

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

D. Craig Brown, Circuit Court Judge

JASON THOMAS BOSTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002179

APPENDIX

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

COURT OF
 GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
 14-GS-45-0120

JASON T. BOSTON,)

DEFENDANT.)

April 1, 2015
 Kingstree, South Carolina

B E F O R E :

THE HONORABLE CLIFTON B. NEWMAN, JUDGE;
 AND JURY

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

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(There were no exhibits submitted.)

1 MS. BARR: Judge, the next case scheduled
2 for trial is the State of South Carolina versus
3 Jason Thomas Boston. This is indictment
4 2014-GS-45-120. The defendant is charged with the
5 offense of armed robbery, possession of a firearm
6 during the commission of a violent crime. He's
7 represented by attorney Amanda Shuler and the State
8 is ready for trial.

9 THE COURT: All right. Ladies and
10 gentlemen, the State has called for trial the case
11 of the State versus Jason Boston. Mr. Boston was
12 indicted by the grand jury and charged with the
13 offense of armed robbery and possession of a weapon
14 during the commission of a violent crime. He's pled
15 not guilty to the charge, presumed to be not guilty,
16 cannot be found guilty unless the State convinces a
17 jury of his guilt beyond a reasonable doubt.
18 Mr. Boston has pled not guilty to the charge. He's
19 presumed to be not guilty of the charge and cannot
20 be found guilty unless the State presents evidence
21 which convinces a jury of his guilt beyond a
22 reasonable doubt. Mr. Boston is in court with
23 counsel.

24 And counsel, if you'll stand along with
25 Mr. Boston, face the jury panel and counsel, if

1 you'll introduce yourself.

2 MS. SHULER: Thank you, Your Honor, may it
3 please the Court. Good morning, ladies and
4 gentlemen, my name is Mandy Shuler. I'm a lawyer
5 here in Kingstree. I practice law at Whetstone,
6 Perkins, and Fulda, along with my father-in-law
7 Duane Shuler across the street, as well as I'm a
8 part-time public defender for Williamsburg County.
9 My firm is also a part of a firm out of Columbia,
10 Whetson, Perkins, and Fulda, and Charles Whetson and
11 Cheryl Perkins and John Eric Fulda are three
12 partners at that firm.

13 THE COURT: And the State is represented
14 by the Third Circuit Solicitor's Office, Ms. Barr.

15 MS. BARR: Thank you, Your Honor, good
16 morning. Ladies and gentlemen of the jury, my name
17 is Kimberly Barr. I'm assistant solicitor. I also
18 practice here in the law offenses of Ronnie Sabb. I
19 also work with another attorney who is attorney
20 Helen McFadden.

21 THE COURT: Ladies and gentlemen, I have a
22 number of questions to ask. If any of these
23 questions applies to you please stand. If anyone is
24 a friend, a relative, an associate, or a client of
25 any of the lawyers involved if so, please stand.

1 (There was no response.)

2 THE COURT: The lawyers have no friends,
3 no relatives, no associates, and no clients. No one
4 has stood. If anyone is a friend, relative, client,
5 or associate of any of the lawyers of the firm, not
6 the lawyers here but the lawyers who are principals
7 s in the firm; and those folks would include, among
8 others, Ronnie Sabb, Duane Shuler, Helen McFadden,
9 if so, please stand.

10 (There was no response.)

11 THE COURT: The senator has no friends,
12 former Judge Shuler has no friends, relatives,
13 associates, or clients. All right, if you are a
14 friend, relative, associate, or acquaintance of any
15 of the following people who may be witnesses in this
16 case. If you're here I need you to stand.
17 Investigator Juan Ballard, Investigator Alex
18 Edwards, Sergeant Justin Whack, Deputy Brandon
19 McCants, Lieutenant Willie Brown, Sharhonda Burgess,
20 Jerry Tovar, Luciano Garcia Reynoso, Patricia Munoz,
21 Maria Sanchez, Zalandria Brown, Christopher Hickson.

22 Any other prospective witnesses,
23 Ms. Shuler?

24 MS. SHULER: Yes, Your Honor, may I
25 approach.

1 THE COURT: All right. Mary Boston
2 Presley, Zindel Brown. If you are a friend, family
3 member, relative, associate, or acquaintance of any
4 of those folks, if so, please stand.

5 (There was no response.)

6 THE COURT: No one is standing. If you
7 know of any reason why you cannot give both the
8 State and the Defendant a fair and impartial trial
9 or any reason whatsoever why you should not be
10 selected to be a juror in this case, if so, please
11 stand.

12 (There was no response.)

13 THE COURT: The incident alleged in this
14 indictment occurred on or about March 14th, 2014, in
15 what area of the county, Ms. Barr?

16 MS. BARR: In Cades, South Carolina.

17 THE COURT: In the Cades area of
18 Williamsburg County. If you know anything about
19 this case, please stand.

20 (There was no response.)

21 THE COURT: And no one is standing. Any
22 additional questions proposed by State or the
23 Defense?

24 MS. BARR: None from the State, Your
25 Honor.

1 MS. SHULER: Your Honor, I hand up one
2 more question.

3 THE COURT: Has any juror or any member of
4 your immediate family or close personal friend of
5 yours ever been the victim of a violent crime, a
6 violent crime being rape, robbery, murder, or
7 burglary.

8 (There was no response.)

9 THE COURT: If you or any member of your
10 immediate family has ever been, or close personal
11 friend, ever been the victim of a violent crime, if
12 so, please stand.

13 (There was no response.)

14 THE COURT: All right, juror number 6
15 and —

16 THE POTENTIAL JUROR: I've had my house
17 broken into.

18 THE COURT: Juror number 6, thank you.
19 Yes, ma'am.

20 THE POTENTIAL JUROR: My brother, he was
21 shot at a robbery trying to steal his car.

22 THE COURT: And your juror number is?

23 THE POTENTIAL JUROR: 108.

24 THE COURT: 108, thank you. Anyone else?

25 (There was no response.)

1 THE COURT: Has anyone upon reflection not
2 responded to any question that your oath as a juror
3 requires you to respond to? If you have not
4 responded to any questions that I have asked that
5 your oath as a juror requires you to respond to, if
6 so, please stand.

7 (There was no response.)

8 THE COURT: No one is standing. Anything
9 else, State or Defense?

10 MS. BARR: Nothing from the State, Your
11 Honor.

12 MS. SHULER: None from the Defendant, Your
13 Honor.

14 THE COURT: All right, let's get our jury.
15 Gerald Brown, do you know of any reason why you
16 should not be selected to be on this jury?

17 THE POTENTIAL JUROR: No, sir.

18 THE COURT: You feeling fine?

19 THE POTENTIAL JUROR: No, sir. A little
20 queasy.

21 THE COURT: Is that a reason or not?

22 THE POTENTIAL JUROR: Yes, sir.

23 THE COURT: That's a question. Is there
24 any reason why any juror should not be selected? Do
25 you have a reason why you should not be selected?

1 THE POTENTIAL JUROR: I don't feel my best
2 today, not at my best.

3 THE COURT: Well, do you think you can
4 serve or you don't think so?

5 THE POTENTIAL JUROR: I can serve, but I
6 mean, I'm not my best.

7 THE COURT: Is that what you told the
8 clerk?

9 THE POTENTIAL JUROR: No, sir.

10 THE COURT: I'm just asking. You know, we
11 have, if you're sick and can't serve then you can't
12 serve.

13 THE POTENTIAL JUROR: Right.

14 THE COURT: I don't know the answers to
15 the questions; I'm asking questions. If you're sick
16 and can't serve, then let me know. If you're fine,
17 then fine. Which one is it?

18 THE POTENTIAL JUROR: I can't serve.

19 THE COURT: All right. We will not
20 consider him because of what reason?

21 THE POTENTIAL JUROR: I don't feel well.

22 THE COURT: He's not feeling well, okay.
23 Very good. Just stay with us for a moment. Mr.
24 Brown will not be included. You can have a seat,
25 yes, sir.

1 All right, let's have the jury.

2 THE CLERK OF COURT: Ladies and gentlemen,
3 we will go through the same process that we did on
4 Monday. When your name is called, please come to
5 the front, turn around and face the State and
6 Defense attorneys.

7 Juror number 147, Hubert Pipkin (white
8 male). What says the State?

9 MS. BARR: Please present Mr. Pipkin.

10 THE CLERK OF COURT: What says the
11 Defense?

12 MS. SHULER: Beg the Court's indulgence.
13 Please seat Mr. Pipkin.

14 THE CLERK OF COURT: Please take your seat
15 in the jury box.

16 Juror number 86, Ms. Johnnie Mae Henry
17 (black female). What says the State?

18 MS. BARR: Juror number?

19 THE CLERK OF COURT: 86.

20 MS. BARR: Please present the juror.

21 THE CLERK OF COURT: What says the
22 Defense?

23 MS. SHULER: Please seat Ms. Henry.

24 THE CLERK OF COURT: Juror number 173,
25 Kylie Tanner (white female). What says the State?

1 MS. BARR: Please present Ms. Tanner.

2 THE CLERK OF COURT: What says the
3 Defense?

4 MS. SHULER: Please excuse Ms. Tanner for
5 the trial of just this case.

6 THE CLERK OF COURT: Please return to your
7 seat.

8 Juror number 7, Suzanne Benton (white
9 female). What says the State?

10 MS. BARR: Please present Ms. Benton.

11 THE CLERK OF COURT: What says the
12 Defense?

13 MS. SHULER: Please excuse Ms. Benton for
14 the trial of just this case.

15 THE CLERK OF COURT: Please return to your
16 seat. Juror number 115, Milton McCrea (black male).
17 What says the State?

18 MS. BARR: Please present Mr. McCrea.

19 THE CLERK OF COURT: What says the
20 Defense?

21 MS. BARR: Please seat Mr. McCrea.

22 THE CLERK OF COURT: Please take your seat
23 in the jury box.

24 Juror number 17, Alicia Brown (black
25 female). What says the State?

1 MS. BARR: Please present Ms. Brown.

2 THE CLERK OF COURT: What says the
3 Defense?

4 MS. SHULER: Place seat Ms. Brown.

5 THE CLERK OF COURT: Please take your seat
6 in the jury box.

7 Juror number 38, Kimberly Council (black
8 female). What says the State?

9 MS. BARR: Please present Ms. Council.

10 THE CLERK OF COURT: What says the
11 Defense?

12 MS. SHULER: Please excuse Ms. Council
13 from the trial of just this case.

14 THE CLERK OF COURT: Please return to your
15 seat.

16 Juror number 8, Mark Bingham (white male).
17 What says the State?

18 MS. BARR: Please excuse Mr. Bingham from
19 the trial of just this case.

20 THE CLERK OF COURT: Please return to your
21 seat.

22 Juror number 123, Calton McKnight (black
23 male). What says the State?

24 MS. BARR: Please present Mr. McKnight.

25 THE CLERK OF COURT: What says the

1 Defense?

2 MS. SHULER: Please seat Mr. McKnight.

3 THE CLERK OF COURT: Please take your seat
4 in the jury box.

5 Juror number 108, Queen McBride (black
6 female). What says the State?

7 MS. BARR: Please present Ms. McBride.

8 THE CLERK OF COURT: What says the
9 Defense?

10 MS. SHULER: Please excuse Ms. McBride
11 from just this case.

12 THE CLERK OF COURT: Please return to your
13 seat.

14 Juror number 51, Kellon Eaddy (black
15 male). What says the State?

16 MS. BARR: Please present Mr. Eaddy.

17 THE CLERK OF COURT: What says the
18 Defense?

19 MS. SHULER: Please excuse Mr. Eaddy from
20 the trial of just this case.

21 THE CLERK OF COURT: Please return to your
22 seat.

23 Juror number 6, Jimmy Bellflowers (white
24 male). What says the State?

25 MS. BARR: Please present Mr. Bellflowers.

1 THE CLERK OF COURT: What says Defense?

2 MS. SHULER: Please excuse Mr. Bellflowers
3 from the trial of just this case.

4 THE CLERK OF COURT: Please return to your
5 seat.

6 Juror number 96, Lachele Johnson (black
7 female). What says the State?

8 MS. BARR: Please present Ms. Johnson.

9 THE CLERK OF COURT: What says the
10 Defense?

11 MS. SHULER: Please seat Ms. Johnson.

12 THE CLERK OF COURT: Please take your seat
13 in the jury box.

14 Juror number 27, Robert Burks (white
15 male). What says the State?

16 MS. BARR: Please present Mr. Burks.

17 THE CLERK OF COURT: What say the Defense?

18 MS. SHULER: Please excuse Mr. Burks from
19 the trial of just this case.

20 THE CLERK OF COURT: Please return to your
21 seat.

22 Juror number 140, Brandy Owens (white
23 female). What says the State?

24 MS. BARR: Please present Ms. Owens.

25 THE CLERK OF COURT: What says the

1 Defense?

2 MS. SHULER: Please seat Ms. Owens.

3 THE CLERK OF COURT: Please take your seat
4 in the jury box.

5 Juror number 91, Heath Hunter (white
6 male). What says the State?

7 MS. BARR: Please present Mr. Hunter.

8 THE CLERK OF COURT: What says the
9 Defense?

10 MS. SHULER: Please excuse Mr. Hunter from
11 the trial of just this case.

12 THE CLERK OF COURT: Please return to your
13 seat.

14 Juror number 169, Jimmia Spann (black
15 female). What says the Defense?

16 MS. BARR: Please excuse Ms. Spann from
17 the trial of this case.

18 THE CLERK OF COURT: Please return to your
19 seat.

20 Juror number 70, Gennie Gamble (black
21 female). What says the State?

22 MS. BARR: Please present Ms. Gamble.

23 THE CLERK OF COURT: What says the
24 Defense?

25 MS. SHULER: Please seat Ms. Gamble.

1 THE CLERK OF COURT: Please have a seat in
2 the jury box.

3 Juror number 182, Cecil Tyler (white
4 male). What says the State?

5 MS. BARR: Present Mr. Tyler.

6 THE CLERK OF COURT: What says the
7 Defense?

8 MS. SHULER: Please excuse Mr. Tyler for
9 the trial of just this case.

10 THE CLERK OF COURT: Please return to your
11 seat.

12 Juror number 1, Bartelle Baker (black
13 male). What says the State?

14 MS. BARR: Please present Mr. Baker.

15 THE CLERK OF COURT: What says the
16 Defense?

17 MS. SHULER: Please seat Mr. Baker.

18 THE CLERK OF COURT: Please take your seat
19 in the jury box.

20 Juror number 29, Valerie Cannon (black
21 female). What says the State?

22 MS. BARR: Please present Ms. Cannon.

23 THE CLERK OF COURT: What says the
24 Defense?

25 MS. SHULER: Please seat Ms. Cannon.

1 THE CLERK OF COURT: Please take your seat
2 in the jury box.

3 Juror number 162, Don Scott (black male).
4 What says the State?

5 MS. BARR: Please excuse Mr. Scott from
6 the trial of just this case.

7 THE CLERK OF COURT: Please return to your
8 seat.

9 Juror number 37, Jason Cooper (white
10 male). What says the State?

11 MS. BARR: Please present Mr. Cooper.

12 THE CLERK OF COURT: What says the
13 Defense?

14 MS. SHULER: Please present Mr. Cooper.

15 THE CLERK OF COURT: Please take your seat
16 in the jury box.

17 Juror number 197, Joyce Wise (white
18 female). What says the State?

19 MS. BARR: Please present Ms. Wise.

20 THE CLERK OF COURT: What says the
21 Defense?

22 MS. SHULER: Please seat Ms. Wise.

23 THE CLERK OF COURT: Please take your seat
24 in the jury box.

25 Do you want two alternates, Judge?

1 THE COURT: We'll see how we go.

2 THE CLERK OF COURT: Juror number 128,
3 Mitchell Moore (white male). What says the State?

4 MS. BARR: Please present Mr. Moore.

5 THE CLERK OF COURT: What says the
6 Defense?

7 MS. SHULER: Please seat Mr. Moore.

8 THE CLERK OF COURT: Please take your seat
9 in the jury box.

10 THE COURT: Another alternate.

11 THE CLERK OF COURT: Juror number 112,
12 Allie McCrea (black female). What says the State?

13 MS. BARR: Please present Ms. McCrea.

14 THE CLERK OF COURT: What says the
15 Defense?

16 MS. SHULER: Please excuse Ms. McCrea for
17 the trial of just this case.

18 THE CLERK OF COURT: Please return to your
19 seat.

20 Juror number 155, James Rice (black male).
21 What says the State?

22 MS. BARR: Please present Mr. Rice.

23 THE CLERK OF COURT: What says the
24 Defense?

25 MS. SHULER: Please seat Mr. Rice.

1 THE CLERK OF COURT: Please take your seat
2 in the jury box.

3 THE COURT: Are there any matters of law
4 regarding the jury selection?

5 MS. BARR: Not on behalf of the State,
6 Judge.

7 MS. SHULER: Your Honor, the defendant
8 does have one issue that he would like to put on the
9 record, but we can certainly do that during a break.

10 THE COURT: All right. Any other matters
11 of law?

12 MS. SHULER: No other matters of law.

13 THE COURT: All right, very good. Ladies
14 and gentlemen of the jury, we're gonna have you go
15 to the jury room for a moment. Please go that way
16 to the jury room. Please do not discuss the case.

17 (WHEREUPON, the jury was removed from the
18 courtroom at 10:58 a.m.)

19 THE COURT: Ms. Shuler, yes, ma'am.

20 MS. SHULER: Thank you, Your Honor, may it
21 please the Court. As Your Honor is aware there were
22 31 jurors that appeared this morning. With Mr.
23 Brown being excused I think makes it 30. If Madam
24 Clerk would correct me if I'm wrong on those
25 numbers.

1 THE CLERK OF COURT: We had a total of 30
2 in the panel period, so it would have been 29
3 excusing Mr. Brown.

4 MS. SHULER: Your Honor, 29 with Mr. Brown
5 coming. There were two hundred jurors summoned with
6 only 29 appearing back for jury selection today.
7 It's our contention that that's not a fair
8 representation or cross section of the county
9 itself, and therefore, it's unfair for Mr. Boston to
10 have to select a jury from only 29 individuals
11 appearing out of 200 that were summoned to appear
12 here today. I certainly don't understand what's
13 going on with jurors not answering their summonses
14 to come into court, but certainly that's something
15 that's outside of Mr. Boston's control, something
16 outside of our, my control. With that being said,
17 Your Honor, we think that it's unfair for him to
18 have to go forward with this trial today based upon
19 the number of jurors that appeared and there only
20 being 29 out of 200 that were summoned to be here
21 this morning.

22 THE COURT: Ms. Barr.

23 MS. BARR: And Judge, I was trying to go
24 over the list of jurors who not only came, but more
25 specifically the ones who were selected to serve in

1 the case, and just got to about three; but you know,
2 we had juror number 1 who reported from New Zion,
3 juror number 6 who reported from Hemingway. We've
4 got jurors coming from Andrews, jurors reported from
5 Greeleyville. There were jurors from Kingstree. So
6 Judge, I think that as a whole in terms of the
7 numbers of ones who did report that they certainly
8 represent from a community standpoint a sufficient
9 portion of Williamsburg County. We had jurors of
10 different genders and different races obviously so
11 we just believe that there's no evidence to
12 support it just based on the numbers alone that the
13 jurors who were, who came, who attended jury duty,
14 did not represent a, did not present a fair
15 representation of the community and we urge the
16 Court to deny the motion.

17 THE COURT: All right, anything further
18 Ms. Shuler?

19 MS. SHULER: Your Honor, the — seven of
20 the jurors are from Andrews, 5 were from the
21 Salters/Lane area of the county. There are — there
22 were was only one juror from the Greeleyville area
23 that I see that has answered, one from Greeleyville.

24 THE COURT: Where is your client from?
25 Where is the defendant from?

1 MS. SHULER: The defendant is from Lake
2 City.

3 THE COURT: All right. Williamsburg
4 County or Florence County?

5 MS. SHULER: Florence County originally.
6 One juror came from the Lake City area.

7 THE COURT: Is this juror on the jury?

8 MS. SHULER: No, Your Honor.

9 THE COURT: What happened to that one?

10 MS. SHULER: Your Honor, he was — we
11 struck him from the jury.

12 THE COURT: By the Defense?

13 MS. SHULER: Yes, Your Honor. But there
14 was only one from the Lake City area who answered
15 the summons. There were a number of individuals
16 that came from the Hemingway area of Williamsburg
17 County and so, Your Honor, it just, it appears to me
18 that it does not present a fair cross-section of the
19 county based upon the diversity on the list itself
20 and then those who actually answered their summons.
21 And so we're asking that Your Honor not require that
22 the defendant go forward based upon the individuals
23 that did show for jury selection today.

24 THE COURT: All right. Well, the manner
25 which jurors are selected is not based on where they

1 live in the county. The jurors are randomly
2 selected from the, based on if they have a state
3 issued I.D. card, a driver's license, or if they are
4 registered to vote I believe, so it's not based on
5 where they live but randomly selected as residents
6 of the county. The record reflects in this case
7 that the defendant is African-American male, and the
8 alleged victim is a Hispanic male. And 30 jurors
9 appeared, 12 white jurors, 28 African-American
10 jurors. The defendant exercised nine strikes out of
11 ten strikes. The strikes utilized by the Defense,
12 the Defense struck six whites, three
13 African-Americans. The jury panel is composed of
14 four whites, eight African-American, and one white
15 alternate, one African-American alternate. I find
16 that the, there's no evidence of any lack of
17 randomness in the selection of the jury pool, that
18 there's no indication that the jury panel is not
19 representing a fair cross-section of the community.
20 And there has been no challenge to Batson challenge
21 or otherwise to the striking of the jurors who
22 showed up. The State exercised three strikes and
23 that's -- the State struck one white, two blacks. I
24 deny the motion. Anything else before we start with
25 this case?

1 MS. BARR: Judge, we're ready to go. I
2 don't know whether or not the Court needs to examine
3 the interpreter. We have Ms. Maria Sanchez here who
4 will be the interpreter for the victim. She's
5 testified previously in court.

6 THE COURT: She needs to take an oath.

7 MS. BARR: An oath, yes, sir. And Judge,
8 we would move to sequester the witnesses.

9 THE COURT: All right.

10 MS. SHULER: No objection, Your Honor.

11 THE COURT: Sequestration. Do you have an
12 interpreter's oath down there, Madam Clerk?

13 THE CLERK OF COURT: We're searching now.

14 THE COURT: If the interpreter would come
15 forward and I will administer the oath to the
16 interpreter.

17 THE CLERK OF COURT: Place your left hand
18 on the Bible, raise your right.

19 THE COURT: All right, ma'am, what is your
20 name?

21 THE INTERPRETER: My name is Maria
22 Sanchez.

23 THE COURT: Ms. Sanchez, would you tell me
24 your native tongue and your ability to interpret in
25 this case.

1 THE INTERPRETER: I was currently working
2 for Telamon Corporation in Florences.

3 THE COURT: Telamon.

4 THE INTERPRETER: Uh-huh.

5 THE COURT: West Evans Street.

6 THE INTERPRETER: Yes, sir. And I'm -- I
7 was a field service clerk. I work on, I work a work
8 experience contract and I'm gonna be hired next
9 months with Telamon. I have done several
10 translations for the Ronnie Sabb office, three, four
11 times.

12 THE COURT: All right, and you are from --
13 your native tongue is?

14 THE INTERPRETER: I'm from Marion County.

15 THE COURT: Marion County. I mean --

16 THE INTERPRETER: From Mexico?

17 THE COURT: Mexican, Hispanic.

18 THE INTERPRETER: I'm Mexican.

19 THE COURT: Mexican, all right.

20 THE INTERPRETER: Yes.

21 THE COURT: And the victim in this case
22 Mr. Luciana Garcia, he is what?

23 THE INTERPRETER: He's Mexican.

24 THE COURT: Mexican, all right. And do
25 you have the ability to fairly interpret the English

1 that will be spoken by the witnesses and lawyers and
2 court personnel into Spanish for Mr. Garcia and the
3 other Spanish speaking witnesses?

4 THE INTERPRETER: Yes, sir.

5 THE COURT: Do you have the ability to in
6 a verbatim manner translate the Spanish that will be
7 spoken by them into English?

8 THE INTERPRETER: Yes, sir.

9 THE COURT: You're able to do that in a
10 verbatim fashion?

11 THE INTERPRETER: Yes, sir.

12 THE COURT: Thank you very much.

13 THE INTERPRETER: That's it?

14 THE COURT: I got to finish the other part
15 of the oath.

16 THE INTERPRETER: Okay.

17 THE COURT: And you will do so to the best
18 of your ability so help you God?

19 THE INTERPRETER: Yes, sir.

20 THE COURT: All right, very good. What
21 else do we have?

22 MS. BARR: Judge, we're ready if I can
23 just get maybe a five minute break if you want or...

24 THE COURT: All right, very good. And
25 what's our interpreter's name again?

1 THE INTERPRETER: Maria Sanchez.

2 THE COURT: We'll go off the record.

3 (WHEREUPON, a recess was taken from the
4 proceedings.)

5 THE COURT: Are we ready for the jury?

6 MS. BARR: State's ready, Your Honor.

7 THE COURT: Let's bring them on.

8 MS. BARR: Judge, we're going to call the
9 victim's wife first.

10 THE COURT: Okay.

11 MS. BARR: Yes, sir.

12 (Whereupon, the jury was returned to the courtroom
13 at 11:34 a.m. and the following proceedings
14 commenced in open court.)

15 THE COURT: Ladies and gentlemen, if you
16 will stand to be sworn.

17 THE CLERK OF COURT: Please raise your
18 right hand.

19 (Whereupon, the jury was sworn.)

20 THE CLERK OF COURT: You may be seated.

21 THE COURT: Ladies and gentlemen of the
22 jury, you've been sworn to be the jury in the trial
23 of the case of State versus Jason Thomas Boston.
24 He's indicted for armed robbery and possession of a
25 weapon during the commission of violent crime. He's

1 pled not guilty to the charge. He's presumed to be
2 not guilty. He cannot be found guilty unless the
3 State presents evidence which convinces each of you
4 of his guilt beyond a reasonable doubt; and that is
5 the purpose of a trial, to determine whether the
6 State can meet that burden of proof. Now out of all
7 the jurors who were summoned to be on jury duty this
8 week, of all the people who live here in
9 Williamsburg County, in fact, out of all the people
10 who live here in the state of South Carolina, only
11 the twelve of you who will deliberate can decide
12 this case. Only the twelve of you who will
13 deliberate can decide whether the defendant is
14 guilty or not guilty of the crimes charged. And
15 that is your role as a juror and the jury, to
16 determine whether the defendant is guilty or not
17 guilty based on the evidence presented during this
18 trial.

19 Now just as only you can decide whether
20 the defendant is guilty or not guilty and you decide
21 all of that based on your evaluation of the facts
22 presented, the evidence, and all that, just as only
23 you can determine that whether he's guilty or not
24 guilty, as the presiding judge I am the sole judge
25 of the law of this case. And you must accept as

1 correct the law as I state it to you at this time
2 during the trial and in greater detail at the end of
3 the trial. It is important that you focus on the
4 task at hand, that you listen closely to the
5 evidence that is presented including the testimony
6 and any other exhibits placed into evidence so that
7 at the end of the case you'll be able to deliberate
8 with your fellow jurors and render a verdict based
9 on the evidence presented during this trial. Now
10 you're not allowed to discuss the case with each
11 other or with anyone else or to allow anyone to
12 discuss it in your presence until the entire case
13 has been presented, the lawyers have made their
14 final arguments, and I've instructed you as to the
15 law. That's when you discuss the case for the first
16 time and that will be in the form of a jury
17 deliberation.

18 Later in the process I will appoint one of
19 you to serve as the foreperson of the jury. That
20 person will be the spokesperson for the jury, will
21 have the responsibility of presiding over the jury
22 deliberation, and completing the verdict form
23 representing the unanimous verdict of the jury. I
24 look forward to working with you on this case.
25 We'll move now to opening statements by the State.

1 Ms. Barr.

2 MS. BARR: May it please the Court,
3 Ms. Shuler, ladies and gentlemen of the jury, good
4 morning. I want to thank y'all, as did the judge,
5 for your service this week. I'm gonna do something
6 that lawyers don't usually do at this time and
7 that's, I'm not going to talk a whole lot, but I did
8 want to thank you all. The judge is absolutely
9 correct, you are the most important people in this
10 courtroom; and I imagine that when you envisioned
11 the week before Easter, the last thing you all
12 thought about was coming into court sitting on jury
13 duty in a criminal case. But this case is very
14 important to the State of South Carolina. It is
15 equally important, if not more so, to the defendant
16 so we thank you all.

17 Now one of the things that I like to tell
18 folks about jury duty, you know, a lot of folks
19 didn't come for jury duty. And when we went through
20 that whole jury selection process, you notice that
21 some people were not picked, some were picked. And
22 you know, you may be lucky or unlucky I guess,
23 depending on how you look at it. But one of the
24 things that I think Ms. Shuler and I agree about on
25 this case is that each of you are, we believe, gonna

1 be the right people to decide the issue in this
2 case, and so again, thank you.

3 Let me give you a little bit about what
4 the case is about and I'll sit down. The defendant
5 in this case is charged with armed robbery and
6 possession of a weapon during the commission of a
7 violent crime. In South Carolina armed robbery is
8 essentially defined as the taking of property from
9 another person while the defendant has possession of
10 a deadly weapon. South Carolina defines a handgun
11 as a deadly weapon. He's also charged under count
12 two of the indictment for possession of a weapon
13 during a violent crime. If at the conclusion of all
14 of the testimony and all of the judge's instructions
15 you believe that the defendant was armed with a
16 deadly weapon and that he committed this armed
17 robbery, -- and armed robbery in South Carolina is
18 considered a violent crime -- then you should also
19 find him guilty of count two of the indictment.

20 You all are here because back on
21 March 14th of last year the victim in the case,
22 Mr. Luciano Garcia who is seated at the prosecution
23 table with me, the evidence is going to show he and
24 his wife were living in their home in Cades,
25 community of Williamsburg County. They own a little

1 store in Lake City they serve tacos. They have a
2 little small business. They've lived here for
3 several years. You will hear testimony that the
4 defendant along with a young lady by the name of
5 Latoya Hickson and another lady young lady by the
6 name of Sharhonda Burgess, came to the home of the
7 victim back on that night of March 14th. And the
8 evidence is going to show that the defendant had a
9 gun in his hand. He got out of the vehicle that was
10 being driven by Latoya Hickson, that once he got out
11 of the vehicle, that he pointed the gun at the
12 victim and took his cell phone and took his wallet.
13 You will also hear evidence that because of
14 individuals who know the victim, the victim was able
15 to get his cell phone back a couple of days later,
16 but he did not get his wallet back.

17 Folks, another thing that you will hear in
18 the case is that the co-defendant, Ms. Latoya
19 Hickson, again, who is the driver of the vehicle
20 involved in the armed robbery, entered a guilty plea
21 on yesterday to the lesser charge of strong armed
22 robbery. We expect that she will be here. She will
23 testify about her role in the crime. In addition,
24 the second lady who was in the vehicle at the time
25 this happened, she'll be here, Ms. Burgess, and

1 she'll testify as to what she saw. Folks, one of
2 the great, one of the many great things I think
3 about jury service is, by your verdict you all don't
4 have any friends to reward or any enemies to punish.
5 You have one job, it's a big job, but it's one job.
6 And that's to deliberate fairly and render a verdict
7 that speaks the truth.

8 Now after all of the testimony is in I'll
9 get an opportunity to stand back before you, again,
10 before you all begin your deliberations. And at
11 that time I'll be asking you to return a verdict
12 that will reflect the truth in this case, and I'll
13 be asking you to return a verdict of guilty. Thank
14 you all for your time. Most importantly, most
15 importantly, thank you for your attention.

16 THE COURT: Ms. Shuler.

17 MS. SHULER: Thank you, Your Honor.

18 Ms. Barr, may it please the Court, good morning,
19 ladies and gentlemen. Thank you all so much for
20 being here. This morning whenever I got up after I
21 got over the initial overwhelming pollen from
22 outside, I looked out and all the flowers were
23 blooming in the yard. My trees are blooming. My —
24 I have my azaleas blooming, my Bradford pears are
25 blooming, my dogwood trees are blooming; and I said

1 to myself, man, it's a really pretty day to be
2 outside. So I know for sure that there's no place,
3 there are other places that you guys would rather be
4 so we certainly thank you for your attention here
5 today. And thank you for answering that summons.
6 Of course you heard Ms. Barr say that there were
7 plenty of people that did not answer their summons
8 and so thank you so much for taking that seriously
9 and showing up here today. This is a serious day
10 and an important day for the Munozes, as well as my
11 client Jason Boston. This is an important day
12 because we hope that today you'll hear the truth
13 about what happened on that day; and we hope that
14 from that you guys can draw from all the evidence
15 and testimony that's presented, the truth of what
16 happened during this during this crime.

17 Now what happened to this young man is
18 certainly tragic. We are not trying to make light
19 of that at all so please don't be guided by your
20 emotions today because certainly we take what
21 occurred that day seriously because it was a serious
22 event that he endured. However, make sure that
23 whenever you listen to the evidence and listen to
24 the testimony, make sure that you draw from that all
25 inferences and all conclusions that may be taken

1 from anybody that gets up there and testifies. Now
2 the State has the burden of proof in this case.
3 They must prove that this, each and every element of
4 armed robbery occurred beyond a reasonable doubt.
5 They must also prove that each and every element of
6 possession of a weapon during the commission of a
7 violent crime occurred beyond a reasonable doubt.

8 Now, and that is a heavy burden. In civil
9 court we say it's more likely than not.. That's not
10 what it is in criminal court. The State must prove
11 their case beyond a reasonable doubt which means
12 they must tip the scales of justice in their favor,
13 way up in their favor, so remember that. Look at
14 the evidence, listen to the evidence, weigh the
15 evidence whenever the judge releases you to
16 deliberate. We're gonna ask for you to take into
17 account witness bias, witness motive, all of these
18 other things whenever the witnesses to get up to
19 testify from the stand. Take all of that into
20 consideration when you deliberate. And whenever you
21 go back to deliberate we're gonna ask you to return
22 a verdict of not guilty. Thank you.

23 THE COURT: First witness please.

24 MS. BARR: The State calls Patricia Munoz.

25 WHEREUPON,

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1 **PATRICIA MUNOZ,**
2 having been duly sworn by the Clerk, testified
3 as follows:

4 **DIRECT EXAMINATION**

5 BY MS. BARR:

6 Q Ma'am, can I get you to state your full name for
7 me?

8 A Patricia Munoz Silva.

9 Q Can you spell your last name?

10 A M-U-N-O-Z, Silva, S-I-L-V-A.

11 Q Okay. And ma'am, where do you live?

12 A Cades.

13 Q Okay. And that's in Williamsburg County?

14 A Yes.

15 Q And how long have you lived at that address?

16 A Live there about seven or eight years.

17 Q Seven or eight years. And who lives there with
18 you?

19 A My husband, my two kids, and my youngest brother.

20 Q Okay. How old are your children?

21 A My daughter, she's 12, and Mason, he's four years
22 old.

23 Q Four years old? All right, I need you to make
24 sure you keep your voice up for me, okay. Now who
25 is your husband?

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1 A Luciano Garcia Reynoso.

2 Q And he is the gentleman that's seated here?

3 A Yes.

4 Q Spell his first name for me?

5 A L-U-C-I-A-N-O.

6 Q Okay, and Garcia?

7 A G-A-R-C-I-A.

8 Q And Reynoso?

9 A R-E-Y-N-O-S-O.

10 Q Okay. And of course you're fluent in English,
11 you can understand what I say?

12 A Yes.

13 Q Okay. Is your husband as fluent in English as
14 you are?

15 A No.

16 Q Okay. Do you have to sometimes help him with
17 translation?

18 A Yes.

19 Q Okay. Now what do you do for a living? What
20 kind of work do you do?

21 A I used to work as a CNA, but I decided to quit
22 and I'm taking classes to be a registered nurse.

23 Q Taking classes to be a registered nurse, okay.

24 Do you -- what about your husband, what does he do
25 for a living?

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1 A He works at A to Z, and that's a company like
2 they do insulation, scaffoldings.

3 Q Insulation and scaffolds? How long has he worked
4 there?

5 A I think it was since 2003.

6 Q 2003, okay. Do you all own a business in Lake
7 City, or operate, run a business in Lake City?

8 A My mother, she's the owner. She's the one that
9 works there.

10 Q Okay. What kind of business is it?

11 A She sells Mexican food.

12 Q Okay. Now let me ask you, prior to March of last
13 year did you know a woman by the name of Latoya
14 Hickson?

15 A I have heard her name, just Latoya. I didn't
16 know her last name.

17 Q Okay, all right. And the person that you knew to
18 be Latoya, how did you know her?

19 A I just knew that she was a friend of Jerry Tovar
20 who was my husband's friend.

21 Q Okay. You knew Latoya to be a friend of Jerry
22 Tovar?

23 A Uh-huh.

24 Q T-O-V-A-R?

25 A Yes.

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1 Q And Jerry Tovar and your husband were friends?

2 A Yes.

3 Q Now prior to March the 14th of last year, the day
4 that all this happened, had Latoya ever been to your
5 home?

6 A I never saw her in my home, but my husband says
7 that sometimes she would pick Jerry up after they
8 get out of work.

9 Q Okay.

10 MS. SHULER: Your Honor, if -- objection
11 to anything that was told to her, or testifying as
12 to hearsay.

13 THE COURT: Ms. Barr.

14 MS. BARR: And Judge, I'll redirect her.

15 BY MS. BARR:

16 Q From your own personal knowledge you said that
17 you'd never seen her at your house prior to or
18 before March of last year?

19 A Correct.

20 Q What about at the store?

21 A Yes, she came into the store on March 14th.

22 Q Okay. All right, now in March of last year what
23 kind of vehicle did Jerry have?

24 A He had a dark blue Chevy, I think it was a
25 Silverado truck.

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1 Q A Chevy Silverado?

2 A A Silverado truck.

3 Q And did you and your husband have Jerry's truck
4 that day?

5 A Yes.

6 Q Okay. How did you all get Jerry's truck?

7 A My husband called me once he got out of work and
8 he —

9 Q Don't tell me what he said. Let me ask you this,
10 did you all go pick up Jerry's truck from somewhere?

11 A Yes, from Superior Transmission.

12 Q From Superior Transmission? And where is that
13 located?

14 A I don't know where it was.

15 Q Is it in Lake City, Florence, Kingstree?

16 A No, it's — I think it is Coward.

17 Q Coward, okay. All right. You went to go pick up
18 Jerry's truck and you brought it back where?

19 A To my mother's store in Lake City.

20 Q Okay. And tell me what happened when you saw
21 Latoya that day. Where did you see her and why was
22 she there?

23 A She came into the store and at first I thought
24 she was a client so I asked her how may I help you.
25 But my husband was close by and she immediately

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1 started to tell my husband that she wanted to get
2 Jerry, Jerry's truck, and she started to request the
3 keys.

4 Q Did you or your husband give the keys to Latoya?

5 A No, because we knew the truck was — it was
6 Jerry's truck.

7 Q Okay. So you did not give the keys to her?

8 A No.

9 Q Tell me, how did she react when you all refused
10 to give the keys to her?

11 A She had started to get upset. I mean, as soon as
12 she came in she didn't request the keys in a, like
13 in a calm way. She was already kind of upset. And
14 as soon as my husband told her that he was not going
15 to give her the keys, and she had started raising
16 her voice. And I didn't know that she could
17 understand some Spanish.

18 Q Okay.

19 A So she had started to say that she was going to
20 call the police if we wouldn't give her the keys.
21 And my mother was beside me so I say, mom, this
22 woman is crazy and in Spanish. And as soon as she
23 heard the word crazy she started to call me cursing
24 words.

25 Q She started to call you curse words?

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1 A Uh-huh, and she got more aggressive.

2 Q Okay. Now when she came into the store do you
3 remember about what time it was?

4 A It had to be around 5:30.

5 Q Why do you say it had to be around 5:30?

6 A Because we got the truck when as soon as my
7 husband got out of work, and that's usually the time
8 he get out of work, like 5. And between the time we
9 went to get the truck and came back it had to be
10 around 5:30.

11 Q Okay. Now when she came there and she was
12 fussing and cussing and carrying on, was she by
13 herself?

14 A No, she brought in two men and two woman.

15 Q Okay. Do you remember what kind of vehicle she
16 was driving? Was she driving or somebody else
17 driving, or do you know?

18 A That woman when she came in I didn't know because
19 she was came into the store.

20 Q Okay.

21 A So —

22 Q Now slow down for a minute. The woman who came
23 into the store with her, have you seen her since
24 March of last year?

25 A She went to my house on Friday before this

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1 Monday.

2 Q Last Friday?

3 A Uh-huh.

4 Q I need you to say yes or no for me.

5 A Yes.

6 Q Okay. And make sure that always try to say yes
7 or no rather than uh-huh or huh-uh because she's
8 taking down everything you say, okay. So the woman
9 who was at the store with you or was at the store
10 with Latoya, you saw that woman again this past
11 Friday?

12 A Yes.

13 Q And she came where?

14 A To my house.

15 Q To your house, okay. Do you know who, what her
16 name is?

17 A She say her name was Sharhonda Burgess.

18 Q Okay. All right, were there any children there
19 with Latoya and Sharhonda?

20 A Yeah. When she say that she was going to damage
21 the truck because we didn't want to give her the
22 keys, she got out so we followed her. And that's
23 when I noticed that she had a lot of children in her
24 car that she was driving.

25 Q Now do they look like small children like

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1 toddlers two or three years or old, or do they look
2 like older children like teenagers?

3 A Different ages.

4 Q Different ages?

5 A From toddlers to like nine years old.

6 Q Okay. Now you said that she was with two guys,
7 two men?

8 A Uh-huh.

9 Q Is that a yes?

10 A Yes.

11 Q Did you know those men?

12 A No.

13 Q Could you identify them?

14 A Just one, just one of them.

15 Q Okay. How were you able to identify one of them
16 and who was the one that you identify?

17 A Well, I can do that because he was the only one
18 that had started to try to calm her down.

19 Q Okay.

20 A And he saw her doing all this.

21 Q Okay. Now the person, the man who tried to calm
22 Latoya down, do you see him in the courtroom today?

23 A Yeah, he's sitting back there.

24 Q Back where?

25 A (Pointing) On the corner on the last bench.

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1 Q The camouflage jacket on and the red striped
2 shirt?

