature of Issuing Judge (L.S.)

James E. Hudson

Judge Code 5031

Judge's Address 4 Mcgee Street, Room 116-B

Greenville, SC 29601-

Judge's Telephone (864)467-5302

Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

4/13
4143

Case Number: 09-118309

YOUR RIGHTS

Sheriff's Office

Greenville, S.C.

Date August 3, 2009

Time 1227

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

P.R.R. Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you have no money to pay a lawyer's fee, the court will appoint one to represent you without cost if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

-5 AUG 2009 15 49

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed x

Patricia L. Rice

Witness Inv Mike Jarvis *484 622

Witness _____

Time 1232

EXHIBIT - ~~1~~ *E*

OF

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSION
OF THE 13TH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

ARMED ROBBERY (E-478797)
POSS. WPN. DUR. VIO. CRIM. (E-478798)

V.

BOBBY JOE BARTON,
DEFENDANT

MOTION TO
SUPPRESS IMPROPER EVIDENCE

COMES NOW THE DEFENDANT TO PETITION THE
COURT TO "SUPPRESS IMPROPER EVIDENCE" OBTAINED
BY THE GREENVILLE COUNTY SHERIFF'S DEPARTMENT
CONCERNING THE CONFISCATION ^{BB 7/1/10} ~~1~~ (7/1/10) FROM THE DEF-
ENDANT ON THE DAY OF HIS ARREST.

ON AUGUST 4, 2009 THE GREENVILLE COUNTY SHERIFF
DEPARTMENT DID TAKE FROM DEFENDANT'S PERSONELL A
"HUNTING & FISHING KNIFE" WHICH IS CONSIDERED "IM-
PROPER EVIDENCE" TO CHARGE HIM WITH ARMED ROBBERY
WHICH CAN NOT BE SUBSTANTIATED WITH HIM AND A
ROBBERY. THE DEFENSE STATES THAT THERE IS NO EVI-
DENCE TO SUPPORT THE STATES CLAIM.

THE DEFENSE WILL REVEAL TO THE COURT THAT THERE

IS NOT A CONNECTION WITH THE DEFENDANT, A KNIFE, AND A ROBBERY WITH A WEAPON. THE DEFENSE WILL SHOW BETWEEN THE VICTIM (EDWIN PEREZ) AND THE ALLEGED CO-DEFENDANT (PATRICIA R. RICE) STATEMENT(S) THAT NEITHER PLACE A WEAPON (KNIFE) TO THE DEFENDANT.

THE VICTIM IN THIS CASE (EDWIN PEREZ) STATED TO OFFICER J.A. LANFORD *1076 THAT HE WAS ROBBED BY A "BLK. MALE," "25-30" YRS OF AGE, BLK. PANTS, BLK. SHIRT, WHITE SHOES AND TAKING FIVE HUNDRED (\$500.00) DOLLARS. (EXHIBIT-A-ATTACHED)

THE DEFENDANT IS FIFTY TWO (52) YEARS OLD AND UPON HIS ARREST HE DID NOT HAVE ANY OF THESE ITEMS: NO BLACK PANTS, NO BLACK SHIRT, NO WHITE SHOES OR NO MONEY AT ALL. THE DEFENDANT IS TWICE THE AGE THAT THE VICTIM DESCRIBED. THEREFORE THE DISCRIPTION ALONE WOULD HAVE AUTOMATICALLY ELIMINATED THE DEFENDANT.

NEXT THE STATES WITNESS (PATRICIA R. RICE) WHOM WAS IDENTIFIED BY THE VICTIM (EDWARD PEREZ) STATED THE SHE WAS APPROX. IN HER EARLY FIFTY'S (50'S). MS. RICE BEING CLASSIFIED AS AN ACCOMPLICE HAS GIVEN AT LEAST TWO (2) STATEMENTS ATTESTING IN [EXHIBIT A-2 ATTACHED] "SAID THAT SHE NEVER SAW HIM (THE DEFENDANT) WITH A KNIFE DURING THE INCIDENT." [QUOTE UNQUOTE] PARAGRAPH #3, LINE #6. (G.C.S.O.S. REPORT 09000118309) EXHIBIT A-2

MS. RICE IN HER MARANDARIZED STATEMENT GAVE UP HER RIGHT TO REMAIN SILENT BY SIGNING A WAIVER [EXHIBIT-B-ATTACHED]. IN THIS STATEMENT SHE STATES THAT "I KNOW THAT BOBBY (THE DEFENDANT) CARRIES A HUNTING KNIFE." [QUOTE UNQUOTE] EXHIBIT-C-ATTACHED

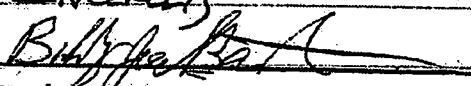
THE DEFENSE ASSERTS THAT THE STATES WITNESS "PATRICIA R. RICE" HAS NEVER GIVEN ANY STATEMENT OF CLAIMS TO WITNESS A KNIFE TO THE DEFENDANT. THE VICTIM "EDWARD PEREZ" CLAIMS SOMEONE OTHER THAN THE FIFTY TWO (52) YEAR OLD DEFENDANT ROBBED HIM AT KNIFE POINT. THERE IS NO STATEMENT IN THIS CASE THAT IDENTIFIES THE DEFENDANT AS THE PERSON WITH A KNIFE, OF ANY OTHER WEAPON. THE DEFENSE CONTENDS THAT THE KNIFE CONFISCATED BY G.C.S.D. CAN NOT BE CONNECTED TO ANY ROBBERY.

THE DEFENDANT IN THIS CASE IS A AVED HUNTER AND FISHERMAN AND BY LAW IS ALLOWED TO CARRY A HUNTING AND FISHING KNIFE. THE DEFENSE ALSO STATES THAT IN THE STATE OF S.C. WHICH IS PREDOMINANTLY WOODLAND AND LAKES THAT HAS PLENTY OF WILD LIFE AND FISH. IT IS VERY COMMON AMONG HUNTER AND FISHERMAN TO CARRY THIS TYPE OF KNIFE ATLEAST 99%. THEREFORE THE DEFENSE REAFFIRMS THAT THERE IS NO LAW AGAINST CARRYING A HUNTERS KNIFE NOR ANY ONE WHO DOES CLASSIFIED AS A ROBBERY WEAPON.

THE DEFENDANT MAINTAINS HIS INNOCENCE NEITHER DID HE HAVE ANY MOTIVE OR OPPORTUNITY TO COMMIT THIS ROBBERY.

THE DEFENSE MOVES UPON THE COURT TO "SUPPRESS
IMPROPER EVIDENCE" FROM TRIAL AND TO DEMAND THAT
THE GREENVILLE COUNTY SHERIFFS DEPARTMENT RETURN THIS
HUNTING & FISHING KNIFE BACK TO ITS RIGHTFUL OWNER.

THE DEFENDANT HUMBLY SUBMITT THIS MOTION AND WITH
MUCH PRAYER AND HOPE THAT THE COURT WILL GRANT IT!

SINCERELY,

Bobby Joe Barton, Pro Se

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 1st
DAY OF JULY, 2010
Colleen E. Reller
NOTARY PUBLIC OF S.C.
10-17-2010
MY COMMISSION EXPIRES

CC: CLERK OF COURT, MR. PAUL WICKENSIMER
ADMINISTRATIVE JUDGE: R. STILLWELL
SOLICITOR'S OFFICE
BOBBY JOE BARTON

CERTIFICATE-OF-SERVICE

THE HEREBY UNDERSIGNED CERTIFIES
THAT A TRUE AND EXACT COPY OF A "MOTION TO
SUPPRESS IMPROPER EVIDENCE"

HAS BEEN MAILED TO CLERK OF COURT, JUDGE R. STILLWELL
STILLWELL, SOLICITOR'S OFFICE BY

THE UNITED STATES POSTAL AUTHORITY ON
JULY, 1 DAY, OF 2010, FROM
THE GREENVILLE COUNTY DETENTION CENTER.

[MOTION 4 PAGES]

[EXHIBIT-4 PAGES ATTACHED
A, A(2), B, & C]

SINCERELY,

[Signature]

TOTALING 8-PAGES

SWORN TO AND SUBSCRIBED

BEFORE ME THIS 9th

DAY OF July, 2010

Colleen F. Rollins

NOTARY PUBLIC FOR SOUTH CAROLINA

10-17-2016

MY COMMISSION EXPIRES

CLERK OF COURT
JULIA W. GOSWAM
GREENVILLE, SC

2010 JUL -9 PM 12:34

OFF AGENCY I.D.
SC0230000

GREENVILLE COUNTY SHERIFF'S OFFICE
SUPPLEMENTAL REPORT

CASE NUMBER
090001118309

4489

☐ ORIGINAL REPORT	☐ STATUS CHANGE	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	INCIDENT TYPE Armed Robbery
☒ SUPPLEMENTAL REPORT	☐ OTHER REPORT	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	PATROL DISTRICT 06 PAGE 1 OF 1 PAGES

I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUSPECT			RESIDENT	RACE	SEX	AGE	D.O.B.
	☒ VICTIM	Perez, Edwin		#1	#2	#3	J	H	M	24	
	☐ SUBJECT	ADDRESS		CITY			STATE	ZIP CODE	PATROL DISTRICT	DAY PHONE	EVENING PHONE
	☐ RUNAWAY								06		
☐ WANTED	HEIGHT	WEIGHT	HAIR	EYES	SKIN TONE	SPECIALLY TRAINED, ETC.					
☐ WARRANT	5'8	150	Blk	Brn							
☐ ARREST	VICTIM NO.		VISIBLE INJURY		COMPLAINT OF NON-VISIBLE INJURY		VICTIM USES ALCOHOL		☐ YES ☐ NO ☐ UNK		
☐ MISSING	EXPLAIN		☐ YES ☐ NO		☐ YES ☐ NO		☐ YES ☐ NO ☐ TYPE		☐ YES ☐ NO ☐ UNK		
☐ JAIL	SUBJECT NO.		USING ALCOHOL		☐ YES ☐ NO ☐ UNK		☐ YES ☐ NO ☐ TYPE		☐ YES ☐ NO ☐ UNK		
☐ OTHER			USING DRUGS		☐ YES ☐ NO ☐ UNK		☐ YES ☐ NO ☐ TYPE		☐ YES ☐ NO ☐ UNK		

ARRESTEE ARMED	☐ YES ☐ NO	WEAPON TYPE:	☐ ON VIEW ARREST ☐ SUMMONED ☐ CUSTODY
JUVENILE DISPOSITION: 1.	☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY		

Arrest Location:

Suspect Description: B/M, 5'8 to 6'0
Black Pants
Black Shirt
White Shoes
25-30 Years Old

EXHIBIT-A

Upon my arrival I met with the listed victim. After meeting with him, he advised me that he had been robbed with a knife while he was sitting beside his trailer. He then stated that while he was drinking in the yard an unknown black male and black female approached him and told him to give them his wallet while the black male held a knife to the victims neck. After taking the victims wallet, which contained \$500 and the victim's identification card, the two suspects ran towards the back of the trailer in the direction of Lanford Dr. and Papernill Dr. Once I was advised of this, K17 (Leathers) was contacted to attempt a track of the suspects. Upon his arrival, a track was conducted but ended when the track was lost on Lanford Dr. After returning to the incident location, I attempted to gather more information about the suspect's involved but found that the victim was having a difficult time with this due to him being extremely intoxicated. With several attempts to get further information were unsuccessful, I completed a victims rights form and provided the victim with a copy. Before leaving the incident location, D03 (Sgt Hays) was contacted and advised on the situation. The total amount of items taken equaled \$550.

