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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable Roger L. Couch, Circuit Court Judge

JONATHAN LEON SIMPSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001499

APPENDIX

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ORIGINAL

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 2006-GS-11-866, 873
4 COUNTY OF CHEROKEE
5
6 STATE OF SOUTH CAROLINA
7 VS.
8 MARCELLOUS KNUCKLES
9 JONATHAN SIMPSON
10
11 NOVEMBER 6-8, 2006
12 GAFFNEY, SOUTH CAROLINA
13 BEFORE THE HONORABLE J. MARK HAYES, III

14 APPEARANCES
15 FOR THE STATE: KIM LESKANIC
16 FOR THE DEFENDANT: BILL RHODEN, SCOTT ROBINSON
17 REPORTED BY: MICHAEL C. WATKINS
18 OFFICIAL COURT REPORTER
19
20
21
22
23
24
25

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VOIR DIRE

1 THE COURT: Ladies and gentlemen of the jury panel, we
2 are about to begin the trial of the State of South Carolina
3 vs. Marcellus Knuckles, and also the State of South
4 Carolina vs. Jonathan Simpson. Before we begin the jury
5 selection there's several questions that I will need to ask
6 you, but before I ask you these questions I am going to
7 need for you to please stand and raise your right hand and
8 the clerk is going to need to swear you in.

9 (The jury panel was sworn.)

10 MS. LESKANIC: Ladies and gentlemen, as I announced we
11 are about to begin the trial of this case. Again, this is
12 the case of the State vs. Jonathan Simpson. Mr. Simpson is
13 charged with armed robbery, and also the case of the State
14 versus Marcellous Knuckles. Mr. Knuckles is charged with
15 armed robbery. If you would, I am going to ask -- I'm
16 going to ask that Mr. Knuckles please stand and face the
17 members of the jury. Thank you. And also, I'm going to
18 ask that Mr. Jonathan Simpson please stand and face the
19 members of the jury. Thank you, y'all may be seated. Is
20 there any -- I'm going to ask if any member of the jury
21 panel is related by blood or marriage to either
22 Mr. Knuckles or Mr. Simpson? If so, please stand at this
23 time. I'm going to ask to any member of the jury panel if
24 you have a close personal or social relationship with
25 either Mr. Knuckles or Mr. Simpson to please stand at this

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1 time? The following are a list of possible witnesses that
2 may be called in this case. As I read these names out if
3 the witness is in the courtroom I will ask that they please
4 stand and face the members of the jury. Here are a list of
5 possible witnesses. Shirley Whitaker. Thank you.
6 Abdullah Hemani. Sargent Tommy Kennedy. Willie Talley.
7 Mary Huskey. David Clary -- Lieutenant David Clary.
8 Sargent Ronald Ramsey. Joseph Bernard Wilson. Laquinton
9 Foster. Sargent Mike Segina. Ladies and gentlemen, I will
10 ask that any member of the jury panel to please stand if
11 you are related by blood or marriage to any of those
12 witnesses or if you have a close personal or social
13 relationship with any of those witnesses to please stand at
14 this time. Also the potential witnesses, I will ask if
15 these witnesses are in the courtroom to please stand as
16 well. Marcia Gregory. Laura Simpson. And you are
17 Ms. Simpson? Any member of the jury panel related by blood
18 or marriage to either of those two witnesses or have a
19 close personal or social relationship to either of those
20 witnesses please stand at this time. Thank you.

21 MR. RHODEN: Your Honor, one additional witness you
22 might want to ask would be Barbara Fernders.

23 THE COURT: Any member of jury panel have a close
24 personal or social with Ms. Fernders, a close personal or
25 social relationship with Ms. Fernders or related by blood

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1 or marriage to her? If so please stand at this time. At
2 this time I would ask for the lawyers representing the
3 State and also the lawyers representing the defendants to
4 please stand and introduce yourself to the members of the
5 jury.

6 MS. LESKANIC: Good afternoon. My name is Kim
7 Leskanic, I'm a prosecutor here with the 7th Circuit
8 Solicitor's Office.

9 MR. RHODEN: I am Bill Rhoden, I'm an attorney here in
10 town, I practice with Mr. Bill Winter and I represent
11 Marcellus Knuckles.

12 MR. ROBINSON: Good afternoon. My name is Scott
13 Robinson, I'm an attorney and I represent Mr. Simpson.

14 THE COURT: Have any of the jury been represented by
15 any of the lawyers in this case? If so, please stand at
16 this time. Any members of the jury know or have a close
17 personal or social relationship with any of the lawyers
18 involved in this case? If so, please stand at this time.
19 Has any member of the jury panel formed or expressed any
20 opinion about any issue or matter that is involved in this
21 case? If so, please stand at this time. Is any member of
22 the jury panel aware of any bias or prejudice toward either
23 the State or either of the defendants involved in this
24 case? If so, please stand at this time. Is there any
25 member of the jury panel that was a member of the grand

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1 jury which issued the indictment in this case? If so,
2 please stand at this time. Is there any member of the jury
3 panel who is a member of or a contributor to any group
4 which has as its primary concern the promotion of law
5 enforcement or victim's rights? These groups would include
6 but certainly would not be limited to MADD, SADD, CAVE or
7 Citizens Against Violent Crime? If so, please stand at
8 this time. Does any member of the jury panel know of any
9 reason whatsoever why he or she should not serve as a juror
10 in this case with particular emphasis being placed on your
11 ability to be fair and impartial to both the State and the
12 defendant? If so, please stand at this time. Does the
13 State have any additional questions?

14 MS. LESKANIC: No, Your Honor.

15 THE COURT: Does either of the defendants have any
16 additional questions?

17 MR. RHODEN: No, sir, Your Honor. But before we start
18 picking I would like to approach the bench with an issue.

19 THE COURT: All right. Does Mr. Robinson, do you have
20 any additional questions?

21 MR. ROBINSON: No additional questions.

22 (A bench conference was held.)

23 THE COURT: Would Mr. Marcus Childers please rise?
24 Come up, please.

25 (The juror approached the bench.)

VOIR DIRE

1 THE COURT: Has Mr. Rhoden represented you in the
2 past?

3 THE JUROR: Yes.

4 THE COURT: Would that affect your ability to give
5 both the State and the defendant a fair and impartial
6 trial?

7 THE JUROR: No, sir.

8 (The juror returned to his seat.)

9 THE COURT: And we had discussed the matter of strikes
10 in chambers as well as we discussed it at the bench. And
11 Mr. Robinson, you want to state on the record your
12 position?

13 MR. ROBINSON: Yes, sir, Your Honor. We will take
14 five strikes, Your Honor.

15 THE COURT: All right. Anything else before we pick
16 the jury?

17 MS. LESKANIC: Not from the State, Your Honor.

18 MR. RHODEN: No, sir.

19 MR. ROBINSON: No, Your Honor.

20 THE CLERK: Juror 89, Kevin Smith. What says the
21 State?

22 MS. LESKANIC: Please present the juror.

23 THE CLERK: What says the defense?

24 THE COURT: You better ask Mr. Knuckles first.

25 Mr. Rhoden, you're going to speak for both of the

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1 defendants on the strikes?

2 MR. RHODEN: I will, Your Honor. And that is for the
3 sake of a little easier, Your Honor, that's the only reason
4 for it.

5 THE COURT: All right.

6 MR. RHODEN: Please excuse the juror for this case.

7 THE CLERK: Juror 15, Marcus Childers. What says the
8 State?

9 MS. LESKANIC: Please excuse the juror from service in
10 this case.

11 THE CLERK: Juror 86, Jonathan Scruggs. What says the
12 State?

13 MS. LESKANIC: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. RHODEN: Please present the juror.

16 THE CLERK: Juror 98, Horace Wilson. What says the
17 State?

18 MS. LESKANIC: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. RHODEN: Please excuse the juror from this case.

21 THE COURT: Juror 88, Tabitha Sherrill. What says the
22 State?

23 MS. LESKANIC: Please present the juror.

24 THE CLERK: What says the defense?

25 MR. RHODEN: Please swear the juror.

VOIR DIRE

1 THE CLERK: Juror 52, Danny Littlejohn. What says the
2 State?

3 MR. RHODEN: Please excuse the juror from service in
4 this case.

5 THE CLERK: Juror 30, Justin Ellis. What says the
6 State?

7 MS. LESKANIC: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. RHODEN: Please excuse the juror from this case.

10 THE CLERK: Juror 101, Leanne West. What says the
11 State?

12 MS. LESKANIC: Please present the juror.

13 THE COURT: What says the defense?

14 MR. RHODEN: Please excuse the juror from this case.

15 THE CLERK: Number 13, Morris Byers. What says the
16 State?

17 MS. LESKANIC: Please excuse the juror from service in
18 this case.

19 THE CLERK: Juror 35, Sherry Goodson. What says the
20 State?

21 MS. LESKANIC: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. RHODEN: Please excuse the juror in this case.

24 THE CLERK: Juror 32, Virginia Evans. What says the
25 State?

VOIR DIRE

1 MS. LESKANIC: Please present the juror.
2 THE CLERK: What says the defense?
3 MR. RHODEN: Please excuse the juror from this case.
4 THE CLERK: Juror 65, Elizabeth Mullinax. What says
5 the State?
6 MS. LESKANIC: Please present the juror.
7 THE CLERK: What says the defense?
8 MR. RHODEN: Please excuse the juror for this case.
9 THE CLERK: Juror 85, Donna Scott. What says the
10 State?
11 MS. LESKANIC: Please present the juror.
12 THE CLERK: What says the defense?
13 MR. RHODEN: Please swear the juror.
14 THE CLERK: Juror 107, Christopher Varnadore. What
15 says the State?
16 MS. LESKANIC: Please excuse the juror from service in
17 this case.
18 THE CLERK: Juror 47, Sandra Jackson. What says the
19 State?
20 MS. LESKANIC: Please present the juror.
21 THE CLERK: What says the defense?
22 MR. RHODEN: Please excuse the juror for this case.
23 THE CLERK: Juror 64, Gary Mossburg. What says the
24 State?
25 MS. LESKANIC: Please present the juror.

VOIR DIRE

- 1 THE CLERK: What says the defense?
- 2 MR. RHODEN: Please excuse the juror.
- 3 THE CLERK: Juror 93, Melinda Whittaker. What says
4 the State?
- 5 MR. RHODEN: Please present the juror.
- 6 THE CLERK: What says the defense?
- 7 MR. RHODEN: Please excuse the juror for this case.
- 8 THE CLERK: Juror 108, Linda Johnson. What says the
9 State?
- 10 MS. LESKANIC: Please present the juror.
- 11 THE CLERK: What says the defense?
- 12 MR. RHODEN: Please swear the juror.
- 13 THE COURT: Juror 11, David Burgess. What says the
14 State?
- 15 MS. LESKANIC: Please present the juror.
- 16 THE CLERK: What says the defense?
- 17 MR. RHODEN: Please excuse the juror for this case.
- 18 THE CLERK: Juror 55, Edward Lorr. What says the
19 State?
- 20 MS. LESKANIC: Please present the juror.
- 21 THE CLERK: What says the defense?
- 22 MR. RHODEN: Please swear the juror.
- 23 THE CLERK: Juror 104, Anita Poole. What says the
24 State?
- 25 MS. LESKANIC: Please present the juror.

VOIR DIRE

- 1 THE CLERK: What says the defense?
- 2 MR. RHODEN: Please swear the juror.
- 3 THE CLERK: Juror number 79, Robert Reeves. What says
4 the State?
- 5 MS. LESKANIC: Please present the juror.
- 6 THE CLERK: What says the defense?
- 7 MR. RHODEN: Please excuse the juror for this case.
- 8 THE CLERK: Juror 28, Richard Dunmire. What says the
9 State?
- 10 MS. LESKANIC: Please excuse the juror from service in
11 this case.
- 12 THE CLERK: Juror 106, Cedric Smith. What says the
13 State?
- 14 MS. LESKANIC: Please present the juror.
- 15 THE CLERK: What says the defense?
- 16 MR. RHODEN: Swear the juror.
- 17 THE CLERK: Juror 105, Gina Mills. What says the
18 State?
- 19 MS. LESKANIC: Please present the juror.
- 20 THE CLERK: What says the defense?
- 21 MR. RHODEN: Please excuse the juror from this case.
- 22 THE CLERK: Juror 100, Judy Yeager. What says the
23 State?
- 24 MS. LESKANIC: Present the juror.
- 25 THE CLERK: What says the defense?

VOIR DIRE

1 MR. RHODEN: Please excuse the juror from this case.

2 THE CLERK: Juror 90, Patsy Spake. What says the
3 State?

4 MS. LESKANIC: Please present the juror.

5 THE CLERK: What says the defense?

6 MR. RHODEN: Please swear the juror.

7 THE CLERK: Juror 81, Mary Rivera. What says the
8 State?

9 MS. LESKANIC: Please excuse the juror from service in
10 this case.

11 THE CLERK: Juror 34, Miles Gettys. What says the
12 State?

13 MS. LESKANIC: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. RHODEN: Please excuse the juror from this case.

16 THE CLERK: Juror 78, James Randolph. What says the
17 State?

18 MS. LESKANIC: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. RHODEN: Please swear the juror.

21 THE CLERK: Juror 60, Kenneth McDaniel. What says the
22 State?

23 MS. LESKANIC: Please present the juror.

24 THE CLERK: What says the defense?

25 MR. RHODEN: Please swear the juror.

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1 THE COURT: Juror 36, Lisa Greer. What says the
2 State?

3 MS. LESKANIC: Please present the juror.

4 THE CLERK: What says the defense?

5 MR. RHODEN: Please swear the juror.

6 THE CLERK: Juror 31, Tony Elumbaugh. What says the
7 State?

8 MS. LESKANIC: Please present the juror.

9 THE CLERK: What says the defense?

10 MR. RHODEN: Please swear the juror.

11 THE CLERK: Juror 73, Mary Phillips. What says the
12 State?

13 MS. LESKANIC: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. RHODEN: Please swear the juror.

16 THE COURT: Anything from either side concerning the
17 manner or methodology of the selection of the jury?

18 MS. LESKANIC: Not from the State, Your Honor.

19 MR. RHODEN: Your Honor, we do have a matter that can
20 come before the Court.

21 THE COURT: All right. Ladies and gentlemen, I want
22 you to retire to the jury room. But before you go, I want
23 you to have no discussions about anything involving this
24 case. At this time I am going to ask you if you would
25 retire to the jury room and we will get you back just

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1 shortly.

2 (The jury left the courtroom.)

3 THE COURT: Yes, sir, Mr. Rhoden?

4 MR. RHODEN: As I see it the State struck three jurors
5 that are black jurors, Your Honor, of course, both of the
6 defendants are black. It would be our position that the
7 State should present a race neutral reason for those
8 strikes that are Batson probable.

9 MS. LESKANIC: May it please the Court, Your Honor?
10 With regard to juror number 52 he has a criminal record
11 which is the reason for the State's exclusion of him from
12 this trial. The juror number 13 lives on New Street, which
13 is an area near where this crime occurred which is where
14 the defendants frequent that area and so we did not feel it
15 would be appropriate to place that person on the jury. And
16 juror number 81 lives in Connecticut Village which is the
17 same area where one of these defendants resides.

18 THE COURT: Yes, sir? Mr. Robinson?

19 MR. ROBINSON: Your Honor, I think that that is a
20 misplaced presumption on their part because making a
21 presumption that those areas are not good areas I think is
22 misplaced. And I think that as a result of that their
23 explanation kind of fails on its face for those reasons.
24 And again, I join Mr. Rhoden to the Batson challenge in
25 this case. Those aren't really valid reasons -- those are

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1 not appropriate reasons for why they struck these jurors.

2 MR. RHODEN: Could you give me one second? Your
3 Honor, I will see if I have anything else to add to that.

4 THE COURT: Certainly.

5 MR. RHODEN: Your Honor, the State's position
6 basically is that -- and I understand the juror with a
7 criminal record and I assume that's true and that certainly
8 is a race neutral reason. The other two jurors basically
9 were stricken based upon the local, Your Honor, especially
10 Connecticut Village. Certainly Connecticut Village is a
11 low income housing type area which frequently houses low
12 income families which tends to in many cases be black, Your
13 Honor, and to say that another individual lives in a
14 general area in the store again tends to be a black type
15 neighborhood. Those reasons, Your Honor, once again are
16 just pretenses based simply on race, Your Honor. Because
17 basically what the State has said is that we don't like
18 that area of town because more blacks live in that area of
19 town, that's why we struck those two jurors.

20 MS. LESKANIC: I'm somewhat offended, Your Honor.
21 However, we seated as the Court knows a black female, a
22 black male and a black alternate. The reason for the
23 strikes are because of the area that they live in, it has
24 nothing to do with their race. We also struck three white
25 males, one because he knew Mr. Rhoden and did not announce

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1 that to the Court, and the other two are because they have
2 criminal records. These are valid non-race reasons for
3 striking people. We do have to consider where individuals
4 live no matter what their race when selecting a juror, that
5 is what we went on and we seated those who did not fall
6 within that category whether they be white or black. These
7 are race neutral reasons, Your Honor.

8 MR. RHODEN: Well, isn't that kind of the -- our court
9 has said it's improper to say that a housing project such
10 as Connecticut Village, I always strike these people
11 because that's a low income area and which tends to be
12 black. So I think that's the type of generalization that
13 our courts say is improper.

14 MS. LESKANIC: Your Honor, I wasn't making a
15 generalization about Connecticut Village, that's where one
16 of the defendants resides. That's a little too close to
17 home to put someone on a jury that may know him or his
18 family or have some sort of a tie.

19 THE COURT: All right. I am going to have to deny the
20 Batson motion. I think taking a look at the overall jury
21 selection made by the State I think those are valid race
22 neutral positions given by the State. Anything else before
23 we dismiss these jurors?

24 MR. RHODEN: Nothing from the defense, Your Honor.

25 MS. LESKANIC: Not from the State, Your Honor. Thank

VOIR DIRE

1 you.

2 (The remaining panel was dismissed.)

3 THE COURT: Let's bring them back.

4 (The jury returned to the courtroom.)

5 THE COURT: Thank you for your patience while we took
6 up the matters outside of your presence with the lawyers.
7 Congratulations, you have been selected as our first jury
8 this week. Frequently throughout your service or during
9 this trial you may hear that there will be times when the
10 lawyers will say, "Your Honor, can I approach the bench,"
11 or, "Your Honor, we need to discuss some matter outside of
12 the presence of the jury." And that as a result there may
13 be times when I will ask you to go back to the
14 deliberations room. The reason I am doing that is not to
15 try to hide anything from you, there are just certain roles
16 that y'all have and certain roles that I have that the
17 roles that we play in a trial like this that cannot cross.
18 So frequently I might have to address the lawyers about
19 matters that are exclusively left up to y'all and so I
20 would not want anything that I say or do in the course of
21 this trial to influence the decision that y'all have to
22 make, so that's one of the reasons I have to ask y'all to
23 leave at times. I've discussed the scheduling with the
24 lawyers and given the hour that it is now we will actually
25 not begin taking the testimony until in the morning, and so

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1 very shortly you're going to be free to go for the day.
2 But I will give you another instruction, is that again,
3 you're not to have any discussions about anything involving
4 this case either among yourselves or when you go home to a
5 loved one or anybody else. The only time that you are to
6 engage in any discussions about this case would be at the
7 end of the case when you begin your deliberations, that's
8 the only time that you're supposed to have any discussions.
9 So I'm going to tell you that if you go home and your loved
10 ones say, "What kind of case is it?" Or, "What did you do
11 today?" Just very politely tell them that the Judge has
12 ordered me that I can't talk to you about it. Once the
13 case is over with you can talk to anybody you want to as
14 much as you want to about the case. But until the case is
15 over don't discuss it with anyone. In the event you've
16 heard anything today that stimulated any of your interests
17 on saying, "Gosh, I might know something about this," or "I
18 might want to go look on the Internet," or you might have
19 somehow heard of a scene of where the accident or an event
20 occurred, don't do any type of independent investigation.
21 You know, again, your decisions are supposed to be based
22 solely on the evidence that's received in this courtroom.
23 So if your interest is stimulated, even if it is that
24 somebody has used a phrase in court that you don't
25 understand and you think you might want to go look at a

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1 dictionary and look it up, don't do that either. Because
2 any explanations of anything will come from me or will come
3 from one of the lawyers, so just depend just solely on what
4 happens in this courtroom when you make your decision.
5 Again, I want to thank you for your time today. I will ask
6 that you be back in the jury deliberations room by 9:30 in
7 the morning and we will start with the presentation of the
8 case. But again, thank you for your time. And Mr. Cedric
9 Smith, I'm going to ask if you would serve as foreperson of
10 this jury, the bailiff will show you which seat that you
11 will take the rest of the time. The other 11 of you are
12 free to sit wherever, I believe that seat is designated for
13 the alternate. So, Mr. Smith, if you will take the
14 foreman's seat and you will remain in the alternate seat
15 for the rest of the trial. Again, I will see you back here
16 in the morning. Thank y'all.

17 (The jury left the courtroom.)

18 THE COURT: Anything from the lawyers before we step
19 down?

20 MS. LESKANIC: Not from the State, Your Honor.

21 MR. RHODEN: Nothing from the defendant, Your Honor.

22 MR. ROBINSON: Nothing from the defense, Your Honor.

23 THE COURT: Then we will see you at 9:30.

24 (Court adjourned for the day and resumed at 9:30 a.m.
25 on November 7, 2006.)

PRETRIAL MOTIONS

1 MR. RHODEN: Your Honor, at the end of the jury
2 selection process -- and I apologize, I should have brought
3 this up then -- the solicitor indicated she struck juror 52
4 for a criminal record and I would just like to know what
5 that record is. If it was a record that would disqualify a
6 juror to start with then the juror would have been
7 dismissed from the pool, but I assume it wasn't and I would
8 just like to know what that record is.

9 THE COURT: It was a CDV first.

10 MR. RHODEN: Thank, you Your Honor.

11 MR. ROBINSON: May it please the Court? Your Honor,
12 we would like to make a motion to sequester witnesses in
13 this case. We believe that it would be prejudicial to the
14 defense in this matter to have all of the witnesses sitting
15 in here and watching the testimony in this case and I would
16 ask the Court to sequester witnesses before they testify.

17 THE COURT: Any objection from the State?

18 MS. LESKANIC: No objection as long as defense
19 witnesses are also sequestered, Your Honor.

20 MR. ROBINSON: That will be fine, Your Honor.

21 THE COURT: I believe that the investigating officer
22 gets to stay; is that correct?

23 MS. LESKANIC: That's correct.

24 THE COURT: Anything else before we bring the jury
25 back?

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1 MS. LESKANIC: Nothing, Your Honor.

2 THE COURT: Let's bring the jury back.

3 (The jury returned to the courtroom.)

4 THE COURT: Mr. Foreman, ladies and gentlemen, I want
5 to thank you for your patience this morning while we took
6 up a matter with the lawyers. We are about to begin the
7 case of the State vs. Jonathan Leon Simpson and the State
8 vs. Marcellus O'Brian Knuckles. At this time I'm going to
9 need for you to stand and raise your right hand, the clerk
10 is going to need to swear you in.

11 (The jury was sworn.)

12 THE COURT: I'll tell you that this trial probably
13 will be different than what you might expect. Many people
14 don't have a chance to attend an actual court session as
15 you're doing now and may think from watching television or
16 reading books and think that trials are full of high drama,
17 intense action and riveting circumstances. While all of
18 those things may be true at times, this trial is not for
19 entertainment, it is a fundamental part of our democracy.
20 It's a search for the truth in an effort to make sure that
21 justice is done between the parties before this Court.
22 Searching for the truth and making sure that justice is
23 done is often slow, deliberate and repetitive, the opposite
24 of what you may have seen on television or seen in movies
25 or read in books. This courtroom is a place of honor

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1 dedicated to the protection and preservation of citizens'
2 rights through what many have called the greatest justice
3 system ever created. The attorneys appearing before you
4 are advocates for the parties they represent, but first and
5 foremost they are officers of this court sworn to uphold
6 the integrity and fairness of our judicial system and to
7 help you in the search for the truth. You should expect
8 them to be professional, competent and ethical in the
9 representation of their client's interest. Remember that
10 you have taken an oath to try this case and reach a fair
11 and just verdict and you will also expected to be
12 professional, reasonable and ethical. Thank you for
13 accepting this important responsibility of jury service and
14 your contribution today to our justice system. What I will
15 say now is intended to serve as an introduction to the
16 trial of this case, these remarks are not a charge on the
17 law. I'll instruct you on the law applicable to this case
18 at the end of the trial before you retire to consider your
19 verdict. This is merely an explanation of the procedure
20 that we will follow in the trial of the case so that you
21 may better understand what may be happening. The
22 defendants -- both of the defendants in this case are
23 charged by indictments that are filed with this court with
24 the crime of armed robbery. The elements of the crime --
25 of these charges will be explained to you at a later time.

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1 The indictments are simply the charges by which the case is
2 brought into court and is not in any sense evidence of any
3 of the allegations contained in it. The defendants have
4 pled not guilty to the indictments. The State therefore
5 has the burden of proving each of the elements of the
6 indictments beyond a reasonable doubt, and it will be your
7 duty, ladies and gentlemen, to decide whether the State has
8 met that burden. Your purpose as jurors is to find and to
9 determine the facts. You are the sole judge of the facts.
10 If at anytime I make any comments regarding the facts, you
11 must disregard it. You are to determine the facts from the
12 testimony you hear and the other evidence introduced in
13 court. It is up to you to determine the inferences which
14 you may feel may properly be drawn from the evidence. It
15 is especially important that you perform your duty of
16 determining the facts diligently and conscientiously
17 because ordinarily there is no way to correct an erroneous
18 determination of facts made by a jury. On the other hand
19 and with equal emphasis the same law that makes you the
20 judge of the facts makes me the judge of the law. The law
21 as given by the Court is the only law you may consider.
22 You must accept and follow it even though you may disagree
23 with it. I cannot tell you what the facts are and you
24 cannot disagree with me about what the law is or should be.
25 Your job is to take the law as I give it to you and apply

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1 it to the facts as you find them from the testimony of the
2 witnesses and any other evidence that is introduced during
3 the trial. After doing that you will render your verdict,
4 a true and just verdict under the solum oath that you have
5 just taken as jurors. Until I advise you to begin your
6 deliberations you must not discuss this case with anyone
7 including your fellow jurors, friends, family members and
8 anyone involved in this case. After the case is submitted
9 to you you must discuss it only in the jury room with your
10 fellow jurors. The attorneys and the parties in this case
11 have been advised that they are not to talk to you at all.
12 So if you see anyone involved in the case and they do not
13 even say hello, they're not being unfriendly, they're just
14 following my instructions. During the trial do not read,
15 listen to or watch any news reports about the case, this
16 includes anything that may be in the newspaper or the
17 Internet, radio or television. You must not consider
18 anything you may have read or heard about the case outside
19 of the courtroom whether before or during the trial. It is
20 important that you keep an open mind and not decide any
21 issue in the case until all of the evidence has been
22 presented, the parties have made their closing arguments
23 and I have instructed you on the law of the case. It is
24 jury solum responsibility to determine the guilt or
25 innocence of the defendants and your verdict must be based

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1 solely on the evidence as it is presented to you in this
2 trial and on the law as I have instructed you during and at
3 the close of the trial. Now, in just a moment the
4 solicitor will make what is called an opening statement in
5 which the solicitor will explain to you the issues in the
6 case or at least what the solicitor thinks the issues are
7 in the case. The attorneys for the defendants may also
8 make an opening statement, although they are not required
9 to do so. But what the attorneys tell you during their
10 opening statements is not evidence in this case, it is only
11 their contention as to what the issues are. The evidence
12 in the case will be presented to you by testimony of sworn
13 witnesses from this witness stand and any exhibits that may
14 be introduced during the trial. From time to time during
15 this trial you may hear one of the lawyers say something
16 like, "Your Honor, I believe I have a question of law or a
17 matter of law to discuss with you," or, "Your Honor, may we
18 approach the bench," or sometimes I myself may find it
19 necessary to excuse you from the courtroom for a short
20 while so that the attorneys and I can discuss a matter of
21 law. The reason for this is because you are the judges of
22 the facts and sometimes when I am discussing matters of law
23 with the attorneys it may be necessary for me to make some
24 comment as to the facts in connection with ruling on
25 whether or not a particular law applies or not. I'm not

1 supposed to tell you what I think the facts are so I will
2 excuse you from the courtroom while these discussions take
3 place so that in no way you will be influenced by anything
4 that I might say or do in connection with the facts. In
5 determining what the true facts are in the case, you must
6 decide whether or not the testimony of a witness is
7 believable. It will be my responsibility to rule as a
8 matter of law as to whether or not certain testimony is
9 admissible, but once the testimony is admitted whether or
10 not you believe it is solely for your -- is for you to
11 determine. In deciding whether to believe a witness you
12 may have the right -- you have the right to consider the
13 interest of any witness, the bias of any witness, the
14 prejudice of any witness and the opportunity for the
15 witness to have seen the matters and things about which the
16 witness may testify and the way the witness acts on the
17 witness stand. You have a right to consider anything that
18 is in the record that will help you evaluate the testimony
19 of the witnesses. That means that it is your duty to pay
20 close attention to these witnesses, to observe the
21 witnesses, to listen to the witnesses and pay close
22 attention to the attorneys and to the Court. Don't let
23 your thoughts wonder but give strict attention to the
24 testimony of the case so that at the end of all of the
25 testimony, the arguments of counsel and the charge on the

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1 law you will then be in a position to determine what the
2 true facts are and apply the law to those facts and thus
3 render a true and just verdict. It is your added duty,
4 Mr. Foreperson, to preside in the jury room and be the jury
5 spokesperson here in this court. It will also be your duty
6 to write the verdict, but I will give you further
7 instructions about that at the conclusion of the case. In
8 order to preserve everyone's rights I will give either
9 party an opportunity to object to anything that I have just
10 now stated to the jury. Any objection from the State?

11 MS. LESKANIC: No, Your Honor.

12 THE COURT: Any from the defense?

13 MR. RHODEN: No, sir.

14 MR. ROBINSON: No, sir, Your Honor.

15 THE COURT: At this time we will now begin the trial
16 of the case. Yes, ma'am?

17 MS. LESKANIC: May it please the Court? Good morning,
18 ladies and gentlemen. My name is Kim Leskanic and I'm a
19 prosecutor here with the solicitor's office. The two
20 defendants seated at that table are Marcellus Knuckles and
21 Jonathan Simpson and they've both been charged with the
22 crime of armed robbery. I want to take you back to the
23 night of January 18th of this year. It's about 7:15 at
24 night, it's dark outside as it's dark in January at 7:15.
25 Shirley Whittaker is working as a clerk at Eastside Saveway

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1 convenience store which is on Wilkinson Highway in Cherokee
2 County. She's turned to stamp some checks, there are no
3 other customers in the store, there's one other worker in
4 the store, Willie Talley, who is in the back of the store.
5 She's turned to stamp some checks and before she knows
6 what's happening there are three males that entered the
7 store. One of them quickly jumps over the counter, takes
8 her by her head and pushes her down to the ground. "Where
9 is the money? Where is the money?" That was Laquinton
10 Foster and I will tell you about him in a minute. The
11 other person in the store, Jonathan Simpson, is armed with
12 a gun and he's standing on the other side of the counter at
13 the register hitting buttons trying to get the register to
14 open but he doesn't know how it works. He is pointing the
15 gun and Shirley has to stand up because he cannot figure
16 out how to open the register, he's telling her to open the
17 register. While she's doing that Laquinton Foster is
18 getting money out of another box and they have money in a
19 storage box and also in the register. Marcellus Knuckles
20 is the third one in the store and he rushes to the back of
21 the store to put Willie Talley, who is the other clerk in
22 the store, on the ground, that's his role in the robbery to
23 make sure everything is secure, you take the guy in the
24 back and we will take the lady at the register, take
25 control of the store. And in less than one minute they had

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1 jumped the counter, taken control of Shirley Whittaker,
2 robbed the store and they left. Those are the facts. That
3 is what happened right down the road on January 18th of
4 this year, less than one minute. And Shirley Whittaker was
5 scared to death. They're wearing masks and they came in as
6 quickly as you can imagine and they were gone just as fast.
7 They took a little over \$2,000 from the store. Those are
8 the facts of the case. You're going to hear evidence from
9 this witness stand as to what happened that night. Shirley
10 Whittaker is going to come in here and relive this night
11 for you, what it's like to be a clerk in a convenience
12 store and be robbed at gun point. You're also going to
13 hear from Laquinton Foster and he's the one I told you is
14 the first one in and the one that jumped the counter,
15 pushed Shirley down to the ground and took the money. He
16 pled guilty to armed robbery yesterday and he has been
17 sentenced. He is going to come in and to be honest with
18 you, I haven't had an opportunity to speak with him yet.
19 He gave a statement so I think I know what he's going to
20 tell me and you will hear from him and he will tell you
21 about what happened that night. You're also going to hear
22 from Joseph Wilson. Mr. Wilson is a relative of
23 Mr. Knuckles and he is a friend of Mr. Foster's and
24 Mr. Simpson's. Mr. Wilson is going to tell you that each
25 one of them either directly to him or in his presence made

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1 statements that they committed this robbery.

2 MR. RHODEN: Your Honor, I'm going to object to
3 getting into those facts at this point in time. There's
4 some legal issues later.

5 THE COURT: The jury, I believe, has already been
6 instructed that the arguments that are presented by counsel
7 is not evidence in the case, it is simply their contention
8 as to what the issues are in the case. Yes, ma'am, go
9 ahead.

10 MS. LESKANIC: Thank you, Your Honor. You are going
11 to hear from these witnesses and they're going to tell you
12 about their knowledge of what happened that night and based
13 on the information that you hear from this witness stand we
14 will prove to you beyond a reasonable doubt that Marcellus
15 Knuckles and Jonathan Simpson are guilty of armed robbery
16 of the Eastside Saveway in January of this year. Thank you
17 very much.

18 MR. RHODEN: May it please the Court? Where were you
19 on July 18th of 2006? I'll come back to that in a minute
20 to illustrate the point. My name is Bill Rhoden, I'm an
21 attorney here in town. My office is right down the street,
22 I practice law with Mr. Bill Winter. I represent Marcellus
23 O'Brian Knuckles who is seated right beside me at counsel
24 table. He goes by Brian, so I'll probably refer to him
25 through the trial mostly as Brian, but it's Marcellus

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1 O'Brian Knuckles. Ladies and gentlemen, as you know from
2 what the Judge told you earlier and as the prosecutor has
3 stated, this is a criminal trial. Those two individuals
4 sitting over there have been accused by the State of South
5 Carolina of committing a crime. The burden is on the State
6 to prove beyond a reasonable doubt that these two
7 individuals committed that crime. The burden is not to
8 some probability or some suspicion or some preponderance of
9 evidence, but the burden is to beyond a reasonable doubt.
10 That is very important for you to keep in mind as you
11 listen to the testimony and the evidence and consider the
12 testimony and the evidence and perhaps the lack of evidence
13 in this case. Now, ladies and gentlemen, I come back to my
14 opening phrase where were you on July 18th of 2006. Why in
15 the world did I say that? Well, this ordeal began for
16 Brian Knuckles on May 12th of 2006 when he was arrested for
17 this offense that occurred on January the 18th, 2006, some
18 four months approximately after the fact. Why is it
19 important? Why am I bringing that up? Well, ladies and
20 gentlemen, as His Honor has told you or mentioned to you in
21 his opening statement we have one of the greatest criminal
22 justice systems in the world. Does it always work? No.
23 But it works for the most part pretty darn good. There are
24 other countries in this world who have copied our system
25 and there's other countries in this world who have it very

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1 different. Ladies and gentlemen, in the former Soviet
2 Union they had what was called a crime against the State.
3 If you were accused of a crime against the State they would
4 say, "You're charged with committing a crime a year ago,
5 six months ago, two years ago," and the burden is on you to
6 prove otherwise. You had to prove what you were doing, you
7 had to prove you did not commit that crime. In our
8 country, in our system and in this courtroom we have just
9 the opposite situation, a defendant is never, never
10 required in our court to prove that he did not commit a
11 crime. As you can well imagine when I started my statement
12 where were you on July 18 of 2006, that's about four months
13 ago, could you prove where you were on July 18, of 2006?
14 Could you prove what you were doing approximately 7:00 on
15 July 18, 2006 about 4 months ago? I dare say many of us
16 could not. I dare say it would be very unusual unless that
17 was some particular day for you such as a birthday or
18 anniversary or something particularly important happened in
19 your life on that day where you would be able to turn back
20 the hands of time and prove what you were doing at about
21 7:00 on that day. The defendant, Brian Knuckles, doesn't
22 have the burden of proving what he was doing or not doing
23 on January 18th of 2006 about 7:00 in the evening. The
24 State has the burden of proving in this case that Brian
25 Knuckles was in that store robbing that store at that date

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1 and time. Now, ladies and gentlemen, the solicitor has
2 come before you this morning and said all of these things
3 about what Brian did, what Mr. Simpson did, what Mr. Foster
4 did. Ladies and gentlemen, you will listen to the
5 testimony from the witness stand and you will see the
6 evidence and you will draw your own conclusions from that
7 testimony. It is not what the solicitor says, it's not
8 what the solicitor thinks in this case, it is what the
9 State has proven to you beyond a reasonable doubt. That is
10 the only thing that is important in this case. Ladies and
11 gentlemen, I dare say that when this case is over and done
12 with there will be no -- absolutely no single solitary
13 piece of physical evidence in this case to link Brian
14 Knuckles to this robbery. There will not be a gun I submit
15 to you that was found anywhere in regard to this matter.
16 There will not be any identification by any independent
17 witness in this case as to who robbed this store. The
18 State will build its case based on the statements of other
19 individuals, a couple of individuals we will get into that
20 as this case goes along, we also know who these individuals
21 are. You will determine their credibility, their
22 believability and at the end of the day, at the end of the
23 case you will have to decide whether or not the State has
24 met their burden of proof beyond a reasonable doubt.
25 Ladies and gentlemen, once again, I can't emphasize any

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1 stronger that the defendant never has any burden. The
2 defendant doesn't have to come forward and testify, the
3 defendant doesn't have to present any witnesses in the
4 case. It's always -- the burden is on the State to prove
5 the case beyond a reasonable doubt. Ladies and gentlemen,
6 you have been chosen as the finders of fact in this case.
7 As His Honor has told you in his openings statement to you
8 there are very different roles that the people in this
9 courtroom will play. I represent Mr. Knuckles, it is my
10 job to represent him the best I can, to be an advocate for
11 his position. The solicitor on the other hand represents
12 the State of South Carolina, it's her job to be an advocate
13 for her position. His Honor is the judge of the law. He
14 will tell you what the law is in this case and he is the
15 judge of the law. Now, you 13 jurors are judges in this
16 case, you are no less a judge than His Honor sitting on the
17 bench. You play no less of a role than His Honor does in
18 this trial. You are judges, you judge the facts. And as
19 His Honor has told you in his opening statement that you
20 are the sole judges of the facts of this case. And as he
21 has illuded to we have mechanisms in this state of
22 correcting errors of law, but really we don't have a
23 mechanism for correcting errors of fact. The facts that
24 you find today will be the facts basically written in stone
25 in this case. That's why it's important that you, as

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1 jurors, as judges of the facts to pay very close attention,
2 to consider the evidence and consider the lack of evidence.
3 Because I submit to you, ladies and gentlemen, it can be
4 sometimes more important to consider the lack of evidence
5 than the evidence itself. You have been chosen by the
6 lawyers in this case to hear the witnesses, to consider the
7 evidence -- and I'm sure and I am confident that you will
8 do your job and do it well and that's all we ask. We ask
9 that you take into consideration the testimony, the
10 exhibits, the evidence, and the lack of evidence, apply the
11 law, hold the State to its burden of proof because that's
12 very important, and at the end of the day render a verdict
13 that speaks the truth. Ladies and gentlemen, thank you for
14 your attention. I do appreciate you being here, without
15 your presence we certainly could not try this case. As I
16 stated before we don't have a perfect system but it does
17 work pretty darn good and you are the an essential clog in
18 that wheel. For that wheel to work right you have to honor
19 your oath, listen to the testimony, apply the law, and hold
20 the State to its burden of proof in this case. The case
21 shouldn't last very long, we might even be finished today,
22 I think that's probably a strong likelihood that we will be
23 finished today. As His Honor has told you that sometimes
24 you listen to or see TV and I think trials go on maybe for
25 months and months and months, that doesn't take place most

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1 of the time. Most of the time they're relatively short as
2 this one will be, but that doesn't make it any less
3 important. These two individuals are charged with very
4 serious crimes and this is a very serious day to them. I
5 appreciate your attention and I know you will do a good
6 job. We will start the testimony in a few minutes. Of
7 course, I remind you everything I say is not evidence and
8 anything the solicitor says is not evidence, the evidence
9 will come from that witness stand. All I ask is you hold
10 the State to their burden of proof. Thank you.