3 A No, the green.

4 Q The green one. All the way at the end; is that
5 correct?

6 A Yes.

7 Q Okay. Do you know who he is to Latoya? And if
8 you don't, that's fine.

9 A No.

10 Q Okay. All right. Now mentioned that Latoya
11 threatened to damage the vehicle. Are you talking
12 about your vehicle or Jerry's vehicle?

13 A Jerry's truck.

14 Q Did she damage Jerry's vehicle?

15 A As soon as she got out of the store she opened
16 the back of her, I think it was like an Expedition,
17 she opened the back of it and she got a large tool.
18 And when I saw that I actually called 911, but then
19 she got on the driver's seat and she pulled out of
20 where she was parking at so I thought she was
21 leaving and I hung up on the police.

22 Q Okay.

23 A But she was not leaving. She was just going to
24 park on the back where Jerry's truck was.

25 Q Okay. What happened when she went to go park on

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1 the back of -- where Jerry's truck was?

2 A She like -- my husband he went there and he
3 started to call Jerry so he ---

4 Q Hold on. Did you see what Latoya did when she
5 went and parked by Jerry's truck?

6 A No.

7 Q Okay, that's fine. Now after Latoya left did you
8 go see if there was anything wrong with Jerry's
9 truck?

10 A Yes. My husband and I, we tried to take it to a
11 safer place.

12 Q Okay.

13 A But we could not do it because of the tires were
14 not, did not have air in it.

15 Q Okay. Did the tires have air in it before Latoya
16 came to the store?

17 A Yes.

18 Q Okay. Could you tell why the tires didn't have
19 any air in them?

20 A I saw her on the back of Jerry's truck like
21 standing up on the back of it, and she had that tool
22 with her.

23 Q Okay.

24 A But I didn't really see her like punching the
25 tires or anything.

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1 Q Did it appear like a sharp tool or could you
2 tell?

3 A I couldn't tell. I was paying more attention to
4 my husband because he was trying to call Jerry on
5 the phone to see if he could calm her down.

6 Q Okay. Now the time that you saw Latoya by
7 Jerry's car, what was her demeanor like? Was she
8 still fussing and loud or had she calmed down?

9 A Yeah, she was still fussing.

10 Q Okay, all right. Did you all ever take the
11 truck, or did you specifically, ever take the truck
12 to try to put air in the tires, Jerry's truck?

13 A My husband was driving but I was with him.

14 Q You was with him? Did you see him try to put air
15 in the tires?

16 A Yes.

17 Q Did the air hold?

18 A (No verbal response.)

19 Q No? Is that a no?

20 A I want to explain to you exactly what we did.

21 Q Okay.

22 A We — he drove Jerry's truck but it was so
23 damaged we could not make it about maybe only a
24 minute, I mean, less than a minute. We had to park
25 like right in front of my mother's store. And he

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1 decided that it would damage the tires really bad if
2 we kept going to a place where we could put air in
3 the tires.

4 Q Okay.

5 A And when we — so we did decided to leave the
6 truck there like almost in front of my mother's
7 store. And Latoya came by driving her Expedition
8 again. She pulled down the window and she was
9 laughing because she saw us trying to fix the truck
10 so that's when we decided to go back to my mother's
11 store, and my husband went to my house to get a
12 machine that he has to put air in two tires.

13 Q Okay.

14 A So I waited in the store and then he came back
15 into the store, and he told me it was so damaged
16 that the air was not holding.

17 Q Okay.

18 A And that's when we decided to take the truck just
19 to a Publix store, like the one that's in the corner
20 in Lake City, and it has a lot of people coming in
21 the store. So we went inside and we asked the lady
22 if it was okay to leave that truck parked in her
23 store.

24 Q Okay.

25 A And she say it was okay so that's where we end up

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1 leaving the truck at.

2 Q Okay. Now after you all left the truck there did
3 you, both you and your husband, go back to your
4 mother's store?

5 A Yes.

6 Q And how long did you all stay there before you
7 left for the day?

8 A Maybe 40 minutes.

9 Q Okay, all right. Did you and your husband leave
10 the store together?

11 A No.

12 Q Okay, who left the store first?

13 A I did.

14 Q Okay. And where did you go when you left the
15 store?

16 A I had my four year old and my daughter with me so
17 I took them to McDonald to get something.

18 Q Okay.

19 A And I don't like to drive and eat at the same
20 time so I just parked in there until we finished
21 what we had.

22 Q Okay.

23 A And then he called me ---

24 Q Slow down for me, slow down. After you took your
25 kids to McDonalds where were you intending to go

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1 once you left McDonalds.

2 A To my house.

3 Q To your house, okay. Now how far is your house
4 from the McDonalds that you went to?

5 A Twelve minutes maybe.

6 Q Maybe 12 minutes, okay. Now -- and stay with me,
7 okay. When you were on the way home from McDonalds
8 with your children, did you get a call from your
9 husband?

10 A I got the call when I was still parked at
11 McDonalds.

12 Q Don't tell me what he said, but as a result of
13 getting the call from your husband, what did you do?

14 A I waited a few minutes in the store.

15 Q Okay.

16 A And I called my mother to let her know that he
17 called me.

18 Q You called your mom to let your mom know that
19 your husband had called you?

20 A Uh-huh.

21 Q Is that a yes?

22 A Yes.

23 Q Okay, all right. Did you then start to go home?

24 A I tried to call him and he was not answering so I
25 decided to go home anyway.

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1 Q How many times did you try to call him?

2 A It was at least three times.

3 Q Okay. And he didn't answer either of the three
4 times?

5 A Huh-uh.

6 Q Is that a no?

7 A No.

8 Q Was that unusual for him not to answer your
9 calls?

10 A Yes, because the first time he called me I told
11 him to make sure that he kept his cell phone with
12 him and that he answered my calls.

13 Q Okay, all right. So after you did not get an
14 answer from him when you called him three times,
15 then what happened?

16 A That's when I decided to go home and I called my
17 mother to let her know that I was on my way home.

18 Q Okay. Tell me what happened when you got home.

19 A I didn't even get home 'cause I saw some car
20 flashing its lights.

21 Q You saw -- slow down. You saw a car flashing its
22 lights?

23 A Uh-huh.

24 Q Is that a yes?

25 A Yes.

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1 Q Okay.

2 A So I stop at a church that's on the way to my
3 house.

4 Q Okay.

5 A And I told my daughter to see who was coming
6 behind us and she said, I think that's my father's
7 car, so I stop and he parked beside my car.

8 Q Your husband parked beside you?

9 A Yes.

10 Q What type of vehicle was your husband driving?

11 A A small yellow Saturn.

12 Q A small yellow Saturn?

13 A Uh-huh.

14 Q Is that a yes?

15 A Yes.

16 Q Okay, all right. Then what happened?

17 A I just put the window down from my, from the
18 other seat, and he got out of his car and I told him
19 why didn't you answer the calls I was calling you.
20 And he say, well, I didn't answer because they took
21 my cell phone away.

22 MS. SHULER: Objection, Your Honor, as to
23 anything that was said to, anything that Mr. Garcia
24 said to Ms. Munoz.

25 MS. BARR: Judge, we take the position

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1 that it's excited utterance or presence sense
2 impression to the hearsay rule.

3 THE COURT: Yes, ma'am.

4 MS. SHULER: Your Honor, may we take this
5 outside the presence of the jury, or can we
6 approach?

7 THE COURT: All right.

8 (WHEREUPON, counsel approached the
9 Bench for an off-the-record discussion.)

10 BY MS. BARR:

11 Q Ma'am, let me back up for just a moment. Now
12 after you had the conversation with your husband,
13 how many minutes do you think passed where you kept
14 trying to call him back and he did not answer his
15 phone?

16 A Can you repeat that.

17 Q Yes. You told me that your husband called you
18 while you were at the McDonalds?

19 A Uh-huh.

20 Q And y'all had a conversation. And you later told
21 me you tried to call him back but he didn't answer.
22 How much time was between the time you talked to him
23 and the time where you were trying to call him back
24 and he didn't answer?

25 A It was not long, maybe four minutes.

SW - P. MUNOZ - DIRECT

1 Q Okay, all right. Now once you kept calling and
2 he did not answer, how much time went by between
3 where you ultimately saw his flashing lights?

4 A Around seven minutes.

5 Q Seven minutes. Okay, you testified that you were
6 by a church?

7 A Uh-huh.

8 Q Is that a yes?

9 A That's where I parked.

10 Q Okay, all right. And how far is the church from
11 your home?

12 A It's only about five minutes.

13 Q Five minutes? Is that a yes?

14 A Yes.

15 Q Okay. All right, and when you saw your husband
16 and you rolled down the window to talk to him how
17 did he appear to you?

18 A I could tell by his face that he was scared. He
19 was ---

20 Q You could tell by his face what now?

21 A That he was scared.

22 Q He looked scared to you?

23 A Uh-huh.

24 Q Is that a yes?

25 A Yes.

SW - P. MUNOZ - DIRECT

1 Q Make sure you got to keep — remember to say yes,
2 okay. And when you rolled the window down and you
3 asked him why didn't he answer the phone, what did
4 he say at that point?

5 A He say because they took away my cell phone and
6 they had a gun.

7 Q Okay, all right. And what did you then do as a
8 result of what your husband told you?

9 A Well, we decided to go home and once we got home
10 I told him that I was going to call the police.

11 Q And you did that?

12 A Yes.

13 Q Okay. Now do you remember speaking with this
14 deputy, one of the deputies from the Williamsburg
15 County Sheriff's Office?

16 A Yes.

17 Q Okay, you told him pretty much what you told the
18 jury today?

19 A Yes.

20 Q And to be fair, ma'am, you did not see your
21 husband being robbed; is that correct?

22 A Correct.

23 Q Now when you came and you saw your husband and he
24 made the statement that they took his cell phone,
25 did you all ever get his cell phone back?

SW - P. MUNOZ - CROSS

1 A Yes, he got it back from Mr. Jerry Tovar.

2 Q You got it back from Jerry Tovar?

3 A He got it back.

4 Q All right, that's all the questions that I have.

5 Please answer any questions that Ms. Shuler may have

6 for you, okay?

7 A Okay.

8 THE COURT: Ms. Shuler.

9 **CROSS-EXAMINATION**

10 BY MS. SHULER:

11 Q Ms. Munoz, you stated that you had heard of

12 Latoya Hickson, right?

13 A Correct.

14 Q And you had heard of her because she has a child
15 with Jerry Tovar; isn't that right?

16 A I did not know that at that time.

17 Q You didn't know that at that time. Mr. -- but
18 Mr. Tovar was living with you guys at the time; was
19 he not?

20 A No.

21 Q No, he wasn't? He wasn't y'all's roommate?

22 A No.

23 Q Okay. Did you tell law enforcement that he was
24 your roommate?

25 A No.

SW - P. MUNOZ - CROSS

1 Q Okay. But he was a friend of your husband's?

2 A Yes.

3 Q Did he live close to you guys?

4 A We live in Cades and he was living in Lake City.

5 Q Okay. Now you saw Latoya come to your mom's
6 store the day this incident occurred, right?

7 A Correct.

8 Q And there were two men with her. And how many
9 women were with her?

10 A I remember two.

11 Q So there were two men and two other women with
12 Ms. Hickson; is that right?

13 A Correct.

14 Q So there were five people total and then some
15 children?

16 A The people that came into the store, it was just
17 Latoya Hickson, two women, two men, and the children
18 stay outside.

19 Q The children were outside in her car?

20 A Uh-huh, yes.

21 Q And she came in and she was visibly upset, right?

22 A Right.

23 Q Even before she started really acting out she was
24 upset when she arrived?

25 A Yes.

SW - P. MUNOZ - CROSS

1 Q And she's upset 'cause she wanted Jerry's truck;

2 —

3 A Correct.

4 Q —is that right? And y'all wouldn't give her
5 the keys to Jerry's truck?

6 A Correct.

7 Q And so she started cussing at you and raising
8 cain and —

9 A At first she just started to say that she was
10 going to call the police on us because we did not
11 want to give her the keys. And when she listened to
12 me saying the word crazy in Spanish, referring to
13 her, she had starred — that's when she had started
14 to cuss me out.

15 Q So she started to cuss you out and somebody —
16 the gentleman in the back of the courtroom tried to
17 call her down?

18 A Correct.

19 Q And that didn't work, did it?

20 A No.

21 Q So she went around, got a tool from the back of
22 her car?

23 A Correct.

24 Q And then got in her car, right?

25 A Correct.

SW - P. MUNOZ - CROSS

1 Q And then drove her car back around to where
2 Mr. Jerry's truck was?

3 A Yes.

4 Q And somehow the air got let out of Mr. Tovar's
5 tires; is that right?

6 A Right.

7 Q And then she left?

8 A Correct.

9 Q And so when y'all moved the truck back around to
10 the front of your mom's car — or front of your
11 mom's store, excuse me, y'all saw her ride by again;
12 is that right?

13 A We did not move it to the front of my mother's
14 store. We moved it to — it is called a Pee Dee
15 medical center. It's like in front of my mother's
16 store but like on the back part of the store.

17 Q Okay. So —

18 A That's as far as we got so it's — it was not
19 very far.

20 Q Okay. So y'all moved the car to where it was on
21 a street or you could see a street; is that right?

22 A It was a parking lot of that Pee Dee Medical
23 Center.

24 Q And so Ms. Hickson drove through that parking lot
25 and started laughing at y'all?

1 A Yes.

2 Q 'Cause y'all couldn't move the truck, couldn't
3 fix the tires?

4 A Correct.

5 MS. SHULER: Beg the Court's indulgence
6 one moment. I have no further questions, Your
7 Honor.

8 THE COURT: Anything further?

9 **REDIRECT EXAMINATION**

10 BY MS. BARR:

11 Q Ms. Munoz, when Latoya saw that you all couldn't
12 move the truck and she started laughing, could you
13 see whether or not there was anyone with her in the
14 truck, in her vehicle?

15 A No, 'cause she just went by driving so.

16 MS. BARR: Judge, that's all the questions
17 I have of this witness.

18 THE COURT: Anything further of this
19 witness?

20 MS. SHULER: Nothing from Defense.

21 THE COURT: Thank you. You may step down.

22 (WHEREUPON, counsel approached the
23 Bench for an off-the-record discussion.)

24 MS. BARR: The State will call Sharhonda
25 Burgess.

SW - S. BURGESS - DIRECT

1 THE CLERK: Place your left hand on the
2 Bible, raise your right hand.

3 WHEREUPON,

4 SHARHONDA BURGESS,

5 having been duly sworn by the Clerk, testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MS. BARR:

9 Q Ms. Burgess, state your full name for me?

10 A Sharhonda Monastasia (ph) Burgess.

11 Q Speak up for me, okay. Spell your first name for
12 me?

13 A S-H-A-R-H-O-N-D-A.

14 Q And do you live in Lake City?

15 A Yes, ma'am.

16 Q And how old are you?

17 A Twenty-two.

18 Q Twenty-two years old. All right, were you
19 subpoenaed to testify in this case?

20 A Yes, ma'am.

21 Q All right. And do you know a woman by the name
22 of Latoya Hickson?

23 A Yes, ma'am.

24 Q Okay. How do you know her?

25 A As a friend, and certain -- like, I used to go

SW - S. BURGESS - DIRECT

1 with her ex-boyfriend Diamond.

2 Q Okay, all right. How long have you known her?

3 A Going on four years now 'cause I was going with
4 him for four years but, for four years.

5 Q Now are the two of you all friends now?

6 A We was friends but not now.

7 Q Not now?

8 A No, ma'am.

9 Q Do you know the gentleman who is seated at the
10 defense table next to Ms. Shuler?

11 A Yes, ma'am.

12 Q How is it that you -- tell the jurors how you
13 know him?

14 A I have to look at him or?

15 Q However. Just tell us how it is that you know
16 the man that's seated at the defense table?

17 A I know him -- well, by Latoya and by him --

18 Q Say again now.

19 A I know him by Latoya Hickson, and I know him by
20 being over there by his sister's house and stuff.

21 Q Okay, all right. Do you know his name?

22 A I call him Rainey.

23 Q You call him Rainey?

24 A Uh-huh.

25 Q Is that a yes?

SW - S. BURGESS - DIRECT

1 A Yes, ma'am.

2 Q Okay, all right. Now I'm gonna take you back to
3 I believe it was a Friday, but March the 14th of
4 2014. Of course, you know why you were subpoenaed
5 here today, right?

6 A Yes, ma'am.

7 Q You understand that you're testifying in an armed
8 robbery trial, correct?

9 A Yes, ma'am.

10 Q All right. Now on March the 14th of last year
11 were you with Latoya Hickson and the defendant when
12 Latoya went to a store in Lake City about a vehicle?

13 A Yes, ma'am.

14 Q Okay. Now let me ask you this, do you know a
15 fella by the name of Jerry Tovar?

16 A Yes, ma'am.

17 Q Okay. And who is Jerry Tovar?

18 A He be dealing with Latoya and I know him as a
19 friend too.

20 Q Okay, when you say dealing with, you mean that he
21 had a relationship with Latoya.

22 A Yeah, they supposedly have a child together.

23 Q And they supposedly have a child together?

24 A Yes, ma'am.

25 Q Now you call her Tora, or Toya?

SW - S. BURGESS - DIRECT

1 A I call her Tori and Torie.

2 Q Okay, all right.

3 MS. SHULER: Your Honor, may we move the
4 mic closer to the witness. I'm having trouble
5 hearing her.

6 BY MS. BARR:

7 Q Now ms. Burgess, you have told us that you've
8 known Latoya Hickson for about four years?

9 A Yes, ma'am.

10 Q How long have you known the defendant?

11 A I knew him a good while too.

12 Q Okay. About the same amount of time, a little
13 more, a little less?

14 A A little less.

15 Q Okay. Last year in March where was he living at?

16 A He was living in different places.

17 Q Okay, different places where? Here in town or?

18 A Yes, ma'am.

19 Q Okay, here in Kingstree?

20 A No, in Lake City.

21 Q All right. How often did you see him around this
22 time?

23 A When I go on over there by Tora's sister house
24 that's how often I see him and sometimes I see him
25 walking sometimes.

SW - S. BURGESS - DIRECT

1 Q Okay. Now in March of 2014 did you know whether
2 or not he was working anywhere?

3 A No, ma'am.

4 Q You don't know, or he wasn't working?

5 A Oh, he wasn't working, not that I know of.

6 Q Were you at the store with Latoya when she went
7 to the little eatery in Lake City?

8 A Yes, ma'am.

9 Q Tell us what happened when — where were you at
10 in the vehicle?

11 A I was getting out. It was so packed I couldn't
12 go in.

13 Q Say again?

14 A I was getting out the car, and I was about to go
15 in 'cause it was so packed everybody was in there so
16 I came back out. It was too packed to come in.

17 Q How did you get to the store?

18 A Latoya Hickson.

19 Q She was driving?

20 A Yes, ma'am.

21 Q What type of vehicle was she driving?

22 A A gray Expedition.

23 Q Okay. Was there anyone else with her other than
24 you?

25 A It was me and her kids and her niece and Boo.

SW - S. BURGESS - DIRECT

1 Q Okay.

2 A And Rainey but...

3 Q And who?

4 A I call him Rainey. I can say Rainey?

5 Q Okay, let me do this so we're clear who we're
6 talking about.

7 A Okay.

8 Q When you say Rainey you're talking about the
9 defendant?

10 A Yes, ma'am.

11 Q So whenever you're talking about Rainey and if
12 that's the defendant I need you to say that's the
13 defendant, okay?

14 A Okay.

15 Q All right. So you were with Latoya, her
16 children, and you mentioned another young lady.

17 A Ambria, her niece.

18 Q Ambria, her niece. Now how old is Ambria? Is
19 she a grownup or a child?

20 A She a child.

21 Q Okay, all right. And you were with the
22 defendant?

23 A Yes, ma'am.

24 Q Okay. What, if anything, did Latoya do to the
25 tires?

SW - S. BURGESS - DIRECT

1 A She had -- I believe she like stabbed them.

2 Q Okay.

3 A But the air, it went out a little bit going out a
4 little bit at the time.

5 Q What was she stabbing the tires with?

6 A I don't know. I believe a knife or something.

7 Q Where were you, where were you when she started
8 stabbing the tires?

9 A I was in the truck when she was stabbing the
10 tires.

11 Q Where was Rainey, or where was the defendant?

12 A Where was Rainey? I don't know where the
13 defendant was at the time everything was going on.

14 Q Okay. When you all left how did y'all leave?

15 A By Latoya Hickson.

16 Q Okay. Now Ms. Burgess, do you know the fella
17 seated all the way in the back that has the green
18 jacket on that's on the last row in the back on the
19 left?

20 A Yes, ma'am.

21 Q Who is he?

22 A I believe the defendant. I can say?

23 Q Say again?

24 A The defendant? That what I supposed to say?

25 Q No, no, listen, hear me. The fella that's all

SW - S. BURGESS - DIRECT

1 the way in the back that just was coughing a few
2 minutes, do you see who I'm talking about?

3 A Yes, ma'am.

4 Q Okay, do you know him?

5 A Yeah, I know him too.

6 Q Who is he?

7 A His brother.

8 Q He is the defendant's brother?

9 A Yes, ma'am.

10 Q Do you know his name?

11 A No, I don't know his name.

12 Q Okay. Do you know if he is connected to Latoya,
13 the fella in the back?

14 A Yes, ma'am, they supposedly be going together.

15 Q Okay, so the fella in the back is the boyfriend
16 of Latoya?

17 A Yes, ma'am.

18 Q Okay, was he at the store that day?

19 A Yeah, but he was in there. He was telling
20 Latoya, come on, get out, don't be in there, come
21 on, get out, they'll call the police. So he got her
22 to come out the building and got in the truck and he
23 went down to Randolph Street and was sitting there.

24 Q Y'all went to where?

25 A Randolph Street.

SW - S. BURGESS - DIRECT

1 Q Now where's Randolph Street? Is that in Lake
2 City?

3 A Yes, ma'am.

4 Q Okay. Who lives at Randolph Street?

5 A Well, her sister was living there at the time.

6 Q Whose sister?

7 A Latoya Hickson's sister.

8 Q Latoya Hickson's sister was living there at that
9 time so y'all went to her house?

10 A Yes, ma'am.

11 Q And then what happened?

12 A She was on the phone with Mr. Tovar.

13 Q Latoya was on the phone with Mr. Tovar?

14 A Yes, ma'am.

15 Q Okay.

16 A And she was talking about, she was telling --

17 Q Don't -- don't tell me what she said, that's
18 hearsay, all right. At some point later that same
19 day did you all go to this man's house, Mr. Garcia's
20 house, in Cades?

21 A It was later. It was like at the nighttime.

22 Q Okay, tell us about that. Who went to Mr.
23 Garcia's house in Cades?

24 A Latoya Hickson, myself, and -- I don't know his
25 name.

SW - S. BURGESS - DIRECT

1 Q You have to tell me who it was.

2 A The defendant.

3 Q Okay. The person who went with you and Latoya to
4 the victim's house in Cades, do you see him in the
5 courtroom?

6 A I believe he behind — yeah.

7 Q Okay, where is he? Point him out.

8 A With the blue shirt on (indicating).

9 Q That's the victim. I'm talking about who was in
10 the car with you.

11 A Oh, oh.

12 Q That's okay, I want to make sure we're clear.

13 A Who was in the car with us?

14 Q Yes.

15 A Me, Latoya Hickson, and the defendant.

16 Q Okay. This gentleman seated here?

17 A Yes, ma'am.

18 MS. BARR: Judge, we would ask that the
19 record reflect that the witness has identified the
20 defendant.

21 THE COURT: It does.

22 BY MS. BARR:

23 Q Okay. Now tell us what happened — well, first
24 of all, who was driving?

25 A Latoya Hickson.

SW - S. BURGESS - DIRECT

1 Q Whose vehicle was she driving?

2 A Hers.

3 Q The same one that she had drove when y'all went
4 to the store?

5 A Yes, ma'am.

6 Q Okay. Anybody else in the vehicle with y'all?

7 A No, ma'am.

8 Q Tell me, if the defendant was with you and Latoya
9 when y'all left the store were y'all there, were all
10 three of you all together from the entire time you
11 left the store until the time you drove to the
12 victim's house?

13 A Yes, ma'am.

14 Q Okay, all right. Tell me what happened when you
15 got to the victim's house.

16 A Oh, I was on the phone talking to somebody about
17 some food. And the next thing I know I was on -- my
18 head was turned out toward the window, I was on the
19 phone. The next thing I know the defendant say I
20 have to pee, and the man say, well, you can go pee
21 in the woods.

22 Q Wait a minute, hold on. What man said you can go
23 pee in the woods?

24 A That one (indicating).

25 Q Mr. Garcia?

SW - S. BURGESS - DIRECT

1 A Yes, ma'am.

2 Q Okay. Now where were y'all at when this
3 conversation took place?

4 A We was —

5 Q Were y'all at the store? Tell me where you were.

6 A No, we was at the house.

7 Q At his house?

8 A Yes, ma'am.

9 Q Well, did he have a vehicle at his house?

10 A I believe a little yellow car.

11 Q A yellow car?

12 A Yes, ma'am.

13 Q Did you see any other vehicles there?

14 A No, ma'am.

15 Q Okay. Why were y'all going to his house?

16 A She told — well, she told me that — well, she
17 told Mr. Tovar why she was taking me home. She
18 didn't take me home. She turned around and did
19 something else when she was supposed to be taking me
20 home.

21 Q Okay, you're talking about, when you say she
22 you're talking about Latoya?

23 A Latoya Hickson was supposed to be taking me home.

24 Q All right, so she didn't take you home. Do you
25 know why y'all were going to Mr. Garcia's house?

SW - S. BURGESS - DIRECT

1 A She said she was going to apologize to him.

2 Q To who?

3 A (Indicating) That man.

4 Q Okay.

5 A And so when she went there she was talking to him
6 and the next thing I know the man say he got, um...

7 Q Calm down.

8 A I can't remember. The defendant asked, he say he
9 had to go pee; and he say, yeah, you can go pee in
10 the woods. So he had knew I was talking on the
11 phone and the next thing I know he tells me, oh,
12 hold it -- he was cursing. And he was using foul
13 language. And the next thing I know I say, oh gosh,
14 I turned my head and so I was steady talking on the
15 phone.

16 Q Then what happened?

17 A And after that happened Latoya Hickson rolled her
18 head and say, I ain't got nothing to do with this, I
19 ain't got nothing to do with this. And the
20 defendant said, you see, you see, and all like that.

21 Q Then what happened?

22 A After that had happened he jumped, he was holding
23 the gun to the man and the man say, you see, see.
24 And then after that he jumped in the car and he say,
25 go, go, go, Latoya spin off, Latoya Hickson.

SW - S. BURGESS - DIRECT

1 Q All right, let me be clear. You said — this
2 conversation, y'all initially approached the house,
3 the conversation that was going on with the victim
4 where was he at, in the house, in the yard, in a
5 car, where was he?

6 A I believe he was getting out of his vehicle.

7 Q Okay, all right. Were the three of you all still
8 in your vehicle, in Latoya's vehicle?

9 A Yes, ma'am, I was on the front seat. I was on the
10 phone. Latoya was in the front seat talking to him
11 until when she was apologizing and all kind of
12 stuff.

13 Q Okay.

14 A And the next — oh.

15 Q All right. Where were you at in the vehicle?

16 A I was in the front seat.

17 Q Okay. And where was the defendant at in the
18 vehicle?

19 A In the back.

20 Q Okay. And you said the defendant got out and
21 said he had to urinate?

22 A Yes, ma'am.

23 Q Or words to that effect?

24 A Yes, ma'am.

25 Q You said that he was using profanity?

SW - S. BURGESS - DIRECT

1 A Yes.

2 Q He was cussing in other words, right?

3 A Yes, ma'am.

4 Q Tell me what he was saying.

5 A I can?

6 Q Yep.

7 A He said mother fucker freeze, and all kind of
8 stuff.

9 Q Okay. And the person — pardon my language but
10 we're grown, the person who said mother fucker
11 freeze, is that the fella right here?

12 A Yes, ma'am.

13 Q And when he said those words who was he talking
14 to?

15 A Him (indicating).

16 Q Mr. Garcia?

17 A Yes, ma'am.

18 Q Did he have anything in his hand? Did the
19 defendant have anything in his hand?

20 A A broke down raggedy gun.

21 Q A broke down raggedy gun?

22 A Yes, ma'am.

23 Q All right. Did he take anything from the vehicle
24 from Mr. Garcia?

25 A Yes, ma'am.

SW - S. BURGESS - DIRECT

1 Q What did he take?

2 A He took his wallet and his phone.

3 Q Okay. Was anyone else around?

4 A No, ma'am.

5 Q Okay. Now before y'all went over to Mr. Garcia's
6 house did you know where his wife was? Did y'all
7 know where his wife was?

8 A Last time when it was daytime she was still at
9 the Taco place.

10 Q She was still at the store?

11 A Yes, ma'am.

12 Q Okay. Did you know what kind of car she was
13 driving?

14 A A silver car but I don't know name of it.

15 Q A silver car?

16 A Yeah, but I don't know the name of the car.

17 Q So when y'all pulled up to the victim's home in
18 Cades did you see the silver car parked in the
19 driveway?

20 A No, ma'am.

21 Q But you saw the victim's little yellow car?

22 A Yes, ma'am.

23 Q You said that the defendant, after he got the
24 cell phone and the wallet belonging to the victim he
25 got back in the car?

SW - S. BURGESS - DIRECT

1 A Yes, ma'am.

2 Q And then what did Latoya do?

3 A Drive till he tell Tora to drive, drive, and Tora
4 spun off.

5 Q She spun off, okay. Whatever happened to the
6 victim's wallet?

7 A It got thrown in the ditch and the rest of the
8 paper thrown in the ditch.

9 Q Say again.

10 A The wallet and the paper got thrown in the ditch.

11 Q Who threw it in the ditch?

12 A Rainey, the defendant.

13 Q Rainey, the defendant?

14 A Yes, ma'am.

15 Q Did you see him throw it in the ditch?

16 A Yes, ma'am.

17 Q What happened to the cell phone, what happened to
18 that?

19 A Oh, the cell phone, he had it but he was trying
20 to sell it but I didn't buy it or nothing. And
21 after that --

22 Q He was trying to sell the victim's cell phone?

23 A Yes, ma'am.

24 Q And who did he try to sell it to?

25 A He was trying to give it to me, I didn't buy it,

SW - S. BURGESS - DIRECT

1 then he try to sell it to Latoya but she didn't buy
2 it. After that I ain't heard nothing about the cell
3 phone.

4 Q Okay. When the three of you all left the
5 victim's home where's the first place you went
6 after?

7 A She went, the first place she had went after she
8 take me to the store, I went to the store. I got me
9 something to cook my boyfriend. I had got me some
10 spaghetti, some sauce, ground beef and round bread.

11 Q And then after the armed robbery you went home
12 and you cooked for your boyfriend?

13 A Yes, ma'am.

14 Q All right. And then, so when Latoya dropped you
15 off and you went to cook that spaghetti for your
16 boyfriend, was the defendant still in your vehicle,
17 in Latoya's vehicle?

18 A No, ma'am.

19 Q Okay. Where had he been dropped off to?

20 A He got dropped off by, I don't know the name of
21 the road.

22 Q Okay.

23 A But he got dropped off.

24 Q Do you know whose home it is?

25 A No, he hadn't got dropped off at a home, he just

SW - S. BURGESS - DIRECT

1 got dropped off.

2 Q On the side of the road?

3 A Yes, ma'am.

4 Q Okay. Did you see Latoya and the defendant the
5 next day?

6 A Yes, ma'am.

7 Q Where did you see them at?

8 A She came over there to my house by me being in
9 Lake City.

10 Q Okay.

11 A She came and picked me up, and I went to her
12 sister's house over there on Randolph Street, and I
13 still talk to her niece Ambria and we was talking.
14 Then Rainey had came up and then Rainey got her car,
15 and he and Tora was talking.

16 Q Wait a minute, Rainey came up and what happened?

17 A Okay, when the next day she came and got me and
18 she take me to the house 'cause I talked to her
19 niece Bree so Rainey comes down the road walking.
20 Ambria was in the car and so we opened the door, got
21 out the car. He was talking to Tora, Latoya
22 Hickson.

23 Q Did she say anything about the robbery?

24 A No, ma'am, they was talking about the cell phone.

25 Q Okay. Did you say anything about the robbery?

SW - S. BURGESS - CROSS

1 Did you ask him why they did that?

2 A No, ma'am.

3 Q Okay. What kind of mood were they in the next
4 day?

5 A I guess a happy mood.

6 Q A happy mood?

7 A Uh-huh.

8 Q Why do you say they were in a happy mood?

9 A I guess they thought it was funny.

10 Q Why do you say they thought it was fun?

11 A 'Cause they were giggling.

12 Q They were giggling?

13 A Yes, ma'am.

14 Q About the robbery?

15 A Yes, ma'am.

16 Q Did you go to Mr. Garcia's and his wife's house
17 on last Friday?

18 A Yes, ma'am.

19 Q Okay, tell us why you went there?

20 A I went there to talk to them about subpoenaing me
21 to come to court.

22 Q Okay.

23 MS. BARR: Beg the Court's indulgence.

24 BY MS. BARR:

25 Q After you left the victim's house and was asking

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1 about the subpoena then, did you then go to the
2 Sheriff's Office that same day later?

3 A I don't know. I went to the Sheriff's Office
4 first because they subpoenaed me, and I was at my
5 cousin -- I was at my friend house, and my -- the
6 police people came to my grandmama's house and
7 subpoena me. I came there, he was gone. So I went
8 up there to the courthouse, well, to the police
9 station, ask why they subpoena me and found out why
10 I was subpoenaed for it and everything, and --

11 Q Okay, all right.

12 MS. BARR: Judge, that's all the questions
13 I have.

14 Ms. Burgess, please answer any questions
15 Ms. Shuler may have for you.

16 THE COURT: Ms. Shuler.

17 **CROSS-EXAMINATION**

18 BY MS. SHULER:

19 Q Do you have children?

20 A No, ma'am.

21 Q You don't have children?

22 A (No verbal response.)

23 Q Are you expecting a child now?

24 A Yes, ma'am.

25 Q Okay. So you got a baby on the way and you

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1 realize how important it is for a child to have
2 their mother around for them?

3 A Yes, ma'am.

4 Q Okay. So you and Ms. Hickson, y'all used to be
5 friends but you're not friends now?

6 A Yes, ma'am.

7 Q Okay. Y'all used to be real good friends?

8 A Yes, ma'am.

9 Q Y'all used to be together all the time, right?

10 A Yes, ma'am.

11 Q But y'all don't be together like that no more?

12 A No, ma'am.

13 Q Okay. Now I'm having trouble understanding
14 exactly what you say happened, and I'm having
15 trouble for a number of reasons. When you went to
16 the Sheriff's Department you told them you didn't
17 know nothing about this; didn't you?

18 A No, I went to the Sheriff's Department 'cause
19 they subpoenaed me. I was wanting to know what was
20 going on, why they subpoenaed me.

21 Q Okay. And well, you came up here to court and
22 you told Ms. Barr you didn't know nothing about this
23 thing, right?

24 A Yes, ma'am, 'cause I didn't have nothing to do
25 with it.

SW - S. BURGESS - CROSS

1 Q Right. So you told them before you didn't know
2 nothing about it?

3 A Yes, ma'am.

4 Q So you lied to Ms. Barr?

5 A No, I told her that I ain't had nothing to do
6 with it. I didn't lie to her.

7 Q Okay, you — your words were you didn't have
8 nothing to do with it?

9 A Yes, ma'am.

10 Q Now the police tried to call you after this thing
11 happened, right?

12 A Yes — no, they didn't try to call me.

13 Q They didn't try to call you?

14 A No, 'cause I don't have a cell phone. They
15 couldn't call me.

16 Q They didn't try to find you?

17 A No. When I got back to Lake City they subpoenaed
18 me because when I was coming to Lake City Tora said
19 we have to come court and I said I was coming and
20 then the next thing I know they subpoenaed me. That
21 why I had came.

22 Q Okay, well, listen to me real carefully.

23 A Yes, ma'am.

24 Q After this thing happened the police tried to
25 talk to you, didn't they, right after it happened?

SW - S. BURGESS - CROSS

1 A They tried to talk to me?

2 Q Yeah. Did the police try to talk to you right
3 after it happened?

4 A No. When they arrested Latoya Hickson?

5 Q Right?

6 A No, they had came -- when Tora came to my house
7 Tora was crying. She said, oh, Rainey got me in
8 trouble, Rainey got me in trouble, I was trying to
9 go figure out what was going on, next thing I know
10 -- oh, keep talking?

11 Q You can finish.

12 A The next thing I know what was going on, I was
13 trying to figure out what was going on, and then I
14 was trying to find out what happened. They was
15 locking her up, put her in the car. Then Tori,
16 Latoya Hickson came to my house telling me they was
17 going to subpoena me to go to court. I said okay,
18 subpoena me and I come to court. That what I told
19 Latoya Hickson, I would. When she got bond out she
20 came to my house the same day she got bond out.

21 Q Okay. So you said, well, you just subpoena me
22 and I'll come --

23 A Yes, ma'am.

24 Q --after that? That's what you told Latoya?

25 A Yes, I wanted -- if I miss court I'd get a bench

SW - S. BURGESS - CROSS

1 warrant. I ain't trying to get a bench warrant.

2 That's why I came.

3 Q Okay. Now you went to the store with your friend

4 Latoya and Latoya was inside the store raising cain

5 and slashing tires, right?

6 A No, she didn't slash tires at the Taco place.

7 Q She didn't?

8 A No, ma'am.

9 Q She was raising cain at the Taco place?

10 A Oh, yes, ma'am.

11 Q She's cussing at this poor lady sitting at the

12 end of the table over there?

13 A Well, they was cursing in Spanish. I don't know

14 Spanish.

15 Q But Latoya was cursing at her?

16 A Yes, ma'am.

17 Q She's cursing at her in Spanish?

18 A Yes, ma'am.

19 Q Okay. But nonetheless Latoya been mad?

20 A Uh-huh.

21 Q Right?

22 A Yes, ma'am.

23 Q She been real upset?

24 A Yes, ma'am.

25 Q And then just a few minutes later she went and

SW - S. BURGESS - CROSS

1 slashed the tires on that truck?

2 A Yes, ma'am.

3 Q And you stuck with her?

4 A Yeah, 'cause she supposed to take me home. That
5 the only ride I got home. I wasn't going to walk to
6 the DMV all the way home.

7 THE COURT: Walk to where?

8 THE WITNESS: 'Cause I stay by the DMV.

9 THE COURT: The DMV?

10 THE WITNESS: And it's a long way for me
11 to walk from their place all the way to DMV. The
12 little truck parked over there, and I was staying at
13 the trailer park.

14 BY MS. BARR:

15 Q So you just stuck with her 'cause she's your only
16 ride home?

17 A Yes, ma'am.

18 Q There wasn't anybody else in the world could come
19 and pick you up?

20 A Yeah, they gonna pick me up they charge me gas
21 money. I ain't had no gas money.

22 Q Your momma wouldn't come get you?

23 A My momma don't have a car.

24 Q Your daddy wouldn't come pick you up?

25 A My daddy, I don't talk to my dad.

SW - S. BURGESS - CROSS

1 Q You don't have a brother or sister come get you
2 or another friend? Nobody would come get you just
3 out of the goodness of their heart?

4 A No. My sister would have come but she got kids
5 at home and she ain't had nobody to watch her kids,
6 her husband was at work.

7 Q Okay, so you just -- I'm just gonna stick with
8 her, I ain't gonna walk, that's too far?

9 A Yeah. If you see where I was staying too I
10 wouldn't want you to walk neither. It's too far to
11 walk.

12 Q Okay. So you stuck with her 'cause she's
13 supposed to take you home?

14 A Yes, ma'am.

15 Q And you been in the front seat of the truck?

16 A Yes, ma'am.

17 Q That's what you said. When you went to the store
18 where were you sitting?

19 A I was sitting in the front seat of the truck.

20 Q Okay. And who was in the truck when y'all went
21 to the store?

22 A All her kids and Ambria and the defendant.

23 Q Anybody else?

24 A No, ma'am.

25 Q The gentleman back there wasn't in the truck?

SW - S. BURGESS - CROSS

1 A No, he wasn't in the truck. He drive his own
2 separate car. He was not in the truck.

3 Q Okay, so he met y'all at the store?

4 A Yes, ma'am.

5 Q All right. And he tried to calm Ms. Hickson down
6 in the store?

7 A Yes, ma'am.

8 Q At that didn't work out?

9 A Yeah, it worked out 'cause he say, come on, Tori,
10 before they call the police and everything. So Tori
11 being nice got out the place and went to her sister
12 house, Lawanda (ph) Hickson, on Randolph Street.

13 Q Okay. So it did work because it got her to
14 leave?

15 A Yes, ma'am.

16 Q But it didn't keep her from slashing no tires?

17 A No, ma'am.

18 Q So y'all went to Randolph Street —

19 A Yes, ma'am.

20 Q —after that?

21 A Yes, ma'am.

22 Q And nobody on Randolph Street would give you a
23 ride home?

24 A No, I ain't had nobody else to give me a ride
25 home.

SW - S. BURGESS - CROSS

1 Q So after all this Latoya said, I feel so bad
2 about what I did, I need to go apologize, right?
3 That's what she said?

4 A Oh, no, I ain't know she said that now. But I
5 know she said she feel bad, she said she feel so bad
6 about that. She said she feel bad to go apologize.
7 That what she say.

8 Q Okay. So she had a change of heart, she needed
9 to go apologize to this man about what, how she
10 acted?

11 A She was talking to him good and nice enough.
12 Then after when she was talking to him that -- oh, I
13 keep talking or?

14 Q Well, that was what she told you she was going to
15 do. She was going to go apologize to him?

16 A No, she got in the car and she said, well -- I
17 told her you 'posed to take me home. She said,
18 yeah, I'm gonna take you home, I'm gonna go
19 apologize. So she went over there to apologize and
20 nice enough.