- Items Taken-
- A. Various U.S. Dollar Bills- \$500
 - B. 1 Black Leather Wallet- \$30
 - C. 1 Mexican Identification Card- \$20

VEHICLE	☐ STOLEN	TAG NUMBER	STATE	YEAR	V.I.N.	VALUE
	☐ RECOVERED	YEAR	MAKE	MODEL	STYLE	COLOR
	☐ SUSPECT	ADDITIONAL VEHICLE DESCRIPTION				
	☐ VICTIM					

Status	Property Type	Quantity	Property Make	Color	Description	Serials	Value
Stolen	20-Money	20	U.S. Currency	Green	Various U.S. Dollar Bills	Unknown	\$500
Stolen	77-Other	1	Wallet	Black	Black Leather Wallet	Unknown	\$30
Stolen	77-Other	1	I.D.	White	Mexican I.D. Card	Unknown	\$20

ADMIN	SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE ☐ ADMIN. CLOSED ☐		ARRESTED UNDER 18 ☐		EXCLEARED UNDER 18 ☐	
	☐ YES ☐ NO		☐ YES ☐ NO		☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EXCLEARED 18 AND OVER	
	REASON FOR DISPOSITIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ VICTIM/DECEASED COOPERATION. 4. ☐ EXTRADITION DENIED. 5. ☐ JUVENILE-NO ARREST									
	REPORTING OFFICER(S)		DATE		UNST. SIGNATURE		APPROVING OFFICER		DATE	
JA Lan. Ford *1076		7/25/09		D17		Sgt. Lopez *376		07-24-09		

7/25/09

AGENCY I.D.
SC0230000Greenville County Sheriff's Office
SUPPLEMENTAL REPORT

CASE NUMBER

09000118309

☐ ORIGINAL REPORT	☒ STATUS CHANGE	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	INCIDENT TYPE	Armed Robbery
☒ SUPPLEMENTAL REPORT	☐ OTHER	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	PATROL DISTRICT	06
				PAGE	1 OF 1

On 8/3/09, I attempted to make contact with the victim by telephone with no success. I responded to the incident location and made contact with the victim outside of his residence. I spoke with the victim at length about the incident. He stated that on the night of the incident, he was sitting outside of his residence, drinking beer. He stated that he was suddenly approached by an unknown black male and a black female. He stated that the black male put a knife to his throat and demanded his money. He stated that he gave the subject his money and then he started yelling. He said that when he started yelling, both the black female and the black male took off running. I asked him if he could describe either of the two subjects. He could not provide a whole lot further information on the male subject. He did however provide a better description of the female subject. He did state that she was familiar to him, and that she frequently walked through the trailer park, from the direction of Lanford Dr and Papermill Rd, just on the other side of the railroad tracks behind his residence. He described her as a skinny black female, about fifty years old, and that she usually wore her hair pulled back tight in a pony tail. He stated that she frequented the Lanford Dr and Papermill Rd area, which he knows to be a bad drug area. I asked him if he would recognize her if we rode around that area. He stated that he would. I drove the victim to the area. We turned on to Papermill Rd, from S. Fairfield Rd, and as we approached Landford Dr, we observed three black males and a black female standing out near the roadway by some trees. The female matched the description that he had initially given me. He quickly pointed out the female that was standing near the road as the female suspect who was with the black male when he got robbed. I kept an eye on the female and requested a marked unit to respond to the area to assist me in identifying this female. As C-28 (Deputy Brown) arrived on scene, I observed the female get in to the front passengers seat of a black, Chrysler Town and Country minivan. I followed the minivan until Deputy Brown could catch up to the vehicle and stop the vehicle. The vehicle was stopped on Evelyn Dr and Dixie Circle, after the driver failed to use a turn signal when turning right on to Evelyn Dr from S. Fairfield Rd. Deputy Brown made contact with the driver, while I made contact with the female passenger, who was identified as subject #1.

Subject #1: Patricia Rosalind Rice Black/Female Age: 53
DOB: [REDACTED]

Greenville, SC 29605 5'1"/100 Blk/Bro

Subject #1 Warrant: Armed Robbery

Warrant#1-478795

I asked for her verbal consent to search her purse for weapons and/or narcotics and she gave it. I found a crack pipe in the subjects purse. I advised the subject of her miranda rights and she advised that she understood her rights. I asked her about the night of the incident, and she did state that she had been present the night of the incident, but that she did not know what was about to happen. She stated that she was with subject #2, who she identified as the person with the knife who robbed the victim.

Subject #2: Bobby Joe Barton Black/Male Age: 51
[REDACTED] Ct Ext, Apt #B35 DOB: [REDACTED]
Greenville, SC 29601 5'9"/185 blk/bro

Subject #2 Warrants: Armed Robbery

Warrant#1-478797

Possession of a Weapon During a Violent Crime Warrant#1-478798

She was placed under arrest and transported to the Greenville County Law Enforcement Center. I made contact with her in the Armed Robbery office. I again read her miranda rights, and she signed a waiver of rights and agreed to talk to me about the incident. She gave me a sworn statement about the incident. She admitted to being present during the robbery, but she said that she did not know what was about to happen. She states that she took off running when she saw subject #2 push the victim up against the trailer and tell him to "turn it loose". The victim, however, had indicated that she did not take off running, until after he started yelling. That she had been present with subject #2 up until then. Subject #1 identified subject #2 as the one who robbed the victim, but said that she never saw him with a knife during the incident. She did however state that she knows him to carry some type of hunting knife. I obtained the listed warrants for subjects #1 and #2. Subject #1 was arraigned and placed into detention in good condition. Warrants for subject #2 remain active.

EXHIBIT - [REDACTED] - [REDACTED] A-2

SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADMIN CLOSED		☐ ARRESTED UNDER 13		☐ EX-CLEARED UNDER 13	
☒ YES ☐ NO		☒ YES ☐ NO		☐ UNFOUNDED		☒ ARRESTED 18 AND OVER		☐ EX-CLEARED 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: ☐ OFFENDER DEATH ☐ NO PROSECUTION ☐ JUDICIAL/CLERICAL COOPERATION ☐ EXTRADITION DENIED ☐ JUVENILE NO ARREST									
REPORTING OFFICER(S)		DATE		UNIT NO. / STAR #		APPROVING OFFICER		DATE / UNIT NO. / STAR #	
Inv Mike Jarvis *484		8/4/09		622		Sgt Tim Jones		8/4/09 / 604	
FOLLOW-UP INVESTIGATION ☐ YES ☒ NO (OFFICER)									

CDR-11-11-11

Case Number 09-118309

YOUR RIGHTS

Sheriffs Office

Greenville, S.C.

Date August 3, 2009

Time 1227

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

P.R.R. Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you have no money to pay a lawyer's fee, the court will appoint one to represent you without cost if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

-5 AUG 2009 15 49

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed X

Patricia D. Rice

Witness Inv Mike Jarvis *484 622

Witness _____

Time 1232

←

EXHIBIT-B

Page #16

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

09-118309

8/3/09

I, Patricia Rosalind Rice
Inv Mike Jarvis *484 622do hereby give freely and voluntarily this statement to
and

who have identified themselves to me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement.

I am 52 years old, and I reside at _____ ville, SC 29605

I have a 11th grade education, and I can read and write.

I am giving this statement freely and voluntarily to Investigator Jarvis. I am in my right mind and know what I am doing. I am not under the influence of any drugs or alcohol at this time. I did have half of a beer early this morning at about 9:00AM, but that is it. It is about 12:45PM right now and I feel fine. I have not done any illegal drugs today, and I have not taken any prescription medicine today either.

About a week or so ago, on the weekend, I went up to the Pumpers at Hwy 25 and Augusta Rd. I don't know what time it was but I know that it was fixing to close, and it was night time. I was walking on my way back to my home, when I ran into a guy I know. His name is Bobby Joe Barton. I have known him since about 2001. He is always trying to be around me and wanting to be with me, but I don't like him like that. He started walking with me. We walked through a trailer park where a bunch of Mexicans live. It's a short cut to get to Lanford Dr and Papermill Rd. As we were walking, we saw a Mexican sitting out by one of the trailers. Bobby started talking to the Mexican, and it sounded like Bobby was talking in Spanish. The Mexican gave Bobby a beer and they sat there and drank it. I was telling Bobby that we needed to leave because I had to go to the bathroom. The next thing I know is that Bobby had the Mexican jacked up against the trailer, and Bobby was saying "turn it loose" (I know that Bobby carries a hunting knife) and I didn't know what was going to happen, so I turned and ran. I didn't know he was going to rob the Mexican. I turned around and ran and got stuck in some bushes and lost my shoes, so I came back out of the bushes and walked back through the trailer park. I saw the Mexican and he was on the phone. I yelled at him that I didn't have anything to do with that, and he kept yelling at me "your friend, your friend!" I walked out to White Horse Rd, and I walked home to my house.

EXHIBIT C

AUG 2009 15 49

I have read the above statement of 1 pages and it is true and correct as best I recall.

WITNESS:

XX

Inv Mike Jarvis *484 622

I HAVE RECEIVED A COPY OF THIS STATEMENT

XX

Sworn before me this _____ day of _____ 20 _____ NOTARY PUBLIC FOR SOUTH CAROLINA

OF

Copies

453
453

(EXHIBIT-G) 8 PAGES & 6 EXHIBITS (A-F)

STATE OF SOUTH CAROLINA } IN THE COURT OF GENERAL SESSION
COUNTY OF GREENVILLE } THE 13TH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA } ARMED ROBBERY (I-478797)

V.