11 THE COURT: Yes, sir, Mr. Robinson?

12 MR. ROBINSON: May it please the Court? That is a
13 long walk from that table to get over here, I was just
14 noticing that. Good morning, ladies and gentlemen, my name
15 is Scott Robinson, I represent Jonathan Simpson who is
16 sitting to my left over here. Jonathan is 22, he's a life
17 long resident of Gaffney and Cherokee County. He works at
18 BMW which is in Greer. Ladies and gentlemen, you woke up
19 this morning and you read the newspaper or the watched the
20 news or listened to something on the radio, you may have
21 heard something about someone being charged with a crime,
22 someone being caught or something like that and you
23 naturally presumed that they caught the guy, they caught
24 the person, he must be guilty. Well, that presumption that
25 you have outside of this courtroom is gone at this point.

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1 The presumption that you have in this courtroom is that the
2 defendants are innocent until proven guilty beyond a
3 reasonable doubt by the State. There are different
4 presumptions that the State has in this case. What that
5 means is that the State has got to prove every element of
6 their case beyond a reasonable doubt in this case. And
7 that means that you have to look at every single part of
8 this case in terms of the defendants and whether or not the
9 State has proven each and every element of their case.
10 Now, you all are members of the community, you have common
11 sense, you have your own experiences that you have had in
12 your lives and you can tell whether someone is either lying
13 or telling the truth, you can tell when something either
14 makes sense or doesn't make sense and that's what you are
15 called on to do in this case. Because that's why there are
16 13 of you, because y'all have your own wisdom and common
17 sense that you bring to this and you're expected to think
18 about it, go over the issues and go over the evidence in
19 this case, look at the witnesses that the State puts up,
20 look at motivation, background, what they have to lose in
21 this case, what the evidence is, what has been shown. But
22 everything you look at has to be looked at through this
23 glass of reasonable doubt. And if the State has not proven
24 each and every element of its case to your satisfaction
25 beyond a reasonable doubt you must find Jonathan Simpson in

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1 this case innocent and acquit him, you acquit him in this
2 case. Now, you know, you don't have to like a person to
3 acquit him. You may not like what they look like, what
4 they sound like, how they dress, but that's not what we are
5 here for. We don't have to like someone, we don't have to
6 like the way they dress, how they sound, that's not what we
7 are here for today. Because it doesn't matter if you like
8 someone, you have to look at whether or not the State has
9 proven their case -- each and every element of their case
10 beyond a reasonable doubt and I ask you to do that in this
11 case. If you do that, if you look at all of the evidence
12 in this case and you use your common sense and your wisdom
13 in this case, there could be but one verdict in this case
14 and that is not guilty of that charge. Thank you.

15 THE COURT: Ready to call your first witness?

16 MS. LESKANIC: We are, Your Honor. The State calls
17 Shirley Whitaker.

18 The witness, SHIRLEY WHITAKER, was first duly sworn
19 and testified as follows, on:

20 DIRECT EXAMINATION

21 BY MS. LESKANIC:

22 Q. Good morning, Ms. Whitaker.

23 A. Good morning.

24 Q. Will you please introduce yourself to the ladies and
25 gentlemen of the jury?

TESTIMONY OF SHIRLEY WHITAKER

- 1 A. I'm Shirley Whitaker.
- 2 Q. Where do you live, Ms. Whitaker? Cherokee County?
- 3 A. Cherokee County.
- 4 Q. Have you lived here your whole life?
- 5 A. Yes.
- 6 Q. Can you tell them a little bit about your work
- 7 history?
- 8 A. Well, let's see, I retired from Tempton in 2002.
- 9 Probably for the last 20 years I have been working
- 10 part-time and full-time in a convenience store.
- 11 Q. Were you working as a clerk at Eastside Saveway
- 12 Convenience Store on January 18th of this year?
- 13 A. Yes, I was.
- 14 Q. Is that located here in Cherokee County?
- 15 A. Yes, ma'am.
- 16 Q. What shift were you working on January 18th?
- 17 A. From 2:00 to 10:00.
- 18 Q. Is that second shift?
- 19 A. Second shift.
- 20 Q. 2:00 p.m. to 10:00 p.m.?
- 21 A. Yes.
- 22 Q. 2:00 in afternoon until 10:00 at night?
- 23 A. Yes.
- 24 Q. I know you're nervous, that's okay, take your time.
- 25 Was anyone else working with you that day?

TESTIMONY OF SHIRLEY WHITAKER

1 A. We had a stocker in there with me, Willie Talley.

2 Q. Okay. Now, can you tell the jury -- take me back to
3 January 18th that evening and tell them what happened while
4 you were working.

5 A. Well, it was somewhere a little while after 7:00 I had
6 just walked over to stamp some checks and the next thing I
7 knew there was a guy behind me hollering either get down or
8 where is the money, one or the other. And he took his hand
9 and pushed me down on the floor by the back of my head.

10 And like I say, undoubtedly he knew where we kept our extra
11 money or must have known because he went directly to the
12 place where we kept our extra money.

13 Q. Was there anyone with him?

14 A. While I was on the floor there was one on the other
15 side of the counter hollering, "Open the register. Open
16 the register." And I told that guy I have got to get up to
17 open the register and the guy had been reaching over the
18 counter mashing buttons trying to get the register open
19 himself. But when I stood up he had a gun pointed at me
20 too, so that really terrified me a good bit. But it took
21 me several minutes to get the register open because he had
22 already mashed some buttons and I had to get it open, and
23 he reached over -- I don't know which hand -- but just
24 grabbed as much money as he could out of the register and
25 the one behind me was trying to get the rest of the money

TESTIMONY OF SHIRLEY WHITAKER

1 out of the register. He just pulled the register drawer
2 out and dropped it and then he jumped back over the
3 counter. And the one that had the gun to me sounded older
4 than the one that was behind me and they ran out about the
5 same time that Mary was coming in. I got to -- as soon as
6 they run out I mashed our panic buttons and 911 said they
7 would get somebody straight out there. After I did that I
8 was asking Mary, "Where is Dirt?" That's his --

9 MR. RHODEN: Your Honor, I am going to object to
10 anything Mary may have said.

11 THE COURT: I will sustain the objection.

12 MS. LESKANIC: I believe she was just saying what she
13 said to Mary.

14 Q. But anyway, did you somehow find out there was another
15 individual involved in the robbery?

16 A. Yes. Because I was asking, "Where is Dirt? Where is
17 Dirt?" That's Willie's nickname. And one had went back to
18 the cooler area where he was at and made him lie down in
19 the floor. But I didn't know there was three of them until
20 afterwards.

21 Q. And you mentioned Mary, was she a customer?

22 A. Yeah. She was coming in the door as they were running
23 out.

24 Q. Any doubt in your mind that the one on the other side
25 of the counter had a gun pointed at you?

TESTIMONY OF SHIRLEY WHITAKER

1 A. No, ma'am.

2 Q. Did the store have a working surveillance camera that
3 you were aware of?

4 A. Yes, ma'am.

5 Q. I would like to show you, if I may, State's Exhibit 1
6 which is the -- I am --

7 MR. RHODEN: We will have some objections to the
8 evidence, Your Honor, if she's offering it now.

9 THE COURT: She is going to lay a foundation first, I
10 believe.

11 Q. I would like to show you what has been marked as
12 State's Exhibit 1. If you will, take a look at that and
13 tell me if you recognize what that is.

14 A. Yes, ma'am.

15 Q. What is this?

16 A. It's a surveillance tape that you showed me the other
17 day.

18 Q. So you have had an opportunity to view this?

19 A. Yes.

20 Q. Does it accurately show what happened on January 18th
21 during the armed robbery?

22 A. It does to my opinion, yes.

23 MS. LESKANIC: Your Honor, at this time the State
24 would offer State's Exhibit 1 for its admission as
25 evidence.

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1 MR. RHODEN: I do have some arguments to make.

2 THE COURT: All right. Ladies and gentlemen, this is
3 one of those times where I am going to have to ask that you
4 retire back to the jury deliberations room. Again, I will
5 remind you not to have any discussions among yourselves and
6 we will get you back out just as quickly as we can.

7 (The jury left the courtroom.)

8 THE COURT: Yes, sir?

9 MR. RHODEN: May it please the Court? Your Honor,
10 just for the record, I do object to the evidence at this
11 time. Your Honor, it would be my position the State has
12 not at this time laid a proper foundation for this video
13 evidence, Your Honor. Obviously there was some sort of
14 surveillance system in this little convenience store. I
15 know Your Honor has not seen this video yet, but it is
16 obvious from looking at the video that this is a very small
17 piece of part, somehow or another this particular portion
18 has been redacted if you will from some later portion I
19 assume. I don't know who did that, what manner they did
20 that, how they took it off, the equipment itself, whether
21 it was before this part or after this part. Your Honor, in
22 addition to that as you will see as you watch the video
23 there are two camera angles that apparently occur in this
24 video. One it looks as if it is kind of taken from behind
25 the counter, the other one looks as if it is taken from

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1 somewhere back in the back part of the store. For awhile
2 you see one camera angle, for awhile you see another camera
3 angle. I think the State must lay some foundation as to
4 how this video works, as to how the camera angles -- how it
5 switches from place to place, is there an additional video
6 that may show both of these cameras at the same angles at
7 the same time. There's a counter on the video, and when I
8 say a counter it's on the upper right hand portion of the
9 video that shows time if you will going by. There's
10 nothing to indicate at this point in time whether or not
11 that counter is in realtime, it that real seconds that are
12 ticking by or is that some other mechanism that this
13 surveillance tape uses. Were there any other cameras
14 besides these cameras in the store? Are there any other
15 videotapes in the store, that has not been established.
16 Your Honor, I think the State must show in order to show
17 this snippet of the video to the jury, you know, the
18 working mechanisms to lay a foundation of how this was
19 done. I know Ms. Whitaker has said she has looked at it
20 and to the best of her knowledge this depicts what
21 happened, but as Your Honor can see a lot of it occurs from
22 different angles, some of which she would not even have
23 been basically privy to during the robbery. As she said
24 she was behind the counter and pushed down and certainly
25 couldn't see everything that was going on. So I think at

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1 this point in time the State must present someone to tell
2 us all of these things about this video before it can be
3 introduced into evidence.

4 THE COURT: Yes, ma'am?

5 MS. LESKANIC: May it please the Court, Your Honor?
6 We have the videotape, we just tried to cut that down to
7 the actual armed robbery to save time. We can watch the
8 entire day at the convenience store if that's what defense
9 counsel wants. We have turned over all of the videotapes,
10 which is just this one available at the store that day.
11 Ms. Whittaker has laid an appropriate foundation saying she
12 has viewed the video and that it accurately portrays what
13 happened during the armed robbery. I think that's
14 sufficient foundation. We certainly have Sargent Ramsey
15 who we can have come over and testify, he's the one that
16 transferred it from the VHS tape to the DVD. I also have
17 the owner of the store who can testify how the surveillance
18 tape works if that's what the Court desires. But I believe
19 the necessary foundation has been made by Ms. Whitaker and
20 she has viewed it and it accurately portrays what happened
21 in the store. I will also have Willie Talley testify at a
22 later point who will testify he was made to lay down on the
23 ground which is what is shown on the video. It is an armed
24 robbery of Ms. Whitaker and Mr. Talley being made to lay
25 down on the ground, that's the purpose of the video is to

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1 show the jury what happened, but certainly if the defense
2 wants to show the entire day at the convenience store we
3 can play the VHS tape.

4 THE COURT: How long is the segment that you intend to
5 publish at this time?

6 MR. RHODEN: Forty-one seconds.

7 THE COURT: All right. Well, let me come down and
8 take a look at it.

9 (The videotape was played.)

10 THE COURT: All right. I find that based on what I
11 have seen that the witness has laid a sufficient
12 foundation. I wouldn't want to tread into the area of
13 wanting to advise the State on what they should do, but I
14 believe that your position can attack the credibility of
15 the evidence and so I would allow it in based on the brief
16 segment that I've seen, her testimony and indicating that
17 it does accurately reflect what did occur. And from my
18 view of it she was active in it -- if that is her --
19 assuming that's her shown in the video, she's an active
20 participant in what transpired in that little segment we
21 saw. You're protected on the record.

22 MR. RHODEN: Thank you, Your Honor.

23 THE COURT: Anything else before we bring the jury
24 back.

25 MR. ROBINSON: I have one matter, Your Honor. Your

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1 Honor, I would object to the State stating armed robbery
2 throughout this whole case. Because I think that -- I
3 think that it is prejudicial to the defendants in this
4 matter and I would ask the Court to ask them to not talk
5 about the armed robbery, armed robbery all of the time
6 because that's the only thing -- I think that's more of a
7 legal matter as far as whether it's an armed robbery or
8 not. That is the objection I have as far as her stating,
9 "Tell me about the armed robbery," or something like that,
10 that's what I was objecting to.

11 MS. LESKANIC: She testified there was a gun, Your
12 Honor, and I think that makes it an armed robbery and
13 that's what they are charged with.

14 THE COURT: I wouldn't hamstring the State to that
15 extent. I mean, the State does -- if they run the risk --
16 if they don't prove it's an armed robbery it could come
17 back to haunt them, but I think it's an appropriate comment
18 so far. Anything else?

19 MR. RHODEN: No, sir.

20 MS. LESKANIC: Is that admitted, Your Honor? Do I
21 need to take it out of the machine or --

22 THE COURT: Just offer to publish it. You are
23 protected on the record.

24 MS. LESKANIC: Thank you, Your Honor.

25 (The jury returned to the courtroom.)

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1 MS. LESKANIC: We will have the video cassette marked
2 as State's 1.

3 (The videotape was received as State's 1.)

4 MS. LESKANIC: Thank you, Your Honor. At this time
5 the State would ask to publish State's Exhibit 1 to the
6 jury.

7 THE COURT: Subject to the defendant's objection you
8 may publish the tape.

9 MS. LESKANIC: Thank you, Your Honor.

10 (The videotape was played.)

11 Q. Ms. Whitaker, is that the way it happened?

12 A. Yes, ma'am.

13 Q. Is that Mary that's walking in the door?

14 A. Yes, ma'am.

15 Q. All right. These individuals have masks on, do you
16 recall?

17 A. As far as I remember they did.

18 Q. Can you tell me what you are doing? Just walk the
19 jury through this as you watch the video.

20 A. We have our checks laying on that side and I have to
21 stamp them on the back with the store stamp.

22 Q. Do you recognize any of the individuals?

23 A. No, ma'am.

24 Q. Did you see their faces?

25 A. No, ma'am.

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1 Q. All right. Ms. Whittaker, I would also like to show
2 you what has been marked as State's Exhibit 2, 3, 4, 5, 6,
3 and 7.

4 MS. LESKANIC: May I approach the witness, Your Honor?

5 THE COURT: Yes, ma'am.

6 Q. First of all, this is State's Exhibit 2.

7 Ms. Whitaker, would you tell me if you recognize that?

8 A. Yes. That's a picture of the front of the store.

9 Q. And this is State's Exhibit 3. Take a look at that
10 and tell me if you recognize it.

11 A. Yes, ma'am. That was shortly after they had left
12 showing the cash drawer on the floor and the money and
13 change everywhere.

14 Q. State's Exhibit 4?

15 A. It is roughly the same thing.

16 Q. Which is what?

17 A. With the cash drawer on the floor and change
18 everywhere.

19 Q. Okay. State's Exhibit 5?

20 A. It shows the money drawer on the floor where they
21 jerked it out of the register and then some stuff they had
22 knocked over the counter when the guy jumped over the
23 counter.

24 Q. State's Exhibit 6?

25 A. This is roughly showing the side where I was stamping

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1 the checks and our extra money box was back in the counter
2 on the -- back in the corner and it was showing it is
3 empty.

4 Q. And State's Exhibit 7?

5 A. Roughly the same thing.

6 Q. Which is what?

7 A. Which is the money box being open and empty and out
8 from the counter.

9 Q. Okay. Do all of these photographs fairly and
10 accurately represent the scene as it appeared on
11 January 18th?

12 A. Yes, ma'am.

13 Q. Okay.

14 MS. LESKANIC: Your Honor, at this time the State
15 would offer Exhibits 2, 3, 4, 5, 6 and 7 for admission into
16 evidence?

17 MR. RHODEN: No objection.

18 MR. ROBINSON: No objection.

19 (The photographs were received as State's 2-7.)

20 MS. LESKANIC: At this time I would like to publish.

21 THE COURT: All right.

22 Q. I know you and I went over this, Ms. Whitaker. I want
23 to be able to show it to the jury and let me give you in
24 case you need it a little laser pointer. If you need to
25 step down you can. I am first showing what's been marked

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1 as State's Exhibit 2. Will you tell the jury what we are
2 looking at?

3 A. We are looking at the front of the store, Eastside
4 Saveway.

5 Q. Okay. And the next one shows State's Exhibit 3.

6 A. This one is showing the register drawer and the change
7 and stuff that's in the floor.

8 Q. That's where you were back behind that counter when
9 this happened?

10 A. Yes, ma'am. I was facing this counter stamping checks
11 with my head down when they came in.

12 Q. Where did the individual, Laquinton Foster, jump
13 across the counter?

14 A. Right beside the register. There's a space between
15 the register and I believe it was cigarettes or something
16 that we had in that area.

17 Q. So did you have your back to him when he came in?

18 A. Yes, ma'am.

19 Q. I'm going to show you State's Exhibit 4. Just tell us
20 what we're looking at.

21 A. Again you are looking at the register drawer that
22 they've pulled out of there, an empty money box and the
23 change and stuff that was knocked on the counter when he
24 jumped over.

25 Q. Where exactly is the register?

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- 1 A. The register is right here.
- 2 Q. Where is the cash box?
- 3 A. It is usually back behind that counter there in the
4 corner just inside the corner.
- 5 Q. And they pulled the cash box out and emptied that as
6 well?
- 7 A. As far as I know they pulled it out. I could have had
8 it maybe showing just a little but as far as I know they
9 pulled it out as far as I can remember..
- 10 Q. States Exhibit 5?
- 11 A. This is the cash register and the change and stuff
12 that they knocked off.
- 13 Q. State's Exhibit 6?
- 14 A. Again, this is showing the counter where I was
15 standing and the register and the empty extra cash box.
- 16 Q. Where did the individual jump over the counter and get
17 a closer view?
- 18 A. Between here. And like I say, there's a space there,
19 this was up against the register and then we have a space
20 that comes out here and we had some cigarettes. This is
21 not a very wide area, I would say maybe three-foot, I don't
22 know, I was just guessing.
- 23 Q. And finally, State's Exhibit 7?
- 24 A. It's just showing me the cash box where we kept our
25 extra money.

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1 Q. Okay. Thank you, Ms. Whitaker, you can have a seat.

2 Did customers continue to come in the store after the
3 robbery occurred?

4 A. Yes. Well, as I can remember, yes. And I told them I
5 couldn't do nothing because we just got robbed.

6 Q. Did it scare you?

7 A. Very much so.

8 Q. Are you working as a clerk at a convenience store now?

9 A. No, ma'am.

10 Q. Why not?

11 MR. RHODEN: Your Honor, I'm going to object at this
12 point in time. That question, I don't know what relevancy
13 that has to the facts of the case.

14 THE COURT: I will allow a limited question on it. Go
15 ahead, ma'am.

16 Q. You are no longer working as a clerk?

17 A. No, ma'am.

18 Q. Did it have anything to do with this incident?

19 A. A good bit of it, yes.

20 MS. LESKANIC: Thank you. If you will, please answer
21 any questions that the defense attorneys or the Judge may
22 have.

23 MR. RHODEN: Please the Court?

24 CROSS EXAMINATION

25 BY MR. RHODEN:

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- 1 Q. Shirley, how are you?
- 2 A. I am fine, I think.
- 3 Q. Of course, you are working at this little convenience
4 store the night of this, it was robbed, it was around 7:00
5 or a little about after, is that about right?
- 6 A. That's correct.
- 7 Q. Three individuals came in the store but you only
8 really saw two of them.
- 9 A. Yes, sir.
- 10 Q. It was basically after the facts that you even knew
11 that there was a third person.
- 12 A. That's correct.
- 13 Q. All right. Basically you saw the person who jumped
14 over the counter and you saw the individual who is in front
15 of the counter trying to get money out of the cash
16 register.
- 17 A. Yes.
- 18 Q. Never saw the other individual that went to the back.
- 19 A. No.
- 20 Q. And, of course, you were not able to identify any of
21 these individuals.
- 22 A. No, sir.
- 23 Q. After the robbery occurred I assume you called the
24 police.
- 25 A. Yes, sir. I mashed -- we have a panic -- what we call

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1 a panic button and 911 called back and I told them we had
2 just got robbed. They said they would get someone straight
3 out there.

4 Q. And the police came that evening?

5 A. Oh, yes.

6 Q. These pictures that the State has asked you about,
7 those were pictures that the police took that evening. You
8 didn't take them.

9 A. No, I didn't take them.

10 Q. All right. Now, do you recall about how many police
11 officers came out that night?

12 A. I think two, maybe more.

13 Q. Did you see Detective Clary there that night?

14 A. I can't remember whether he was there or not.

15 Q. There's another detective, Detective Segina, did
16 you --

17 A. Yeah. I remember seeing him, he was the one taking
18 most of the statements.

19 Q. All right. The door that comes into the store, that's
20 kind of a glass front of the store, correct?

21 A. Yes.

22 Q. There's a front door that customers come in and out
23 of.

24 A. Yes.

25 Q. Do you recall whether that door was opened or shut

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1 when this robbery occurred?

2 A. On my statement I thought it was opened because we had
3 had it opened earlier, but on video it is closed. So
4 undoubtedly it had gotten closed.

5 Q. Well, that brings up an issue here. The night that
6 this occurred and the detectives came out they didn't take
7 a statement from you that night, did they, a written
8 statement?

9 A. Not a written statement, no.

10 Q. They may have asked you what happened but they didn't
11 take any written statement from you that night, or did
12 they?

13 A. Detective Skinner was writing down everything I said.

14 Q. Detective Skinner made notes of what you were saying
15 as you were telling him things.

16 A. I think so, yeah.

17 Q. You saw him do that?

18 A. He was writing something, it may have just been a
19 report. I don't know.

20 Q. But as you were telling him things that happened that
21 night he was, in fact, writing?

22 A. He was writing something, yes. It may have just been
23 the report.

24 Q. All right. Or it may have been notes taken from what
25 you were telling him.

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1 A. It could have been.

2 Q. Okay.

3 MR. RHODEN: Your Honor, I have got an issue of law.

4 THE COURT: All right. Ladies and gentlemen, I am
5 going to ask you once again to retire back to the jury
6 deliberations room and you are not to have any discussions
7 among yourselves about the case.

8 (The jury left the courtroom.)

9 MR. RHODEN: May it please the Court? Your Honor, I
10 certainly have been provided by the State with a statement
11 that Ms. Whitaker gave that looks like she gave that on
12 May 16th of 2006. I have not been provided with any other
13 statements or any other notes of information that she may
14 have given that evening unless I have just totally
15 overlooked it, which I may have, but I don't think so. I
16 didn't even see any indication from the information
17 supplied to me by the State that Detective Skinner was even
18 present in this investigation. And certainly if Detective
19 Skinner was, in fact, there that night and did, in fact,
20 take notes of what Ms. Whitaker may have told him that
21 night we would be entitled to those notes and to use those
22 notes as possible contradictory statements that this
23 witness may have made. I don't know if they are
24 inconsistent from her testimony because I haven't seen
25 them. But I think we are entitled to those to be able to

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1 use in cross examination if, in fact, he did take notes as
2 to what Ms. Whitaker may have told him that night.

3 THE COURT: Yes, ma'am?

4 MS. LESKANIC: It's my understanding Detective Skinner
5 was not at the scene, Your Honor, and I don't want to speak
6 for Ms. Whitaker, there was Detective Segina that was out
7 there and that may be the name, I don't know. But he did
8 have some handwritten notes that I turned over to defense
9 counsel, not in particular to her statement. But those are
10 the only handwritten notes that we have.

11 MR. RHODEN: Well, Your Honor, the only handwritten
12 notes that I have as I have the incident report, I have
13 another little sheet that says something about the
14 35-millimeter film and some fingerprints and I have nothing
15 detective -- I have just notes on what he did that night.
16 Certainly if somebody were talking to me I would be writing
17 down. If he is going to say he doesn't have any notes
18 that's fine, but if there are notes --

19 THE COURT: She's not even identifying the correct
20 officer. You need to be sure you make a record for it in
21 the event that it comes up that it is an issue in the
22 trial, but I'm not hearing anything that has been done yet
23 that I can make a ruling on.

24 (The jury returned to the courtroom.)

25 MR. RHODEN: May it please the Court?

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1 Q. Let me back up to a few things to clarify. I know you
2 told us you couldn't identify any of these individuals.
3 Did you say they had masks or on didn't have masks on or
4 you didn't know?

5 A. I am pretty sure they had masks on.

6 Q. In any event, you never got a look at any of their
7 faces.

8 A. No.

9 Q. Now, there was another individual who was working in
10 the store that night.

11 A. Yes.

12 Q. And who was that?

13 A. Willie. His nickname is Dirt, he's a stocker.

14 Q. Willie Talley?

15 A. Willie Talley, yeah.

16 Q. They call him Dirt?

17 A. Yeah, they call him Dirt.

18 Q. Where was he?

19 A. He was back next to the drink coolers. He must have
20 been filling some drink boxes or something.

21 Q. So basically you were in the front of the store and he
22 is kind of in the back?

23 A. Yeah.

24 Q. Now, this store that we're talking about, of course,
25 is a little convenience store and it really is a fairly

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- 1 small building.
- 2 A. Yes.
- 3 Q. So we looked at this videotape -- of course, I don't
- 4 know the mechanisms by which this tape was made, but it
- 5 kind of views the whole store from a couple of different
- 6 angles; is that right?
- 7 A. Yeah.
- 8 Q. But in reality this store itself is very small.
- 9 A. Yeah, it is pretty small.
- 10 Q. If someone is in the back and you need to say
- 11 something to them you pretty much can just in your general
- 12 conversation voice talk to them in the back of the store.
- 13 A. You have to kind of speak up a little bit, but not --
- 14 Q. Not much?
- 15 A. Not real loud, yeah.
- 16 Q. Now, the individual, one of them jumps over the
- 17 counter top.
- 18 A. Yeah.
- 19 Q. Did you -- after the robbery took place, did you see
- 20 an impression on the counter top of someone's shoe? Did
- 21 you see that?
- 22 A. I don't remember seeing it.
- 23 Q. Did the detectives come and do stuff on the counter
- 24 top such as try to take fingerprints and stuff like that?
- 25 A. Yes.

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1 Q. They did those things?

2 A. Yeah.

3 Q. You saw them do it?

4 A. Yeah.

5 Q. The person who is trying to get money out of the cash
6 register didn't appear to have any gloves on them of any
7 kind, did they?

8 A. I don't remember. I was looking at the gun instead of
9 the hands.

10 Q. Okay. How about the person who went behind the
11 counter, do you know if they had any gloves on?

12 A. No, I don't.

13 Q. You don't know -- didn't see them, you don't know.

14 A. I don't know.

15 Q. Now, the State has shown you several pictures
16 whereby -- I'm not real good at using this fancy equipment
17 so bear with me here. I tell you what, let's do it the old
18 fashioned way.

19 MR. RHODEN: With Your Honor's permission if she could
20 step down and let's show the pictures to the jury.

21 THE COURT: Ma'am, if you would, just be sure -- you
22 are not going to be at a microphone, he needs to be able to
23 hear you so be sure you speak up loud enough.

24 Q. Shirley, I'm showing you what has been marked as
25 State's Exhibit Number 3. Can you kind of show that to the

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1 jury? Does that show kind of the back of the area -- the
2 counter there where you worked?

3 A. Yes. This is the back, the register is here and I
4 mainly work in that area right there.

5 Q. On that picture, can you tell -- or where does it show
6 where you keep the cash box in the back or one that you
7 said holds your extra money?

8 A. You can't see it real good, but it's up here.

9 Q. All right. Now, my question to you, Shirley, is if I
10 am taking that picture and obviously I am kind and standing
11 is this how you get behind the counter, you walk around
12 here?

13 A. You come in the front door and you walk around.

14 Q. Show the jury.

15 A. You come in the front door around here, then we have a
16 long counter over here. The only way you get up to my work
17 area is to come around the long counter and back up in
18 there.

19 Q. All right. So my question to you, Shirley, is if I am
20 standing back here to where that individual is taking the
21 pictures from, apparently I can see the cash box.

22 A. Yeah.

23 Q. Okay. All right. So during the course of operating
24 the store from time to time would you have to go into the
25 cash box if somebody had a large bill or something and get

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- 1 some money?
- 2 A. Yeah.
- 3 Q. That's what it was there for.
- 4 A. Yes.
- 5 Q. You just kept it underneath the counter.
- 6 A. We usually keep it pushed back to the counter that
7 goes back in there and it is usually right behind there.
- 8 Q. All right. Thank you. You can have a seat, I
9 appreciate it. All of this, of course, Shirley, took place
10 within a very short period of time.
- 11 A. Yes.
- 12 Q. And did you -- you did not even see the individuals
13 come in the door at all.
- 14 A. No.
- 15 Q. They were --
- 16 A. I did not see them come in.
- 17 Q. They were just basically there, took the money, got
18 out of the store and you didn't even know there was a third
19 involved until after the fact.
- 20 A. That's correct.
- 21 Q. And you said Mary a couple of times when you were
22 testifying, Mary is Mary Huskey; is that correct? Or do
23 you even know her last name?
- 24 A. I'm not sure about her last name, but she's a pretty
25 regular customer that comes in there.

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- 1 Q. All right. And she is basically -- and we see it
2 right at the end of the video -- she is coming in the front
3 door as these individuals are leaving.
- 4 A. Going out, yeah.
- 5 Q. And did she, in fact, come on into the store after the
6 robbery?
- 7 A. Yeah.
- 8 Q. And you gave a statement to the police about what
9 occurred, a written statement but you didn't give that
10 written statement until I think in May of this year; is
11 that right?
- 12 A. That's correct.
- 13 Q. All right. The police didn't take any written
14 statement from you on the night of the robbery.
- 15 A. I didn't write anything down the night of the robbery.
- 16 Q. Of course, on your written statement you indicated
17 that the door was opened but, of course, you look at the
18 video and you see that you were mistaken about that.
- 19 A. Yes. I'm sure we had it open earlier, but --
- 20 Q. But it wasn't opened at the time.
- 21 A. Undoubtedly Dirt had already closed it, yes.
- 22 Q. All right. Is that a pretty busy little store?
- 23 A. At times, yeah, very, very busy.
- 24 Q. A lot of people in and out?
- 25 A. Well, seems like everybody wants to come at one time

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1 then it kind of slows down and then everybody else wants to
2 come at one time.

3 Q. All right. And an evening about 7:00 would be?

4 A. Would be a little bit slower because most of the
5 lottery goes down at 7:00 or 15 'til.

6 Q. So y'all sell lottery tickets there?

7 A. Yeah.

8 MR. RHODEN: Thank you, Shirley. That's all I have.

9 THE COURT: Mr. Robinson?

10 CROSS EXAMINATION

11 BY MR. ROBINSON:

12 Q. Shirley, you just testified a few moments ago you
13 didn't know whether the persons that came in there had
14 gloves or not, correct?

15 A. That's correct.

16 Q. Let's just talk about the different spots in that
17 store where the items would have been handled. Now, you
18 just testified a few moments ago to Mr. Rhoden that they
19 came to the front door; is that correct?

20 A. Yes.

21 Q. Came through the front door. Now, if that were
22 open --

23 A. We don't have a back door.

24 Q. If that were closed -- all right. To get in they
25 would have had to -- one of them would have had to grip

TESTIMONY OF SHIRLEY WHITAKER

- 1 that handle, correct, push in the door, grip that handle.
- 2 What kind of door is it?
- 3 A. It has got a handle on it, you can either push it in
- 4 or, you know, which ever but --
- 5 Q. How would you push it in, with your hand probably; is
- 6 that correct?
- 7 A. Yeah.
- 8 Q. Now, let's talk about the register. There was a
- 9 register on the ground, I think the solicitor showed you a
- 10 picture. Do you remember that?
- 11 A. It was just a register drawer.
- 12 Q. Was that register handled by one of these folks?
- 13 A. The one that was behind me, yes.
- 14 Q. How did they handle this cash register?
- 15 A. He just reached in and I assumed he was trying to get
- 16 what money was left and just grabbed it and he grabbed it.
- 17 Q. So did he handle it with his hands?
- 18 A. No. As far as I can remember it was only one hand and
- 19 he just reached in and kind of grabbed it and dropped it.
- 20 Q. So he grabbed the register, right?
- 21 A. Just the drawer part.
- 22 Q. Just the drawer part of it. Okay.
- 23 A. As far as I know.
- 24 Q. As far as you know. Okay. And when one of the
- 25 persons went over the counter, right, when one of the

TESTIMONY OF SHIRLEY WHITAKER

1 persons, did they put -- didn't they put one of their hands
2 on the counter?

3 A. I don't know.

4 Q. You are not sure. You can't say whether they did or
5 not; is that correct?

6 A. No.

7 Q. Now, you looked at the video a few moments ago, right?

8 A. Uh-huh.

9 Q. How did that person when they went over the counter,
10 did they touch it with their hand or did they just jump
11 over the counter, do you remember?

12 A. I'm not sure.

13 Q. You are not sure? Okay. Now, the folks that came in
14 that day on that video, you didn't recognize any of their
15 voices, did you?

16 A. They sounded familiar but I couldn't place none of
17 them.

18 Q. And you say that's a pretty busy little store; is that
19 correct?

20 A. Yes, I think so. As well as I can remember the
21 lottery was real high that night and especially around I
22 would say from 5:30 until 15 until 7:00 is very, very busy.
23 Because, you know, the pick three and pick four and cash
24 five goes off and then it slows down after they cutoff the
25 drawing for the lottery.

TESTIMONY OF SHIRLEY WHITAKER

1 Q. Okay. This store that you worked in on January 18,
2 2006, what kind of area is that located in as far as in the
3 city or the county, what kind of area is it located in?

4 A. It's I would say maybe two blocks up from where the
5 old Winn Dixie was, I mean, the one that just recently
6 closed.

7 Q. Okay. And you have a lot of people coming in and out
8 of that store on a regular basis; isn't that right?

9 A. Yeah.

10 Q. And when this incident occurred there were also other
11 people coming in and out of the store; is that correct?

12 A. Not at that time.

13 Q. Not at that time?

14 A. None but Mary.

15 Q. And there was Dirt there as well, correct?

16 A. Dirt was there as well.

17 Q. Okay.

18 A. Like I say, as the lottery closes then you know it
19 slows down right then for a little while.

20 Q. Okay.

21 MR. ROBINSON: That's all I have. Thank you.

22 THE COURT: Any redirect limited to what they went
23 into?

24 MS. LESKANIC: Yes, Your Honor. Thank you.

25

REDIRECT EXAMINATION

TESTIMONY OF SHIRLEY WHITAKER

1 BY MS. LESKANIC:

2 Q. Ms. Whitaker, Mr. Rhoden asked you about whether you
3 gave a statement the night of the robbery. What was your
4 condition the night of the robbery? How did you feel?

5 A. Very, very upset, shaky.

6 Q. When you gave a statement a couple of months later you
7 said that the door was open.

8 A. Yes.

9 Q. Do you see that as something significant whether the
10 door was opened or closed?

11 A. I thought that was the reason that it happened so fast
12 was.

13 Q. Let me ask you this: If you had never given a
14 statement, would you be able to come in here and tell these
15 ladies and gentlemen about being robbed?

16 A. Yes, ma'am.

17 Q. So you didn't need to write a statement that night or
18 several months later in order to remember someone pointing
19 a gun at you?

20 A. No, ma'am, the first and the last time I hope.

21 Q. Now, the front door, you have to pull it to open or do
22 you push it open, or can it go either way?

23 A. It can go either way.

24 Q. Okay. Mr. Robinson said the only way you can open the
25 door is grab it by your hand and pushing it.

TESTIMONY OF SHIRLEY WHITAKER

1 A. Either that or your body.

2 Q. You could use your shoulder?

3 A. Yeah.

4 Q. Or your hip or some other part of your body. You
5 don't have to grab it by the handle.

6 A. Yes.

7 Q. Now, you said that the voices sounded familiar to you.
8 Have you ever seen either one of these individuals in the
9 store before?

10 A. The guy on the right over here, I have seen him in
11 there before, possibly this one, I can't remember.

12 Q. Okay. But do you remember seeing -- and I believe
13 that's Jonathan Simpson -- tell me what kind of shirt he's
14 wearing or what he's wearing. What is he wearing now?

15 A. A checkered blue shirt.

16 Q. And you have seen him in the store before, you are
17 sure.

18 A. I recognize his face, yes.

19 MS. LESKANIC: Okay. Nothing further. Thank you,
20 Ms. Whitaker.

21 RECROSS EXAMINATION

22 BY MR. RHODEN:

23 Q. But people are in and out all of the time.

24 A. Yes.

25 Q. It's in a little community area where neighborhood --

TESTIMONY OF SHIRLEY WHITAKER

1 it's basically a neighborhood store.

2 A. Yes.

3 Q. And certainly probably hundreds of people come in and
4 out every week.

5 A. I am sure.

6 Q. And Shirley, you are not saying that he was in the
7 store that night or not.

8 A. No.

9 Q. You don't know that.

10 A. I just recognize him from being in at different times.

11 Q. And you recognize a lot of people when you see them
12 that have been in the store, correct?

13 A. Yes.

14 Q. And you are not saying that this is connected with
15 Jonathan Simpson or not, are you?

16 A. No.

17 MR. RHODEN: Thank you.

18 THE COURT: Thank you, ma'am, you may step down.

19 Ladies and gentlemen, I know that you have been in and out
20 but other people that have been involved in this case have
21 not had their break yet so we are going to take a few
22 minutes to take a break. I will let you go back to the
23 jury deliberations room, I will instruct you not to have
24 any discussions among yourself and we will get you back out
25 in about five or ten minutes.

TESTIMONY OF SHIRLEY WHITAKER

1 (The jury left the courtroom and a break was taken.)

2 THE COURT: Anything else before we bring the jury
3 back?

4 MS. LESKANIC: No, sir.

5 MR. RHODEN: No, sir.

6 MR. ROBINSON: No, sir.

7 THE COURT: Let's bring them back.

8 (The jury returned to the courtroom.)

9 THE COURT: Ready to call your next witness?

10 MS. LESKANIC: Yes, Your Honor. State calls Detective
11 Mike Segina.

12 The witness, MIKE SEGINA, was first duly sworn and
13 testified as follows, on:

14 DIRECT EXAMINATION

15 BY MS. LESKANIC:

16 Q. Would you please introduce yourself to the jury?

17 A. I'm Detective Mike Segina, I work for the Gaffney
18 Police Department.

19 Q. How long have you been with the Gaffney Police
20 Department?

21 A. Thirteen years.

22 Q. Have you been with the Gaffney Police Department for
23 your entire law enforcement career?

24 A. Yes. I started for the Gaffney Police Department in
25 1992 as a reserve police officer.

TESTIMONY OF MIKE SEGINA

1 Q. What other positions have you held from 1992 to the
2 present?

3 A. I was a road officer or patrolman first class, I was
4 promoted to the detective division, also served as the
5 department's training officer and crime scene technician.

6 Q. What is your current position with the police
7 department?

8 A. Training officer and crime scene technician.

9 Q. Now, were you a crime scene technician in January of
10 this year?

11 A. I was.

12 Q. Were you called out to the Eastside Saveway
13 convenience store on January 18th of this year?

14 A. I was.

15 Q. And why were you called out?

16 A. I was notified by Cherokee County 911 to contact
17 Detective Clary, to call him in reference to an armed
18 robbery.