21 Q Okay, so she said I'm gonna go apologize?

22 A Yes, ma'am.

23 Q And then I'm gonna take you home?

24 A Yeah.

25 Q Okay. So when they got -- when y'all came up to

SW - S. BURGESS - CROSS

1 this gentleman's house —

2 A Yes, ma'am.

3 Q —you were sitting in the passenger seat, front
4 passenger seat, which is what you said Latoya was in
5 the driver's seat?

6 A Yes, ma'am.

7 Q You said Latoya was talking to him out the
8 window?

9 A Yes, ma'am.

10 Q And he was — she was apologizing to him out the
11 window as he was getting out of his car?

12 A No, ma'am. She — when he was getting out his
13 car she was coming, she was coming up and he was
14 getting out the car she stopped. And he walked to
15 the car 'cause she was talking to him. And when she
16 was apologizing to him the defendant said I had to
17 pee, urinate.

18 Q Okay. So she was apologizing to him out the
19 window.

20 A Yes, ma'am.

21 Q Where were y'all, where was the car parked at
22 this point?

23 A Leak I don't recollect go his house like a little
24 curve it was like a car right there.

25 Q It's on the road?

SW - S. BURGESS - CROSS

1 A No, it's like in the yard.

2 Q Okay, the car was in the yard?

3 A Yes, ma'am.

4 Q So she's apologizing?

5 A Yes, ma'am.

6 Q And then you said that the defendant said he had
7 to go pee?

8 A Yes, ma'am.

9 Q And then who told him to go pee up against the
10 woods?

11 A The -- I don't know his name. The man right
12 there (indicating).

13 Q Okay, so this gentleman right here said go pee
14 against the woods?

15 A Yeah, he say he go over there in the woods and
16 pee.

17 Q So you say the defendant got out of the car to go
18 pee?

19 A Yes, ma'am.

20 Q And then you saw a gun in his hand?

21 A Yes, ma'am. When I turned around she was
22 apologizing to the man. When she was talking to the
23 man I was looking, but I was on the phone talking
24 to, with one of my friends about getting something
25 to eat. So then the next thing I know he said I got

SW - S. BURGESS - CROSS

1 to pee; he said, well you go over there and pee in
2 the woods. And the next thing I know was he hold
3 his hands and said, si, si. And then the boy hit
4 loose on god language and I said oh, no, I got
5 nothing to do with this. I turned my head towards
6 Latoya and I said, I ain't had nothing to do with
7 this and the next thing I know he take the man
8 wallet and everything and took it in the car and
9 told Tori go, go, go, go.

10 Q Okay. So he said to the man, mother fucker
11 freeze; is that right?

12 A Yes, ma'am.

13 Q And he got a wallet and his keys?

14 A No, his wallet and his phone.

15 Q Wallet and his phone?

16 A Yes, ma'am.

17 Q And Latoya said, I ain't had nothing to do with
18 this?

19 A Yes, ma'am.

20 Q Okay. So your friend up there is telling you,
21 oh, I didn't have nothing to do with this, I was
22 just here to apologize?

23 A Yes, ma'am.

24 Q I been raising cain, slashing tires, and I've had
25 a change of heart, I just want to apologize.

SW. - S. BURGESS - CROSS

1 A Yes, ma'am.

2 Q Okay. And so Latoya spun her tires on off out,
3 sped off?

4 A Yes, ma'am.

5 Q And then she took you home?

6 A No, she didn't took me home right then and there.

7 Q Where'd you go?

8 A I went to the store and got me some spaghetti.

9 Q Right, you got you some spaghetti noodles and
10 sauce and hamburger meat. Then you went home and
11 cooked your boyfriend some dinner?

12 A Yes, ma'am.

13 Q So you just carried on like nothing happened?

14 A No, I didn't carry on like nothing happened. I
15 was thinking myself why she do this, why she went
16 there to apologize when she could have apologized at
17 the store.

18 Q Okay. But nonetheless you just went home and
19 cooked you and your boyfriend some supper, you had
20 you some supper, you went to bed, all that other
21 good stuff. You didn't call the police?

22 A No, ma'am.

23 Q You didn't say, hey, listen here, look what
24 happened, I need to tell you what happened?

25 A Yes, ma'am.

SW - S. BURGESS - CROSS

1 Q You didn't do that?

2 A Yes, ma'am.

3 Q You just went home, cooked yourself some supper,
4 took you a shower, went to bed, right?

5 A Yes, ma'am.

6 Q So then the next day this girl who took you to
7 this gentleman's house for this armed robbery comes
8 and picks you up again?

9 A Yes, ma'am.

10 Q And you had get in the car with her again?

11 A Yes, ma'am.

12 Q 'Cause y'all just that good of friends?

13 A No, we was bored that day and I didn't want to
14 sit at the house watching everybody kids.

15 Q So you're gonna get in a car with a girl that
16 took you to the armed robbery the day before?

17 A Yeah, to go see her niece and stuff.

18 Q So you said that you saw Latoya and Jason the
19 next day, right?

20 A Yes, ma'am.

21 Q And first you said they weren't talking about the
22 armed robbery and then you said they were giggling
23 about it. Well, which one is it? Were they talking
24 about it or not talking about it?

25 A They were giggling about it.

SW - S. BURGESS - CROSS

1 Q Okay, so they was giggling about it, said it was
2 funny?

3 A Yeah, it was funny. I said why y'all laughing,
4 why it so funny. They were giggling about it. I
5 ain't said nothing about it. And after that she
6 went and got a pack of cigarettes, and I went back
7 home.

8 Q And so you said that Jason tried to sell you the
9 cell phone?

10 A Yes, ma'am.

11 Q But you didn't buy it?

12 A No, because I didn't want to buy it 'cause I can
13 go to Wal-Mart and buy a phone so I didn't buy the
14 phone. I didn't want the phone.

15 Q And he tried to sell it to Latoya?

16 A Yes, ma'am.

17 Q And she didn't buy it either?

18 A No, ma'am.

19 Q 'Cause she didn't have nothing to do with it?

20 A No, she didn't buy it 'cause she said she didn't
21 want to buy it.

22 Q Okay. So she said — but she said she didn't
23 know nothing about that robbery, she didn't have
24 nothing to do with it.

25 A Yeah, that what she told me. Yes, ma'am.

SW - S. BURGESS - REDIRECT

1 Q This your friend, she got kids, right?

2 A She got seven.

3 Q She got seven kids. Seven kids at home, right?

4 A Yeah, got seven kids.

5 Q She takes care of those seven kids?

6 A Yes, ma'am.

7 Q Them seven kids need their momma, right?

8 A Yes, ma'am?

9 Q Just like your baby is gonna need their momma?

10 A Yes, ma'am.

11 MS. SHULER: Beg the Court's indulgence.

12 I have no further questions.

13 THE COURT: Any redirect?

14 MS. BARR: One quick question, Judge, if I
15 may.

16 **REDIRECT EXAMINATION**

17 BY MS. BARR:

18 Q Ms. Burgess, when you testified that Latoya
19 Hickson didn't buy the cell phone the defendant was
20 trying to sell, did he say how much he wanted to
21 sell it for?

22 A I can't remember the price.

23 Q Okay, that's fine. That's all the questions I
24 have.

25 THE COURT: Anything further?

1 MS. SHULER: No, Your Honor.

2 THE COURT: All right, ma'am, thank you
3 very much. You can step down.

4 All right, ladies and gentlemen, we're
5 gonna break now for 45 minutes for lunch. 45
6 minutes. Please be back in the jury room in 45
7 minutes. Do not discuss the case or allow anyone to
8 discuss it with you in your presence.

9 (WHEREUPON, the jury was removed from the
10 courtroom at 12:51 p.m. and a lunch break was
11 taken.)

12 THE COURT: Anything else before the jury
13 comes in?

14 MS. BARR: The State's ready, Your Honor.

15 MS. SHULER: Nothing from the Defense,
16 Your Honor.

17 THE COURT: You can come on in.
18 (WHEREUPON, the jury was returned to the courtroom
19 at approximately 1:43 p.m. and the following
20 proceedings commenced in open court.)

21 THE COURT: Welcome back. Your next
22 witness.

23 MS. BARR: The State calls Luciano Garcia.
24 We'll have Ms. Sanchez interpret for her, Your
25 Honor.

SW - L. GARCIA - DIRECT

1 THE CLERK: Place your left hand on the
2 Bible, raise your right hand.

3 (Interpreter begins interpreting.)

4 WHEREUPON,

5 **LUCIANO GARCIA,**

6 having been duly sworn by the Clerk, testified
7 as follows:

8 THE CLERK: Have a seat up here.

9 MS. BARR: First Ms. Sanchez, can I get
10 you to stand so the jury can see him.

11 **DIRECT EXAMINATION**

12 BY MS. BARR:

13 Q Hello, Mr. Garcia, tell me your full name.

14 A Luciano Garcia.

15 Q And where do you live?

16 A In Cades.

17 Q In Cades, South Carolina?

18 A Yes.

19 Q Your wife is Patricia?

20 A Yes.

21 Q And how long have you lived in South Carolina?

22 A Eighteen years.

23 Q How long have you been lived at the address in
24 Cades?

25 A Seven to eight years.

SW - L. GARCIA - DIRECT

1 Q Okay. And do you know Jerry Tovar?

2 A Yes.

3 Q How do you know Jerry Tovar?

4 A We work together. I work with him in the same
5 company.

6 Q And how long have you known him?

7 A Around three or four.

8 Q Three or four years?

9 A Yes.

10 Q Okay. Do you know Latoya Hickson?

11 A Yes.

12 Q And how do you know Latoya Hickson?

13 A When I used to work together with Jerry she would
14 come pick him up at my house when we used to come
15 from work.

16 Q Okay. How many times before the date that you
17 were robbed had Latoya been to your home?

18 A Several times, like four or five.

19 Q Were the two of them dating each other?

20 A Who?

21 Q Latoya and Jerry?

22 A Yes.

23 Q Let me take you back to March 14th of last year.

24 Okay? Did Latoya come to the store that your wife's
25 family operates in Lake City?

SW - L. GARCIA - DIRECT

1 A Yes.

2 Q Who was with her?

3 A Our -- I remember there were several people, but
4 I don't know them.

5 Q Okay. Where was Jerry at the time?

6 A He was coming from Texas. He was working in
7 Texas.

8 Q Okay. Did you have his vehicle that day?

9 A Yes, ma'am. I was told by him to go pick it up.

10 Q Okay. And did you do that?

11 A Yes.

12 Q Okay. Tell us about what happened when Latoya
13 came to the store?

14 A When she first walk in she asked for the keys.

15 Q Okay.

16 A And I told her I couldn't give them to her
17 because I had to talk to him first.

18 Q Had to talk to Jerry?

19 A Yes.

20 Q Did you speak with Jerry after she got to the
21 store?

22 A Yes.

23 Q Okay. After the conversation did you give her
24 the keys?

25 A No.

SW - L. GARCIA - DIRECT

1 Q How did she react to that?

2 A She was real upset about me telling her I was not
3 gonna give her the keys.

4 Q Okay.

5 A That's when my wife was standing up there and she
6 was telling us that she was gonna call the police.

7 Latoya, right? Yes, that's when my wife say that
8 she was crazy and then she got more upset.

9 Q Okay. Did you see Latoya damage Jerry's car in
10 any way?

11 A No, ma'am, 'cause I was trying to get in touch
12 with Jerry.

13 Q Okay. Were there any men with Latoya when she
14 came to the store?

15 A Yes, but I didn't pay any attention.

16 Q Okay. What type of vehicle was Latoya driving?

17 A Expedition.

18 Q Okay. After Latoya left the store, okay, did you
19 try to take Jerry's vehicle somewhere?

20 A Yes, I was trying to take the vehicle to a
21 friend's house, but the tires didn't have any air on
22 it.

23 Q Okay, all right. And before Latoya came to the
24 shop did you have any problems with the tires?

25 A No, because I just had bring it from the

SW - L. GARCIA - DIRECT

1 mechanic.

2 Q Okay. Did you see Latoya again later that day?

3 A Yes. When I moved the truck to put air on it,
4 but I was unable to move the truck too far because
5 the tires didn't have any air. And when I was
6 trying to put air on the tires she went by, and she
7 laugh at me.

8 Q Okay. Did she have anybody in the car with her,
9 if you could tell?

10 A No, I was not able to see.

11 Q Okay. Did you see Latoya at any point after
12 that?

13 A Yes.

14 Q When Latoya came to the store was that during the
15 daytime or during the nighttime?

16 A In the afternoon.

17 Q Okay, all right. When you saw her again after
18 you were trying to put air in the tires, was that
19 daytime or nighttime?

20 A You can still see.

21 Q Okay. Tell me where you saw her after she left
22 passing by you laughing?

23 A When I was on my way home I seen her truck. It
24 was parked like in a mechanic shop. When I went by
25 the street I saw the Expedition follow me.

SW - L. GARCIA - DIRECT

1 Q Okay.

2 A After ---

3 Q Hold on, hold on. When you first saw the vehicle
4 park in the mechanic shop could you tell who was in
5 it?

6 A No, I didn't saw her, I just saw the car.

7 Q Did you see anybody get in or out of the car when
8 it was parked at the mechanic shop?

9 A Not in that moment.

10 Q Okay. Prior to the car coming to your house did
11 you ever see anybody get in or out of Latoya's
12 truck?

13 A When I was driving and I looked back at my mirror
14 I saw her Expedition just like a few seconds and I
15 saw somebody got in.

16 Q You saw somebody got in?

17 A Yes.

18 Q Where?

19 A Latoya's vehicle.

20 Q Okay. Could you tell whether the person who got
21 in was a male or female?

22 A At that point it was already dark and I couldn't
23 see. I just saw they were wearing pants.

24 Q Okay. Tell me what happened when you got home.

25 A I noticed they were following me.

SW - L. GARCIA - DIRECT

1 Q How could you tell they were following you?

2 A 'Cause I knew her truck at that point.

3 Q Okay. And how far is the mechanic shop where you
4 saw the truck parked from your home?

5 A Eight to ten minutes away.

6 Q Eight to ten minutes away, okay. When you
7 realized that somebody was following you could you
8 tell who was driving the vehicle that was following
9 you?

10 A No.

11 Q Okay. Tell me what happened when you got home?

12 A When I came home I went into my home — well, in
13 the yard. And I saw the Expedition went a little
14 bit far from my house and then came back and then
15 went into my yard.

16 Q Okay.

17 A That's when I realized Latoya was driving that
18 vehicle.

19 Q All right. Did you make any telephone calls to
20 your wife?

21 A I called her when I was driving and I nodded as
22 they were following me.

23 Q And why didn't you call your wife?

24 A One of the — a guy that had came to the store
25 had told me Latoya —

SW - L. GARCIA - DIRECT

1 Q Hold on, don't tell me what they said.

2 A Okay.

3 Q Based upon what that person said, is that why you
4 called your wife?

5 A Yes.

6 Q What did you tell your wife during that call?

7 A Where were you.

8 Q Okay.

9 A Because I was afraid that she was, that she was
10 home.

11 Q Okay.

12 A She had my kids and I didn't want nothing to
13 happen to them.

14 Q Okay. And this is after you realized that Latoya
15 was following you?

16 A Yes.

17 Q Okay. Now again, take you back to the point
18 where you're at home. Tell me what happened when
19 Latoya gets there?

20 A When I got out my car that's when she came into
21 the yard.

22 Q That's when — she who?

23 A Latoya.

24 Q Okay. What happened next?

25 A She rolled her window down. She was telling me

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1 that she was sorry, she was apologize. But when she
2 was apologize, the person who was in the back seat
3 asked me if he could go pee. And since she was
4 telling me that she was sorry he gave permission to
5 that person on the back seat to get off.

6 Q Okay. Was there anybody in the front seat with
7 Latoya?

8 A Yes, a woman.

9 Q Okay. Did you ever see that woman again within
10 the last week?

11 A Yes.

12 Q When?

13 A Last Friday when she came home.

14 Q Okay, all right. Now when the -- well, let's see
15 other than Latoya, the girl in the front seat, and
16 the guy who asked to pee, was there anybody else in
17 the vehicle?

18 A No.

19 Q All right. What happened after the guy asked you
20 if he could go pee?

21 A He got off from the truck. He came straight to
22 me cursing me out and pull a gun on me, this part
23 right here (indicating).

24 Q Would you stand up. Come around. Pretend like
25 I'm you. Show me how the guy pointed the gun at

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1 you.

2 A (Indicating.)

3 Q What did he say?

4 A He cursed me out and the only thing he remembers
5 it was, don't make me do it.

6 Q Okay. And you are pointing to the right side of
7 my stomach?

8 A Yes.

9 Q Okay. Can you describe the gun?

10 A No, I don't know too much about guns.

11 Q Okay. Could you tell me whether it was a long
12 rifle or handgun that can fit in your waist?

13 A It was small. It was — it was not a rifle.

14 Q Say again?

15 A It was not a rifle.

16 Q Not a rifle, okay. What was going through your
17 mind? What did you think was gonna happen when the
18 man pointed the gun at you?

19 A I really thought he was gonna kill me. That's
20 why I didn't move.

21 Q You did not move?

22 A No.

23 Q Did you hear your cell phone ring at all during
24 this time?

25 A No.

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1 Q Okay, all right. After he pointed the gun and
2 cursed at you what happened next?

3 A He took my cell phone and my wallet, and he got
4 in the truck.

5 Q Okay. Where was your cell phone and wallet?

6 A I had a sweater and my cell phone was inside my
7 sweater, and my wallet was on my back pocket.

8 Q Okay. What was in your wallet?

9 A Documents and like ten dollars.

10 Q What happened next?

11 A They laughed.

12 Q Who laughed?

13 A Latoya and the guy.

14 Q Latoya and the guy laughed?

15 A Yes.

16 Q Could you tell what the other female was doing in
17 the car?

18 A She was sitting down. I didn't pay too much
19 attention because Latoya was talking to me.

20 Q Okay. After Latoya apologized and did she say
21 anything else to you?

22 A No.

23 Q Okay. After she laughed did she say anything
24 else?

25 A No.

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1 Q After the man took your cell phone and your
2 wallet did he say anything else to you?

3 A No, it was fast. They left.

4 Q Okay, all right. So when he got the wallet and
5 got your cell phone what did he do?

6 A He took — he just took them and got in the car.

7 Q And then what happened after he got in the car?

8 A They run away.

9 Q Okay, all right. Do you have neighbors who live
10 by you?

11 A Yes.

12 Q Were any of the neighbors out that night?

13 A Regularly they never outside.

14 Q All right. After they left tell me what
15 happened.

16 A I got in my car to try to let my wife know.

17 Q Okay. Were you going to meet her?

18 A I was going to look for her.

19 Q Okay. Did you find her?

20 A Yes.

21 Q Okay. What happened after you found her, what
22 did you tell her?

23 A What had happened and that somebody had robbed
24 me.

25 Q Okay. Did you get your cell phone back?

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1 A Yes.

2 Q Who gave you your cell phone back?

3 A Jerry Tovar.

4 Q Okay. How long after the robbery did you get
5 your cell phone back?

6 A I don't really remember. I think it was two or
7 three days after.

8 Q The person who held the gun on you, could you
9 tell whether that person was older or younger
10 person?

11 A What do you refer when you say older?

12 Q Would it have been somebody say in their fifties
13 or somebody say in their twenties?

14 A Around twenties.

15 Q Okay. And could you tell the race of the person
16 who robbed you?

17 A African-American.

18 Q Now Mr. Garcia, can you identify the person who
19 robbed you?

20 A No.

21 Q Okay. You were not able to see his face?

22 A No.

23 Q When you got your cell phone back was there --
24 was your information still on the cell phone?

25 A No, and my memory was not there neither.

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1 Q Okay. Was someone else's information on your
2 cell phone?

3 A Yes.

4 Q Do you know the name of the person whose
5 information was on this cell phone?

6 MS. SHULER: Objection, Your Honor, may we
7 approach.

8 THE COURT: Okay.

9 (WHEREUPON, counsel approached the
10 Bench for an off-the-record discussion.)

11 BY MS. BARR:

12 Q Mr. Garcia, was there other information on your
13 cell phone when you got it back?

14 A It was locked. I couldn't see a lot. I just saw
15 a picture.

16 Q Okay. Do you remember what you saw a picture of?

17 A It was a picture of a woman.

18 Q Okay. Have you seen Latoya since this happened
19 other than in court?

20 A No.

21 Q What about Jerry, Jerry Tovar, have you seen him
22 since this happened?

23 A Yes, I saw him at work.

24 Q Now did you or your wife call the police?

25 A Yes, my wife did.

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1 Q Okay. Were you going to call the police?

2 A No, I didn't have my phone and I didn't speak no
3 English.

4 Q Okay. All right, that's all the questions that I
5 have. Please answer any questions that Ms. Shuler
6 may have.

7 **CROSS-EXAMINATION**

8 BY MS. SHULER:

9 Q Mr. Garcia, Jerry Tovar, he's a coworker of
10 yours?

11 A Yes, he was working at the time with me. Now
12 he's no longer working with me.

13 Q Did he ever live with you?

14 A No, ma'am.

15 Q So he wasn't ever your roommate?

16 A No, ma'am.

17 Q Now Latoya Hickson came to your mother-in-law's
18 store?

19 A Yes.

20 Q On March 14th of last year, right?

21 A Yes.

22 Q And when she got there she was mad?

23 A Yes.

24 Q And she wanted to pick up Jerry's truck?

25 A Yes.

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1 Q And you wouldn't let her get Jerry's truck?

2 A No.

3 Q And so she got even more mad?

4 A Yes.

5 Q Your wife called her crazy?

6 A Yes.

7 Q And then she got mad again?

8 A Yes.

9 Q And then she went and slashed Mr. Tovar's tires?

10 A I didn't saw her.

11 Q But there were, there was no air in the tire

12 whenever you went to go drive the truck, right?

13 A Yes.

14 Q And so you — y'all moved the truck and ut it in

15 a safe location?

16 A Yes.

17 Q And then you went home?

18 A I was a little while at my mother-in-law's store.

19 Q Okay. And on your way — but you went home later

20 that night?

21 A Yes.

22 Q And on your way home you saw Latoya's car parked

23 at a mechanic's shop?

24 A Yes.

25 Q And you said that you saw somebody get into the

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1 car?

2 A Not when the car was parked, but when they were
3 driving. When, when they were following me they
4 stopped, and that's when somebody got in.

5 Q Where were you when somebody got in the truck?

6 A I was driving. I was driving at 35-mile per
7 hour.

8 Q At what location, though, were you when you saw
9 somebody get in their truck?

10 A It's a street where there's a lot of holes, but I
11 don't remember the street name.

12 Q Is it in Lake City or Cades or Kingstree?

13 A It's part of Lake City on 52.

14 Q Off of 52?

15 A Uh-huh.

16 Q So they stopped on the four lane highway 52 and
17 picked somebody up in Lake City?

18 A No.

19 Q Did they pull off the road and pick somebody up?

20 A On that street there's only two lines, and I was
21 driving and they were behind me. He stopped — she
22 stopped beside the road. Latoya. Well at that
23 point it was Latoya's vehicle; I didn't see Latoya.

24 Q Okay. Whenever Latoya's vehicle stopped where
25 was Latoya's vehicle?

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- 1 A I don't know the name of the street.
- 2 Q Was not Highway 52?
- 3 A No.
- 4 Q It was on -- it was a road on your way home?
- 5 A Yes.
- 6 Q So tell me the route you took home.
- 7 A From my mother-in-law's store I got on 52 going
- 8 towards Charleston, and there was a store named by
- 9 Subway or Sav-way, Sav-way. Where there was old
- 10 IGA. Is this Lake City? Yes, after I was on
- 11 driving on 52 I turned to my right.
- 12 Q On to Green Road?
- 13 A I don't remember.
- 14 Q And you don't remember seeing anybody else in the
- 15 vehicle other than a man in the back and Latoya and
- 16 Sharhonda Burgess; is that right?
- 17 A No.
- 18 Q Okay. And you can't, you don't know who it was
- 19 that robbed you that night?
- 20 A No.
- 21 Q And you stated earlier that Ms. Hickson laughed
- 22 at the robbery, after he was robbed?
- 23 A No.
- 24 Q Okay, so she didn't laugh after?
- 25 A No.

SW - L. GARCIA - REDIRECT

1 MS. SHULER: Beg the Court's indulgence
2 one moment please. I have no further questions,
3 Your Honor.

4 THE COURT: Any redirect?

5 MS. BARR: Very briefly.

6 **REDIRECT EXAMINATION**

7 BY MS. BARR:

8 Q Mr. Garcia, I want to make sure that we
9 understand what you're saying. Did I understand you
10 to say earlier that someone was laughing after you
11 were robbed?

12 A No.

13 Q Okay. Did you see anybody laugh at you? I just
14 want to make sure I didn't misunderstand.

15 A No.

16 Q Okay, all right. Thank you.

17 THE COURT: Anything further?

18 MS. SHULER: No, Your Honor.

19 THE COURT: Okay, thank you.

20 We'll take a few minutes to stretch.

21 Please do not discuss the case.

22 (WHEREUPON, a the jury was removed from the
23 courtroom and the following proceedings commenced in
24 open court.)

25 THE COURT: Also, before the jury comes

1 back I want to be certain that the plea offer, the
2 rejections, and all that is placed on the record.

3 MS. SHULER: Sure, Your Honor.

4 THE COURT: I need to talk to Mr. Boston.
5 WHEREUPON,

6 **JASON BOSTON,**
7 having been duly sworn by the Clerk, testified
8 as follows:

9 THE COURT: All right, Mr. Boston, I want
10 to make sure that we, that you understand and that
11 the record clearly reflects whatever kind of plea
12 bargain took place before the beginning of the trial
13 and that you fully understand everything and have
14 made your own free and voluntary decision with
15 regard to this trial.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Ms. Barr, what type of plea
18 bargain, if any, took place?

19 MS. BARR: Your Honor, we offered to make
20 a recommendation of 15 year sentence. At the time I
21 believe he was in SCDC serving a sentence on larceny
22 charge, burg second, something to that effect. We
23 were going to recommend it run concurrent. I
24 believe he's since served his time with that SCDC
25 sentence and has been released.

1 THE COURT: All right. Is that right, Ms.
2 Shuler?

3 MS. SHULER: The offer is correct. He was
4 serving a sentence on a grand larceny charge.

5 THE COURT: And Mr. Boston, you rejected
6 the plea offer?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you understand that the
9 penalty for armed robbery is a minimum of 10 years
10 and maximum of 30 years?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And that the armed robbery is
13 classified in the law as a most serious offense?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And you elected to reject that
16 offer, plea offer, by the State and have a trial?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Okay, very good.

19 MS. SHULER: Thank you, Your Honor.

20 THE COURT: Okay, thank you. Ready to
21 press on?

22 MS. BARR: Yes, sir.

23 THE COURT: Bring them on.

24 (WHEREUPON, the jury was returned to the courtroom
25 at approximately 2:40 p.m., and the following

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1 proceedings commenced in open court.)

2 THE COURT: Mr. McCrae, I'm gonna appoint
3 you to be foreman of the jury. As foreman of this
4 jury you serve as spokesperson for the jury, will
5 have the responsibility of presiding over the jury
6 deliberations and completing the verdict form
7 representing the unanimous verdict of the jury. And
8 that's the foreperson's seat.

9 Okay, your next witness.

10 MS. BARR: The State calls Latoya Hickson.

11 THE COURT: All right, Ms. Hickson, come
12 forward right there.

13 WHEREUPON,

14 **LATOYA HICKSON,**
15 having been duly sworn by the Clerk, testified
16 as follows:

17 THE CLERK: Have a seat in the witness box
18 right here.

19 **DIRECT EXAMINATION**

20 BY MS. BARR:

21 Q Ms. Hickson, state your full name for me.

22 A Latoya Shani'l Hickson.

23 Q Spell your middle name for me.

24 A S-H-A-N-I-'L.

25 Q And where do you live?

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1 A 259 East Clyde (ph) Circle, Lake City, South
2 Carolina.

3 Q Okay. And how old are you?

4 A Twenty-nine.

5 Q All right. Have you lived in Lake City all your
6 life?

7 A I grew up in Scranton from age 22 to age 29.

8 Q Okay. Now Ms. Hickson, to be clear, were you
9 present in court today when Mr. Garcia testified?

10 A No, ma'am.

11 Q Were you present in court today when his wife
12 Patricia testified?

13 A No, ma'am.

14 Q All right. Were you present in court when
15 Sharhonda Burgess testified?

16 A No, ma'am.

17 Q Okay. All right. And do you know Sharhonda
18 Burgess?

19 A Yes, ma'am.

20 Q How do you know her?

21 A She's my cousin.

22 Q Okay. Do you know the individual seated at the
23 defendant's table, Jason Thomas Boston?

24 A Yes, ma'am.

25 Q How long have you known him?

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1 A For a couple of years.

2 Q How is it that you know him?

3 A My sister moved over to where his family lived,
4 and him and my niece became girlfriend and
5 boyfriend. That's how I know him.

6 Q So he dates your niece?

7 A Yes, ma'am.

8 Q What's your niece's name?

9 A Zalandria Brown.

10 Q Do y'all have any other family connection?

11 A I date his brother.

12 Q You date the defendant's brother?

13 A Yes, ma'am.

14 Q And what's the defendant's brother's name?

15 A Jesay (ph) Presley.

16 Q He's not gone there. Do you know whether or not
17 he came up to the courthouse today? Jesay Presley?

18 A Yes, ma'am.

19 Q What was he wearing today?

20 A I don't remember.

21 Q All right. You told me where you live. Is that
22 a house, a mobile home, apartment?

23 A That's a house.

24 Q Okay. Who owns that house?

25 A Mary Boston and Willie Presley.

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1 Q And are they related to the defendant?

2 A Yes, ma'am.

3 Q How are they related to the defendant?

4 A That's his mom and father.

5 Q His mother and father?

6 A Yes, ma'am.

7 Q So you live in a home now that's owned by the
8 defendant's parents?

9 A Yes, ma'am.

10 Q Okay. Now of course you were here this morning?

11 A Yes, ma'am.

12 Q During the lunch break did you go and get lunch?

13 A Yes, ma'am.

14 Q Did you go by yourself?

15 A No, ma'am.

16 Q Who was with you?

17 A Jesay.

18 Q Anyone else?

19 A That's it.

20 Q Now do you know Jerry Tovar?

21 A Yes, ma'am.

22 Q Tell the jurors how you know Jerry Tovar.

23 A Me and Jerry Tovar have a child together.

24 Q And how old is Jerry?

25 A Thirty-one I believe.

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1 Q Okay. And how old is the child that you have
2 with Mr. Tovar?

3 A Two.

4 Q Two years old?

5 A Yes, ma'am.

6 Q Is that your youngest child?

7 A Yes, ma'am.

8 Q How many children do you have?

9 A Seven.

10 Q Okay. And how old are they, the ages?

11 A I have two twin boys that's 12. Next to the twin
12 boys is a ten year old. There's a nine year old,
13 there's a seven year old, a six year old, and two
14 year old.

15 Q Okay. You testified that you've known the
16 defendant for a couple of years?

17 A Yes, ma'am.

18 Q Okay. Where does he live?

19 A He was living with my niece.

20 Q With Zalandria Brown?

21 A Yes, ma'am.

22 Q And where does Zalandria live?

23 A Lives with Mary Roe (ph) in Scranton.

24 Q Mary Roe in Scranton. How long has she lived
25 there?

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1 A I want to say eight years, maybe longer.

2 Q Eight years or longer?

3 A Yes, ma'am.

4 Q I need you to keep your voice up for me, okay.

5 Where does the defendant's mother live?

6 A In Lake City.

7 Q Okay. Where at in Lake City?

8 A On Randolph Street.

9 Q Randolph Street, okay. Was he, the defendant
10 dating Zalandria, your niece, back in March of last
11 year?

12 A Yes, ma'am.

13 Q Okay. You know why you're here today?

14 A Yes, ma'am.

15 Q All right. Prior to the robbery of Mr. Garcia,
16 on an average monthly basis for example, how often
17 would you see or spend time or be in the company of
18 the defendant Jason Boston?

19 A Haven't.

20 Q Say again?

21 A I haven't seen him since ---

22 Q No, I'm not talking since. I'm talking about
23 before this happened, say in the year or two before
24 this happened, from 2012, '13, up until beginning of
25 2014. On an average monthly basis how often would

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1 you see him?

2 A (There was no response.)

3 Q More than once a week?

4 A About three times a week.

5 Q About three times a week?

6 A Yes, ma'am.

7 Q Would you also hang around his family?

8 A Yes, ma'am.

9 Q Okay. His mom?

10 A Yes, ma'am.

11 Q Cousins?

12 A Yes, ma'am.

13 Q Brothers?

14 A Yes, ma'am.

15 Q Okay. Does he have a nickname?

16 A Yes, ma'am.

17 Q What is his nickname?

18 A Rainey.

19 Q Who calls him that?

20 A His family.

21 Q Okay. Let's just get into it. Tell me about —
22 well first of all, I guess let me start by asking,
23 did you go to the store that's operated or in Lake
24 City that's operated by Patricia and Mr. Garcia's
25 family?

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1 A Yes, ma'am.

2 Q Help us to understand kind of where that is.

3 Where is their store located?

4 A I think it's South Main Street.

5 Q Okay. Is it near a landmark someplace that we
6 would know?

7 A Right beside the Shrimper.

8 Q It's located right next to the Shrimper in Lake
9 City?

10 A Yes, ma'am.

11 Q Did you go there earlier that day?

12 A Yes, ma'am.

13 Q What were you driving?

14 A A silver Expedition.

15 Q Who was with you?

16 A Sharhonda, my niece Zalandria, and Jason Boston.

17 Q Okay. Anybody else?

18 A No, ma'am.

19 Q Okay.

20 A In my vehicle, no, ma'am.

21 Q Why were you going there?

22 A Because I thought Mr. Jerry Tovar was there and
23 come to find out he was not.

24 Q Okay. Why was it important to you that he might
25 have been there?

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1 A 'Cause he owed me some money for the rims that
2 was on his truck.

3 Q Okay. And what kind of truck was that that had
4 the rims on it?

5 A His truck or mine?

6 Q His truck.

7 A Blue Silverado.

8 Q So you were going there to collect your money?

9 A Yes, ma'am.

10 Q And Mr. Tovar was not there?

11 A No, ma'am.

12 Q What happened when you got there and realized
13 that he was not there?

14 A I went in and I asked Mr. Luciano where was
15 Jerry. He said he was still at work. And I asked
16 him for the keys for the truck. He told me no. So
17 he said he was going to call Jerry. Then in the
18 process of him calling Jerry his wife — I don't
19 remember her name — called me out my name so I
20 called her back out of her name. Then ---

21 Q Now were you speaking to her in English or in
22 Spanish?

23 A In English.

24 Q Did you ever speak to her in Spanish?

25 A No, ma'am.

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1 Q Could you understand what she was saying? Was
2 she talking in English or in Spanish?

3 A In both.

4 Q Could you understand some of what she was saying
5 in English and in Spanish?

6 A Yes, ma'am.

7 Q Okay. What was your tone and demeanor like when
8 you went there and realized you were not going to
9 get the truck?

10 A It was loud.

11 Q Okay. Did you use profanity?

12 A Yes, ma'am.

13 Q Okay, all right. What happened once Mr. Garcia
14 — first of all, did you know him before that date,
15 Mr. Garcia, the victim here?

16 A Yes, ma'am.

17 Q How did you know him?

18 A I know him through Jerry. Jerry would, they
19 would all send me to pick up his check from A to Z
20 Company.

21 Q Okay. All right. Had Jerry ever brought you to
22 the victim's home?

23 A Yes, ma'am.

24 Q Okay. You went there and socialized there?

25 A No, ma'am.

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1 Q Okay. But you knew where he lived?

2 A Yes, ma'am.

3 Q All right. Tell me what happened after

4 Mr. Garcia told you he was not going to give you the
5 keys to the truck?

6 A He got on the phone, and he called Jerry. And
7 after he called Jerry and got a hold of Jerry he
8 gave me the phone and I spoke to Jerry. Jerry just
9 told me to calm down, he'll handle it when he get
10 home. So I gave him back his cell phone and walked
11 out the store. When I walked out the store they
12 followed me out the store. I grabbed a pair of
13 scissors out the driver's side of my truck and
14 flattened the tires on the truck and I left the
15 store.

16 Q And why did you do that? Why did you flatten the
17 tires on the truck?

18 A 'Cause I -- it's been almost over a year that
19 Jerry owed me the money for the tires and he never
20 gave it to me.

21 Q And this is Jerry's truck is what type of truck?

22 A A blue Silverado.

23 Q Okay. Now what's, what is Jerry's nationality or
24 his race?

25 A Hispanic.

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1 Q Okay. And Mr. Garcia, the victim, what's his
2 nationality or his race?

3 A Hispanic.

4 Q When you left who was with you?

5 A Sharhonda, my niece Ambria, and Jason Boston.

6 Q Okay. Now I asked you earlier who was with you
7 at the store and you mentioned Ambria. You
8 mentioned Jason Boston and you mentioned Sharhonda.
9 And you said that was all that was in my vehicle.

10 Were there other people, friends or family members
11 of yours who came to the scene or came to the store?

12 A There was Jesay, his brother, and his cousin
13 Chuckie.

14 Q Okay. What about your children?

15 A They were in school.

16 Q All of them?

17 A Yes, ma'am.

18 Q What about the two year old? Two year old was
19 one then.

20 A With my sister.

21 Q What about the six year old?

22 A School.

23 Q Where did you all go when you left the store?

24 A We went to my house to get some clothes for my
25 kids, then we went to get the kids something to eat.

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1 Then we went back to Randolph Street. I dropped the
2 cloths, my niece Ambria, and the food off with my
3 sister.

4 Q What's your sister's name.

5 A Juanetta Hickson.

6 Q Now you mentioned that your -- was Jesay Presley,
7 the defendant's brother, was he your boyfriend at
8 that time?

9 A Yes, ma'am.

10 Q Okay. Now you came with the defendant to the
11 store, right?

12 A Yes, ma'am.

13 Q You left with the defendant to the store?

14 A Yes, ma'am.

15 Q Why didn't you leave with your boyfriend?

16 A We were in two separate cars.

17 Q Okay. And the defendant didn't leave with his
18 brother, your boyfriend?

19 A No, ma'am.

20 Q Okay. Was Sharhonda supposed to go somewhere
21 that day?

22 A Yes, ma'am.

23 Q Where was she supposed to go?

24 A I know she had an appointment, but I don't
25 remember if it was the clinic or the doctor.

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1 Q Did you take her there?

2 A No, ma'am.

3 Q Okay. Now you said that you saw Jason around
4 this time at least three times a week, right?

5 A Yes, ma'am.

6 Q Do you know where he was working? Had you known
7 him to work during this time?

8 A No, ma'am.

9 Q Have you ever been in his company while he was
10 with his girlfriend, your niece, Ambria?

11 A No, ma'am.

12 Q Did he ever tell you how he was able to support
13 himself if he's not working?

14 A No, ma'am.

15 Q Were you working at the time?

16 A No, ma'am.

17 Q Was Sharhonda working at the time?

18 A No, ma'am.

19 Q So you said you left, you went back to your
20 house?

21 A Yes, ma'am.

22 Q And you went to get, pick up some food for your
23 children?

24 A Yes, ma'am.

25 Q And then where did you go?

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1 A To Randolph Street to drop the clothes and the
2 foot off and my niece Ambria off.

3 Q And who was with you when you went back to
4 Randolph Street to drop the food and clothes off?

5 A Jason Boston and Sharhonda Burgess.

6 Q Then where did y'all go from there?

7 A We rode around through the projects and other
8 places in Lake City. Then after that I, you know,
9 went to Luciano's house.

10 Q Okay. Why did you go to Luciano's house?

11 A To apologize to him and his wife.

12 Q Okay. Now when you went to Mr. Garcia's house
13 did you know what type of vehicle he drove?

14 A Yes, ma'am.

15 Q Okay. And what type of vehicle did he drive?

16 A A yellow Saturn.

17 Q Okay. Not a whole lot of yellow Saturns in Lake
18 City in Cades?

19 A It's about three in Lake City.

20 Q Okay. What type of vehicle did his wife drive?

21 A A gray Grand Am.

22 Q Okay. When you pulled into and went to Mr.
23 Garcia's house was it daytime or nighttime?

24 A It was dusk dark.

25 Q His vehicle was there?

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1 A Yes.

2 Q Was his wife's vehicle there?

3 A No, ma'am.

4 Q And again, you arrived at the victim's home.

5 Tell me again who all was in the car and where were
6 they seated in the car?

7 A Sharhonda was in the passenger seat in the front
8 and Jason was behind me.

9 Q Okay. Have you ever prior to that occasion known
10 Jason to carry a gun?

11 A No, ma'am.

12 Q Okay. Did you see him with a gun that day?

13 A No, ma'am.

14 Q Okay. Before or after the robbery?

15 A After the robbery I did see him with one.

16 Q Tell me what happened when you got —

17 A During the robbery.

18 Q I'm sorry?

19 A During the robbery and after the robbery.

20 Q Tell me what happened when you pulled up at the
21 victim's home.

22 A Well, when I pulled in the yard I saw Mr. Munoz's
23 brake lights so I assumed he just got home.

24 Q You saw whose brake lights?

25 A Mr. Luciano's.

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1 Q Okay.

2 A And he got out the car and I parked maybe about
3 15 feet away from his car. He walked up to my truck
4 and I apologized immediately to him. And he leaned
5 up against and told me it was okay, that he didn't
6 want problems. So Jason asked if he could get out
7 to pee. He said, yeah, go over to the bushes. So
8 he got out the vehicle and Sharhonda said something
9 to me — I don't remember what it was. And the next
10 thing I know I heard Jason say, don't do it. So
11 when I turned and looked back at him he had Mr.
12 Luciano at gun point.

13 Q Okay. And you keep saying Mr. Munoz, are you
14 talking about Mr. Luciano Garcia?

15 A Yes.

16 Q The gentleman here?

17 A Yes.

18 Q All right, you said Jason had — we'll just call
19 him the victim so we can be clear.

20 A Okay.

21 Q Had the victim at gun point?

22 A Yes, ma'am.

23 Q Where was he pointing the gun? Where did he
24 point the gun at the victim?

25 A In his side.

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1 Q In his side, okay. What did the victim do once
2 Mr. Boston pointed the gun at him?