POSS. WPN. JUR. VIO. CRIM. (I-478798)

BIBBY JOE BARTON,

DEFENDANT

MOTION FOR

EVIDENTIARY HEARING

FILED
CLERK OF COURT
JANUARY 12, 2010
GREENVILLE, SC

COMES NOW THE DEFENDANT IN THE ABOVE CASE TO CHALLENGE THE VERACITY OF THE SWORN STATEMENT(S) GIVEN BY INVESTIGATOR "MICHEAL JARVIS #484-622" ON THREE (3) SEPARATE OCCASIONS. WITH STATEMENTS THAT WERE MADE WITH DELIBERATE AND RECKLESSNESS WITH THE INTENT TO MALICIOUSLY PROSECUTE UNDER FALSE (STATEMENTS) PRETENSE.

THE DEFENSE IN THIS CASE WILL REVEAL TO THE COURT WITH A PROPER SHOWING THAT INVESTIGATOR MICHEAL JARVIS #484-622 DID COMMIT OFFICIAL MISCONDUCT AGAINST THE GOOD FAITH RULE AND HIS STATEMENT DID NOT QUALIFY FOR THE EXCEPTION. [ON AUGUST 3, 2009 - INV. JARVIS ARRESTED A BLK. FEMALE "PATRICIA R. RICE" FOR AN ARMED ROBBERY. HER ACCOMPLICE WAS SAID TO BE A BLK. MALE, "25 to 30 yrs. old" BY THE ROBBERY VICTIM "EDUVIN PEREZ", WHOM POLICE REPORTS AT THE TIME OF THE ROBBERY WAS ASSESSED AS BEING [EXTREMELY] INTOXICATED AND NOT BEING ABLE TO GIVE ANY MORE IDENTIFICATION ON THE BLK. MALE. [1ST PARAGRAPH, LINE 6, 7, 88 OF EXHIBIT-A] ATTACHED]

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AS STATED BY OFFICER J. A. LANFORD * 1076, ALSO SIGNED OFF BY HIS SUPERIOR, SGT. STEPP * 326 (ATTACHED - EXHIBIT - A) DATED 7/24/09, INV. JARVIS * 484-622, QUESTION "MS. RICE" ABOUT THE UNKNOWN BLK. MALE THAT WAS ACCUSED OF BEING THE ACTUAL ROBBERY SUSPECT. "MS. RICE" IN TURN NAMES THE DEFENDANT AS HER ACCOMPLICE ONCE IN THE FIELD WHERE THE TRAFFIC STOP OCCURRED, "INV. JARVIS QUESTION "MS. RICE" CONCERNING THE DEFENDANT HAVING A KNIFE AND PUTTING IT TO THE VICTIM'S (EDWARD PEREZ) THROAT? [3 PARAGRAPH, 6TH LINE, 1ST SENTENCE BEHIND THE COMMA.] "MS. RICE" EXACT WORDS ARE [THAT SHE NEVER SAW A KNIFE.] [ATTACHED - EXHIBIT - B]

AT THE GREENVILLE COUNTY L. E. C. APPROX. 12:45 PM., INV. MICHAEL JARVIS * 484-622 ONCE AGAIN QUESTIONS "MS. RICE" ONCE AGAIN. THIS TIME HER STATEMENT IS GIVEN UNDER THE MIRANDA LAW. "MS. RICE" ONCE AGAIN STATES "I KNOW THAT THE DEFENDANT CARRIES A HUNTING KNIFE" AS IN "2ND PARAGRAPH, LINE (8), MIDDLE SENTENCE. [ATTACHED - EXHIBIT - C]. MS. RICE IN NEITHER STATEMENT GIVEN HAS NOT CORROBORATED THE SWORN INVESTIGATOR MICHAEL JARVIS HAS GIVEN TO JUDGE L. T. SIMMONS ON AUGUST 3, 2009 WHEN HE WENT BEFORE HER TO OBTAIN AN "ARMED ROBBERY" WARRANT, ALSO A WARRANT FOR "POSSESSION OF A WEAPON DURING A VIOLENT CRIME."

THE DEFENSE ASSERTS THAT MICHAEL JARVIS * 484-622 DID COMMIT AN ACT OF OFFICIAL MISCONDUCT WHEN HE

6/20/10 RICE B.B.

VIOLATED THE GOOD FAITH WHEN HE GAVE THAT STATEMENT
IN ORDER TO OBTAIN A WARRANT(S) GIVING A FALSE STATEMENT
IN A SWORN AFFIDAVIT, AS IN "FRANKS V. DEL., 438 U.S. (1978)"
"U.S. V. HAMMOND, 351 F.3d (6th CIR 2003)" AND "U.S. V. GONZALEZ, JR.,
412 F.3d (9th CIR 2005) WHICH STATES PRELIMINARY SHOWING MADE BY
DEFENDANT MADE SUBSTANTIAL SHOWING THAT SUPPORTED FINDING OF RECKLESS-
NESS CONCERNING OMISSIONS AND MISSTATEMENTS IN AFFIDAVITS. ALSO
THE FORMER TWO CASES INVOLVE [FALSITIES IN AFFIDAVIT BY AFFIANT].

IN "DEL AND FRANKS" TO BE MORE CORRECT "FRANKS V. DEL., 438"
THE DEFENDANT IS ENTITLED TO A [EVIDENTIARY HEARING] BECAUSE
OF THE SUPPORTING AFFIDAVIT. [ATTACH-EXHIBIT-D & E] WHICH
PLAINLY GIVES THE EXACT STATEMENT "WORD FOR WORD" INVESTI-
GATOR JARVIS SWORE UNDER OATH TO JUDGE L.T. SIMMONS. AS THE
COURTS MAY SEE IN HIS AFFIDAVIT OF WARRANT [I-478797
& I-478798] HE STATES "THE CO DEFENDANT "PATRICIA RICE"
POSITIVELY IDENTIFIED THE DEFENDANT AS THE PERSON WHO
PUT A KNIFE AROUND "TO" THE VICTIMS THROAT. THERE IS NOTHING
IN EITHER OF "MS. RICE" STATEMENT(S) TO SUPPORT HIS STATEMENT.
INV. JARVIS DID THIS WITH MALICIOUS INTENT AND RECKLESS-
NESS WITHOUT RESPECT FOR LIFE OR LIMB. THROUGH MANIPULA-
TION OF THE STATEMENT HE ALSO SOUGHT THE HIGHEST DEGREE
OF ROBBERY [ARMED.] TO MAKE MATTERS WORSE HE EVEN PRINTED
POSTERS OF THE DEFENDANT LABELED AS [ARMED AND DANGER-
OUS.] THIS ACT COULD HAVE COST THE DEFENDANT HIS LIFE
SHOULD HE'D BEEN ACCOSTED BY A PRIVATE CITIZEN OR

AN INEXPERIENCE DEPUTY BY REACHING INTO HIS POCKET FOR IDENTIFICATION OR ANYTHING ELSE, SHOT FOR NO REASON. INV. JARVIS GAVE THAT STATEMENT FOR [DETRIMENTAL PHRASES] AND GAVE JUDGE L.T. SIMMONS THE SAME IMPRESSION THAT HE HAD A SWORN STATEMENT TO THAT EFFECT.

THE DEFENSE HAD THE OPPORTUNITY TO CORRESPOND WITH JUDGE SIMMONS ON NOVEMBER 2, 2009 INFORMING HER OF THE OFFICIAL MISCONDUCT INV. JARVIS COMMITTED BEFORE HER BY HIM. JUDGE SIMMONS VOICE WAS SILENT YET THOUGH THERE HAPPENED TO BE A MIRACULOUS EVENT. ON NOVEMBER 12, 2009, I WAS HAVING A 2ND PRELIMINARY HEARING FOR THE SAME CHARGE BEFORE JUDGE DAVIS. MY ACTING ATTORNEY SEEMED DUMBFOUNDED ABOUT IT AND THE OPPORTUNITY TO QUASH THIS CASE ESCAPED.

ON SEPTEMBER 10, 2009 INVESTIGATOR MICHAEL JARVIS # 484-622 ONCE AGAIN WENT ON THE WITNESS STAND BEFORE THE HONOR JUDGE HUBBARD AT THE 1ST PRELIMINARY HEARING, TAKING THE SWORN OATH PUBLICLY AND STATE ON THE RECORD THAT THE ALLEGED CO-DEFENDANT "PATRICIA R. RICE" GAVE HER A WRITTEN STATEMENT THAT THE DEFENDANT WAS THE PERSON WHO PUT A KNIFE TO THE VICTIM'S THROAT. THE DEFENSE ASK THE COURT TO PLEASE ALLOW THE RECORD TO REFLECT, THAT THERE IS NO SUCH STATEMENT AND ALSO THE PRELIMINARY HEARING TRANSCRIPTS WILL SUPPORT THE ALLEGATIONS THE DEFENSE HAS MADE DURING THIS PROCEEDINGS. SEE [U.S. V. BASURTO, 497 F.2d (9th Cir. 1974)]. THE DEFENSE DIRECTS

THE COURT TO RE-EXAMINE [EXHIBIT-B&C] TO FIND ANY SUCH STATEMENT REGARDING THE DEFENDANT HAVING A KNIFE OR ANY OTHER WEAPON TO THE VICTIM THROAT.

ON NOVEMBER 12, 2009, THE DAY OF THE ANONYMOUS 2ND PRELIMINARY HEARING, JUDGE DAVIS PRESIDING [INV. JAMES*484-622] ONCE AGAIN UNDER SWORN OATH BUT [HIS TIME] HE BEING AWARE OF HIS TESTIMONY REPHRASE HIS STATEMENT BY SAYING THAT "THE ALLEGED CO-DEFENDANT IDENTIFIED THE DEFENDANT AS THE PERSON WHO COMMITTED THE CRIME AND THAT SHE (PATRICIA A. RICE) SAID SHE NEVER ACTUALLY SAW A KNIFE" THE DEFENSE STATES THAT INV. JAMES (1ST & 2ND) SWORN STATEMENTS DIRECTLY CONTRADICTS HIS LATTER (3RD) STATEMENT. THE DEFENSE ONCE AGAIN ASK THE COURT TO LET THE TRANSCRIPT RECORD REFLECT THE VERACITY WHICH THE DEFENSE ASSERTS.

THE DEFENSE HUMBLY REQUEST OF THE COURT TO PRESERVE BOTH PRELIMINARY HEARING TRANSCRIPTS FOR POSSIBLE DEFENSE TRIAL AND OR CIVIL ACTIONS. MAY IT BE KNOWN THAT BOTH TESTIMONIES WAS USED TO BIND THE DEFENDANT OVER FOR TRIAL THEREFORE THE DEFENDANT HAS A RIGHT TO ACCESS OF ANY TESTIMONY USED AGAINST HIM IN A PRELIMINARY HEARING OR GRAND JURY IN WHICH THIS TESTIMONY WAS THE REASON THE DEFENDANT WAS BOUND OVER ON.