19 Q. Did you respond to the convenience store?

20 A. I did.

21 Q. What did you do when you arrived?

22 A. I photographed the store as I found it when I arrived,
23 took several other photographs of inside of the store,
24 fingerprinted the counter top, cash box, a cash register
25 and the face of the cash register.

TESTIMONY OF MIKE SEGINA

1 Q. Okay. What were the results of your fingerprinting
2 efforts?

3 A. I was able to lift about five prints from the counter
4 top area from inside and one of the cash boxes.

5 Q. And were you able to lift prints from anywhere else?

6 A. No, ma'am.

7 Q. Okay. Do you know if those prints were of sufficient
8 quality to be able to read the print?

9 A. No, they were not.

10 Q. How does that work if you can explain it to the jury?
11 How do you have a print that you can't tell who it belongs
12 to?

13 A. Fingerprints contain ridge detail or pattern of the
14 fingerprint and when you lift it from the surface sometimes
15 you can't get enough of that detail to be able to identify
16 it to a person.

17 Q. Is that what happened in this case?

18 A. Yes. The fingerprints that I lifted from the counter
19 top and the cash drawer did not have enough of that ridge
20 detail to positively identify someone.

21 Q. Okay. Now, Ms. Whitaker was working at the store all
22 day and customers had been in and out of the store all day.
23 Why would you not have a single print from everyone
24 touching it that you could read? How could that happen?

25 A. Stuff sliding across the counter tops, the

TESTIMONY OF MIKE SEGINA

1 fingerprints sliding themselves to where when the dust is
2 applied they show up as nothing but a black just spot, you
3 cannot see the detail.

4 Q. Okay. So if someone touches the surface, do they
5 necessarily leave a print that you can lift and read?

6 A. May not be a print that we can identify to that
7 person, but sometimes they leave the print but it is
8 un-legible.

9 Q. The prints that you did lift but were not able to
10 identify, is there any way to know whether that would
11 belong to Ms. Whitaker or a customer or one of the
12 defendants?

13 A. They did not contain enough detail to positively
14 identify them to anyone.

15 Q. All right.

16 MS. LESKANIC: Thank you. If you would please answer
17 any questions that the defense attorneys have.

18 MR. RHODEN: May it please the Court?

19 CROSS EXAMINATION

20 BY MR. RHODEN:

21 Q. Detective Segina, you did, in fact, try to obtain
22 fingerprints.

23 A. Yes. I fingerprinted the counter top, the cash
24 drawer, cash register and the cash box that was opened
25 during the robbery.

TESTIMONY OF MIKE SEGINA

1 Q. And, in fact, you did find five prints that were at
2 least of enough significance to lift.

3 A. I did.

4 Q. And the way the process works, of course, is that you
5 have this little powder that actually contains some
6 chemicals or metallic substance that you spread around to
7 see if you are going to find fingerprints, right?

8 A. Yes. Usually fingerprint powder dust to a surface.

9 Q. Then you may see something that looks like, well,
10 there might be a fingerprint and you would kind of work in
11 a little bit more detail with your little dusting brush
12 with the suspected areas; is that right?

13 A. That's correct.

14 Q. And if you find something that looks like a print when
15 you say lift the print, can you tell the jury how you do
16 that?

17 A. How do I lift a print?

18 Q. Correct.

19 A. We use a fingerprint lifting tape which we place over
20 the top of the area where we believe is a fingerprint and
21 it removes the oils and the fingerprint powder from that
22 surface.

23 Q. Because basically what happens when somebody touches a
24 surface or whatever, they leave a trace of their body oils
25 or moisture that leaves that impression on the surface that

TESTIMONY OF MIKE SEGINA

- 1 they touch, correct?
- 2 A. That's correct.
- 3 Q. And basically what you are trying to do with the
- 4 powder is you are trying to find where that person may have
- 5 touched that counter and left those oils or moisture of
- 6 their finger on the counter, correct?
- 7 A. By dusting.
- 8 Q. By dusting?
- 9 A. Yes.
- 10 Q. And you're trying to find that?
- 11 A. Yes.
- 12 Q. Because theoretically if I touch this I'm going to
- 13 leave a fingerprint.
- 14 A. That's correct.
- 15 Q. And correct me if I am wrong, the closer in time that
- 16 you may dust for that print the more likely you are going
- 17 to find a print; is that correct?
- 18 A. Could you repeat that?
- 19 Q. The closer in time -- if I left this print right now
- 20 and you dusted it now or a hour from now, it's more likely
- 21 that you're going to find that print than if you dusted for
- 22 12 hours from now or two days from now.
- 23 A. Yes. It would be more likely the closer in time.
- 24 Q. All right. So in this particular case you, in fact,
- 25 found five prints that were at least significant enough to

TESTIMONY OF MIKE SEGINA

- 1 you that you're going to actually take and go through the
2 process where you put the tape down and actually lift those
3 prints from the surface that you found them on, correct?
- 4 A. Yes, I did.
- 5 Q. All right. So can you tell us where you found those
6 five prints?
- 7 A. They were -- three of the fingerprints were found --
8 or two of the fingerprints were found on the counter top
9 next to the cash register and one was found inside a white
10 cash box.
- 11 Q. Okay. Now, does that count for all five of them? I'm
12 sorry?
- 13 A. That was three of them.
- 14 Q. Where were the other two?
- 15 A. The other two were also found from the counter top
16 next to the cash register.
- 17 Q. All right. And you also testified that you, in fact,
18 took pictures; is that correct?
- 19 A. Yes, I did.
- 20 Q. And you said you're the crime scene technician.
- 21 A. Yes, sir.
- 22 Q. Crime scene investigator, like CSI?
- 23 A. Yes, sir.
- 24 Q. Now, so you find these five fingerprints and then you
25 have -- if you think they're significant enough to lift you

TESTIMONY OF MIKE SEGINA

1 have to place the tape down on top of the impression after
2 you have dusted it with this powder; is that correct?

3 A. That's correct.

4 Q. Because basically what you're trying to do by placing
5 the tape down is you're trying to take the powder that you
6 put down which clings to the ridges of the impression that
7 the finger makes and you're trying to lift that off to
8 preserve that, correct?

9 A. I am trying to lift the fingerprint impression off of
10 the surface.

11 Q. Of course, if you take that tape down and you goof and
12 you move when you put it down you're going to smudge
13 prints, correct?

14 A. There's a possibility, yes.

15 Q. You have to be very careful in how you do it.

16 A. Correct.

17 Q. All right. Now, in this particular case you actually
18 took a picture of one of these fingerprints, didn't you?

19 A. I did.

20 Q. So in your mind at least at that point in time you
21 think that it is pretty significant.

22 A. Yes. It was on the counter top where this armed
23 robbery took place.

24 Q. Detective Segina, you made a picture of that print.
25 Let me show you this. Does that appear to be a copy of

TESTIMONY OF MIKE SEGINA

- 1 that picture of the print?
- 2 A. Yes, it does.
- 3 Q. All right.
- 4 MR. RHODEN: Move to introduce this as evidence, Your
- 5 Honor?
- 6 THE COURT: Any objection from the State?
- 7 MS. LESKANIC: No, Your Honor.
- 8 THE COURT: Any objection from Mr. Robinson?
- 9 MR. ROBINSON: No, sir, Your Honor.
- 10 THE COURT: Without objection that will be Defendant's
- 11 Exhibit 1.
- 12 (The photograph was received as Defendant's K1.)
- 13 Q. Detective Segina, I show you now what's been marked as
- 14 Defendant Knuckles Exhibit 1. That is a picture of the
- 15 fingerprints that we have discussed.
- 16 A. It's a picture of one of them, yes, sir.
- 17 Q. Is that the only one that you took a picture of, the
- 18 only fingerprint?
- 19 A. No, sir.
- 20 Q. You have got pictures of more than one fingerprint?
- 21 A. Yes, sir.
- 22 Q. Have you got your pictures with you?
- 23 A. Yes, I do.
- 24 Q. Can I see them? Well, can you go through those and
- 25 show me another picture of another fingerprint?

TESTIMONY OF MIKE SEGINA

- 1 A. (Witness complies.)
- 2 Q. Okay. So there was a print from -- is that the cash
3 drawer or is that the cash register drawer?
- 4 A. The way I described it was the cash box, small white
5 metal box.
- 6 Q. So that's a picture of another print that you lifted?
- 7 A. Yes, it is.
- 8 Q. Do you do fingerprint identification?
- 9 A. No, I do not.
- 10 Q. So your job is not to try to identify the print, your
11 job is simply to go to the scene and try to find prints and
12 lift those prints and the identification process is for
13 somebody else.
- 14 A. That's correct.
- 15 Q. All right. So you're not qualified to say whether
16 that print belongs to one particular individual or another
17 particular individual.
- 18 A. No, I am not.
- 19 Q. All right. Now, did you take any pictures of any
20 other physical evidence besides the pictures we've seen
21 already in the counter and the cash box or whatever -- let
22 me just ask a better question, that just wasn't a good
23 question. Did you take a picture of any shoe prints?
- 24 A. Yes, I did.
- 25 Q. Where were those shoe prints found?

TESTIMONY OF MIKE SEGINA

1 A. One of those was found on the counter top.

2 Q. And the counter top we're talking about, is that the
3 counter top that's right next to where the cash register
4 was?

5 A. That's correct, it's right beside the cash register.

6 Q. I think you took several pictures of that shoe print,
7 didn't you?

8 A. I did.

9 Q. Let me show you a couple of things here. Is that --
10 I'll just show you both at the same time. Do those two
11 documents appear to represent the pictures that you took of
12 the shoe print?

13 A. Yes, they do.

14 MR. RHODEN: Your Honor, we request to admit these as
15 Defendant's 2.

16 THE COURT: Without objection?

17 MS. LESKANIC: No objection.

18 MR. ROBINSON: No objection.

19 THE COURT: Without objection they will be Defendant's
20 K2.

21 (The photograph was received as Defendant's K2.)

22 Q. And Detective Segina, you took these pictures for what
23 reason of the footprints?

24 A. To show that there were footprints on the counter
25 beside the cash register.

TESTIMONY OF MIKE SEGINA

1 Q. So you deemed that to be important.

2 A. Yes, I did.

3 Q. All right. Never were able to match these footprints
4 up with any shoes, were you?

5 A. No, I did not.

6 MR. RHODEN: Your Honor, if I may publish these
7 pictures to the jury?

8 THE COURT: Yes, sir.

9 Q. And Detective Segina, did you interview witnesses at
10 the scene that night?

11 A. No, I did not.

12 Q. Was that part of your job or was that part of somebody
13 else's job?

14 A. My job is to process the crime scene, take
15 photographs, collect evidence.

16 Q. Okay. So let me back up. When I was asking you about
17 the print, shoe print, your job is to take pictures of
18 things that you think might be significant that you find in
19 this crime scene, correct?

20 A. That's correct.

21 Q. And it would be somebody else's job, not yours, to
22 take those pictures or even the fingerprints and do
23 something with them. You know, like the shoe print, you
24 took it for a reason, right?

25 A. That's correct.

TESTIMONY OF MIKE SEGINA

- 1 Q. And the reason I assume, and correct me if I'm wrong,
2 you might be able to match it with somebody's shoe.
- 3 A. That's correct.
- 4 Q. But that's not your job to do.
- 5 A. To collect the evidence at the scene?
- 6 Q. No, no. To try to match the print that -- the picture
7 you took with some individual.
- 8 A. I don't want to say it's not my job but there are
9 other people more qualified than I am that could look at it
10 and make a comparison or match to that.
- 11 Q. All I'm trying to do is find out what everybody's role
12 is that's being played that night of the robbery. And I
13 took it from your testimony that your role that you played
14 was to be the crime scene investigator and take pictures
15 and collect fingerprints and other evidence at the scene.
- 16 A. That's correct, that was my job that night.
- 17 Q. And perhaps I have asked another bad question and I'll
18 try to ask it another way. Did you have any responsibility
19 in the follow-up of trying to match the shoe print with
20 some individual or trying to match the fingerprint with
21 some individual, was that your job to follow-up on that?
- 22 A. Not in this case, I did not follow-up on that.
- 23 Q. That would have been somebody else's job in this case?
- 24 A. Yes, it was.
- 25 Q. Whose job would that have been?

TESTIMONY OF MIKE SEGINA

- 1 A. Detective Clary took the fingerprints to Spartanburg.
- 2 Q. That would be Detective Clary's job to follow-up on
- 3 the evidence that you may have photographed or collected
- 4 that day.
- 5 A. He did follow-up on fingerprints that were lifted at
- 6 the scene.
- 7 Q. Do you know if anybody followed up on the shoe print
- 8 if you know? Do you know if anybody ever followed up on
- 9 that?
- 10 A. Yes, they did.
- 11 Q. Who would that be?
- 12 A. I did myself.
- 13 Q. You did?
- 14 A. Yes.
- 15 Q. Did you match it with anybody?
- 16 A. No, I did not.
- 17 Q. All right. Or match it with any shoe I should say.
- 18 A. No, I did not.
- 19 Q. Okay. And when you say you followed up, what steps
- 20 did you take to follow-up on that?
- 21 A. I compared it to a pair of shoes and found that I
- 22 could not match it.
- 23 Q. Whose shoes did you compare it to?
- 24 A. I don't have that paperwork with me of whose shoe it
- 25 come from.

TESTIMONY OF MIKE SEGINA

1 Q. Was it Mr. Knuckles or Mr. Simpson?

2 A. I cannot recall whose shoes they come from.

3 Q. So all you know is you tried to match it to somebody's
4 shoes and they didn't match and that's basically all you
5 did.

6 A. Yes.

7 Q. Okay. But you don't know who that person was, whether
8 it was Mr. Knuckles or somebody else.

9 A. I don't have that paperwork with me to tell me whose
10 show it was that I was comparing it to.

11 Q. Might have been somebody else that's not involved in
12 this case at all.

13 A. Correct.

14 Q. And I know I'm going to go back a little bit and I
15 apologize, you did not take any statements from any of the
16 witnesses at the scene, that was not your job.

17 A. No. I did not take any statements the night of the
18 robbery.

19 MS. LESKANIC: Your Honor, may we approach a moment?

20 THE COURT: All right.

21 (A bench conference was held.)

22 MR. RHODEN: Detective, that's all I have. Thank you.

23 MR. ROBINSON: Please the Court?

24 CROSS EXAMINATION

25 BY MR. ROBINSON:

TESTIMONY OF MIKE SEGINA

- 1 Q. Detective, you testified a few moments ago that you
2 were not an expert, or you have not been trained in
3 identifying fingerprints in terms of who they belong to; is
4 that correct?
- 5 A. That's correct.
- 6 Q. So what do y'all -- do you send it down to SLED where
7 do you send it to when you take a print, where do you send
8 that to?
- 9 A. Sometimes we take it to the Spartanburg Sheriff's
10 Department or we may use the State Law Enforcement
11 Division.
- 12 Q. Okay. Did you get any results back from them? You
13 didn't get any results back from them about these prints;
14 is that correct?
- 15 A. I did not take those prints to Spartanburg.
- 16 Q. You didn't? Okay. So there's five prints altogether,
17 right?
- 18 A. That's correct.
- 19 Q. Out of those five prints, none of them went to SLED or
20 Spartanburg, correct?
- 21 A. That's incorrect. Three of the prints went to
22 Spartanburg.
- 23 Q. Okay. But there was nothing from those fingerprints
24 that would identify anyone, correct?
- 25 A. No, there was not.

TESTIMONY OF MIKE SEGINA

1 Q. So there's nothing in any of those fingerprints that
2 would identify Jonathan Simpson to this case; is that
3 correct?

4 A. That's correct.

5 MR. ROBINSON: That's all I have. Thank you.

6 THE COURT: Any redirect limited to what they went in
7 to?

8 MS. LESKANIC: No, Your Honor.

9 THE COURT: All right. Thank you, sir, you may step
10 down. Ready to call your next witness?

11 MS. LESKANIC: Yes, Your Honor. The State calls Mary
12 Huskey.

13 The witness, MARY HUSKEY, was first duly sworn and
14 testified as follows, on:

15 DIRECT EXAMINATION

16 BY MS. LESKANIC:

17 Q. If you would, please introduce yourself to the jury.

18 A. Mary Huskey.

19 Q. Where do you live, Ms. Huskey?

20 A. I live at it I'm staying at
21 (phonetically) keeping some kids because their mama
22 is in jail.

23 Q. Do you know where Eastside Saveway Convenience Store
24 is located?

25 A. Yeah.

TESTIMONY OF MARY HUSKEY

1 Q. Do you go there frequently?

2 A. Yes.

3 Q. Did you go there on January 18th of this year?

4 A. I did.

5 Q. Okay. Can you tell the jury what you observed on that
6 day on your way to the store and once you arrived?

7 A. Well, I was coming up by our house where I babysit is
8 right here and in the next place is the Jet Cleaners and
9 the next place is the store. So I went -- by the time I
10 got to Jet Cleaners I seen some boys run in the store,
11 three boys run in the store. And by the time I got in the
12 store one was coming over the counter, one was at the front
13 with a gun and another one was in the back and I just stood
14 back and put my hands up like that because I seen them with
15 the gun and stuff. I just stood back and they ran on out
16 of the store and I looked to see which way they went. Then
17 I went back in the store and asked the lady if she was all
18 right and the boy that was in the back, asked him was he
19 all right and she said no, I wet on myself, I need some
20 pants.

21 MR. RHODEN: I'm going to object to getting into
22 statements.

23 THE COURT: I sustain the objection.

24 A. I went to the house and got some jogging pants so she
25 could change her clothes. And after that the police came

TESTIMONY OF MARY HUSKEY

1 and stuff and they asked me what I seen and I told them
2 what I seen.

3 Q. Did you notice whether the three boys that were in the
4 store if they were wearing masks?

5 A. Yeah, the toboggans.

6 Q. Did you see their face?

7 A. I didn't see their face.

8 Q. How did Shirley Whitaker appear to you? I know you
9 said that you had to go get her a change of pants, how did
10 she appear to you?

11 A. Well, she was on the floor. I said, "Are you all
12 right?" Because I didn't see her because she was still
13 laying on the floor I guess because she was scared. She
14 got up and she said, "No, I'm not all right, I done wet on
15 myself, I need some pants." She asked me did I have a pair
16 of pants that she could change her clothes.

17 Q. Now, Ms. Huskey, were you at the convenience store the
18 day before?

19 A. Yes.

20 Q. Did you notice anything suspicious on the 17th?

21 A. Yeah. There was three boys out there, one was at the
22 phone, one was behind the store and one was standing
23 looking in the window in the front of the store.

24 Q. Did you recognize any of those three individuals?

25 A. One of them I did.

TESTIMONY OF MARY HUSKEY

- 1 Q. Who is that?
- 2 A. Jonathan Simpson.
- 3 Q. Do you see him in the courtroom today.
- 4 A. Yes.
- 5 Q. Could you please point him out?
- 6 A. (Witness complies.)
- 7 Q. What is he wearing?
- 8 A. The one right there with the blue plaid shirt on.
- 9 Q. And the other -- did you get a good look on the 17th
- 10 of the other two individuals that was with him?
- 11 A. No. Like I said, I was talking with my girlfriend and
- 12 the one in the back of the store I couldn't see him, it was
- 13 dark right there, it was near the dumpster so you can't
- 14 hardly see, there's not a lot of light right there. The
- 15 other one I just didn't pay them attention, I just noticed
- 16 that they were standing at the store. Like I said, one was
- 17 on the phone, one was in front of the store and one was
- 18 behind me.
- 19 Q. Was he actually using the phone or standing by the
- 20 phone?
- 21 A. He said he was waiting for a phone call.
- 22 Q. Who was that? Did you know that person?
- 23 A. Jonathan.
- 24 Q. So it was Mr. Simpson standing by the phone. Why did
- 25 this strike you as odd?

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1 A. Because they was there a long time. I thought the one
2 behind the store was using the bathroom like boys used to
3 do, go behind and -- but he just --

4 MR. RHODEN: Your Honor, I'm going to object to the
5 witness testifying as to her opinion or her ideas about
6 something. I don't know if she's qualified to do that.

7 THE COURT: I'll sustain that objection. Ma'am,
8 relate just what you observed if you would. Go ahead.

9 A. And that one behind the store, one was in front of it
10 and one was on the phone and they were still there when we
11 left.

12 Q. Okay. The two other individuals that were -- well,
13 let me ask you, was this approximately at the same time at
14 night as the robbery occurred the next day?

15 A. Yeah.

16 Q. The two individuals that were with Mr. Simpson, could
17 you tell if they were the approximate size and build as the
18 individuals that --

19 MR. RHODEN: Your Honor, I'm going to object to
20 leading. She can describe what she saw.

21 THE COURT: I sustain the objection.

22 Q. Would you please describe for me -- do you have any
23 idea the approximate ages of the other two individuals that
24 were with Mr. Simpson on the 17th of January if you have
25 any idea?

TESTIMONY OF MARY HUSKEY

1 A. Both of them were about -- like I would say about 17
2 or 19 years old. I can't be for sure, you know, I don't
3 know how old they was.

4 Q. Did you have a conversation with any of those
5 individuals that night?

6 A. Just Jonathan, he said he was waiting for a phone
7 call. Because I was getting ready to use the phone and he
8 said, "You can't use the phone because I am waiting for a
9 phone call."

10 MS. LESKANIC: Thank you very much, Ms. Huskey. If
11 you will, answer any questions that Mr. Rhoden or
12 Mr. Robinson will have for you.

13 MR. RHODEN: May it please the Court?

14 THE COURT: Yes, sir.

15 CROSS EXAMINATION

16 BY MR. RHODEN:

17 Q. All right. Mary, let me see if I can get some of this
18 straight here, this convenience store is located right down
19 past the old Winn Dixie.

20 A. Uh-huh.

21 Q. On Wilkinson Highway.

22 A. Uh-huh.

23 Q. There's a Jet Cleaners that's sort of next door.

24 A. Uh-huh.

25 Q. It's not like right next door.

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- 1 A. No.
- 2 Q. But it's a little bit down.
- 3 A. And there's a house in between the store and cleaners.
- 4 Q. So it's a little ways before you get from Jet Cleaners
- 5 to the store.
- 6 A. Yeah.
- 7 Q. Okay. And this is a little community store and there
- 8 are people in and out of this store all of the time.
- 9 A. Uh-huh.
- 10 Q. Do you go in and out of the store all of the time?
- 11 A. Yeah.
- 12 Q. Would you say it's probably hundreds of people per
- 13 week that go in and out of the store.
- 14 A. Yeah.
- 15 Q. Not unusual to see people go in and out of the store,
- 16 is it?
- 17 A. You usually see people going in and out of the store.
- 18 Q. You see it all of the time. There's nothing unusual
- 19 about it.
- 20 A. Yeah.
- 21 Q. And there's a phone out there and not unusual to see
- 22 somebody using a phone out there.
- 23 A. No.
- 24 Q. Okay. All right. Now, the first time that you saw --
- 25 on the night of January 18th when this robbery occurred,

TESTIMONY OF MARY HUSKEY

- 1 the first time you saw anybody run into the store, where
2 were you?
- 3 A. When I seen them run into the store?
- 4 Q. Right.
- 5 A. I was near Jet Cleaners.
- 6 Q. You were at Jet Cleaners.
- 7 A. I was going right past it.
- 8 Q. So Jet Cleaners, it's going to be a lot further
9 distance than the back of this courtroom?
- 10 A. It's this far from here to the store.
- 11 Q. All right. So if you're standing at Jet Cleaners and
12 you see the boys run into the store, it's about from where
13 you're sitting to the back of the courtroom?
- 14 A. Uh-huh.
- 15 Q. About that distance?
- 16 A. Yeah.
- 17 Q. And you saw boys run in the store with masks.
- 18 A. Uh-huh.
- 19 Q. Right? You could tell they had masks on.
- 20 A. I could see them run into the store. I couldn't tell
21 if they had masks or hats because it was from the back of
22 them so I didn't know if it was a mask or a hat or what it
23 was.
- 24 Q. Okay. Well, okay.
- 25 A. I only seen the masks when I got in the store.

TESTIMONY OF MARY HUSKEY

- 1 Q. All right. Do you remember talking to the police
2 officers that night?
- 3 A. Uh-huh.
- 4 Q. You talked with Detective Clary right here; is that
5 right?
- 6 A. It was a man. I forgot if it was a man or woman, but
7 I know it was a man.
- 8 Q. Nevertheless, it was a police officer?
- 9 A. It was a police officer I talked to.
- 10 Q. And in fact, that particular police officer asked you
11 to give him a statement, didn't he?
- 12 A. Yeah.
- 13 Q. And you wrote out a statement.
- 14 A. Yeah.
- 15 Q. And you wrote it out in your own handwriting, correct?
- 16 A. Yeah.
- 17 Q. Do you remember doing that?
- 18 A. Yeah.
- 19 Q. Do you remember putting in that statement, you said,
20 "I saw three boys run in the store, one with a red hood and
21 black mask and one with a black hood with a red mask."
- 22 A. Uh-huh.
- 23 Q. That's what your statement says, right?
- 24 A. Uh-huh.
- 25 Q. So you were at Jet Cleaners and you saw the masks.

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- 1 A. When I got in the store I seen the masks.
- 2 Q. Your statement doesn't say you saw that when you got
3 in the store. Do you want to look at your statement? Do
4 you want me to refresh your memory?
- 5 A. Well, it was kind of scarry that night but I seen the
6 masks when I got in the store.
- 7 Q. All right. You didn't see a mask until you got in the
8 store.
- 9 A. That's right.
- 10 Q. All right. Okay. So when you get in the store, where
11 are all of these three boys?
- 12 A. Two was at the front and one was at the back.
- 13 Q. So by the time you --
- 14 A. One was coming over the counter. One was coming over
15 the counter, one was standing right there in front of the
16 counter and the other one was coming from the back.
- 17 Q. Okay, Mary. So you're telling us today that when you
18 saw the boys run in the store when you were at the Jet
19 Cleaners you didn't think anything about it, you just
20 thought it was three boys running in the store.
- 21 A. No. Because kids be running in the store all of the
22 time.
- 23 Q. In your mind nothing is going on unusual.
- 24 A. Until I got there.
- 25 Q. All right. And it's not until you actually opened the

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1 door, because you are not --

2 A. Expecting anything --

3 Q. You're just going in a store, right? And it's not
4 until you open that door that you even realize that
5 anything is going on, right.

6 A. That they robbed the store, uh-huh.

7 THE COURT: If you would, Ma'am, we're having to make
8 a recording and everything that's said in here, let him
9 finish the question before you answer it and that way
10 you're not speaking over each other.

11 A. Okay.

12 MR. RHODEN: I apologize, Your Honor.

13 Q. Okay, Mary. So it's not until you're actually opening
14 the door and putting a foot in the store that you realize
15 anything unusual is going on, right?

16 A. Uh-huh.

17 Q. Is that right?

18 A. Yeah.

19 Q. And at that particular point in time when you put your
20 foot in the door, where are these three individuals?

21 A. One is coming over the counter and one was in front of
22 it and the other one was coming from the back.

23 Q. So we've got one in the back --

24 A. He almost knocked me down. When he jumped on the
25 counter I was just opening the door and he hit the floor

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1 and I just stood back because there's a rack right here
2 with some stuff on it and I just stood back here with a
3 rack like this and they just run past me and run out the
4 door.

5 Q. So one was toward the back because he had to be toward
6 the back because you could tell he was coming from the
7 back, right?

8 A. Uh-huh.

9 Q. And one wasn't over the counter yet, he jumped over
10 the counter as you walked in. And one was --

11 A. Right there at the counter, standing in front of the
12 counter.

13 Q. Okay. And then after the -- after you open the door
14 and see those individuals, what happens next?

15 A. I just stood back and let them run.

16 Q. Stood back and let them run?

17 A. Yeah.

18 Q. And they took off.

19 A. They took off.

20 Q. You don't know what happened to them.

21 A. They went behind the store right where the phone is
22 at, the phone over here, they went down that road right
23 there and turned that way and went down that other road.

24 Q. Did you go back out of the store and look for them?

25 A. I stood there and looked to see which way they ran and

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- 1 then went back in to see if the lady was all right.
- 2 Q. Have you seen the video surveillance tape?
- 3 A. Yeah, we seen it that night.
- 4 Q. You looked at the tape that night?
- 5 A. They let us look at the tape that night.
- 6 Q. So you've seen it?
- 7 A. Uh-huh.
- 8 Q. Do you mind if I play that for you and let's us go
- 9 over a few things?
- 10 A. No.
- 11 (The videotape was played.)
- 12 Q. You're not in the store right here, do you?
- 13 A. No.
- 14 Q. At this point in time you don't see yourself in this
- 15 video anywhere, do you?
- 16 A. No.
- 17 Q. Now, that's you coming in the door.
- 18 A. That's me coming in the door.
- 19 Q. So by the time you walked in the door two of them are
- 20 right there at the door; is that right?
- 21 A. On the video, yeah.
- 22 Q. So how do you know where one of them came from if they
- 23 were just coming out the door?
- 24 A. You can see through the window when you were coming up
- 25 the street, you can see if people is in the store.

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1 Q. Well, if you are attentive and thought something was
2 going on like a robbery, why would you go in the store?

3 A. I didn't see nobody with a gun until I got there to
4 the door.

5 Q. You just walked in the door not suspecting anything.

6 A. No. I didn't know the store was getting robbed.

7 Q. You say after they left and went down the street you
8 could tell which way they went, right?

9 A. Yes.

10 Q. That is you coming in the door and now we've got a
11 different angle. And isn't that you walking off there?

12 A. Yeah.

13 Q. And that's right after they left. You never went back
14 outside, did you?

15 A. Yeah, I was back outside.

16 Q. You did?

17 A. Yeah.

18 Q. Now, you talked a little bit about this day before --

19 A. Uh-huh.

20 Q. -- noticing people who were there. You didn't put
21 anything like that in your statement though, did you?

22 A. They didn't ask me about the day before.

23 Q. All right. Well, there's no mention of it in your
24 statement, the statement that you gave the date of the
25 robbery, is it?

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- 1 A. No. They asked me what I seen that night, they didn't
2 ask me what I seen the day before.
- 3 Q. And you just didn't think to volunteer any of that
4 information until later on.
- 5 A. Yeah. Later on when I thought about it I said --
6 because the day before I had told her, I said, "You better
7 watch them boys."
- 8 Q. Well, tell me about this. When did you tell the
9 police about the day before information?
- 10 A. Huh?
- 11 Q. When did you tell the police about that day before
12 information that you gave us?
- 13 A. When she came to the house and asked me about it.
- 14 Q. When who came to the house?
- 15 A. The lady.
- 16 Q. You mean the solicitor came to your house?
- 17 A. Yeah.
- 18 Q. Well my goodness, when was that?
- 19 A. Friday.
- 20 Q. Last week?
- 21 A. Uh-huh.
- 22 Q. You mean to tell me that you gave a statement --
- 23 A. Didn't nobody ask me about the day before, what I seen
24 the day before, was anybody outside suspicious the day
25 before, they only asked me about the day the robbery

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1 happened.

2 Q. So some robbery occurred January 18th, and in November
3 or late October is the first time you're telling anybody
4 about the suspicious activity you saw the day before.

5 A. The girl I was with that night, we was talking about
6 it.

7 Q. But you didn't tell any police officers.

8 A. No.

9 MR. RHODEN: All right. Thank you. That's all I
10 have.

11 CROSS EXAMINATION

12 BY MR. ROBINSON:

13 Q. Ma'am, you would agree that the day of January 18,
14 2006, that you never saw Jonathan Simpson at that store,
15 did you?

16 A. I didn't see nobody's face because they had on a mask.

17 Q. The question is this: You did not see Jonathan
18 Simpson at that store on January 18, 2006 correct? Yes or
19 no.

20 A. The day of the robbery?

21 Q. Yes or no.

22 A. No.

23 Q. And as far as this statement that you gave the
24 solicitor or someone from that office either last week or
25 shortly before this trial, the only -- what you're telling

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1 me is you saw some people -- you saw Jonathan using the
2 phone, isn't that correct, the day before, correct? That's
3 what you saw?

4 A. That's what I saw, one behind it and one to the front.

5 Q. But that's all you know; isn't that right?

6 A. That's right.

7 Q. And you don't have any information that connects the
8 17th, the day before to this, do you?

9 A. No.

10 Q. Okay.

11 A. I never did say I did.

12 Q. And a lot of people use that phone out there, don't
13 they?

14 A. Yeah.

15 Q. Black and white, correct?

16 A. Yeah.

17 MR. ROBINSON: That's all I have.

18 THE COURT: Any redirect limited to what they went in
19 to?

20 MS. LESKANIC: No, Your Honor, no redirect. The State
21 calls Willie Talley.

22 The witness, WILLIE TALLEY, was first duly sworn and
23 testified as follows, on:

24 DIRECT EXAMINATION

25 BY MS. LESKANIC:

TESTIMONY OF WILLIE TALLEY

- 1 Q. Would you please state your name to the jury?
- 2 A. My name is Willie Talley.
- 3 Q. And were you working at Eastside Saveway back on
- 4 January 18th of this year, Mr. Talley?
- 5 A. Yes, ma'am.
- 6 Q. What were you doing for Eastside Saveway?
- 7 A. Stocking.
- 8 Q. Did anything unusual happen that night?
- 9 A. Yes, ma'am.
- 10 Q. Would you tell the jury what happened?
- 11 A. Well, three guys came in and I was stocking in the
- 12 back and one came to the door and he told me to get down so
- 13 I got down. So I didn't see nothing else, I just got down
- 14 like he said.
- 15 Q. Okay. I would like to show you -- if you will take a
- 16 look at this, Mr. Talley. Is that you right there walking
- 17 to the back?
- 18 A. Yes, ma'am.
- 19 Q. Right here?
- 20 A. That's me at the cooler.
- 21 Q. So that's you back there?
- 22 A. At the cooler, yes, ma'am.
- 23 Q. And that individual is telling you to get down on the
- 24 ground?
- 25 A. Yes, ma'am.

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- 1 Q. Were you afraid that night?
- 2 A. Yes, ma'am.
- 3 Q. Did he say anything to you other than get down on the
- 4 ground?
- 5 A. That's all he said, get down on the ground.
- 6 Q. Did you listen to him?
- 7 A. Yes, ma'am.
- 8 Q. Did you recognize him or anyone else in the store?
- 9 A. No, ma'am.
- 10 Q. All right.
- 11 MS. LESKANIC: Thank you. If you would, please answer
- 12 any questions that Mr. Rhoden or Mr. Robinson may have.
- 13 MR. RHODEN: Please the Court?
- 14 CROSS EXAMINATION
- 15 BY MR. RHODEN:
- 16 Q. Willie, have you got a nickname?
- 17 A. Yes, sir.
- 18 Q. What's your nickname?
- 19 A. Dirt.
- 20 Q. People call you Dirt?
- 21 A. Yes, sir.
- 22 Q. You were working that night when the robbery occurred.
- 23 A. Yes, sir.
- 24 Q. And you were back stocking?
- 25 A. Yes, sir.

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- 1 Q. Back toward the cooler, which is toward the back of
2 the store?
- 3 A. Yes, sir.
- 4 Q. And an individual told you to get down.
- 5 A. Yes, sir.
- 6 Q. You didn't recognize who that individual was.
- 7 A. No, sir.
- 8 Q. And that person said get down so you got down, didn't
9 you?
- 10 A. Yes, sir.
- 11 Q. You did what they said.
- 12 A. Yes, sir.
- 13 Q. And basically until they left you didn't get back up,
14 did you?
- 15 A. I got up and they was gone.
- 16 Q. You got up -- when you got up they were gone.
- 17 A. Yes, sir.
- 18 Q. The individual that told you to get down didn't hit
19 you or do anything to you.
- 20 A. No, sir.
- 21 Q. Didn't hit you.
- 22 A. No, sir.
- 23 Q. That's it. That's about all you know, isn't it?
- 24 A. Yes, sir, that's all.
- 25 MR. RHODEN: Thank you, that's all.

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1 MR. ROBINSON: No questions, Your Honor.

2 THE COURT: All right. Any redirect?

3 MS. LESKANIC: No, Your Honor. We would ask that this
4 witness be excused.

5 THE COURT: Thank you, Mr. Talley you may step down.
6 Ladies and gentlemen, there are matters involved that I
7 need to take up with the lawyers outside of your presence
8 so as opposed to take you in and out we're going to go
9 ahead and let you take your lunch break now and I will go
10 ahead and address the issues with the lawyers. I am going
11 to ask you if you would to please be back into the jury
12 room by 2:00 and we will try to get you back in here and
13 take testimony. I will again instruct you not to have any
14 discussions among yourselves or with anyone else about
15 anything involved in the case. In the event you heard of
16 the location where this event occurred and your curiosity
17 is "I'm going to drive back and see it," again, don't do
18 anything like that. But I will let you go to lunch now and
19 thank you for your time this morning.

20 (The jury left the courtroom.)

21 THE COURT: You had an issue or two about Mr. Wilson?

22 MR. RHODEN: Yes, Your Honor. Since the State has
23 indicated they're calling Mr. Wilson as a witness I do have
24 some issues dealing with his potential testimony. First of
25 all, Your Honor, it would be my position that any testimony

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1 into evidence nonetheless. I would say that at least a
2 portion of his statement where he says, "I can look at that
3 video and I can identify all of these people," is a result
4 of the police officers' interrogation of this individual
5 and showing him this video prior to giving a statement, and
6 also takes the rest of his statement in that they're
7 showing this individual who had nothing to do with this
8 robbery, basically the sequence of events that occurred and
9 then he goes in his statement and says, "Well, you know,
10 Mr. Foster went here and Mr. Simpson had the gun and
11 Mr. Knuckles went to the back." He's giving all of that
12 information in the statement after he views the video. So
13 the reliability of his statement has been tainted because
14 the State has shown him the video before they make the
15 statement. And this statement, Your Honor, was taken way
16 after the fact, the statement wasn't even taken until May
17 of this year. Well, that's my first argument as to why his
18 testimony ought to be suppressed is because he is a
19 jailhouse snitch and it has been tainted by the State, they
20 have no reliability whatsoever. The second prong of my
21 argument is this, Your Honor, it's basically we have a
22 Brewton issue and a Crawford issue. Because what we have
23 here is we have Mr. Wilson is going to say, "Well,
24 Mr. Simpson told me this and Mr. Knuckles told me that and
25 Mr. Foster told me something else." All of this is going

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1 to be hearsay, obviously it's hearsay because he wasn't
2 there. Now, granted, if Mr. Knuckles said to Mr. Wilson I
3 did X, Y and Z, well, that might be admissible against
4 Mr. Knuckles. If Mr. Wilson said I did X, Y and Z, that
5 might be admissible against -- Mr. Simpson said X, Y, Z
6 that might be admissible against him. So we have a pure
7 Brewton issue here where we can't really -- this statement
8 cannot be redacted to the point where what Mr. Wilson -- I
9 mean Mr. Simpson is telling him is not being used against
10 Mr. Knuckles and vice versa. And the right of
11 confrontation is denied because if he says anything that
12 Mr. Simpson told him I don't have the right to cross
13 examine Mr. Simpson and vice versa, if he says what
14 Mr. Knuckles told him, Mr. Robinson doesn't have any right
15 of cross examination against Mr. Knuckles. So it's a pure
16 Brewton issue in regard to that. Because unless I'm
17 mistaken, the only thing that Mr. Wilson is going to be
18 testifying to is stuff that these defendants allegedly told
19 him. And in regard to Mr. Foster, Mr. Foster is available
20 so certainly he can testify if he chooses to -- the State
21 chooses to call him we can see what he says. I don't think
22 he would fall into -- what Mr. Foster said to Mr. Wilson
23 would fall under any hearsay exceptions and that shouldn't
24 be allowed. So I don't think he should be allowed to
25 testify as to what any of these individuals told him.

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1 THE COURT: All right. The problem I have in making a
2 determination, I don't know what he's going to testify to.

3 MR. RHODEN: I understand what you're saying. We may
4 have to proffer testimony, I don't know.

5 THE COURT: I'm not saying I buy your arguments but
6 even before I get to your arguments you're asking me to
7 rule on something I have not heard, that I don't know. All
8 right. Why don't we -- do you have any other issue?