3 A He put his hands up in the air, said he didn't
4 want problems.

5 Q What kind of gun was it?

6 A It was a short gun with black tape wrapped around
7 it.

8 Q Okay. Prior to the defendant getting out of the
9 vehicle asking to urinate, had you seen him with a
10 gun?

11 A No, ma'am.

12 Q All right. So he points the gun at the victim,
13 tells him don't do it, or don't do it. Is that your
14 testimony?

15 A Yes, ma'am.

16 Q All right. And the victim holds his hands up and
17 says I don't want any problems?

18 A Yes, ma'am.

19 Q Then what happens?

20 A Jason walked around Mr. Munoz, patting him down
21 -- Mr. Luciano, patting him down. And after, I
22 guess he took what he took he got back in the truck.

23 Q Okay. Step down for a moment for me please.

24 A (Witness complies.)

25 Q Keep your voice up because you lost your mic so

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1 keep your voice up for me. Show me how the
2 defendant, Mr. Boston, pointed the gun at the
3 victim.

4 A (Indicating) like this.

5 Q Okay, all right. And you said the victim held
6 his arms up like this. Is it like this, like a
7 surrender type mode?

8 A Yes, ma'am.

9 Q All right. And you said that the defendant
10 started patting the victim down?

11 A Yes, ma'am.

12 Q Can you show the jurors how the defendant patted
13 the victim down?

14 A Like this. With this hand actually like this.

15 Q While he was holding the gun in the other hand?

16 A Yes, ma'am.

17 Q Okay, you can have a seat. Did the victim say
18 anything after he said I don't want any trouble?

19 A No, ma'am.

20 Q And you said that he took what he took. Did you
21 know at that point in time as the defendant was
22 patting down the victim what he took?

23 A No, not until he got back in the truck.

24 Q Okay. And he took what he took, the defendant
25 took what he took, and got back in the truck?

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1 A Yes, ma'am.

2 Q In your truck? 4?

3 A Yes, ma'am.

4 Q Then what happened?

5 A Then Mr. Munoz turned away and walked back
6 towards his car and I sat there for a minute. He
7 almost got back to the car. Jason punched my seat
8 and told me, move.

9 Q Say it.

10 A Bitch. So I put the truck in reverse and I left.

11 Q Okay. And where did y'all go from there?

12 A We went to the projects. I dropped him off in
13 the projects.

14 Q Okay. During the ride back to the projects from
15 the victim's house could you see or could you tell
16 at that point what the defendant took from the
17 victim?

18 A Only thing I saw was the cell phone.

19 Q Okay. Did you ever see a wallet?

20 A I don't remember.

21 Q Did he ever tell you he had a wallet?

22 A I truly honestly don't remember.

23 Q Okay. You dropped the defendant off in the
24 projects. That's in Lake City?

25 A Yes, ma'am.

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1 Q And you did what from there?

2 A I went dropped Sharhonda off and I went home.

3 Q Okay. Did you see the defendant the next day?

4 A Yes, ma'am.

5 Q All right. Why did you see -- what happened when
6 you saw him the next day?

7 A The next day Mr. Jerry Tovar called me and asked
8 me did I know where his cell phone and wallet was.

9 I told him --

10 Q Talking about the victim?

11 A Yes, ma'am.

12 Q Okay.

13 A And I told him -- at first I told him, no, I did
14 not. And then he hung up and he called me back. He
15 said, you sure? I said, yeah, I know where the cell
16 phone is. And he said, well, can you get it back
17 from --

18 MS. SHULER: Objection, Your Honor, as to
19 anything somebody else said.

20 MS. BARR: It's not being offered for the
21 truth of the matter asserted, Judge.

22 THE COURT: Subject to the location of the
23 cell phone?

24 MS. BARR: Correct.

25 THE COURT: I sustain the objection.

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1 BY MS. BARR:

2 Q Let me do it this way. You received a telephone
3 call from Jerry?

4 A Yes, ma'am.

5 Q The first telephone call you told him you didn't
6 know where the cell phone was?

7 A Yes, ma'am.

8 Q You received a second phone call from him?

9 A Yes, ma'am.

10 Q What did you tell him?

11 A No, I knew where the cell phone was.

12 Q Okay. What happened after you got off the phone
13 with him?

14 A I contacted Jason and told Jason that he needed
15 the cell phone back.

16 Q Okay, all right. Then what did Jason say?

17 A He said okay.

18 Q All right. Did you facilitate or help Jerry get
19 the victim's cell phone from Jason?

20 A Yes, ma'am. I called Mr. Tovar back and I told
21 him he was gonna give his cell phone back. Mr.
22 Tovar said, I'll give him 40-dollars —

23 Q Don't tell me what he said, okay. You told Mr.
24 Tovar that you can get the victim his phone back?

25 A Yes, ma'am.

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1 Q All right. How did that happen?

2 A Me and Jesay went and picked Jason up and took
3 him to Mr. Tovar's house.

4 Q Okay. You and your boyfriend, right?

5 A Yes, ma'am.

6 Q Picked the defendant up from where?

7 A Randolph Street.

8 Q And took him where?

9 A To Jerry's house.

10 Q Okay, all right. And when you got there did he
11 just — did the defendant just turn over the
12 victim's cell phone to Jerry?

13 A Yes, ma'am.

14 Q Okay. Free and clear?

15 A Yes, ma'am.

16 Q Okay. Was there any money exchanged?

17 A Yes, ma'am.

18 Q How much money was exchanged?

19 A A hundred dollars.

20 Q How do you know that?

21 A 'Cause I saw Jerry when he gave it to him.

22 Q Jerry gave Jason Boston a hundred dollars?

23 A Yes, ma'am.

24 Q And then what did Jason do? Did he give him the
25 phone?

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1 A Yes, ma'am.

2 Q Now was -- did Mr. Tovar just voluntarily give
3 Jason a hundred dollars or was Jason asking for
4 money?

5 A The first time Mr. Tovar offered him \$40 and he
6 said, no, I want a hundred.

7 Q Who said they want a hundred?

8 A Jason.

9 Q Okay. And is that when Mr. Tovar gave him a
10 hundred dollars?

11 A Yes, ma'am.

12 Q Now did you ever see or hear the defendant trying
13 to sale the phone to anybody else before he gave it
14 to Mr. Tovar?

15 A No, ma'am.

16 Q Do you know whether he had any -- did you know
17 whether or not he had any contact information on the
18 cell phone? When I say "he" I mean the defendant.

19 A I knew that he rebooted the cell phone and used
20 the cell phone.

21 Q You saw that? You saw him do that?

22 A I didn't see him do it, but I know he used the
23 cell phone because he called me from the cell phone.

24 Q Called you from the victim's cell phone?

25 A Yes, ma'am.

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1 Q All right. So do you remember what day of the
2 week the robbery happened?

3 A Friday.

4 Q Friday?

5 A Yes, ma'am.

6 Q When do you think the cell phone was exchanged?
7 When did Jerry get the cell phone if the robbery
8 happened on Friday?

9 A The next day.

10 Q The next day?

11 A Yes, ma'am.

12 Q Okay. And obviously you're here and the police
13 came looking for you?

14 A Yes, ma'am.

15 Q All right. When did the police come looking for
16 you?

17 A The day after the cell phone was exchanged.

18 Q Okay, so Sunday?

19 A Yes, ma'am.

20 Q All right. You were arrested?

21 A Yes, ma'am.

22 Q What were you charged with?

23 A Armed robbery with a deadly weapon.

24 Q Okay. Did you give a statement to the police?

25 A Yes, ma'am, I did.

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1 Q Don't read anything out loud. Just tell me, is
2 that a transcript of the statement that you gave to
3 the police?

4 A Yes, ma'am.

5 Q When did you give the statement, what day?

6 A March 17th.

7 Q March 17th?

8 A Yes, ma'am.

9 Q So this incident happened on a Friday, the 14th
10 of March?

11 A Yes, ma'am.

12 Q And you gave the statement to the police on the
13 17th. That would have been that Monday?

14 A Yes, ma'am.

15 Q Okay. And when you gave your statement to the
16 police did you tell them who robbed the victim?

17 A Yes, ma'am.

18 Q Who did you tell the police that robbed the
19 victim?

20 A Jason Boston.

21 Q Okay. Did you tell them that he had a gun?

22 A I don't remember. I'm not gonna answer that; I
23 don't know.

24 Q Would it refresh your memory to look at your
25 statement?

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1 A Yes, ma'am.

2 Q Okay. Refer to page 6, read it to yourself.

3 Don't read it out loud. Look at the top of page 6
4 and read that paragraph to see if that refreshes
5 your memory as to whether you told the police Jason
6 had a gun.

7 A Yes, ma'am.

8 Q Okay. So in response to my question did you tell
9 the police that Jason had a gun, what's your answer?

10 A Yes, ma'am.

11 Q Okay. Did you describe the gun to the police at
12 that time?

13 A Yes, ma'am.

14 Q Okay. How did you describe the gun to the police
15 at that time, if you remember?

16 A A short gun with black tape wrapped around it.

17 Q Okay. Ms. Hickson, you entered a guilty plea on
18 yesterday to strong armed robbery?

19 A Yes, ma'am.

20 Q All right. And do you know what your possible
21 sentence could be for a conviction for strong armed
22 robbery?

23 A Yes, ma'am.

24 Q And how much time are you facing for a conviction
25 for strong armed robbery?

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1 THE COURT: Just a moment. Counsel
2 approach.

3 (WHEREUPON, counsel approached the
4 Bench for an off-the-record discussion.)

5 THE COURT: Fully note the question,
6 Ms. Barr.

7 BY MS. BARR:

8 Q According to your arrest but after the robbery
9 was committed, you told me about seeing the
10 defendant and the next day after the robbery. Did
11 you have any other communication with him before
12 your arrest?

13 A Yes, ma'am.

14 Q Okay. How were y'all getting along?

15 A Fine.

16 Q Getting along fine? Even after the robbery?

17 A You mean after the rob?

18 Q Yeah, before you got arrested, before you got
19 locked up?

20 A No, we didn't have no communications.

21 Q Okay. The night that you all — the night that
22 the robbery occurred did you have any bad feelings
23 or ill feelings toward the defendant?

24 A Ma'am?

25 Q Prior to the robbery did you have any bad

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1 feelings or ill feelings toward the defendant,
2 Mr. Boston?

3 A Yes, ma'am.

4 Q Were you mad at him or anything before the
5 robbery happened?

6 A No, ma'am.

7 Q Y'all were getting along good?

8 A Yes, ma'am.

9 Q Socializing together?

10 A Yes, ma'am.

11 Q Hanging out?

12 A Yes, ma'am. You mean before the robbery, right?

13 Q Yeah.

14 A Yes, ma'am.

15 Q Ms. Hickson, that's all the questions I have.

16 Answer any questions, Ms. Shuler's questions, or the
17 judge's questions.

18 THE COURT: All right, Ms. Shuler.

19 **CROSS-EXAMINATION**

20 BY MS. SHULER:

21 Q Ms. Hickson, you said Sharhonda Burgess is your
22 cousin?

23 A Yes, ma'am.

24 Q Okay. Y'all used to be pretty close, right?

25 A Yes, ma'am.

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1 Q But you're not close anymore —

2 A No, ma'am.

3 Q —right? But she's related you?

4 A Yes, ma'am.

5 Q Earlier she said that y'all were friends at one
6 time. She didn't say y'all were related.

7 MS. BARR: Objection, witness pitting,
8 Your Honor.

9 THE COURT: All right. Is that a question
10 or statement, or what, Ms. Shuler? She wasn't —
11 she doesn't know what she said; she wasn't in here.

12 MS. SHULER: Right. I really wasn't
13 finished with my question, but —

14 THE COURT: Okay, all right. We'll wait
15 for the question.

16 BY MS. SHULER:

17 Q Earlier Ms. Burgess testified that y'all
18 weren't — that y'all were friends. She didn't say
19 anything about y'all being cousin. Why would she
20 say something like that? Why wouldn't we she say we
21 cousins?

22 A I don't know.

23 MS. BARR: Judge, we have the same
24 objection and calls for speculation.

25 THE COURT: All right, objection

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1 sustained.

2 BY MS. SHULER:

3 Q You've known Jason for a few years, right?

4 A Yes, ma'am.

5 Q Okay. Your niece dates him?

6 A Yes, ma'am.

7 Q And whenever we say -- whenever I think of a
8 niece I think of somebody younger than me walking
9 around with pigtails and things like that. This
10 niece is older than you, right?

11 A Yes, ma'am.

12 Q Okay. And they've been dating for some time?

13 A Yes, ma'am.

14 Q And you said that you've been dating his brother
15 for some time, right?

16 A Yes, ma'am.

17 Q Now you don't have any children with his brother,
18 do you?

19 A No, ma'am.

20 Q But you got seven kids?

21 A Yes, ma'am.

22 Q How many of your seven children have the same
23 dad?

24 A Five.

25 Q Five?

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1 A Yes, ma'am.

2 Q All right. So are those the oldest five that
3 have the same dad?

4 A Yes, ma'am.

5 Q Okay. So the oldest five have the same dad and
6 then the youngest two have different daddies?

7 A Yes, ma'am.

8 MS. BARR: Judge, objection to relevance.

9 MS. SHULER: It's —

10 THE COURT: Objection to relevance,
11 Ms. Shuler.

12 MS. SHULER: If I may have a couple more
13 questions, Judge, I'll get there.

14 THE COURT: All right. Okay.

15 BY MS. SHULER:

16 Q So with the — Jerry Tovar is the dad to the
17 youngest child?

18 A Yes, ma'am.

19 Q And is Mr. Boston or any of Mr. Boston's family
20 the fathers of your children, any of your children?

21 A No, ma'am.

22 Q Okay. Now you said that you would see Jason
23 about three times a week; is that right?

24 A Yes, ma'am.

25 Q And y'all hang out a lot together?

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1 A Yes, ma'am.

2 Q And this is all the while while he was dating
3 your niece?

4 A Yes, ma'am.

5 Q And so it would be you and Sharhonda and Jason
6 all hanging around together?

7 A Yes, ma'am.

8 Q And none of y'all had a job?

9 A No, ma'am.

10 Q And so the day that this happened you — y'all
11 first started out at the Munoz's store; is that
12 right?

13 A Yes, ma'am.

14 Q And while y'all were there you went into the
15 store and you exchanged words with the victim and
16 the victim's wife; isn't that right?

17 A Yes, ma'am.

18 Q And then you went out back and slashed Jerry's
19 tires on his truck?

20 A Yes, ma'am.

21 Q And then you went and rode around a little bit?

22 A Yes, ma'am.

23 Q And you didn't have any of your kids with you
24 that day?

25 A No, ma'am.

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1 Q None of your kids were with you in your car?

2 A No, ma'am.

3 Q So the only people that were with you you said
4 were Jason, Sharhonda, and your niece?

5 A Yes, ma'am.

6 Q And your boyfriend and Chuckie met you there; is
7 that right? Is that what you called him? Is
8 that — somebody met you there at the store, right?

9 A Right.

10 Q Who met you at the store?

11 A Jesay and Chuckie.

12 Q Okay, so ---

13 A You said it so fast, I'm sorry, I couldn't
14 understand you.

15 Q So just Jesay and Chuckie met you at the store?

16 A Yes, ma'am.

17 Q And Jesay calmed you down and got you outside?

18 A Right, I voluntarily left.

19 Q You voluntarily left?

20 A Yes, ma'am.

21 Q Okay. So then you when and got some clothes and
22 got some food and dropped it off at your sister's
23 house?

24 A Yes, ma'am.

25 Q And then you said, well, I really just have to

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1 apologize?

2 A Yes, ma'am.

3 Q And because you said I acted out and I acted out
4 and I need to go apologize, right?

5 A Yes, ma'am.

6 Q But you didn't tell the police that, did you?

7 A Yes, ma'am, I did.

8 Q You did? Okay, I want you to look at that
9 transcript, that statement Ms. Barr gave you. Do
10 you still have that up there? I'm gonna hand you
11 the transcript of the statement that Ms. Bar handed
12 you earlier. I want you to look through that.
13 Don't read anything back out loud. I just want you
14 to tell me when you told the police that you acted
15 out in the store.

16 (Pause.)

17 THE WITNESS: I don't see it in there, but
18 I know I told them.

19 BY MS. SHULER:

20 Q Okay, so you don't see it in the transcript. You
21 didn't tell the police you slashed Jerry's tires,
22 did you?

23 A I don't remember if I did or didn't.

24 Q You just reviewed this transcript. You didn't

25 ---

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1 A I don't read very well.

2 Q Okay. You don't know if you told the police
3 whether you slashed Jerry's tires or not?

4 A I don't remember if I did.

5 Q Now y'all had been together all day is your
6 testimony, right?

7 A Yes, ma'am.

8 Q And all day along y'all had been hanging out, got
9 in an altercation at the store, picked up food,
10 carried that to your sister's house, and all the
11 while hanging out — you don't — you didn't drop
12 Jason off somewhere. He stayed with you all day
13 long, right?

14 A Yes, ma'am.

15 Q Okay. So then y'all went to go to the victim's
16 house to apologize to him is your story, right?

17 A I went to apologize, not them.

18 Q Okay. So you went to go apologize?

19 A Yes, ma'am.

20 Q And while y'all were there and you were talking
21 to Mr. Tovar there, it's your testimony that Jason
22 said he had to go use the bathroom, right?

23 A I never said that I talked to Mr. Tovar at —

24 Q I apologize. While you were talking to the
25 victim Mr. Garcia, or that Mr. — you said that

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1 Mr. Boston had to go use the bathroom, right?

2 A Yes, ma'am.

3 Q So you told him to go up against the woods and go
4 use the bathroom, right?

5 A No, I did not, Mr. Luciano told him to.

6 Q Mr. Luciano told him to go to the bathroom?

7 A Yes.

8 Q You didn't tell him to go to the bathroom?

9 A No, I did not.

10 Q But you told law enforcement that you told him to
11 go use the bathroom.

12 A They must have heard that wrong because I know
13 what I said.

14 Q Okay. So you didn't tell law enforcement —

15 A No, I did not.

16 Q —you told him to go the bathroom?

17 A No, I did not.

18 Q Now Ms. Barr asked you whether or not you know,
19 you knew if a wallet was stolen, right. You said
20 you didn't know?

21 A I don't remember.

22 Q You don't remember a wallet being stolen?

23 A Right.

24 Q Now you pled guilty to strong armed robbery,
25 right?

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1 A Yes, ma'am, I did.

2 Q And whenever you pled guilty to that you came in
3 here, you placed your hand upon that Bible, and you
4 swore to —

5 A Yes, ma'am.

6 Q —tell the truth?

7 A Yes, ma'am.

8 Q And at that time you told the judge that the
9 wallet was thrown out the window; didn't you?

10 A Now that you mention it, I do remember saying
11 that.

12 Q Okay. So you swore to tell the truth, you told
13 the judge that the wallet was thrown out the window
14 whenever you were pleading guilty?

15 A Yes, ma'am.

16 Q But you testified here today you don't remember
17 if he ever took a wallet?

18 A If I don't remember I don't remember.

19 Q Your guilty plea was just two days ago; wasn't
20 it?

21 A Yes, ma'am.

22 Q So you remembered it then, but you don't remember
23 it today?

24 A There's a lot of things I don't remember today.

25 Q But you remember what you're facing on strong

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1 armed robbery, how much time, right?

2 A Yes, ma'am.

3 Q How much time are you looking at with your plea
4 to strong armed robbery?

5 A From what I was told, 0 to 25.

6 Q 0 to 25 years?

7 A Yes, ma'am.

8 Q So that's what you say you're told. Now for
9 armed robbery you were looking at much more time;
10 weren't you?

11 A I think it was about the same.

12 Q You think it was about the same?

13 A Yes, ma'am.

14 Q You think that you would get no time for armed
15 robbery?

16 A No, ma'am, it was 10 to 25.

17 Q So a minimum of ten years, right?

18 A Yes, ma'am.

19 Q So you pled your charge down, right?

20 A Yes, ma'am.

21 Q In exchange for testifying you had to agree to
22 testify, right?

23 A Yes, ma'am.

24 Q And with that you're not looking at the minimum
25 of ten years anymore, right?

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1 A I don't know what I'm looking at now.

2 Q You don't know what you're looking at?

3 A No, ma'am.

4 Q I thought you just said you were looking at 0 to
5 25?

6 A Well, I don't know what that means.

7 Q You're no longer facing the mandatory minimum of
8 ten years in prison, right?

9 A Right.

10 Q Because you pled guilty to strong armed robbery?

11 A Right.

12 Q Okay. If you would have been convicted of armed
13 robbery you would have been facing a mandatory
14 minimum of ten years; is that right?

15 A Yes, ma'am.

16 Q You are no longer facing that mandatory minimum
17 of ten years, right?

18 A Right.

19 Q Okay. So you got those seven kids at home that
20 need you?

21 A Right.

22 Q And you need to get home to them seven kids?

23 A Right.

24 Q You're gonna say and do what you need to get home
25 to them kids, right?

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1 A I'm gonna speak the truth.

2 Q Okay. Well, I'm having trouble then
3 understanding why you'd plead guilty because what
4 you have testified to today, you just said that you
5 saw what went on, right?

6 A Right.

7 Q You say that -- it's your story that you didn't
8 know a robbery was going to take place, right?

9 A Ma'am?

10 Q Isn't that your contention? You didn't know a
11 robbery was going to take place, right?

12 A Right.

13 Q Okay. And so it's your story and you want the
14 jury to believe that Mr. Boston robbed this
15 gentleman right here, right?

16 A Right.

17 Q And got a cell phone, right?

18 A Right.

19 Q And then two days later you go and say, hey, I
20 need that cell phone back and he just gives you that
21 cell phone, that's what you want them to believe?

22 A He didn't give the cell phone to me. He gave it
23 to Mr. Tovar.

24 Q You went to go pick him up to go get it though?

25 A Right.

SW - L. HICKSON - REDIRECT

1 MS. SHULER: Beg the Court's indulgence
2 one moment.

3 BY MS. SHULER:

4 Q Now whenever you were arrested, you were arrested
5 about three or four days after this thing happened,
6 right? It happened on a Friday. You got arrested
7 on a Monday?

8 A Sunday.

9 Q Sunday, Monday. You had the weekend to sit and
10 think about what happened, right?

11 A Right.

12 Q All during the weekend you never picked up the
13 police and say, hey, I witnessed an armed robbery,
14 did you?

15 A No, ma'am.

16 Q And you're up here testifying today not facing
17 any mandatory minimum jail time; isn't that right?

18 A Right.

19 Q 'Cause you want to get home to see your kids?

20 A Right.

21 MS. SHULER: I have no further questions.

22 THE COURT: Redirect, Ms. Barr.

23 MS. BARR: Yes, sir.

24 **REDIRECT EXAMINATION**

25 BY MS. BARR:

SW - L. HICKSON - REDIRECT

1 Q Ms. Hickson, I'm gonna show you a copy of the
2 transcript from your statement of March 17th. Turn
3 to page 5 for me please. Let me know when you're
4 there.

5 A I'm there.

6 Q Okay. Look at line 9 on that page and tell me
7 when you're there.

8 A Okay.

9 Q All right. You were asked on cross-examination
10 whether you said anything to the police about you
11 acting out at the store. Do you remember Ms. Shuler
12 asking you those questions?

13 A Yes, ma'am.

14 Q And do you remember her asking you to look over
15 the transcript to see whether or not you ever
16 mentioned anything about acting out at the store?

17 A Yes, ma'am.

18 Q If you read to yourself from lines 9 through 14,
19 tell me if that refreshes your memory as to whether
20 you told the police that you acted out at the store?

21 A I don't read well.

22 Q Okay, let me show you where I am. Line 9. Did
23 you tell police at that time that me and the little
24 lady that was at the store, she called me out —

25 MS. SHULER: Objection, Your Honor, this

SW - L. HICKSON - REDIRECT

1 is improper.

2 THE COURT: Objection to your publishing
3 the statement.

4 MS. BARR: Judge, we believe that she
5 has — I have a right to obviously refresh her
6 memory if she has been candid with the court and
7 shared with the court that she does not read very
8 well. Judge, I think it's more than fair since the
9 defendant tried to portray her testimony to be
10 something different that we be allowed to
11 rehabilitate her to show the jury it was not
12 different.

13 THE COURT: All right. Ms. Shuler.

14 MS. SHULER: Your Honor, I certainly think
15 that the statement can be used to refresh her
16 memory; and if she needs it read to her, I have
17 absolutely no problem with that being done outside
18 the presence of the jury.

19 THE COURT: What was the predicate
20 question to all of this, Ms. Barr?

21 MS. BARR: My question to her was, was she
22 asked on cross-examination whether or not she acted
23 out at the store, and I was gonna — a second
24 followup question was whether or not she apologized.
25 And I wanted to show her portions of her transcript

SW - L. HICKSON - REDIRECT

1 to refresh her memory in that regard.

2 THE COURT: First let me hear her answers
3 to the questions.

4 BY MS. BARR:

5 Q Yes, ma'am. Do you recall your questions on
6 cross-examination by Ms. Shuler as to whether or not
7 you told the police you acted out at the store?

8 A Yes, ma'am.

9 Q Did you tell the police that you acted out at the
10 store?

11 A I don't remember.

12 Q Okay. Did I -- of course I've handed you a
13 transcript of your statement.

14 A Yes, ma'am.

15 Q And I've referred you to page 5 of that
16 statement?

17 A Yes, ma'am.

18 Q Can you read to yourself lines 9 through 14. Can
19 you read those lines? Just tell me if you can or
20 you can't.

21 (Pause.)

22 THE WITNESS: Yes, ma'am.

23 BY MS. BARR:

24 Q You can read it?

25 A Some of the words, yes, ma'am.

SW - L. HICKSON - REDIRECT

1 Q You do understand it?

2 A Yes, ma'am.

3 Q All right. Having read it, do you now recall
4 whether you told the police that you acted out at
5 the store?

6 A Yes, ma'am.

7 Q You did tell them that?

8 A Yes, ma'am.

9 Q Having read it, do you recall now whether or not
10 you told police that you apologize?

11 A Yes, ma'am.

12 Q Okay. Now one more quick question. If you refer
13 to the bottom of that page starting at paragraph 23,
14 line 23. I want you to read those three lines to
15 yourself, pick up on the next page, page 6, and just
16 read just that line, and tell me when you finish
17 reading those four, four or five lines.

18 (Pause.)

19 BY MS. BARR:

20 Q You finished reading those?

21 A (No verbal response.)

22 Q Is that a yes?

23 A Yes, ma'am.

24 Q Ms. Shuler asked you to show her in your
25 transcript where the victim told the defendant he

SW - L. HICKSON - REDIRECT

1 could go pee. Do you see that in your transcript?

2 A Yes, ma'am.

3 Q And in your transcript did you tell the police
4 then that the victim told the defendant that he
5 could go pee?

6 A Yes, ma'am.

7 Q Now at any point in time during this crime did
8 you ever have possession of a gun?

9 A No, ma'am.

10 Q Any other weapon on the victim?

11 A No, ma'am.

12 Q Okay. When you gave your statement three days
13 after this happened, did you know what the penalty
14 for armed robbery was?

15 A No, ma'am.

16 Q When you gave your statement to the police three
17 days after this happened, did anybody promise you
18 anything to get you to say that Jason Boston was the
19 one with the gun?

20 A No, ma'am.

21 Q Did you say that to be saying it, or did you say
22 it because it's true?

23 A It's true.

24 Q That's all the questions that I have.

25 THE COURT: Anything further?

SW - B. MCCANTS - DIRECT

1 MS. SHULER: One moment, Your Honor,
2 please. I have nothing further of this witness,
3 Your Honor.

4 THE COURT: All right, thank you. You may
5 step down.

6 You may call your next witness.

7 MS. BARR: That will be Brandon McCants.

8 WHEREUPON,

9 **BRANDON K. MCCANTS,**

10 having been duly sworn by the Clerk, testified
11 as follows:

12 BY MS. BARR:

13 Q Sir, please state your full name for me.

14 A Brandon Kenneth McCants.

15 Q We see that you have a uniform on, but just kind
16 of tell the ladies and gentlemen of the jury what it
17 is you do for a living.

18 A I'm a patrol deputy for the Williamsburg County
19 Sheriff's Office.

20 Q And how long have you been employed in Sheriff's
21 Office?

22 A 2008.

23 Q Okay. So seven years?

24 A Almost seven years.

25 Q Okay. And give us an idea, if you would, about

SW - B. MCCANTS - DIRECT

1 you, generally what your day to day responsibilities
2 are.

3 A To enforce the laws of the state, criminal
4 traffic patrol in county, respond to calls for
5 service within the county.

6 Q Okay. And sir, you were working back on
7 March 14th of last year?

8 A Yes.

9 Q And on that occasion did you respond to a call of
10 armed robbery in the Cades community?

11 A Yes.

12 Q All right. And that community is located in
13 Williamsburg County?

14 A Yes.

15 Q All right. Now about what time were you
16 dispatched out to the call?

17 A About 8:30 p.m.

18 Q Okay. And about how long did it take you to get
19 out to the scene?

20 A About 20 minutes.

21 Q Okay, all right. And when you arrived at the
22 scene did you see Mr. Garcia there?

23 A I did.

24 Q How about his wife?

25 A I did. She was there too.

SW - B. MCCANTS - DIRECT

1 Q Okay, all right. Were you able to communicate
2 with Mr. Garcia?

3 A I wasn't.

4 Q Why was that?

5 A There was a language barrier.

6 Q Okay. He couldn't speak English and you couldn't
7 speak Spanish. Did you — how were you able to kind
8 of understand what had happened as far as the crime
9 was concerned?

10 A I would ask and his wife understood what I was
11 saying, and she would interpret for him and then
12 she'd tell me what he said.

13 Q Okay. And sir, what would be the normal protocol
14 for a patrol officer investigating a crime like this
15 after you've taken the initial report?

16 A Our protocol is to notify the investigator.

17 Q Okay.

18 A Whether they come out or not is their protocol,
19 but we notify them and they take over from there.

20 Q Okay. After you spoke with the victim or I guess
21 with the victim and his wife, were you looking for
22 anyone in particular?

23 A Yes, we were looking for Latoya Hickson.

24 Q Latoya Hickson, okay. All right, and Latoya was
25 arrested subsequently?

SW - B. MCCANTIS - DIRECT

1 A Yes.

2 Q Do you know, do you remember whether or not you
3 were involved in her arrest or some —

4 A I was.

5 Q You placed her under arrest?

6 A Yes.

7 Q What was she placed arrest for?

8 A Armed robbery.

9 Q And of course you've been in the courtroom with
10 me. You've heard testimony that she gave a
11 statement?

12 A Yes.

13 Q Okay. And that statement was given to who?

14 A Investigator Juan Ballard.

15 Q Juan Ballard who is employed, of course, with the
16 Sheriff's Office here?

17 A Yes, ma'am.

18 Q And subsequent to that statement the defendant
19 Mr. Jason Bostic was also arrested and charged with
20 armed robbery?

21 A Yes.

22 Q Now in this particular case were you — I know we
23 watch television a lot, and was curious to know
24 whether or not there were any fingerprints or
25 whether or not there was any DNA or anything along

SW - L. HICKSON - CROSS

1 those lines in terms of evidence in the case?

2 A From me, no.

3 Q Okay. To your knowledge has the weapon that was
4 used in the robbery ever been recovered?

5 A To my knowledge, no.

6 Q Do you have any idea where it is?

7 A No.

8 Q I think that's all that I have for you. Please
9 answer any questions that the judge or defense
10 counsel may have.

11 MS. SHULER: Thank you, Your Honor.

12 **CROSS - EXAMINATION**

13 BY MS. SHULER:

14 Q Officer McCants, you guys deny go a photo lineup
15 in this case, did you?

16 A I didn't.

17 Q You didn't hand a photo lineup to Mr. Munoz to
18 have him try to identify the individual that robbed
19 him?

20 A No, ma'am.

21 Q And whenever you arrested Ms. Hickson on the
22 16th, she didn't mention at that time this wasn't
23 me, it was Jason Boston, did she?

24 A She didn't mention anything to me. I really
25 didn't question her about it. Once it was assigned

SW - L. HICKSON - REDIRECT

1 to Investigator Ballard it became his case; I just
2 executed the warrant.

3 Q But she didn't say you have the wrong person, did
4 she?

5 A No, ma'am.

6 Q She didn't say, it wasn't me, it was Jason
7 Boston?

8 A I don't remember her actually saying Jason
9 Boston.

10 Q Okay.

11 A At that time.

12 Q I have no further questions.

13 THE COURT: Anything further?

14 MS. BARR: Just a couple quick followup.

15 **REDIRECT EXAMINATION**

16 BY MS. BARR:

17 Q Deputy McCants, did you interview Ms. Hickson —

18 A No.

19 Q —related to this crime?

20 A No.

21 Q After you came on the scene — you said you got
22 there about 20 minutes later?

23 A Yes, ma'am.

24 Q You spoke with the victim through his wife; is
25 that right?

SW - L. HICKSON - REDIRECT

1 A Yes, ma'am.

2 Q All right. Now after you had that initial
3 interview with the victim on the scene were you
4 looking for a male or female individual who robbed
5 the victim?

6 A Actually looking for both.

7 Q Okay.

8 A We figured that if finding Ms. Hickson we could
9 find the male party.

10 Q Okay. And I guess what I'm trying to ask you is
11 did the victim tell you a woman pulled a gun on him?

12 A No.

13 Q Okay.

14 A It was a black male.

15 Q That's all the questions I have.

16 THE COURT: All right, anything else?

17 MS. SHULER: No, Your Honor.

18 THE COURT: All right, thank you, sir.

19 Next witness.

20 MS. BARR: Your Honor, at this time the
21 State would rest.

22 THE COURT: Ladies and gentlemen of the
23 jury, that's the State's case. We need you to go to
24 the jury room for a break while we take up some
25 matters outside your presence. Please do not

1 discuss the case.

2 (WHEREUPON, the jury was removed from the
3 courtroom at 3:46 p.m. and the following proceedings
4 commenced in open court.)

5 THE COURT: All right. Any matters of
6 law at this time?

7 MS. SHULER: Yes, Your Honor. At this
8 time the defendant would move for a directed
9 verdict. There's been a failure of competent proof
10 to show that Mr. Boston was the individual that
11 perpetrated this crime, and the victim himself has
12 not been able to identify the individual that
13 robbed, that robbed him at gun point. The only
14 testimony that's been presented that he was there
15 was that of the codefendant and her friends that say
16 that he was there. And there's been no independent
17 corroboration of that. There's been nothing to
18 place him there at the time of the crime. And so
19 Your Honor, we move for a directed verdict based on
20 no independent corroboration of just their
21 testimony.

22 THE COURT: We have three witnesses who
23 said the victim was robbed. We had two of them who
24 say that the defendant is one who robbed him, robbed
25 the victim of his wallet and cell phone. The

1 defendant then sold the cell phone back to the
2 victim through a friend of the other co-defendant
3 Ms. Hickson. And there's sufficient evidence for
4 the jury to find him guilty as charged if they
5 believe the evidence so I deny the motion.

6 Mr. Boston, if you will stand for a
7 moment. First I'm going to explain to you certain
8 of your rights. And you were sworn earlier, and
9 you're still under oath. But if you don't
10 understand anything I say and you want me to explain
11 it in further detail let me know, I'll be happy to
12 do so. You understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: We've reached the stage of the
15 trial where you may present your defense. Now you
16 have the right to claim the protection given to you
17 by the Fifth Amendment to the Constitution of the
18 United States. The Fifth Amendment says in part
19 that no person shall be compelled in any criminal
20 case to be a witness against himself. This means
21 that you cannot be required to testify; but you do
22 have the right to testify on your own behalf if you
23 would like to, but no one can make you testify.
24 Whether or not you testify is a personal right and
25 no one can waive that right exempt you. You follow

1 me?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now if you decide to testify
4 you'll be subject to the same rules that govern
5 other witnesses, and you may be examined and
6 cross-examined on any relevant issue in this case.
7 In addition, if you have any convictions involving
8 dishonesty or false statements or for crimes
9 punishable by more than one year — and I heard you
10 were in prison for grand larceny so that's a crime
11 of dishonesty and punishable for more than one
12 year — and I determine that the probative value of
13 admitting that evidence outweighs its prejudicial
14 effect to you, then the Solicitor will be able to
15 introduce that record of the grand larceny and any
16 other offense applicable on your record. The
17 Solicitor will be able to introduce your records to
18 attack your credibility.

19 If you decide to testify it must be a
20 free, voluntary, intelligent decision that you make
21 knowing full, being physically aware informed of the
22 protections given to you by the Fifth Amendment and
23 the consequences of your decision to testify. If
24 you decide not to testify I will instruct the jury
25 that they cannot give the fact that you did not

1 testify any consideration whatsoever and that
2 there's to be absolutely no prejudice to you because
3 you did not testify. It's left entirely up to you
4 to whether or not you testify. You can talk with
5 your lawyer Ms. Shuler, family, friends, or anyone
6 else you might want to talk to; but the final
7 decision about whether or not you testify is your
8 decision. Do you understand what I've explained?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have you talked to Ms. Shuler
11 about whether or not you're gonna testify?

12 MS. SHULER: Your Honor, we've discussed
13 that, but I think we need a few minutes to discuss
14 it a little further.

15 THE COURT: All right. We'll have an
16 opportunity for you to do that unless he's your very
17 next witness.

18 MS. SHULER: He would not be, but I need
19 to talk to him about a couple of other things.

20 THE COURT: All right, very good. We'll
21 take a few minutes while Ms. Shuler chats with her
22 client.

23 MS. SHULER: Thank you, Your Honor.

24 (WHEREUPON, a recess was taken from the
25 proceedings.)

1 THE COURT: Are you through talking with
2 Mr. Boston?

3 MS. SHULER: Yes, Your Honor.

4 THE COURT: Mr. Boston, have you made a
5 decision on whether or not you're going to testify?

6 THE DEFENDANT: I want to plead the fifth,
7 Your Honor.

8 THE COURT: You're gonna plead the fifth?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Does that mean you're going to
11 testify or not testify?

12 THE DEFENDANT: No, sir.

13 THE COURT: No, sir what?

14 THE DEFENDANT: I'm not going to testify.

15 THE COURT: Okay. All right, you have
16 other witnesses?

17 MS. SHULER: Your Honor, we would rest in
18 the presence of the jury whenever they came.

19 THE COURT: And if you do that then you're
20 ready for press on to closing arguments?

21 MS. SHULER: I'll leave that —

22 THE COURT: Or you want to do them in the
23 morning?

24 MS. SHULER: I'll leave that to the Court,
25 but I would rather do that in the morning if we

1 could, and I'm sure Ms. Barr would not object to
2 that.

3 MS. BARR: I second that motion, Your
4 Honor.

5 THE COURT: All right, well, let's bring
6 the jury.

7 (WHEREUPON, the jury was returned to the courtroom
8 at approximately 4:11 p.m., and the following
9 proceedings commenced in open court.)

10 THE COURT: You have heard the State's
11 case. Now the Defense's turn, Ms. Shuler.

12 MS. SHULER: Thank you, Your Honor, at
13 this time the Defense rests.

14 THE COURT: Ladies and gentlemen, the
15 Defense has rested. That means you've heard all the
16 evidence in the case; and due to the time being
17 4:00, we're gonna quit early. We're going to quit
18 right now. You all can be quit right now and go
19 home, be back at 9:30 tomorrow morning. We're going
20 to quit today, start back 9:30 tomorrow morning.
21 Thank you very much. Y'all have a good evening.
22 We'll see y'all at 9:30 tomorrow morning. 9:30 in
23 the morning.

24 (WHEREUPON, the jury was removed from the
25 courtroom at 4:13 p.m. and the following proceedings

1 were commenced in open court.)

2 THE COURT: All right, any special
3 requests concerning the charge, charges?

4 MS. SHULER: Your Honor, we would request
5 the charge defendant not testifying and that can't
6 be used against him. I don't think there'd be
7 anything else but.

8 THE COURT: All right.

9 MS. BARR: Judge, I can't think of
10 anything special.

11 THE COURT: Okay. If there's not anything
12 else on this case we'll break on this case.

13 (Whereupon, court was adjourned at 4:17 p.m. and
14 resumed on April 2, 2015.)

15 THE COURT: Ready for them?

16 MS. SHULER: Yes, Your Honor.

17 MS. BARR: Yes.

18 THE COURT: Bring the jury please.

19 (Whereupon, the jury was returned to the courtroom
20 at 9:58 a.m. and the following proceedings were
21 commenced in open court.)

22 THE COURT: Good morning, Mr. Foreman, how
23 is the jury doing?

24 THE FOREMAN: Jury is doing great.

25 THE COURT: Very good, all right. Well,

1 you all have heard all of the testimony in this
2 case. Now it's time for closing arguments.

3 Ms. Shuler. I'm sorry, not Ms. Shuler,
4 but the State first and then Ms. Shuler.

5 Ms. Barr.

6 MS. SHULER: Thank you, Your Honor.

7 MS. BARR: Thank you, Judge, may it please
8 the Court.

9 THE COURT: Yes.

10 MS. BARR: Ms. Shuler, Mr. Foreman, ladies
11 and gentlemen of the jury, good morning. Let me
12 thank you all again on behalf of Luciano Garcia, and
13 his wife, his family, your fellow citizens of
14 Williamsburg County, and the State of South
15 Carolina. I know that this week we pulled you all
16 from your families, your jobs, and all of your
17 responsibilities that you all have outside this
18 courtroom and it's come at a sacrifice. But let me
19 just tell you honestly, from the bottom of my heart,
20 we appreciate that. I know we've taxed your time; I
21 know we've taxed your patience. But what happened
22 in this case in March of last year was a pretty
23 significant day for Mr. Garcia, and so he wanted me
24 to thank you all for hearing this case and I
25 certainly want to do that. The — when we gave you

1 all opening statements my colleague and my good
2 friend Amanda Shuler said that this day and this
3 week and this trial, we are here because we want to
4 the truth; and from the evidence in the case and the
5 testimony, you all as the jurors in this case will
6 have to glean and determine the truth. And she and
7 I agreed on that. That's probably the only thing
8 that we'll agree on this whole case, but she and I
9 agree on that. A trial is a search for the truth.
10 And when you all deliberate and render your verdict,
11 your verdict should speak the truth in this case.
12 The term verdict actually comes from a Latin phrase
13 that literally means, the word verdict, literally
14 means to speak the truth. And so when I think about
15 a trial as the search for the truth I have to be
16 reminded of a story that I'll share very briefly
17 with you, that the former prosecutor told me about.
18 And what he told me was, you know, a trial is a
19 search for the truth; it is not a search for
20 reasonable doubt. And he was — we were sharing war
21 stories about some of the cases we tried this here;
22 and what he told me was, he had a trial, put on his
23 evidence and his witnesses and everything else, and
24 he was feeling really good about it and he thought
25 he had a good chance of getting a guilty verdict.