THE DEFENSE IN THIS CASE BELIEVES THAT IT HAS SHOWN

OFFICIAL MISCONDUCT COMMITTED IN THIS CASE BY ONE WHOM IS SWORN TO UPHOLD THE LAW BUT YET HAS SEEN FIT TO OPERATE IN BAD FAITH AND PASS JUDGMENT ON WHOM HE PLEASE BY WRITING FALSE STATEMENT AGAINST CERTAIN INDIVIDUALS THAT HE PLEASES. THE DEFENSE DOES ACKNOWLEDGE BY THE WRITTEN STATEMENT [EXHIBIT-B & C] SAID ALLEGE CO-DEFENDANT DID GIVE A STATEMENT ACCUSING THE DEFENDANT OF BEING THE UNKNOWN BLK. MALE SUSPECT BUT THE DEFENDANT STILL MAINTAINS HIS INNOCENCE. NEITHER DOES THE ALLEGE CO-DEFENDANT VERBALLY PLACES A WEAPON OR KNIFE IN HER STORY OF ROBBERY.

THE DEFENSE HAS SUBMITTED BEFORE THE COURT ACTUAL DOCUMENTATION AS TO ITS CLAIM OF OFFICIAL MISCONDUCT BY A GOVERNMENT OFFICIAL CONCERNING A CRIMINAL CASE AND THE DEFENSE REQUEST THAT THE COURT GRANT A EVIDENTIARY HEARING IN THIS. THE DEFENSE STATES THAT THE COURT HAS A MORAL DUTY TO SEEK OUT JUSTICE AND NOT TO TAKE THE WORD OF AN OFFICIAL WHEN ALL THE EVIDENCE POINTS TO WRONG DOING ON HIS PART AND CAN BE SUBSTANTIATE THROUGH WITNESS STATEMENT, JUDGE SIMMONS STATEMENT AND LASTLY HIS OWN STATEMENT FROM THE TWO (2) PRELIMINARY HEARINGS TRANSCRIPTS AND EXHIBITS - B, C, D, & E - ALL ATTACHED.

THE DEFENSE HUMBLY SUBMITT THE MOTION BEFORE THE COURT. IT IS WITH MANY PRAYERS AND MUCH HOPE THAT

THE COURT WILL GRANT HIS MOTION FOR EVIDENTIARY
HEARING AND RULE BASED UPON THE EVIDENCE PRESENTED
AND MERIT AND DISMISS THE ARMED ROBBERY CHARGES
AGAINST THE DEFENDANT.

EXHIBIT-F-ATTACHED (PATRICIA R. RICE)
[WAIVER OF ALLEGE CO-DEFENDANT RIGHTS]

SINCERELY,
~~Bobby Joe Barton~~
BOBBY JOE BARTON, PRO SE

SWORN TO AND SUBSCRIBED

BEFORE ME THIS 28th

DAY OF June, 2010

Colleen F. Rollen

NOTARY PUBLIC OF SOUTH CAROLINA

10-17-2010

MY COMMISSION EXPIRES

C.C.: CLERK OF COURT, PAUL WICKENSIMER

ADMINISTRATIVE JUDGE R. STILLWELL

SOLICITOR'S OFFICE

SUSANNAH ROSS, P.D.

BOBBY JOE BARTON,

CERTIFICATE-OF-SERVICE

THE HEREBY UNDERSIGNED CERTIFIES
 THAT A TRUE AND EXACT COPY OF A "MOTION"
FOR EVIDENTIARY HEARING

HAS BEEN MAILED TO CLERK OF COURT, ADM. JUDGE,
SOLICITOR'S OFFICE & SUSANNAH ROSS, P.D. BY
 THE UNITED STATES POSTAL AUTHORITY ON
 _____ DAY, OF 20____, FROM
 THE GREENVILLE COUNTY DETENTION CENTER.

* THE CONTENTS WHICH ARE A
 7 PAGE BRIEF MOTION & 6 PAGE
 EXHIBITS LABELED A-F PLUS *
 1 PAGE CERTIFICATE OF SERVICE

SINCERELY,
Bobby J. Barton
 BOBBY J. BARTON, PROSE

SWORN TO AND SUBSCRIBED
 BEFORE ME THIS 28th
 DAY OF June, 20____
Colleen F. Kellers

NOTARY PUBLIC FOR SOUTH CAROLINA
10-17-2016

MY COMMISSION EXPIRES

DEED BOOK OF COURT
 PAUL J. MCCHESNEY
 GREENVILLE CO. SC

2010 JUL -9 PM 12:36

AGENCY I.D.
SCO236000

GREENVILLE COUNTY SHERIFF'S OFFICE
SUPPLEMENTAL REPORT

CASE NUMBER
090001118309

☐ ORIGINAL REPORT ☐ STATUS CHANGE ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY
☒ SUPPLEMENTAL REPORT ☐ OTHER REPORT ☐ ADDITIONAL OFFENSES ☐ ADDITIONAL RECOVERED PROPERTY

INCIDENT TYPE **Armed Robbery**
PATROL DISTRICT **06** PAGE **1** OF **1** PAGES

I.D. OVERFLOW

☐ COMPLAINANT ☒ VICTIM ☐ SUBJECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ MISSING ☐ JAIL ☐ OTHER

NAME (LAST, FIRST, MIDDLE) **Perez, Edwin**
ST **VI** STREET **Stanger** CITY **[REDACTED]** STATE **[REDACTED]** ZIP CODE **06** PATROL DISTRICT **06**
RESIDENT **J** RACE **H** SEX **M** AGE **24** D.O.B. **[REDACTED]**
ADDRESS **[REDACTED]** DAY PHONE **[REDACTED]** EVENING PHONE **[REDACTED]**
HEIGHT **5'8"** WEIGHT **150** HAIR **Blk** EYES **Bro** RACIAL HAIR **[REDACTED]** REGULARITIES, ETC. **[REDACTED]**
VICTIM NO. **1** VISIBLE INJURY: ☐ YES ☒ NO COMPLAINT OF NON-VISIBLE INJURIES: ☐ YES ☒ NO
EXPLAIN: **[REDACTED]** DRUGS: ☐ YES ☒ NO TYPE: **[REDACTED]** ☐ YES ☒ NO
USING ALCOHOL: ☐ YES ☒ NO TYPE: **[REDACTED]** ☐ YES ☒ NO
USING DRUGS: ☐ YES ☒ NO TYPE: **[REDACTED]** ☐ YES ☒ NO
ARRESTED ON CURRENT OFFENSE ☐ YES ☒ NO
CLEARED BY ARREST ON PRIOR OFFENSE ☐ YES ☒ NO
ARRESTEE ARMED ☐ YES ☒ NO WEAPON TYPE: **[REDACTED]** ON VIEW ARREST ☐ SUMMONED ☐ CUSTODY ☐
JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY

NARRATIVE

Arrest Location: **[REDACTED]**
Suspect Description: **B/M, 5'8 to 6'0**
Black Pants
Black Shirt
White Shoes
25-30 Years Old ← **EXHIBIT-A**

Upon my arrival I met with the listed victim. After meeting with him, he advised me that he had been robbed with a knife while he was sitting beside his trailer. He then stated that while he was drinking in the yard an unknown black male and black female approached him and told him to give them his wallet while the black male held a knife to the victims neck. After taking the victims wallet, which contained \$500 and the victim's identification card, the two suspects ran towards the back of the trailer in the direction of Lanford Dr. and Papermill Dr. Once I was advised of this, K17 (Leathers) was contacted to attempt a track of the suspects. Upon his arrival, a track was conducted but ended when the track was lost on Lanford Dr. After returning to the incident location, I attempted to gather more information about the suspect's involved but found that the victim was having a difficult time with this due to him being extremely intoxicated. With several attempts to get further information were unsuccessful, I completed a victims rights form and provided the victim with a copy. Before leaving the incident location, D03 (Sgt Hays) was contacted and advised on the situation. The total amount of items taken equaled \$550.

Items Taken-
A. Various U.S. Dollar Bills- \$500
B. 1 Black Leather Wallet- \$30
C. 1 Mexican Identification Card- \$20

VEHICLE

☐ STOLEN ☐ RECOVERED ☐ SUSPECT ☐ VICTIM

TAG NUMBER **[REDACTED]** STATE **[REDACTED]** YEAR **[REDACTED]** V.I.N. **[REDACTED]** VALUE **[REDACTED]**
YEAR **[REDACTED]** MAKE **[REDACTED]** MODEL **[REDACTED]** STYLE **[REDACTED]** COLOR **[REDACTED]**
TAG ONLY ☐ ADDITIONAL VEHICLE DESCRIPTION **[REDACTED]**

PROPERTY

Status	Property Type	Quantity	Property Make	Color	Description	Serial	Value
Stolen	20-Money	20	U.S. Currency	Green	Various U.S. Dollar Bills	Unknown	\$500
Stolen	77-Other	1	Wallet	Black	Black Leather Wallet	Unknown	\$30
Stolen	77-Other	1	I.D.	White	Mexican I.D. Card	Unknown	\$20

ADMIN

SUBJECT IDENTIFIED ☐ YES ☒ NO SUBJECT LOCATED ☐ YES ☒ NO ☐ ACTIVE ☐ ADMIN. CLOSED ☐ UNFOUNDED ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER ☐ EX-CLEARED UNDER 18 ☐ EX-CLEARED 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH, 2. ☐ NO PROSECUTION, 3. ☐ VICTIM'S COOPERATION 4. ☐ EXTRADITION DENIED 5. ☐ JUVENILE-NO ARREST

REPORTING OFFICER(S) **[REDACTED]** DATE **7/25/09** D17 **[REDACTED]** APPROVING OFFICER **Sgt. [Signature]** DATE **07-24-09** **[Signature]**
FOLLOWUP INVESTIGATION ☐ YES ☒ NO **[REDACTED]** **7/25/09**

25 JUL 2009 20 32

462

462

AGENCY I.D.
SC0230000Greenville County Sheriff's Office
SUPPLEMENTAL REPORT

CASE NUMBER

01910101118309

☐ ORIGINAL REPORT	☒ STATUS CHANGE	☐ ADDITIONAL VICTIM	☐ ADDITIONAL STOLEN PROPERTY	INCIDENT TYPE	Armed Robbery
☒ SUPPLEMENTAL REPORT	☐ OTHER	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	PATROL DISTRICT	06
				PAGE	1 OF 1 PAGES

On 8/3/09, I attempted to make contact with the victim by telephone with no success. I responded to the incident location and made contact with the victim outside of his residence. I spoke with the victim at length about the incident. He stated that on the night of the incident, he was sitting outside of his residence, drinking beer. He stated that he was suddenly approached by an unknown black male and a black female. He stated that the black male put a knife to his throat and demanded his money. He stated that he gave the subject his money and then he started yelling. He said that when he started yelling, both the black female and the black male took off running. I asked him if he could describe either of the two subjects. He could not provide a whole lot further information on the male subject. He did however provide a better description of the female subject. He did state that she was familiar to him, and that she frequently walked through the trailer park, from the direction of Lanford Dr and Papermill Rd, just on the other side of the railroad tracks behind his residence. He described her as a skinny black female, about fifty years old, and that she usually wore her hair pulled back tight in a pony tail. He stated that she frequented the Lanford Dr and Papermill Rd area, which he knows to be a bad drug area. I asked him if he would recognize her if we rode around that area. He stated that he would. I drove the victim to the area. We turned on to Papermill Rd, from S. Fairfield Rd, and as we approached Landford Dr, we observed three black males and a black female standing out near the roadway by some trees. The female matched the description that he had initially given me. He quickly pointed out the female that was standing near the road as the female suspect who was with the black male when he got robbed. I kept an eye on the female and requested a marked unit to respond to the area to assist me in identifying this female. As C-28 (Deputy Brown) arrived on scene, I observed the female get in to the front passengers seat of a black, Chrysler Towa and Country minivan. I followed the minivan until Deputy Brown could catch up to the vehicle and stop the vehicle. The vehicle was stopped on Evelyn Dr and Dixie Circle, after the driver failed to use a turn signal when turning right on to Evelyn Dr from S. Fairfield Rd. Deputy Brown made contact with the driver, while I made contact with the female passenger, who was identified as subject #1.