9 MR. RHODEN: Those are it.

10 THE COURT: Why don't we try to get together maybe at
11 ten until 2:00 and let's go ahead and get -- my
12 understanding is Mr. Wilson is downstairs somewhere, let's
13 go ahead and have him up here about ten minutes until
14 2:00 and let's reconvene and see where we go from there.
15 Okay. All right.

16 (Lunch break was taken.)

17 MS. LESKANIC: I think Mr. Rhoden is referring to Mr.
18 Wilson as a jailhouse snitch, I think that is something
19 that he can sufficiently cover on cross examination and it
20 goes to the weight of his testimony, not the admissibility
21 of the testimony. The second part of the argument is
22 Brewton and I guess somehow Crawford. This wouldn't be
23 hearsay, Your Honor, when the statement is made by the
24 defendant, so it doesn't qualify as hearsay and I think
25 takes away any Crawford issue. The last issue is Brewton.

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1 The way I plan on addressing that is just asking Mr. Wilson
2 not if Simpson made a statement implicating Knuckles, but
3 did Simpson make a statement implicating himself and what
4 did he say that he did in the robbery. And as far as
5 Mr. Knuckles, did Mr. Knuckles make a statement to you
6 about his participation in the robbery and what did he tell
7 you, if anything, that he did in the robbery and limiting
8 him to testifying directly as to what each defendant told
9 him, not what they told him about the other's involvement.
10 I think that avoids any Brewton issue altogether, Your
11 Honor. So that's the way I would instruct him to testify
12 and ask the Court to instruct him to testify.

13 THE COURT: My understanding is that if he's not going
14 to use statements by one defendant against the codefendant
15 then it takes out the rhelm of the Brewton problem.

16 MR. RHODEN: But I think we still have a Crawford
17 issue. Crawford basically says a confrontation clause
18 issue -- I mean confrontation issue where what we have
19 here, Your Honor, if you take it in that context is what
20 the State has laid out as to what they intend to do. For
21 instance, they're going to ask Mr. Wilson, "Well, what did
22 Mr. Simpson tell you?" Mr. Simpson said I did X, Y, Z.
23 From my standpoint with Mr. Knuckles, I cannot call
24 Mr. Simpson as a witness. I have no right or ability to
25 confront that witness, that's what Crawford basically says

TESTIMONY OF WILLIE TALLEY

1 is that if I can't confront that witness with cross
2 examination it's inadmissible. I can't call Mr. Simpson as
3 a witness to say I never told Mr. Wilson that. I deny I
4 told Mr. Wilson that. I can't call Mr. Simpson and say
5 that. And so when that information comes in to the Court I
6 have no way to basically cross examine this witness
7 concerning that because I can't call the gentleman who is
8 going to basically deny he even told Mr. Wilson any of that
9 information. And basically what Mr. Wilson says, he gives
10 so much detail about who did this and who did that,
11 etcetera, etcetera, we still -- I don't think we have
12 solved the Brewton problem because I don't think you can
13 isolate this in such a way that the testimony from one
14 doesn't implicate the other. Because we've already got the
15 video in about how it happened and the three guys there and
16 if he just simply gets up and there and says, "Well,
17 Mr. Simpson said this and Mr. Knuckles said that," it by
18 and of itself is going to implicate each other in that
19 testimony. But we have to keep in mind that Mr. Wilson in
20 all of this is relaying just third party information and he
21 wasn't an eye witness to any of this.

22 MS. LESKANIC: And, Your Honor, both defense counsel
23 will have an opportunity to cross examine him, which will
24 be before the jury to judge his credibility. But these are
25 statements from the State's position that the defendants

TESTIMONY OF WILLIE TALLEY

1 made to him which is an admission by party opponent which
2 is not hearsay and it can come in. And it does avoid
3 Brewton by limiting him to say what did this particular
4 person tell you, not what did they tell you about what
5 someone else did.

6 MR. RHODEN: But it does eliminate the Crawford issue
7 in that he's basically going to say Simpson said X, Y, Z
8 and I can't call Simpson up to say, "I did not say that."

9 THE COURT: Well, is the gentleman up here,
10 Mr. Wilson?

11 MS. LESKANIC: Should be here, Your Honor. He's not
12 going to be my next witness, I am going to call Mr. Foster
13 as my next witness.

14 THE COURT: Let's go ahead and call your next witness
15 and give me a copy of that statement, that way I will be
16 ahead of the game when we get back to Mr. Wilson and
17 possibly we can get Mr. Wilson done at the next break.

18 (The jury returned to the courtroom.)

19 The witness, LAQUINTON FOSTER, was first duly sworn
20 and testified as follows, on:

21 DIRECT EXAMINATION

22 BY MS. LESKANIC:

23 Q. Good afternoon, Mr. Foster. Would you please state
24 your name to the jury?

25 A. Laquinton O'Brian Foster.

TESTIMONY OF LAQUINTON FOSTER

- 1 Q. How old are you, Mr. Foster?
- 2 A. Seventeen.
- 3 Q. Do you have a nickname that you go by on the street?
- 4 A. O. B.
- 5 Q. Did you participate in the armed robbery of the
- 6 Eastside Saveway Convenience Store on January 18, 2006?
- 7 A. Yeah.
- 8 Q. And you pled guilty to armed robbery?
- 9 A. Yeah.
- 10 Q. Were you sentenced?
- 11 A. Yeah.
- 12 Q. Did the State, myself or anyone else representing the
- 13 State, make any offers to you in that case?
- 14 A. No.
- 15 Q. Did we give you any kind of deal?
- 16 A. No.
- 17 Q. Before you pled guilty?
- 18 A. No.
- 19 Q. Give you any kind of deal to be in here today?
- 20 A. No.
- 21 Q. You came on your own accord yesterday and pled guilty
- 22 as you were charged.
- 23 A. Yeah.
- 24 Q. Okay. Do you know Marcellus Knuckles?
- 25 A. Yeah, I know him.

TESTIMONY OF LAQUINTON FOSTER

- 1 Q. Okay. Can you identify him for me, what he's wearing
2 today?
- 3 A. In the blue right there..
- 4 Q. Wearing the sweater?
- 5 A. Yeah.
- 6 Q. Okay.
- 7 THE COURT: Mr. Foster, if you new would, lean into
8 that microphone, the gentleman in front you is a court
9 reporter and he needs to be able to hear you as well as I
10 do and the members of the jury and your voice is fading
11 off.
- 12 Q. Do you know Jonathan Simpson?
- 13 A. Yes.
- 14 Q. Do you see him in the courtroom?
- 15 A. Yeah.
- 16 Q. What is he wearing?
- 17 A. A blue button-up shirt.
- 18 Q. Wearing plaid?
- 19 A. Yeah.
- 20 Q. How long have you known Mr. Knuckles and Mr. Simpson?
- 21 A. About a year.
- 22 Q. And how do you know them? How do you know
23 Mr. Knuckles?
- 24 A. Kin to him.
- 25 Q. You are related to him?

TESTIMONY OF LAQUINTON FOSTER

- 1 A. Yeah.
- 2 Q. How are you related?
- 3 A. Cousins.
- 4 Q. How do you know Jonathan Simpson?
- 5 A. I just met him through Marcel.
- 6 Q. All right. Now, you've already told the jury and you
7 told the Court yesterday that you were involved in the --
- 8 MR. RHODEN: Your Honor, I'm going to object to what
9 he may have said yesterday.
- 10 THE COURT: Sustain the objection.
- 11 Q. You pled guilty yesterday to armed robbery.
- 12 A. Yeah.
- 13 Q. Who was with you committing the robbery?
- 14 A. Have I got to answer that?
- 15 Q. I'm asking you the question, yes, sir. If you would,
16 please tell the jury who was with you the night of
17 January 18th.
- 18 A. I don't remember.
- 19 THE COURT: I'm sorry, I didn't hear you.
- 20 A. I don't remember.
- 21 THE COURT: Sir, you're going to need a give an
22 answer.
- 23 A. I don't remember.
- 24 Q. You don't remember who was with you that night?
- 25 A. No.

TESTIMONY OF LAQUINTON FOSTER

- 1 Q. All right. I'm going to show you what's been marked
2 as State's Exhibit 1. If you will, look at the screen and
3 see if this first of all refreshes your memory. If you
4 will watch this, then I am going to ask you some questions
5 about it.
- 6 (The videotape was played.)
- 7 Q. Mr. Foster, did you see yourself in that?
- 8 A. Yeah, I seen myself.
- 9 Q. What role did you play in the robbery?
- 10 A. I jumped over the counter.
- 11 Q. You jumped over the counter?
- 12 A. Yeah.
- 13 Q. And who had the gun at the counter?
- 14 A. I don't remember.
- 15 Q. Who was in the back that made Willie Talley lay down
16 on the floor?
- 17 A. I can't remember.
- 18 Q. Are you afraid to be in court today?
- 19 A. Am I what?
- 20 Q. Afraid, scared of being in court today testifying?
- 21 A. No. Why would I?
- 22 Q. You tell me.
- 23 A. No.
- 24 Q. Do you remember giving a statement to Detective Ramsey
25 and Detective Clary in this case?

TESTIMONY OF LAQUINTON FOSTER

1 A. No. I don't remember anything about no Detective
2 Ramsey.

3 Q. Okay. Do you remember Detective Clary?

4 A. Yeah, I know him.

5 Q. Do you remember giving a statement to him about what
6 happened?

7 A. Yeah.

8 Q. You do?

9 A. Yeah.

10 Q. You spoke with him on June 12th of 2006?

11 A. Yeah.

12 Q. Did he go over your rights with you?

13 A. Yeah.

14 Q. Did you ask to speak with him about the case?

15 A. Yeah.

16 Q. Did you tell him that you had some information about
17 the robbery?

18 A. Yeah.

19 Q. What did you tell him?

20 A. I told him that I was one of the ones that did it.

21 Q. Who else did you say did it?

22 A. I said I think it was them.

23 Q. Is that what you said?

24 A. Yeah, I think.

25 MS. LESKANIC: May I approach the witness, Your Honor?

TESTIMONY OF LAQUINTON FOSTER

- 1 THE COURT: Yes, ma'am.
- 2 Q. Mr. Foster, I'm going to show you has been marked as
- 3 State's Exhibit Number 9. Would you take a look at this,
- 4 first of all the front page. Do you recognize this?
- 5 A. Yeah.
- 6 Q. What is that?
- 7 A. That's the paper that he read my rights and stuff with
- 8 me.
- 9 Q. Is that your signature?
- 10 A. Yeah.
- 11 Q. Now, I am going to show you the second page of State's
- 12 Exhibit Number 9. Take a look at that and tell me if you
- 13 recognize that.
- 14 A. Yeah.
- 15 Q. What is this?
- 16 A. That's the statement that Detective Clary wrote for
- 17 me.
- 18 Q. Okay. Did you tell him what to write?
- 19 A. I told him half of what to write.
- 20 Q. You told him what?
- 21 A. I told him half of, the brackets, that was his idea.
- 22 Q. Okay. So this one part right here?
- 23 A. Yeah.
- 24 Q. Okay. But have you read over this statement with him?
- 25 A. I got a copy.

TESTIMONY OF LAQUINTON FOSTER

1 Q. So you've read it and you know what's in this
2 statement.

3 A. Yeah.

4 Q. Okay. I would like you to read along with me. And
5 we're going to start at the top of your statement. Okay?

6 MR. RHODEN: I'm going to object. She's going to have
7 to ask him specific questions and then she can use the
8 statement if they're inconsistent, but I don't think she
9 can just have him read the entire statement, Your Honor.

10 THE COURT: I agree with counsel as the witness is
11 being approached at this time.

12 Q. Okay. Let me ask you then, Mr. Foster, did you want
13 to talk to the detective, did you request to speak with
14 Detective Clary about the armed robbery?

15 A. Yeah. He was saying something before I seen the video
16 if I wanted to talk to him like a man and come in his
17 office so I did.

18 Q. Okay. And so you went to his office.

19 A. Yeah.

20 Q. And did you tell him about the robbery?

21 A. Yeah.

22 Q. You told him what, that you were one of the ones that
23 did it?

24 A. Yeah.

25 Q. Did you tell him who else did it?

TESTIMONY OF LAQUINTON FOSTER

- 1 A. I told him I think he was with me. I was drinking and
2 smoking that night.
- 3 Q. Who did you tell him that you thought was with you
4 that night?
- 5 A. I said I thought they was with me that night.
- 6 Q. Who is they?
- 7 A. Marcellus and Brian.
- 8 Q. The two guys sitting over here?
- 9 A. Yeah.
- 10 Q. You thought they were the ones that were with you?
- 11 A. Yeah.
- 12 Q. But you're not sure if they were with you to rob the
13 convenience store?
- 14 A. No.
- 15 Q. Did you want to do the robbery?
- 16 A. Yeah.
- 17 Q. You did?
- 18 A. Yeah.
- 19 Q. I would like to read along with me and tell me if I
20 read this correctly. "I told him that I didn't really want
21 to do it but I was pressured into it. I even stopped at
22 the front door and wasn't going in and they pushed me in
23 the door." Did I read that correctly?
- 24 A. It's on the paper.
- 25 Q. But did I read that -- I want to make sure that I read

TESTIMONY OF WILLIE TALLEY

1 from Mr. Wilson should be excluded and I would move to
2 suppress. This is my argument on that particular portion
3 of that is that Mr. Wilson according to his statement that
4 he gave was shown a videotape of the robbery and that is in
5 his written statement. Obviously for him to have put that
6 in his written statement that he would have had to have
7 seen the video before he gave the written statement. Now,
8 Mr. Wilson, Your Honor, basically is a jailhouse snitch and
9 that's what he is. He doesn't have any firsthand knowledge
10 of any of this robbery, he wasn't -- according to him if
11 you believe him wasn't there and wasn't a participant in
12 this robbery. His testimony is basically going to be what
13 he learned from other people, that being the three
14 defendants in the case, Mr. Simpson, Mr. Knuckles and
15 Mr. Foster. He then goes on in his statement to say that
16 he is a master of identification and regardless he can look
17 at that video and he can tell you who those guys are. Now,
18 this is a bit of an unusual argument, I don't have any law
19 on it, but I am going to basically say, Your Honor, that it
20 is sort of like an identification issue when you have an
21 eye witness identification and you have a show up of a
22 potential suspect that makes that eye witness
23 identification suspect and the Court goes through a
24 balancing test to determine whether or not that
25 identification is of sufficient reliability to allow it

TESTIMONY OF LAQUINTON FOSTER

1 it correctly.

2 A. Yeah.

3 Q. And that's what you told Detective Clary; is that
4 correct?

5 A. Yeah.

6 Q. And you have said that you're not sure who was with
7 you but I would like to read that portion of your statement
8 along with you, too. Because here you say, "The other two
9 guys who did this with me were Jonathan Simpson and
10 Marcellus Knuckles, they came in the door behind me. I'm
11 not exactly sure who had the gun but I think it was
12 Jonathan." Is that correct?

13 A. Yeah.

14 Q. Okay. So at the time you gave the statement you
15 didn't tell Detective Clary that you were drunk or smoking
16 something, you told him you knew who was with you.

17 A. I wasn't drunk then, but I'm saying when that happened
18 I was.

19 Q. But you didn't tell the detective that you weren't
20 sure who did it with you, you told the detective who was
21 with you that night, right?

22 A. He was just telling me if I was to write a statement
23 it would help me so I was going along with what he was
24 saying. I had never been in no big trouble.

25 Q. You came in and you told the truth about what you did,

TESTIMONY OF LAQUINTON FOSTER

- 1 didn't you?
- 2 A. I guess if that's what you call it.
- 3 Q. You tell me. Did you tell the officer the truth about
- 4 what happened that night? Did you come and take
- 5 responsibility for your actions and tell the officer what
- 6 role you played in this?
- 7 A. What role I played, yeah, I did that.
- 8 Q. But you're not sure who was with you.
- 9 A. No.
- 10 Q. But at the time you gave the statement you weren't
- 11 sure it was Jonathan Simpson and Marcellus Knuckles that
- 12 went in that store with you and robbed Shirley Whitaker at
- 13 gun point to the point that she peed in her pants; is that
- 14 right?
- 15 A. If that's what you got on that statement.
- 16 Q. Did you have the gun?
- 17 A. No, I didn't have the gun.
- 18 Q. Who had the gun?
- 19 A. I don't know who had the gun. I wasn't focused on who
- 20 had no gun, I was focussed on getting that money and
- 21 getting out.
- 22 Q. What happened to the gun after the robbery?
- 23 A. I don't know.
- 24 Q. You don't know? Read along with me. "It was thrown
- 25 in the bushes behind the store, I didn't have it;" is that

TESTIMONY OF LAQUINTON FOSTER

- 1 correct?
- 2 A. I guess.
- 3 Q. How much money did you get from the robbery?
- 4 A. I got about \$700.
- 5 Q. How much did your two buddies get?
- 6 A. I don't know, I know what I had.
- 7 Q. Where did y'all go after the robbery? Whose house did
- 8 you go back to?
- 9 A. Split up. I just ran off by myself.
- 10 Q. How did you get your money?
- 11 A. I had the money, I took it. I went over the counter
- 12 and got the money.
- 13 Q. And so the fellow that we see in the back of the store
- 14 that made Willie Talley lay down, he just left and didn't
- 15 get any money. He participated in the robbery but since
- 16 you went separate ways and you don't know who you were with
- 17 he didn't get his money.
- 18 A. I guess.
- 19 Q. Are you sorry for what you did?
- 20 A. I'm sorry for what I did, the part I played. I am
- 21 sorry for what I did.
- 22 Q. Are you going to be sorry for what you're doing now?
- 23 A. What?
- 24 Q. Who was with you during the robbery?
- 25 A. I don't know, I can't remember. It's been six months

TESTIMONY OF LAQUINTON FOSTER

1 ago, I can't remember.

2 Q. Can't remember. How many armed robberies have you
3 done?

4 A. First one I have ever done.

5 Q. First one you ever did and you don't know who you did
6 it with.

7 A. No.

8 Q. When is the last time you saw Brian Knuckles?

9 MR. RHODEN: Your Honor, I am going to object to the
10 form of that question. Can we approach?

11 (A bench conference was held.)

12 Q. Who else would you have committed the robbery with?

13 MR. RHODEN: Your Honor, I am going to object. She's
14 asked the question like four times who committed -- who was
15 with him when he committed the robbery. All she's doing is
16 asking the same question over and over the same way.

17 THE COURT: I will allow it one more time. Go ahead,
18 ma'am.

19 Q. Who did you commit the robbery with?

20 A. If I know I would tell you but I don't know.

21 Q. You did tell us, didn't you? You told us in your
22 statement.

23 A. If that's what you're going to use.

24 Q. Do you know Joseph Wilson?

25 A. Yeah, I know him.

TESTIMONY OF LAQUINTON FOSTER

1 Q. How do you know him?

2 A. We grew up right up the street from him.

3 Q. Did you tell him what you did in the robbery?

4 A. Yeah. I told him what I did.

5 Q. Is this your signature at the bottom of the statement?

6 A. Yeah.

7 Q. And that's your statement on your signature on the
8 front page of your Miranda warning?

9 A. Yeah.

10 MS. LESKANIC: Your Honor, at this time we would offer
11 State's Exhibit 9 for admission into evidence.

12 MR. RHODEN: I certainly object. That's not
13 subjective evidence that can be used for impeachment and --

14 THE COURT: All right. We will need to take this up
15 outside of the presence of the jury. Ladies and gentlemen,
16 we're going to ask you to return back to the jury
17 deliberations room not to have any discussions about
18 anything involving the case.

19 (The jury left the courtroom.)

20 MR. RHODEN: Your Honor, the statement that Mr. Foster
21 gave certainly I think would be used for purposes of
22 impeachment which the State has done in front of the jury,
23 I don't think it can be used as substantive evidence by
24 being introduced into evidence. She -- the solicitor has
25 been given an opportunity to ask this gentleman questions,

TESTIMONY OF LAQUINTON FOSTER

1 asked him if he had inconsistent responses and statement
2 and has even had him -- or she has read portions of the
3 statement to him. I think that is the limit of what this
4 statement can be used for, it cannot be introduced as
5 substantive evidence of the offense is what the State is
6 intending to do with this statement. It's not like
7 introducing one of the defendant's statements, he's just a
8 witness, Your Honor.

9 THE COURT: Yes, ma'am?

10 MS. LESKANIC: I actually believe Mr. Rhoden is
11 correct, Your Honor. Looking at rule 1613-B since he did
12 admit to making the prior statement I don't believe I'm
13 allowed to use extrinsic evidence so I will withdraw my
14 question. But I would like to continue with my direct
15 examination.

16 THE COURT: All right. All right. Okay. Bring the
17 jury back.

18 (The jury returned to the courtroom.)

19 THE COURT: Yes, ma'am?

20 CONTINUED DIRECT EXAMINATION

21 BY MS. LESKANIC:

22 MS. LESKANIC: Thank you, Your Honor.

23 Q. Looking back at what's been marked as State's Exhibit
24 Number 9, Mr. Foster, I would like to go over with you the
25 pre-interrogation waiver form that we've already looked at.

TESTIMONY OF LAQUINTON FOSTER

1 MR. RHODEN: Your Honor, I am going to object. He
2 admitted he signed it, he has admitted he was read his
3 rights.

4 THE COURT: All right.

5 MR. RHODEN: He has not denied those.

6 THE COURT: Right. You want to just see if he denies
7 them now?

8 MS. LESKANIC: I don't -- no, Your Honor. I just had
9 some additional questions about the form.

10 THE COURT: All right.

11 Q. Now, did the detective go over this form with you?

12 A. Yeah.

13 Q. And you signed first of all stating the box that your
14 rights have been read to you by David L. Clary and you
15 signed your name.

16 A. Yeah.

17 Q. Then under waiver of rights to make sure --

18 MR. RHODEN: Your Honor, once again I'm going to have
19 to object. I mean, he admits it, he was given his rights,
20 he admits that he signed the statement. I don't know what
21 purpose the State is using the statement for, certainly not
22 impeachment at this time.

23 THE COURT: All right. These are rather -- well, I
24 won't characterize -- I'm going to allow her to go into
25 this and then move on.

TESTIMONY OF LAQUINTON FOSTER

1 Q. Here you say you waive your rights freely and
2 voluntarily without being threatened or coerced and without
3 being promised any leniency or reward, is that correct, and
4 you signed that?

5 A. Yeah.

6 Q. Okay. And were you under the influence of any alcohol
7 when you gave this statement to Detective Clary?

8 A. No.

9 Q. Were you under the influence of any drugs or
10 medications when you gave him the statement?

11 A. No.

12 Q. So you gave him a statement freely and voluntarily on
13 June 12th of 2006?

14 A. Yeah. He told me one of my co-defendants signed a
15 statement on me.

16 Q. He said what?

17 A. One of my co-defendants signed a statement.

18 Q. Okay. And so then you gave a statement implicating
19 yourself and your co-defendants?

20 A. No. He just told me one of my co-defendants signed a
21 statement on me and he asked me did I know them two dudes
22 so I figured it was one of them that signed the statement.
23 I ain't know it was Mr. Wilson or whatever his name is.

24 Q. So you just picked Knuckles and said --

25 A. No. He said it was them, he was signing it, he was

TESTIMONY OF LAQUINTON FOSTER

1 going to help me get out of the trouble I was in so I
2 signed the statement.

3 Q. So the statement isn't true?

4 A. You said that it is.

5 Q. I am asking you, is the statement that you gave the
6 detective true?

7 A. The part about me being in it is true.

8 Q. So is the part that Mr. Knuckles wasn't involved, is
9 that not true or you just don't remember who was with you?

10 A. I don't remember.

11 Q. And the part about Mr. Simpson being involved, is that
12 not true or you just don't remember?

13 A. I don't remember.

14 Q. So it's not that the statement is false, it's you just
15 can't remember who robbed the convenience store with you
16 back in January?

17 A. Correct.

18 Q. We watched the video. Mr. Foster, you said you were
19 the one that jumped over the counter.

20 A. Yeah.

21 Q. So it's your shoe print that Detective Segina
22 collected from the counter top?

23 A. Yeah.

24 Q. And you took money out of the cash box?

25 A. Say what?

TESTIMONY OF LAQUINTON FOSTER

- 1 Q. You took money out of the cash box?
- 2 A. The box where the money was in?
- 3 Q. Uh-huh.
- 4 A. Yeah.
- 5 Q. Where was that located?
- 6 A. Up under the cabinet.
- 7 Q. What time did you go into the store?
- 8 A. I don't know, I can't remember.
- 9 Q. How did you decide to do the robbery?
- 10 A. Just came about.
- 11 Q. How did it come about?
- 12 A. In need of money, I guess.
- 13 Q. You needed money or who needed money?
- 14 A. I said in need of money.
- 15 Q. In need of money?
- 16 A. Yeah.
- 17 Q. So was it your idea to do the robbery?
- 18 A. No.
- 19 Q. Because in your statement I think you said they had to
- 20 push you through the door; is that right?
- 21 A. Detective Clary told me he seen something through the
- 22 camera where they pushed me through the door so I just used
- 23 it.
- 24 Q. So you wanted to go in, you willingly went in?
- 25 A. Yeah.

TESTIMONY OF LAQUINTON FOSTER

- 1 Q. So you wanted to do the robbery as much as the two
2 guys with you.
- 3 A. Not really, I was there.
- 4 Q. I understand you were there.
- 5 A. I would have been an accessory anyway.
- 6 Q. Well, I understand. I'm just wondering whose idea it
7 was to do the robbery, whether it was yours or somebody
8 else's.
- 9 A. I can't remember, that's been in January, that's been
10 almost a year. I can't remember.
- 11 Q. But it was an armed robbery.
- 12 A. I know it was.
- 13 Q. And you can't remember who was idea it was to commit
14 an armed robbery?
- 15 MR. RHODEN: Your Honor, I'm going to object, that's
16 about the 12th time --
- 17 THE COURT: I tend to agree with you. Let's move on.
- 18 MS. LESKANIC: I have nothing further. Mr. Foster if
19 you would please answer any questions that either of the
20 defense attorneys have for you.
- 21 MR. RHODEN: Your Honor, could you give me one minute?
22 Please the Court?
- 23 CROSS EXAMINATION
- 24 BY MR. RHODEN:
- 25 Q. Mr. Foster, the solicitor has asked you a lot of

TESTIMONY OF LAQUINTON FOSTER

1 questions about -- the solicitor has asked you a lot of
2 questions about the statement that you gave and you didn't
3 give that statement until June.

4 A. That's when I was arrested.

5 Q. Pardon?

6 A. That's when I was arrested.

7 Q. Right. That's when you were arrested.

8 A. Yeah.

9 Q. The way this came about is basically in June Detective
10 Clary wrote this statement out, didn't he?

11 A. Yeah.

12 Q. You didn't write this statement, did you?

13 A. No.

14 Q. All of the handwriting on this statement is the
15 detective's handwriting?

16 A. Yeah.

17 Q. And the detectives, he told you certain things and you
18 went along with it basically.

19 A. Yeah, because I had never been in no trouble. I just
20 figure it would get me out of what I was in and I would
21 come out better. He was just baiting me in really.

22 Q. So Detective Clary comes to you and tells you certain
23 things and you think it's going to help you out so he
24 writes this statement.

25 A. Yeah.

TESTIMONY OF LAQUINTON FOSTER

1 Q. And you just sign it, right?

2 A. Yeah.

3 Q. And the truth of the matter is that when the robbery
4 occurred you say you were drunk and high on whatever.

5 A. Right.

6 Q. Right?

7 A. Yeah.

8 MR. RHODEN: All right. Thank you, that's all.

9 THE COURT: Mr. Robinson?

10 MR. ROBINSON: I have no more questions, Your Honor.

11 THE COURT: Any redirect limited to what he went into?

12 MS. LESKANIC: No, Your Honor. Thank you.

13 THE COURT: Sir, you may step down. Thank you.

14 Ladies and gentlemen, there's a matter of law I need to
15 take up outside of your presence before the next witness.
16 I'm going to ask you if you would retire back to the jury
17 room and I instruct you not to have any discussions among
18 yourselves about the case.

19 (The jury left the courtroom.)

20 THE COURT: I'm going to go ahead and let the State
21 proffer Mr. Wilson's testimony and let me get a feel for
22 exactly what he's going to testify to. I have looked over
23 the Brewton cases as well as the South Carolina cases that
24 the State versus Dennis and recognizing like the admission
25 by a codefendant or admission taken with that, so let's go

TESTIMONY OF JOSEPH WILSON

1 ahead and bring Mr. Wilson on in.

2 The witness, JOSEPH BERNARD WILSON, was first duly
3 sworn and testified as follows on:

4 DIRECT EXAMINATION

5 BY MS. LESKANIC:

6 Q. Are you Joseph Bernard Wilson?

7 A. Yes, ma'am.

8 Q. How old are you, Mr. Wilson?

9 A. Nineteen.

10 Q. Do you know Marcellus Knuckles?

11 A. Yeah.

12 Q. How do you know him? What name does he go by?

13 A. Brian.

14 Q. Do you see him in the courtroom?

15 A. Yeah.

16 Q. Where is he? If you would point him out for the
17 Judge.

18 A. In the sweater or the shirt.

19 THE COURT: This gentleman in front of you is the
20 court reporter, he's making a recording of everything that
21 happens in here so I need you to give verbal answers.
22 Don't just nod and shake your head and point. Okay?

23 A. Okay.

24 Q. How long have you known Brian?

25 A. About a year and a half.

TESTIMONY OF JOSEPH WILSON

- 1 Q. How do you know him?
- 2 A. He's my cousin.
- 3 Q. So y'all are related. Do you know Jonathan Simpson?
- 4 A. Yeah.
- 5 Q. Do you see him in the courtroom?
- 6 A. Yeah.
- 7 Q. What is he wearing?
- 8 A. T-shirt, button-up.
- 9 Q. Button-up shirt? How long have you known him?
- 10 A. About the same amount of time.
- 11 Q. How do you know Mr. Knuckles and Mr. Simpson? How did
- 12 you have cause to interact with them?
- 13 A. Hanging out in the same hood together.
- 14 Q. Okay. For about the last year and a half you say?
- 15 A. Yeah.
- 16 Q. Okay. Did you have a occasion to talk with
- 17 Mr. Knuckles, Brian, about the robbery at the Eastside
- 18 Saveway?
- 19 A. Yeah, one or twice.
- 20 Q. Okay. Can you tell me what Brian told you he did in
- 21 the robbery, not what anybody else did, but what, if
- 22 anything, he did in the robbery of the Eastside Saveway
- 23 back in January?
- 24 A. I can't remember much. He didn't say too much about
- 25 it, verbal statements.

TESTIMONY OF JOSEPH WILSON

- 1 Q. You said you talked about it with him a couple of
2 times.
- 3 A. Yeah, once or twice.
- 4 Q. Okay. What did he say he did?
- 5 A. If I ain't mistaken he said he went to the back of the
6 store.
- 7 Q. What did he do when he was in the back of the store?
- 8 A. I don't know. From the tape they showed like he hit
9 the man in the back of the store.
- 10 Q. But did he tell you that he was at the Eastside
11 Saveway and committed the robbery?
- 12 A. Yeah.
- 13 Q. Okay. Did you have an occasion to talk with Jonathan
14 Simpson about the robbery or be in his presence when he was
15 talking about the robbery?
- 16 A. I might have, I don't know.
- 17 Q. What is that?
- 18 A. I might have, I don't know.
- 19 Q. You don't remember if you heard Mr. Simpson say
20 anything about the robbery, if he told you something about
21 the robbery?
- 22 A. I can't remember that.
- 23 Q. Mr. Knuckles and Mr. Simpson live together.
- 24 A. Yeah.
- 25 Q. Were you at their house one day when both of them were

TESTIMONY OF JOSEPH WILSON

- 1 there discussing the robbery?
- 2 A. Yeah. Yes, I was.
- 3 Q. Okay. What did Mr. Simpson say? Let me just ask you
- 4 this, did Mr. Simpson say that he participated in the
- 5 robbery of the convenience store back in January with his
- 6 roommate, Mr. Knuckles?
- 7 A. I believe he did, I don't know. I can't say for sure.
- 8 Q. Did you ever hear Mr. Simpson talk about the robbery?
- 9 A. No.
- 10 Q. All right. But Mr. Knuckles told you that he was at
- 11 the robbery and he went to the back of the store.
- 12 A. Yeah.
- 13 Q. Do you remember giving a statement --
- 14 A. Yeah.
- 15 Q. -- to police about this?
- 16 A. Yeah.
- 17 Q. Did you tell the truth in that statement?
- 18 A. Yeah.
- 19 Q. If you looked at that, would that help refresh your
- 20 memory as to what you were or were not told?
- 21 A. I believe I can remember all of it.
- 22 Q. Do you want to take a look at your statement?
- 23 A. No.
- 24 Q. But you think you can remember everything in the
- 25 statement?

TESTIMONY OF JOSEPH WILSON

- 1 A. I believe so.
- 2 Q. Okay. Then in your statement, what did you tell the
3 police that Jonathan Simpson did? What did he tell you
4 that he did?
- 5 A. If I ain't mistaken he was holding the gun at the
6 woman.
- 7 Q. And that's what he told you in your presence?
- 8 A. Yeah.
- 9 Q. About his participation in the robbery of the
10 convenience store back in January?
- 11 A. Yeah.
- 12 Q. Okay. Did you talk to Laquinton Foster?
- 13 A. Yeah.
- 14 Q. Did he make any statements to you about what he did in
15 the robbery?
- 16 A. Yeah.
- 17 Q. What did he say that he did?
- 18 A. Jumped over the counter or something.
- 19 Q. Did John tell you what they did with the gun or what
20 he did with the gun?
- 21 A. Yeah.
- 22 Q. What did he tell you he did with the gun?
- 23 A. Threw it right there behind the store.
- 24 Q. Did you watch the video in this case?
- 25 A. Yeah.

TESTIMONY OF JOSEPH WILSON

1 Q. Could you tell who was on the video by watching it?

2 A. Yeah.

3 Q. Who was on the video committing the armed robbery?

4 A. Brian, John and O. B.

5 Q. Brian is Mr. Knuckles, Marcellus O'Brian Knuckles?

6 A. Yeah.

7 Q. And O. B. is Laquinton Foster?

8 A. Yeah.

9 Q. And John is Jonathan Leon Simpson?

10 A. Yeah.

11 Q. Did John try to get you to do a robbery with him after
12 this? Did he ask you to do the store again with him?

13 A. Yeah, they talked about it.

14 MS. LESKANIC: That's all we have, Your Honor.

15 MR. RHODEN: Please the Court?

16 CROSS EXAMINATION

17 BY MR. RHODEN;

18 Q. Mr. Wilson, now let's talk a little bit about your
19 statement. Now, let's put all of this into context. Okay?
20 The statement -- you came forward to the police, to
21 Detective Clary and gave the statement on May 12th of this
22 year, correct?

23 A. Yeah.

24 Q. And you were in jail when you gave the statement,
25 correct?

TESTIMONY OF JOSEPH WILSON

1 A. Yeah.

2 Q. In fact, you had been arrested on several charges and
3 have charges pending against you at this present time,
4 correct?

5 A. Yeah.

6 Q. And basically Detective Clary came to you and wanted
7 to know if you wanted to tell him some stuff, correct?

8 A. Uh-huh, yeah.

9 Q. And, of course, at that point in time you wanted to
10 cooperate because you thought it might help you, right?

11 A. Yeah.

12 Q. And so the statement that you gave was one while you
13 are in jail and hoping you are going to get something good
14 to happen to you by giving this statement, right?

15 A. Yeah.

16 Q. And they showed you the video, right?

17 A. Yeah.

18 Q. And so you got to see the video about how the robbery
19 occurred, correct?

20 A. Yeah.

21 Q. Did they show it to you -- how many times did they
22 show it to you?

23 A. Two or three times.

24 Q. And you weren't there, were you?

25 A. No.

TESTIMONY OF JOSEPH WILSON

1 Q. So all of this information that you are giving to us
2 today and when you -- the information comes from this
3 statement is just stuff either you saw on the video or you
4 claimed somebody else told you, right?

5 A. Yeah.

6 Q. Okay. You didn't even write out the statement
7 yourself, did you?

8 A. No.

9 Q. Detective Clary wrote that out for you, didn't he?

10 A. Yeah.

11 Q. You didn't implicate yourself in this statement, you
12 didn't say you helped in any way, did you?

13 A. No.

14 Q. You're just basically saying these other people did
15 it, right?

16 A. Right.

17 Q. And so after Detective Clary, he got you out of your
18 cell and you went down to his office, is that the way it
19 worked?

20 A. Yeah.

21 Q. Showed you the videotape two or three times and then
22 he wrote out the statement for you, correct?

23 A. Yeah.

24 Q. Didn't implicate yourself in this robbery whatsoever
25 but you hoped by giving this statement that it might help

TESTIMONY OF JOSEPH WILSON

1 you out on your other cases, right?

2 A. Yeah.

3 Q. And quite frankly at this point in time you don't even
4 really remember what anybody told you about how this
5 happened, do you?

6 A. Most of it.

7 Q. All right. But you haven't come forward to anybody,
8 police officers or anybody else before May the 12th of 2006
9 when you're in jail hoping to help yourself out, right?

10 A. Uh-huh.

11 Q. Of course, there's stuff in the statement, isn't
12 there, Mr. Wilson, that you now know is not even true about
13 for instance Dirt getting hit, you know he didn't get hit
14 now, don't you?

15 A. That's what I was told.

16 Q. That's what you were told. And you said -- you say
17 Dirt had a swollen eye. Of course, we know he didn't get
18 hit so none of that is even true, is it? Did the detective
19 tell you all of that stuff and help you put that stuff in
20 that statement?

21 A. No.

22 Q. He just wrote it for you and you signed it.

23 A. Uh-huh.

24 MR. RHODEN: All right. That's all I have.

25 MR. ROBINSON: I have just a couple of questions, Your

TESTIMONY OF JOSEPH WILSON

1 Honor.

2 CROSS EXAMINATION

3 BY MR. ROBINSON:

4 Q. Mr. Wilson, there were no other persons that witnessed
5 this statement, were there, beside you and the officer,
6 correct? Just you and him, correct?

7 A. Yeah.

8 Q. And it was never recorded, was it?

9 A. I don't think so.

10 MR. ROBINSON: All right, that's all I have. Thank
11 you.

12 THE COURT: Any redirect limited to what they went
13 into?

14 MS. LESKANIC: Yes, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. LESKANIC:

17 Q. Were you promised anything on your charges to come to
18 court today, on your pending charges?

19 A. No.

20 Q. Did we tell you we're going to give you any kind of a
21 deal if you came to court?

22 A. No.

23 Q. And you were talking about officers -- about another
24 case and you told them you had information about the
25 robbery, is that the way that it happened?

TESTIMONY OF JOSEPH WILSON

- 1 A. Yeah.
- 2 Q. Did you give them your statement first or did you
3 watch the video first?
- 4 A. Watched the video first.
- 5 Q. You watched the video, then you gave a statement.
- 6 A. Uh-huh.
- 7 Q. And who was -- do you remember who was present?
- 8 A. I believe it was Detective Mike Skinner and Detective
9 Raymond Skinner.
- 10 Q. When you gave your statement did you tell -- does
11 Detective Ramsey or whoever was with you tell you what to
12 do or did you tell them what you knew about it and that's
13 what they wrote down?
- 14 A. I told them about it.
- 15 Q. So they didn't tell you what to put in your statement.
- 16 A. No.
- 17 Q. Is the information you gave in your statement about
18 the information you received from Mr. Knuckles and
19 Mr. Simpson; is that correct?
- 20 A. Yes.
- 21 Q. Everything in your statement is accurate?
- 22 A. Yes, ma'am.
- 23 Q. So the police didn't tell you who did it or who you
24 should say did it, you had that information on your own.
- 25 A. Yeah.

TESTIMONY OF JOSEPH WILSON

1 MS. LESKANIC: Thank you.

2 MR. RHODEN: Nothing further.

3 MR. ROBINSON: Nothing further, Your Honor.

4 THE COURT: All right. I heard enough of the
5 defendant's recitation of the events that I am inclined to
6 find that there's some reliability in the information that
7 he is going to testify to as it relates to the
8 conversations that he would have had with the two
9 defendants that are not part of the taking of this
10 statement. I think I have enough confidence in what I have
11 heard that there's -- it would still be left up to the jury
12 to decide whether or not they wanted to believe that
13 testimony or not, but I have -- I believe that the
14 independent issue of reliability that I have to find is met
15 with those prior statements allegedly made by the
16 defendants to this defendant that were not part of any type
17 of a police investigation. You know, as far as the
18 statement is concerned, I'm not saying that if the
19 appropriate doors are opened that the statement could not
20 be used for some other purpose, but I would rather -- would
21 rule at this time that the actual use of the statement to
22 prove the contents of the statement right now is not going
23 to be allowed into evidence. But again, I would advise the
24 lawyers to be watchful as to how the questioning and
25 responses go to see if any doors are opened that might

TESTIMONY OF JOSEPH WILSON

1 allow the use of that statement. Yes, sir?