1 And when the jury came back they found whoever the
2 defendant was not guilty, and he was shocked. And
3 as lawyers, what we do oftentimes is we will Monday
4 morning quarter back our performance during the
5 trial. We're trying to figure out, okay, what did I
6 do right, what did I do wrong, what can I do a
7 little better. So he asked the judge was it okay if
8 he speaks with some of the jurors after the trial
9 because he wanted to know what kind of went into
10 their thought process why they found the person not
11 guilty and if it was something that he needed to
12 improve or whatever. He was just kind of curious so
13 he met with a couple of the jurors after the trial;
14 and he said, well, if you don't mind speaking with
15 me, do you mind just telling me why you found the
16 person not guilty. And so the jurors almost in
17 unison said, you know, we started deliberating and
18 we all agreed he was guilty but the State didn't
19 prove it. And so he said, okay, so he went on about
20 his business and he said, you know, I started
21 thinking about that thing later and I said wait a
22 minute, if the judge says, okay, your jury verdict
23 can only be based on the law and the evidence, the
24 evidence comes from among other things what you hear
25 on that witness stand. So when the jury in his case

1 was deliberating and they said, well, we all knew he
2 was guilty and we all knew he was guilty, the only
3 reason they could have reached that conclusion is
4 what, based on what was on that witness stand. So
5 ladies and gentlemen, I submit to you that if a
6 trial is in fact a search for the truth and based on
7 what you've heard on that witness stand, if you are
8 convinced that this defendant is guilty, then the
9 truth in this case is that the verdict should
10 reflect guilty.

11 Now we talk about a couple of things. The
12 defendant as you were told earlier is charged with
13 armed robbery and possession of a weapon during the
14 commission of a violent crime. And essentially I
15 think what the judge will tell you about the law of
16 armed robbery is that a person is guilty of armed
17 robbery if the person takes possession of property
18 belonging to another while displaying a deadly
19 weapon or that the victim reasonably believes to be
20 a deadly weapon. Now that language is important
21 because I remember Sharhonda Burgess, the young lady
22 who was the passenger in the vehicle, that she
23 mentioned that she saw the gun and it was a broke
24 down gun I think is how she described it. And so in
25 my mind I started thinking when she said that, I

1 said, okay, well, you know, the jurors might
2 conclude it wasn't a real gun, and then I remembered
3 the testimony of Latoya Hickson when she said she
4 saw the gun and the gun had black tape around it.
5 And so then it connected with me, okay, well, that's
6 why Sharhonda called it a broke down gun. Now let's
7 just assume for argument sake that the gun was broke
8 for whatever reason and couldn't be fired. Guess
9 what, under the law it does not matter. If the
10 victim reasonably believes that it's a gun, then
11 this is an armed robbery. And so when you hear
12 testimony that the, from the victim, who says that
13 the person pointed a gun at him, when you hear
14 testimony — pardon my language — when somebody
15 says, when Sharhonda Burgess says the defendant
16 said — excuse me — mother fucker freeze, and that
17 the victim thought that he was gonna be killed that
18 night, the only reasonable conclusion is that it was
19 either a gun or the victim reasonably believed it to
20 be a gun.

21 Now Ms. Shuler and I have tried a couple
22 of cases together in this courtroom, and she's a
23 very gifted lawyer. The way our rules of court
24 work, she gets to give you the last closing, and I
25 always like to give the last closing because I

1 always want to be the last voice that the jury hears
2 right before the judge talks. But in any event, the
3 rules work that or she gets to come behind and I
4 don't get an opportunity to rebut whatever she tells
5 you. I imagine that if I were a betting person I
6 would imagine that she would probably suggest to you
7 that it was not the defendant, in fact, who was the
8 person having the gun, it was somebody else, maybe
9 even his brother who was dating Latoya. And let me
10 just tell you about that. Let me suggest to you --
11 if she says that, I don't know if she will or she
12 won't, or if she says that -- let me suggest to you
13 that that's incredibly implausible. Let me tell you
14 why, a couple of reasons.

15 You all remember Patricia Munoz testifying
16 that Latoya came out there to that store that day
17 and showed her royal behind, cussing, fussing,
18 stabbing tires, just carrying on. And the only
19 person, the only person who could calm her down and
20 get her to leave was her boyfriend Jesay Presley.
21 That's important. Now is it reasonable that the
22 person who's trying to diffuse the situation, get
23 her out of there so it doesn't escalate will then
24 come back hours later to rob this man. And then you
25 may recall the testimony of Mr. Garcia when he said

1 that Mr. Shey Presley who was in the courtroom,
2 came — and told him something, and that's why he
3 was concerned later that day as he was driving home
4 and he realized Latoya Hickson was following him,
5 that's why he became concerned about his wife. And
6 what did he do? I asked him, I said, why did you
7 call your wife? 'Cause she's my wife and she had my
8 kids, and I wanted to make sure that they were not
9 home. And so you know, I started to wonder, was
10 this Mr. Presley trying to warn them to be careful.
11 You know, and if that's the case and if you want to
12 flip it and just kind of throw out all kind of
13 possibilities, is it really likely that he would
14 have a conversation with this victim who saw him
15 face to face and then later, just two or three hours
16 later, come to his house and rob him? That's not
17 plausible. And then when you look at the fact that
18 we were in the middle of this trial, in the middle
19 of this trial, and where is Jesay Presley, sitting
20 right in this courtroom. Now does a gun man while
21 the victim's wife and while the victim is on the
22 stand, does the gunman come to a trial? No. So if
23 that's thrown at you, folks, I urge you not to fall
24 for that.

25 Let me, let's talk about some of the

1 evidence that you've heard. You know, at the risk
2 of telling my age I have, I've been a lawyer for
3 almost 20 years. I've been a prosecutor almost 15
4 of those 20 years, and I've heard a lot of stuff in
5 this courtroom. I've seen a lot of stuff in this
6 courtroom. And folks, the one thing that I believe
7 is true over and over and over and I've seen over
8 and over and over, you know, when a person is trying
9 to get away from a crime and trying to distance
10 himself from a crime, you'll often hear people say,
11 well, you know, they give statements to the police
12 or when they come into court, I wasn't there, it
13 wasn't me, I didn't have anything to do with it; or
14 you know, I was there, but the gunman was Bo Bo or
15 Skeeter, or some just random nickname. And then
16 they'll tell you the story but, you know, I don't
17 know what his real name is, I don't know where he
18 lives, because they're trying to distance themselves
19 from the person who had the gun. Nobody wants to
20 have the gun. Nobody wants to have a gun in their
21 hands. But at every term, at every single term, the
22 single person identified by every witness who was in
23 that car that night was one person, and that's the
24 defendant Jason Boston, nobody else, nobody else.
25 His brother's girlfriend three days after this

1 robbery happened said that he was the one with the
2 gun.

3 Now mind you now, I want y'all to consider
4 something. Latoya Hickson -- and I'm not trying to
5 paint her as a saint, I promise you that, but Latoya
6 Hickson is living in a home that's owned by his
7 momma. Latoya Hickson is dating his brother.
8 Latoya Hickson's niece is dating him. And out of
9 all the people in this entire world that she can pin
10 this on as being the person who robbed Mr. Garcia is
11 him. When you think about the testimony of
12 Sharhonda Burgess, Sharhonda was there, admittedly
13 by everybody's testimony, she didn't do anything,
14 she didn't commit a crime, she was just simply
15 there. And folks, in South Carolina it's not
16 illegal simply be where a crime is being committed
17 unless you're participating in it. But she was just
18 simply there. And what's interesting about her
19 testimony is, one, she clearly identified the
20 defendant as being the one that had the gun and she
21 called it a broke down gun. And I found interesting
22 the fact that she didn't even know his real name.
23 She just called him by a nickname, and she -- y'all
24 saw her. You all had the opportunity to judge her
25 demeanor. She was like, well, what do you call it,

1 a defendant, what do can you call it, I call him
2 Rainey. And so later, when Ms. Hickson got on the
3 stand I wanted to see, well, was that really what
4 he's called, is that his nickname? And when
5 Ms. Hickson got on the stand I said, does he have a
6 nickname and she says yeah. What's his nickname?
7 They call him Rainey; his mom calls him Rainey. So
8 all of the witnesses who were there in that vehicle
9 identified one person and that's the defendant Jason
10 Boston.

11 Now what's disturbing for me, what is
12 heart breaking for me, what's sad, and quite frankly
13 what angers me, is that these three individuals had
14 absolutely no regard for what happened to that man,
15 none, absolutely none. You know folks, if I'm
16 sitting up in a car and some friends of mine decide
17 they want to go rob somebody at gun point, I would,
18 my nerves would be so shot I couldn't think, I
19 couldn't, I couldn't stand up and walk. But these,
20 the mindset of these young folks it's just, it's
21 incredible; I don't understand it. The mindset is
22 hum, well, yeah, I just witnessed this armed
23 robbery, but I need you to drop me off to the store
24 so I can pick up some food and I go home and I can
25 make my man some spaghetti and some garlic bread.

1 That's unbelievable to me. I just -- absolutely
2 unbelievable to me. And the mindset of Ms. Hickson
3 is, yeah, you know, I just witnessed this armed
4 robbery, this guy just went rogue and, you know, he
5 took, you know, this property that belonged to a
6 friend of the father of my child, but I'm not gonna
7 go and tell the police, I'm not gonna go call for
8 help, I'm not gonna distance myself from him, we're
9 gonna go hang out the next day. But folks, that's,
10 that's their mindset.

11 And then when you look at Jason Boston,
12 this is the big bad one. And what makes him the big
13 bad one is because he's the one with the gun. And
14 folks, when you have a gun you can be the littlest
15 man in the world or the biggest man in the world,
16 with that, with that gun you're gonna be the baddest
17 man in the world. He goes, takes the man's wallet,
18 and he only had but ten dollars in it. But takes
19 his wallet, takes his cell phone, has the sheer
20 audacity to call Latoya Hickson from the victim's
21 cell phone. And if that ain't bad enough, if that
22 is not completely bad enough, when the victim's
23 friend Mr. Tovar comes and tries and gets the phone
24 back, he's bargaining with him. Instead of saying,
25 you know, hey okay, listen, I'm sorry, I didn't mean

1 for it to go down like that, listen, tell Mr. Garcia
2 I didn't want any harm, here's the phone back, let's
3 just squash this; no, Mr. Tovar offers him \$40.
4 Naw, I don't want 40-dollars, you want this phone
5 back you're gonna have to pay 100 for it. The sheer
6 audacity.

7 And again, I'm processing all of this.
8 The day after the robbery, these three folks they're
9 not hiding. I'm committing armed robbery, you're
10 not gonna see me for a while. They're just walking
11 around, driving around in Lake City right where the
12 victims have a store, no sense of shame or
13 embarrassment or regret or empathy. They're driving
14 around and walking around normal. He's putting
15 pictures on the phone. It is unbelievable.

16 And I got to tell you, I had some problems
17 with Latoya's testimony; I just have to be honest.
18 I mean, I, you know, I have a job to do but I'm not
19 stupid. You know, I don't think there's a
20 coincidence that Mr. Tovar is Hispanic. I don't
21 think it's a coincidence that Mr. Garcia is Hispanic.
22 You know, when Latoya goes over to the store she's
23 fussing and carrying on and she gets scissors out of
24 her car and just starts stabbing tires, you know,
25 folks, you take scissor and you stab somebody's

1 tires, that's illegal, that's a crime, that's
2 vandalism. It's called malicious injury to
3 property. You can go to jail for that. I never
4 once, never once heard anybody say, okay, Mr. Tovar
5 pressed charges against her, she had to go to court
6 for that charge. Never once. So I'm assuming that
7 Mr. Tovar did not press charges, that he just let
8 that go. And you know what, they probably expected
9 Mr. Garcia to do the same thing. They probably
10 expected him to do the same thing, especially when
11 they gave him his cell phone. Because I remember
12 Latoya saying, she was testifying that the victim
13 and Mr. Tovar used to work together, and I think I
14 remember her saying words to the effect that she
15 used to cash Mr. Tovar's check so presumably she'd
16 known when they get paid. And what happens on most
17 Fridays, people get paid so they thought that he had
18 money on him. Now she said she went there to
19 apologize. Sharhonda said she went and she was
20 gonna apologize to his wife so I said, well, was his
21 wife there? No. Didn't you find that unusual?
22 Well, yeah, because -- and this is what Sharhonda is
23 saying, yeah, because I was like, why we going to
24 his house to apologize to his wife, his wife is not
25 there. Now you believe, you know, that they just

1 happened to decide to go to this man's house under
2 the color of darkness at 8:30 at night, that this
3 quote, unquote, apology couldn't wait till the
4 morning or they couldn't go to the store where they
5 thought his wife was. You know, that's up to you to
6 decide. But I don't, I don't know necessarily that
7 that's, that was a coincidence. You know, when he's
8 at home and it's at night and he's by himself, he's
9 what? He's an easy target. And folks, I'll just be
10 candid, a lot of people like the defendant believe
11 that people like the victims are easy marks because
12 the victim can't speak English. People might come
13 to the conclusion, and you know, he's Hispanic or
14 he's from Mexico and probably here illegally,
15 they're not gonna call the police, they're not gonna
16 call the police because, you know, they're afraid
17 they'll get deported so they're an easy mark. And
18 surely if he calls the police, the police aren't,
19 you know, they're not going to be worried about
20 trying to investigate that or bring charges. And
21 certainly, you know, heaven forbid the police
22 investigate it and they report it. Well, I mean,
23 they're not gonna be around when it comes to trial
24 time. And surely, surely the State is not gonna go
25 through the expense of getting an interpreter and

1 having all these people come up here and try this
2 case. And what he's also counting on most
3 assuredly, the jury is not going to convict him for
4 that, surely will not. Mr. Garcia has lived here
5 for 15 years. He and his wife have two beautiful
6 children together. He's working hard, does manual
7 labor. He's worked hard a long time. His wife is
8 in school trying to become a registered nurse.
9 They're trying to have what we all want, and that's
10 the American dream. The difference between these
11 folks and that fella right there, they're willing to
12 work for the American dream. Jason Boston wants the
13 American dream but he wants to take it from people
14 like them. They go out and they work hard for their
15 life. He's out and about and doesn't have a job.
16 Not trying to work, not trying to get a job, not
17 trying to go to school to better himself. It's just
18 easy to take from somebody else. And you know,
19 folks, that ten dollars that he got from the, Mr.
20 Garcia's wallet, probably in seconds, this robbery
21 didn't, like it didn't take long. And the hundred
22 dollars that he got from selling the man back his
23 own cell phone was probably the quickest 110 dollars
24 he'd never made. I mean, that, between those two
25 transactions, the robbery and give the money to

1 Mr. Tovar, maybe 15 minutes. How many of you all
2 make 110-dollars in 15 minutes? You can get a lot
3 when you put a gun on someone.

4 Mr. Boston comes back the next day having
5 committed this crime hanging around the same
6 individuals. And on the day that Mr. Garcia thought
7 that he would never see his wife and his children
8 again, Jason Boston thinks that's funny. He's
9 laughing about it because it was so easy and so
10 quick. The law is designed to protect the weak and
11 the strong, and Mr. Garcia was one of the most
12 vulnerable victims in a crime, and for that reason
13 he was, he was prey. If we as a society cannot
14 protect our most vulnerable, then we have failed as
15 a society and I am not prepared to concede that
16 battle.

17 Ladies and gentlemen, this case cries out
18 for justice. And so even though we pulled you all
19 from your families and even though we pulled you all
20 from your jobs, folks, it's for a very good reason.
21 We need you all to speak the truth. And when you're
22 asked perhaps later about this case and about your
23 verdict, I want you all to be able to look who all
24 is asking you the questions in the face, and say, my
25 verdict spoke the truth. The truth in this case is

1 that the defendant is guilty of armed robbery and
2 possession of a weapon during a violent crime.

3 Ladies and gentlemen, I ask you all to return a
4 verdict of guilty. Thank you again for your time.
5 Thank you all again, each and every one of you, for
6 your attention.

7 THE COURT: Ms. Shuler.

8 MS. SHULER: Thank you, Your Honor, may it
9 please the Court, Ms. Barr, Mr. Munoz, Ms. Garcia.
10 Ladies and gentlemen, thank you all again so much
11 for being here, and of course we know that we took
12 you away from your jobs, your lives, and your homes,
13 and that -- that's, we don't take that lightly; we
14 certainly don't. We know that losing time from work
15 is serious for you guys and y'all depend on your
16 paychecks so we certainly do thank you for being
17 here, thank you for listening, and I can certainly
18 tell you guys did listen throughout the entire
19 trial.

20 And Ms. Barr is right, that there are
21 usually few things that she and I agree on; but
22 there are a number of things that we agree on in
23 this case. What happened to this young man was
24 serious. That robbery was a serious crime that
25 happened, and we certainly sympathize with him. We

1 also agree that the actions of Sharhonda Burgess and
2 Latoya Hickson were absolutely unbelievable. No
3 doubt, no doubt their actions were unbelievable. So
4 yes, we agree on a few things though usually they're
5 few and far between. Whenever I finish talking to
6 you the judge is gonna talk to you about the law so
7 I'm not gonna get bogged down on the law and preach
8 to you guys about what it is. I'm gonna talk to you
9 about a few things and talk to you about how what
10 you heard you can apply to the law that the judge is
11 gonna tell you about.

12 Now Ms. Barr represents the State of South
13 Carolina. And as I told you whenever I stoop up
14 here in opening, the State has to prove their case
15 beyond a reasonable doubt. And you might be saying,
16 well, everybody said that term beyond a reasonable
17 doubt and I really don't know what that is. That is
18 that hesitation for you to act. Reasonable doubt
19 is, is there a possibility that this gentleman did
20 not commit this crime. Did Ms. Barr convince you
21 that it was this gentleman that was there that
22 night. You know whenever you get in your car and
23 you crank it up and you put your seatbelt on and go
24 down the road, you get to your job and you go inside
25 and you clock in and you start work and you say, did

1 I wear my seatbelt on my way to work this morning, I
2 don't remember putting my seatbelt on. You think
3 back on it, you say, well, I had to put my seatbelt
4 on 'cause I do that every day; but I don't remember
5 doing that this morning, did I put on my seatbelt?
6 Is that reasonable doubt? The, you know when you
7 get up on Sunday morning and you're ironing your
8 clothes for church and getting your kids ready
9 giving everybody breakfast, you're getting your
10 coffee, did you unplug the iron? Got everybody
11 loaded up ready to go, did I leave that iron plugged
12 in or did I unplug? You get out, you go check it.
13 That's reasonable doubt. That hesitation for you to
14 act, that hesitation for you to keep on going to
15 church without checking to make sure that iron is
16 unplugged. Did I turn the stove off when I got done
17 cooking supper? That hesitation to act. You're
18 gonna go back and check that stove to make sure it's
19 turned off.

20 Now I will go over the reasonable doubt in
21 this case, but I want y'all to remember something
22 throughout all of this, is that the burden is
23 completely on the State. They have to prove it all.
24 And I say that to y'all again because Mr. Boston,
25 Jason, he doesn't have to prove anything to y'all.

1 He doesn't have to get up there on the witness stand
2 and testify. He doesn't have to say a word. And
3 the fact that he does not say anything is his
4 constitutional right. That is his right to remain
5 silent. It is his right; it's his right to
6 exercise. And y'all cannot consider that in any way
7 during your deliberations. That can't go back there
8 with you in the jury room and say, we didn't hear
9 from him. That is his constitutional right and that
10 cannot enter into the jury room with you in there
11 with your deliberations. So remember that when you
12 go back there. He is innocent until the State
13 proves him guilty.

14 Now why would you, why should you hesitate
15 to act, why should you hesitate to find Mr. Boston
16 guilty, why should you hesitate to put a verdict of
17 guilty on Jason? The number one reason I'm gonna
18 tell you is the credibility of those witnesses. Not
19 Mr. Munoz, not Ms, no, not his lovely wife, but
20 those two rider ladies that got up and testified.
21 Now Ms. Burgess, Ms. Sharhonda Burgess, after this
22 crime happened Ms. Burgess didn't come forward and
23 say a word. She didn't talk to the police. She
24 didn't say, I need to tell you what happened, I was
25 just there, I was, I was just a witness. She didn't

1 come forward and say anything until her girl pled
2 guilty and needed her help. Not a word. She went
3 up to the police department to find out why I got
4 this subpoena, why I have this subpoena. But she
5 got up there and told you, she told her friends,
6 send me a subpoena and I'll come. What makes sense
7 about that? The only thing that makes sense is that
8 her friend needed her help. She needed somebody to
9 back up her story. And that's why she came forward
10 after her friend pled guilty. She didn't tell you
11 that that's my cousin. She didn't say, Latoya is my
12 cousin, that's my family. She didn't tell you that.
13 She said that they were friends and used to be
14 friends but they aren't really friends right now.
15 And why'd she tell you that? 'Cause she wanted you
16 to think that 'cause they ain't friends now, why
17 would she come forward and back her up. She wanted
18 to add a little bit to her story. Well, we used to
19 be friends but we ain't friends right now. Think
20 about that.

21 What else don't match up? Let's talk
22 about that incident at the store. Who exactly was
23 there? Ms. Reyo, Ms. Reyo said there were three
24 women and two men, or two women and two men, and a
25 car full of kids. Sharhonda Burgess said there was,

1 the kids were there. Latoya Hickson, she said my
2 kids weren't there. They said that Jason's brother
3 was there. Somebody mentioned the name Chuckie.
4 When I asked about Chuckie, if y'all remember,
5 Ms. Hickson said, who? Oh, yeah, I told her Chuckie
6 was there so, yeah, Chuckie was there. Now, you
7 didn't hear from Chuckie about the incident in the
8 store. You didn't hear from Jason's brother about
9 the incident at the store. You didn't hear either
10 of those two individuals come forward and tell you
11 anything about it. You didn't hear from Latoya's
12 niece. And what about these kids in the car?
13 Latoya said her kids weren't in the car, but yet
14 this lady says that they were and Sharhonda Burgess
15 said that they were. What do we believe? I don't
16 know what to believe. They said — Sharhonda
17 Burgess said that Jason and she and Latoya been
18 together all day long, we been together all day
19 long, we hang out all the time. They been together
20 all day long? And you say, well, I didn't, he
21 didn't, Jason didn't normally carry a gun, but he
22 had a gun that night. He'd been with you all day
23 long and you didn't know he had a gun? If that's
24 your story, it don't add up, don't add up a bit.
25 And then let's talk about Ms. Burgess

1 during the robbery. She was on the phone. She was
2 hungry, talking about wanting to go get something to
3 eat. And then while she's on the phone she saying
4 the robbery is going on. Who is she on the phone
5 with? Surely that person on the phone heard what
6 was going on out there. She said she looked away.
7 At the time she looked away she said she also saw
8 him take the cell phone and a wallet. Well, which
9 one is it, did you look away or see him take the
10 cell phone and a wallet. Ms. Barr has said over and
11 over again in many of the cases we try, the devil's
12 in the details. And you will find truth in the
13 details. We're missing the details here. They
14 might have the content of their stories the right
15 way, but the details are not adding up and that's
16 where it is. The devil's in the details, and the
17 details aren't here.

18 You have this girl talking to somebody,
19 I'm hungry, what we gonna have to eat, what you want
20 for supper tonight. I have that conversation all the
21 time with my husband. I always tell him, please
22 tell me what you want to cook for supper. It's be
23 so much easier if you'd just tell me, I'll fix you
24 whatever you want, just tell me what you want. So I
25 can imagine what that little conversation was on the

1 phone she's having. And so, where's this person?
2 And her looking away, but yet, she sees him take the
3 cell phone and the wallet. How does that happen?
4 How do you look away, but yet, see him take
5 something. Don't make sense. And then she's here
6 helping out her girl. She says, I looked over at
7 Latoya and she threw up her hands and said, I didn't
8 have nothing to do with this, I don't know nothing
9 about it, didn't have anything to do with it. She
10 got to come up and help her girl out.

11 Now Sharhonda says that Jason got out the
12 back of the car, put the gun on Mr. Munoz and said,
13 mother fucker, freeze. Well, Latoya said that Jason
14 said, don't make me do this. That detail doesn't
15 add up, that don't match. Had a broke down raggedy
16 gun or had a gun wrapped up in tape. Is it a broke
17 down raggedy gun covered with tape? What kind of
18 gun is it? Nobody could tell what kind of gun it
19 was other than it was a little gun. If they out in
20 there rolling in the streets, riding in the streets,
21 they know what kind of gun it is. But the devil's
22 in the details and they can't describe it to you.
23 They can't tell you was it a pistol, was it a long
24 gun, was it a rifle. We don't know. They — 'cause
25 they couldn't tell you, but they're out there

1 rolling in the streets. They know exactly what kind
2 of gun it was. Then after, after all of this, after
3 this robbery occurred Sharhonda Burgess said, we
4 dropped Jason off on the road. Latoya said they
5 dropped him off in the projects. She said, we
6 dropped him off right on the main road; that doesn't
7 add up. Then they took Sharhonda to the store and
8 she bought her some spaghetti noodles and spaghetti
9 sauce and some hamburger meat and some garlic bread,
10 and went home and cooked her supper for her and her
11 boyfriend, business as usual, didn't call the
12 police, didn't report it. Never once said maybe I
13 should, maybe I should call the law. Didn't do it,
14 carried on business as usual. I — she's witnessed
15 an armed robbery, gonna go home and cook herself
16 some spaghetti and garlic bread, take a shower and
17 go to bed? If that's what she gonna do she's not
18 gonna get up here and tell you all the truth? She
19 gonna get up there and say, I swear to tell the
20 truth, the whole truth, nothing but the truth so
21 help me God and abide by that; but yet, she gonna go
22 home and carry on business as usual like nothing
23 just happened?

24 Now let's also talk about what she said in
25 the car. She said that Jason threw the wallet out

1 into the ditch, and that she tried to sell -- he
2 tried to sell her the cell phone and tried to sell
3 Sharhonda the cell phone -- Latoya, the cell phone,
4 excuse me. So neither one of them likes it was
5 stolen is what she said. That's not what Latoya
6 told you. Latoya said, naw, I don't remember that.
7 Devil's in the details, ladies and gentlemen. So
8 the next day Sharhonda wakes up, she'd been bored
9 sitting at her house. She call her girl up, hopped
10 right back in that car the next day. The girl that
11 just took you to the armed robbery, you're gonna hop
12 back in a car with her? You're gonna take her back,
13 you're gonna have her back the whole way from that
14 witness stand. Whenever you go back there and y'all
15 analyze the evidence and testimony, remember that.
16 If she, Ms. Sharhonda Burgess, was so unaffected by
17 this armed robbery, I tell you she ain't affected
18 one bit by getting up there and telling you some
19 made-up story or putting somebody else there.

20 Now Latoya, again she said, you know, my
21 kids, nope, my kids weren't with me that day, naw, I
22 didn't have my kids in the car with me that day, my
23 sister had my two year old. So after she goes into
24 the store and she exchanges words with this lady she
25 says, I took it outside by myself on my own free

1 will, I calmed down and took it outside by myself.
2 Then went and slashed my child's father's tires,
3 went out there and cut those tires. In that car for
4 the man that is supporting your young'un, out there
5 working hard trying to put food on the table for
6 that little girl that I'm sure he loves. But you
7 know, she's such a good and honest person she needed
8 to go apologize. She wants y'all to believe she
9 went to go apologize to these two people and say,
10 listen, I'm so sorry I acted up, I didn't mean it, I
11 was stressed out, I didn't act right, please forgive
12 me. After she slashed tires she needed to go
13 apologize. She'd been going to go get her money for
14 them tires; that's what she was gonna go do. But
15 she didn't have nothing to do with it, I didn't have
16 nothing to do with it. Now, three days, she had
17 three days to get everything together. You know, if
18 she said she didn't have nothing to do with it, I
19 was just there, I just saw it happen, why didn't you
20 call the police? She had to get her story together.
21 She had to get her story together with her girl, say
22 we got to get this straight, you got to take my
23 back, I got to get home to my kids, you know I can't
24 go to prison, I got to be with my kids. So three
25 days she had to get that stuff together, I got to

1 get it straight. Looks like they needed a little
2 bit more time than that 'cause they ain't got it
3 together. She said that she didn't know nothing
4 about wallet. She didn't know the wallet was taken,
5 don't know nothing about that. But you heard me ask
6 her, well, didn't you plead guilty and tell the
7 judge about the wallet. Now she has told so many
8 stories that she's forgotten what she's actually
9 told. Where is the truth? What can we keep it
10 together? I can tell you that she says, I see Jason
11 three, I saw Jason three times a week, we were
12 always together. What are people going to believe?
13 That boy that was always with me was the one that
14 committed that robbery so I'm gonna put Jason in the
15 car, I'm gonna put Jason out there with the one with
16 the gun, I'm gonna put this on Jason 'cause we
17 always together. Makes sense, right? Ain't been
18 me, been somebody else. Who are you gonna put it
19 on? The person that you're always around. Those
20 stories keep changing back and forth, the details
21 get mixed up, had that weekend to conjure up this
22 story. You don't have any children with anybody in
23 Jason's family. You don't depend on anybody in
24 Jason's family for your support. You might live in
25 a house. You didn't hear her say anything about

1 paying rent or not paying rent. I bet you she's
2 paying some rent. You don't depend on anybody in
3 his family for that child support check to put food
4 on the table for your kids. It makes sense. I'm
5 gonna put it on him, it'll be all right, I'll get
6 home to my kids, I'll get home to my seven children
7 that need me.

8 Now let me tell you about what other
9 reasonable doubt we have in this case. The only
10 thing that Mr. Munoz was able to tell you was that
11 it was a young black man that robbed me. He didn't
12 tell you height, weight, complexion, was he light
13 skin, dark skin, was he wearing glasses, did he have
14 facial hair, did he have dreadlocks, did he have a
15 short hair cut, nothing, just a young black man.
16 With that description you can put anybody there,
17 anybody at all. No, neither of these two people
18 were able to put him there at that house that night.
19 He could not pick the individual out of a lineup.
20 We don't have a gun. We don't have an attempt to
21 find a gun. We don't have any fingerprints. We
22 don't have anything except a story from these two
23 girls that I'm telling you, ladies and gentlemen,
24 that I don't know exactly what to believe when it
25 comes out of their mouth because the story keeps

1 changing.

2 Now let's talk about this cell phone.

3 Ms. Barr said that Jason put his information on his
4 cell phone. You didn't hear anybody say Jason put
5 his information on this cell phone. You don't see a
6 cell phone here today. You don't have a cell phone
7 to say, yeah, that's got Jason's cell phone
8 information in it. Mr. Munoz said that it had a
9 picture of a woman on the front of it. He didn't
10 say who the woman was. We don't know who the woman
11 was; it could have been anybody. It wasn't a
12 picture of Jason Boston. It was a picture of a
13 woman. And not only that, they say that Jerry
14 Tovar, this person that we have not seen, that we
15 don't know where he is, got the phone back. Well
16 where is he to say I went to Jason and got the phone
17 from Jason and brought it back in here. All you
18 heard that from was Ms. Hickson, the person that
19 needs to get home to her seven children. Jerry went
20 back to Jason to get the phone. He got the phone and
21 took it back to Mr. Munoz. Where is, where's Jerry?
22 Why is -- he's not here to tell you that himself.
23 I'm sure if that's the only thing that he knows
24 about that he'd be here today to tell you about it.
25 So again, you got to believe Ms. Hickson when she

1 says, I didn't know nothing about this robbery, I
2 didn't have anything to do with it, I went and
3 got — me and Jerry went and picked this cell phone
4 up from Jason the next day and Jerry had to pay him
5 for it. You got to believe her to support that cell
6 phone story. It just doesn't add up. Where's
7 Jerry?

8 Now let's talk about Jesay Presley.
9 That's the person that everybody says is Jason's
10 brother who was at the store that day, the level
11 headed one that tried to talk Ms. Hickson down. Did
12 he get up on the witness stand and say, this is who
13 was at the store that day, this is what I did, this
14 is what happened? He didn't, he didn't get up there
15 and testify that's what happened. And where's
16 the — and Chuckie, where's he? He was at the store
17 that day, why didn't he get up there and testify.
18 You have no nobody else except for these two girls
19 whose stories don't add up, these two girls that
20 were so unaffected by an armed robbery that they
21 just witnessed that they carried on business as
22 usual. They got up, got in a car, rolled around
23 together the next day. Mr. Sharhonda Burgess says,
24 we went back over to the area where Jason was and
25 they was giggling about the armed robbery. If this

1 individual was the person that committed an armed
2 robbery the night before, you're gonna get up, go
3 over there and giggle with him and laugh and joke
4 around, all that other good stuff? No, you're not,
5 you're gonna distance yourself, you're gonna stay
6 away.

7 Now Ms. Hickson wants you to believe that
8 Jason called her from the cell phone and chatted it
9 up with her and all that other good stuff. Did they
10 bring in any phone records to show that that was
11 made? Did they bring in anything independent to
12 corroborate her story? There is absolutely no
13 corroboration to either of these lady's stories at
14 all. None. They are up there telling you a story
15 with mixed details, and they want you to believe
16 that and they want you to convict this young man
17 based on that. The devil's is in the details; the
18 details are missing in this case. And you got two
19 ladies that were so unaffected by an armed robbery
20 that they carried on business as usual. And I'm
21 telling you, if they carry on business as usual they
22 absolutely are not gonna have a problem with putting
23 their hand on that bible, swearing to tell the truth
24 and getting up there and not doing it. Can you put
25 your trust in these two girls? Absolutely not. Can

1 you put your trust in these two home girls that got
2 each other's back and convict this young man based
3 on that? Absolutely not. What we're gonna do,
4 Sharhonda? Latoya, how are we gonna take care of
5 this, what we gonna do. Three days they got
6 together, and they had to come up with the story.
7 And they put it on the person that they got up there
8 and said they spend three days a week with. Yeah,
9 people believe that. I guarantee you people believe
10 that because he's with us three days a week, that's
11 right, and I'm gonna tell them that he had the cell
12 phone, that Jerry went back and got the cell phone
13 and he called me from his cell phone and that's what
14 we're gonna do. Yep, that will get me home to my
15 kids. If you were involved in an armed robbery and
16 you took a cell phone off somebody, would you just
17 hand that cell phone back over? No, no, you
18 wouldn't.

19 Nothing makes sense. The stories have
20 changed. Sharhonda Burgess came forward only after
21 her girl pled guilty and she needed her back, her to
22 have her back. Remember that. Remember those
23 things. Remember that Mr. Munoz can't pick this
24 person out of a lineup, can't tell you who it was
25 that robbed him that day. Remember that.

1 Reasonable doubt. That's what there's a whole lot
2 of that in this case. I didn't have anything to do
3 with it, I'm gonna get my home girl so she's gonna
4 have my back and I'm gonna go home to my kids.

5 Thank y'all so much for your attention.
6 Whenever the judge sends you back to your jury room
7 to deliberate I'm gonna ask you to remember what
8 I've talked to you about today. Talk about the
9 testimony that came from that witness stand. Talk
10 about witness bias, witness motive. And I'm gonna
11 ask you to return a verdict of not guilty. Thank
12 you.

13 THE COURT: Let's stand for a moment and
14 get a good stretch, everybody. All right. Mr.
15 Foreman and members of the jury, you heard the
16 testimony, received the evidence and heard the
17 arguments of the State and the Defendant. I will
18 now explain to you the law that applies to this
19 case. Under the constitution and laws of South
20 Carolina you are the finders of the facts in this
21 case. I do not have the right to pass upon the
22 facts or to express any opinion that I might have as
23 to them because this is a matter solely for you, the
24 jury, to determine. As jurors then it is your duty
25 to determine the effect, the value, the weight, and

1 the truth of the evidence presented during this
2 trial. Now as the trial judge it is my
3 responsibility to preside over the trial of the case
4 and to rule upon the admissibility of the evidence
5 offered during the trial. You are to consider only
6 the testimony which has been presented from this
7 witness stand. Additionally, I have the duty to
8 charge you the law applicable to this case, and as a
9 presiding judge I am the sole judge of the law of
10 this case. You must accept as correct the law as I
11 state it to you and then reach your verdict.
12 Finally I charge you in this regard that you should
13 not be concerned with what you think the law ought
14 to be, but rather, what I charge you that the law
15 is.

16 You are also the judges, the sole judges
17 of the credibility; that is, the believability of
18 the witnesses who have testified and the evidence
19 which has been presented. In evaluating credibility
20 you must take into consideration many things such as
21 the demeanor or manner of testifying, whether the
22 witness had reason to be biased or prejudiced,
23 whether the testimony of a witness was contradicted
24 on the one hand or supported and corroborated on the
25 other hand. All these things you will consider

1 bearing in mind that you should give the defendant
2 the benefit of any reasonable doubt. It becomes
3 your duty as jurors to evaluate the evidence and to
4 determine that evidence which convinces you of its
5 truth.

6 Now the fact that the defendant did not
7 testify is not a factor to be considered by you in
8 any way in your deliberations and in your question
9 or consideration of the guilt or innocence of the
10 defendant. It must not be considered by you in any
11 way or in any manner whatsoever. A defendant has a
12 constitutional right to remain silent and the
13 assertion of this right must not be considered by
14 you in your deliberations. The fact that the
15 defendant did not testify should not even be
16 discussed in the jury room. The burden of proof is
17 on the State to prove the defendant guilty. The
18 defendant is not required to prove his innocence.

19 The fact that the defendant was indicted
20 and charged in this case is not evidence in this
21 case and not — and cannot be considered by you as
22 evidence of guilt in this case; nor does it create
23 any inference or presumption of guilt. The
24 indictment is simply the formal written instrument
25 which brings the case into court. The defendant has

1 pled not guilty to the charges contained in the
2 indictment and the charges alleged against him. The
3 burden is on the State to prove him guilty. It is
4 an important rule of the law in a criminal trial no
5 matter what the seriousness of the charge may be,
6 that the person accused of the crime will always be
7 presumed to be innocent of the crime for which the
8 indictment was issued unless guilt has been proven
9 by evidence satisfying you of that guilt beyond a
10 reasonable doubt.

11 The presumption of innocence does not end
12 when you begin your deliberations, but it
13 accompanies the defendant throughout the trial until
14 you reach a verdict of guilt based upon evidence
15 satisfying you of that guilt beyond a reasonable
16 doubt. The presumption of innocence is like a robe
17 of righteousness placed about the shoulders of the
18 defendant which remains with the defendant until it
19 has been stripped from the defendant by evidence
20 satisfying you of the defendant's guilt beyond a
21 reasonable doubt. The presumption of innocence is
22 not a mere legal theory; it's not just a legal
23 phase. It is a substantial right to which every
24 defendant is entitled unless you, the jury, are
25 satisfied from the evidence of the defendant's guilt

1 beyond a reasonable doubt.

2 The State must prove the defendant guilty
3 beyond a reasonable doubt, so what is a reasonable
4 doubt in the law? A reasonable doubt is a doubt
5 which makes an honest, sincere, and conscientious
6 juror hesitate to act. Proof beyond a reasonable
7 doubt must therefore be proof of such a convincing
8 character that a reasonable person would not
9 hesitate to rely and act upon it in the most
10 important of his or her own affairs. Proof beyond a
11 reasonable doubt can also be described as proof that
12 leaves you firmly convinced of the defendant's
13 guilt.

14 Now there are very few things in this
15 world that we know with absolute certainty, and in a
16 criminal case the law does not require proof that
17 overcomes every possible doubt. If based on your
18 consideration of the evidence you are firmly
19 convinced that the defendant is guilty, then you
20 must find him guilty. If on the other hand, you
21 think there's is a real possibility that he is not
22 guilty, you must then give him the benefit of the
23 doubt and find him not guilty.

24 The defendant is charged with armed
25 robbery. In order to prove the defendant guilty of

1 armed robbery the State must first prove beyond a
2 reasonable doubt that the defendant took personal
3 property from the victim. The State must also prove
4 beyond a reasonable doubt that the defendant carried
5 away the property intending to permanently deprive
6 the victim of the property and to keep the property
7 for the defendant's own use. The slightest removal
8 of the property or the complete possession of the
9 property, even for an instant, by the defendant is
10 sufficient to show a taking and carrying away of the
11 property. The taking and carrying away of the
12 property must have been done with violence or by
13 putting the victim in fear of violence.

14 Finally, the State must prove beyond a
15 reasonable doubt that the defendant was armed with a
16 deadly weapon or any object which a person present
17 during the commission of the robbery reasonably
18 believed to be a deadly weapon. And a deadly weapon
19 is any article or instrument which is likely to
20 cause death or great bodily harm. The defendant is
21 also charged with possession of a firearm during the
22 commission of a violent crime. The State must prove
23 beyond a reasonable doubt that the defendant was in
24 possession of a firearm or visibly displayed what
25 appeared to be a firearm during the commission of a

1 violent crime. A firearm means any weapon which
2 will, is designed to, or may readily be converted to
3 project or to expel a projectile. In order to find
4 the defendant guilty of possession of a firearm due
5 to commission of a violent crime, you must first
6 find the defendant guilty of committing a violent
7 crime. Armed robbery is a violent crime. But
8 before you can find the defendant guilty of any
9 crime you must be convinced that the State has
10 proven guilt beyond a reasonable doubt.

11 Now while the arguments of counsel is a
12 beneficial part of every trial you should remember
13 that the statements made by the lawyers, by counsel,
14 are not evidence. In presenting arguments counsel
15 often refer to the evidence; however, you should
16 base your verdict on the evidence as you remember
17 it. Therefore, if there are any conflicts between
18 what the lawyer tells you or told you about the
19 evidence and your own recollection of the evidence,
20 you should rely on your own understanding of the
21 evidence.