Subject #1: Patricia Rosalind Rice Black/Female Age: 53

DOB: [REDACTED]

Greenville, SC 29605 5'1"/100 Blk/Bro

Subject #1 Warrant: Armed Robbery

Warrant#I-478795

I asked for her verbal consent to search her purse for weapons and/or narcotics and she gave it. I found a crack pipe in the subjects purse. I advised the subject of her miranda rights and she advised that she understood her rights. I asked her about the night of the incident, and she did state that she had been present the night of the incident, but that she did not know what was about to happen. She stated that she was with subject #2, who she identified as the person with the knife who robbed the victim.

Subject #2: Bobby Joe Barton Black/Male Age: 51

[REDACTED] Ct Ext, Apt #B35 DOB: [REDACTED]
Greenville, SC 29601 5'9"/185 blk/bro

Subject #2 Warrants: Armed Robbery

Warrant#I-478797

Possession of a Weapon During a Violent Crime Warrant#I-478798

She was placed under arrest and transported to the Greenville County Law Enforcement Center. I made contact with her in the Armed Robbery office. I again read her miranda rights, and she signed a waiver of rights and agreed to talk to me about the incident. She gave me a sworn statement about the incident. She admitted to being present during the robbery, but she said that she did not know what was about to happen. She states that she took off running when she saw subject #2 push the victim up against the trailer and tell him to "turn it loose". The victim, however, had indicated that she did not take off running, until after he started yelling. That she had been present with subject #2 up until then. Subject #1 identified subject #2 as the one who robbed the victim, but said that she never saw him with a knife during the incident. She did however state that she knows him to carry some type of hunting knife. I obtained the listed warrants for subjects #1 and #2. Subject #1 was arraigned and placed into detention in good condition. Warrants for subject #2 remain active.

EXHIBIT - ~~DELETED~~ - B

SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADJUDICATED		☐ ARRESTED UNDER 10		☐ 15-CLEARER 15-DEF 15	
☒ YES ☐ NO		☒ YES ☐ NO		☐ UNFOUNDED		☒ ARRESTED 18 AND OVER		☐ 15-CLEARER 15-DEF 15 AND CLEARED	
REASON FOR EXCEPTIONAL CLEARANCE: ☐ OFFENDER DEATH ☐ NO PROSECUTION ☐ VICTIM/DECLINES COOPERATION ☐ EXTRADITION DENIED ☐ JUVENILE-NO ARREST									
REPORTING OFFICER(S)	DATE	UNIT NO. / STAR #	APPROVING OFFICER	DATE	UNIT NO. / STAR #				
Inv Mike Jarvis *484	8/4/09	622	Sgt Tim Jones	8/4/09	604				
FOLLOW-UP INVESTIGATION			☐ YES ☒ NO (OFFICER)						

Page #6

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

09-118309

8/3/09

I, Patricia Rosalind Rice do hereby give freely and voluntarily this statement to
Inv Mike Jarvis *484 622 and
who have identified themselves to me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement.

I am 52 years old, and I reside at _____, Greenville, SC 29605

I have a 11th grade education, and I can read and write.

I am giving this statement freely and voluntarily to Investigator Jarvis. I am in my right mind and know what I am doing. I am not under the influence of any drugs or alcohol at this time. I did have half of a beer early this morning at about 9:00AM, but that is it. It is about 12:45PM right now and I feel fine. I have not done any illegal drugs today, and I have not taken any prescription medicine today either.

About a week or so ago, on the weekend, I went up to the Pumpers at Hwy 25 and Augusta Rd. I don't know what time it was but I know that it was fixing to close, and it was night time. I was walking on my way back to my home, when I ran into a guy I know. His name is Bobby Joe Barton. I have known him since about 2001. He is always trying to be around me and wanting to be with me, but I don't like him like that. He started walking with me. We walked through a trailer park where a bunch of Mexicans live. It's a short cut to get to Lanford Dr and Papermill Rd. As we were walking, we saw a Mexican sitting out by one of the trailers. Bobby started talking to the Mexican, and it sounded like Bobby was talking in Spanish. The Mexican gave Bobby a beer and they sat there and drank it. I was telling Bobby that we needed to leave because I had to go to the bathroom. The next thing I know is that Bobby had the Mexican jacked up against the trailer, and Bobby was saying "turn it loose" (I know that Bobby carries a hunting knife, and I didn't know what was going to happen, so I turned and ran. I didn't know he was going to rob the Mexican. I turned around and ran and got stuck in some bushes and lost my shoes, so I came back out of the bushes and walked back through the trailer park. I saw the Mexican and he was on the phone. I yelled at him that I didn't have anything to do with that, and he kept yelling at me "your friend, your friend!" I walked out to White Horse Rd, and I walked home to my house.

EXHIBIT-C

5 AUG 2009 15 49

I have read the above statement of 1 pages and it is true and correct as best I recall.

WITNESS:

XX

Inv Mike Jarvis *484 622

I HAVE RECEIVED A COPY OF THIS STATEMENT

XX

Sworn before me this _____ day of _____ 20 _____

NOTARY PUBLIC FOR SOUTH CAROLINA

OF

7/65

ARREST WARRANT

1-478798

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE

09-118309

against

Bobby Joe Barton

Address: [REDACTED] Ct Ext, Apt B35

GREENVILLE, SC 29601-

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 5 9 Weight: 185

DL State: SC DL#: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: Michael Jarvis - 0484

Offense: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Offense Code: 0549

Code/Ordinance Sec: 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused.

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to

defendant Bobby Joe Bartonon 8-4-09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Magistrate 2
4 Mc Gee Street Room 116-B
Greenville, SC 29601

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant, Michael Jarvis

being duly sworn deposes and says that defendant Bobby Joe Barton

did within this county and state on or about 07/25/2009

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

In the following particulars:

DESCRIPTION OF OFFENSE Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 7/25/09, the victim states that he was robbed at knifepoint by a black male and a black female. During the course of the robbery, the suspects stole the victims wallet containing approximately \$500 in U. S. Currency. The defendant was positively identified by the co-defendant Patricia Rice, identifying the defendant as the person who put a knife to the throat of the victim and robbed the victim of his wallet. This did occur at 16 Randolph St. Lot #24, which is located in Greenville County.

EXHIBIT-DX

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street

Greenville, SC 29601-

Affiant's Telephone (864)467-5300

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/25/2009 defendant Bobby Joe Barton

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 08/03/2009

Signature of Issuing Judge (L.S.)

James E. Hudson

Judge Code: 5031

Judge's Address 4 Mcgee Street, Room 116-B

Greenville, SC 29601-

Judge's Telephone (864)467-5302

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ARREST WARRANT

I-478797

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

THE STATE

09-118309

against

Bobby Joe Barton

Address: [REDACTED] Ct Ext, Apt B35

GREENVILLE, SC 29601-

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 5 9 Weight: 185

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: Michael Jarvis - 0484

Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on Bobby Barton 8-4-09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Magistrate 2
4 Mc Gee Street Room 116-B
Greenville, SC 29601

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Personally appeared before me the affiant Michael Jarvis

being duly sworn deposes and says that defendant Bobby Joe Barton

did within this county and state on or about

07/25/2009

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Greenville

in the following particulars:

DESCRIPTION OF OFFENSE Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 7/25/09, the victim states that he was robbed at knife point by a black male and a black female. During the course of the robbery, the suspects stole the victims wallet containing approximately \$500 in U. S. Currency. The defendant was positively identified by the co-defendant Patricia Rice identifying the defendant as the person who put a knife to the throat of the victim and robbed the victim of his wallet. This did occur at 16 Randolph St, Apt #24, which is located in Greenville County.

EXHIBIT E

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Affiant's Address 4 McGee Street

Greenville, SC 29601-

Affiant's Telephone (864)467-5300

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/25/2009

defendant Bobby Joe Barton

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Greenville

) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 08/03/2009

Signature of Issuing Judge (L.S.)

James E. Hudson

Judge Code: 5031

Judge's Address 4 McGee Street, Room 116-B

Greenville, SC 29601-

Judge's Telephone (864)467-5302

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

465

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

465

YOUR RIGHTS

Sheriff's Office

Greenville, S.C.

Date August 3, 2009Time 1227

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

P.R.R. Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you have no money to pay a lawyer's fee, the court will appoint one to represent you without cost if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed *X Patricia D. Rice*

Witness Inv Mike Jarvis *484 622

Witness _____

Time 1232

EXHIBIT-F

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2014-CP-23-5047
COUNTY OF GREENVILLE	)	
	)	
Bobby Joe Barton,	)	
S.C.D.C. No. 163629,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the post-conviction relief application filed September 12, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the February 2010 term of General Sessions for armed robbery (2009-GS-23-10018, count 1) and possession of a weapon during the commission of a violent crime (2009-GS-23-10018, count 2). Susannah C. Ross, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty only of armed robbery. On August 10, 2010, the Honorable Edward W. Miller sentenced the Applicant to twenty-five years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. LaNelle C. DuRant, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense

perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Barton, Op. No. 2013-UP-058 (S.C. Ct. App. filed Jan. 30, 2013). The South Carolina Supreme Court denied the Applicant's subsequent petition for writ of certiorari on July 11, 2014. The Remittitur was sent on July 25, 2014.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

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

1. Ineffective assistance of trial counsel:
 - a. Failed to fully communicate the formal plea offer.
 - b. Failed to keep the Applicant reasonably informed of the status of the plea offer.
 - c. Failed to explain the plea offer for the Applicant to make informed decision.
 - d. Failed to comply with reasonable requests for information.
 - e. "[O]pened the door" to prior bad acts between the Applicant and the witness.
 - f. Failed to object to inadmissible character evidence regarding prior bad acts.
 - g. Failed to make contemporaneous objection to improper testimony or request a curative instruction.
2. Ineffective assistance of appellate counsel:
 - a. Failed to request tape recordings of the preliminary hearing.
 - b. Failed to point out statements in trial transcript where trial counsel admitted to volunteering confidential information.
 - c. Failed to argue the trial judge failed to do an in camera questioning of the four witnesses in the courtroom.
3. Procedural Due Process.
4. Prosecutorial Misconduct:
 - a. Misled and confused the jury concerning the difference between robbery and armed robbery.
 - b. Misled and confused the jury concerning the burden of proof.