2 MR. RHODEN: May I be heard, Your Honor? I'm not
3 trying to argue with the Court, but as I understand it the
4 State has to show that there's some trustworthiness, some
5 reliability as to what this gentleman was saying. And once
6 again, I'm not trying to argue with the Court, but he did
7 admit that the videotape was played to him before he gave
8 the statement and it doesn't -- he doesn't implicate
9 himself. In a lot of the case law the issue of
10 trustworthiness or reliability of the statement turns on
11 whether it's an inculpatory statement and, of course, he is
12 just saying, no, these guys did it, I didn't have anything
13 to do with it. So it doesn't have any trustworthiness in
14 regard to that, so I just want to make those arguments now.
15 I do need some clarification Your Honor. Now, about the
16 issue of Mr. Foster, now, I don't know if the State is
17 going to ask --

18 THE COURT: Well, that's a good point of
19 clarification. I would not allow anything Mr. Foster said
20 because Mr. Foster is not a party to this proceeding and
21 you brought up a point that is important in my reasoning,
22 part of my thought process is I'm not going to get into the
23 statement. And my thought process is why I'm finding
24 reliable prior statements that were allegedly made by these
25 defendants to this witness is because at this time if we

TESTIMONY OF JOSEPH WILSON

1 go -- if we exclude the information contained in this
2 police statement we don't have the problem of the guy being
3 in custody on whether or not the 6th Amendment is going to
4 apply because there's no custodial interrogation being
5 taken based on at the time that these gentlemen allegedly
6 made the statements to that gentleman. So that's why I
7 am -- one of the main reasons I'm inclined to allow him to
8 testify as to those statements allegedly made by these
9 defendants to him. But it's not any way tied to the police
10 investigation.

11 MR. RHODEN: So once again just for clarity, as I
12 understand it and the solicitor will be allowed to ask
13 basically Mr. Wilson what, if anything, statements did
14 Mr. Knuckles make to you?

15 THE COURT: About Mr. Knuckles' comments.

16 MR. RHODEN: About Mr. Knuckles, and likewise ask
17 whatever statements did Mr. Simpson make to you then he
18 will be allowed to say whatever he chooses to say at that
19 point in time.

20 THE COURT: That's my -- right, that's my inclination,
21 that's my direction as to how I would like the State to
22 approach the statements made elicited from Mr. Wilson.

23 MR. RHODEN: And he says what he says and, you know, I
24 guess what I'm trying to clarify is if he gets up there and
25 hems and haws and the solicitor says, "Let me look at this

TESTIMONY OF JOSEPH WILSON

1 statement and refresh your memory and tell you what to
2 say."

3 THE COURT: We'll approach that as it takes place.
4 All right, sir. I need you to listen to me, I want to give
5 you some instructions. I have made -- we have had some
6 discussions with the lawyers about your testifying. Some
7 of the lawyers have made some objections concerning your
8 testimony and I have made some rulings and I need to see if
9 I can explain these to you. All right? I am going to
10 allow the State to ask you questions about the statements
11 that were made by the two defendants and I'm going to allow
12 you to give answers based on statements that those
13 defendants made outside of what was stated in this police
14 interview that you did. Do you understand that?

15 THE WITNESS: Uh-huh.

16 THE COURT: So I need you to as best you can if the
17 question is asked I need you to limit your responses to
18 what, if anything, they told you outside of that police
19 interview.

20 MR. SHEALY: Your Honor, just for the Court's
21 information I represent Mr. Wilson.

22 THE COURT: Good.

23 MR. SHEALY: He doesn't have -- he has other charges
24 he faces, I just wanted him to know I am here.

25 THE COURT: Certainly. For the purposes of the record

TESTIMONY OF JOSEPH WILSON

1 that is Mr. Tom Shealy. What we did is we did an in-camera
2 presentation of his testimony and I have ruled that certain
3 statements that were obtained by the police as part of
4 their discussions with this gentleman concerning and they
5 want to classify them as admissions by these defendants
6 cannot be presented in this court. But your client has
7 testified as to other statements that these witnesses -- I
8 mean the defendants potentially made to him outside of that
9 that I am going to allow them to ask questions about.

10 MR. SHEALY: Yes, sir.

11 THE COURT: If you come up with any questions about,
12 you know, during this proceeding you can ask to speak to
13 your lawyer and I will have your lawyer come up and talk to
14 you. All right? You need to give verbal responses.

15 THE WITNESS: Yeah.

16 THE COURT: Anything else before we bring the jury
17 back?

18 MS. LESKANIC: Not from the State, Your Honor.

19 MR. RHODEN: No, sir.

20 MR. ROBINSON: No, sir.

21 THE COURT: Let's bring the jury back.

22 (The jury returned to the courtroom.)

23 THE COURT: Does the State want to call their next
24 witness?

25 MS. LESKANIC: Yes, Your Honor. The State calls

TESTIMONY OF JOSEPH WILSON

1 Joseph Bernard Wilson.

2 The witness, JOSEPH BERNARD WILSON, remained under
3 oath and testified as follows, on:

4 DIRECT EXAMINATION

5 BY MS. LESKANIC:

6 Q. Will you please give your name to the jury?

7 A. Joseph Bernard Wilson.

8 Q. Okay. Mr. Wilson, you are wearing an orange jump
9 suit. Are you currently at the county detention facility?

10 A. Yeah.

11 Q. Do you have charges pending on you?

12 A. Yeah.

13 Q. Okay. Have myself or anyone else in the solicitor's
14 office offered you anything on those charges for you to be
15 in court today?

16 A. No.

17 Q. Do you know Marcellus O'Brian Knuckles?

18 A. Yeah.

19 Q. Do you see him in the courtroom?

20 A. Yeah.

21 Q. Would you please identify him for me? What is he
22 wearing?

23 A. A sweater.

24 Q. He's wearing the blue sweater?

25 A. Uh-huh.

TESTIMONY OF JOSEPH WILSON

- 1 Q. What name does he go by?
- 2 A. Brian.
- 3 Q. How do you know Brian?
- 4 A. He's my cousin.
- 5 Q. Okay. How long have you known him?
- 6 A. About a year and a half, probably more.
- 7 Q. Do you know Jonathan Simpson?
- 8 A. Yeah.
- 9 Q. Do you see Mr. Simpson in the courtroom?
- 10 A. Yeah.
- 11 Q. What is he wearing?
- 12 A. Blue button-up.
- 13 Q. A blue button-up shirt?
- 14 A. Uh-huh.
- 15 Q. What do you call him?
- 16 A. John.
- 17 Q. John. How long have you known John?
- 18 A. About the same period of time.
- 19 Q. And do you know how Brian and John know each other?
- 20 A. Yeah.
- 21 Q. How do they know each other?
- 22 A. He knows Brian's sister.
- 23 Q. John dates Brian's sister?
- 24 A. Yeah.
- 25 Q. Do they live together or near each other?

TESTIMONY OF JOSEPH WILSON

1 A. With each other.

2 Q. They live with each other, Brian and John do?

3 A. Uh-huh.

4 Q. Okay. Did you talk with Brian about the robbery that
5 happened at Eastside Saveway back on January 18th of this
6 year?

7 A. Yeah, once or twice.

8 Q. Did Brian tell you whether or not he was involved in
9 that robbery?

10 A. Yeah.

11 Q. Did he tell you that he was involved?

12 A. Yeah.

13 Q. Did he tell you what he did?

14 MR. RHODEN: Your Honor -- never mind, I withdraw it.

15 THE COURT: Go ahead, ma'am.

16 Q. Did he tell you what he did in the robbery?

17 A. He didn't say particularly what he did, he was just
18 bragging about how they did it and everything.

19 Q. Did he say whether he went in the store?

20 MR. RHODEN: Your Honor, I'm going to object to
21 leading at this point in time.

22 THE COURT: All right. I'll sustain the objection.

23 Q. Do you know whether or not Brian had the gun?

24 MR. RHODEN: Your Honor, I'm -- I think the proper
25 question is just tell us what Brian said, not leading

TESTIMONY OF JOSEPH WILSON

1 through possibilities.

2 THE COURT: Okay. I will sustain the objection.

3 Q. Please tell us what Brian told you.

4 A. He told me he hit the dude in the back of the store.

5 Q. He told you that he is the one that went to the back
6 of the store?

7 A. Yeah.

8 Q. Did you talk with Jonathan Simpson about the robbery
9 at the convenience store?

10 A. I didn't talk to him one on one about it. He was
11 around me and Brian when we talked about it.

12 Q. What did Jonathan Simpson say he did in the robbery?

13 MR. ROBINSON: I'll object, Your Honor.

14 THE COURT: I'll -- based on his prior response I
15 would have to sustain the objection. If you can ask him
16 another way to be sure that we don't run into the other
17 issue we've already addressed.

18 Q. Were you present when Jonathan Simpson made a
19 statement about the armed robbery that happened at the
20 convenience store?

21 MR. ROBINSON: I'm going to object to the leading.

22 THE COURT: I will allow this question. Go ahead,
23 sir.

24 A. Yeah.

25 Q. And what did he say about the robbery?

TESTIMONY OF JOSEPH WILSON

1 A. He was saying he had the gun pointed at the woman.

2 Q. And did John tell you what he did with the gun?

3 A. Yeah. He said he threw it behind the store.

4 MS. LESKANIC: Thank you, Mr. Wilson. If you will,
5 please answer any questions Mr. Rhoden or Mr. Robinson may
6 have.

7 MR. RHODEN: May it please the Court?

8 THE COURT: Yes, sir.

9 CROSS EXAMINATION

10 BY MR. RHODEN:

11 Q. Now, Mr. Wilson, you're presently incarcerated in the
12 Cherokee County Detention Center; is that correct?

13 A. Yeah.

14 Q. You presently have charges against you; is that
15 correct?

16 A. Yeah.

17 Q. You haven't come to court yet, have they?

18 A. No, not yet.

19 Q. Of course, you're coming here hoping what you're
20 saying in this courtroom is going to help you out on those
21 charges, right?

22 A. No. They didn't offer me any pleas to it.

23 Q. I'm just saying, you're hoping it will help you out,
24 aren't you?

25 A. If it will.

TESTIMONY OF JOSEPH WILSON

1 Q. If it will it will, right?

2 A. Yeah.

3 Q. Of course, now, you weren't there when this robbery
4 occurred, were you?

5 A. No.

6 Q. You didn't see anybody rob the store, did you?

7 A. No.

8 Q. You didn't go in the store that night, did you?

9 A. No.

10 Q. So of your own personal knowledge you didn't see, hear
11 or do anything that gives rise to your own personal
12 knowledge about this robbery; is that correct?

13 A. Yeah.

14 Q. All right. You don't know whether or not anything
15 that somebody told you is true or not, do you? You don't
16 have any way to know that, do you?

17 A. No.

18 Q. You don't know if somebody might just be bragging
19 about something they did and really do just to be bragging?
20 People do that sometimes, don't they? Is that right?

21 A. Yeah, they do.

22 MR. RHODEN: All right. All right. Thank you, that's
23 all I have.

24 THE COURT: Yes, sir, Mr. Robinson?

25 MR. ROBINSON: No questions, Your Honor.

TESTIMONY OF JOSEPH WILSON

1 THE COURT: Any redirect limited to what he went in
2 to?

3 MS. LESKANIC: No, Your Honor. Thank you.

4 THE COURT: Thank you, sir. You may step down. Yes,
5 ma'am?

6 MS. LESKANIC: The State rests, Your Honor.

7 THE COURT: All right. Ladies and gentlemen of the
8 jury, we are at a point in the trial that I now have to
9 take up some other legal matters with the lawyers outside
10 of your presence. At this time I'm going to ask you to go
11 back to the jury room and not to have any discussions among
12 yourselves and we'll get you back out here just as quickly
13 as we can. Thank you.

14 (The jury left the courtroom.)

15 THE COURT: Are y'all ready for your motions?

16 MR. RHODEN: Yes, Your Honor. May it please the
17 Court? We move for a directed verdict of not guilty at
18 this stage of the proceeding. Your Honor, of course, I
19 know that at this stage the Court must look at the evidence
20 in the light most favorable to the State. However, Your
21 Honor, I believe that the State has ultimately failed to
22 prove all of the elements of the offense of armed robbery.
23 At best we have got -- we certainly have no testimony -- no
24 direct testimony from anybody as to these individuals being
25 part of the robbery. Mr. Foster said he didn't remember,

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1 although, of course, the State tried to impeach him on his
2 prior inconsistent statement and I would submit that's not
3 substantive evidence. And the only other evidence they
4 have is Mr. Wilson who said Mr. Knuckles may have said
5 something to him in bragging but he don't know whether or
6 not he was bragging about something he did or he was just
7 bragging to be bragging. Certainly Mr. Wilson wasn't
8 present and he had no firsthand information. Secondly, of
9 course, we have no gun in this case that was recovered or
10 presented in to evidence, Your Honor. So I would move for
11 a directed verdict of not guilty in regard to my client,
12 Mr. Knuckles, Your Honor.

13 THE COURT: Yes, sir, Mr. Robinson?

14 MR. ROBINSON: Your Honor, I think that I would join
15 with co-counsel in this case -- defense counsel in this
16 case as to a motion for a directed verdict on the grounds
17 of as to the count of armed robbery in this case going to
18 the existence of any evidence that would establish that my
19 client, Jonathan Simpson, was guilty of this offense. But
20 that's my directed verdict motion.

21 THE COURT: And I would have to -- again applying the
22 standard that the Court has to apply in these motions and
23 having viewed the evidence in the light most favorable to
24 the State, I would have to deny both of the motions. All
25 right. Are y'all going to take some time to speak with

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1 your client?

2 MR. RHODEN: I need at least about ten minutes or so
3 to talk with my client about his rights to testify or not
4 testify, Your Honor.

5 THE COURT: Are you going to talk with yours as well?

6 MR. ROBINSON: Same, Your Honor. I would like to talk
7 to Mr. Rhoden as well in a minute.

8 (A break was taken.)

9 THE COURT: Yes, sir, Mr. Rhoden?

10 MR. RHODEN: May it please the Court? Your Honor,
11 after discussing the situation with my client he has told
12 me he does want to testify so I'm going to present him as a
13 witness, Your Honor. In regard to that I would like to
14 take a second and talk about my client's criminal record.
15 I'm showing that he has a simple assault and battery, which
16 my position would be it is not an impeachable offense. He
17 has a shoplifting, which I think is clear that is
18 impeachable and can be used against him. He has a simple
19 possession of a scheduled two drug, I think that was
20 cocaine, it's my position that that should not be allowed
21 to be used against him. Although it carries more than one
22 year the prejudicial effects far outweigh its probative
23 value, Your Honor. In the case of State vs. Bryant, Your
24 Honor, there's some discussions about prior convictions and
25 the supreme court of our state cites State vs. Cheeseboro

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1 for the propositions that violations of narcotics laws are
2 generally not probative for truthfulness. Certainly it has
3 nothing to do with the facts of this case and there's no
4 evidence that this was any type of matter involving drugs.
5 So I would submit that that should not be allowed to be
6 used against Mr. Knuckles for impeachment purposes.

7 THE COURT: Which ones does the State intend to --
8 desire to use for impeachment?

9 MS. LESKANIC: The shoplifting from 2002, Your Honor,
10 and the drug offense from 2005, it does carry more than one
11 year.

12 THE COURT: And how is it that the State feels the
13 drug offense is -- the probative value outweighs the
14 prejudicial effect?

15 MS. LESKANIC: As Mr. Rhoden says, it doesn't have
16 anything to do with the crime at hand, I don't see how it
17 would be prejudicial to the defendant. I would be happy to
18 couch it if he has been convicted of a crime that carries
19 more than a year and not specify a drug offense if that
20 seems to be the issue that it is a drug offense.

21 MR. RHODEN: Well, Your Honor, I think the law
22 basically is that why do you -- why is a conviction used
23 against a defendant, and, of course, that is to probe
24 whether or not he is being truthful. And our court says
25 that crimes of moral turpitude, of course, and crimes of

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1 dishonesty certainly were probative in regard to whether
2 this client may be truthful testifying. When you get into
3 an offense that clearly has nothing to do with truthfulness
4 and as the court says it's a violation not probative for
5 truthfulness, then what relevance is it to this case? And
6 the prejudicial effect under Rule 403, of course, is the
7 Court has to do a balancing test to determine whether or
8 not the probative value outweighs any prejudicial effects
9 of that. And, of course, all the State is doing is saying,
10 "I want to say he has been convicted of a drug offense,
11 really it's not relevant to this case and doesn't have
12 anything to do with the truthfulness, I just want to be
13 able to tell about it." So I submit it certainly does not
14 meet the balancing test and it has to be more probative
15 than prejudicial.

16 THE COURT: How does the State intend to argue that,
17 the prior record?

18 MS. LESKANIC: I'm sorry, Your Honor?

19 THE COURT: How would the State -- how is the State
20 intending to argue in closing about the prior record?

21 MS. LESKANIC: I don't know that I'll bring it up at
22 all in closing, Your Honor. But I think it goes to his
23 credibility when he's testifying in front of a jury.
24 There's a separate section for crimes that carry over one
25 year and another section for dishonesty and truthfulness.

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1 If it's a problem with the drug offense I have no problem
2 just inquiring whether he was convicted of a crime that
3 carried more than one year. Under the balancing test we
4 have to look at the impeachment value of the prior crime,
5 point and time of convictions and subsequent history, and
6 this conviction was 2005, similarity between past crime and
7 the charged crime, it is not similar so that would not be
8 prejudicial to the defendant. The importance of
9 defendant's testimony and the sentence, the credibility
10 issue. I believe that any of these convictions go to his
11 credibility and the jury is entitled to be aware of those
12 convictions.

13 THE COURT: I'm going to rule with the State and allow
14 her to ask about the drug offense and the shoplifting
15 offense.

16 MR. RHODEN: Your Honor, not going to argue with the
17 Court, but I think the Cheeseboro case -- and I'm looking
18 at it right now -- is directly on point, State vs.
19 Cheeseboro where they found there was error under Rule 609
20 to allow a narcotics offense to be used as probative value
21 of truthfulness, because it is not, and Rule 609 always has
22 to be balanced against Rule 403. And, I mean, there's
23 just -- all they're going to do is make him out to be a bad
24 guy, he's a bad guy so he committed a crime.

25 MS. LESKANIC: I believe in Cheeseboro, Your Honor,

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1 the convictions in that case were outside the ten year
2 limit and that I believe was the basis for the reversal.
3 The crimes were more than 25 years old, here we have the
4 crimes committed in 2005.

5 MR. RHODEN: Once again, if it's not probative for the
6 truthfulness then what relevancy are they, or is it?

7 MS. LESKANIC: And the State's position is it goes to
8 his credibility, Your Honor.

9 THE COURT: I believe that the crime that the drug
10 offense falls within what is allowed by the rules for the
11 State to go into and I don't believe that any prejudicial
12 effect is really going to be that great to this defendant.
13 So I believe the probative value would outweigh the
14 prejudicial effect, so I'm going to allow it.

15 MR. RHODEN: Just to protect myself on the record,
16 Your Honor, I certainly understand the Court's ruling and
17 I'm not going to argue with the Court's ruling, but subject
18 to my objection I'm certainly going to bring it out myself
19 that he has these convictions, and by doing that I'm not
20 intending to waive my objection by bringing it out myself.

21 THE COURT: Okay. Does your client wish to testify?

22 MR. ROBINSON: Your Honor, I have spoken with my
23 client at length and he does wish to testify as well. He
24 does not have -- I have actually gone back and checked the
25 NCIC with the solicitor, he does not have anything on his

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1 record that he could be impeached.

2 THE COURT: At this juncture, gentleman, I need to ask
3 you both a series of questions. I would like to just ask
4 you each separately so we will start first with
5 Mr. Knuckles. If you would please stand up, sir. I am
6 going to need for you to raise your right hand.

7 (Defendant Knuckles was sworn.)

8 THE COURT: Mr. Knuckles, at this time I'm going to
9 explain to you certain of your rights and if you do not
10 understand anything that I say please let me know. If you
11 ever want me to explain anything in more detail, just
12 please let me know that as well. Now, do you understand
13 that, sir?

14 DEFENDANT KNUCKLES: Yes, sir.

15 THE COURT: We have now reached the stage of this
16 trial where you may present a defense. You have a right to
17 claim the protection given to you by the 5th Amendment of
18 the Constitution of the United States. This amendment
19 states in part that no person shall be compelled in any
20 criminal case to be a witness against himself. This means
21 that you cannot be required to testify in this case. You
22 have the right to testify on your on behalf, however no one
23 can make you testify. This is a personal right and no one
24 can waive this right except you. If you decide to testify
25 you will be subject to the same rules that govern other

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1 witnesses and you may be examined and cross examined on any
2 relevant issue in this case. In addition if you have any
3 convictions involving dishonesty or false statements or for
4 crimes punishable by imprisonment for more than one year
5 and this Court determines that the probative value of
6 admitting this evidence outweighs the prejudicial effect to
7 you the solicitor will be able to introduce your record to
8 attack your credibility. If you decide to testify this
9 decision on your part must be freely, voluntarily and
10 intelligently made with knowledge of the protection given
11 to you by the 5th Amendment and the consequences of your
12 decision to testify. If you decide not to testify I will
13 instruct the jurors that they cannot give the fact that you
14 did not testify any consideration whatsoever and that
15 there's to be absolutely no prejudice to you because you
16 did not testify. It is left entirely up to you whether or
17 not you testify. You may talk with your attorney, your
18 family and friends or anyone else but the final decision
19 would be left entirely up to you. Do you understand what I
20 have explained to you, sir?

21 DEFENDANT KNUCKLES: Yes, sir, I understand.

22 THE COURT: Do you have any questions about what I
23 have explained to you?

24 DEFENDANT KNUCKLES: No, sir, I have no questions.

25 THE COURT: Have you discussed with your lawyer

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1 whether you should or should not testify?

2 DEFENDANT KNUCKLES: Yes, sir, we have discussed it.

3 THE COURT: And, sir, do you wish to talk with your
4 lawyer anymore about your right to testify?

5 DEFENDANT KNUCKLES: No, sir.

6 THE COURT: And, sir, are you at a position that you
7 want to tell me now whether you want to testify or not to
8 testify?

9 DEFENDANT KNUCKLES: I am testifying.

10 THE COURT: You do want to testify in this case?

11 DEFENDANT KNUCKLES: Yes, sir.

12 THE COURT: All right. All right, sir, if ever during
13 between now and the time that you are called as a witness
14 you change your mind just simply let your lawyer know and
15 we will -- and you can invoke the 5th Amendment. Okay?

16 DEFENDANT KNUCKLES: Yes, sir.

17 THE COURT: Sir, has anybody in any way come to you
18 and made any threats against you or promised you anything
19 in order to get you to make this decision concerning your
20 right to testify?

21 DEFENDANT KNUCKLES: No, sir.

22 THE COURT: You do so freely and voluntarily?

23 DEFENDANT KNUCKLES: Yes, sir.

24 THE COURT: And you are satisfied with the work of
25 your lawyer so far?

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1 DEFENDANT KNUCKLES: Yes, sir.

2 THE COURT: I find that his decision concerning his
3 right to testify has been made freely, voluntarily,
4 knowingly and intelligently by him. He has received the
5 services from a very competent and able legal counsel in
6 making this decision, services he has indicated to the
7 Court he is satisfied with. Thank you, sir. All right.
8 Mr. Simpson?

9 (Defendant Simpson was sworn.)

10 THE COURT: Mr. Simpson, at this time I am going to
11 explain to you certain of your rights but if you do not
12 understand anything I say please let me know. If you want
13 me to explain anything in more detail please let me know
14 now. Do you understand that, sir?

15 DEFENDANT SIMPSON: Yes, sir.

16 THE COURT: Sir, we have now reached the stage of the
17 trial where you may present your defense. You have the
18 right to claim the protection given to you by the 5th
19 Amendment to the Constitution of the United States. This
20 amendment states in part that no person shall be compelled
21 in any criminal case to be a witness against himself. This
22 means that you cannot be required to testify in this case.
23 You have the right to testify on your own behalf, however
24 no one can make you testify. This is a personal right and
25 no one can waive this right except you. If you decide to

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1 testify you will be subject to the same rules that govern
2 other witnesses and you may be examined or cross examined
3 on any relevant issue in this case. In addition if you
4 have any convictions involving dishonesty or false
5 statements or crimes punishable by imprisonment for more
6 than one year and this Court determines that the probative
7 value of admitting this evidence outweighs its prejudicial
8 effect to you, the solicitor will be able to introduce your
9 record to attack your credibility. If you decided to
10 testify this decision on your part must be freely,
11 voluntarily and intelligently made with knowledge of the
12 protections given to you by the 5th Amendment and the
13 consequences of your decision to testify. If you decide
14 not to testify I will instruct the jurors that they cannot
15 give the fact that you did not testify any consideration
16 whatsoever and that there's to be absolutely no prejudice
17 to you because you did not testify. It is left entirely up
18 to you whether or not you testify. You may talk with your
19 attorney, your family, your friends or anyone else, the
20 final decision will be left entirely up to you. Now, do
21 you understand what I have just explained to you, sir?

22 DEFENDANT SIMPSON: Yes, sir.

23 THE COURT: Do you have any questions about what I
24 have just explained to you?

25 DEFENDANT SIMPSON: No, sir.

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1 THE COURT: Have you discussed with your lawyer
2 whether or not you should or should not testify?

3 DEFENDANT SIMPSON: Yes, sir.

4 THE COURT: Do you wish to talk to your lawyer anymore
5 about this matter?

6 DEFENDANT SIMPSON: No, sir.

7 THE COURT: Sir, do you wish to testify in this case?

8 DEFENDANT SIMPSON: Yes, sir.

9 THE COURT: All right, sir. Between now and the time
10 that you are called to testify in this case, if you change
11 your mind just let me know and you may properly invoke the
12 5th Amendment. Are you satisfied with the work of your
13 lawyer?

14 DEFENDANT SIMPSON: Yes, sir.

15 THE COURT: And beyond that which I might have heard
16 in this courtroom, has anybody come to you and made any
17 promises in order to make you make this decision about
18 testifying?

19 DEFENDANT SIMPSON: No, sir.

20 THE COURT: You have made the decision freely and
21 voluntarily?

22 DEFENDANT SIMPSON: Yes, sir.

23 THE COURT: All right. I will find that the
24 defendant's decision concerning his right to testify has
25 been made freely, voluntarily, knowingly and intelligently

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1 by him and that he has received the services from a very
2 competent, able legal counsel, services he has indicated to
3 the Court he is satisfied with and has relied on in making
4 the decision he has made concerning his right to testify.
5 Bring the jury back.

6 (The jury returned to the courtroom.)

7 MR. RHODEN: The defense calls Brian Knuckles.

8 The witness, MARCELLOUS O'BRIAN KNUCKLES, was first
9 duly sworn and testified as follows, on:

10 DIRECT EXAMINATION

11 BY MR. RHODEN:

12 Q. You are Marcellus O'Brian Knuckles, correct?

13 A. Yes, sir, I am.

14 Q. All right. But everybody calls you Brian, they don't
15 call you O'Brian.

16 A. Yes, sir.

17 Q. Okay. And Brian, how old are you?

18 A. Twenty-one.

19 Q. And you live here in Gaffney?

20 A. Yes, sir.

21 Q. Do you have relatives here in Gaffney?

22 A. Yes, sir.

23 Q. Who all lives here in Gaffney that's related to you?

24 A. I stay with my grandmother.

25 Q. Okay. Your grandma, how old is she?

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- 1 A. She's like 56.
- 2 Q. All right. And did you grow up here in Gaffney?
- 3 A. Yes, sir.
- 4 Q. Lived here all of your life?
- 5 A. Yes, sir.
- 6 Q. This store that got robbed back in January, do you
- 7 know what store we're talking about?
- 8 A. Yes, sir, I know the store.
- 9 Q. All right. How big of a store is it?
- 10 A. It's a small store.
- 11 Q. So it's like a little convenience store?
- 12 A. Yes, sir.
- 13 Q. Is it in kind of like a little community where people
- 14 go in and out of at that store all of the time?
- 15 A. Yes, sir.
- 16 Q. All right. Brian, you have had some problems in the
- 17 past, haven't you?
- 18 A. Yes, sir, I have.
- 19 Q. All right. And I believe you pled guilty to a
- 20 shoplifting?
- 21 A. Yes, sir.
- 22 Q. And that was a couple of years ago, is that right, or
- 23 let's see, that was back I believe in 2002; is that right?
- 24 A. Yes, sir.
- 25 Q. Were you guilty of that?

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- 1 A. Yes, sir.
- 2 Q. Did you plead guilty to that?
- 3 A. Yes, sir.
- 4 Q. Brian, you have also had some problems with drugs; is
5 that right?
- 6 A. Yes, sir.
- 7 Q. And I believe you had a possession of I believe
8 cocaine back in 2005; is that right?
- 9 A. Yes, sir, I did.
- 10 Q. Okay. And did you plead guilty to that?
- 11 A. Yes, sir, I did.
- 12 Q. All right. And did you plead guilty because you were
13 guilty of that?
- 14 A. Yes, sir, I did.
- 15 Q. All right. Now Brian, we are here concerning a
16 robbery of a convenience store back in January of 2006. Of
17 course, you have listened to all of the testimony in this
18 case, haven't you?
- 19 A. Yes, sir.
- 20 Q. Now Brian, I'm going to ask you and I want you to tell
21 these 12 or 13 jurors here, Brian, did you rob that
22 convenience store?
- 23 A. No, sir. I did not rob that store.
- 24 Q. Did you participate in that robbery at all in any way?
- 25 A. No, sir. I had no participation in that store being

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- 1 robbed.
- 2 Q. You didn't do it?
- 3 A. No, sir.
- 4 Q. Now, you have heard some testimony from Mr. Wilson
- 5 saying that you were bragging about it. Did you ever brag
- 6 about robbing that store to him?
- 7 A. No, sir. I ain't bragged about robbing no store.
- 8 Q. Did you have any involvement in robbing that store at
- 9 all?
- 10 A. No, sir, not one.
- 11 Q. Were you even in that store the night of January 18,
- 12 2006?
- 13 A. No, sir, I was not present.
- 14 Q. All right.
- 15 MR. RHODEN: Thank you. Answer any questions that the
- 16 solicitor may have.
- 17 CROSS EXAMINATION
- 18 BY MS. LESKANIC:
- 19 Q. Mr. Knuckles, how do you know you weren't in the store
- 20 on January 18th of this year?
- 21 A. Say what, ma'am?
- 22 Q. How do you know that you were not in that convenience
- 23 store on January 18th of this year?
- 24 A. I can't say where I was on January 18th, that's been
- 25 six months ago, but I know that I wasn't present in that

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1 store.

2 Q. I thought you just testified when your lawyer asked
3 you if you were in the store on January 18th, you said, no.
4 I just want you to say how you know you weren't there on
5 the 18th of January?

6 A. No, ma'am, I wasn't there.

7 Q. Have you ever been in that store before?

8 A. Yes, ma'am. I have been in that store before.

9 Q. But you know that you weren't there on January 18th at
10 anytime.

11 A. No, ma'am. I was not present at that store on
12 January 18th.

13 Q. How do you know? How does January 18th stand out in
14 your mind as you know you weren't in that convenience
15 store?

16 A. I just know I wasn't present because I didn't rob no
17 store, ma'am.

18 Q. Were you in the store at all that day?

19 A. No, ma'am. I was not present in that store that day.

20 Q. And you know that how?

21 A. Because, ma'am, I was employed at Evergreen at the
22 time in Blacksburg, a landscape company and I didn't get
23 off until 7:00.

24 Q. Do you know Laquinton Foster?

25 A. Yes, ma'am, I know Laquinton Foster, that's my cousin.

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1 Q. Do you know Jonathan Simpson?

2 A. Yes, ma'am, I know -- excuse me. I know Jonathan
3 Simpson, he has got two kids by my sister.

4 Q. Do you live with him?

5 A. He stayed with us off and on, it ain't just like we
6 live together, though.

7 Q. But y'all spend a lot of time together.

8 A. Yes, ma'am, we do.

9 Q. And you know Joseph Wilson?

10 A. Yes, ma'am, that's my cousin.

11 Q. Okay. Now, where did you say that you were working on
12 January 18th?

13 A. Ma'am, I worked at Evergreen, it was a landscape
14 company in Blacksburg, it's a wife and a husband that own
15 it and we go and we were putting up fences in a land fill,
16 we were putting up fences.

17 Q. You were putting up fences on January 18th?

18 A. Yes, ma'am. I was employed by Evergreen.

19 Q. How do you know -- what else does Evergreen do? Tell
20 me a little bit about the business.

21 A. Well, basically we go places and landscape, we put up
22 fences, we go to schools. We were putting up fences around
23 schools, we were in a couple of places.

24 Q. Is that the only thing that the landscaping company
25 does is put up fences or they do other things?

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1 A. We clean stuff out like, you know what I'm saying,
2 like glass and dirt in a land fill like cleanup stuff. It
3 was basically like a cleanup crew.

4 Q. Where were you on the 18th putting up fences?

5 A. I can't recall the place that we was at but it's a big
6 place. I can't recall the name of it, it was like in
7 Chester, South Carolina, somewhere where we were putting up
8 fences and stuff.

9 Q. Was it for a business or a home, school, what?

10 A. I'm saying I don't know like what the -- I just know
11 it was landscaping. My job was to, you know what I'm
12 saying, is putting fences up, like I say, clean land, that
13 was our job.

14 Q. Okay. And you said you were putting up fences on
15 January 18th.

16 A. Yes, ma'am.

17 Q. And how do you know that that is what you were doing
18 on that day back in January?

19 A. Ma'am, I know. I just know.

20 Q. You remember. Do you know what y'all did on
21 January 2nd?

22 A. No, ma'am, I can't recall January 2nd.

23 Q. How about January 4th?

24 A. No, ma'am, can't recall that day either.

25 Q. The 5th?

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1 A. No, ma'am, not that day either.

2 Q. Can you recall any other day other than January 18th
3 what you were doing on your job?

4 A. Well, I can recall the 17th of January, we was at the
5 same place, that's how I can recall the 18th.

6 MS. LESKANIC: Nothing further, Your Honor. Thank
7 you.

8 THE COURT: Mr. Robinson, do you have cross
9 examination?

10 MR. ROBINSON: No cross, Your Honor.

11 THE COURT: Any redirect limited to what she went
12 into?

13 MR. RHODEN: No, sir.

14 THE COURT: Thank you, sir, you may step down.
15 Mr. Rhoden?

16 MR. RHODEN: That's all from the defense, Your Honor.

17 THE COURT: Are you ready, Mr. Robinson?

18 MR. ROBINSON: Yes, sir, Your Honor.

19 THE COURT: Yes, sir?

20 MR. ROBINSON: Please the Court? Your Honor, we would
21 call Jonathan Simpson to the stand.

22 The witness, JONATHAN SIMPSON, was first duly sworn
23 and testified as follows, on:

24 DIRECT EXAMINATION

25 BY MR. ROBINSON:

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- 1 Q. Jonathan, what is your address?
- 2 A.
- 3 Q. How old are you?
- 4 A. Twenty-two.
- 5 Q. And who lives at that residence with you?
- 6 A. My mom and my grandma.
- 7 Q. What are their names?
- 8 A. Laurie Anne Simpson and Ella Mae Simpson.
- 9 Q. Do you have children?
- 10 A. Two of them.
- 11 Q. What are their names?
- 12 A. Jankeel and Jaquez Laquan
- 13 Q. How old are they?
- 14 A. My little girl is three years old and my little boy is
- 15 seven months.
- 16 Q. Do you like being a dad?
- 17 A. Yes, sir.
- 18 Q. Jonathan, as far as what you -- did you grow up in
- 19 Cherokee County?
- 20 A. Yes, sir.
- 21 Q. And did you go to school in Cherokee County?
- 22 A. Yes, sir.
- 23 Q. Where did you go to school?
- 24 A. Drakeville Elementary and East Junior High and Gaffney
- 25 High School.

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- 1 Q. How far did you get in high school?
- 2 A. Until about I would say 10th grade, but I don't know
- 3 if down the road counts.
- 4 Q. Okay.
- 5 A. Into the 12th.
- 6 Q. Did you get your GED?
- 7 A. No, sir.
- 8 Q. And what do you do? What is your vocational, what do
- 9 you do for a job?
- 10 A. I done did all kinds of jobs; landscaping, contractor.
- 11 I worked at a brick yard in Blacksburg, I worked in
- 12 Spartanburg cleaning out machines, different kinds of
- 13 stuff.
- 14 Q. Did you work at BMW?
- 15 A. Yes, sir.
- 16 Q. When did you work at BMW?
- 17 A. In December and January.
- 18 Q. Of 2006?
- 19 A. Yes, sir.
- 20 Q. Okay. Now, you have had an opportunity to listen to
- 21 all of the persons in the courtroom testify, haven't you?
- 22 A. Yes, sir.
- 23 Q. And you paid close attention to everybody; is that
- 24 correct?
- 25 A. Yes, sir.

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1 Q. Now, you know the accusations that have been made, of
2 course, against you.

3 A. Yes, sir.

4 Q. Did you have anything to do with robbing this store on
5 January 18th of 2006?

6 A. No, sir.

7 Q. Okay. Now, the solicitor is going to try to talk
8 about your memory and so forth. Explain to the jury how
9 you know you had nothing to do with this incident.

10 A. Because like on the reason why I know where I was on
11 January 18th is because that night -- well, I'm going to
12 take you back to that morning.

13 Q. Just take it step by step.

14 A. When I woke up that day it was like we always lay
15 around the house until about 2:00 playing with my kids,
16 doing stuff around the house. I would say about at
17 7:00 that night, about 7:30 or -- 7:00 or 7:30 I walked the
18 path to my mama's house, I hung around down there. I went
19 back up there to my girlfriend's house about 10:00 that
20 night, stayed the night. That next morning came down to
21 the village, everybody was talking about a robbery and
22 stuff like that. So when I got back to my girlfriend's
23 house she was asking me questions about it and stuff like
24 that. She said that they had put me in it and some more
25 people in it but they were just saying stuff. I didn't

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- 1 listen to her or believe her or nothing because I know
2 where I was. But she was just telling me that.
- 3 Q. Now, who is your girlfriend?
- 4 A. Markesia Gregory.
- 5 Q. That's the mother of your children, correct?
- 6 A. Yes, sir.
- 7 Q. Okay. So what happened next? What happened after
8 that as far as you were at her house, you hear about it in
9 the morning, what happened then?
- 10 A. It was just -- then when I got back down to the
11 village where my mama stayed everybody just gathered
12 gossiping about it.
- 13 Q. The village, where is that?
- 14 A.
- 15 Q. Where is that?
- 16 A. That's where my mama stayed.
- 17 Q. Do you have a prior record?
- 18 A. A simple assault, I have a couple of things on there,
19 not that bad, I don't think.
- 20 Q. Which is when you were a juvenile?
- 21 A. My juvenile record.
- 22 Q. Was that when you were a juvenile?
- 23 A. Yes, sir.
- 24 Q. Okay. Now, memory wise now, why would you remember
25 January 18th as far as in connection with January 1st or

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- 1 January 10th or whatever? Why would you remember that day?
- 2 A. Because people that gossiping about stuff, they put me
- 3 in it saying I have done robbed the store. I didn't rob no
- 4 store, that's why I remember where I was that day.
- 5 Q. Jonathan, do you want to go to college?
- 6 A. Yes, sir, I do.
- 7 Q. Let me ask this: What do you want to take up?
- 8 A. I want to do a lot of stuff, I don't know.
- 9 Q. Do you want your kids to go to college?
- 10 A. Yes, sir.
- 11 Q. Family is important to you.
- 12 A. Yes, sir.
- 13 Q. Is that correct?
- 14 A. Yes.
- 15 Q. You heard what Mr. Wilson, the person that came in a
- 16 few minutes ago in the orange jump suit, you saw him a
- 17 second ago. Did you hear his statement that you told him
- 18 about this incident, did you hear that?
- 19 A. Yes, sir, I heard.
- 20 Q. Did you ever tell Mr. Wilson anything about any
- 21 incident?
- 22 A. I ain't talked to Mr. Wilson about no robbery.
- 23 Q. Did you ever brag to him about anything like that?
- 24 A. No, sir.
- 25 Q. So in your view Mr. Wilson is a liar?