22 Now you've been chosen as sworn to give
23 the parties in this case both the State and the
24 Defendant a fair and impartial trial. When you have
25 done so you will have complied with your oath, and

1 no one will have the right to criticize your
2 verdict. You must not be influenced by opinions or
3 expressions of opinion you may have heard outside of
4 the courtroom, but rather, should base your verdict
5 solely on the testimony of the sworn witnesses who
6 took the stand and the law which I have stated. You
7 should not be swayed by caprice, passion, prejudice,
8 or improper sympathy for or against anyone in this
9 case. Remember, you have no friends to reward or
10 enemies to punish, and the State and of the
11 defendant are entitled to a fair and impartial
12 trial. It is your duty as jurors to consult with
13 one another and to deliberate in an effort to reach
14 an agreement. Each of you must decide the case for
15 yourself, but only after and impartial consideration
16 of all the evidence with your fellow jurors.

17 During the course of your deliberation do
18 not hesitate to reexamine your views and change your
19 opinion if you become convinced it is erroneous;
20 however, do not surrender your honest conviction as
21 to the weight or the affect of the evidence solely
22 because the opinion of your fellow jurors or for the
23 mere purpose of returning a verdict. As stated
24 earlier, you are the judges, the judges of the
25 facts. Your sole interest is to seek the truth and

1 evident evidence in this case. Your verdict must
2 represent the considered judgment of each juror; in
3 other words, your verdict must be unanimous.

4 Now you may have noticed, I'm sorry,
5 that -- Mr. Foreman, I meant to say, it will be your
6 duty to preside over the deliberations of the jury.
7 If during your deliberations you should desire to
8 communicate with the Court, please reduce your
9 message or question to writing, signed by the
10 foreman, and pass it to bailiff who will bring it to
11 my attention. I caution you, however, with regards
12 to any message or question you should never state or
13 specify your numerical division at the time.

14 You've heard the evidence and now you've
15 heard the law. Whatever your verdict, guilty or not
16 guilty as to each count, Mr. Foreman, you will
17 indicate it by writing on the, it on the verdict
18 form that will be provided for you, and then date
19 it, by checking the appropriate box either not
20 guilty or guilty as to particular charges, and sign
21 and date the verdict form. Now although the
22 foreperson is the only juror who writes the verdict,
23 it was not his alone. The verdict has to be
24 unanimous. Mr. Foreman, you're not authorized to
25 write the verdict until all of you have agreed on

1 the verdict. I'm gonna send you now to your jury
2 room, all of you except the last two jurors
3 selected, but do not begin deliberating until you
4 receive a copy of the verdict form and that will be
5 your signal to begin your deliberations. Once you
6 receive the verdict form you will begin deliberating
7 and deliberate until you have reached a verdict,
8 knock on the door, and we'll bring you back in to
9 receive your verdict. So I ask all of you then go
10 to the jury room, all of you except the last two
11 jurors who were picked.

12 (Whereupon, they jury was removed from the courtroom
13 and the following proceedings commenced in open
14 court.)

15 THE COURT: We picked 14 but we can only
16 use 12. Since the others made it through we cannot
17 use you all to participate in the deliberations. We
18 certainly thank you for your being here and
19 listening and being able to serve, but in just a
20 moment we'll excuse you.

21 Are there any objections or exceptions to
22 the charge?

23 MS. BARR: Not on behalf of the State,
24 Your Honor.

25 MS. SHULER: None from the Defense.

1 THE COURT: All right. Well, the jury can
2 begin deliberating.

3 (Jury began its deliberations at 11:14 a.m. and the
4 alternates were excused.)

5 THE COURT: We will be at ease on this
6 case waiting for the verdict.

7 (WHEREUPON, court was in recess.)

8 THE COURT: Let's bring the jury.
9 (Whereupon, the jury was returned to the courtroom
10 at 2:25 p.m.)

11 THE COURT: Mr. Foreman, have you reached
12 a verdict?

13 THE FOREMAN: Yes, we have.

14 THE COURT: Is it unanimous?

15 THE FOREMAN: Yes, it is, Your Honor.

16 THE COURT: If you'll pass it up. You may
17 be seated.

18 The defendant will stand.

19 (Verdict tendered to the Court.)

20 THE COURT: All right, Madam Clerk, if you
21 will publish the verdict.

22 THE CLERK: We, the jury, unanimously find
23 the defendant Jason Thomas Boston as to armed
24 robbery, guilty; as to possession of a firearm
25 during the commission of a violent crime, not

1 guilty.

2 THE COURT: If that's the verdict of each
3 and every juror be let it known by raising your
4 right hand.

5 (All jurors complied by raising their hand.)

6 THE COURT: All hands are raised. The
7 verdict appears to be unanimous. Any individual
8 polling requested by the Defense?

9 MS. SHULER: Please, Your Honor.

10 THE COURT: If you will poll each juror
11 individually please.

12 THE CLERK: Juror number 147, Hubert
13 Pipkin, is this your verdict and is still your
14 verdict?

15 JUROR PIPKIN: Yes, ma'am.

16 THE CLERK: Juror number 86, Johnny M.
17 Henry, is this your verdict and is still your
18 verdict?

19 JUROR HENRY: Yes, ma'am.

20 THE CLERK: Juror number 115, Milton
21 McCrea, is this your verdict and is still your
22 verdict?

23 JUROR MCCREA: Yes, it is.

24 THE CLERK: Juror number 17, Alicia S.
25 Brown, is this your verdict and is still your

1 verdict?

2 JUROR BROWN: Yes, ma'am.

3 THE CLERK: Juror number 123, Calton
4 McKnight, is this your verdict and is still your
5 verdict?

6 JUROR MCKNIGHT: Yes, ma'am.

7 THE CLERK: Juror number 96, Lachele
8 Johnson, is this your verdict and is still your
9 verdict?

10 JUROR JOHNSON: Yes, ma'am.

11 THE CLERK: Juror number 140 Brandy Owens.

12 Q Your verdict and is still your verdict yes,
13 ma'am?

14 THE CLERK: Juror number 70, Gennie
15 Gamble, is this your verdict and still your verdict?

16 JUROR GAMBLE: Yes.

17 THE CLERK: Juror number 1, Mr. Bartelle
18 Baker, is this your verdict and is still your
19 verdict?

20 JUROR BAKER: Yes.

21 THE CLERK: Juror number 29, Valerie
22 Cannon, is this your verdict and is still your
23 verdict?

24 JUROR CANNON: Yes, it is.

25 THE CLERK: Juror number 37, Jason Cooper,

1 is this your verdict and is it still your verdict?

2 JUROR COOPER: Yes, ma'am.

3 THE CLERK: Juror number 197, Joyce Wise,
4 is this your verdict and is it still your verdict?

5 JUROR WISE: Yes, ma'am.

6 THE COURT: Okay. And then, Madam Clerk,
7 you say, Your Honor, the verdict is unanimous.

8 THE CLERK: I'm sorry.

9 THE COURT: Please announce the results of
10 what you've done and that the verdict is unanimous.

11 THE CLERK: And that the verdicts are
12 unanimous.

13 THE COURT: The jury has been polled and
14 the verdict is unanimous. That's what you typically
15 would say..

16 THE CLERK: Okay.

17 THE COURT: And that is a fact. The jury
18 has been polled and the verdict is a unanimous
19 verdict. Any post-trial motions?

20 MS. SHULER: Yes, Your Honor.

21 THE COURT: All right, we'll hear them
22 now.

23 MS. SHULER: Thank you, Your Honor. May
24 it please the Court, at the close of the testimony I
25 argued that there was not sufficient evidence to

1 back this conviction, Your Honor. There was no
2 independent corroboration of the testimony of Latoya
3 Hickson and Sharhonda Burgess. Your Honor, without
4 any corroborating testimony there's insufficient
5 proof to convict Mr. Boston of armed robbery.

6 THE COURT: Ms. Barr.

7 MS. BARR: Your Honor, we would of course
8 respectfully submit that there was -- there were
9 eyewitnesses to the armed robbery here and testified
10 before the Court. Even though the victim was not
11 able to identify the gunman, certainly the testimony
12 that he gave was sufficiently corroborated by an
13 independent witness, that's Ms. Burgess, who was in
14 the vehicle at the time it happened. And so we
15 believe there was substantial evidence in the record
16 which supports the jury verdict, and we would ask
17 that the post-trial motion be denied.

18 THE COURT: All right. The only witnesses
19 who were there to testify that they knew who
20 committed the crime and who saw who committed the
21 crime were the eyewitnesses, and they both said that
22 Mr. Boston committed the crime. All the other
23 surrounding circumstances point to Mr. Boston as
24 being the one who committed the crime. The evidence
25 was credible by people who would have no reason to

1 not testify truthfully, and he is guilty. He is the
2 one who robbed Mr. Garcia so I deny the motion.

3 If you'll come forward for sentencing.

4 Ladies and gentlemen, thank you very much
5 for your services. Where you have found a person
6 guilty, then it's my responsibility to impose a
7 sentence. You have no role in sentencing, but
8 you're welcome to stay where you are as we proceed
9 with sentencing. He's been convicted of armed
10 robbery, and through the testimony you will note
11 that armed robbery carries a mandatory minimum of
12 ten years in prison, a maximum of 30 years in
13 prison. It is classified in the law as a most
14 serious offense if a person commits — and it's also
15 considered a strike under the two strikes law. If a
16 person commits another armed robbery they can be
17 sentenced to prison for life without the possibility
18 of parole for any, another armed robbery or any
19 other most serious offenses. And I had one in
20 Sumter, a young fella, he had had, been convicted of
21 robbing someone and then he went in Young's Market.
22 He was only about 21, 22. And the State gave notice
23 of life without a possibility of parole and he was
24 found guilty and sentenced to life at the age of 22
25 without the possibility of parole for committing a

1 second most serious offense.

2 Ms. Barr.

3 MS. BARR: And Judge, if I may have
4 Mr. Garcia and his wife come up please.

5 THE CLERK: I'll go ahead and swear him
6 in. Place your left hand on the Bible and raise
7 your right hand.

8 WHEREUPON,

9 JASON BOSTON,

10 having been duly sworn by the Clerk, testified
11 as follows:

12 MS. BARR: And Judge, we have Ms. Patricia
13 Munoz. If you want to tell the judge on your behalf
14 and behalf of your husband how the crime affected
15 your family, you can do so.

16 THE COURT: I want to address just one
17 other thing to the jury. Ladies and gentlemen, the
18 -- I looked at the verdict form and I saw guilty of
19 armed robbery and not guilty of possession of a
20 firearm during the commission of a violent crime so
21 I immediately said to my clerk to, you know,
22 research what might be an inconsistent verdict
23 because, you know, you find him guilty of armed
24 robbery but not, not guilty of possession of a
25 weapon during a violent crime. And then it quickly

1 caught me that the person doesn't have to be
2 actually armed with a deadly weapon, but display
3 what visibly appeared to be a deadly weapon. And
4 since the weapon was not recovered, then those of
5 you who might have convinced the others that he's
6 not guilty of that part of it, it's very insightful
7 because if you don't -- we had a case of a robbery
8 of a guy at, a guy robbed Black's Shell Station, now
9 the Subway. And he had -- he didn't have a gun, he
10 did this, and said this is a stick up using his
11 finger; but to the clerk, they thought it was a gun.
12 And as a result of that murder, State v. Muldrow,
13 they modified the law that you actually don't have
14 to have proof, be proven to have a weapon as long as
15 the victim reasonably believes that you have a
16 weapon. So I point that out to say that you all did
17 an insightful job, wonderful job. You followed the
18 law to a tee in rendering the verdict and I want to
19 commend you all for that even though sometimes
20 jurors, they fuss and get mad with each other and
21 finally reach a verdict. In the end the system has
22 proven that whatever you come up with is generally
23 right on the money, and I think that your verdict in
24 this case is right on the money giving the defendant
25 the benefit of the reasonable doubt. There's no

1 proof they didn't get the gun, but you know, did a
2 good job.

3 Yes.

4 MS. MUNOZ: Well, first of all, I just
5 want to let you know that I, I'm not happy that
6 you're going to jail.

7 THE COURT: Talk to me instead of him.

8 MS. MUNOZ: I don't like to, I mean, to
9 me it's sad that some people mess up their life so
10 bad, like in his case, just for ten dollars and a
11 cell phone. And it change your life completely
12 because before this happened we could sleep with our
13 doors open. We were not afraid of anything 'cause
14 we don't have problems with anybody. And after this
15 happened we had to open the blinds or something
16 before we open the door. Every morning my mother
17 comes to get my children for school, and we have to
18 open the window first to see if it is safe to open.
19 So I just wanted to let you know that I don't wish
20 anybody something bad, but he actually affected our
21 lifestyle.

22 THE COURT: All right.

23 MS. BARR: Judge, Mr. Garcia has declined
24 to state anything. The only thing I'll add, Judge,
25 is regards to his criminal history.

1 THE COURT: Yes.

2 MS. BARR: The defendant was convicted in
3 April of 2004 for public disorderly conduct. He was
4 convicted in June of 2004 for misprision of a
5 felony. He received a three year sentence suspended
6 to two years probation. He was convicted later in
7 2004 for another count of public disorderly conduct.
8 All of these charges are out of Lake City. He was
9 convicted by the Florence County Sheriff's Office in
10 2010 for breach of peace. He was convicted out of
11 Myrtle Beach in June of 2010 for it appears to be a
12 some type of violation of a city ordinance charge
13 that might have stemmed from trespass since trespass
14 was the original charge. There is a tampering with
15 a motor vehicle charge that does not reflect a
16 disposition out of Myrtle Beach in 2010. There's a
17 trespass and malicious injury to property charge
18 That does not reflect a disposition in 2011 in
19 Florence. He was convicted of shoplifting in
20 November of 2012. He was convicted of grand
21 larceny, property value more than two thousand but
22 less than ten thousand in March of 2014, and that
23 was a case that was brought by the Florence County
24 Sheriff's Office. He received a two year sentence
25 and actually did time and that would have been —

1 well, he served time after this incident happened.
2 It looks like he went to SCDC July of 2014. He also
3 has a record out of North Carolina.

4 THE COURT: Has he ever been released from
5 SCDC or he's still ---

6 MS. BARR: He has been released from SCDC.
7 They held him in county jail pending the trial.

8 THE COURT: Since his release from SCDC?

9 MS. BARR: Yes, sir. He was convicted out
10 of Cumberland County, North Carolina following a
11 jury trial, possession of stolen goods. That was
12 May of 2010. It looks like at the same time he was
13 also convicted of obtaining goods by false
14 pretenses. He had a probation violation they
15 classified as a felony probation violation.

16 MS. SHULER: Your Honor, the charges out
17 of North Carolina were disposed of by way of guilty
18 plea. It indicates that on his wrap sheet.

19 MS. BARR: I'm sorry, it says trial by
20 judge, verdict guilty.

21 MS. SHULER: Right.

22 MS. BARR: Non jury trial.

23 MS. SHULER: Underneath it it says plead
24 guilty. I just want to clarify that for the Court.

25 THE COURT: All right. How many different

1 crimes have you given me so far?

2 MS. BARR: Nine and a probation violation,
3 beginning in 2004 and continuing to 2014 so about
4 ten year period.

5 THE COURT: Nine crimes in ten years?

6 MS. BARR: Yes, sir.

7 THE COURT: All right. What else, Ms.
8 Barr?

9 MS. BARR: Judge, that's all the State
10 would offer.

11 THE COURT: All right, Ms. Shuler.

12 MS. SHULER: Thank you, Your Honor, may it
13 please the Court. The majority of those convictions
14 are magistrate level offenses for disorderly
15 conduct, breach of peace. Any -- his felony record
16 is a 2003 conviction for misprision, a 2014 grand
17 larceny conviction, and then the receiving stolen
18 goods and property by false pretenses in North
19 Carolina. The other stuff is, of course,
20 significant, significant in terms of there's a
21 conviction but not, not serious in the grand scheme
22 of things. Your Honor, Jason is 32 years old, and
23 he is 32 a resident of Lake city. He lived there
24 with his mom, Mary Boston Presley, who is here in
25 the courtroom today.

1 Your Honor, there was — we did not get
2 into this 'cause I didn't feel like it was something
3 that we needed to present; but there has — there's
4 been a feud between Jason's family and Latoya's
5 family and it's been existent for years. Ms. —

6 THE COURT: Is she the tenant?

7 MS. SHULER: She is.

8 THE COURT: Okay. Between the landlord
9 and tenant or?

10 MS. SHULER: The families.

11 THE COURT: The families, okay.

12 MS. SHULER: And it stems over Jason's
13 relationship with Zalandria Brown who is Latoya's
14 niece. Zalandria's parents have never felt that
15 Jason has been good enough for their daughter.

16 THE COURT: Because?

17 MS. SHULER: I'm assuming—

18 THE COURT: In and out of jail or because
19 —

20 MS. SHULER: No real specific reason I
21 assume. You — there's — they've been feuding for
22 years, and it stems basically from their
23 relationship. Whenever Jason was arrested he was at
24 his girlfriend's house; and the brother was there,
25 being Zalandria's brother, which would also be

1 Latoya's nephew -- no, Latoya's brother. So it was
2 her uncle, said are you going to take this charge
3 for my sister, right. And we tried to find what
4 deputy was present that arrested him and was present
5 there. It was not reflected in the records that I
6 obtained from Florence County so we could not bring
7 that deputy here to question him about that; but
8 there's certainly been a lot of tension between the
9 families for years, and that's what Jason feels like
10 this stems from.

11 He has one child in North Carolina. He's
12 completed his GED and working on his work keys. He
13 worked for his mom who has owned rental properties,
14 and he was doing her maintenance and things like
15 that. Her -- his mom is a teacher and she's here.
16 Your Honor, he's always been respectful.

17 THE COURT: How many rental places does
18 she have?

19 THE DEFENDANT: Mobile home park and some
20 houses.

21 MS. SHULER: He's always been extremely
22 appreciative of what I've done for him. He has
23 discussed his case at length with me. And Your
24 Honor, this is certainly not something that I think
25 that falls within the individual that I've been in

1 contact with. And if his mom would like to address
2 the Court she certainly may; I don't know if she
3 does.

4 MS. PRESLEY: Good afternoon.

5 THE COURT: Good afternoon.

6 MS. PRESLEY: My name is Mary Boston
7 Presley, and this is my son Jason. He's my oldest
8 son.

9 THE COURT: How many do you have?

10 MS. PRESLEY: I have three sons, sir.

11 THE COURT: Three sons?

12 MS. PRESLEY: Yes. And I love him. I
13 don't know what happened during that time but I love
14 him. This has been going on, this feud — it even
15 continued on outside earlier today with this family.
16 I've been praying and asking for this feud that's
17 been going on. We can't keep him from her 'cause
18 that's who he love but —

19 THE COURT: How did Mr. Garcia get tied up
20 in the feud?

21 MS. PRESLEY: I don't — I never even seen
22 him, sir, to be honest so.

23 THE COURT: So the feud is separate from
24 this —

25 MS. PRESLEY: Yes, sir, yes, sir. I have

1 no — all I know is Latoya has children with his
2 friends; that's all I know. I have no nothing
3 harmful to say about Latoya. I have nothing harmful
4 to say about my child, but I know there's a lot of
5 lying that went on; I do know that much. And it was
6 all brought on because it's not his — I'm sorry,
7 Zalandria's mother and father didn't want them
8 together because he was in trouble or because he was
9 a troubled young man.

10 THE COURT: You were on the witness list;
11 weren't you?

12 MS. PRESLEY: Yes, I was. It's not
13 because he was a troubled child. They just did not
14 want — it was me; I was the problem. And she told
15 me constantly that she was gonna get me one way or
16 another, and I guess this is it. But he's a good
17 fella. He has made some choices. The lord knows if
18 I could change it I'd change it myself, but this —
19 everyone know what their children will do. And I
20 know just what this young man will do; and what he
21 has been accused of, I'm willing to bet my life that
22 was not him.

23 THE COURT: Why didn't you come and tell
24 the jury that during the trial? You're on the list
25 of witnesses and —

1 MS. PRESLEY: I mean, I ---

2 THE COURT: Of course, you weren't in the
3 court during the testimony, or were you?

4 MS. PRESLEY: No, I was not here.

5 THE COURT: You didn't --- so you ---

6 MS. PRESLEY: I was here but I was
7 outside.

8 THE COURT: You were outside.

9 MS. PRESLEY: Yes, sir.

10 THE COURT: So you're saying there was
11 lying is going on from the witness stand?

12 MS. PRESLEY: I'm sorry?

13 THE COURT: You were saying lying going on
14 from this chair?

15 MS. PRESLEY: Yes, sir.

16 THE COURT: But you didn't hear it.

17 MS. PRESLEY: No, sir.

18 THE COURT: 'Cause you weren't in here.

19 MS. PRESLEY: There's just a whole lot
20 going on that has went on before it came to this.

21 MS. SHULER: Your Honor, she did not
22 testify because we made a judgment call about
23 whether we wanted to lose our right to argue last,
24 and we did not want to lose the right to argue last.

25 THE COURT: You did a good job. You threw

1 in everything including the kitchen sink.

2 MS. PRESLEY: It's okay.

3 THE COURT: All right, Mr. Boston. When I
4 say the name Boston I think of Reverend Boston and
5 Boston in the back. These your people, Boston?

6 THE DEPUTY: No, sir, Judge.

7 THE COURT: It's a different set of
8 Bostons?

9 THE DEPUTY: No, sir.

10 MS. PRESLEY: We're from Maryland.

11 THE COURT: Oh, I think of Bostons I'm
12 looking for Reverend Boston and Boston back there to
13 come in here.

14 Yes, sir.

15 THE DEFENDANT: I just want to tell the
16 victim I'm sorry what they went through, but I
17 didn't have nothing to do with it. I wasn't nowhere
18 around.

19 THE COURT: You weren't nowhere around?

20 THE DEFENDANT: I wasn't nowhere around.

21 THE COURT: Where were you?

22 THE DEFENDANT: I never seen these people
23 a day in my life. And like ---

24 THE COURT: Well, where were you?

25 THE DEFENDANT: I was on Randolph Street.

1 THE COURT: On Randolph Street.

2 THE DEFENDANT: Yeah, I wasn't — like I
3 told the cop, I didn't know, I did not know nothing.

4 THE COURT: What's going on on Randolph
5 Street? I've heard that name called a couple of
6 times.

7 THE DEFENDANT: I had just finished
8 helping my brother do some work.

9 THE COURT: Is that like Night Street?

10 THE DEFENDANT: Nah, it's a neighborhood
11 housing that work where my family live. I was just
12 —

13 THE COURT: I don't know, I'm not familiar
14 with Randolph Street.

15 THE DEFENDANT: It's in Lake City.

16 THE COURT: Okay.

17 THE DEFENDANT: I was just finish helping
18 my brother to some work on one of my mom houses.

19 THE COURT: All right. How did you get a
20 case? How did you end up in here?

21 THE DEFENDANT: 'Cause they said I had
22 something to do with armed robbery. And like I
23 tried to explain to law enforcement I didn't, I
24 didn't have nothing to do with armed robbery. I was
25 at the house with my aunt all day, and they was

1 like —

2 THE COURT: You were at the house with
3 your aunt all that day.

4 THE DEFENDANT: And when I left —

5 THE COURT: Your aunt could have come in
6 here and explained that to the jury.

7 THE DEFENDANT: 'Cause —

8 THE COURT: You probably had phone calls
9 you were making. You had a cell phone?

10 THE DEFENDANT: Huh?

11 THE COURT: You had a cell phone?

12 THE DEFENDANT: No, I didn't have no cell
13 phone.

14 THE COURT: If you were at her house all
15 day you could have —

16 THE DEFENDANT: I'm saying when I was with
17 my brother left witness and I went to my aunt house.

18 THE COURT: Yeah. Well. I'm not gonna
19 sentence you based on the fact that you didn't do
20 it. I'm sentencing you —

21 THE DEFENDANT: Sir, like I'm saying.

22 MS. PRESLEY: Jason.

23 THE COURT: I'm gonna sentence you on the
24 basis that you didn't do it. We've been through the
25 trial.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: I'm sentencing you on the
3 basis that you did do it, that you robbed that man
4 right there and that you committed an armed robbery.
5 I'm going based on that fact based on the jury
6 verdict, which I agree with one hundred percent.

7 THE DEFENDANT: I just want to let him
8 know I'm —

9 THE COURT: You don't need to let him know
10 he can't sentence you. I'm trying to apologize.

11 MS. PRESLEY: Jason.

12 THE COURT: You through talking to
13 listening you talking to me I'm the one that do the
14 sentencing.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Talk to me, not to him. He
17 can't understand what you're saying anyway.

18 THE DEFENDANT: Well, sir, I just want to
19 apologize to the family for what they went through
20 'cause they didn't have to go through what they went
21 through and —

22 THE COURT: Which family?

23 THE DEFENDANT: The —

24 THE COURT: Victim?

25 THE DEFENDANT: The victim's family.

1 THE COURT: Well ---

2 THE DEFENDANT: And I just ---

3 THE COURT: Yeah, you wanted a trial so
4 they had to go through it.

5 THE WITNESS: I'm talking about the
6 robbery situation.

7 THE COURT: Oh. No, they didn't have to
8 go through that, but they did.

9 THE DEFENDANT: Yes, sir. I just ask for
10 you to have some kind of mercy on me.

11 THE COURT: Based on what? Have mercy on
12 you based on what? What is it about you that I
13 should have mercy on? You're facing 30 years in
14 prison. You just got out. You hadn't got home yet
15 from prison. When did you go to prison?

16 THE DEFENDANT: I went to prison in 2014.

17 THE COURT: For doing what?

18 THE DEFENDANT: Grand larceny.

19 THE COURT: For stealing what?

20 THE DEFENDANT: Car trailer.

21 THE COURT: Say again?

22 THE DEFENDANT: Car trailer.

23 THE COURT: Stealing a car trailer. In
24 Florence County?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right.

2 MS. SHULER: Your Honor, Jason has always
3 stood up in court and has admitted whenever he has
4 done wrong. And that was one thing that he told me
5 as soon as we met was is, Ms. Shuler, I've always
6 pled guilty, if I would have done this I —

7 THE COURT: Let's use Ms. Barr's debate
8 about whether it was pleading guilty in North
9 Carolina or a jury trial, you know, I don't know.
10 She said, she said it was a bench trial. You said
11 he pled guilty. Read what it says, Ms. Barr, see
12 how it sounds. For some reason, you know, I do a
13 lot of court in Charleston and we just we were in
14 Charleston in court all last week from Monday
15 morning to 10:00 Friday night involving human
16 trafficking type allegations involving Mexicans
17 where people were being made to work overtime and
18 not paid overtime. They would pay them through two
19 different companies so they wouldn't have to pay
20 overtime. They were, you know, threatened they'd be
21 deported if they complained about it. In fact, they
22 had in on e instance they had 30 of them living in
23 one house, 30 people living in one house. They had
24 two people living in a shed and six people living in
25 a garage, and they were all doing work at the

1 restaurants, golf course, and landscaping throughout
2 the Charleston area. They did a feature on it,
3 Hidden Charleston Economy, how the Mexicans were
4 being exploited. We were in trial about that. And
5 the case started as a class action litigation, but
6 when it came to getting corporation among all these
7 people, they didn't want to be involved because
8 there were afraid of the system. And so many other
9 instances they were reported, particularly in north
10 Charleston of these Mexicans being targeted because
11 they think that they won't cooperate with the
12 prosecution because they're afraid of being involved
13 in the system. So for people who have suffered
14 being various forms of prejudice, to then look at
15 them as someone that you can take advantage of and
16 exploit, you know, and in many instances the people
17 get away with it, even here. You know, some cases
18 you have Mexican victims, they do seasonal work.
19 You know, we've even had murder cases here where the
20 families, they just disappear, they don't, they
21 won't prosecute, they don't want to be involved.
22 They want to just move on like the man says, I don't
23 want no trouble, I don't want no problems. And to
24 look down on a person and you think you can take
25 advantage of them. It may not be a reflection on --

1 it is a reflection on you, but just the idea of how
2 can that even come in your mind that you can rob
3 someone of their cell phone and then sell it back to
4 them and rob someone knowing full well that the
5 people who you're with know the people. There's no
6 way he can even get away with the crime. Your only
7 hope is that he just disappear and say forget it.

8 Go ahead, Ms. Barr, about this.

9 MS. BARR: Judge, the wrap sheet reflects
10 a charge for possession of stolen goods slash
11 property on, classified as a felony, on May 17th
12 2010. It says trial by judge. I said jury ---

13 THE COURT: What was that about?

14 THE DEFENDANT: I had brought some
15 jewelry.

16 THE COURT: You had what?

17 THE DEFENDANT: I had bought some jewelry.

18 THE COURT: Bought?

19 THE DEFENDANT: Yeah, I bought some
20 jewelry off of somebody.

21 THE COURT: You bought some jewelry off

22 ---

23 THE DEFENDANT: Yeah, and like people be
24 like around the mall and stuff selling jewelry ---

25 THE COURT: Were you in Charlotte or where

1 were you at?

2 THE DEFENDANT: I was in Fayetteville.

3 THE COURT: Fayetteville, all right. What
4 happened with the case?

5 MS. BARR: It says trial by judge, verdict
6 guilty. And then underneath it says court comments,
7 plea, and then it says guilty. And then it says
8 another charge obtaining property by false
9 pretences.

10 THE COURT: You had a trial, the judge
11 decided you were guilty, or did you plead guilty?

12 THE DEFENDANT: We call it a bench trial.

13 THE COURT: Bench trial. You were telling
14 them that you were not guilty?

15 THE DEFENDANT: No, no. Like, the DA came
16 to me with a plea and I took the plea. I plead
17 guilty to it.

18 THE COURT: What did they do with you for
19 that?

20 THE DEFENDANT: It was, I think it was two
21 years probation.

22 THE COURT: You pled guilty to buying some
23 jewelry?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: That was stolen?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Go ahead, Ms.
3 Shuler, you still had the floor, I'm sorry.

4 MS. SHULER: Your Honor, I would just add
5 that Mr. Boston has always come to the court and
6 admitted whenever he had involvement in any of his
7 crimes and that was one of the things that we had
8 talked about was, I've always pled guilty, if I had
9 done this I would take — his words were I would
10 take my ten years like a man. So —

11 THE COURT: Take it like a man?

12 MS. SHULER: Yes.

13 THE COURT: All right.

14 MS. SHULER: So I'd ask that Your Honor
15 sentence him in a way that it's fair under the
16 circumstances. Mr. Boston has some, does have
17 convictions on his record. He has a quite a few of
18 those Magistrate level offenses. He went to prison
19 on a grand —

20 THE COURT: If you have to have ten
21 different cases and nine cases in ten years and
22 to — when is the date of the sentencing of the
23 State Department of Corrections did you say?

24 MS. BARR: He went in on July 17th of the
25 last year.

1 THE COURT: July 17. And so it may be
2 consistent with the, those girls saying that he just
3 seemed to be a joke. I mean, he's had all these
4 cases and situations and so now the fella gets
5 robbed and he's laughing about it, sells him his
6 phone back and now he's graduated into a situation
7 that's definitely not a joke.

8 MS. SHULER: Certainly isn't, Your Honor,
9 and that's not what we're implying at all.

10 THE COURT: I know. That's my
11 interpretation of the whole picture. I know that
12 you disagree with that perspective.

13 MS. SHULER: Your Honor, it's — I have a
14 particular problem with Latoya Hickson and Latoya
15 Hickson pleading guilty and her standing up in front
16 of everybody, including you, saying that she had
17 nothing to do with this, I know nothing about this,
18 and maintain that throughout the trial, throughout
19 her guilty plea, the whole process. She has not
20 admitted her involvement in any of it.

21 THE COURT: I've still got to sentence
22 her. When is she coming?

23 MS. BARR: She should be here today,
24 Judge.

25 MS. SHULER: And —

1 THE COURT: We will tend to her later on
2 today.

3 MS. SHULER: But with that being said,
4 Your Honor, that reflects on the rest of this
5 process. She's taking it off of herself and putting
6 it on somebody else and at least attempting —

7 THE COURT: Well, the victim said he was
8 talking with her so he knows that she didn't rob
9 him; she was there apologizing. So she's not the
10 robber. He got robbed by the man.

11 MS. SHULER: Right. But at least under
12 all of — everything that I've seen she was the
13 person that set it up and that made it happen.

14 THE COURT: That's the part Ms. Barr is
15 leary of. She doesn't believe that part of what
16 says either.

17 MS. SHULER: She —

18 THE COURT: That's why we went through
19 that with her guilty plea, well, if you didn't know
20 anything about it how can I take your guilty plea.
21 And then we went through State versus Collins and
22 accessory and resolve that she said she was guilty
23 of, to whatever degree she did.

24 MS. SHULER: Right. My point with that is
25 she had to put it on somebody else, and that was —

1 this was the natural person, this was the person
2 that they were with during the week —

3 THE COURT: She put it on the person who
4 actually did the robbery, and that's a good thing.
5 I have to give her credit for that.

6 MS. SHULER: That's what the jury has
7 decided, Your Honor, and I would just ask that you
8 sentence Mr. Boston fairly. Thank you.

9 THE COURT: Mr. Boston, your last word,
10 okay.

11 THE DEFENDANT: I just want to say I had
12 no kind of hate or passion against no kind of
13 people, Hispanic people, 'cause my niece, she's
14 Hispanic, my brother's wife Hispanic. I just —

15 THE COURT: You didn't think they knew you
16 or your brother has a baby with her —

17 THE DEFENDANT: I should have had got on
18 the stand and talked, but I, I didn't have nothing
19 to do with it.

20 THE COURT: You stood right up there and
21 said you're gonna take the Fifth, you're gonna plead
22 your Fifth.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You have a right to do that.
25 I mean, we discussed that and whether or not you

1 testified was your decision. Now ---

2 THE DEFENDANT: Can I say something?

3 THE COURT: Go ahead.

4 THE DEFENDANT: It's like a person be
5 found guilty and really, you know what I'm saying,
6 didn't do it, you know, and in my heart I know I
7 didn't do it.

8 THE COURT: Well ---

9 THE DEFENDANT: But I got to take it like
10 a man now, but ---

11 THE COURT: Got to take it like a man.
12 You had a fair trial. They found you not guilty of
13 having a gun.

14 THE DEFENDANT: But it just hurts ---

15 THE COURT: Not guilty of having a gun,
16 found you guilty of doing the robbery by having what
17 appeared to be a gun. And you're -- Ms. Barr, you
18 said during the plea bargain beforehand, Ms. Barr
19 said that she offered you a plea to 15 years.

20 THE DEFENDANT: I didn't take it because I
21 figured I could bite it because I didn't do it.

22 THE COURT: You didn't have to take it.
23 You had a right to a jury trial which you had. I'm
24 just explaining that you -- she offered you a plea
25 of 15, a recommendation of 15 years, facing minimum

1 of 10, a maximum of 30. Her recommendation was 15
2 years; you didn't take it. I'm not bound at all by
3 her recommendation, and she drives a real hard
4 bargain. She doesn't play as you can tell. And
5 looking at your record of all these crimes in ten,
6 nine crimes in ten years I guess she felt that you
7 shouldn't get the minimum, that you should get 15
8 years. I got to figure whether you get 10, 15, 20,
9 25, 30, 'cause you have to do 85 percent of whatever
10 you get. Are you on parole or probation or what?

11 THE DEFENDANT: I'm on parole, sir.

12 THE COURT: You're on parole? For how
13 many years?

14 THE DEFENDANT: I supposed to had got off
15 parole next month.

16 THE COURT: All right. So you got that to
17 deal with as well.

18 MS. SHULER: It won't violate his parole,
19 Your Honor.

20 THE COURT: Time is going to be so much it
21 can't be a violation 'cause it's just amazing, I
22 mean, how did your life turn in this direction?

23 THE DEFENDANT: I just, like, this charge
24 she read, she was reading out, that was between me
25 and my girl family. It wasn't like I was out there

1 ---

2 THE COURT: You were taking from your
3 girlfriend's family?

4 THE DEFENDANT: No, I'm talking about
5 those breach of peaces and disorderly conduct and
6 stuff like that. I — before all that came along I
7 wasn't like a troublemaker because I'm a certified
8 firefighter, I got my EMT certification.

9 THE COURT: You're a certified
10 firefighter. Which high school did you attend?

11 THE DEFENDANT: I attended Lake City High
12 School but I — when I went to prison I got my GED.

13 THE COURT: In prison?

14 THE DEFENDANT: Yeah.

15 THE COURT: So you didn't graduate from
16 high school?

17 THE DEFENDANT: No.

18 THE COURT: How far did you go?

19 THE DEFENDANT: I went all the way up to
20 ninth or tenth grade.

21 THE COURT: All the way up to ninth or
22 tenth grade?

23 THE DEFENDANT: I was a firefighter ever
24 since I was 15 years old.

25 THE COURT: When did you first start

1 getting in trouble?

2 THE DEFENDANT: When I was like 22 or 23.

3 THE COURT: How did you get kicked out of
4 school in the ninth grade?

5 THE DEFENDANT: I didn't actually get
6 kicked out.

7 THE COURT: Why did you stop going?

8 THE DEFENDANT: I just quit.

9 THE COURT: You quit.

10 THE DEFENDANT: 'Cause my grandmama, well,
11 my grandmama was dieing from cancer.

12 THE COURT: She got her — your momma is
13 not gonna agree to that.

14 THE DEFENDANT: My mom, I wasn't living
15 with my mom.

16 THE COURT: You weren't living with your
17 mother?

18 THE DEFENDANT: My mom was living in Fort
19 Bragg.

20 THE COURT: All right.

21 THE DEFENDANT: My grandma raise me till
22 she died.

23 THE COURT: She's not — you didn't drop
24 out of school because your mother — your
25 grandmother had cancer. You got to come up with

1 another reason.

2 THE DEFENDANT: I just, I'm saying at that
3 time I was going through too much with that I just
4 wanted to quit, sir.

5 THE COURT: You start getting in trouble
6 as a juvenile?

7 THE DEFENDANT: No, sir.

8 THE COURT: You waited till you got about
9 22?

10 THE DEFENDANT: About 22, 23.

11 THE COURT: All right. And what else, we
12 got to move on. We got other stuff to do today.
13 Anything else?

14 MS. SHULER: Nothing further, Your Honor.

15 THE COURT: So Ms. Barr wanted him to
16 plead to 15 years, and he's had a trial. And what
17 do you think, Ms. Shuler, more or less, or same?

18 MS. SHULER: Your Honor, that's why you
19 wear the robe.

20 THE COURT: What do you think?

21 THE DEFENDANT: Sir, I want less, but I
22 want to be able to be back out.

23 THE COURT: Less than what?

24 THE DEFENDANT: 15. I want to be able to
25 be back out to at least see some kind of my daughter

1 childhood.

2 THE COURT: How old is your daughter?

3 THE DEFENDANT: My daughter is ten years
4 old.

5 THE COURT: Ten. All right. What's your
6 problem? You on drugs or you just kind of got
7 emotional problems, mental problems?

8 THE DEFENDANT: I'm — no, none of that,
9 sir.

10 THE COURT: Why do you keep getting in all
11 this trouble?

12 THE DEFENDANT: It was like, —

13 THE COURT: You just a trouble maker?

14 THE DEFENDANT: Where me and my girl were
15 staying it was on her family land, right, and like
16 they'd come out there and —

17 THE COURT: On her family land?

18 THE DEFENDANT: Yeah.

19 THE COURT: I thought she's on your family
20 land.

21 THE DEFENDANT: Naw, her family has land
22 too and my mom have land too. They'll come, they
23 come out there neck and pick and stuff like that.
24 Then I started getting hit with breach of peace or
25 disorderly conduct, it'll come together allow me or

1 whatever.

2 THE COURT: I got you.

3 THE DEFENDANT: They used to call my
4 probation officer say I had guns and drugs.

5 THE COURT: Violated the probation?

6 THE DEFENDANT: No. I had — when I came
7 back down —

8 THE COURT: She just called out a
9 probation violation among them things, the trouble.

10 THE DEFENDANT: I been on probation twice.
11 That's what I'm saying.

12 THE COURT: Twice? In South Carolina?

13 THE DEFENDANT: No, once in South
14 Carolina. I think once in North Carolina.

15 THE COURT: Probation in South Carolina
16 and North Carolina?

17 THE DEFENDANT: Yes, sir.

18 PROBATION OFFICER: It was transferred.

19 THE COURT: Transferred.

20 MS. PRESLEY: Yes, sir, it was
21 transferred.

22 THE COURT: We're back to 15 years.

23 Ms. Barr recommends more or less. I've heard from
24 Ms. Shuler. And what did you say? More or less or
25 the same.

1 THE DEFENDANT: I'd rather less, sir.

2 THE COURT: Pardon?

3 THE DEFENDANT: I'd rather less. I just
4 want less so I can just have a shot at another
5 chance and prove to society I'm not as bad as people
6 think I am.

7 THE COURT: Ms. Barr.

8 MS. BARR: Judge, just in quick response,
9 he said that he was at home all day that day;
10 however, when he gave his recorded statement to the
11 police he admitted to being at the store when the
12 incident happened where Mr. Tovar's tire —

13 THE COURT: You see, Ms. Barr doesn't
14 play. You can't just come in here and start lying.
15 She's got all the details. It's her turn now.

16 Go ahead.

17 MS. BARR: And he said that he describes
18 Latoya as using profane language and in his words he
19 said Latoya said, I'm going to whip that bitch's
20 ass, talking about Ms. Munoz and he was excited to
21 go along because he said he thought he was going to
22 see a fight. Now, of course he's always denied that
23 he was at the robbery, but he did tell the police
24 that he was there when that happened.

25 THE COURT: He was riding with them.

1 MS. BARR: And that he was riding with
2 them. He also admitted to cell — putting his
3 personal information on the victim's cell phone.

4 THE COURT: He admitted that.

5 MS. BARR: Yeah. He said that, he says
6 that the girls came back and gave him the cell
7 phone.

8 THE COURT: He said the girls gave it to
9 him.

10 MS. BARR: Or sold the phone or something.
11 That's what he said. And he said that if he had
12 known that the cell phone was involved in a robbery
13 he would have wiped that bitch clean is how she
14 described it. And he admits to giving the phone to
15 Mr. Tovar, and Mr. Tovar giving him 25 20-dollar
16 bills.