- c. Stated the victim and witness had no reason to lie.
- d. Made statements intended to incite or inflame the jury.
- e. Stated the Applicant attempted to evade police.
- f. Denied the Applicant an impartial jury trial.

In a "Motion to Amend and Supplemental Pleadings" filed December 14, 2014, the Applicant argued:

1. Ineffective assistance of trial counsel:
 - a. Failed to object to testimony.
 - b. Failed to object to the trial judge's appointment and use of an interpreter based on the failure to comply with the statute.
 - c. Failed to object to the use of an unsworn interpreter during the Neil v. Biggers hearing.
 - d. Advised the Applicant not to testify.
 - e. Failed to have the trial judge rule on whether the robbery conviction could be used against the Applicant to impeach him.
 - f. Advised the Applicant to terminate the services of an identification expert.
 - g. Failed to investigate.
 - h. Failed to cross-examine the victim as to the amount of alcohol he had consumed.
 - i. Failed to cross-examine the victim as to whether he had an alcohol problem.
 - j. Failed to cross-examine the victim as to whether he had been arrested for an alcohol-related offense.
 - k. Failed to cross-examine the victim as to the location of his brother.
 - l. Failed to cross-examine the victim as to whether he solicited the witness and the Applicant for prostitution.
 - m. Failed to cross-examine the witness about her background and character.
 - n. Failed to request the witness be treated as hostile.
 - o. Failed to cross-examine the witness as to whether she went to the victim's trailer for prostitution purposes.
 - p. Failed to cross-examine the witness as to whether she knew how much time she faced.
 - q. Failed to cross-examine the witness about whether she lied.
 - r. Failed to cross-examine the witness as to whether her charge would be dismissed.
 - s. Failed to cross-examine the witness as to whether she met with the Applicant and bought drugs with him.
 - t. Failed to argue a motion for evidentiary hearing and motion for suppression.

- u. Failed to enter into evidence the 911 tapes and police reports.
- v. Failed to refrain from using the word "mugshot" and failed to object when the State used this word.
- w. Created a conflict of interest between herself and the Applicant.
- x. Failed to properly cross-examine Edward Perez or Investigator Jarvis.
- y. Misled the jury in closing argument.
- z. Failed to request a cautionary instruction jury charge.
- 2. Prosecutorial misconduct:
 - a. Knowingly allowed police to use the exact same arrest photo to be used in the photo line-up when he knew the victim had the exact photo in his possession."
 - b. Proceeded to trial upon the possession of a weapon during the commission of a violent crime charge.
 - c. Used perjured testimony.
- 3. Judicial misconduct:
 - a. Made prejudicial and condescending remarks to trial counsel.

III.

The Respondent asserts the Applicant's allegation that his trial attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must

overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830 (1985). In analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273,

276 (2009); Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999) (noting courts apply the Strickland test to determine if appellate counsel was deficient for failing to raise an issue and whether the defendant was prejudiced from the failure to raise the issue). Appellate counsel, however, is not required to raise every non-frivolous claim, but instead may select among them in order to maximize the likelihood of a favorable outcome. Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248.

V.

The Applicant has made allegations of trial court error and judicial misconduct. The Respondent submits the Applicant has not raised issues that are cognizable in a PCR action. Rather, these allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised these issues on appeal. The failure to do so has waived these allegations as grounds for relief.

VI.

The Applicant cannot prevail on his allegation of prosecutorial misconduct. "[T]he test

for reversible prosecutorial misconduct generally has two components: that (1) the prosecutor's remarks or conduct must in fact have been improper, and (2) such remarks or conduct must have prejudicially affected the defendant's substantial rights so as to deprive the defendant of a fair trial." United States v. Chorman, 910 F.2d 102, 103 (4th Cir. 1990). In order to establish prejudicial misconduct on the part of the prosecutor the alleged misconduct must have "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Darden v. Wainwright, 477 U.S. 168, 180-81, 106 S. Ct. 2464, 2471 (1986) (quotation omitted). This allegation must be dismissed.

VII.

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

VIII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

February 12, 2015

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

BOBBY JOE BARTON, 163629

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2014-CP-23-5047

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:

**Bobby Joe Barton, 163629
Perry Correctional Institution
430 Oaklawn Road
Pelzer SC 29669**

DATED this 12th day of February, 2015.


Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Bobby Joe Barton,)
S.C.D.C. No. 163629,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2014-CP-23-5047

ORDER OF DISMISSAL

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. MOORENSINER
2016 JAN 30 PM 2 26

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 12, 2014. The Respondent made its return on February 12, 2015. An evidentiary hearing was held on February 18, 2016 at the Greenville County Courthouse. The Applicant was present and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

Prior to the commencement of the PCR hearing, counsel for the Applicant requested a continuance. This Court denied that motion. Counsel for the Respondent also noted the Applicant had filed a pro se "Motion to Relieve Counsel" on December 23, 2015. The Applicant chose to withdraw this motion and the case proceeded to a hearing.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were assistant solicitor Mark Moyer, Aaron L. Jones, Jr., and the Applicant's trial counsel, Susannah C. Ross, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and Applicant's Exhibits 1-8.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the February 2010 term of the Greenville County Grand Jury for armed robbery (2009-GS-23-10018, count 1) and possession of a weapon during the commission of a violent crime (2009-GS-23-10018, count 2). He was represented by Susannah C. Ross, Esquire.

After the State called the case to trial, the Applicant was found guilty only of armed robbery. On August 10, 2010, the Honorable Edward W. Miller sentenced the Applicant to 25 years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. LaNelle C. DuRant, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Barton, Op. No. 2013-UP-058 (S.C. Ct. App. filed Jan, 30, 2013). The South Carolina Supreme Court denied the Applicant's subsequent petition for writ of certiorari on July 11, 2014. The remittitur was sent on July 25, 2014.

ALLEGATIONS

In his PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to fully communicate the formal plea offer.
 - b. Failed to keep the Applicant reasonably informed of the status of the plea offer.
 - c. Failed to explain the plea offer for the Applicant to make informed decision.
 - d. Failed to comply with reasonable requests for information.
 - e. "[O]pened the door" to prior bad acts between the Applicant and the witness.

- f. Failed to object to inadmissible character evidence regarding prior bad acts.
- g. Failed to make contemporaneous objection to improper testimony or request a curative instruction.
- 2. Ineffective assistance of appellate counsel:
 - a. Failed to request tape recordings of the preliminary hearing.
 - b. Failed to point out statements in trial transcript where trial counsel admitted to volunteering confidential information.
 - c. Failed to argue the trial judge failed to do an in camera questioning of the four witnesses in the courtroom.
- 3. Procedural Due Process.
- 4. Prosecutorial Misconduct:
 - a. Misled and confused the jury concerning the difference between robbery and armed robbery.
 - b. Misled and confused the jury concerning the burden of proof.
 - c. Stated the victim and witness had no reason to lie.
 - d. Made statements intended to incite or inflame the jury.
 - e. Stated the Applicant attempted to evade police.
 - f. Denied the Applicant an impartial jury trial.

In a pro se "Motion to Amend and Supplemental Pleadings" filed December 14, 2014, the Applicant raised the following issues:

- 1. Ineffective assistance of trial counsel:
 - a. Failed to object to testimony.
 - b. Failed to object to the trial judge's appointment and use of an interpreter based on the failure to comply with the statute.
 - c. Failed to object to the use of an unsworn interpreter during the Neil v. Biggers hearing.
 - d. Advised the Applicant not to testify.
 - e. Failed to have the trial judge rule on whether the robbery conviction could be used against the Applicant to impeach him.
 - f. Advised the Applicant to terminate the services of an identification expert.
 - g. Failed to investigate.
 - h. Failed to cross-examine the victim as to the amount of alcohol he had consumed.
 - i. Failed to cross-examine the victim as to whether he had an alcohol problem.
 - j. Failed to cross-examine the victim as to whether he had been arrested for an alcohol-related offense.
 - k. Failed to cross-examine the victim as to the location of his brother.
 - l. Failed to cross-examine the victim as to whether he solicited the witness and the Applicant for prostitution.

- m. Failed to cross-examine the witness about her background and character.
- n. Failed to request the witness be treated as hostile.
- o. Failed to cross-examine the witness as to whether she went to the victim's trailer for prostitution purposes.
- p. Failed to cross-examine the witness as to whether she knew how much time she faced.
- q. Failed to cross-examine the witness about whether she lied.
- r. Failed to cross-examine the witness as to whether her charge would be dismissed.
- s. Failed to cross-examine the witness as to whether she met with the Applicant and bought drugs with him.
- t. Failed to argue a motion for evidentiary hearing and motion for suppression.
- u. Failed to enter into evidence the 911 tapes and police reports.
- v. Failed to refrain from using the word "mugshot" and failed to object when the State used this word.
- w. Created a conflict of interest between herself and the Applicant.
- x. Failed to properly cross-examine Edward Perez or Investigator Jarvis.
- y. Misled the jury in closing argument.
- z. Failed to request a cautionary instruction jury charge.
- 2. Prosecutorial misconduct:
 - a. Knowingly allowed police to use the exact same arrest photo to be used in the photo line-up when he knew the victim had the exact photo in his possession."
 - b. Proceeded to trial upon the possession of a weapon during the commission of a violent crime charge.
 - c. Used perjured testimony.
- 3. Judicial misconduct:
 - a. Made prejudicial and condescending remarks to trial counsel.

In an "Amended Petition for Post Conviction Relief" filed by counsel on February 16, 2016, the Applicant raised the following issues:

- 1. Ineffective assistance of trial counsel:
 - a. Failed to fully and adequately communicate the State's plea offer.
 - b. Failed to keep the Applicant reasonably informed of the plea offer.
 - c. Failed to object to the wording and testimony of the mug shot magazine evidence.
 - d. Failed to object to the prosecution's failure to notify police that victim had the Applicant's photograph in his possession.
 - e. Failed to request a cautionary instruction charge.
 - f. Failed to request a missing witness instruction.