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1 A. Yes, sir.

2 Q. Okay.

3 MR. ROBINSON: That's all of the questions I have.

4 Answer any questions the prosecutor has.

5 CROSS EXAMINATION

6 BY MS. LESKANIC:

7 Q. So on the 18th you weren't working that day. You were
8 off work?

9 A. Yes, ma'am. I had done got laid off at BMW. I had
10 got laid off I believe about a week or two before that. I
11 wasn't working that day.

12 Q. Okay. And the 19th you went over to your mom's house.

13 A. I went to my mom's house everyday, every night. When
14 I leave with my kids and my girlfriend I go to my mom's
15 house and check on my grandmom because she is blind.

16 Q. When you went to your mom's on the 19th, people were
17 talking about you having done the robbery at the
18 convenience store.

19 A. That talk went on for a long time.

20 Q. But the day after the robbery at your mom's house
21 people were talking about you doing the robbery.

22 A. No, not at my mom's house, down there where my mom
23 stays at.

24 Q. And that's how you know where you were on the 18th,
25 because on the 19th people were saying that you were a

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- 1 member of the group that did the robbery.
- 2 A. People were saying that they had heard that.
- 3 Q. People were saying they heard you did it the morning
4 of the 19th?
- 5 A. Yes, ma'am. The afternoon when I went down there they
6 were saying that.
- 7 Q. I thought you went down to your mom's in the morning,
8 that's when everybody was talking about it.
- 9 A. In the afternoon everybody was gossiping about it.
- 10 Q. And people were saying you did it?
- 11 A. People I grew up with asked me about it. They said
12 they didn't figure I would do nothing like that, I said no,
13 I ain't, that's crazy.
- 14 Q. That's how you know where you were on the 18th. So on
15 the 19th people were saying you did the robbery, is that
16 how you know you didn't do it that day?
- 17 A. Yes, ma'am.
- 18 Q. Do you know Mr. Foster?
- 19 A. Yes, sir. Yes, ma'am.
- 20 Q. How do you know him?
- 21 A. Because he had lived down in Connecticut Village
22 before too, that's how I know him.
- 23 Q. How long have you known him?
- 24 A. I'm saying he was down there about three or four
25 months, I didn't know him long. I know him for a little

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- 1 bit, I didn't know him long.
- 2 Q. What does that mean?
- 3 A. Less than a year.
- 4 Q. All right. Do you know Mr. Knuckles?
- 5 A. Yes, ma'am.
- 6 Q. How do you know him?
- 7 A. We all basically we grew up together.
- 8 Q. Okay. Lived together?
- 9 A. Off and on.
- 10 Q. Pretty tight?
- 11 A. Yes, ma'am.
- 12 Q. You know Joseph Wilson?
- 13 A. Yes, ma'am.
- 14 Q. How do you know him?
- 15 A. Through his cousin. Because I hang with his cousin
- 16 and he come -- I done rode with his cousin in the car
- 17 before and went over to his cousin's house so that's his
- 18 aunt. I can't think of his real name, but we call him
- 19 Frue, that's how I know him.
- 20 Q. But you hung out with him before.
- 21 A. He has been to my house.
- 22 Q. He has been at the house where you and Mr. Knuckles
- 23 stay together?
- 24 A. Yes, ma'am. He has been to both of my houses -- well,
- 25 my mama's house and my house in the village.

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1 Q. What did you do with the money from the robbery?

2 A. What did I do with it? I never received no money from
3 the robbery.

4 Q. Did you throw the gun in the woods when you left?

5 A. I ain't had no gun, ma'am.

6 Q. You didn't have the gun in the robbery?

7 A. I ain't had no gun, ain't been in no robbery, ma'am.

8 MS. LESKANIC: That's all I have for you, Mr. Simpson.

9 MR. ROBINSON: No redirect, Your Honor.

10 MR. RHODEN: No questions.

11 THE COURT: All right, sir. You may step down. Thank
12 you. Yes, sir, Mr. Robinson?

13 MR. ROBINSON: That's our case, Your Honor.

14 THE COURT: All right. Is the State in a position to
15 have any reply?

16 MS. LESKANIC: No, Your Honor.

17 THE COURT: Ladies and gentlemen, that has concluded
18 the testimony that we will receive in this case. Given the
19 hour that it is we will not do the arguing and the charging
20 until in the morning. I will ask if you would to be please
21 be back here by 9:30 in the morning. We have reached the
22 part that's very important in this trial, all of the
23 evidence has now been received. I need to stress to you
24 and re-emphasize to you the fact that you are not to begin
25 your deliberations so you cannot have any discussions

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1 amongst yourselves walking out of the building in the
2 parking lot, don't have any discussions among yourselves
3 about anything involving the case. Again, tell any of your
4 loved ones this evening that you are still under an order
5 from the judge that you cannot have any discussions about
6 the case and will be more than happy to talk to them
7 tomorrow night or the next day, whenever you get through
8 with deliberations, but you are not to have any discussions
9 about anything involving the case. I'm also going to
10 instruct you that just for one more day how about not to
11 watch the television. If you see any news shows or local
12 events, simply just ignore it for about 24 more hours. I
13 would not want y'all to be influenced by anything that
14 happens outside of this courtroom and the decision that you
15 are fixin' to have to make in this case. But at this time
16 I want to thank you for your work today, I have paid
17 attention to you, you all have been very attentive to the
18 witnesses. But I will let you go today and I look forward
19 to seeing you in the morning at 9:30.

20 (The jury left the courtroom.)

21 THE COURT: Do the defendants wish to renew their
22 motions?

23 MR. RHODEN: Yes, sir, Your Honor. I would renew my
24 motion for a directed verdict after all of the testimony
25 has been presented basically on the same grounds I stated

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1 earlier.

2 MR. ROBINSON: May it please the Court? We also would
3 renew on behalf of Jonathan Simpson the same motions.

4 THE COURT: And my ruling has not changed from when it
5 previously was announced based on the legal requirements
6 that I have to apply to the evidence in viewing it at this
7 stage so I will deny both motions, but you are protected on
8 the record. Let's talk about the lesser included offense
9 of strong armed robbery. The theory of what I have put
10 together as far as the charges are concerned is I am going
11 to instruct them on the role of the Judge and jury and the
12 instruction of multiple defendants in this case requiring
13 evidence against both of them, that the State must meet
14 their burden as to each of the defendants, presumption of
15 innocence, the reasonable doubt standard, direct and
16 circumstantial evidence. Mr. Coler pointed out that the
17 alternative substantial evidence charge as contained in the
18 Judge's trial book is no longer good law, so I will be
19 giving -- if y'all are familiar with the first direct and
20 circumstantial evidence charge is what I will be giving and
21 not the alternative charge. Credibility of witnesses. The
22 defendant's good character will not be charged. Failure to
23 testify will not be charged. I am going to charge hand of
24 one since it's an armed robbery case. Prior inconsistent
25 statements of witnesses I am going to charge. Prior record

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1 will not be charged. Prior record of the defendant limited
2 for impeachment purposes will be charged. And then the
3 armed robbery charge as contained in the charge book.
4 Let's talk about robbery, why should I not charge common
5 armed robbery as a lesser-included offense?

6 MS. LESKANIC: The testimony from Ms. Whitaker is he
7 pointed the gun at her. There's no evidence that it wasn't
8 a real gun, there's no evidence that a gun was not
9 involved. They haven't given any evidence to go with the
10 lesser-included of common law robbery. The evidence is
11 that someone had a gun and pointed it at Ms. Whitaker.
12 There is at least a representation of a gun, that she
13 believed it was a gun, she testified she believed it was a
14 gun. That meets all of the evidence of armed robbery and
15 not common law robbery.

16 MR. RHODEN: I would argue that the Court should give
17 common law robbery. You know, there's not really a lot of
18 evidence at all. We don't have the gun, nobody has come
19 forward and said this is the gun or what have you, so we
20 have no gun placed into evidence. The videotape at best,
21 you can tell there's something in his hand, it's really not
22 clear enough to know exactly what that is. She didn't say
23 a gun, she didn't describe the gun, she didn't go into any
24 detail about the gun at all, although maybe just a couple
25 of passing references maybe about the gun. I don't recall

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1 her saying that -- you know, anything other than that about
2 the gun. I think taking the case as a whole and what we
3 have here, the jury could conclude that the State has not
4 proven beyond a reasonable doubt that there was in fact a
5 gun involved in this case and therefore I think as a matter
6 of law common law robbery could still come into play.

7 MR. ROBINSON: Your Honor, I was going to add a
8 minimal amount to that. The video does show something in
9 one of the robber's hands, but there was no gun recovered
10 in this case.

11 THE COURT: But the positions of the defense has not
12 been, okay, there possibly was a robbery but there was
13 never a gun involved. It was the position of the defense
14 is that there has been a crime committed, no gun at all.
15 So what I would -- as it relates to Mr. Robinson's client,
16 I think there is -- to charge them with as regards to Mr.
17 Robinson's client with strong armed robbery I think would
18 be inappropriate. The reason I'm looking at Mr. Rhoden's
19 client as to whether or not I should charge -- common law
20 robbery should be charged is that all of the testimony
21 concerning the gun has come -- has pointed at Mr. Simpson
22 not to Mr. Knuckles.

23 MR. RHODEN: And there's a total lack of -- the jury
24 certainly could conclude -- I'm not arguing with the
25 Court -- the jury could conclude that Mr. Knuckles was a

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1 knowing participant but the issue is still open whether or
2 not he was a knowing participant in the robbery, in the
3 armed robbery, whether he had any prior knowledge. The
4 fact of whether there was a weapon involved at all, that's
5 an open question of the Court. The jury could conclude the
6 he was there and the hand of one, hand of all, but they
7 could conclude otherwise, too.

8 THE COURT: Could they conclude the hand of one, hand
9 of all and convict him of the robbery and not -- of armed
10 robbery, whether the hand of one.

11 MR. RHODEN: I don't think it would if he was not a --
12 he did not know that there was going to be an armed
13 robbery, he had no reasonable expectations that there was
14 going to be a weapon involved. If he's going in the store
15 with criminal intent to commit a common law robbery and did
16 not know that anybody, in fact, had a gun on the person
17 whatsoever and he gets in the store and one of the
18 compadres pulls out a weapon and he didn't know it was
19 there, certainly. I think under that set of facts they can
20 conclude he had a criminal intent to commit an armed
21 robbery.

22 MS. LESKANIC: The only testimony in this case from
23 Shirley Whitaker was that a gun was pointed at her head.
24 She believed that a gun was pointed at her and that's the
25 only testimony.

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1 THE COURT: As opposed to both of them.

2 MS. LESKANIC: Both of them, hand of one, hand of all.
3 They are not saying that, "I participated in it but didn't
4 know he was going to be armed." He said, "I wasn't there."
5 So I don't think they have provided anything to get a
6 lesser included offense.

7 THE COURT: I will take a look at it and let y'all
8 know in the morning.

9 (Court adjourned for the evening and resumed at 9:30
10 a.m. on November 8, 2007.)

11 (The jury returned to the courtroom.)

12 THE COURT: After looking at this overnight, I am not
13 going to charge the lesser included offense. All of the
14 testimony in regards to the robbery is that there was an
15 armed robbery and that there was never -- sure, a witness
16 can be disbelieved, but for there not to be any questioning
17 of the witness concerning the fact of whether there was or
18 was not a gun, that creates an issue that is not part of
19 this case. Either these gentlemen were there and they did
20 it or they did not. So I am not going to charge the lesser
21 included offense in this case.

22 (The jury returned to the courtroom.)

23 THE COURT: Mr. Foreman, ladies and gentlemen, I want
24 to thank you for your patience while we got ready this
25 morning. We have now reached the stage of this trial where

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1 we're now going to receive the closing arguments from all
2 of the attorneys. As I stated to you when I explained to
3 you about opening statements, closing arguments are not
4 evidence in the case. Closing arguments gives all of the
5 lawyers an opportunity to summarize and present to you what
6 they feel the evidence shows in this case. It is still up
7 to you to decide back in the beginning of your
8 deliberations exactly what the true facts are in this case,
9 but this is an opportunity for the lawyers to act as an
10 advocate for their respective positions. So we will now
11 begin with the receipt of the closing arguments. Yes, sir,
12 Mr. Rhoden?

13 MR. RHODEN: May it please the Court? Good morning,
14 ladies and gentlemen. Let me first say -- the first thing
15 I want to do is I want to apologize beforehand because this
16 is going to be probably for you the worst part of this
17 case, because for the next hour or maybe even an hour and a
18 half or thereabouts you have to suffer through listening to
19 three lawyers talk to you. But that's our job and that's
20 why we are here. His Honor has told you that what we say
21 is not evidence, it's like our opening statements, it's not
22 evidence. We don't present evidence, lawyers don't. What
23 we say is just what we think is important about the case
24 and we want to point these things out to you, that is our
25 job. Likewise when the solicitor gets up here in a few

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1 minutes nothing she says is evidence either, you've heard
2 all of the evidence. And that's why I apologize because
3 you've heard all of the evidence, I'm just going to be
4 talking about it for just a little while because I think
5 it's important to point things out in the case. Ladies and
6 gentlemen, I think -- and the perception that we get from
7 testimony and the evidence that I submit is important here
8 is this is a case of conjecture, suspicion and innuendo,
9 that is what this case is. This is not a case of evidence
10 against the defendants, because from everything you have
11 heard in this case there's very, very, very little to tie
12 Mr. Knuckles to this case. Now, before I go into that any
13 further let me just point out to you, we are sitting over
14 here, there's two defendants, there's Mr. Knuckles and
15 Mr. Simpson. I represent Brian Knuckles, of course.
16 There's two separate defendants in this case and when you
17 go back into the jury room you will deliberate basically
18 separately on those two defendants because you don't have
19 to find them both guilty or both not guilty, they don't --
20 one doesn't go with the other, although I think the
21 evidence against both of them pretty much falls into the
22 same category being little or non-existent. But I just
23 want to point that out to you, these are two separate
24 defendants and you consider them separately in this case.
25 But ladies and gentlemen, let's go down kind of the laundry

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1 list of litany of the testimony that you have heard in this
2 case. Well, let's start out with Shirley Whitaker. I
3 don't think there's any doubt that Shirley Whitaker was
4 working at the store when three men came in and robbed her,
5 that's undisputed. There was a robbery at the store on
6 January 18th of 2006 around 7:00 thereabouts in the
7 evening. It's undisputed that this is a little convenience
8 store located in kind of a little community there right
9 beyond the old Winn Dixie, people are in and out of that
10 store all of the time. The issue in this case is who
11 committed the robbery, and the issue is did Mr. Knuckles or
12 did Mr. Simpson or did both of them commit this robbery.
13 Now, Shirley Whitaker, of course, didn't identify anybody
14 because they had a mask on or whatever, she did not see
15 their face, she did not identify any single solitary person
16 as part of the robbery. Of course, she didn't even realize
17 until she saw the video after the fact that there was
18 actually three people involved, she actually only saw two,
19 somebody at the cash register and the one that jumped
20 behind the counter. So from an eye witness perspective she
21 can only say that she saw two people in the store, although
22 the video shows that there was three. Shirley Whitaker
23 gives us no evidence whatsoever that Mr. Knuckles was
24 involved in this robbery. So then we move on. We have the
25 testimony after that of Mike Segina who is a detective. He

1 gets up on the witness stand and he basically says -- I
2 wanted to make clear when I was asking questions what his
3 role in the investigation was -- and he was -- we all watch
4 TV -- CSI, the crime scene investigator, he called it a
5 crime scene technician. And his role in this investigation
6 was to go to the crime scene to take pictures and collect
7 any other physical evidence and then turn it over to
8 somebody else to follow-up on. Remember him saying that?
9 All right. So what did he collect? Well, he made some
10 pictures, of course they got the video, he took
11 fingerprints. That was his role in this case. I
12 introduced into evidence in this case pictures of a
13 fingerprint. Remember the blowup picture of -- remember
14 that? I introduced that into evidence, the blow-up
15 pictures of fingerprints, that was taken from the county.
16 But Mike Segina's role in this case was to collect evidence
17 and get those fingerprints, which he did. He got five
18 prints, remember, that he listed, and he basically says,
19 "Well, we didn't match them with them." But that's why I
20 went into, "What was your role in this case, Detective
21 Segina?" And his role was just collect that evidence and
22 turn it over to somebody else and follow it. So ladies and
23 gentlemen, this print came from somebody. It possibly came
24 from somebody who was in the store earlier in the day,
25 possibly could be Ms. Whitaker or it could possibly be one

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1 of the robbers because it was on the counter right next to
2 the cash register. Now, why am I going on about a
3 fingerprint that they said really wasn't good to match
4 anybody? Well, the reason is this, ladies and gentlemen:
5 The State has the burden of proof. The State did not
6 present any testimony, any evidence whatsoever as to what
7 efforts they made to try to match that fingerprint. They
8 did not call as a witness in this case whoever looked at
9 that fingerprint. Remember, Mr. Segina -- Detective Segina
10 said he is not qualified to identify fingerprints. The
11 State has not told you who looked at it to examine it, what
12 the problems were with it, they didn't say they took it to
13 SLED, they didn't say they took it to the FBI, nothing of
14 that nature has been presented by the State in this case.
15 So I submit to you, of course, we don't know whose
16 fingerprint that was and it very likely could have been one
17 of the robbers but we just don't know who it was and we
18 don't know what the State did with it. So basically that's
19 no evidence as to who committed this crime. And we have,
20 of course, Willie Talley testified, he didn't identify
21 anybody, couldn't identify anybody. He said he got down
22 like he was supposed to, when he got up they were gone. We
23 get into some interesting testimony after that. The first
24 person I want to talk about is Mary Huskey, the lady who
25 came in the door as the robbers were running out. Now, she

1 says that she saw three boys running into the convenience
2 store while she was down at the Jet Cleaners, which as you
3 can remember you've got the convenience store, a little
4 house and you have got Jet Cleaners. So she's about the
5 distance of this courtroom away when she sees three boys --
6 or three people run into the convenience store, and then
7 she just proceeds to go into the convenience store. So I
8 think a logical assumption is she didn't think anything of
9 it. So she walked in the door as they run out, you saw
10 that on the videotape. Didn't make any mention whatsoever
11 in the statement that she gave to the police about
12 something the day before. It's not only -- it only came
13 about a week before this trial as she was talking to the
14 prosecutor that she came up with this, "Oh yeah, now I saw
15 three guys hanging out at the store the day before. One of
16 them was Mr. Simpson and I don't know who the other two
17 were and he was using the phone." Well, what has that got
18 to do anything except trying to build some case of
19 conjecture or suspicion, innuendo. I mean, people hang out
20 there all of the time, people use the telephone all of the
21 time. That's no evidence in the case, that's no evidence
22 to point to anybody in this case. Then we, of course, get
23 to Mr. Foster, and Mr. Foster was one of the robbers. He
24 testified he pled guilty to it and he was the one who
25 jumped over the counter. He gets up on the witness stand

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1 and he says to you 12 jurors, "I don't remember who was
2 with me." That's his testimony in this case, "I don't
3 remember who was with me." Now, of course, I know the
4 State is going to want you to believe that, of course, he
5 knows who was with him and he is just not telling you. I
6 mean, that's what the State is going to come up here and
7 argue I surmise. I don't know what they're going to say in
8 their closing argument but I surmise that's what they're
9 going to say. But his testimony in this courtroom was he
10 didn't know, he doesn't remember because he was drunk and
11 on drugs and he was so messed up and he doesn't remember
12 who did it, that's his testimony. Now, the State tried to
13 bring out a prior statement that he made that implicated
14 the defendants. Of course, I asked him about that
15 statement, remember? He was in jail when he made the
16 statement and he said, "I hoped it was going to help me out
17 and I made it to Mr. Clary and Mr. Clary actually wrote out
18 the statement. But as I am sitting here in this courtroom
19 basically he says to you that, "I don't remember who it
20 was." So we have got no evidence coming into this
21 courtroom whatsoever that connects Mr. Simpson or
22 Mr. Knuckles to this robbery. We don't even have the
23 testimony from Detective Clary as to how he went about
24 taking the statement because Detective Clary didn't even
25 come up here and testify. He didn't present any evidence

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1 to you that may shed some light on the situation. And by
2 the way, Detective Clary was a detective who was the one
3 out there to follow-up on all of this stuff and he didn't
4 even bother to get up here and tell you anything about what
5 he did. And then we have Mr. Wilson. Well, once again we
6 have got a guy in jail, he said -- I asked, "Well, you
7 know, you hope this is going to help you out if you get up
8 here and testify. Well, I don't know, nobody has promised
9 me, I don't know." Ladies and gentlemen, use your own good
10 common sense. Now, Mr. Wilson is a guy who is in jail,
11 charges pending against him and he's going to come in here
12 and he's going to say, "Yeah, I remember Mr. Knuckles, he
13 was bragging about that." Well, he didn't tell us when he
14 heard that, you know, how that came about, nothing. He
15 just said, "Well, I just heard Mr. Knuckles bragging." You
16 know, what do we have? We have two criminals to come into
17 this courtroom, one of them says, "Well, I heard something
18 from one of these guys or both of these guys but I don't
19 really know when or where," or none of that comes out and
20 the State wants to use that to convict these defendants.
21 And we have one of the robbers -- criminal --
22 admitted criminal who basically says, "Well, I was drunk or
23 whatever and I gave the other statement because I thought
24 it might help me out but I really don't remember who did
25 it," and that's the case. Ladies and gentlemen, when I

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1 first got up here yesterday morning in my opening statement
2 I said this case -- what may be as important in this case
3 or more important is the lack of evidence versus the
4 evidence. And that's what this case is all about, the lack
5 of evidence. Ladies and gentlemen, as I told you yesterday
6 we have one of the greatest criminal justice systems in the
7 world and the way it works so well is because we have a
8 burden on the State to prove their case beyond a reasonable
9 doubt, not suspicion, not conjecture, not innuendo. The
10 State has the burden of proof beyond a reasonable doubt,
11 beyond suspicion, not maybe, not perhaps, but beyond a
12 reasonable doubt that Mr. Knuckles and Mr. Simpson on
13 January 18th of 2006 at about 7:00 went in this convenience
14 store and robbed the store. They have to prove to you
15 beyond a reasonable doubt that those defendants did it, and
16 if they can't prove to you beyond a reasonable doubt, if
17 all they can present to you is suspicion, conjecture and
18 innuendo then they have not met their burden of proof.
19 This is a very substantial burden of proof, that's the way
20 our system is set up. You don't convict people on
21 suspicions, you don't convict people on conjecture, you
22 don't convict people on innuendo. You only convict people
23 on hard, fast evidence beyond a reasonable doubt and you
24 simply do not have that in this case. Could the State have
25 presented more evidence to you? Could they have presented

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1 things that Detective Clary did or didn't do in this case?
2 I don't know, he didn't testify, and you don't know either.
3 Is that reasonable doubt? That's part of it. Anything
4 that gives you pause, that's reasonable doubt. Ladies and
5 gentlemen, as I stated to you yesterday I think it is
6 virtually an uncontroverted fact in this case is there's
7 not one single solitary piece of physical evidence against
8 either of these defendants, not one single solitary piece.
9 We don't even know where the gun is, we don't even know
10 what happened to the gun. We don't even know what the
11 police did to try to find the gun because nobody told them.
12 You've got none of it. There's not one single shred of
13 physical evidence, not one single shred of independent
14 evidence to come from somebody who doesn't have an interest
15 in this case to tell you what happened, nothing.
16 Mr. Foster is an interesting party and Mr. Wilson is hoping
17 it's going to help him out, so you don't have any single
18 solitary proof that Mr. Knuckles or Mr. Simpson on
19 January 18, 2006 at about 7:00 went in that store and did
20 this. Ladies and gentlemen, Mr. Knuckles took the witness
21 stand. He didn't have to. As I submitted to you yesterday
22 in my opening statement a defendant doesn't have to prove
23 anything, a defendant doesn't have to testify, that's the
24 way our system is set up and that's the way it should be,
25 that the defendant doesn't have the burden of proof. He

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1 doesn't have the burden of proving the negatives that he
2 didn't do it. But nevertheless, Mr. Knuckles gets up on
3 the witness stand and he testified and he said to you, "I
4 did not rob that store." He says to you, "I was working in
5 landscaping and I didn't get off until around 7:00 because
6 we were on the job doing fencing." That is an
7 uncontradicted fact in this case. There's nobody who
8 testified otherwise. There's nobody who testified that
9 Mr. Knuckles was even in the vicinity, the vicinity of the
10 store on January 18th of 2006. Nobody testified that they
11 saw him at the store or near the store or anywhere about
12 the store and there is no testimony that anybody saw
13 Mr. Knuckles with a gun or around anybody with a gun or
14 anything of that nature around January 18th of 2006,
15 there's nothing. So I submit to you you have evidence that
16 the defendant when he came forward and testified that he
17 didn't do it and he wasn't there and it's uncontradicted.
18 Ladies and gentlemen, I appreciate your attention in this
19 case. It has been a quick case and didn't take as long as
20 you see on TV, cases take months sometimes, especially in
21 California. It has been a quick case but that doesn't mean
22 it's any less important and all of the rules still apply
23 whether this case took a day and a half for a trial or two
24 months to try. But it is indicative, is it not, of the
25 lack of evidence in the case that you just simply don't

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1 have anything to hang your hat on to prove that either of
2 these defendants committed this robbery. I ask you ladies
3 and gentlemen because I don't get another chance to come up
4 here and talk to you -- you're probably glad -- but I don't
5 get another chance to talk to you, this is my last chance.
6 But I ask you to do something for me, you 12 people were
7 chosen to be judges of the facts, that is your job, you
8 have to figure out what the facts are in this case. But in
9 a criminal case you have the right to go back there and
10 when you put on your judge's hat to try to figure out what
11 the facts are, you have the right in a criminal case to
12 basically say we don't know, we don't know what the facts
13 are because the State hasn't given us enough to work with.
14 And if your conclusion after going back in the jury room is
15 that we don't know what happened on the night of
16 January 18, 2006, that we are not sure about what happened
17 on January 18, 2006, if that is your conclusion then you
18 have to find the defendants not guilty because the State
19 has not given you enough to work with. And each of you,
20 your oath is when you stood in this box and stood up
21 yesterday and took that oath is that you are to apply the
22 law as the Judge gives you and part of that law is that the
23 State has to prove all of the pieces of the puzzle
24 together, and if they're missing a piece or two pieces or
25 three pieces, they haven't put the piece of the puzzle

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1 together, the pieces are missing. If that's your
2 conclusion you will have to find the defendants not guilty.
3 It is as simple as that. I submit to you, ladies and
4 gentlemen, at the end of the day, at the end of this case
5 is that there are numerous pieces of the puzzle missing.
6 You simply don't have them and if you don't have the pieces
7 you can't put the puzzle together and you have to find the
8 defendants not guilty. Ladies and gentlemen, the way the
9 system works, and His Honor will tell you, every single one
10 of you has an equal voice back there in the jury room. The
11 State has to convince every single one of you that the
12 defendants are guilty beyond a reasonable doubt. If one,
13 two or three or all of you hopefully have that doubt then
14 it is your duty to stand up for that doubt and to say
15 they've not convinced me beyond a reasonable doubt.
16 Because this is not a verdict by committee, it's not a
17 majority rules, each one of you has an equal part to play
18 and you must decide yourself did the State convince me
19 beyond a reasonable doubt. Ladies and gentlemen, I
20 appreciate your bearing with me, I appreciate your
21 attention. I know that when you go back to the jury room
22 and put on your judge's hat that you will honor your oath
23 you will do your job, we know you will do that. But I
24 submit to you, ladies and gentlemen, at the end of the day,
25 at the end of your deliberations the only conclusion you

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1 can reach in this case is we are not sure what happened, we
2 don't know because the State hasn't given us the
3 information we need to work with and we find the
4 defendants, especially Mr. Knuckles -- I represent
5 Mr. Knuckles, of course -- not guilty in this case. Thank
6 you.

7 MR. ROBINSON: Please the Court? Good morning again.
8 I went with my wife last night to Wendy's, we went to
9 Wendy's and we got burgers and fries, chicken and things
10 like that, I hadn't gone there in a long time and I was
11 trying to come up with some sort of theme or something like
12 that for this case. And I remember when I was a little kid
13 there was this advertising campaign by Wendy's so they had
14 this little old lady, she would pop out at some times and
15 she would say, "Where's the beef? Where's the beef?" And
16 so forth. And I think if you look at this case and what
17 the prosecution has put forward you can ask yourself very
18 simply not just with burgers but with this case,
19 "Prosecution, where's the beef?" All right. Let's see
20 what we have here. Let's take it step by step. I'm not a
21 great artist but let's kind of go through exactly what we
22 don't have in this case. Let's talk about fingerprints.
23 Fingerprints. Where is the fingerprints? There are no
24 fingerprints that link Jonathan Simpson or Mr. Knuckles to
25 this offense. There are none. They took five

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1 fingerprints, five latent fingerprints according to the
2 officer. Now these are -- it's interesting on cross
3 examination, never got sent out, I guess he said he sent
4 them to Spartanburg but no one came to court saying, "Oh
5 yeah, I'm an expert and I can link these folks to these
6 fingerprints." Oh no, we didn't have that. We didn't even
7 have Officer Clary, who is the person that he allegedly
8 sends the more responsibility to to come up and say, "Yeah,
9 we have these fingerprints and here is what we found." And
10 I think that Mr. Rhoden gave them the fingerprints, did
11 they come in? Did they redirect examination or even on
12 direct examination say, "Oh yeah, this print belongs to
13 either of these folks." No. They had five fingerprints in
14 this case. They have one on the counter top and they have
15 others around like on the register and so forth. But guess
16 what? None of these fingerprints belong to Jonathan
17 Simpson or Mr. Knuckles, not one. I'm sure you were
18 waiting for someone to come in in the prosecution's case
19 and say, "Okay. These are the fingerprints that link these
20 guys." Nothing. Not one person came forward and linked
21 these folks to this crime. They talk about a shoe print
22 that they found. Anybody link them -- Mr. Simpson to that
23 foot print? No. So the question is in this case as to the
24 fingerprints, where is the beef? Doesn't exist. They
25 don't have evidence, they don't have fingerprints to link

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1 Jonathan Simpson to this incident. Let's talk about DNA.
2 Hair samples. Any hair samples or DNA presented to you,
3 the 13 of you that established that Jonathan Simpson was at
4 that scene that day on January 18th? No. Not one person
5 came into court and said, "Oh yeah, we found DNA in here at
6 the scene that connects Jonathan Simpson to that crime."
7 Not one person. Not one detective, deputy, person from
8 DHEC or SLED, nobody. Nobody came here and can say that.
9 No DNA, no hair. Now, they paraded some witnesses out
10 here. They had Ms. Shirley, I liked her a lot, she was a
11 very nice lady, but again, she couldn't identify who it was
12 that was in that store in the robbery that day. She
13 couldn't identify either of these guys as being one of the
14 guys. She didn't recognize the voices, she just didn't
15 know who they were. And if you noticed, I asked her about
16 did she see him in that store that day, I asked her that on
17 cross examination and she said no, she did not. Let's talk
18 about Mary Huskey. Nope. Didn't see either of these guys
19 in the store that day. And they didn't present any
20 evidence from any witness that said, "Oh yeah, they were
21 around the store that day. I saw both of these guys around
22 the store. I saw Jonathan Simpson around the store that
23 day." No one. Now, Willie Talley, "Dirt", he said he
24 didn't recognize anybody that day, he didn't provide much
25 of anything other than he was there that day, he was on the

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1 ground. He couldn't link this crime to these two folks. I
2 want to talk about Mr. Wilson for a second, he's the guy
3 that is the second person they have testify, the person in
4 the orange suit they had come up here and testify. I want
5 you to think a second -- and Mr. Rhoden went into this very
6 skillfully -- but you've got to think to yourself, what his
7 motivation in this case. Do you really believe that this
8 guy is going to come to court with pending charges and
9 testify for nothing? Do you really believe that? And did
10 you get his story? Did you hear what he said? He said he
11 couldn't figure out when and where this was said, but he
12 said he heard it. Do you think to yourself where did he
13 hear it and who did he hear it from, time of day? Where
14 was it? No idea. Doesn't it make more sense to y'all that
15 some person who is sitting here in an orange suit and he
16 tells the solicitor -- did you look at his response to the
17 solicitor and his whole way he talked and the way he
18 responded to the questions and so forth? She asked him,
19 "Has anyone promised you anything or anything like that?"
20 I think he said no, but did you see how he said it, though?
21 Did you see how he testified on that point, though? Did
22 you believe him? Did you believe what he said? In
23 closing, ladies and gentlemen, there is no fingerprints
24 linking Jonathan Simpson to this case, there is no DNA, no
25 hair. I want to go back to Mr. Wilson one more time just

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1 to think about this. They presented two witnesses in this
2 case, they had the officer which was the officer from
3 Gaffney, that would be Mike Segina. Now, he's the crime
4 scene investigator and he told you kind of what he did,
5 what he did as far as his job and so forth. And, you know,
6 you kind of conjure up in your mind what TV shows show and
7 so forth as far as what they do. He says he goes to the
8 crime scene, he collects evidence and so forth. Did you
9 notice one piece of that he never did collect that he never
10 talked about? I'll give you what it was, it was this
11 alleged gun. Now, here is the crime scene investigator
12 that goes along and collects all of this evidence and he
13 took a ton of time with this it sounds like. It sounds
14 like he took all of these fingerprints and all of this,
15 went around, but he never ever talked about finding any
16 gun, there's no question or nothing. But our orange friend
17 over here, Mr. Wilson in the orange jump suit, what does he
18 talk about? He says the gun, which Officer Segina never
19 even mentioned, was thrown some place. He threw it some
20 place. Now, who are you going to believe? If he lies --
21 if he's not telling the truth there, where else is he not
22 telling the truth? And look at who we're talking about
23 here, folks, pending charges. He tells the solicitor under
24 oath, under oath, no, not being promised anything, not
25 getting anything out of this. If I testify for y'all in

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1 your case I'm not getting anything out of this and I'm not
2 saying this. Do you believe it? Is he believable to you?
3 Ladies and gentlemen, in our country serving on a jury is
4 probably the greatest privilege and service during peace
5 time that y'all can have. I've never served on a jury,
6 I'll never get chosen on a jury, but what you're doing is
7 one of the biggest honors I think that you can possibly
8 have. It may not seem like it to you today, it may not
9 seem like it tomorrow. You know, you register to vote or
10 you have a driver's license, you get picked to be a juror
11 and it doesn't seem like a big deal, but it is a big deal.
12 You all use your common sense and your wisdom and
13 everything you've learned, things you learned when you were
14 a kid, when you were an adult, things you've learned from
15 your parents, from friends, from people that you looked up
16 to when you were growing up, lessons that you learned. A
17 lot of hard lessons, good lessons, good times, bad things,
18 but you learned things. And you learn when to see when
19 someone is telling the truth or lying, whether or not it
20 makes sense or it doesn't make sense. You can look at it
21 in your mind and think about it and when you go back to
22 that jury room one of the first questions that you will ask
23 yourself, what you could ask yourself, what you should ask
24 yourself is where is the beef in this case? Where is the
25 evidence that links Jonathan Simpson to this crime? And

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1 you know what you're going to find out and what you're
2 going to conclude is that there's none. And Your Honor is
3 going to instruct you in a few moments that when you look
4 at the evidence in this case you'll look at it in terms of
5 reasonable doubt. Does it create a reasonable doubt in
6 your mind? It's not just eliminate any doubt, a reasonable
7 doubt. And look at no DNA, no fingerprints, no eye
8 witness, no one that saw them there that day, no credible
9 witnesses. Look at it. Now, you may think that what
10 you're doing here today as a juror this last couple of days
11 is something that's only something in the 20th century or
12 21st century, that you think it's a lucid thing, it's not.
13 This idea of people when they're accused of crimes to be
14 given a day in court for a fair shake and for people to not
15 just to be able to accuse people, that's something that
16 goes back to ancient times, way back to Roman times. And
17 I'm going to read you a quote, it's actually a story that
18 you may want to hear. I know it's 10:30 in the morning
19 after election day and I'm sure you are all -- I want you
20 to listen to this and it may be something you want to think
21 about. But it kind of goes and permeates this whole case.
22 This happened in Roman times and this was a trial that was
23 going on in Roman times just like this, just like this
24 trial, but it was in Roman times, probably people wearing
25 togas or whatever they wore back in Roman times. But in

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1 ancient Rome the governor of the Norvonus Province, which
2 is a province in Rome, was on trial before Cesar. The
3 trial was public like this one, Numarious, who was the
4 governor kind of like the State in this case, contented
5 himself with simply denying his guilt relying on the fact
6 that there was insufficient proof to support the
7 accusations against him. He's the accused. The prosecutor
8 was Delfidious, his case was weak and sensing the
9 inevitable outcome explained to Cesar, "Oh, Illustrious
10 Cesar if it is sufficient to simply deny what hereafter
11 will become of the guilty?" And Cesar replied -- and this
12 holds true in this case and every case in this land in a
13 criminal court -- "If it is sufficient to simply accuse
14 someone of something, what will hereafter become of the
15 innocent?" I ask you now on behalf of Joniathan Simpson and
16 his family and his children to render a verdict that speaks
17 the truth and to use your common sense and the knowledge
18 that you have gained, the wealth of knowledge that all
19 thirteen of you have gained in your lives, and if you do
20 that and if you hold the State to their high burden that
21 they have in this case and look at every single piece of
22 evidence, or actually lack of evidence in this case, well,
23 that high standard that the Judge will instruct you in a
24 second, there can be but one verdict and that is that
25 Jonathan Simpson is not guilty of this offense. Thank you

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1 for your time.

2 MS. LESKANIC: May it please the Court, Your Honor?
3 When you know who did it you don't need forensics. Ladies
4 and gentlemen of the jury, I appreciate your time. I've
5 got to prove to you two things, the first thing was that an
6 armed robbery was committed. Second thing I've got to
7 prove to you is who did it. Let's look at the armed
8 robbery quickly because I think that's very quick to
9 handle. Someone commits an armed robbery when they rob
10 someone with a gun or a deadly weapon, or representation of
11 a weapon that the person who is being robbed believes is a
12 deadly weapon. Now, you heard from Shirley Whitaker, "They
13 pointed the gun at my head." Mary Huskey who came in the
14 store afterwards said, "I saw a guy with a gun." I'm going
15 to play the video for you briefly so we can take a look at
16 the gun.

17 (The video is being played.)