17 THE COURT: Seems like when you're out on
18 the streets you're not as nice and calm and
19 collected and under control as you are now.

20 THE DEFENDANT: Can I say something, sir?

21 THE COURT: Yes, sir.

22 THE DEFENDANT: I admitted to all that.
23 What I was saying was —

24 THE COURT: You telling them the truth?

25 THE DEFENDANT: Huh?

1 THE COURT: You telling them the truth?

2 THE DEFENDANT: I wasn't around when the
3 person got robbed. I was at my aunt house and
4 she —

5 THE COURT: You just happened to end up
6 with the evidence?

7 THE DEFENDANT: No, I was at my aunt house
8 when she came up. She was like, I'm gonna beat that
9 such and such. She was al--- must have already been
10 up there before, so me, me and my brother was
11 sitting out there —

12 THE COURT: Well, now you told me you were
13 on Randolph Street.

14 THE DEFENDANT: It's on Randolph Street,
15 my aunt house. My aunt was out there whenever —

16 THE COURT: Now, the store where the
17 argument and all that took place —

18 THE DEFENDANT: I'm saying, they went back
19 back.

20 THE COURT: What street was that store on,
21 the taco stand?

22 MS. MUNOZ: West Main Street.

23 THE COURT: West Main Street. All right,
24 go ahead, one, one last chance, go ahead.

25 THE DEFENDANT: And when I went back up

1 there with them, right, she started cursing, kids
2 started jumping out the car, running in the store,
3 cursing her out. I was like, I'm gone, I ain't got
4 nothing to do with this.

5 THE COURT: And you walked away.

6 THE DEFENDANT: Naw, I jumped in the truck
7 with my brother, I'm like, man, come on. He try to
8 run in there and calm them down. I'm like, man,
9 come on 'cause when somebody —

10 THE COURT: When you left with your
11 brother did you leave a man in the car?

12 THE DEFENDANT: Huh?

13 THE COURT: When you left with your
14 brother —

15 THE DEFENDANT: No, it was just me and my
16 brother in the truck.

17 THE COURT: No, I mean, who was left in
18 the girl's Expedition?

19 THE DEFENDANT: She was out there arguing
20 with this lady like here. This lady like, I'm gonna
21 call the police.

22 THE COURT: Sir, when you left with the
23 brother who would have been the man in the
24 Expedition that did the robbery?

25 THE DEFENDANT: It wasn't no, it wasn't no

1 man in the Expedition. Me and my brother was ---

2 THE COURT: So as far as your evidence, if
3 the Expedition left and went to their house and did
4 the robbery, there's no man in the car so it had to
5 be one of those two girls who testified ---

6 THE DEFENDANT: Like ---

7 THE COURT: ---or they picked up another,
8 man.

9 THE DEFENDANT: I don't know, sir. Like,
10 if my brother could have got on the stand he could
11 have tell you, I left with him that day.

12 THE COURT: Well, he could have gotten on
13 the stand if he wanted to.

14 THE DEFENDANT: I left with him.

15 THE COURT: All right, I hear you.

16 But Ms. Barr, about them -- we were asking
17 about the 15 years you were offering versus less,
18 more, the same.

19 MS. BARR: And Judge ---

20 THE COURT: As that's what I thought you
21 ---

22 MS. BARR: And Judge, just from my
23 standpoint, one of the things that my boss would
24 tell me when he was prosecuting these kinds of cases
25 is that when a person has a gun pointed to them that

1 he's heard the victims come and describe it as
2 seeing their life flash before their eyes. And so I
3 asked Mr. Garcia before he took the stand what did
4 he think was gonna happen to him, and Ms. Sanchez,
5 the interpreter, told me that he said he thought
6 they were gonna kill him. He thought that he was
7 going to kill him, the guy was going to kill him.
8 And so, Judge, it is such a serious crime.

9 My mindset has always been if nobody is
10 physically hurt and the person gets up and admits
11 what they did and doesn't have a prior record, a lot
12 of times we're seeing young folks unfortunately up
13 here with those type charges, then I typically
14 recommend minimum sentence on them. I think what
15 kind of swayed me with 15 years in terms of my
16 recommendation was his prior record.

17 THE COURT: All right. How unnecessary
18 this whole thing is, Mr. Boston.

19 THE DEFENDANT: Judge, it's very ---

20 THE COURT: Robbed a man and got ten
21 dollars and a cell phone knowing — you should have
22 known you were going to get caught unless you're
23 just kind of a, just kind of a renegade wild fella
24 out there. It just makes no sense. And then the
25 evidence is all these things you've gotten into,

1 among the feud you said you got going on with the
2 girls, whoever they are. But you know, the — I
3 usually get my law clerk's recommendation on
4 sentences too and rarely do I follow it; but among
5 the — now her note says ten years. She disagrees
6 with the solicitor. She wants me to give you the
7 minimum, and the fella in the back row there is
8 nodding his head in agreement. She said Ms. Barr is
9 hard, she — you know, armed robbery is a serious
10 crime. You have to do 85 percent of the time.

11 Now I'm convinced that there's no way that
12 you would have shot that man that day even though
13 you told him, cursed him out and said freeze, and
14 don't make me do it. There's just no way you would
15 have shot that man. I don't believe you would have
16 done that, though you had your gun and all that. I
17 don't believe, even though he thought you were
18 there's no way I believe that you would have shot
19 and killed that man in the presence of all those
20 people. I think you thought it was a joke, just —
21 and that's why you were laughing and playing, got a
22 Mexican guy who can't speak English, they're just
23 here popped up in Williamsburg County whenever they
24 showed up in Williamsburg County just doing their,
25 you know. They're like the black folks used to be

1 years ago, just treat them any kind of way. And
2 that's sad commentary for you to have that kind of
3 feeling about another human being.

4 MS. PRESLEY: Excuse me, sir.

5 THE COURT: Yes, ma'am.

6 MS. PRESLEY: My daughter-in-law is
7 Mexican. My grandchildren are Mexican. I don't
8 feel as though that's how he felt. I'm just gonna
9 be honest.

10 THE COURT: Yeah, well, I hope you —

11 MS. PRESLEY: I don't think Mexican, I
12 mean, I just don't — if you say he did this, you
13 all are saying he did this, I don't think it's
14 because they were Mexican. I'm just gonna be real.

15 THE COURT: Well, it could — not because
16 they're Mexican but because they don't participate
17 quite often in the system. They'd rather not be
18 involved in, they have to have interpreters to come.
19 They have — you know, they're handicapped. They're
20 in the navigating, and they're some of the hardest
21 working people we have around here. You know, work
22 that people used to do won't do anymore; they're
23 doing it while everybody else is standing around
24 doing nothing like Boston here. You weren't doing
25 nothing, were you? Where were you working?

1 THE DEFENDANT: I was working, working for
2 my momma.

3 THE COURT: That wasn't no job, come on.
4 That wasn't no job. You weren't working no place
5 for your momma.

6 THE DEFENDANT: I was getting paid.

7 THE COURT: Pardon me?

8 THE DEFENDANT: I was getting paid.

9 THE COURT: You were getting paid? Well,
10 that's not a job, okay. You were doing nothing.
11 You were doing nothing that day. But anyway, I'm
12 gonna sentence you to 11 years, you know. My — you
13 know, my — I think a reasonable sentence is 11
14 years. You did the right thing by not accepting
15 Ms. Barr's offer, but the wrong thing by being there
16 robbing that man so I'm gonna give you 11 years.
17 How about that?

18 MS. SHULER: Thank you, Your Honor.

19 THE COURT: How about that, Mr. Boston?
20 Mr. Boston, how about that?

21 THE DEFENDANT: Thank you, Your Honor.

22 THE COURT: All right.

23 THE DEFENDANT: Can I give my mom a hug
24 before I go?

25 THE COURT: Fine with me. It's kind of

1 hard to hug someone with handcuffs behind your back.

2 Come on, give him a hug, momma.

3

4 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA))
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South
Carolina, this 15th day of June, 2015.

S/Frances B. Ray

FRANCES B. RAY, RPR

FORM 5

2017-CP-45-184

STATE OF SOUTH CAROLINA

COUNTY OF WilliamsburgJason Thomas Boston 360656
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF ~~FILED~~ PLEAS1/30/2017
Williamsburg County
Clerk of Court
Kingstree SC

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Evans Correctional Inst
2. Name and location of Court which imposed sentence Williamsburg County General Sessions
3. Name(s) of co-defendant(s) (if any) Latoya Hickson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-45-120 Armed robbery and possession
 - (b) of a fire arm during the commission of a
 - (c) violent crime (Dismissed)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 1, 2015 11 yrs
 - (b) _____

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- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Ineffective Assistance of Counsel

- (a) _____
 (b) _____
 (c) _____

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

- (a) Witness Inconsistent Statements / Trial Counsel
 (b) failed to object thereto.
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? "YES"
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? "No"
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? "No"
 (d) any other petitions, motions or applications in this or any other Court? "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. Direct Appeal
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. S.C. Court OF Appeals
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. No Relief Granted
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

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

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

"No"

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

(a) which grounds have been presented:

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

(b) the proceedings in which each ground was raised:

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective Assistance of Trial Counsel

(b) _____

(c) _____

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

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

18.

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

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

- i. Amanda M. Stulcr
- ii. 125 W main street Kingstree SC
- iii. 29556

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

- i. Jury Trial
- ii. _____
- iii. _____

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

New Trial

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

"No"

STATE OF SOUTH CAROLINA)

County of Williamsburg)

VERIFICATION

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

S/ Jason Boston

SWORN to and subscribed before me this 27
day of January, 2007

S. Outlaw

(L.S.)

Notary Public

My Commission Expires: 2/17/24

**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.

S. Jason B. Smith

Applicant

SWORN or affirmed to and subscribed before me this

27 day of January, 2017

S. Deulen

Notary Public

My Commission Expires: 2/17/24

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Jason Thomas Boston, #360656,

Case No.: 2017-CP-45-00184

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on January 30, 2017¹, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. In May 2014, the Williamsburg County Grand Jury indicted Applicant for armed robbery and possession of a firearm during the commission of a violent crime (2014-GS-45-0120). M. Amanda Shuler, Esquire, represented Applicant. Assistant Solicitor Kimberly V. Barr, Esquire, prosecuted the case. On April 1-2, 2015, Applicant proceeded to trial before the Honorable Clifton B. Newman. The jury found Applicant guilty of armed robbery and not guilty of possession of a firearm during the commission of a violent crime. Judge Newman sentenced Applicant to imprisonment for eleven years for armed robbery.

Applicant filed a timely notice of appeal. Kathrine H. Hudgins, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals dismissed Applicant's

¹ Respondent did not receive application until April 20, 2017.

appeal after review pursuant to Anders² on December 7, 2016.³ State v. Boston, Op. No. 2016-UP-503 (S.C. Ct. App. filed December 7, 2016). The Remittitur was issued on December 28, 2016.

The facts underlying the charges are as follows: on March 14, 2014, the Applicant allegedly robbed the victim at gunpoint. Trial Tr. 6:13-14, 32:11-12. The Applicant allegedly went to the victim's home on the night in question, got out of a vehicle driven by another, pointed a gun at the victim and took the victim's cell phone and wallet. Id. at 32:6-12.

Attached to this Return and incorporated by reference are the records of the Williamsburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel
 - a. Trial Counsel failed to object to witness inconsistent statements.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having

2. Anders v. California, 386 U.S. 738 (1967).

3. Applicant also filed a *pro se* brief raising the same allegations he raises in his PCR application, which the Court of Appeals reviewed and dismissed with the Anders brief.

produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the

State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

V.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claim of ineffective assistance of trial counsel.

[Signature block on following page]

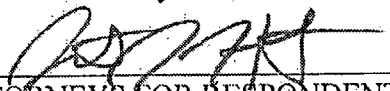
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

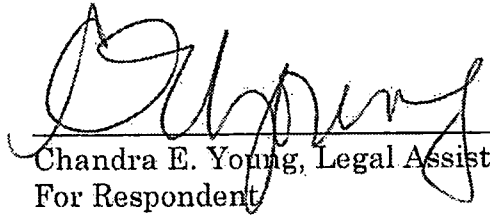
June 22, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	
	)	
	)	2017-CP-45-0184
JASON T. BOSTON, #360656	)	
	)	
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(s) by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
 1400 Laurel Street, Suite 4A.
 Columbia, SC 29201

DATED this 22ND day of June, 2017.


 Chandra E. Young, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

COURT OF COMMON PLEAS

JASON T. BOSTON)
360656

APPLICANT,)

v.)

TRANSCRIPT OF RECORD
17-CP-45-00184

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

July 24, 2017
Sumter, South Carolina

B E F O R E :

THE HONORABLE D. CRAIG BROWN, JUDGE

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

LANCE S. BOOZER, ESQ.
Attorney for the Applicant

JULIE H. COLEMAN, ESQ.
Attorney for Respondent

FRANCES B. RAY, RPR
Circuit Court Reporter

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(There were no exhibits introduced.)

1 MS. COLEMAN: At this time the State would
2 call Jason Boston. This is Jason Thomas Boston
3 versus the State of South Carolina, docket number
4 2017-CP-45-184. Applicant is presently confined to
5 the South Carolina Department of Corrections
6 pursuant to orders of commitment of the Williamsburg
7 County Clerk of Court. In May 2014 the Williamsburg
8 County grand jury indicted applicant for armed
9 robbery and possession of a firearm during the
10 commission of a violent crime. Amanda Shuler,
11 Esquire, represented the applicant. Assistant
12 Solicitor Kimberly Barr, Esquire, prosecuted the
13 case. On April 1st and 2nd, 2015, applicant
14 proceeded to trial before the Honorable Clifton D.
15 Newman. The jury found applicant guilty of armed
16 robbery and not guilty of possession of a firearm
17 during the commission of a violent crime. Judge
18 Newman sentenced applicant to imprisonment for 11
19 years for armed robbery.

20 Applicant filed a timely notice of appeal.
21 Katherine Hudgins, Esquire, at the Office of
22 Appellate Defense perfected the appeal and an Anders
23 brief was filed. The South Carolina Court of
24 Appeals dismissed the appeal and remittitur was
25 issued on December 28th, 2016. Applicant filed a

1 timely application for post-conviction relief on
2 January 30th, 2017, alleging that he was being held
3 in custody unlawfully based on an allegation of
4 ineffective assistance of counsel. Trial counsel
5 failed to object to witness inconsistent statements.

6 The State filed its return June 22nd,
7 2017, and he's present today and represented by
8 Mr. Lance Boozer.

9 THE COURT: All right. Mr. Boozer.

10 MR. BOOZER: Thank you, Your Honor, if it
11 pleases the Court, we go ahead and call Mr. Jason
12 Boston to the stand.

13 THE COURT: Sir, if you'd come around to
14 be sworn please.

15 THE CLERK: Place your left hand on the
16 Bible, raise your right hand. State your name
17 please.

18 THE WITNESS: Jason Thomas Boston.

19 THE CLERK: Thank you. Have a seat
20 please.

21 WHEREUPON,

22 **JASON T. BOSTON,**

23 having been duly sworn by the Clerk, testified
24 as follows:

25 THE CLERK: Please state your full name

AW - J. BOSTON - DIRECT

1 spell your last name for the record.

2 THE WITNESS: Jason Thomas Boston,
3 B-O-S-T-O-N.

4 MR. BOOZER: And Your Honor, before I
5 examine Mr. Boston, I neglected to do this earlier
6 and intended to do so, and I've spoken with the
7 Attorney General's Office about this last week and I
8 believe are consenting to this. I'm making an oral
9 amendment to this PCR application which would
10 include trial counsel was ineffective for failing to
11 call Mary Presley as a witness, as well as trial
12 counsel failed to object to the solicitor's closing
13 argument and specifically pages 193 to 194.

14 THE COURT: All right. Ms. Coleman, any
15 ---

16 MS. COLEMAN: No objection from the State.

17 THE COURT: All right, go ahead.

18 **DIRECT EXAMINATION**

19 BY MR. BOOZER:

20 Q Mr. Boston, how are you doing today?

21 A All right.

22 Q All right. Now, if you would, just keep your
23 voice up so Madam Court Reporter can take down
24 everything you're saying, okay?

25 A Yes, sir.

AW - J. BOSTON - DIRECT

1 Q All right. Mr. Boston, do you know why you're
2 here today?

3 A Yes, sir.

4 Q Why is that?

5 A For my PCR hearing for my case.

6 Q Okay. Now obviously you filed what's called an
7 application for post-conviction relief?

8 A Yes, sir.

9 Q All right. And tell us what you're currently
10 incarcerated for.

11 A Armed robbery.

12 Q And did you go to trial on that?

13 A Yes, sir.

14 Q And what type of sentence did you receive?

15 A Eleven years, 85, Department of Corrections.

16 Q And when is your max-out date?

17 A 2023.

18 Q 2023?

19 A Yes, sir.

20 Q And you and I have certainly discussed what can
21 be done on a PCR case, right?

22 A Yes, sir.

23 Q And just to review that, you understand that the
24 only thing this Court can do for you today is
25 basically just give you a new trial, you understand

AW - J. BOSTON - DIRECT

1 that?

2 A Yes, sir.

3 Q On the original charge?

4 A Yes, sir.

5 Q And you and I have discussed this; but you
6 understand that if you go back to trial, if you're
7 successful today, that there's a possibility or
8 there's a risk that if you get found guilty of a
9 trial that you can get either more time than what
10 you got initially or more time than what you got
11 left to serve on your sentence?

12 A Yes, sir.

13 Q And you understand that?

14 A Yes, sir.

15 Q And it's your desire to still go forward with
16 your request for a new trial?

17 A Yes, sir.

18 Q Okay. Now who represented you at your trial?

19 A Amanda Shuler.

20 Q Amanda Shuler?

21 A Yes, sir.

22 Q All right. When did you first get arrested?

23 A March 18th, 2014.

24 Q And when did Ms. Shuler come on your case?

25 A Right after, I think his name was Darryl Harvin

AW - J. BOSTON - DIRECT

1 had dropped my, dropped my case.

2 Q Okay. You had another lawyer who was
3 representing you?

4 A Yes, sir.

5 Q Who was that?

6 A I think his name was Darryl Harvin or something
7 like that.

8 Q Was it Doward Harvin?

9 A Yes, sir.

10 Q Okay. How many times did you meet with
11 Mr. Harvin?

12 A Once.

13 Q All right. Why did, you said Mr. Harvin dropped
14 your case. Do you know why Mr. Harvin got off of
15 your case?

16 A He told me at my initial appearance or something
17 like that he had my co-defendant as client too.

18 Q Who was your co-defendant?

19 A Latoya Hickson.

20 Q So Mr. Harvin was representing your co-defendant
21 Ms. Hickson?

22 A Yes, sir.

23 Q All right. Do you know how long he had been
24 representing her while he was representing you?

25 A He never told me.

AW - J. BOSTON - DIRECT

1 Q Okay. While Mr. Harvin was representing you did
2 you have any discussions about the case with him?

3 A Yes, sir.

4 Q Okay. Did you kind of go over your defense and
5 your background and all that with him?

6 A I went over my defense and my background. After
7 I did that he told me something about flip a coin
8 'cause he had me on a case load and my co-defendant
9 on a case load.

10 Q What did you take that to mean, "flip a coin"?

11 A He was like, flip a coin, or something like that.
12 If I flip a coin heads up he won't represent me or
13 he gonna represent my co-defendant. Then he was
14 like, he can't do it anyway. He was like, 'cause he
15 already talked to my co-defendant too and he decided
16 to take her case.

17 Q And he didn't tell you all this until after you
18 had discussed the case with him?

19 A Yes, sir.

20 Q Okay. And Miss Latoya Hickson, was she a pretty
21 big witness at your trial?

22 A Yes, sir, she was a witness at my trial.

23 Q Okay. So then after Mr. Harvin comes off your
24 case that's when Ms. Shuler comes on?

25 A Yes, sir.

AW - J. BOSTON - DIRECT

1 Q How many times do you think you met or spoke with
2 Ms. Shuler?

3 A Probably like twice.

4 Q All right. What would you two guys talk about
5 when you would meet or speak?

6 A She asked me about my case, and she pulled me
7 back from SCDC 'cause I was on an unrelated charge.
8 She asked me about my case. We talked about my
9 case. I went back to SCDC. When I, when they
10 paroled me out to Williamsburg County she called me
11 and told me I was going to trial.

12 Q All right. Now let's talk about your allegations
13 specifically. You've got an allegation that your
14 lawyer failed to object to inconsistent witness
15 testimony?

16 A Yes, sir.

17 Q All right. And now by amendment you've alleged
18 that your lawyer was in effective for failing to
19 call Mary Presley as a witness and also that your
20 lawyer failed to object to the Solicitor's closing
21 argument. Are those your allegations?

22 A Yes, sir.

23 Q All right. Now prior to your trial — and was
24 there ever a plea offer?

25 A There was a plea offer for 15 years, 85.

AW - J. BOSTON - DIRECT

1 Q Okay, and what was your response no that?

2 A I denied it.

3 Q Okay. Were you wanting to go to trial the entire
4 time in this case?

5 A No, sir, 'cause when I was on — when Darryl
6 Harvin talked to me that day he was saying he was
7 going to try to get it dropped to a lesser charge or
8 something like that.

9 Q Let's talk about what you and Ms. Shuler were
10 discussing. Did you call any witnesses at your
11 trial on your behalf? Did anyone testify on your
12 behalf?

13 A No, sir.

14 Q All right. When you met with Ms. Shuler what
15 sort of defenses did you two discuss?

16 A We was gonna use my mom as a alibi witness.

17 Q Okay. Did you tell Ms. Shuler that?

18 A Yeah, yes, sir.

19 Q All right. When you say an alibi witness, what
20 did you tell Ms. Shuler, where did you tell her you
21 were when this crime supposedly happened?

22 A At my mom's house.

23 Q Okay. And who's your mother?

24 A Mary Presley.

25 Q All right. Do you recall about — was this

AW - J. BOSTON - DIRECT

1 incident, was it back on March 14th? Is that when
2 that, when it was alleged to have occurred?

3 A I think it was somewhere around about the time.

4 Q And do you know when they were alleging it
5 occurred? Was it somewhere in the evening around 8
6 or 8:30?

7 A They said it happened around about, I think, 8,
8 7:30, 8:00.

9 Q Okay. And going back to that day do you remember
10 sort of that day in your mind?

11 A Yes, sir.

12 Q All right. When were you at your mother's house?

13 A Around about from 6:00 in the evening till like,
14 11, 11:30 at night.

15 Q What were you doing at your mom's house?

16 A I was helping her do something around the house
17 'cause I had just got off work working for her.

18 Q Okay. So you were at her house doing some work?

19 A Yes, sir.

20 Q Did you eat dinner over there or?

21 A Yes, sir.

22 Q All right. And did you go anywhere from the time
23 you got to your mom's house to the time that you —
24 did you leave your mom's house later on that night?

25 A No, sir, I went home. I went home around about

AW - J. BOSTON - DIRECT

1 11 or 11:30.

2 Q When you say home, you didn't live with your mom?

3 A No, sir.

4 Q Where did you stay then?

5 A In Scranton community right out of Lake City.

6 Q All right. So what time did you leave to go to
7 your house then?

8 A Around about 11.

9 Q Okay. And during that time from 6 till 11, did
10 you leave your mother's house?

11 A No, sir.

12 Q Was your mom there to your knowledge the whole
13 time?

14 A Yes, sir.

15 Q All right. Did you tell Ms. Shuler that?

16 A Yes, sir.

17 Q Okay. And what did she tell you?

18 A She said she was going to call my mom as a alibi
19 witness, but then later on the trial she changed her
20 mind saying she wanted the closing argument.

21 Q Okay. Do you know if Ms. Shuler actually spoke
22 with your mother?

23 A No, sir.

24 Q You don't know?

25 A I don't know.

AW - J. BOSTON - DIRECT

1 Q Okay. Now like you were saying, did she call
2 your mother to testify as a witness at trial?

3 A She -- I can say she putting her on the docket or
4 something like that for her to testify.

5 Q Okay. And during your trial -- well, let me ask
6 you this, did you think she was going to testify?

7 A Yes. Yes, sir.

8 Q And, in fact, do you recall -- and Your Honor,
9 I'm referencing page 239 of the transcript. Do you
10 recall your mother speaking after you had been found
11 guilty on the record?

12 A Yes, sir.

13 Q All right. And she was having some conversation
14 with Judge Newman?

15 A Yes, sir.

16 Q All right. Do you recall that basically Judge
17 Newman asked, wanted to know why she didn't testify?

18 A Yes, sir.

19 Q And on page 239 at line 20, beginning at like 21,
20 do you recall your lawyer saying, Your Honor, she
21 didn't testify because we made a judgment call about
22 whether we wanted to lose our right to argue last
23 and we did not want to lose the right to argue last.
24 Do you remember that?

25 A Yes, sir.

AW - J. BOSTON - DIRECT

1 Q Did you have any discussion during the trial with
2 Ms. Shuler about what it meant to have last argument
3 versus calling witnesses?

4 A Not really. Only thing she told me if something,
5 like, if my mom testified that the State would have
6 the last argument; but if my mom didn't testify,
7 something about she would have the last argument.

8 Q Are you a lawyer?

9 A No, sir.

10 Q Okay. How old are you?

11 A I'm 34.

12 Q Okay. But you don't have any legal training?

13 A No, sir.

14 Q Do you understand what all of that means to have
15 the last argument versus ---

16 A No.

17 Q ---hang on a second --- versus calling a witness?

18 A No, sir.

19 Q Okay. Did you want your mother to testify?

20 A Yes, sir.

21 Q And you thought she was going to testify?

22 A Yes, sir.

23 Q Were there other folks that you thought were
24 gonna testify as well?

25 A Yes, sir.

AW - J. BOSTON - DIRECT

1 Q Who was that?

2 A My female friend. It was Zalandra (ph) Brown.

3 Q Okay. Now you've also, as we discussed you've
4 alleged — let me ask you this, had you ever had any
5 discussions with Ms. Shuler after your trial about
6 why she didn't call your mom?

7 A Not, not really, no, sir.

8 Q Okay. Now with your allegation regarding the
9 Solicitor's closing argument, do you understand that
10 that's a legal argument that I'll be presenting to
11 the Court and through your former counsel?

12 A Yes, sir.

13 Q Okay. Now we've discussed a number of things so
14 far. I just want to make sure we've covered all of
15 your application, and I think that we have but this
16 is certainly your day in court. Is there anything
17 else that we've not covered that you would like to
18 bring to this Court's attention?

19 A Not, not really.

20 MR. BOOZER: Your Honor, that's all the
21 questions I have at this time.

22 Please answer any the State may have for
23 you.

24 THE COURT: Ms. Coleman.

25 MS. COLEMAN: Thank you, Your Honor.

AW - J. BOSTON - CROSS

CROSS-EXAMINATION

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BY MS. COLEMAN:

Q Hi, Mr. Boston.

A Hi.

Q How many times did you say you met with your attorney before going to trial?

A I think it was like twice.

Q Twice? Do you recall reviewing the discovery with your attorney before the trial?

A I think so.

Q Did you know that your co-defendant was gonna testify against you?

A Not till the day of my trial.

Q Okay. Did you discuss the alibi defense with your attorney?

A Yes, ma'am.

Q And your mother was on the witness list at trial, right?

A Yes, ma'am.

Q So she was ready to go forward and testify that day?

A Yes, ma'am.

Q Okay. But she made the, your attorney made the decision to not to put her up in order to get the last argument, right?

AW - J. BOSTON - CROSS

1 A Yes, ma'am.

2 Q And she explained that to you?

3 A Yes, ma'am.

4 Q Okay. You chose to plead the fifth and not
5 testify at the trial, right?

6 A Yeah, 'cause my attorney told me to.

7 Q Okay. But the judge told you that you had the
8 right to present a defense on your behalf, right,
9 and you chose not to?

10 A Yes, ma'am.

11 Q Okay. Solicitor Barr offered you a 15 year plea
12 deal, right?

13 A Yes, ma'am.

14 Q And it was, was it your decision to go to trial
15 instead of pleading guilty?

16 A I denied, I denied the plea, but it wasn't my
17 decision to go to trial.

18 Q Okay. But you ended up getting 11 years —

19 A Yes, ma'am.

20 Q —after the trial, right?

21 A Yes, ma'am.

22 Q Which was better than the 15 year deal?

23 A Yes, ma'am.

24 Q Okay.

25 MS. COLEMAN: Beg the Court's indulgence.

AW - J. BOSTON - CROSS

1 BY MS. COLEMAN:

2 Q Now you mentioned that you were at your mother's
3 house starting from about 6 p.m. that day; is that
4 right?

5 A Yes, ma'am.

6 Q And what exactly were you doing during that time?

7 A I just had, I just had got off work for helping
8 her at her mobile home park doing maintenance work
9 and went to her house to help her do some things
10 around the house.

11 Q What were you doing at her house specifically, do
12 you remember?

13 A She had me moving stuff around, I can't remember.

14 Q Okay. Did you eat dinner that night?

15 A Yes, ma'am.

16 Q Were you at, you ate at her house?

17 A Yes, ma'am.

18 Q What did you eat?

19 A It was so long ago I don't even remember.

20 Q Okay. But you remember leaving around 11 or
21 11:30 that night?

22 A Yes, ma'am.

23 Q Okay. And you did not see your co-defendant that
24 night at all?

25 A I seen, I seen her earlier that day, but I didn't

AW - M. PRESSLEY - DIRECT

1 see her that night.

2 Q What time that day did you see her?

3 A Around about probably like 3:00.

4 Q Okay. And where was that?

5 A She came down the street, my mom and them.

6 Q Did you go with her to the restaurant where this
7 crime happened that day?

8 A I went with her to the restaurant that day, but
9 not to the victim home.

10 Q Okay. And I should clarify, I'm sorry, the crime
11 actually happened at the victim's home; but earlier
12 that day your co-defendant had gone to the
13 restaurant that the victim owned; is that right?

14 A Yes, ma'am.

15 Q And you were with her then?

16 A Yes, sir — I mean, yes, ma'am.

17 Q And that was around 3:00?

18 A Yes, ma'am.

19 Q Okay, thank you. Nothing further.

20 THE COURT: Anything further, Mr. Boozer?

21 MR. BOOZER: Nothing further, Your Honor.

22 THE COURT: Sir, you may step down. Thank
23 you.

24 Call your next witness.

25 MR. BOOZER: We call Ms. Mary Pressley to

AW - M. PRESSLEY - DIRECT

1 the stand.

2 THE CLERK: Place your left hand on the
3 Bible, raise your right hand. State your name
4 please.

5 THE WITNESS: Mary Louise Boston Pressley.
6 WHEREUPON,

7) **MARY PRESSLEY,**
8 having been duly sworn by the Clerk, testified
9 as follows:

10 THE CLERK: Thank you. Have a seat up
11 here please. Please state your full name, spell
12 your last name for the record.

13 THE WITNESS: Mary Louise Boston Pressley,
14 B-O-S-T-O-N P-R-E-S-S-L-E-Y.

15 **DIRECT EXAMINATION**

16 BY MR. BOOZER:

17 Q Ms. Boston, how are you?

18 A Just fine. Yourself?

19 Q I'm doing fine, thank you for asking. You sound
20 good. I don't think we'll have a problem hearing
21 you. Keep speaking the way that you are, okay?

22 A Yes, sir.

23 Q Ms. Pressley, do you know Jason Boston?

24 A Yes, sir.

25 Q Okay. Who is Jason Boston?

AW - M. PRESSLEY - DIRECT

1 A He's my son, my oldest son.

2 Q He's your son. You had him from day one until
3 today, right?

4 A Yes, sir.

5 Q All right. Now are you aware that Mr. Boston had
6 a trial for a charge of armed robbery?

7 A Yes, sir, I am.

8 Q Were you present at that trial?

9 A Yes, sir, I was.

10 Q Okay, and let's get specific though. Were you
11 actually in the courtroom during most of that trial?

12 A No, sir, I was not.

13 Q Where were you?

14 A I was in a -- well, I was in a room upstairs and
15 then back and forth outside to my car and back in.

16 Q Okay. Why weren't you in the courtroom?

17 A Because his attorney at the time said that being
18 that I was going to testify I was not allowed to be
19 in the courtroom at the time.

20 Q Okay. So you were anticipating being called as a
21 witness in the case?

22 A Yes, sir.

23 Q And who was going to call you as a witness? Was
24 Ms. Shuler going to call you?

25 A Yes, sir.

AW - M. PRESSLEY - DIRECT

1 Q Okay. And do you know who Ms. Amanda Shuler is?

2 A Yes, I met her the day of the trial and one time
3 before that.

4 Q Okay, you met with her prior to the trial?

5 A Yes, sir. Well, no, sir, I'm sorry. I talked
6 with her on the phone. We actually had a phone
7 conversation about the trial.

8 Q Okay. What did you two discuss?

9 A About where Jason was at that day and that they
10 offered him 15 years, but once we went to trial that
11 she was going to try I guess to get a lesser charge
12 or, and that's about it. Just where he was at
13 during that, during the time the crime was supposed
14 to have happened.

15 Q Okay. And do you recall, was this back in
16 March 14 of 2014?

17 A Yes, sir, it was.

18 Q All right. And what did you tell Ms. Shuler?
19 Where did you tell her that Mr. Boston was?

20 A Well, I told her that he was at my house later
21 that night but that during that day my husband and
22 I, we have a rental property and Jason usually does
23 our maintenance work at the rental property and he
24 was out on that property the majority of the day. I
25 mean, I didn't, I guess he left at 3 like I said

AW - M. PRESSLEY - DIRECT

1 earlier. During the majority of that day because my
2 sister and I, we're usually out there as well. And
3 later on that afternoon I asked him, I had been
4 asking him for a couple of days to come and help me
5 move some furniture out of my house into the storage
6 in back of my house and to rake my yard because I
7 live on a corner lot and people tend to come by and
8 throw trash in it. And I told him, I said, Jason, I
9 need you to come and clean up this trash that
10 they're throwing as they ride by.

11 Q Okay. And so he was doing some work for you at
12 the house?

13 A Yes, sir.

14 Q Do you know about what time he may have gotten to
15 your house?

16 A It was a little before 6. And I think ---

17 Q Did you tell Ms. Shuler that?

18 A Yes, sir, because I'm also -- at that time I was
19 a student and I was online doing some, submitting a
20 paper that I had to submit, and when he came in he
21 was talking loud. I told him, son, wait a minute,
22 I'm busy, and then he went into the one of the rooms
23 that he usually go in whenever he comes by and he
24 was sitting in there on the phone, I don't know who
25 he was talking to. He was on the house phone at

AW - M. PRESSLEY - DIRECT

1 that time. And then when I finished the paper
2 'cause it had to be submitted by 6:15 so once I
3 submitted it, the paper, and that's when I came out
4 and asked him, I said, son, have you went outside
5 and picked up the trash like I asked you to. And
6 ---

7 Q Okay. How long do you think he was at your house
8 that evening?

9 A It was till late. It was because he kept saying,
10 well, mom, I'm hungry, I'm hungry, so I did cook
11 dinner. And after I cooked we were just sitting
12 'cause I was complaining to him about my baby boy
13 who lives in Texas, and I was saying I wish he would
14 come closer to home and we were just sitting around
15 talking. And after we ate it was about, it was
16 late, it was.

17 Q Do you know about how late it might have been
18 when he left your house?

19 A Oh, goodness. Around about 11, 10:30, 11,
20 somewhere in there.

21 Q So from 6 p.m. or thereabout until about 11, was
22 he at your house?

23 A Yes, sir. In between my house and my sister
24 house is right behind mine so he was between my
25 house and there. He was standing in the yard. So

AW - M. PRESSLEY - DIRECT

1 we went outside because my, I let my puppy out and
2 he ran off and we were outside trying to get the
3 puppy to come back into the house.

4 Q At any time to your knowledge did Mr. Boston, or
5 Jason, ever leave your house?

6 A Not until he got ready to go home.

7 Q Later that evening around 11:30 —

8 A Yes, sir. Later, yes, sir.

9 Q Okay. What you have testified to today in court,
10 did you tell all that to Ms. Shuler?

11 A Yes, ma'am — I mean, I'm sorry, yes, sir.

12 Q You can say ma'am in a moment when you answer her
13 questions. When you, what did Ms. Shuler tell you?

14 A Well, once we came back in she said that she was
15 not gonna let me testify, and this might have been
16 about —

17 Q Let me stop you. You jumped forward to the
18 trial.

19 A Okay, I'm sorry.

20 Q But how about beforehand, did you think that you
21 were gonna be a witness and testify?

22 A Yes, sir, I did.

23 Q Were you under subpoena that day?

24 A I don't recall to be honest.

25 Q Okay.

AW - M. PRESSLEY - DIRECT

1 A I don't recall.

2 Q Would you have needed a subpoena?

3 A No, sir, no.

4 Q You would have been there voluntarily?

5 A Yes, sir.

6 Q All right. And what you have testified to today
7 in court, is that what you would have testified to
8 at trial had you been called as a witness?

9 A Yes, sir, I would have.

10 Q All right. And you understand that you're under
11 oath today just as you would have been at trial?

12 A Yes, sir.

13 Q Okay. Now did you have any discussion with
14 Ms. Shuler during the trial about you testifying?

15 A Yes, sir. She asked about, well, the history of
16 between, I guess, the family; and we just, she just
17 told me, said she was gonna try her best to get him
18 a lesser, I guess lesser time.

19 Q Did you have any discussions specifically with
20 Ms. Shuler about whether you were going to testify
21 or not during the trial?

22 A No, sir, 'cause I thought I was going to testify
23 and that's when I was told up until she said
24 about — I don't know anything about last, speaking
25 last. Up until that time I actually thought I was

AW - M. PRESSLEY - DIRECT

1 going to testify.

2 Q Okay. Now during the — after the trial and
3 after Jason had been found guilty, do you recall
4 that you had some discussions on the record with the
5 judge?

6 A Yes, sir.

7 Q All right.

8 MR. BOOZER: And specifically, Your Honor,
9 I'm looking at page 238 of the transcript.

10 THE COURT: All right.

11 BY MR. BOOZER:

12 Q Do you recall making some statements saying, one
13 of which that you made is, "All I know is Latoya has
14 children with his friends, that's all I know. I
15 have nothing harmful to say about Latoya. I have
16 nothing harmful to say about my child and I know
17 there's a lot of lieing that went on, I do know that
18 much." And then further on down the Court asked
19 you, why didn't you come and tell the jury that
20 during the trial, you're on the list of witnesses.
21 And then it goes on a little bit further. But do
22 you recall that?

23 A Yes, sir, I do.

24 Q So you're telling the judge you thought you were
25 going to be there to testify?

AW - M. PRESSLEY - DIRECT

1 A Yes, sir, that's I was told.

2 Q And then later on your son's lawyer indicates
3 that she made a -- we made a judgment call about
4 whether we wanted to lose the right to argue?

5 A Yes, sir.

6 Q All right. When you were talking about that
7 there's a lot of lieing that was going on, you
8 weren't even in the courtroom during the trial, were
9 you?

10 A No, sir, I was not.

11 Q Okay. Now do you know who Latoya Hickson is?

12 A Yes, sir, I do.

13 Q Who is she?

14 A She was -- well, she's dating one of my other
15 sons. She was dating one of my sons.

16 Q Okay. Now you explained it to me and I do
17 understand there's a lot of family dynamic going on,
18 right?

19 A Yes, sir.

20 Q Okay. If you could, explain sort of why you were
21 saying, you know, there's a lot of lieing going on.

22 A Okay. Well, there's been -- her sister and I,
23 well, her sister has --

24 Q Latoya's sister?

25 A Yes. I had to have a restraining order taken out

AW - M. PRESSLEY - DIRECT

1 against her because she, they would come at my
2 house. I could be standing on the porch, they would
3 snap pictures. She'd throw things in my yard. She
4 called police on me. She ran my car off the road
5 with her grandchildren in it one time. And Latoya
6 and my nieces, they stayed into something. We had
7 to have Latoya arrested for fighting with my nieces
8 and -- well, and she has nine children so we both
9 tried to, I've always tried to 'cause I'm the mom.

10 Q Where are those nine children?

11 A In -- well, three of them are at my home.

12 Q Three of Latoya's children were living with you?

13 A Yes, sir.

14 Q And why do they live with you?

15 A Because she told me that they were my son's
16 children, the two of them.

17 Q Your son Jason or the other son?

18 A No, I -- my son Jeshay [ph].

19 Q Okay.

20 A She told me she was living with him at the time
21 when she got pregnant. She said that they were his
22 children. So when DSS came in I went out my way to
23 find homes for the nine children to keep DSS from
24 taking them from her because I thought -- two of
25 them, the twins, he had a set of twins, were my

AW - M. PRESSLEY - DIRECT

1 grandchildren. Well, they weren't, I mean, I knew
2 from the time they came from the hospital they
3 weren't, but they were children. And she just, she
4 does fraud. I mean, she does just ----

5 Q Did you tell Ms. Shuler this sort of relationship
6 that y'all had with Latoya?

7 A Yes, sir.

8 Q And what you've explained to me, did you explain
9 that to Ms. Shuler ----

10 A Yes, I did.

11 Q ----prior to trial?

12 A But the children weren't here, the last two
13 weren't here yet.

14 Q Had Latoya accused any of your family members or
15 specifically Mr. Boston or your other son with
16 anything in the past?

17 A Yes, sir.

18 Q So this is something that she had done before?

19 A Yes, sir, it is.

20 Q Okay. And you explained that to Ms. Shuler?

21 A Yes, sir, I did.

22 Q And is that what you were talking about when you
23 were saying, telling the judge that you just know
24 there was a lot of lieing going on?

25 A Yes, sir, uh-huh. Because she came to me, Latoya.

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1 did, and said that she -- they told her that it was
2 either she would go to jail or Jason and that being
3 that she had children, she didn't want to tell them
4 that Jason wasn't with her that day; but she was
5 told she had to in order for her not to get any
6 time.

7 Q Did you tell Ms. Shuler that?

8 A Yes, I did.

9 Q What was her response to all this?

10 A I don't remember to be honest; I truly don't.

11 Q Okay. Did Miss Latoya, did she tell you that
12 before the trial after that?

13 A This was actually during the time trial was going
14 on. She came downstairs; we were at outside. And
15 she kept saying I want, can I talk to you, can I
16 talk to you. I told her, no, that we had nothing to
17 talk about. 'And that's when she, actually she told
18 my sister as well the same thing that she was told
19 that's what she had to do.