- g. Failed to object to the prosecution's use of perjured testimony in order to obtain a conviction and denied the Applicant a fair trial.
- h. Failed to object to testimony and denied the Applicant his right to confront witnesses at trial.

This Court finds the only issues properly raised to this Court were the issues raised at the PCR hearing. This Court finds all other issues are deemed abandoned.¹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the

¹ This Court also notes the Applicant filed a pro se "Motion to Amend and Supplemental Pleading" on March 17, 2015. This Court cannot consider this pleading, however, as it was filed after counsel was appointed. See Rule 11(a), SCRCP; Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) (holding there is no constitutional right to hybrid representation either at trial or on appeal).

result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

Plea offer

The Applicant stated trial counsel brought him a 15-year plea offer in January 2010. The Applicant stated trial counsel never discussed the terms of the offer with him and never explained the offer was for the Applicant to plead to the lesser charge of strong arm robbery.

Trial counsel testified she received a plea offer (which was dated January 11, 2010) in which the State would reduce the armed robbery charge to strong arm robbery and recommend either a sentence of 15 years suspended to 8 years or a plea without a recommendation. Trial counsel testified she visited the Applicant on January 29, 2010 to explain the plea offer and that she told him the plea was for strong arm robbery. Trial counsel testified, however, that the Applicant argued with her at that meeting. Trial counsel testified the Applicant later refused to be transported on March 25, 2010 so that they could discuss the case. Trial counsel testified she had explained the sentence ranges to the Applicant for both armed robbery and strong arm robbery. Trial counsel testified the Applicant never told her either that he wanted to accept this plea offer or that he wanted to plead guilty.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not adequately convey and discuss the plea offer. Trial counsel testified she conveyed the plea offer and explained its terms to the Applicant. Trial counsel testified, however, that the Applicant rejected the offer and then refused to see her for several months. This Court finds trial counsel's testimony is more credible than the Applicant on this issue. This Court notes trial counsel's file

contained both the plea offer letter from the State and her notes about her meeting with the Applicant. This Court also notes trial counsel had a specific recollection of relaying the offer to the Applicant and the Applicant opting to refuse it. This Court finds trial counsel fulfilled her responsibilities in this regard. See Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance).

Status of case

The Applicant stated trial counsel failed to keep him reasonably informed of the status of his case. The Applicant stated trial counsel stopped visiting him at the jail.

Trial counsel testified the Applicant refused to see her for several months. Trial counsel testified it was her practice to make notes if a client requested a jail visit and she did not indicate her file had any such notes.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not keep him informed about the status of the case. Trial counsel testified the Applicant refused to see her for several months after he rejected the plea offer. Trial counsel testified it was difficult to interact with the Applicant and that it was difficult to explain things to the Applicant that he did not want to hear. This Court finds trial counsel's testimony is credible. This Court finds that, if there was any breakdown in communication between the Applicant and trial counsel in this case, it was due to the Applicant's conduct. See United States v. Pellerito, 878 F.2d 1535, 1543 (5th Cir. 1989) ("If counsel was ineffective in any sense, it was only because the client rendered him so, first by keeping [counsel] in the dark, and then, by refusing to heed his advice. That is not the sort of 'ineffectiveness' for which relief can be granted.").

Discovery materials

The Applicant stated he requested a copy of the discovery materials prior to trial and did

not receive all of it.

Trial counsel testified she filed discovery motions, received those materials, and reviewed them with the Applicant on October 5, 2009. Trial counsel testified she made a copy of the discovery materials and sent it to the Applicant on October 16, 2009.

This Court finds the Applicant failed to meet his burden of proving he was not provided discovery materials in this case. Trial counsel testified she reviewed the discovery materials with the Applicant and then sent him a copy of the materials shortly thereafter. This Court finds trial counsel's testimony is more credible. This Court finds that, even assuming arguendo that the Applicant did not receive the discovery materials, he failed to demonstrate he suffered any prejudice as a result. See Johnson v. State, 325 S.C. at 186, 480 S.E.2d at 735.

Patricia Rice's prior conviction

The Applicant stated trial counsel should have objected to testimony regarding Patricia Rice's prior conviction for providing a false statement. The Applicant stated the assistant solicitor violated the rules by eliciting this testimony and that he was prejudiced as a result.

The assistant solicitor testified he ran a RAP sheet for Rice and provided it to trial counsel.

Trial counsel testified there was no reason to object to testimony that Rice had a prior conviction because this was helpful to the defense case.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to Rice's prior conviction. On direct examination, Rice admitted she had a 2008 conviction "for lying to police about [her] name." (Trial transcript, p.158). On cross-examination, trial counsel questioned Rice about this prior conviction and had her admit she gave a false name to police to avoid trouble. (Trial transcript, pp.174-75). This Court agrees

with trial counsel's testimony that there was no basis to object to this line of questioning. This line of questioning was helpful to the defense case, as it clearly placed Rice's credibility at issue. As such, the Applicant failed to meet his burden of proof on this issue. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (finding in a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application).

Confrontation clause

The Applicant stated the victim only spoke Spanish and the victim's brother interpreted for him to the police officers. The Applicant stated trial counsel should have called the victim's brother as a witness at trial.

Trial counsel noted the victim's brother was on the State's witness list but did not know why he was not called. Trial counsel testified she did not believe the victim's brother would have helped the defense case.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have argued a violation of the Confrontation Clause. This Court finds that, however, that there was no violation of the Confrontation Clause in this case. See, e.g., Crawford v. Washington, 541 U.S. 36, 68, 124 S. Ct. 1354, 1370 (2004) ("Where nontestimonial hearsay is at issue, it is wholly consistent with the Framers' design to afford the States flexibility in their development of hearsay law. . . . Where testimonial evidence is at issue, however, the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination."). As such, this Court finds trial counsel was not deficient in failing to raise a Confrontation Clause argument. Regardless, this Court has examined the trial transcript and finds credible trial counsel's testimony that she did not believe the victim's brother's testimony would have had an impact on the defense case. This Court finds the Applicant failed to

demonstrate he suffered any prejudice from the lack of a Confrontation Clause argument. See Johnson v. State, 325 S.C. at 186, 480 S.E.2d at 735.

Perjured witness

The Applicant stated the assistant solicitor met with Rice at the jail. The Applicant stated trial counsel should have objected because Rice perjured herself at trial. The Applicant stated Rice was with him the night of the robbery – contrary to her trial testimony – and that he provided trial counsel with the names of witnesses who could support his story.

The assistant solicitor testified he had no concerns that Rice perjured herself and that he had no doubt she was telling the truth.

Aaron L. Jones, Jr. stated he recalled seeing the Applicant and Rice around 1:15 a.m. on July 25, 2009. Jones stated he saw them together for 30 minutes that night. Jones admitted he was on drugs at the time. When asked on cross-examination why he could recall that day in particular, Jones responded “that’s a good question.”

Trial counsel testified the Applicant told her the assistant solicitor met with Rice and that she confirmed this. Trial counsel testified there was a letter in her file from the assistant solicitor to Rice’s attorney.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected because Rice perjured herself at trial. This Court initially notes there is no prohibition against the prosecutor meeting with a co-defendant in a criminal case. Regardless, this Court finds the Applicant has failed to demonstrate Rice offered incorrect or perjurious testimony. While Jones testified he recalled seeing the Applicant and Rice together for a 30 minute period on a specific date more than 6 years ago, this Court does not find this testimony to be credible. As such, the Applicant failed to present any credible evidence to support his

allegation that trial counsel should have objected to rice's testimony about her whereabouts after the armed robbery. See Butler v. State, 286 S.C. at 442, 334 S.E.2d at 814.

Inadmissible testimony

The Applicant stated trial counsel should have objected to inadmissible testimony when Rice testified about dismissing a CDV charge. The Applicant also stated Rice's testimony that he was incarcerated was inadmissible.

Trial counsel testified Rice's comment was very quick and she did not object because she did not want to draw attention to it.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to Rice's testimony. During redirect examination, Rice admitted she called she previously called police because the Applicant had committed domestic violence. (Trial transcript, p.175). Rice explained she chose not to prosecute because "[h]e had already been incarcerated for something else. He had made time for that. That was in the past. Let it go." (Trial transcript, p.175). This Court finds trial counsel articulated a valid strategic reason that she did not object to Rice's testimony – that she did not want to draw further attention to it. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel); see also Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) ("Courts must be wary of second-guessing counsel's trial tactics."). This Court finds the Applicant also failed to demonstrate he suffered any prejudice as a result of this testimony. See Johnson v. State, 325 S.C. at 186, 480 S.E.2d at 735.

State's closing argument

The Applicant stated trial counsel should have objected when the assistant solicitor

caused the jury to be inflamed during closing argument.

Trial counsel testified there was no reason to object because (1) the assistant solicitor was referring to the victim, not the Applicant and (2) this was not a Golden Rule violation.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected during the assistant solicitor's closing argument. The assistant solicitor stated:

Don't you think if anyone would stand up and say, no, police, you got it wrong, it's really a much younger guy, it's not him, [the victim] has that incentive? If you've been robbed, you want the real robber to be caught. You don't want somebody you are not sure about. You're not going to be flippant about that. You want the real robber, the real person who put the knife against your throat, you want that person caught. You don't want the real robber out there running around doing who knows what in a neighborhood right next to yours. He, I would argue to you, has more incentive than anyone.

(Trial transcript, p.227, line 22 – p.228, line 9). This Court agrees with trial counsel that this was not an objectionable argument because it was not a Golden Rule argument. Rather, it was merely commentary about the victim's motivations in this case. See State v. Huggins, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997) (finding a solicitor's argument must stay within the record and its reasonable inferences); see also State v. Cooper, 334 S.C. 540, 553, 514 S.E.2d 584, 591 (1999) (noting a solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony). This Court finds the Applicant failed to prove either that trial counsel was deficient or that he was prejudiced as a result.

Missing witness instruction

The Applicant stated trial counsel should have requested a "missing witness" instruction because the victim's brother was not a witness at trial.

Trial counsel testified she did not contemplate asking for such a jury instruction and that she did not believe such an instruction would have been helpful to the defense case.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have requested a "missing witness" jury charge in this case. Initially, this Court does not believe such an instruction would have been merited in this case. See, e.g., State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001) (holding the law to be charged must be determined from the evidence presented at trial). Regardless, this Court finds the Applicant failed to articulate the nature of such an instruction, the basis upon which trial counsel should have argued for its inclusion, or how the lack of this instruction prejudiced his case. See Butler v. State, 286 S.C. at 442, 334 S.E.2d at 814.