18 Here is Ms. Whitaker getting ready to stamp the
19 checks, she has got Dirt in the back of the store, you see
20 the guys come by the window, here they come. Now, we had
21 Jonathan -- excuse me -- Mr. Foster who pled guilty, he
22 says he's the one that jumped over the counter, so you see
23 him jumping over the counter. There's testimony that
24 Mr. Simpson had the gun here in the red, when you play
25 that, as you can see in his hand that is a gun, ladies and

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1 gentlemen. Get a couple of shots of it. There is a gun
2 pointed at Ms. Whitaker while he's trying to open the
3 register, clearly armed with a weapon to the point that Ms.
4 Whitaker had to ask a friend of hers to bring her a change
5 of clothes. He had a gun pointed at her head. We also
6 know it's an armed robbery because one of the defendants
7 accepted responsibility and he pled guilty to armed robbery
8 on Monday and he was sentenced for committing this armed
9 robbery. The Judge is going to instruct you on what's
10 called hand of one is the hand of all. Please listen to
11 the law as he gives it to you, not what I tell you. But I
12 want to give you a little bit -- everybody doesn't have to
13 have a gun in a robbery to be guilty of armed robbery, just
14 one person has to have a gun and the others have to
15 participate in the robbery and that is what we have here,
16 hand of one is the hand of all. Mr. Simpson had the gun,
17 Mr. Knuckles went to the back and made Mr. Talley lay on
18 the ground, Mr. Foster jumped the counter and pushed
19 Shirley Whitaker down to the ground. It is an armed
20 robbery, I don't think there is any doubt about that.
21 Now, who did it, that's what the defense -- where's the
22 beef and who did it, we don't have any idea. Yeah, we do.
23 We know exactly who did it. Now Shirley, Willie and Mary
24 were in the store either during the robbery or immediately
25 thereafter. They all said they were wearing masks. But

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1 Mary saw Jonathan Simpson at that convenience store about
2 the same time the night before with two other black males
3 and she said that that looked suspicious to her. They were
4 hanging outside too long, said he's waiting by the phone to
5 get a phone call and it struck her as odd. And she knows
6 Jonathan Simpson, she didn't know the other two, but she
7 identified him as being out there the night before about
8 the same time that this robbery occurred looking
9 suspicious. Maybe casing the place? Laquinton Foster, he
10 pled guilty as I told you on Monday to armed robbery and he
11 was sentenced for that and he admitted to you that he was
12 the first one that went over the counter. The defense has
13 made comments about the shoe print and fingerprint, we know
14 whose shoe print it was on the counter as Foster said, "I
15 went over the counter." And you can watch the video as
16 many times as you want to, it's his shoe print. We didn't
17 need to send it off anywhere and get the FBI and CIA.
18 Foster said, "I went over the counter," that's the shoe
19 print. Fingerprints on the counter, he's the one who
20 touched the counter, it would be his fingerprint on the
21 counter. Don't let the defense make you think that we
22 don't have something that you need. Foster said, "I did
23 it. I went over the counter, put my foot up on it" and his
24 hand then had to go down on it. If that fingerprint
25 belongs to a defendant it would be him. We haven't failed

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1 to provide you with anything. There's just no need to
2 bring in experts -- and in this case they couldn't read the
3 fingerprint anyway, they tried. Mike Segina came in and
4 told you, "We collected the print, we sent them off, they
5 weren't sufficient data." I'm not going to waste your time
6 bringing an expert in and other witnesses to say we
7 couldn't read the print when Mike Segina can tell you that.
8 We're here to get to what we do have in the case, and we
9 have got beef and we have got enough for convictions. Now,
10 Laquinton Foster, he was the one that jumped the counter,
11 and he came in here and had amnesia. He said he committed
12 one armed robbery in his life, in his 17 years, but it
13 happened so long ago back in January that he can't remember
14 who he did it with. But when he talked to police and he
15 gave a statement he knew exactly who was with him,
16 Marcellus Knuckles and Jonathan Simpson. That's what he
17 told police. I realize he came in here with these two in
18 the courtroom having already been sentenced and pled to his
19 charge looking out for his buddies and maybe for himself
20 and said, "I don't know who it was. I was drunk and I was
21 smoking something." Look at the video, look at the way he
22 jumps that counter. Tell me if that's how a drunk man
23 jumps a counter. He knows who was with him, he told the
24 police who was with him. He didn't say, "I think it was
25 this guy named Brian and I think it was this guy named

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1 John." No. He said, "It was Marcellus Knuckles and it was
2 Jonathan Simpson." Not I think, but that's who it was. I
3 asked him on direct, "Who was with you?" And his response
4 was, "Do I have to answer that?" I went onto tell him,
5 "Yeah, you need you to answer that question. Who was with
6 you? I don't remember." So at first, "Do I have to answer
7 that?" And when I tell him, "Yeah, you need you to tell
8 these folks over here who was with you. Okay. I don't
9 remember. All right. Do you remember giving a statement?
10 Yeah, I remember that. Were you drunk or high when you
11 gave that statement to police? No." He looked shocked
12 that I asked him that. "Of course I wasn't drunk or high
13 when I talked to the police. Who else did you say did it?
14 I said I think it was them. Did you tell the police who
15 else did it? I said I thought they were the ones with me."
16 But he doesn't remember. And I went on to ask him whether
17 the statement was true and he said that he just didn't know
18 who was with him that night. And I asked him, "So it's not
19 that the statement is false, it's just that you can't
20 remember." And he said, "Correct." Don't forget, he
21 committed an armed robbery. And I know you all saw him
22 testify on the stand and when you see his demeanor maybe
23 you understand the reasons why he testified the way he did.
24 I told you in my opening that I didn't have an opportunity
25 to talk to him and I wasn't sure exactly what he was going

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1 to say, but I knew what he told the police. I knew he told
2 the police when he wasn't in front of these two and he
3 hadn't already been sentenced and looking out to protect
4 his buddies and he said, "Marcellus Knuckles and Jonathan
5 Simpson were with me to commit this armed robbery." There
6 is beef. There is beef. And you judge his credibility
7 from the stand, and if you believe that the statement he
8 gave the police wasn't true and he just somehow came up
9 with those names, then make your decision on that. But
10 just remember how he appeared testifying in front of you,
11 how reluctant he was to answer my questions, where he is,
12 the setting, who is he testifying in front of. "It was
13 Marcellus Knuckles and Jonathan Simpson that were with me.
14 How long have you known them? About a year or year and a
15 half. Are you related to any of them? Related to
16 Marcellus. Do you know Jonathan through Marcellus? They
17 live together." He knows these guys. It's not the first
18 time meeting them. He didn't walk down the street and just
19 meet each other. He knows them. He identified them.
20 There is the beef. And the evidence doesn't have to come
21 in the form of fingerprints and DNA. They were wearing
22 hoods and masks, I wouldn't expect there to be any hair
23 samples. You need fingerprints when you don't know who did
24 it. You might need DNA when you don't know who did it, but
25 we know. Mr. Foster told the police he was with me. We

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1 also know because you heard from Joseph Wilson. Now, they
2 want you to believe he has been promised something. I
3 asked him, "Did we promise you anything for your
4 testimony?" And he said, "No." Ladies and gentlemen, some
5 people just do the right thing. Defense doesn't want you
6 to believe that, but there are people out there, some of
7 them may have been in jail and they actually come in here
8 and they just do the right thing. That's what Mr. Wilson
9 did. He's not getting any benefit on his charges, not
10 promised anything for his testimony, he just came in here
11 to tell you what he knew. He did the right thing. What
12 did he tell you? He told you that he's a cousin of
13 Marcellus Knuckles, it's a family member. You can't talk
14 about having any problems with him or any motive to give
15 him any trouble. And he said that Knuckles told him that
16 he did the robbery and he's the one that went to the back
17 of the store and the one that made Willie Talley lay down
18 while the other two finished their part of the robbery.
19 And Marcellus Knuckles and Jonathan Simpson lived together,
20 he said he had been to their house. And he said Simpson
21 said that he's the one that had the gun pointed at the
22 clerk and that he threw the gun in the woods. Is that
23 motivation for him to come in here and tell you that? Some
24 people just do the right thing. Foster did the right thing
25 by coming in here and pleading guilty. Can't always

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1 control what he's going to say in front of you due to these
2 surroundings but he tried to do the right thing at least
3 for his part. That is the beef. The person that was with
4 him said they were with me and another friend, a relative
5 who has nothing to gain by his testimony, told me he did,
6 and it's all consistent. In Mr. Rhoden's opening yesterday
7 he asked you where were you on July 18, 2006? Can you
8 prove what you are doing that day? Probably not unless it
9 was a particularly important day. But you know what?
10 Mr. Knuckles knew where he was on January 18, 2006, he knew
11 that he was putting up a fence. Was it a particularly
12 important job? I don't know. He was working with unnamed
13 individuals at an unknown location in another county, but
14 he knows he got off at 7:00 on January 18, 2006. Not only
15 did he know he was working on the 18th but he knew he was
16 working on the 17th, nobody even asked him about that. I
17 submit he knew he was working on the 17th because that's
18 the day Mary Huskey saw Jonathan Simpson and two other
19 black males at the store that appeared suspicious and he
20 needed to be somewhere else on the 17th also. Because I
21 asked him -- I may get the days wrong -- where he was on
22 January 2nd and 4th and 5th and 6th and he didn't know.
23 But he knew exactly -- at least that he was putting up a
24 fence on the 17th and the 18th. Couldn't have been the
25 18th and 19th, or the 19th and the 20th, it was definitely

CLOSING ARGUMENTS

1 the 17th and the 18th that he was doing fence work on a job
2 with unnamed people at a location he can't remember in a
3 different county. I found that interesting. I also found
4 it interesting that he apparently was working with these
5 people, he's the only one that you heard from about that.
6 Simpson. He knows Foster, he knows Wilson and he knows his
7 codefendant, Mr. Knuckles, both of them knew everyone
8 involved in this case, admitted that they did. He too
9 remembers January 18th, a particularly important day. No
10 other day of the month really stood out, but the 18th did
11 and that's because on that day he must have been at his
12 grandmom's and his girlfriend's, because the next day he
13 went down to the Village where his mom lives and people
14 there were saying he committed the robbery that happened on
15 the 18th. That's how he knows where he was on the 18th
16 because the next day everybody was saying he robbed the
17 convenience store. Didn't make a lot of sense to me, but
18 apparently that's how he knows where he was on
19 January 18th. But again, we just heard from him that he
20 was with mom and girlfriend for the day. Ladies and
21 gentlemen, you're not allowed to bring in notes to take
22 notes in the trial, bring a computer, luckily you get to
23 bring in your common sense and that is the best tool that
24 you have. And all I ask is that you use your common sense
25 when you go back to deliberate this case. It is clearly an

CLOSING ARGUMENTS

1 armed robbery, no doubt about it, and it is clear who
2 committed this robbery because Foster told the police who
3 did it with him and these two guys told their buddy,
4 Wilson, that they did it. That's evidence. Testimony that
5 comes from this stand is evidence. Don't let the defense
6 confuse you that we have to have something other than
7 somebody's word. Somebody's word. Somebody is doing the
8 right thing, comes in here and tells you what happened.
9 Foster told police Marcellus Knuckles and Jonathan Simpson
10 were the two that were with him. Joseph Wilson said,
11 "Marcellus Knuckles told me he's the one that went to the
12 back of the store, Simpson told me he's the one that had
13 the gun pointed at Shirley Whitaker and threw the gun out
14 in the woods." It's all consistent, and that's evidence and
15 they are guilty. Verdict means to speak the truth and I
16 ask that you go back to the jury room and come back with a
17 verdict that speaks the truth of what happened at the
18 Eastside Saveway convenience store back in January, who was
19 involved in that case and hold them responsible. Thank
20 you.

21 THE COURT: Thank you, ladies and gentlemen. It's now
22 my responsibility to give you the charge on the law. I
23 know you have been sitting there for about an hour so I
24 would like for you to just stand up for a moment and get a
25 good stretch and we'll charge you on the law. The

JURY CHARGE

1 indictments charge both Mr. Knuckles and Mr. Simpson with
2 armed robbery. I will remind you that the fact that the
3 defendants were arrested, charged and indicted is not
4 evidence in this case and cannot be considered by you as
5 evidence of guilt in this case, nor does it create any
6 presumption of inference of guilt. The indictments are
7 documents simply -- or simply the formal written
8 instruments which contain the charges made against the
9 defendants. They are the formal documents by which this
10 case is brought in to court. I charge you that there are
11 two defendants in this case, each of whom is charged with
12 armed robbery. The case of each defendant and the evidence
13 and the law concerning that defendant should be considered
14 separately and individually. Your verdict does not have to
15 be the same for both of the defendants. The fact that you
16 may find one of the defendants guilty or not guilty should
17 not control your verdict as to the other defendant. When
18 more than one person is charged with a crime and the
19 evidence warrants it, you may convict one and acquit the
20 other or you may acquit both, or you may convict both. It
21 will depend upon your view of the testimony and evidence.
22 You must take each defendant and consider the evidence as
23 to that defendant and my instructions to you on the law.
24 You will then write a separate verdict of guilt or not
25 guilty for each of the defendants. The defendants have

JURY CHARGE

1 pled not guilty to the indictment and that plea puts the
2 burden on the State to prove the defendant guilty. A
3 person charged with committing a crime, a criminal offense
4 in South Carolina is never required to prove himself
5 innocent. I charge you that it is an important rule of law
6 that the defendant in a criminal trial no matter what the
7 seriousness of the charge may be will always be presumed to
8 be innocent of the crime for which the indictment was
9 issued unless guilt has been proven by evidence satisfying
10 you of that guilt beyond a reasonable doubt. This
11 presumption of innocence does not end when you begin
12 your deliberations, but it accompanies the defendant
13 throughout the trial until you reach a verdict of guilty
14 based on the evidence satisfying you of that guilt beyond a
15 reasonable doubt. The presumption of innocence is like a
16 robe of righteousness placed about the shoulders of the
17 defendant which remains with the defendant until it has
18 been stripped from the defendant by evidence satisfying you
19 of the defendant's guilt beyond a reasonable doubt. The
20 presumption of innocence is not a mere legal theory, it is
21 not just a legal phrase, it is a substantial right to which
22 every defendant is entitled unless you, the jury, are
23 satisfied from the evidence of the defendant's guilt beyond
24 a reasonable doubt. The State has the burden of proving
25 the defendant guilty beyond a reasonable doubt. Some of

JURY CHARGE

1 you may have served as jurors in civil cases where you were
2 told that it is only necessary to prove a fact is more
3 likely true than not true such as by the greater weight or
4 the preponderance of the evidence. In criminal cases the
5 State's proof must be more powerful than that, it must be
6 beyond a reasonable doubt. Proof beyond a reasonable doubt
7 is proof that leaves you firmly convinced of the
8 defendant's guilt. There are very few things in this world
9 that we know with absolute certainty and in criminal cases
10 the law does not require proof that overcomes every
11 possible doubt. If based on your consideration of the
12 evidence you are firmly convinced that the defendant is
13 guilty of the crime charged, you must find the defendant
14 guilty. If, on the other hand, you think there is a real
15 possibility that the defendant is not guilty you must give
16 the defendant the benefit of the doubt and find him not
17 guilty. I remind you that during this trial you and I have
18 certain duties to perform. As the trial judge it is my
19 responsibility to preside over the trial of this case. And
20 I also have a duty to rule on the admissibility of evidence
21 offered during this trial. You are to consider only the
22 competent evidence before you. If there was any testimony
23 ordered stricken from the record in this case in this trial
24 you must disregard that testimony. You are to consider
25 only the testimony which has been presented from the

JURY CHARGE

1 witness stand, any exhibits which have been made a part of
2 the record of this case and any stipulations of counsel. I
3 have the additional duty to charge you the law applicable
4 to this case. As Presiding Judge I am the sole judge of
5 the law in this case and it is your duty as jurors to
6 accept and apply the law as I now state it to you. If you
7 already have any ideas to what the law is or what the law
8 ought to be and it does not agree with what I now tell you
9 the law is, you must abandon this idea because you are
10 sworn to accept and apply the law exactly as I state it to
11 you. In every case tried in this court before a jury the
12 jury becomes the sole and exclusive judge of the facts. A
13 trial judge cannot intimate, state, comment on or make any
14 statement to the trial jury about the facts of the case.
15 Since you, the jury, are the sole judge of the facts in the
16 case you are not to infer from what I said during the
17 progress of this trial in ruling upon the admissibility of
18 evidence or otherwise or anything that I say now during the
19 course of this instruction to you that I have any opinion
20 about the facts in this case. The law does not allow me to
21 have an opinion about the facts in the case. This is a
22 matter solely for you, the jury, to determine as jurors and
23 it is your duty to determine the effect, value, weight and
24 truth of the evidence presented during this trial. There
25 are two types of evidence which are generally presented in

JURY CHARGE

1 the trial, direct evidence and circumstantial evidence.
2 Direct evidence is testimony of a person who claims to have
3 actual knowledge of a fact such as an eye witness. It is
4 evidence which immediately establishes the main fact to be
5 proven. Circumstantial evidence is proof of a chain of
6 facts and circumstances indicating the existence of a fact.
7 It is evidence which immediately establishes collateral
8 facts from which the main fact may be inferred.
9 Circumstantial evidence is based on inference and not on
10 personal knowledge or observations. The law makes no
11 distinction between the weight or value to be given either
12 direct or circumstantial evidence, nor is a greater degree
13 of certainty required of circumstantial evidence than of
14 direct evidence. You should weigh all of the evidence in
15 the case and after weighing all of the evidence if you are
16 not convinced of the guilt of the defendant beyond a
17 reasonable doubt you must find the defendant not guilty.
18 Necessarily you must determine the credibility of witnesses
19 who have testified. Credibility simply means
20 believability. It becomes your duty as jurors to analyze
21 and to evaluate the evidence and determine which evidence
22 convinces you of its truth. In determining the
23 believability of witnesses who have testified you may
24 believe one witness over several witnesses or several
25 witnesses over one. You may believe a part of the

JURY CHARGE

1 testimony of a witness and reject the remaining part of the
2 testimony of that same witness, you may believe the
3 testimony of a witness in its entirety or reject the
4 testimony of a witness in its entirety. You may consider
5 whether any witness has exhibited to you any interest,
6 bias, prejudice or other motive in this case. You may also
7 consider the appearance and the manner of the witness while
8 on the witness stand. If a crime is committed by two or
9 more people who are acting together in committing a crime
10 the act of one is the act of all. A person who joins with
11 another to accomplish an illegal purpose is criminally
12 responsible for everything done by the other person which
13 occurs as a natural consequence of the act done in carrying
14 out of the common plan and purpose. For example, two
15 people can be guilty of killing another person, but only
16 one of the two had a gun, there was only one bullet and
17 only one of the two fired the shot that caused the damage.
18 When two or more people are together acting together
19 assisting each other in committing the offense, the act of
20 one is the act of all, or as it is sometimes said, the hand
21 of one is the hand of all. Prior knowledge that a crime is
22 going to be committed without more is not sufficient to
23 make a person guilty of that crime. Mere knowledge that
24 another person is going to commit a crime, even if the
25 defendant is present when the crime is committed is not

JURY CHARGE

1 sufficient to convict the defendant as a principal. Guilt
2 as a principal is shown by actual or constructive presence
3 at the scene as a result of a prior arrangement. Therefore
4 a finding of prior arranged plan or common scheme is
5 necessary for a finding of guilt as a principal. The State
6 must prove beyond a reasonable doubt by competent evidence
7 the theory of the hand of one is the hand of all. A
8 principal in a crime is one who either actually commits the
9 crime or who is present aiding, abetting or assisting in
10 committing the crime. When a person doesn't act in the
11 presence of and with the assistance of another, the act is
12 done by both. When two or more acting with a common plan
13 or intent are present at the commission of a crime it does
14 not matter who actually commits the crime, all are guilty.
15 The hand of one is the hand of all. Present at the
16 commission of a crime means to be sufficiently near to aide
17 and abet and assist in the commission of a crime. However,
18 mere presence at the scene of a crime is not sufficient to
19 convict one as a principal on the theory of aiding and
20 abetting. Intent is also a necessary element for there
21 must have been the common design or intent to commit the
22 crime. The crime must have been committed pursuant thereto
23 with the person aiding and abetting by some overt act.
24 Intent means intending the result which actually occurs,
25 not accidentally or involuntarily. Intent may be shown by

JURY CHARGE

1 acts and conduct of the defendant and other circumstances
2 from which you may naturally and reasonably infer intent.
3 The State must prove these elements beyond a reasonable
4 doubt. There has been evidence presented that witnesses
5 have made prior statements which are not consistent with
6 the witness' present testimony. You may use this evidence
7 to decide whether to believe the witness. You may also use
8 evidence of the earlier contradictory statements to
9 determine the truth of those statements. It is up to you
10 to decide whether to believe the earlier statements and
11 testimony given at trial. If a witness is shown to have
12 not knowingly testified truthfully concerning any material
13 matter, you may consider this in determining whether to
14 trust the witness' testimony as to the other matters. You
15 may reject all of the testimony of that witness or give all
16 or part of that testimony the weight you think it deserves.
17 You have heard evidence that a defendant was convicted of a
18 crime other than the one for which the defendant is now on
19 trial. This evidence may be considered by you if you
20 conclude it's true only in determining whether the
21 defendant's testimony is believable and for no other
22 purpose. You must not consider the defendant's prior
23 record as any evidence of the defendant's guilt of the
24 charge we are trying today. The defendants are charged
25 with armed robbery. In order to prove this offense the

JURY CHARGE

1 State must first prove beyond a reasonable doubt that the
2 defendants took personal property from the person or
3 presence of another person. Property is in the presence of
4 a person if it's within the person's reach, inspection,
5 observation or control so that a person could if not
6 overcome with violence or prevented by fear kept the
7 property -- to have kept possession of the property. The
8 State must also prove beyond a reasonable doubt that the
9 defendant carried the property away intending to
10 permanently deprive the owner of the property and to keep
11 the property for the defendant's own use. The slightest
12 removal of the property or the complete possession of the
13 property even for an instance by a defendant is sufficient
14 to show a taking and carrying away of a property. The
15 taking and carrying away of the property must have been
16 done with violence or by putting the owner of the property
17 in fear of violence. Finally, the State must prove beyond
18 a reasonable doubt that the defendant was armed with a
19 deadly weapon during the robbery. A deadly weapon is any
20 article, instrument or substance which is likely to cause
21 death or great bodily harm. Whether an instrument has been
22 used as a deadly weapon depends on the facts and
23 circumstances of each case. The following are examples of
24 instruments which may be deadly weapons: Pistol, shotgun,
25 rifle, dart, dagger, knife, sling shot, metal knuckles, a

JURY CHARGE

1 razor, gasoline or fire bomb, a Molotov cocktail and
2 lighter fluid. A gun may be a deadly weapon even if it is
3 not in operation. There are two verdict forms that you
4 will have with you in the jury room. A verdict form has
5 been prepared for each of the defendants, and on each of
6 the defendants there are two possible verdicts, the verdict
7 of not guilty and the verdict of guilty. I have had to
8 list them on here in a certain way and the manner that I
9 have listed them as I have is of no importance. I had to
10 list one prior to the other, I couldn't list them both at
11 the same time. So there is -- I need for you to when you
12 begin your deliberations it's important again that you
13 consider each of the defendants independently of each
14 other, you need to weigh the evidence as it relates to each
15 of the defendants. In determining your verdicts, ladies
16 and gentlemen, your verdict must be a unanimous one,
17 Mr. Foreperson, when the jury agrees on the verdict you
18 will write the verdict down, indicate the verdict that the
19 jury has agreed on and then you will sign your name, you
20 will date it and you will knock on the door and let the
21 bailiff know once you've reached your verdict. I'm going
22 to now have you to go to the jury deliberations room but I
23 am going to ask that you not begin your deliberations. I
24 need to take up some matters with the lawyers and once the
25 bailiff brings you the evidence and tells you to begin your

JURY CHARGE

1 deliberations then you may begin your deliberations. I'll
2 advise you that in the event we take a break or one of your
3 members during the deliberations has to leave you and say
4 go to the restroom or do something outside of the presence
5 of the others, you need to cease your discussions about the
6 case until that other person returns because your
7 deliberations need to be done in the presence of all jury
8 members. At this time I will allow you to go to the jury
9 deliberations room and the bailiff will be in there just
10 shortly.

11 (The jury left the courtroom.)

12 THE COURT: Anything from the lawyers concerning the
13 charge?

14 MS. LESKANIC: Not from the State, Your Honor.

15 MR. RHODEN: Not from the defense, Your Honor.

16 THE COURT: Will y'all be sure that we have got the
17 exhibits together, proper exhibits and then put these
18 verdict forms with the exhibits and let the bailiff take
19 them back?

20 (The jury began deliberations and returned with a
21 verdict.)

22 THE COURT: I'm informed the jury has reached a
23 verdict. Anything we need to put on the record before we
24 bridge the jury out?

25 MS. LESKANIC: Not from the State, Your Honor.

VERDICT

1 MR. RHODEN: Not from the defendants.

2 (The jury returned to the courtroom.)

3 THE COURT: Mr. Foreman, the bailiff informs me that
4 you have reached a verdict; is that correct?

5 THE JUROR: Yes, sir.

6 THE COURT: Sir, if you would just hand it to the
7 bailiff and she will hand it up here. Madam Clerk, if you
8 would publish the verdicts.

9 THE CLERK: Indictment 2006-GS-11-866, State vs
10 Marcellus O'Brian Knuckles, we, the jury, unanimously find
11 Marcellus O. Knuckles guilty of armed robbery. Signed by
12 foreperson Cedric Smith. 2006-GS-11-873, the State vs.
13 Jonathan Leon Simpson, we, the jury, unanimously find
14 Jonathan Leon Simpson guilty of armed robbery. Signed by
15 foreperson Cedric Smith. Ladies and gentlemen of the jury,
16 if this is the verdict of you all please indicate by
17 raising your right hand. Thank you. Let the record
18 indicate that all of the jurors raised their right hand.

19 THE COURT: Anything before we dismiss the jury from
20 the State?

21 MS. LESKANIC: Not from the State, Your Honor.

22 MR. RHODEN: I would ask that the jury be polled, Your
23 Honor.

24 THE COURT: Yes, ma'am. Now, the Clerk is going to
25 poll each one of you individually to confirm this is your

VERDICT

1 verdict. If you will say yes or no as to whether or not
2 that is still your verdict.

3 THE CLERK: Juror 86, Jonathan Scruggs, is this your
4 verdict?

5 THE JUROR: Yes.

6 THE CLERK: Juror 88, Tabitha Sherrill, is this your
7 verdict?

8 THE JUROR: Yes.

9 THE CLERK: Juror 85, Donna Scott, is this your
10 verdict?

11 THE JUROR: Yes.

12 THE CLERK: Juror 108, Linda Johnson, is this your
13 verdict?

14 THE JUROR: Yes.

15 THE CLERK: Juror 55, Edward Lorr, is this your
16 verdict?

17 THE JUROR: Yes.

18 THE CLERK: Juror 104, Anita Poole, is this your
19 verdict?

20 THE JUROR: Yes.

21 THE CLERK: Juror 106, Cedric Smith, is this your
22 verdict?

23 THE JUROR: Yes.

24 THE CLERK: Juror 90, Patsy Spake, is this your
25 verdict?

VERDICT

1 THE JUROR: Yes.

2 THE CLERK: Juror 78, James Randolph, is this your
3 verdict?

4 THE JUROR: Yes.

5 THE CLERK: Juror 60, Kenneth McDaniel, is this your
6 verdict?

7 THE JUROR: Yes.

8 THE CLERK: Juror 36, Lisa Greer, is this your
9 verdict?

10 THE JUROR: Yes.

11 THE CLERK: Juror 31, Tony Elumbaugh, is this your
12 verdict?

13 THE JUROR: Yes.

14 THE CLERK: Thank you.

15 THE COURT: Anything else from the defendants before
16 we dismiss the jury?

17 MR. RHODEN: No, sir, Your Honor.

18 MR. ROBINSON: No, sir, Your Honor.

19 (At this time the jury was dismissed.)

20 THE COURT: Anything from the defendants?

21 MR. RHODEN: Yes, Your Honor, make a motion for a new
22 trial. Your Honor, the evidence in this case was paltry at
23 best, Your Honor. I do not believe the evidence was
24 sufficient to sustain a verdict beyond a reasonable doubt
25 and we would move for a new trial. The second ground, Your

SENTENCING HEARING

1 Honor, is I still believe that the offense of simple
2 possession of cocaine was improperly used against my client
3 when he testified and I still believe that that was not
4 correct and on that ground, too, I would move for a new
5 trial.

6 MR. ROBINSON: I would have the same motions, Your
7 Honor, for a new trial based on the lack of evidence from
8 the State in this case.

9 THE COURT: All right. Does the State wish to
10 respond?

11 MS. LESKANIC: Your Honor, the jury heard all of the
12 testimony including that of one of the participants in the
13 robbery and somebody else that told that the defendants
14 told that they participated in the robbery. They spent
15 sufficient time deliberating and they are the triers of
16 fact and I believe that makes it sufficient.

17 THE COURT: All right. I would have to agree with the
18 State, I believe that there's evidence -- overwhelming
19 evidence upon which the jury could base its verdict against
20 either of the defendants. I think that my ruling in
21 regards to the drug offense being part of his prior record,
22 I think that that was proper and even if it was in error I
23 believe that considering the vast amount of evidence that
24 was presented to the jury that that would have been an
25 insignificant consideration on their part, especially since

SENTENCING HEARING

1 the State did not even argue that in their closing
2 argument. So I would deny the motions. Do you wish to
3 proceed with sentencing?

4 MS. LESKANIC: Yes, Your Honor.

5 THE COURT: Yes, ma'am. Does Mr. Knuckles have --
6 what was his prior record again?

7 MS. LESKANIC: Your Honor, in 2002 he has a conviction
8 for simple assault and battery, also for shoplifting, and
9 in 2005 possession of cocaine.

10 THE COURT: What about Mr. Simpson, does he have a
11 prior record?

12 MS. LESKANIC: He does not have any convictions, Your
13 Honor, on an adult record.

14 THE COURT: And does the victim -- I know the
15 restitution of \$2,407.04. Does the victim have any
16 information or wish to address the Court?

17 MS. LESKANIC: Yes, Your Honor, I believe Mr. Hemani,
18 who owns the convenience store, would like to make a
19 statement to Your Honor.

20 THE COURT: If you would speak loud enough, the
21 gentleman down front is the court reporter and his machines
22 need to be able to hear our voices and I need to be able to
23 hear you as well. I would be more than happy to hear from
24 you, sir?

25 THE WITNESS: I want them punished maximum as the law

SENTENCING HEARING

1 allows because behind the mask they are hidden and tried to
2 hurt my clerk, they should be put back behind bars as long
3 as the law allows.

4 THE COURT: Thank you, sir. Anything else from the
5 State on Mr. Knuckles?

6 MS. LESKANIC: No, Your Honor. Just on both of
7 them -- Ms. Whitaker has been here, I know Your Honor has
8 seen her throughout the trial, she does not wish to make
9 any additional statements. I just want the Court to be
10 aware she has been here throughout this trial.

11 THE COURT: All right. And anything else in regards
12 to Mr. Simpson?

13 MS. LESKANIC: No, Your Honor. I believe the Court is
14 aware of all of the facts of the case.

15 THE COURT: Yes, sir, Mr. Rhoden?

16 MR. RHODEN: May it please the Court, Your Honor? Of
17 course, you've heard the testimony and the facts in this
18 case and, of course, the jury has spoken. Of course, my
19 client still maintains his innocence. However, if we go
20 with the State's theory of the case, which is what they
21 presented, Mr. Knuckles based on the State's theory was the
22 individual who was in the back of the store. He was not
23 the gunman and his participation in the robbery -- active
24 participation was basically under the State's theory you go
25 back to the back of the store and Mr. Talley was back there

SENTENCING HEARING

1 and he told Mr. Talley to get down. There was -- some of
2 the statements -- or one statement there was some
3 indication that -- or allegation that my client hit
4 Mr. Talley. But Mr. Talley said that didn't occur, the
5 individual went back there, just told him to get down, he
6 got down and when he got up the individual was gone. So I
7 would ask the Court to take into consideration when
8 sentencing Mr. Knuckles that really in regard to the grand
9 scheme of this robbery -- and, of course, I understand
10 guilty as a principal, hand of one is the hand of all, but
11 when sentencing I think the Court can delineate or take
12 into account culpability, he was the least culpable of all
13 three of these individuals. Mr. Foster was the one who
14 pushed Ms. Whitaker down, he was the one who got the money
15 out of the cash box. Under the State's theory Mr. Simpson
16 was the one who had the gun and the one who got the money
17 out of the cash register and Mr. Knuckles was the least
18 culpable and all he basically did is go back to the back of
19 the store and said to Mr. Talley get down, then he walked
20 back out of the store, really didn't have anything to do
21 with Ms. Whitaker. Of course, Ms. Whitaker testified that
22 she didn't even realize there was three guys in the store
23 until after the fact. So I would ask the Court to take
24 into consideration that Mr. Knuckles was, in fact, the
25 least culpable of all of these defendants and ask the Court

SENTENCING HEARING

1 to be as lenient as possible when sentencing Mr. Knuckles
2 taking that into account, Your Honor.

3 THE COURT: Mr. Knuckles, were you able to hear the
4 statements made by your lawyer?

5 DEFENDANT KNUCKLES: Yes, sir.

6 THE COURT: Do you agree with those statements?

7 DEFENDANT KNUCKLES: Yes, sir.

8 THE COURT: Mr. Knuckles, is there anything that you
9 would like to say or would like for me to know or consider?

10 DEFENDANT KNUCKLES: No, sir.

11 THE COURT: Yes, sir, Mr. Robinson?

12 MR. ROBINSON: May it please the Court, Your Honor?
13 Jonathan is 22, he did not finish high school, he is not
14 married but he does have two children that his girlfriend
15 is in the audience today. Your Honor, his lack of a prior
16 record and his young age, I would ask the Court for mercy
17 as far as Jonathan. We have fought this case tooth and
18 nail the whole time, he has never admitted any guilt in
19 this matter and he still is -- but he knows that the jury
20 system does work and that he's not happy with this verdict
21 but it is a jury verdict, they've spoken. But, Your Honor,
22 based on his limited lack of any record whatsoever to speak
23 of and his young age of 22, in fact, we would ask the Court
24 for mercy in this case as far as what the Court does layout
25 in this matter.

SENTENCING HEARING

1 THE COURT: Mr. Simpson, were you able to hear the
2 statements made by your lawyer?

3 DEFENDANT SIMPSON: Yes, sir.

4 THE COURT: Do you agree with those statements?

5 DEFENDANT SIMPSON: Yes, sir.

6 THE COURT: Mr. Simpson, is there anything that you
7 would like to say or would like for me to know or consider?

8 DEFENDANT SIMPSON: Yes, sir.

9 THE COURT: I will be more that happy to hear from
10 you.

11 DEFENDANT SIMPSON: I'm sorry for what happened to
12 Ms. Whitaker but I didn't have any dealings in the robbery.

13 THE COURT: Thank you, sir. Been in since did I hear
14 June 18th?

15 MR. RHODEN: May 12th, I think. The warrant was
16 served on May 12th but a lot of times there's a couple of
17 days delay, so that's probably correct, May 10th.

18 THE COURT: On indictment 2006-GS-11-866, sentence of
19 the Court is that the defendant will be confined to the
20 state department of corrections for a period of 15 years.
21 Credit is made since May 10, 2006. Restitution has been
22 ordered as reflected by the restitution order. On
23 indictment 06-GS-11-837 (sic), sentence of the Court is
24 that the defendant will be confined to the state department
25 of corrections for a period of 20 years, get credit since

SENTENCING HEARING

1 May 10, 2006, restitution has been ordered. Good luck to
2 y'all.

3 (END OF TRIAL PROCEEDINGS.)

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1 I, the undersigned Michael C. Watkins, Official Court
2 Reporter for the Sixteenth Judicial Circuit of the State
3 of South Carolina, do hereby certify that the foregoing is
4 a true, accurate and complete transcript of record of the
5 proceedings had and evidence introduced in the trial of
6 the captioned case, relative to appeal, in the Court of
7 General Sessions for Cherokee County, South Carolina, on
8 the 6-8 days of November, 2006.

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto.

11

12

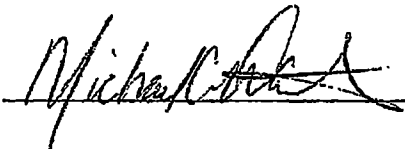
March 30, 2007.

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Court Reporter

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The South Carolina Court of Appeals
Kenneth A. Richards, Clerk
P.O. Box 11629
Columbia, SC 29211

ANDERSON RECORDS

April 1, 2008

RECEIVED

APR 4 2008

SC Court of Appeals

Jonathan Simpson

v.

The State of South Carolina

Brief Addressing my Issues

1.) My lawyer only came and visit me once, which was the day before my trial. So therefore, defendant didn't have a full understanding of the consequences. Defendant lawyer never attempt to cross examination witness Joseph Wilson in front of the Jury about how defendant supposedly told witness how defendant committed the robbery. Due to the fact, Joseph Wilson stated it out his own mouth that he was showed the surveillance camera two or three times. And the state use Joseph Wilson statement as evidence when first he said that I never said nothing to him about a robbery RDA pg. 142. And then the state ask him a couple more questions and ask him again did I tell him anything he said yes RDA pg. 14. It is clearly shown that witness Joseph Wilson lied before and to the Jury. I'm clearly showing that my counsel was ineffective and counsels

Representation below an objective standard²⁵¹
of Reasonable~~ness~~. That's how Joseph Simpson knew
how the Robbery happened because he saw the surveillance
camera.

2.) Also the state struck two African American, because
they lived near where the robbery took place. RDA pg. 16
lines 9-17. The trial Judge denied the Batson Motion
RDA pg. 18, lines 19-22 and found that the state had
valid race neutral reasons for striking the jurors.

3.) The state didn't have any evidence to support
that there was an Armed Robbery. There was never
no gun recovered, on the surveillance camera you can
see someone holding something, but know one can
say what the object was.

4.) Counsel should, and can with honor and without conflict,
be of more assistance to his client and to the court. As his
role as advocate requires that he support his clients appeal
to the best of his ability. My counsel did not meet
constitutional standards.

Respectfully Submitted,
S/ Jonathan Simpson
PRO-SE Jonathan Simpson # 3186216
Lee Corr. Inst. / Ches. N. 1148
990 Wilsack Highway
Bishopville, S.C. 29010

cc: KR. Clerk
SS. PRO-SE

009CP-110992

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Cherokee)Jonathan Simpson #318626)

Full name and prison number, if any, of applicant.)

v.)

State of South Carolina)

Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

BRANDY W. MCBEE

2009 OCT 21 A 11:06

CLERK OF
CHEROKEE COUNTY, S.C.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 it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lee Correction Institution 990 Wisader Highway
Bishopville, South Carolina 29010

2. Name and location of Court which imposed sentence Cherokee County General Session
Court

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) Armed Robbery 06-65-11-00873

(b) _____

(c) _____

4. The date upon which sentence was imposed and the terms of the sentence:

(a) November 8th, 2006 20 Years

(b) _____

(c) _____

A TRUE COPY

Brandy W. McBee

CLERK OF COURT
CHEROKEE COUNTY, S.C.

5. 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 _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes

7. If you answered "yes" to (6), 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. September 1st, 2009

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. 2009-UP-436

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) Conviction Obtained In Violation of Constitution

(c) _____

- 10. A) Trial counsel allowed expert to testify at trial who was not qualified by state during trial to do so.
 - 10B) Trial counsel allowed Person to testify without having a hearing under *Massiah v. United States*
 - 10C) Trial court made improper ruling by allowing evidence of defendants admission of Guilt.
- Trial Counsel failure and court ruling violated the applicant
Right to a fair trial

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Trial Counsel failed to make timely objections to evidence submitted at trial and failed to perform as required by law and denied me a fair trial

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law?

N/A

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

N/A

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)

N/A

(d) any other petitions, motions or applications in this or any other Court?

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. N/A

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. N/A

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. N/A

iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____ N/A
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____ N/A
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? _____

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____ N/A
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____ N/A
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

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

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

17. If you answered "yes" to one or more parts of (16), list:

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

i. Scott Robinson

ii. Eleanor D. Clark

iii. _____

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

i. Trial / Sentencing

ii. Appeal

iii. _____

18. State clearly the relief you seek in filing this application.

Vacate Conviction

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

No

009CP-110992

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Lee)

VERIFICATION

BRANDY W. M.
 2009 OCT 21 4:11 PM
 b6
 b7C

I, Jonathan Simpson, 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.

Jonathan Simpson

Sworn to and subscribed before me

This 14th day of October, 2009

Angela Rich L.S.
 Notary Public for South Carolina

My Commission Expires 10-31-2015

APPLICATION TO PROCEED WITHOUT PREPAYMENT
 OF COSTS AND AFFIDAVIT
 IN SUPPORT THEREOF

I, Jonathan Simpson, 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 proceeding or give security therefor.

Jonathan Simpson
 Applicant

Sworn to and subscribed before me

This 19th day of Oct., 2009

Angela Rich L.S.
 Notary Public for South Carolina

My Commission Expires: 10-31-2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	
Jonathan Simpson, #318626	)	2009-CP-11-0992
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post conviction relief (PCR) filed October 21, 2009, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. Applicant was indicted at the September 2006 term of the Cherokee County Grand Jury for armed robbery (2006-GS-11-0873). Bill Rhoden, Esquire, and Scott Robinson, Esquire, represented him. On November 6-8, 2006, Applicant underwent trial, pursuant to which he was found guilty as indicted. The Honorable John C. Hayes, III, sentenced him to confinement for twenty (20) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Simpson, Op. No. 2009-UP-337 (S.C. Ct. App. filed September 10, 2009). The Remittitur was sent on September 28, 2009.