20 Q Okay. Did you tell that to Ms. Shuler during the
21 trial, or did you have an opportunity to tell her if
22 you didn't?

23 A I don't know. No, I don't think. I don't know
24 to be honest.

25 Q Okay.

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1 MR. BOOZER: Beg the Court's indulgence,
2 Your Honor.

3 THE COURT: Yes, sir.

4 BY MR. BOOZER:

5 Q Ms. Pressley, that's all the questions I have for
6 you. Thank you for being here. If the State has
7 any questions, please answer those.

8 A Yes, sir.

9 THE COURT: Ms. Coleman.

10 MS. COLEMAN: Thank you, Your Honor.

11 **CROSS-EXAMINATION**

12 BY MS. COLEMAN:

13 Q You said your son was out in the yard picking up
14 trash for you that afternoon?

15 A Yes, sir. Yes, ma'am, I'm sorry.

16 Q When he was in the yard how far away from the
17 house was he?

18 A Oh, right up close to my house. It's only 1200
19 square foot so it's not much room on the outside
20 'cause...

21 Q Okay. Could you see him for —

22 A Yes, ma'am.

23 Q Were you inside the house?

24 A No, ma'am. I have a screened in porch on the end
25 and I was sitting, actually sitting there with my

AW - M. PRESSLEY - REDIRECT

1 laptop basically.

2 Q So you could see him?

3 A Yes, ma'am.

4 Q Were you with him the entire time he was at the
5 your house that night?

6 A Yes, ma'am, except for when I went, I did go to
7 the restroom so, yes, ma'am.

8 Q Okay. Now you're his mother, right?

9 A Yes, ma'am, I am.

10 Q And you don't want anything bad to happen to him
11 obviously?

12 A No, ma'am, I don't.

13 Q So you were willing to testify at trial to help
14 him out?

15 A Yes, ma'am.

16 Q Okay. And I don't ask you this question to
17 embarrass you because I don't know the answer to it
18 but —

19 A That's fine.

20 Q —do you have a criminal record?

21 A Oh, no, ma'am.

22 Q Okay, so no convictions from the last ten years?

23 A No, ma'am.

24 Q Okay. Thank you. No further questions.

25 A Yes, ma'am.

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1 THE COURT: Mr. Boozer, anything further?

2 MR. BOOZER: Just briefly.

3 **REDIRECT EXAMINATION**

4 BY MR. BOOZER:

5 Q Were you willing to testify not only because he's
6 your son but were you willing to testify because
7 those events were events that happened?

8 A Yes, sir.

9 Q Okay, thank you. No further questions.

10 THE COURT: Hold on just a minute.

11 THE WITNESS: Yes, sir.

12 THE COURT: Ms. Coleman, anything else?

13 MS. COLEMAN: No, nothing else.

14 THE COURT: You may step down.

15 THE WITNESS: Thank you, sir.

16 THE COURT: Any other witnesses,

17 Ms. Boozer?

18 MR. BOOZER: We'll go ahead and call

19 Ms. Shuler to the stand.

20 THE COURT: All right.

21 THE CLERK: Place your left hand on the
22 Bible, raise your right hand. State your name
23 please.

24 THE WITNESS: Mary Amanda Harrelson
25 Shuler.

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1 WHEREUPON,

2 **AMANDA SHULER,**

3 having been duly sworn by the Clerk, testified
4 as follows:

5 THE CLERK: Please state your full name,
6 spell your last name for the record.

7 THE WITNESS: Mary Amanda Harrelson
8 Shuler, S-H-U-L-E-R.

9 **DIRECT EXAMINATION**

10 BY MR. BOOZER:

11 Q Ms. Shuler, how are you?

12 A I'm doing well, thank you.

13 Q Yes. Do you recall representing Mr. Jason
14 Boston?

15 A I do.

16 Q And how did you come about representing
17 Mr. Boston?

18 A I was appointed to represent Mr. Boston after his
19 case was reassigned to me through the Public
20 Defender's Office.

21 Q Okay. Do you know why it was reassigned to you?

22 A If I'm not mistaken, Mr. Harvin was appointed to
23 represent his co-defendant Ms. Hickson and him so
24 one of the cases had to be reassigned.

25 Q Did you have any discussion with Mr. Boston about

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1 any of his interactions with Mr. Harvin prior to
2 your representation?

3 A I don't recall any specifics. I don't know if it
4 was from him or from Mr. Harvin. It's my
5 understanding that he had never met with Mr. Harvin.

6 Q Okay. Now do you know about how many times you
7 met with Mr. Boston prior to the trial?

8 A I met with him in December -- not December, in
9 January, and we went over his discovery at that
10 time. We met again in February; and then whenever
11 he was released from the Department of Corrections
12 and sent back to Williamsburg County, we met several
13 times before his trial.

14 Q Okay. What was sort of -- let me ask you this,
15 was there a plea offer prior to the trial?

16 A There was.

17 Q Do you recall what that was for?

18 A 15 years for a plea to armed robbery.

19 Q And what was his response to that?

20 A I didn't do this.

21 Q Well, was he adamant that he was not involved in
22 this, wanted a trial the whole time?

23 A Pretty much.

24 Q Okay. So this is something y'all were gearing up
25 to basically be inevitable trial?

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1 A He said to me at one point that I've always
2 admitted to what I've done, I didn't, if I'd done it
3 in past I would have pled guilty. If I would have
4 done this I would have pled guilty to it and taken
5 my time like a man.

6 Q Okay. What was the trial strategy in this case?

7 A To point out all the inconsistencies in the
8 co-defendant's, in her rendition of the facts.

9 Q And so, I guess, the whole strategy around this
10 case centered on discrediting, would it be
11 Ms. Hickson?

12 A Yes.

13 Q And was she kind of a main witness for the State
14 in this case?

15 A She was.

16 Q And the alleged victim, he testified?

17 A He did.

18 Q Okay. And he was not able to identify
19 Mr. Boston, was he?

20 A He was not.

21 Q Okay. Was anyone other than Ms. Hickson able to
22 identify Mr. Boston?

23 A I don't think so.

24 Q All right. Now were you aware -- let me ask you
25 this, what were sort of the general allegations by

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1 way of the State in this case? What were they
2 alleging?

3 A Earlier in the day of the alleged robbery
4 Mr. Boston was with Ms. Hickson and another lady. I
5 think her name was Sharonda Burgess. That's going
6 off my memory. They went, they had been together
7 that day. They went to a Mexican restaurant in Lake
8 City where Miss Hickson confronted the victim's wife
9 about some sort of -- there was some issue about her
10 boyfriend's truck, and there was an altercation in
11 the restaurant. Ms. Hickson slashed the tires on a
12 car in the lot, and they exchanged words and left
13 and rode around the remainder of the day. And then
14 it was alleged that they went to the victim's house
15 in Cades, which is in Williamsburg County, and
16 supposedly Ms. Hickson went there to apologize at
17 which time supposedly Mr. Boston said, I have to use
18 the restroom, stepped out of the car, was told to
19 use the bushes, and then supposedly robbed the
20 victim at gun point and took his cell phone and his
21 wallet.

22 Q Okay.

23 A At later time day he had, supposedly had a cell
24 phone. Mr. Tober, who was the boyfriend, supposedly
25 got the cell phone back and gave it to law

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1 enforcement.

2 Q So this was really, like you said earlier, this
3 is about the credibility of these folks?

4 A Absolutely.

5 Q Okay. Now at the trial did you have some
6 witnesses that you were considering or intending to
7 present on behalf of Mr. Boston?

8 A We filed a notice of alibi and we had discussed
9 calling Ms. Pressley, his mother, and I believe her
10 name, his girlfriend, who I believe her name was
11 Sharonda Burgess.

12 Q And were his mother Ms. Presley and then his
13 girlfriend, were they present at the trial?

14 A I don't recall if — the girlfriend's name was
15 Zalandra Brown. I don't recall if Miss Brown was
16 present, but I'm pretty sure she was under subpoena.

17 Q How about Ms. Presley?

18 A Ms. Pressley was present, obviously not in the
19 courtroom due, I believe, so the witnesses were
20 sequestered.

21 Q Okay. Now prior to trial did you have any
22 discussions with Ms. Pressley?

23 A Spoke with Ms. Pressley several times.

24 Q Okay. And what was your understanding of what
25 she would have testified to that day?

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1 A She would have testified that Ms. Boston was with
2 her, and she told me as my notes reflected that
3 Jason left her house about 8 or 8:45. And so
4 because of the discrepancy in the time frame
5 whenever she told me she had left, I was
6 uncomfortable with calling her to the witness stand.

7 Q Okay. What time was the crime alleged to have
8 occurred, do you recall?

9 A I don't recall right off. I have to look at the
10 incident report.

11 Q All right. Did you have any discussion with Ms.
12 Pressley about sort of the pre-existing relationship
13 between Latoya Hickson and the Boston family?

14 A I did.

15 Q Okay. Were you in the courtroom this morning for
16 Ms. Pressley's testimony?

17 A I was.

18 Q Okay. And her statements talking about some of
19 the issues that existed between the family and
20 Ms. Hickson, was that consistent to what she had
21 told you before?

22 A There were some other details. Ms. Zalandria
23 Brown's parents didn't like Mr. Boston, and she was
24 also the co-defendant, Ms. Hickson's, niece so there
25 was a lot of family feuding going back and forth.

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1 Because of what she told me I requested incident
2 reports from Florence County, Lake City,
3 Williamsburg County, and looked over those.

4 Q Okay. But your understanding of it was that
5 there was some serious history between these two
6 families, or at least between Ms. Hickson and the
7 Boston family?

8 A Yes, sir.

9 Q Okay. Now going back and looking at that trial
10 transcript itself, do you recall Ms. Pressley having
11 some discussion or on the record conversation with
12 the trial court?

13 A Yes.

14 Q All right. And she goes on, in fact, on page 238
15 to tell the Court about how she knows that there's a
16 lot of lying that went on and then the Court asked
17 why didn't you come in and tell the jury that. And
18 then on page 239 you indicate you made a judgment
19 call about whether we wanted to lose our right to
20 argue last and we didn't want to lose that right.
21 Sort of tell me what was sort of going on and why
22 you made that decision.

23 A Jason and I discussed that. We discussed whether
24 we were gonna put up any testimony on his behalf;
25 and based on those discussions he decided that there

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1 was enough inconsistencies in the witness'
2 statements that we did not need to call his mother.
3 That, in connection with the mom's recollection of
4 what time he left her home and there being a gap in
5 time, we were not comfortable with putting her on
6 the witness stand because we did not think that it
7 would help him.

8 Q Okay. Now you agree with me, but let's say they
9 allege the crime happened at 8 or 8:30 and let's say
10 that -- let's take your testimony today and say that
11 she indicated he left the house at 8 or 8:30, around
12 that, or 8:45 I think what you may have said. Would
13 you agree with me that that's all pretty close in
14 time, there can be some variances based on memory
15 and recollection?

16 A I guess so.

17 Q Okay. It's not like she's saying he was at my
18 house at 4:00 and then I didn't see him again until
19 the next day, right?

20 A That wasn't what she told me.

21 Q Exactly. I mean, that would have been a much
22 worse scenario because then --

23 A Absolutely.

24 Q Correct? And this certainly was a credibility
25 issue. Your whole trial strategy was to discredit

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1 Ms. Hickson, right?

2 A That's right.

3 Q Do you think it would have added to the case to
4 also have Ms. Hickson be able to come in and, of
5 course, subject to objections, testify about certain
6 motivations that Ms. Hickson may have or tell the
7 jury, educate the jury about this relationship with
8 Ms. Hickson's had with this family?

9 A We discussed, discussed those issues, but there
10 was no — from an evidentiary standpoint I did not
11 have an avenue to get that into evidence.

12 Q Well, you could have just asked her; then the
13 State could have maybe refuted if there were records
14 or whatnot, right?

15 A I suppose I could have.

16 Q Okay. Do you think that that would have been
17 more beneficial than just having last argument?

18 A There was not an avenue for which that I could
19 get that information or testimony into the record.

20 Q Well, you — do you think you could have had Ms.
21 Pressley testify to this relationship that she had
22 with Ms. Hickson based on firsthand personal
23 knowledge?

24 A I suppose I could have.

25 Q Okay. Let me look at and talk — well, let me

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1 ask you this, the discussion you had with Jason
2 about saving last argument, do you recall
3 specifically sort of what y'all talked about or what
4 y'all walked through in reaching that decision?

5 A We discussed his prior criminal history. We
6 discussed the events of the day. And because of his
7 prior criminal history we decided -- well, he
8 decided because I never make that decision. That's
9 not my decision to make; that's his decision. He
10 decided that he would not testify.

11 Q Well, not specifically about him not testifying.
12 I'm sorry, if that's what I said. I meant for
13 saving last argument and not calling additional
14 witnesses, not him, but mom or girlfriend or
15 whoever.

16 A I don't know that I understand your question.

17 Q Sure, it may have been a bad question. When you
18 said you made a discussion with Jason about saving
19 last argument, did you have discussion with Jason
20 about whether to call witnesses on his behalf or to
21 save the last argument?

22 A We had a discussion about whether to call
23 witnesses on his behalf. The reason that I stated
24 what I stated on the record was that I did not want
25 to tell the trial judge at that time that there was

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1 a gap in time that Jason could not be accounted for.
2 And rather than that being stated on the record, I
3 cut that off. The decision to not call the
4 witnesses was not based upon saving last argument
5 alone. That factored into that decision making
6 process, but by no means was that the only reason
7 that decision was made.

8 Q Okay. I want to skip over to page 193 of the
9 trial transcript. Have you reviewed the transcript?
10 Do you have a copy with you?

11 A I have a copy.

12 Q Okay. Have you reviewed it prior to today?

13 A I have glanced through it. I've not read it in
14 its entirety.

15 Q Do you have -- and let me just point you to the
16 direction of 193 where the solicitor states, and
17 I'll just read from it. "He's an easy target,"
18 talking about --

19 THE COURT: Hold on a minute, what line?

20 MR. BOOZER: I'm sorry, Your Honor,
21 beginning at line 9.

22 THE COURT: Thank you.

23 BY MR. BOOZER:

24 Q The Solicitor states he's an easy target
25 referring to the victim, "and folks, I'll just be

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1 candid, a lot of people like the defendant believe
2 that people like the victim are easy marks because
3 the victim can't speak English. People might come
4 to the conclusion and, you know, he's Hispanic or
5 he's from Mexico, and primarily they're not gonna
6 call the police, they're not gonna call the police
7 because, you know, they're afraid they'll get
8 deported to easy mark. And surely if he calls the
9 police, the police aren't, you know, they're not
10 gonna be worried about trying to investigate that or
11 bring charges. And certainly, you know, heaving
12 forbid the police investigate it and they report it,
13 well, I mean, they're not gonna be around when it
14 comes time to trial so surely, surely the State is
15 not gonna go through the expense of getting an
16 interpreter and having all these people come up here
17 or try this case."

18 And this is continued on 194. "And what
19 he's also counting on most assuredly is the jury is
20 not going to convict him for that, surely will not.
21 Mr. Garcia have lived here 15 years. He and his
22 wife have two beautiful children together. He's
23 working hard, does manual labor. He's worked hard a
24 long time. His wife is in school trying to become a
25 registered nurse. They're trying to have what we

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1 all want, and that's the American dream. The
2 difference between those folks and that fellow right
3 there, they're willing to work for the American
4 dream. Jason Boston wants to, wants the American
5 dream but wants to take it from people like them.
6 They go out and they work hard for their life. He's
7 out about and doesn't have a job." Do you recall
8 that particular closing?

9 A It's in the transcript. I don't recall it
10 specifically, no.

11 Q Sure, I mean, that's fine. I mean, if it
12 happened it happened in the transcript, right?

13 A That's correct.

14 Q Okay. Did you make any sort of objection?

15 A Had I made an objection it would be in the
16 transcript, so no, I did not.

17 Q Okay. Do you think that's an improper argument
18 by the Solicitor?

19 A It, no, it's closing argument, it's an argument.
20 I tend to not object to something unless it's
21 absolutely improper, and I didn't see anything
22 absolutely improper about that. If you do that,
23 sometimes it causes more attention to it than
24 anything else.

25 Q Okay. Do you think at that point you could have

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1 even objected and asked for a mistrial?

2 A I probably could have.

3 Q Okay. Well, let me ask you this, was there any
4 evidence at all that pointed to this was sort of
5 motivation or factor in why the robbery occurred?

6 A I don't recall specifically and I did not read
7 the transcript in its entirety, but there were
8 discussions about Miss Hickson and robbing Mexican
9 American individuals in the past.

10 Q Okay. But specifically with Jason, there wasn't
11 anything that was brought out that this is what
12 Jason wanted to do ---

13 A No.

14 Q ---this is what Jason did, X, Y and Z?

15 A No.

16 Q Okay. And then, if you would, flip over to page
17 245 for me.

18 MR. BOOZER: And Your Honor, I'll be
19 beginning at line 12.

20 THE COURT: Okay.

21 BY MR. BOOZER:

22 Q This is actually during the sentencing and the
23 Court indicates, "I do a lot of court in Charleston
24 and we were just here in Charleston in court all
25 last week from Monday morning till ten Friday night

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1 involving human trafficking type allegations
2 involving Mexicans where people were being paid, or
3 being made to work overtime and not paid overtime.
4 They would pay them two different companies so they
5 wouldn't have to pay them overtime. They were, you
6 know, threatened may be deported if they complained
7 about it. In fact, they had one instance they had
8 30 of them living in one house, 30 people in one
9 house. They had two people living in a shed and six
10 people living in a garage and they were all doing
11 work at the restaurants, golf course, and
12 landscaping throughout the Charleston area." And
13 this is continued over on 246, and I'll just skip
14 down a little bit at line 8. "And so many other
15 instances never reported, particularly in north
16 Charleston, these Mexicans were being targeted
17 because they think they won't cooperate with the
18 prosecution because they're afraid of being involved
19 in the system. So for people who have suffered
20 being various forms of prejudice, they'll look at
21 them as someone you can take advantage of, exploit,
22 you know, in many instances people get away with it
23 even here. You know, in some cases you have Mexican
24 victims that do seasonal work. You know, we even
25 had murder cases here where the families they just

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1 disappear and they don't want to prosecute, they
2 don't want to be involved. They just want to move
3 on like the man says, I don't want no trouble, I
4 don't want no problems. And to look down on a
5 person thinking to take advantage of them. And that
6 may not be a reflection on, is a reflection on you,
7 but just the idea of how you can, how that can even
8 come in your mind that you can rob someone of their
9 cell phone and sell it back to them and rob someone
10 knowing full well the people with whom you're with
11 know the people."

12 And then let's take that in context with
13 jumping over to page 266 beginning at line 20. And
14 this, again, is from the Court and during sentencing
15 where the Court indicates beginning at line 20. "I
16 think you thought it was a joke, just, and that's
17 why you're laughing and playing. You got a Mexican
18 who can't speak English who is here, popped up in
19 Williamsburg County. Whenever they showed up in
20 Williamsburg County just doing their, you know.
21 They're like black folks used to be years ago, just
22 treat them any kind of way, and that's sad
23 commentary for you to have that kind of feeling
24 about another human being." So you would agree with
25 me that even the judge is getting into sort of what

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1 the Solicitor brought up in closing?

2 A Sure.

3 Q Okay. It wouldn't be a big leap to then say that
4 if the judge is bringing this up, surely the jury
5 must have been considering that?

6 A I mean, I can't speculate what the jury brought
7 up or said or talked about.

8 Q Okay. But they would have heard from the
9 Solicitor in closing, right?

10 A Yes.

11 Q Okay.

12 MR. BOOZER: Beg the Court's indulgence,
13 Your Honor.

14 THE COURT: Yes, sir.

15 MR. BOOZER: Thank you, Ms. Shuler.
16 That's all the questions I have.

17 **CROSS-EXAMINATION**

18 BY MS. COLEMAN:

19 Q Hi, Ms. Shuler. I'll start just right where we
20 left off talking about the sentencing there and the
21 judge was discussing Hispanics. On page 267 there
22 in the transcript, this is all during the
23 sentencing, didn't Ms. Pressley immediately explain
24 to him that she didn't think he was prejudiced
25 against Mexicans because he had, she had Mexican

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1 grandchildren in her family? Do you recall that?

2 A That's what the transcript says.

3 Q Okay. So she explained to the Court that she
4 really did not believe that that had anything to do
5 with this crime?

6 A That's what the transcript says.

7 Q Okay. You testified that the applicant chose not
8 to take the stand in this case, correct?

9 A That's correct.

10 Q And did he have a criminal record that would have
11 been brought out if he had testified?

12 A He did.

13 Q Okay. Do you recall off the top of your head
14 what his record was?

15 MR. BOOZER: Objection, Your Honor, we're
16 not having allegations about Mr. Boston testifying
17 or not testifying. I don't believe it's relevant.

18 THE COURT: Overruled, I'm gonna allow it.

19 MS. COLEMAN: Thank you.

20 THE WITNESS: He had a grand larceny if
21 I'm not mistaken, and then receiving stolen goods
22 out of North Carolina. I believe that was what it
23 was. There were two, two issues in his past.

24 BY MS. COLEMAN:

25 Q Okay. And they would have brought all that on

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1 the record at the sentencing, correct?

2 A I believe they did; they usually do.

3 Q Okay. In fact, I think Judge Newman kind of had
4 a long discussion with him about his record, do you
5 recall that? Or, it's in the transcript if you
6 don't.

7 A It would be in the transcript.

8 Q Okay. Do you believe that having his alibi
9 presented either through his testimony or his
10 mother's testimony, do you believe that would have
11 changed the outcome of this case?

12 A No.

13 Q Okay. Do you believe that any of the other
14 witnesses he planned to present would have changed
15 the outcome of this case?

16 A No.

17 Q Okay. Now there was another person in the car
18 alleged by the State during this crime, correct?

19 A That's correct.

20 Q And what was her name? Sharonda Burgess I think.

21 A I believe that her name was Sharonda Burgess.

22 Q Sharonda. And she testified at trial, right?

23 A She did.

24 Q Did she identify the applicant as the person in
25 the back seat who robbed the victim?

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1 A I believe she did, yes.

2 Q Okay. And just looking, if I recall correctly, I
3 don't believe she called him by name but she
4 identified him by his nickname which I think was
5 Rainy. Does that sound familiar?

6 A I don't remember.

7 Q Okay. But you would agree that the State had two
8 eyewitnesses who were in the car, who claimed to
9 have been in the car who placed the applicant there,
10 correct?

11 A That's correct.

12 Q Okay. Did you believe this was strong evidence
13 against him?

14 A Yeah.

15 Q Would you classify that as overwhelming evidence
16 in your opinion?

17 A There were some inconsistencies in what was said.
18 There were strong, however, there was strong
19 evidence that Mr. Boston could be convicted of the
20 crime.

21 Q Okay. Now you also told the judge in the
22 sentencing phase that the applicant told you and
23 explained to you that if he had actually committed
24 this crime he would have pled guilty to it, right?

25 A I did.

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1 Q So the judge considered that when he was giving
2 his sentence?

3 A That's correct.

4 Q Okay. And the judge ended up sentencing him to
5 11 years, correct?

6 A That's right.

7 Q Okay. And what was he facing?

8 A I believe it was 10 to 30 years on the armed
9 robbery and the 5 years on the possession of a
10 weapon charge.

11 Q And he was found not guilty of possession of a
12 weapon, correct?

13 A He was.

14 Q And you said ten years was a mandatory minimum
15 sentence?

16 A That's correct.

17 Q Okay. You mentioned briefly your strategy in
18 general during closing arguments. Do you typically
19 object often during closing arguments?

20 A I can recall one time in my career objecting
21 during closing arguments.

22 Q And was -- and you mentioned that that was a, an
23 absolutely improper closing argument. Would that be
24 correct?

25 A If I objected to it I would have, it was

AW - A. SHULER - CROSS

1 absolutely improper.

2 Q Okay.

3 A Otherwise, I do not object to something that
4 could be conceivably improper because it calls more
5 attention to it than anything else.

6 Q Okay. And the Solicitor closing argument in this
7 case about Hispanics, do you believe that that
8 changed the outcome of the case?

9 A No.

10 Q Okay. So that alone wouldn't have swayed the
11 jury so much to convict him based solely on that
12 theory?

13 A No.

14 Q Okay. Did you believe that Ms. Pressley, the
15 applicant's mother, was a credible alibi witness?

16 A Ms. Pressley had a gap in time that she could not
17 account for. Between the time that she told me that
18 Jason left her house and the time that he went to
19 his girlfriend's house, there was a gap in time that
20 Jason could not have been accounted for so because
21 of that, I did not feel like it was a good idea to
22 call her. Was she credible? There was no reason
23 for me to doubt her credibility.

24 Q Okay.

25 A But this rendition of the fact that she testified

1 to this morning were different than what she told me
2 as we were preparing for trial.

3 Q Okay, that's right. Today she testified that he
4 was at her house until about 11 p.m.?

5 A That's correct.

6 Q Okay. Did you have ample time to prepare for
7 trial in this case?

8 A I did.

9 Q Okay, thank you. No further questions.

10 THE COURT: Mr. Boozer, anything further?

11 MR. BOOZER: Nothing further, Your Honor.

12 THE COURT: Ma'am, you may step down.

13 Thank you.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Anything further from the
16 Applicant?

17 MR. BOOZER: Nothing further. Your Honor.

18 THE COURT: Anything from the State?

19 MS. COLEMAN: The State has no witnesses.

20 THE COURT: All right. Anything by way of
21 argument, Mr. Boozer?

22 MR. BOOZER: Your Honor, just briefly, and
23 if I may approach to hand up a case.

24 THE COURT: All right.

25 MR. BOOZER: Your Honor, this is John

1 Henry Simmons versus State of South Carolina, 231
2 South Carolina 333. Judge, obviously you've heard
3 the alibi testimony today. And in addition to the
4 alibi testimony, sort of the testimony which
5 Ms. Pressley could have presented that would have
6 shown a reason for Ms. Hickson to accuse Mr. Boston
7 of this robbery, I'll let that testimony stand on
8 its own, but. With regard to the Solicitor's
9 closing, Your Honor, I would submit that was
10 certainly an improper closing that was made and
11 there should have been an objection at least and a
12 motion for mistrial.

13 Your Honor, in the Simmons case on page
14 two 2 this printed out opinion, it directs sort of
15 the analysis that's undertaken when looking at the
16 improper closing. It states, "The solicitor's
17 closing must not appeal to the personal biases of
18 the jurors, nor be calculated to arouse the jurors'
19 passions or prejudice and it's contents should stay
20 within the record and reasonable inferences.
21 Improper comments do not automatically require
22 reversal if they're not prejudicial to the
23 applicant." In this case we would submit, Judge,
24 that those were prejudicial to the applicant; they
25 were outside of the record. There was no testimony

1 that Mr. Boston had any sort of motivation to rob
2 these folks simply because of their race. And I
3 would point, Your Honor, to the transcript in the
4 judge's colloquy during the sentencing the judge
5 himself raises this issue and sort of harps on how
6 terrible this is and this is what happens to folks
7 like that. Certainly, if it's in the judge's mind,
8 I don't think it's that big of a leap to take and
9 say that it surely was in the jury's mind as well so
10 I think for that reason it should have been objected
11 to and a motion for mistrial made. Your Honor,
12 other than that, that's why we ask for this
13 application to be granted.

14 THE COURT: Anything else?

15 MS. COLEMAN: Your Honor, I'd argue that
16 there's no prejudice in this case. Even if this
17 were improper argument, trial counsel I believe
18 credibly testified today that she did not find this
19 incredibly objectionable. There was plenty of other
20 evidence. There were two witnesses, eyewitnesses
21 placing the defendants in the car, the applicant,
22 excuse me, in the car and identifying him as the
23 person who pulled the gun on this victim and I think
24 that's enough evidence for the jury to find him
25 guilty of the crime regardless of the closing

1 argument presented here. And whatever motive they
2 think he might have had, I think it's clear from the
3 evidence that he was the one for whatever reason who
4 pulled the gun on this victim.

5 THE COURT: All right, I'll take a look at
6 this case as well as I'm gonna read the trial
7 transcript and let you all know.

8

9 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 15th day of December, 2017.

Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Jason Thomas Boston, #360656,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2017-CP-45-00184

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on January 30, 2017. Respondent submitted its Return on June 22, 2017. An evidentiary hearing was convened on July 24, 2017, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's mother, Mary Pressley, and Applicant's plea counsel, M. Amanda Shuler, Esquire ("Trial Counsel") also testified. The Court had before it a copy of the trial transcript, the records of the Williamsburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. On March 14, 2014, Applicant was driven to the victim's home, got out

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Williamsburg County
Clerk of Court
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of the backseat of the vehicle while the victim was speaking to the driver, pointed a gun at the victim, and took his cell phone and wallet. Tr. at 32:6-12.

In May 2014, the Williamsburg County Grand Jury indicted Applicant for armed robbery and possession of a firearm during the commission of a violent crime (2014-GS-45-0120). M. Amanda Shuler, Esquire, represented Applicant. Assistant Solicitor Kimberly V. Barr, Esquire, prosecuted the case. On April 1-2, 2015, Applicant proceeded to trial before the Honorable Clifton B. Newman. The jury found Applicant guilty of armed robbery and not guilty of possession of a firearm during the commission of a violent crime. Judge Newman sentenced Applicant to imprisonment for eleven years for armed robbery.

Applicant filed a timely notice of appeal. Kathrine H. Hudgins, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals dismissed Applicant's appeal after review pursuant to Anders on December 7, 2016. State v. Boston, Op. No. 2016-UP-503 (S.C. Ct. App. filed December 7, 2016). The Remittitur was issued on December 28, 2016.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel
 - a. Trial Counsel failed to object to witness inconsistent statements.

At the evidentiary hearing, Applicant orally amended his application to include two additional grounds of ineffective assistance of counsel for failure to call alibi witnesses and failure to object to the Solicitor's closing argument at page 193-94 of the trial transcript.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

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V. SUMMARY OF RELEVANT TESTIMONY

Applicant testified that he was currently serving an eleven year sentence for armed robbery. He stated he was originally represented on the charges by attorney Doward K. Harvin, but Mr. Harvin dropped his case because he represented Applicant's codefendant on the same charges, which was a conflict of interest. Applicant stated that he discussed the background of the case as well as defenses with Mr. Harvin before he told him he was representing his codefendant. After Mr. Harvin was relieved, Applicant testified that Trial Counsel was appointed. He stated that he met with Trial Counsel twice before the trial.

Applicant testified he was originally offered a plea deal for fifteen years, serving eighty-five percent of that time, but he rejected it. He stated that he did not put up a defense at trial; they were going to use his mother as an alibi witness, but he and Trial Counsel decided not to call any witnesses because they wanted the last closing argument at trial. He stated Trial Counsel explained the concept of having the last argument to him, but he did not know what that meant. He stated he wanted his mother and other witnesses to testify.

Applicant testified that on the night of the crime, he was at his mother's house. He stated that the crime happened at 8:00 or 8:30 P.M., but he was at his mother's house doing work from 6:00 P.M. until about 11:00 or 11:30 P.M.

Following Applicant's testimony, Mary Pressley, took the stand. Ms. Pressley testified that she was Applicant's mother. She stated she attended the trial, but she did not get to watch it because she was sequestered as a witness, and she intended to testify at trial as an alibi witness. She testified that Applicant was at a piece of rental property that she owned on the day of the crime doing some work, but she was not there with him at the time. Ms. Pressley stated Applicant came over to her house a little before 6:00 P.M. to do some work she asked him to do.

She stated that she was with him or could see him all night until he left her house around 10:30 or 11:00 P.M. She testified that she remembers him coming in before 6:00 because she was finishing a paper for a class she was taking that was due at 6:15 P.M., and he spoke with someone on the phone waiting for her to finish her paper. She stated that she cooked dinner for him, he helped move the trash out of her yard, he stayed late, and they talked about her other son in Texas.

Following Ms. Pressley's testimony, Respondent called to the stand Trial Counsel M. Amanda Shuler. Trial Counsel testified that she was appointed to this case through the public defender's office. She stated that Doward Harvin was appointed to represent Applicant's codefendant, but she does not recall any discussions with Applicant about Mr. Harvin. She stated that it was her understanding Applicant had never met with Mr. Harvin. Trial Counsel stated there was a fifteen-year plea offer from the State, but Applicant rejected it. She stated that he did not want to plead guilty because he said he did not commit the crime; she believed that if he were guilty, he would have pled guilty. She stated that she explained this to the judge during sentencing.

Trial Counsel testified her trial strategy was to discredit the State's witness Latoya Hickson. She stated the victim testified at trial and was not able to identify Applicant as the person who robbed him, and the only person who identified him was Latoya Hickson. She stated that the case was all about the credibility of the witnesses. Trial Counsel stated she filed a notice of alibi and planned to use Applicant's mother, Ms. Pressley, his girlfriend Zalandria Brown, and his brother as alibi witnesses. However, she stated she made a strategical decision not to call those witnesses in order to have the last closing argument, which she believed would be more beneficial. She testified she spoke to Ms. Pressley several times, and Ms. Pressley always told

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her that Applicant left her house that night around 8:00-8:45 P.M. Trial Counsel stated that time was so close to the time of the crime that she did not feel comfortable putting Ms. Pressley on the stand, and it was not a good idea to call her. She stated that she and Applicant discussed this during the trial and Applicant decided not to put up a defense.

Trial Counsel testified she and Applicant discussed his prior criminal history and the events of the day in question, and Applicant decided that he would not testify. She stated that they discussed whether to call witnesses on his behalf, but ultimately she did not want to tell the judge that there was a gap in time for which he had not been accounted for.

Trial Counsel testified that she did not see anything objectionable about the Solicitor's closing argument. She stated she did not object to the Solicitor's statements about Hispanic victims (Tr. 193) because she does not see anything wrong with it at the time. She stated she does not object in closing arguments unless something is absolutely improper or objectionable. She stated Ms. Pressley noted on the record during the sentencing that Applicant was not prejudiced against Hispanics because they had Mexican family members.

VI. 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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Trial Counsel's testimony to be credible and

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persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. This Court finds Trial Counsel's representation did not fall below the standards of professional norms in any manner. Based on the testimony presented and the record before the court, this Court finds Trial Counsel's representation was not ineffective in any regard.

Failure to object to witness inconsistent statements

Applicant alleges Trial Counsel was ineffective for failing to object to inconsistent statements by the witnesses. This allegation is meritless. Applicant has failed to prove that Trial Counsel was deficient in failing to make any specific objection to a witness's testimony or that he was prejudiced by that lack of objection. Based on the testimony and the trial transcript, this Court finds that Trial Counsel thoroughly cross-examined each witness and raised inconsistencies in their stories before the jury and was not ineffective in this regard. Therefore, this allegation is denied and dismissed with prejudice.

Failure to present alibi witnesses

Applicant alleges that Trial Counsel was ineffective for failing to present Mary Pressley as an alibi witness. This Court finds that Trial Counsel was not deficient for choosing not to put up the alibi witness because she presented a valid strategic reason for choosing not to do so.

To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012).

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In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995).

Applicant presented testimony from Mary Pressley, Applicant's mother, at the hearing. Ms. Pressley testified that Applicant was with her at her house from 6:00 P.M. until 11:30 P.M. on the evening of the crime, which occurred around 8:30 P.M. She testified that it was not possible for him to have been elsewhere because he was with her the entire time. However, Trial Counsel credibly testified that Ms. Pressley told her before the trial, and would have testified at trial, that Applicant was only with her until 8:00 or 8:30 P.M., and then he left her house. This Court finds Trial Counsel's testimony to be very credible. In contrast, it finds Mary Pressley's testimony to be not credible.

Trial Counsel credibly testified that she was not comfortable putting Ms. Pressley on the stand to testify that there was a gap in time for which Applicant was not accounted for. She further testified that she made a strategic decision not to put up a defense so they could have the last closing argument before the jury. This was evidenced not only by Trial Counsel's testimony, but also by the trial transcript, where Trial Counsel indicated to the trial judge during sentencing that Ms. Pressley "did not testify because we made a judgment call about whether we wanted to lose our right to argue last, and we did not want to lose the right to argue last." Tr. 239, line 21-24.

Because Trial Counsel presented a valid trial strategy in choosing not to put up a defense, she cannot be found ineffective in this regard. "Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective." Roseboro v.

State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Applicant has failed to prove that Trial Counsel was deficient or that he was prejudiced by the failure to put this witness up at trial. Therefore, since neither prong of the Strickland test is met, this allegation is denied and dismissed with prejudice.

Failure to object to Solicitor's closing argument

Applicant alleges Trial Counsel was ineffective for failing to object to the Solicitor's closing argument comments about Hispanics being the target of crimes. This allegation is meritless. In her closing argument, the Solicitor argued the following:

[The victim is] an easy target. And folks, I'll just be candid, a lot of people like the defendant believe that people like the victims are easy marks because the victim can't speak English. People come to the conclusion, and you know, he's Hispanic or he's from Mexico and probably here illegally, they're not gonna call the police, they're not gonna call the police because, you know, they're afraid they'll get deported so they're an easy mark. And surely if he calls the police, the police aren't, you know, they're not going to be worried about trying to investigate that or bring charges. And certainly, you know, heaven forbid the police investigate it and they report it. Well, I mean, they're not gonna be around when it comes to trial time. And surely, surely the State is not gonna go through the expense of getting an interpreter and having all these people come up here and try this case. And what he's also counting on most assuredly, the jury is not going to convict him for that, surely will not.

Tr. 193 line 9 – 194 line 4. Trial Counsel did not object to this statement, and she testified at the evidentiary hearing that she did not find it objectionable at the time. She stated she does not object during closing arguments unless something is absolutely improper or objectionable, and in this case, she did not believe it was. This Court finds that the Solicitor's comments in closing argument were not objectionable, and Trial Counsel was not deficient in choosing not to object. Her remarks were reasonably based on the circumstances of the crime, and she was only

speculating to the jury about a potential motive to commit the crime. Whether the jury believed the motive or not was within their discretion.

Furthermore, even if the comments were objectionable, this Court finds there was no prejudice resulting from them. "Closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case." State v. Mouzon, 321 S.C. 27, 31, 467 S.E.2d 122, 124 (Ct. App. 1995), aff'd, 326 S.C. 199, 485 S.E.2d 918 (1997) (citing Herring v. New York, 422 U.S. 853 (1975)). "A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury." Von Dohlen v. State, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004). "The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom." Id. at 609-10, 602 S.E.2d at 744. "Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id.

Applicant has failed to meet his burden of proving that these comments in the Solicitor's closing arguments changed the outcome of the trial. This Court finds there was sufficient evidence to convict Applicant on this charge regardless of what the jury believed was his motive. The testimony presented clearly showed that someone robbed the victim at gunpoint and stole his wallet and cell phone. A codefendant and another passenger in the vehicle identified Applicant as the perpetrator to the jury. Regardless of why he chose his victim, the jury clearly believed

Applicant was the man who robbed him. Therefore, there was no prejudice resulting from these comments.

Finally, Applicant argues the trial judge improperly used the Solicitor's comments in sentencing Applicant. Tr. 245 line 12 - 247 line 7. This Court finds this assertion meritless. Sentencing is in the trial court's discretion, and he may use whatever motive he believed Applicant held in his decision. A trial judge generally has wide discretion in determining what sentence to impose. It is also true that before making that determination, a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider or the source from which it may come. U.S. v. Magliano, 336 F.2d 817 (4th Cir. 1964); North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969). The transcript also clearly shows that Applicant and his mother both explained to the trial court that he was not prejudiced against Hispanics because they had Mexican members of their family. Even if this motive was considered in sentencing, there was no prejudice to Applicant because the trial court sentenced him to eleven years' imprisonment when he was facing at least ten and up to thirty years in prison.

Because Applicant has failed to meet either prong of the Strickland test, this allegation is denied and dismissed with prejudice.

VII. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

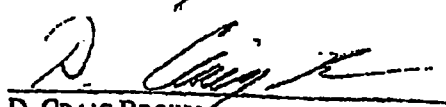
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8/11/912

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. That Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 15 day of August, 2017.


D. CRAIG BROWN
Presiding Judge
Third Judicial Circuit

Florence, South Carolina

WITNESSES

Sgt. Juan Ballard
Williamsburg County Sheriff's Office

ARREST WARRANT NUMBER

2014A4510100205 2014A4510100207
2014A4510100206

ACTION OF GRAND JURY

TRUE BILL

Date: 5/18/14

Foreperson of Grand Jury
Date: 5/18/14

VERDICT

Armed Robbery -
Possession of a Firearm
During Violent Crime -

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-45-0120

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

MAY TERM 2014

THE STATE

vs.

LATOYA SHANIK HICKSON

JASON THOMAS BOSTON

Indictment for

**ARMED ROBBERY AND POSSESSION OF A
FIREARM DURING THE COMMISSION OF A VIOLENT
CRIME**

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

INDICTMENT FOR
ARMED ROBBERY AND POSSESSION OF A
FIREARM DURING THE COMMISSION OF A
VIOLENT CRIME

At a Court of General Sessions convened on May 8, 2014, the Grand Jurors of
WILLIAMSBURG County did present upon their oath:

COUNT ONE - ARMED ROBBERY

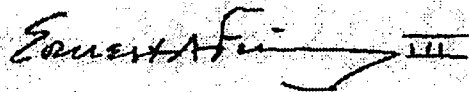
That the defendants, Jason Thomas Boston and Latoya Shanik Hickson, did in
Williamsburg County, South Carolina on or about March 14, 2014 commit the offense of
armed robbery in that they did, while acting in concert with each other, take the wallet
and cell phone from the person of the victim, Luciano Garcia, while one of them was
armed with the deadly weapon or what the victim reasonably believed to be a deadly
weapon, in violations of §16-11-330(A), South Carolina Code of Laws, 1976, as
amended.

**COUNT TWO - POSSESSION OF A FIREARM DURING THE COMMISSION OF A
VIOLENT CRIME**

That the defendant, Jason Thomas Boston, did in Williamsburg County, South
Carolina on or about March 14, 2014 knowingly possess and visibly display a firearm
during the commission of the offense of armed robbery, a violent crime, in violation of
§16-23-0490, South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.

Solicitor



ARRO2.DOT