Mug shot magazine

The Applicant stated the trial judge ruled in the Biggers hearing that the mug shot magazine could not be admitted at trial. The Applicant argued trial counsel was ineffective because the assistant solicitor mentioned the magazine 8 times at trial and trial counsel mentioned it 25 times.

The assistant solicitor testified he did not know about the mug shot magazine until 1-2 weeks before trial. The assistant solicitor testified the victim did not tell him about the mug shot magazine until after the Applicant had already been arrested (based on Rice's statement). The assistant solicitor testified the Applicant was arrested in August 2009.

Trial counsel testified they litigated the admissibility of the mug shot magazine during the Biggers hearing. Trial counsel testified she mentioned the magazine during trial because it as central to the defense in attempting to discredit the lineup and the victim's identification.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to mention of the mug shot magazine during his trial. Trial counsel testified the existence of the mug shot magazine was a key part of the defense case. This Court finds trial

counsel's testimony is credible. This Court has examined the trial transcript and finds trial counsel articulated a valid strategic reason for mentioning the mug shot magazine, as she clearly argued to the jury that the victim only identified the Applicant as the assailant in a photographic lineup because he had previously seen the Applicant's photograph in a mug shot magazine. See Roseboro v. State, 317 S.C. at 294, 454 S.E.2d at 313. This Court finds the Applicant failed to prove either that trial counsel was deficient or that he was prejudiced as a result.

Investigator Jarvis

The Applicant stated trial counsel should have objected when Investigator Jarvis' testimony at the trial differed from that at the preliminary hearing. The Applicant stated trial counsel should have argued Jarvis perjured himself.

Trial counsel testified she was present at the preliminary hearing but did not recall if Jarvis's testimony was the same at the preliminary hearing and the trial.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to Jarvis' trial testimony and argued he committed perjury. This Court finds the Applicant failed to prove Jarvis' testimony at trial differed from that at the preliminary hearing. Without such, the Applicant cannot demonstrate trial counsel was deficient in not making an objection. See Butler v. State, 286 S.C. at 442, 334 S.E.2d at 814. Further, even assuming arguendo that trial counsel should have objected, this Court finds the Applicant failed to demonstrate he suffered any prejudice as a result. See Johnson v. State, 325 S.C. at 186, 480 S.E.2d at 735.

Cautionary instruction charge

The Applicant stated trial counsel should have requested a "cautionary instruction charge" because — as she was an accomplice to the crime — Rice had motivation to testify against

him. The Applicant stated the jury should have been advised her testimony should be taken "with some form of caution."

Trial counsel testified she did not request this jury charge and did not believe there was any value in such a charge.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have requested a "cautionary instruction" jury charge in this case. Initially, this Court agrees with trial counsel that such an instruction would not have been merited in this case. See, e.g., State v. Knoten, 347 S.C. at 302, 555 S.E.2d at 394. Regardless, this Court finds the Applicant failed to articulate the nature of such an instruction, the basis upon which trial counsel should have argued for its inclusion, or how the lack of this instruction prejudiced his case. See Butler v. State, 286 S.C. at 442, 334 S.E.2d at 814.

Prosecutorial misconduct

The Applicant stated trial counsel should have objected to prosecutorial misconduct because the State's photographic lineup was fundamentally unfair. The Applicant stated the assistant solicitor should have told the police not to use the same photograph in the lineup as was seen in the mug shot magazine.

The assistant solicitor testified the Applicant was arrested in August 2009. The assistant solicitor testified he told Jarvis to do a photographic lineup in November 2009 and that the lineup was done in January 2010. The assistant solicitor testified he did not know about the mug shot magazine when the lineup was put together.

Trial counsel testified there was no prosecutorial misconduct in this case. Trial counsel testified the assistant solicitor was not aware of the mug shot magazine before the photographic lineup was made.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have made an argument about prosecutorial misconduct. The crux of the Applicant's argument is his contention that the assistant solicitor should have instructed law enforcement to use a different photograph for the photographic lineup than the one that was used in the mug shot magazine. Both the assistant solicitor and trial counsel, however, testified the assistant solicitor did not know about the mug shot magazine when the photographic lineup was created. This Court finds their testimony is credible. This Court finds trial counsel was not deficient for failing to argue prosecutorial misconduct because the Applicant has failed to demonstrate the existence of any such misconduct in this case. See United States v. Chorman, 910 F.2d 102, 103 (4th Cir. 1990) ("[T]he test for reversible prosecutorial misconduct generally has two components: that (1) the prosecutor's remarks or conduct must in fact have been improper, and (2) such remarks or conduct must have prejudicially affected the defendant's substantial rights so as to deprive the defendant of a fair trial."); Darden v. Wainwright, 477 U.S. 168, 180-81, 106 S. Ct. 2464, 2471 (1986) (holding that, in order to establish prejudicial misconduct on the part of the prosecutor, the alleged misconduct must have "so infected the trial with unfairness as to make the resulting conviction a denial of due process.") (internal quotation omitted).

Conclusion

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met

his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

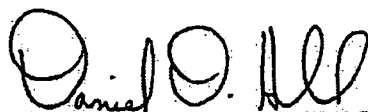
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 14th day of March, 2016.



Daniel D. Hall
Presiding Judge
Thirteenth Judicial Circuit

Yock, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2014CP2305047

RECEIVED
CLERK OF COURT
PAUL B. WICKENSIMER
JAN 10 2 26 PM '15

Bobby Joe Barton vs. South Carolina State Of

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - Daniel D Hall

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Caroline M.W. Horlbeck 101 Whitsett Street
Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

MAY 11 2016

Daniel D. Hall, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2014-CP-23-05047

Bobby Joe Barton, ... Appellant,

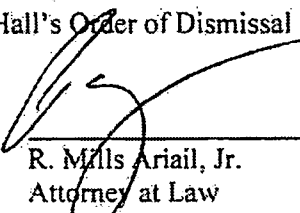
v.

State of South Carolina Respondent.

NOTICE OF APPEAL

Appellant appeals the Honorable Daniel D. Hall's Order of Dismissal dismissing Appellant's application for post-conviction relief. On March 14, 2016, the Honorable Daniel D. Hall signed an order dismissing Appellant's application for post-conviction relief with prejudice. Appellant's previous counsel, Caroline Horlbeck, received written notice of entry of this order on April 5, 2016 and she was relieved as Appellant's counsel on April 7, 2016.

On April 8, 2016, R. Mills Ariail, Jr. was appointed as Appellant's counsel and received a copy of the Order of Dismissal on that date. On April 18, 2016, Appellant's counsel filed a Rule 59(e) Motion for Reconsideration which was denied by the Honorable Daniel D. Hall on April 28, 2016. Applicant's counsel received notice of the dismissal of the Motion to Reconsider on April 29, 2016. A copy of the Honorable Daniel Hall's Order of Dismissal and Form 4 Order of Dismissal are attached.



R. Mills Ariail, Jr.
Attorney at Law
11 North Irvine St., Suite 11
Greenville, SC 29601
Telephone (864) 232-9390
Attorney for Bobby Joe Barton

Greenville, South Carolina
May 05, 2016

The Supreme Court of South Carolina

Bobby Joe Barton, Petitioner,

v.

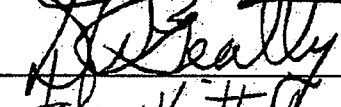
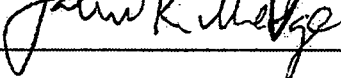
State of South Carolina, Respondent.

Appellate Case No. 2016-000995

ORDER

This matter is before the Court by way of a notice of appeal of an order of the circuit court denying petitioner's application for post-conviction relief (PCR). Petitioner is proceeding *pro se*. Petitioner has notified this Court that he is challenging the accuracy of the transcript of the evidentiary hearing in this matter. He asserts the transcript "does not reflect the actual testimony that [] petitioner gave on the witness [stand] or the testimony given by other witnesses." Petitioner contends he has been unsuccessful in contacting the court reporter. However, the court reporter informed South Carolina Court Administration that she received one letter from petitioner, and she responded to the letter on October 6, 2016. The court reporter also reports that the audiotapes of the evidentiary hearing are no longer available. See Rule 607(i), SCACR.

We remand this matter to the Honorable Daniel D. Hall to hold a hearing within forty-five (45) days of the date of this order to determine the accuracy of the transcript prepared in this matter. Judge Hall shall notify this Court of his findings within fifteen (15) days of the hearing on remand.

	_____	C.J.
	_____	J.
	_____	J.

Kaye L. Heam J.
John Cannon Jr J.

Columbia, South Carolina

November 9, 2016

cc:

Karen Christine Ratigan, Esquire

Bobby Joe Barton, #163629

SC Appellate Defense

The Honorable Daniel B. Hall

4977



ALAN WILSON
ATTORNEY GENERAL

November 30, 2016

The Honorable Daniel D. Hall
Presiding Judge, 13th Judicial Circuit
Moss Justice Center
1675-1J York Highway
York SC 29745

Re: Bobby Joe Barton, 163629 v. State of South Carolina
2014-CP-23-5047

Dear Judge Hall:

Enclosed please find the proposed original **Transport Order** in the above-captioned case. If this Order meets with your approval, please sign same and return to me in the enclosed envelope and I will forward to the Greenville County Clerk of Court and the Department of Corrections.

Sincerely,

Patrick Schmeckpeper
Assistant Attorney General

PLS/jacc
Enclosures

cc: Bobby Joe Barton, 163629
Taylor D. Gilliam, Esquire

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Bobby Joe Barton, #163629,)

Plaintiff,)

v.)

State of South Carolina,)

Defendant.)
_____)IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No: 2014-CP-23-5047

ORDER OF TRANSPORTATION

TO: McCormick Correctional Institution and the South Carolina Department of Corrections

Mr. Bobby Barton (SCDC Inmate No. 163629) is scheduled to appear before this Court for a hearing in his pending post-conviction relief appeal. The Department of Corrections is **ordered** to transport Mr. Barton to this hearing at **9:00 am on Thursday, December 15, 2016**, to the **Union County Courthouse**, located at **210 West Main Street, Union, SC 29379**.

DANIEL D. HALL
Presiding Judge
Thirteenth Judicial Circuit

_____, South Carolina

_____, 2016

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT
CASE NO: 2014-CP-23-5047

BOBBY JOE BARTON)
vs.) TRANSCRIPT OF RECORD
STATE OF SOUTH CAROLINA)

DECEMBER 15, 2016
UNION, SOUTH CAROLINA

BEFORE THE HONORABLE DANIEL HALL

APPEARANCES:

PATRICK SCHMECKPEPER, ASSISTANT ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

BOBBY JOE BARTON, PRO SE

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES: DIRECT CROSS RE-DIRECT RE-CROSS
(NO TESTIMONY TAKEN)