Attached herewith and incorporated herein by reference are the records of the Cherokee County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the appellate court records, and the trial transcript.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel, in that;
 - a. Counsel allowed person to testify without having a hearing under Massiah v. United States.
2. The trial court made improper ruling by allowing evidence of defendant's admission of guilty.

III.

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115 at 117, 386 S.E.2d 624 at 625 (1989), citing Strickland.

Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; Alexander, 303 S.C. at 541-42, 402 S.E.2d at 485. The Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. Applicant must overcome this presumption in order to receive relief. Cherry, Id.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the

record does not conclusively refute. Accordingly, 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's second allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

V.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

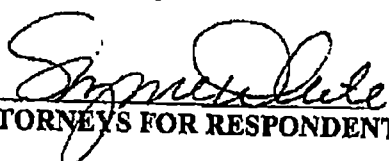
HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

[signatures continued on next page]

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 31, 2010.

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Jonathan Simpson,

2009-CP-11-0992

Applicant,

v.

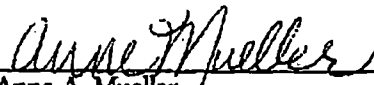
CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Thomas B. Outlaw, Esquire
11 N. Irvine Street, Suite 2
Greenville, South Carolina 29601-4902


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 31st day of March, 2010.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) COURT OF COMMON PLEAS NONJURY
3

4 JONATHAN SIMPSON,)
5 APPLICANT,) TRANSCRIPT
6 vs.) OF
7 STATE OF SOUTH CAROLINA,) RECORD
8 RESPONDENT.) 2009-CP-11-992
9

10 September 16th, 2010
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge.

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

16 THOMAS B. OUTLAW
17 ESQ.
18 Attorney for the Applicant

19 SUZANNE H. WHITE
20 ASSISTANT ATTORNEY GENERAL
21 Attorney for the State

22
23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

I N D E X O F W I T N E S S E SWITNESSESPAGE

JONATHAN SIMPSON

Direct examination by Mr. Outlaw

Cross-examination by Ms. White

Redirect examination by Mr. Outlaw

SCOTT ROBINSON

Direct examination by Ms. White

Cross-examination by Mr. Outlaw

Closing by Mr. Outlaw

Closing by Ms. White

Ruling by the Court

Certificate

P R O C E E D I N G S

MS. WHITE: Your Honor, this is the case of Jonathan Simpson versus the State of South Carolina. It's Case Number 2009-CP-11-0992. He's represented today by Mr. Tom Outlaw.

Mr. Simpson was indicted in September of '06 for armed robbery, proceeded to trial and was convicted and received a sentence of 20 years. He filed an appeal which affirmed his conviction and sentence, and subsequently filed PCR alleging various allegations of ineffective assistance of counsel regarding an expert testifying who's unqualified, someone testifying without a hearing, improper ruling by the Trial Court, and failure to make timely objections.

I will turn it over to Mr. Outlaw at this time.

THE COURT: Yes, sir.

MR. OUTLAW: Thank you, judge.

We have reduced this issue to the issues ineffective assistance of counsel and would like to proceed by calling Jonathan Simpson.

THE COURT: In what respects are you alleging counsel was ineffective?

MR. OUTLAW: In respect of, of lack of communication of what was going on with the trial, failure to meet with the client prior to trial.

1 THE COURT: Is that the only two?

2 MR. OUTLAW: Yes, sir.

3 THE COURT: Okay. Then you may call your first
4 witness.

5 MR. OUTLAW: Call Jonathan Simpson please.

6 THE COURT: Sir, if you would, whatever documents you
7 need, bring those with you to my left to be sworn.

8 JONATHAN SIMPSON, being first duly
9 sworn, testified as follows:

10 THE COURT: Have a seat please and Mr. -- please state
11 your name please.

12 THE WITNESS: Jonathan Simpson.

13 THE COURT: All right. Mr. Outlaw, your witness.

14 MR. OUTLAW: Thank you, judge.

15 May it please the Court?

16 THE COURT: Yes, sir.

17 DIRECT EXAMINATION

18 BY MR. OUTLAW:

19 Q Mr. Simpson, when were you convicted of armed robbery?

20 A November the 8th, 2006.

21 Q And what was your sentence?

22 A Twenty years.

23 Q And you did -- did you have a codefendant with you?

24 A Yes, sir.

25 Q And what was his sentence?

1 A Fifteen years.

2 Q Okay. Were any plea offers made before the trial?

3 A No, sir.

4 Q You never heard from your attorney about any plea
5 offers?

6 A No, sir.

7 Q Now, was your attorney a private attorney that you
8 hired or was he a public defender?

9 A A public defender.

10 Q And when were you first arrested on this charge?

11 A May the 10th, 2006.

12 Q And after you were arrested, when did you apply for a
13 public defender?

14 A Like three weeks after I was in the county jail.

15 Q Three weeks after?

16 A Three weeks after.

17 Q And when did you find out who your attorney was gonna
18 be?

19 A I say about, about four months. I had got a letter in
20 the mail stating that he -- Scott Robinson---

21 Q So, if you applied in three weeks, when did you get
22 that letter after you applied after that?

23 A I applied in July. I think about four months.

24 Q Four months?

25 A I think about four months.

1 Q Okay. Did you receive any telephone calls?

2 A He had me to call him once after that.

3 Q And you're speaking of Mr. Robinson, Scott Robinson?

4 A Yes, sir.

5 Q Okay. Okay. Did you visit with him any time since the
6 time you were arrested until the date of your trial?

7 A He visited me on a Saturday. That following Monday we
8 was preparing to go to trial.

9 Q Did he leave any discovery with you on that Saturday or
10 give you any discovery?

11 A A couple statements.

12 Q Just A couple statements.

13 How pages was that?

14 A I, I think it was two, two pages. I believe it was two
15 statements.

16 Q I mean how many pages of paper?

17 A It was the one -- it was the one -- it was two pages,
18 two different statements if I can remember correctly.

19 Q And you were tried with your codefendant, is that
20 right?

21 A Yes, sir.

22 Q And who did most of the trial as far as talking for the
23 defense?

24 Was it Mr. Robinson or your codefendant's attorney?

25 A My codefendant's counsel.

1 Q Now, you had two witnesses against you, Mr. Joseph
2 Wilson and Laquintin foster.

3 Did Mr. Robinson question any of those witnesses?

4 I can direct the Court to Page 160 to Joseph Wilson's
5 testimony and 137 for Laquintin Foster.

6 Do you remember Mr. Robinson questioning those
7 witnesses?

8 A Not in front of the jury.

9 Q He questioned them outside the presence of the jury?

10 A Yes, sir.

11 Q Okay. When the jury came back, did he do any
12 questioning?

13 A No, sir.

14 Q I'm gonna ask you one more time.

15 How many times did you see your attorney in person
16 before your trial?

17 A Once.

18 Q One time.

19 That was how many days before the trial?

20 A It was that Saturday and that following Monday we were
21 preparing to pick a jury.

22 Q So, Saturday you saw him, Sunday passed, and Monday
23 pick the jury?

24 A Yes, sir.

25 MR. OUTLAW: Okay. No further questions, judge.

1 THE COURT: Ms. White.

2 MS. WHITE: Thank you, Your Honor.

3 Just briefly.

4 CROSS-EXAMINATION

5 BY MS. WHITE:

6 Q Mr. Simpson, the -- you testified that you never
7 received any plea offers before the trial.

8 was there ever a plea offer offered right before the
9 trial or during the trial?

10 A They was talking about -- they was talking about
11 something, but it wasn't never a plea. It wasn't never no
12 plea offer.

13 Q So, you do recall some attempts to get a plea or---

14 A He---

15 Q ---some negotiations?

16 A He stated, when we was in the holding cell during the
17 trial, that he would go on and go talk to the solicitor
18 about a plea, but by that time wasn't nothing else to talk
19 about. That's all it was.

20 Q Okay. Your only visit you said with him was Saturday
21 before the trial and that's when he gave you a couple of
22 statements.

23 Did you communicate with him in anyway prior to that
24 visit?

25 A We, we talked about what, what's the jury, what's the

1 jury trial about and we talked about who will be there
2 testifying.

3 Q Now, was that that Saturday visit or did y'all talk
4 about that prior to that Saturday?

5 A That was that Saturday visit and we talked about that
6 too on one time on the phone about ten or fifteen minutes.

7 Q Okay. So, y'all have talked on the phone.

8 Do you recall how many times you had spoke with him on
9 the phone prior?

10 A No, one time. I talked to him about ten minutes on the
11 phone one time.

12 Q Okay. Did you ever communicate with him or receive any
13 letters from him?

14 A I received a letter indicating that he was my lawyer.

15 Q Okay. And the two witnesses that were testifying
16 against you, one was an alleged codefendant, is that right?

17 A Yes, ma'am.

18 Q Okay. And he had actually -- was it -- had he already
19 pled guilty?

20 A Yes, ma'am.

21 Q Okay. And the other one, was he a, an alleged
22 codefendant as well?

23 A Like another case or something like that?

24 Q No, I think -- was one of them a relative of yours?

25 A Near one of them a relative.

1 Q Okay. Maybe a codefendant then?

2 A One was a codefendant and the other one was in there on
3 other charges.

4 Q Okay. What relationship did he have to this case then,
5 the other witness?

6 That was Mr. Wilson.

7 A He didn't have nothing to do with this case. He say he
8 didn't. That's what he say he did.

9 Q Okay. So, he testified that, in fact, he had been
10 told---

11 A He been -- yes, ma'am.

12 Q ---who had participated in the crime?

13 A He had been told that he seen the videotape two or
14 three times before we wrote his statement --

15 Q Okay. Right.

16 A -- and that he didn't have nothing to do it. I
17 don't -- I ain't know where he come from.

18 Q He just testified that, that he knew who had done it
19 because he had been told, is that right?

20 A Yes, ma'am.

21 Q Okay.

22 All right. That's all the questions I have at this
23 time, Your Honor.

24 THE COURT: Redirect?

25 MR. OUTLAW: Just one more question, judge.

1 REDIRECT EXAMINATION

2 BY MR. OUTLAW:

3 Q Mr. Simpson, when did you receive your discovery?

4 A My---

5 Q The packet of stuff you have right there with you.
6 When did you get that?

7 A What's that date say on that right there?

8 Q Is this it, your discovery?

9 A Yes, sir, August the 11th, 2010.

10 Q So you got it a month ago?

11 A Yes, sir.

12 MR. OUTLAW: No further questions, judge.

13 MS. WHITE: Nothing, Your Honor.

14 THE COURT: You may step down.

15 THE WITNESS: Thank you, sir.

16 THE COURT: The applicant may call its next witness.

17 MR. OUTLAW: No further witnesses, Your Honor.

18 THE COURT: State wish to call witnesses?

19 MS. WHITE: Yes, Your Honor.

20 We call Scott Robinson to the stand.

21 THE COURT: Come forward, sir, to be sworn.

22 SCOTT ROBINSON, being first duly
23 sworn, testified as follows:

24 THE COURT: Have a seat please. Once seated, state
25 your name please.

1 THE WITNESS: Scott Robinson.

2 THE COURT: Your witness, Ms. White.

3 MS. WHITE: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MS. WHITE:

6 Q Mr. Robinson, if you can, just give us a brief
7 background.

8 How long have you been practicing law here?

9 A Here?

10 Q Well, in general and then maybe narrow it down to South
11 Carolina.

12 A I was, I was sworn in November of 1992.

13 Q Okay. And what type of practice do you generally do?
14 What's your, percentage wise, of your legal practice,
15 criminal defense, civil?

16 A Criminal defense, federal and state.

17 Q Okay. And what types of cases have you represented in
18 the past?

19 A Murder, pretty much the litany of cases, tax fraud, tax
20 evasion, racketeering, federal immigration. I've handled
21 cases in New York, North Carolina, Virginia, Alabama,
22 Georgia.

23 Q Okay. Now, in this case, he stated that you were
24 appointed---

25 A I was.

1 Q ---public defender?

2 Explain to us just a little bit about how you were
3 selected to represent him --

4 A Sure.

5 Q -- I guess in the case.

6 A Under the South Carolina Rules regarding attorney, you
7 get to choose your counties that you wish to -- it's 608 I
8 guess it's called, and I am in Spartanburg, Union, at the
9 time Union, and Cherokee.

10 Q Okay. Do you recall when you were appointed to
11 represent Mr. Simpson in the case?

12 A It would of been June I think of 2006.

13 Q And do you recall communication with him between that
14 time and I believe the trial was in November --

15 A Yes.

16 Q -- of 2006?

17 A Yes.

18 Q Do you remember how many times you met with him?

19 A You know, I don't have any independent recollection of
20 each time, but I have a -- I know I corresponded with him in
21 terms of telling him who I was, that I was appointed to
22 represent him. We also had a teleconference with him. We
23 also met, also met before the trial in this case.

24 Q Okay. And in your conversations with him, did you have
25 a chance to explain to him with the, what the charges were,

1 the elements and the potential sentencing?

2 A Yes, we went over all the discovery in the case. I
3 mean every single document that there was that they gave us
4 we went over.

5 Q And was that discovery more than two pages or two
6 statements?

7 A It was probably around -- it included incident report,
8 statements from witnesses. It was probably 40 to 50 pages.

9 Q Okay. And did you feel like, when you went over with
10 him everything, that y'all communicated well, that he
11 understood what he was facing, the charges?

12 A Yes, he's a very, very articulate intelligent guy. I
13 mean he understood it very well.

14 Q And how old was he at this time?
15 Do you recall?

16 A It was 2006, November 2006. From the warrant, it
17 appears he was born in 1984. So at that time he would of
18 been 22.

19 Q Twenty-two.

20 Okay. And do you recall if he -- this was his first
21 experience in the criminal justice system or --

22 A It wasn't his first experience. The -- I don't think
23 that he -- he had been charged before with different things,
24 but I don't think he ever had a conviction before that time.

25 Q Okay. And what kind of investigation did you do in

1 regards to this case?

2 A As far as the investigation goes, there really wasn't a
3 lot to investigate. The codefendant -- one of the
4 codefendants had testified against him. I don't even know
5 who that was, but I guess he had a better deal in this case.
6 The person who saw him who gave a statement in the case, she
7 pointed out who he was and so forth. So, the investigation
8 really consisted of the alibi that he had in this matter at
9 all.

10 Q Okay. And had he shared with you his version of events
11 in the case or did he---

12 A He did.

13 Q ---just flat out deny that he had participated?

14 A He denied that he participated.

15 Q In regards to the actual trial, he was tried with his
16 codefendant, Mr. Knuckles, is that right?

17 A Yes.

18 Q Okay. And, therefore, you were representing him and,
19 and who was representing Mr. Knuckles at the time?

20 A Bill Rhoden of the Cherokee County Bar.

21 Q Okay. Had -- did you have a chance to talk with
22 Mr. Rhoden prior to about the case?

23 A Yes, we were kind of -- we actually -- Bill's a, Bill's
24 a fine attorney and, and he knew the Cherokee County jury
25 pool, knew the, knew kind of about the community and so

1 forth, and I, being from Greenville, I kind of relied on him
2 cause I was not from Cherokee. But we talked a lot about
3 strategy, a lot about defenses and things of that nature.

4 Q And what was the strategy in this case?

5 A Well, they both denied that they were -- that that was
6 them, that was -- and really the strategy consisted of
7 trying to discredit witnesses showing that they were not
8 credible and so forth. But, again, there was no alibi that
9 we had in that matter that we could point to.

10 Q And you made a couple of motions.

11 Do you recall making a Batson challenge to some of the
12 jury strikes?

13 A I'd have to look at the transcript---

14 Q Well---

15 A ---briefly to tell you. If I did, it would be in the
16 transcript. I --.

17 Q Okay. All right. And did you cross-examine some of
18 the witnesses in this case?

19 A Yes.

20 Q And including the store clerk perhaps or the detective
21 in the case?

22 Do you recall?

23 A If -- I'd have to go by the transcript obviously. If
24 the transcript had me doing that, I did do that.

25 Q Correct.

1 A But a few moments ago regarding the, the codefendant's
2 attorney, he would go first usually in the case, and a lot
3 of times you, you can only follow-up with questions that
4 he's not gonna answer or he's not been effective with. And
5 if I did not follow up with a whole litany of the same
6 questions again, that was the reason for it because he asked
7 very good questions I thought, and, you know, I could just
8 follow his -- what he was doing---

9 Q Okay.

10 A ---in this matter.

11 Q All right. Did you feel like y'all presented a pretty
12 good case or, or did you, did you know kind of have a
13 feeling as to what was gonna happen or --?

14 A The -- when you have a, when you have a witness who is,
15 who is a codefendant in the matter, that's kind of a
16 difficult situation.

17 Q Uh-huh. (Affirmative).

18 A It was more difficult when the person who actually
19 recognized or thought she recognized these, the two of them,
20 but I had no -- you know, we presented as good a case as we
21 could under the circumstances I thought.

22 Q Talk with me briefly about the plea offers.

23 Were there ever any negotiations for a plea in this
24 case?

25 A Well, there, there were. Not -- up until the time of

1 the trial, actual trial, there were none till the time we
2 got there, and the last -- the offer that we had in the case
3 was about five minutes before the jury came in, before the
4 judge came in and so forth, and Michael Morin, who's the --
5 I think he is the deputy solicitor there, he had conveyed to
6 me, and this is my recollection from four years ago, he had
7 conveyed to me that he had offered a YOA sentence in the
8 case, and we -- both Bill and I went back and presented that
9 to them, and they kind of had to think about it a little
10 bit. And by the time they were able to give an answer to
11 the case, Mike said there were no more offers, and, you
12 know, so that -- the offer was kind of -- it was there for
13 probably around five minutes or so. It really wasn't a very
14 long, long offer and unfortunately it was taken away as
15 quick as it came.

16 Q Okay. And ultimately he received 20 years. I believe
17 he testified his codefendant received 18.

18 A I think his codefendant received 15 I think.

19 Q Fifteen. Okay.

20 A But yeah, unfortunately.

21 MS. WHITE: All right. That's all the questions I have
22 at this time, Your Honor.

23 THE COURT: Your witness.

24 MR. OUTLAW: Thank you, judge.

25 THE COURT: Yes, sir.

1 CROSS-EXAMINATION

2 BY MR. OUTLAW:

3 Q Mr. Robinson, you testified that you do a lot of
4 indigent defense cases in several counties I guess?

5 A I do. I am appointed on cases. Yeah, I'm appointed.
6 I do.

7 Q All right.

8 A Not that I do a lot of it, but I get appointed by
9 counties that I have that I'm on the list for.

10 Q Okay. And at any given time -- I mean how many of
11 those would you have roughly?

12 A I'd say about five percent of my practice maybe. Five
13 percent.

14 Q Okay.

15 A Something like that. Five, ten percent.

16 Q Total criminal cases, how many would you generally
17 have?

18 A How many cases?

19 Q (Nods affirmatively.)

20 A I don't take -- I don't -- I limit myself as far as the
21 number of cases I have cause I can't handle thousands of
22 cases cause I'm not set up for it, but I handle as much as I
23 can -- as much as myself can handle. So, probably around 75
24 maybe, 75 cases possibly cause I have an investigator, and
25 he has to make sure he goes out and does things and

1 interviews people and all that kind of stuff.

2 Q Did the investigator do any work on this case?

3 A I didn't have this investigator at that time. No, did
4 not.

5 Q What is your normal procedure when you get appointed to
6 a case especially the one who has the defendant in the
7 detention center?

8 A I go and meet with them. I typically---

9 Q That's your first step?

10 A First step, right. I send them a letter first telling
11 me -- telling them usually a little bit about myself.

12 Sometimes they, they just want to know, you know, what kind
13 of background you have, how long you've practiced, general
14 things like that.

15 Q So, you would send a letter first and then you would go
16 see them?

17 A I would typically do that, correct.

18 Q Okay. Did you follow this same procedure with Mr.
19 Simpson?

20 A You know, I believe I did, but honestly, Mr. Outlaw, I
21 have no independent recollection. I mean I really don't.
22 It's four years ago.

23 Q Right.

24 A I would normally customarily I always, I always do
25 that, but I can't tell you independently without, you know,

1 as far as notes, I don't have a note of that. I have where
2 I talked to him on the phone and so forth and met with him,
3 but I don't have any independent recollection of meeting him
4 right after I got appointed.

5 Q And you stated you went through the discovery with
6 him.

7 A Yes.

8 Q Is that every bit you were given from the Solicitor's
9 office?

10 A Yes, sir, every bit we went through, correct.

11 Q would that be on the telephone or in person?

12 A In person.

13 Q Okay. would that be before the Saturday before the
14 trial or would that be Saturday before the trial?

15 A I'm really not sure. I'm not sure. I know I went with
16 him -- went over it with him the Saturday before the trial,
17 and I would think I would of met with him before that time.

18 Q But you're not sure?

19 A Again, I have no independent -- I can't tell you
20 something I don't have any independent, independent
21 recollection of.

22 Q In an average case, when someone is in jail from June
23 to November, how many times would you normally try to see
24 them?

25 A As much as I could.

1 Q As much as you could.

2 All right.

3 A The customary way I would do it is that the
4 investigator that I have is a former Greenville -- he was
5 over violent crimes in Greenville for 20 something years,
6 and he immediately -- we would meet with them probably
7 every, as far as going over every single stitch of evidence,
8 going over videos, all the discovery, going over every
9 single document, meeting with him---

10 Q But you didn't turn it over to him, right?

11 A I didn't turn it over to him, no.

12 Q Okay.

13 A Correct.

14 MR. OUTLAW: No further questions, judge.

15 THE COURT: Ms. White, anything further?

16 MS. WHITE: Nothing, Your Honor.

17 THE COURT: You may step down.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: All right. The applicant may call its next
20 witness or the State's witness.

21 State may call its next witness.

22 MS. WHITE: State has no other witnesses, Your Honor.

23 THE COURT: All right. Mr. Outlaw, do you wish to
24 argue on behalf of your client?

25 MR. OUTLAW: No argument, judge.

1 THE COURT: All right. Does the State have any
2 comments?

3 MS. WHITE: Nothing, Your Honor.

4 THE COURT: All right. A review of this record
5 indicates to me that the defendant didn't meet with -- it
6 appears that he met with the attorney, that there was a
7 discussion of the discovery. There's a discrepancy as to
8 how much discovery was discussed, but there's no evidence of
9 any prejudice to the applicant as a result of the meetings.
10 There's no indication of witnesses who were not interviewed
11 or matters that the attorney didn't handle for him.

12 I find that the applicant has not met the burden of
13 proof necessary to justify a new trial in the matter. I'll
14 deny the application and I'll ask the State to prepare an
15 order in accordance with my finding.

16 MS. WHITE: Thank you, Your Honor.

17 THE COURT: Thank you very much.

18 MR. OUTLAW: Thank you, judge.

19

20

21 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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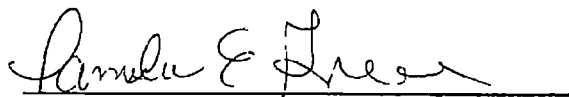
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 16th day of September, 2010.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 13th, 2014



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	
Jonathan Simpson, #318626	)	2009-CP-11-0992
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

2009 NOV 29 A 8:17
BRADY W. COBBE

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 21, 2009. The Respondent made its Return on or about March 15, 2010. An evidentiary hearing into the matter was convened on September 16, 2010, at the Spartanburg County Courthouse. The Applicant was present and represented by Thomas B. Outlaw, Esquire, at the hearing. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Scott D. Robinson, Esquire, testified on behalf of the State. This Court also had before it a copy of the trial transcript, the records of the Cherokee County Clerk of Court, Applicant's Appellate records and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. Applicant was indicted at the September 2006 term of the Cherokee County Grand Jury for armed robbery (2006-GS-11-0873). Scott D. Robinson, Esquire, represented him. On November 6-8, 2006, Applicant underwent trial,

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pursuant to which he was found guilty as indicted. The Honorable John C. Hayes, III, sentenced him to confinement for twenty (20) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Simpson, Op. No. 2009-UP-337 (S.C. Ct. App. filed September 10, 2009). The Remittitur was sent on September 28, 2009.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel, in that;
 - a. Counsel allowed person to testify without having a hearing under Massiah v. United States.
2. The trial court made improper ruling by allowing evidence of defendant's admission of guilt.

SUMMARY OF TESTIMONY

Applicant testified that he was arrested on May 10, 2006, for armed robbery and applied for an attorney through the Cherokee County Public Defender's office three weeks after his arrest. Applicant testified that four months following his application he received a letter informing him that Scott D. Robinson (Counsel) was his attorney. Applicant testified that the only visit from Counsel was the Saturday before trial. Applicant testified that he and Counsel discussed whether or not Applicant should plead guilty or proceed with a jury trial. Counsel also discussed the witnesses with Applicant at this meeting. Applicant testified that he gave Counsel a couple of statements at this meeting as well. Applicant also testified that he talked on the phone with Counsel and received a letter from Counsel prior to trial.

Applicant testified that at trial, his co-defendant's counsel did the majority of the talking and asked the majority of the questions to witnesses. Applicant testified that Wilson and Foster were

both witnesses against him, but that Counsel only questioned them outside of the presence of the jury. Applicant testified that he recalled plea negotiations, but did not believe that he ever received a plea offer prior to trial. Applicant also testified that he received a sentence of twenty years, while his co-defendant received a sentence of eighteen years. Applicant testified that he only received his packet of discovery materials on August 11, 2010.

Counsel to his over eighteen years of legal experience, including handling cases in both Federal and State courts and crimes from murder to tax fraud. Counsel testified that he was appointed in June 2006 to represent the Applicant on his charges. Counsel testified that although he does not have an independent recollection of this case, his normal practice is to send a letter to his client first and then follow-up with an in person visit. Counsel testified that he reviewed the discovery materials with Applicant in-person, which included incident reports and witness statements. Counsel testified that they also discussed the charges facing Applicant and the fact that his alleged co-defendant was testifying against him and he had no alibi. Counsel testified that during his representation of the Applicant, Applicant continued to deny his involvement in the crime. However, Counsel testified that Applicant also had previous charges at twenty-two years old.

Counsel testified that he did follow the co-defendant's attorney in questioning the witnesses and did not think that he should ask simply repetitive questions. Counsel testified that the trial strategy was to discredit the witnesses. Counsel also testified that the only plea negotiations occurred at the time of trial, when the Solicitor offered a YOA sentence and Applicant turned it down.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the

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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 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, id. The Applicant must overcome this presumption 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. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced

the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

As to Applicant's allegation that Counsel was ineffective for failing to spend enough time with Applicant prior to trial, this Court finds that the Applicant has failed to meet his burden of proof. This Court also finds Counsel's testimony as to this issue to be more credible than Applicant's testimony. Counsel communicated with the Applicant and reviewed discovery materials with Applicant prior to trial. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Here, the Applicant could not point to any specific matters counsel failed to discover had there been additional meetings. The Applicant has not shown that counsel was deficient in his representation based on lack of consultation time. Therefore, this claim is denied and dismissed.

Applicant alleged that Counsel was ineffective for failing to effectively cross-examine several witnesses. This Court finds that Applicant has failed to meet his burden of proof as to this allegation. Again, this Court finds Counsel's testimony regarding his strategy in this matter to be credible more credible than Applicant's. The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation, and of showing 'whether such information . . .

would have produced a different result." United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). The Applicant did not proffer any questions counsel allegedly failed to ask, and did not present any testimony showing the witnesses' answers at trial would have been different. Accordingly, the Applicant has not shown that a different approach to cross-examination would have been beneficial to the defense. Therefore, this claim is denied and dismissed.

Other Allegations

As to the allegations raised in Applicant's application regarding the lack of a Massiah hearing, trial court error, and Counsel's ineffectiveness for allowing an expert to testify when the expert was not qualified to testify, this Court finds that the Applicant presented no evidence or testimony in support of these allegations. Therefore, Applicant failed to meet his burden of proof and the allegations are denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) 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 PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South

Carolina Appellate Court Rule 243¹ for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 24th day of November, 2010.

[Signature], South Carolina

[Signature]
Roger L. Couch
Presiding Circuit Court Judge

¹ Formerly Rule 227, SCACR. Rules 224 through 230, SCACR, were renumbered as Rules 240 through 246, SCACR, by order of the South Carolina Supreme Court dated April 29, 2009.

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The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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FAX: (803) 734-1489
www.sccourts.org

January 25, 2013

Thomas Bryant Outlaw, Esquire
500 Geisler Road
Piney Flats, TN 37686

Re: Jonathan L. Simpson, # 318626 v. State
Appellate Case No. 2013-000112
Lower Court Case No. 2009-CP-11-00992

Dear Mr. Outlaw:

Enclosed is a copy of documents filed by your client, Mr. Jonathan Simpson. These documents have been construed as a notice of appeal. Since you were his counsel below, I remind you that you remain as his counsel of record before this Court. Rule 71.1(g) of the South Carolina Rules of Civil Procedure.

For this matter to continue, it will be necessary for the following items to be provided to this Court:

- (1) A copy of the orders to be challenged on appeal; ,
- (2) A proof of service showing that the notice of appeal has been served on opposing counsel; and,
- (3) A statement as to when you received written notice of entry of the order from which this appeal is taken. According to the case management system for Cherokee County, this final order was apparently filed on or about November 29, 2010.

<http://publicindex.sccourts.org/cherokee/publicindex/CaseDetails.aspx?County=11&CourtAgency=11002&Casenum=2009CP1100992&CaseType=V>

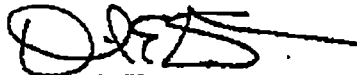
These items should be provided within fifteen (15) days of the date of this letter.

This case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/HTMLFiles/2007-08-13-02.htm. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

Very truly yours,


CLERK

Enclosure

cc: Suzanne Hollifield White, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Jonathan Leon Simpson, #318626
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

¹ The lower court case management system lists his first name as Johnathan rather than Jonathan.

The Supreme Court of South Carolina

Jonathan L. Simpson, # 318626, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2013-000112

Cherokee County
Trial Court Case No. 2009CP1100992

ORDER

Petitioner has failed to provide this Court with a copy of the order(s) to be challenged on appeal, and a proof of service showing that the notice of appeal has been served on opposing counsel as required by Rule 203(d)(1)(B) (i) and (ii) of the South Carolina Appellate Court Rules (SCACR). Further, petitioner's counsel has failed to advise this Court of the date on which he received written notice of entry of the final order in this matter as requested by letter dated January 25, 2013.

Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221, SCACR.

FOR THE COURT

BY



CLERK

Columbia, South Carolina
February 22, 2013

cc: Suzanne Hollifield White, Esquire
Thomas Bryant Outlaw, Esquire
Mr. Jonathan Leon Simpson, #318626

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The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
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March 12, 2013

Brandy W. McBee
PO Drawer 2289
Gaffney SC 29342-2289

REMITTITUR

Rc: Jonathan L. Simpson v State
Lower Court Case No. 2009CP1100992
Appellate Case No. 2013-000112

Dear Clerk of Court:

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

Very truly yours,

CLERK

cc: Suzanne Hollifield White, Esquire
Thomas Bryant Outlaw, Esquire
Jonathan Leon Simpson, 318626

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The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
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March 29, 2013

Mr. Jonathan Leon Simpson, 318626
Lee Correctional Inst.
1204 East Church St.
Bishopville SC 29010

Re: Jonathan L. Simpson v State
Appellate Case No. 2013-000112

Dear Mr. Simpson:

This responds to your correspondence dated March 25, 2013. Please be advised that the appeal in this matter was dismissed by order dated February 22, 2013. When no petition for reinstatement or rehearing was received, the remittitur was sent to the circuit court on March 12, 2013. Rule 221, SCACR.

Since the remittitur has been sent, no action will be taken on your request to appoint new counsel or to require the submission of documents. *Wise v. South Carolina Dept. of Corrections*, 372 S.C. 173, 642 S.E.2d 551 (2007) ("When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter.").

Very truly yours,

CLERK

cc: Suzanne Hollifield White, Esquire
Thomas Bryant Outlaw, Esquire

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FORM 5

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of Cherokee

014CP-110053

Jonathan Leva Simpson # 318626
Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEF

FILED IN SET OF
CLERK OF COURT
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BENJAMIN W. MCDEE

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

- Place of detention Lee Correctional Institution
990 Wabacky Highway - Bishopville SC 29010
- Name and location of Court which imposed sentence Cherokee County
General Session Court
- Name(s) of co-defendant(s) (if any) Marcellous Knuckles
Laquinton Foster
- The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) Armed Robbery 06-68-11-00873
(b) 20 years

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) November 8th 2006
- (b) 20 years
- (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?
The judgment of conviction and 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 September 1st, 2009
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. September 1st, 2009
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2009-1P-436
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) NA

FILED IN OFFICE OF
 CLERK OF COURT
 CHANCERY COUNTY, S.C.
 2009 JUN 27 AM 8 49
 RANDY W. MCBBE

10. A) Trial counsel allowed expert to testify at trial who was not qualified by state during trial to do so.

10B) Trial counsel allowed Person to testify without having a hearing under Massiah v. United States

10C) Trial court made improper ruling by allowing evidence of defendants admission of Guilt.

11. A) Trial Counsel Failure and court ruling violated the applicant Right to a fair trial

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CLERK OF COURT
DISTRICT COURT, 1st JUD. DIST.
2014 JUN 27 AM 8 49
BRANDY W. MOORE

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Conviction Obtained in Violation of Constitution
- (c) Trial counsel allowed expert to testify at trial
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See sheet attached
- (b) ↓
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes - Post-conviction Relief
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Post-conviction - Relief
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Cherokee County Court
- ii. _____
- iii. _____
- iv. _____

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2014 JAN 27 PM 8:49
BRANDY W. NOBLET

(c) the disposition thereof:

i. Denied with prejudice

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. Orders of PCR Judge of final order was

ii. denied and dismiss with prejudice.

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?

Yes.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. Ineffective of Counsel

ii. Conviction obtained in violation of constitution

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

FILED IN OFFICE OF
CLERK OF COURT
SHERIFF COURT, CO.
JAN 27 AM 8 49
BRANDY W. MCBEE

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

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

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

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. Scott D. Robinson / out of Greenville

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

FILED IN OFFICE OF
 CLERK OF COURT
 GREENVILLE COUNTY, S.C.
 2014 APR 27 AM 8 46
 BRANDY W. MOBEE

19. State clearly the relief you seek in filing this application: 15 years
Ms. LeShanic for the State, for my trial. Stated-
Both of them. hand of one, hand of all & I clearly
seek (15 years) just as well trial & a defendant gotten.
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Charleston)

I, Jonathan L. Simpson S.L.S., 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.

Jonathan Simpson S.L.S.

SWORN to and subscribed before me this 29th
 day of January, 2014.
M. Michael (L.S.)
 Notary Public

My Commission Expires: 9/3/2014

FILED IN OFFICE OF
 CLERK OF COURT
 BRANDY W. MOORE
 2014 JAN 27 AM 8 49
 CHESAPEAKE, SOUTH CAROLINA

014CP-10053

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

I, Jonathan Simpson, 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.

Jonathan Simpson S.L.S.
Applicant

SWORN or affirmed to and subscribed before me this

26th day of January, 2014.

Michael Michel
Notary Public

My Commission Expires: 9/3/2014

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2014 JAN 27 AM 8 50
BRANDY W. MCBEE

014CP-110053

10/a) Applicant entitled to A Austin V. State P.C.R or Related Appeal.

11/a) Applicant avers that applicant is entitled to another P.C.R pursuant Attorney did not file a Appeal after the 1st P.C.R final order was submitted to the Clerk of Court. Applicant was awaiting for Appeal to be filed for over 2 years then contacted the clerk of Court approx Dec 2012, and applicant did not know whether or not the P.C.R Application was denied or still pending until the clerk of court and Supreme Court contacted Applicant to contact Counsel Thomas B. Outlaw Esq. Then counsel forwarded applicant a letter that states:

Dear Mr. Simpson:

In receipt of your letter regarding an appeal of your P.C.R hearing, I have spoken to several people about the best way for you to proceed. You may file another P.C.R and entitle it as Austin P.C.R. Austin V. State may allow the case to be reopened due to a related perfection of the appeal. Please reference Austin in the P.C.R appeal and, from what I understand, a contact attorney will be appointed to your case. Furthermore, I've spoken to the Assistant Attorney General and the Attorney General's office may be able to agree by consent order to allow the case to proceed.../

The letter was dated June 1st 2013 and then applicant proceeded to P.C.R Avenue. This court may contact Attorney General office and Thomas B. Outlaw Esq. office. Applicant contends that this court should grant A P.C.R avenue under the order of Attorney General office and hear all of Applicant issues.

014CP-110053

Under Pruitt and McCay, the issues weren't ruled on properly, nor did the State of South Carolina put a answer to my allegations and P.C.R. to Applicant claims in 1st P.C.R. See Pruitt v. State, 423 S.E. 2d 121 (SC 1992) This is to rehear all issues and place correct ruling finding of fact and conclusion of law to each and every allegation in the Judge order and to applicant issues. See § 17-27-80. A hearing evidentiary may be held where facts are not disputed by the record. See Sharper v. State / See Cohns v. State, 408 S.E. 2d 223 (1991).

FILED IN OFFICE OF
CLERK OF JUDGE
COURT OF COMMON PLEAS, S.C.
2011 JAN 27 AM 8 50
FRANK W. MOORE

Law Office of Leah B. Moody, LLC

235 East Main Street
Post Office Box 1015
Rock Hill, South Carolina 29731
lbmativ@comporium.net

Phone: (803) 327-4192

Fax: (803) 329-1344

July 2, 2014

Suzanne White, Esquire
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

RE: Jonathan Leon Simpson v. State of South Carolina
C.A. No.: 2014-CP-11-0053

Dear Ms. White:

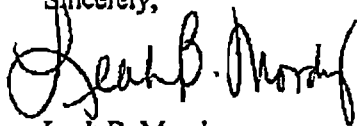
Please be informed that I have three (3) potential amendments to Mr. Jonathan Leon Simpson's PCR Application in the above-referenced matter.

The potential amendment to Mr. Simpson's PCR Application would be amended under Question 10 and may be generally described as:

- (1) Ineffective Assistance of Counsel: Counsel failed to object to State's fingerprint evidence identifying defendant as perpetrator
- (2) Ineffective Assistance of Counsel: Counsel failed to call an expert witness at trial to rebut State's fingerprint evidence identifying defendant as perpetrator
- (3) Ineffective Assistance of Counsel: Counsel failed to subject State's evidence identifying defendant as perpetrator to meaningful adversarial testing

If you have any questions or concerns, please feel free to contact my office. Thank you.

Sincerely,



Leah B. Moody

LBM/res

Cc: Jonathan Leon Simpson

STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE)

Jonathan Leon Simpson, #318626,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2014-CP-11-0053

RETURN

BRANDY W. MCBE

2014 JUN 21 AM 11 43

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

The Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed January 27, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. Applicant was indicted at the September 2006 term of the Cherokee County Grand Jury for armed robbery (2006-GS-11-0873). Scott D. Robinson, Esquire, represented him. On November 6-8, 2006, Applicant underwent trial, pursuant to which he was found guilty as indicted. The Honorable John C. Hayes III, sentenced him to confinement for twenty (20) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Simpson, Op. No. 2009-UP-337 (S.C. Ct. App. filed September 10, 2009). The Remittitur was sent on September 28, 2009.

The Applicant subsequently filed an application for PCR on October 21, 2009, in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel, in that;
 - a. Counsel allowed person to testify without having a hearing under Massiah v. United States.
2. The trial court made improper ruling by allowing evidence of defendant's admission of guilt.

The Respondent made its Return on or about March 15, 2010. An evidentiary hearing into the matter was convened on September 16, 2010, at the Spartanburg County Courthouse. The Applicant was present and represented by Thomas B. Outlaw, Esquire, at the hearing. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. By Order dated March 24, 2010, the Honorable Roger L. Couch denied and dismissed the Applicant's Application for PCR. There was no appeal filed following the denial of the application.

Attached herewith and incorporated herein by reference are the records of the Cherokee County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the records from the Applicants first PCR application.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons¹:

1. Ineffective assistance of trial counsel, in that;
 - a. Counsel allowed expert to testify at trial who was unqualified to testify as expert,
 - b. Counsel allowed person to testify without having a hearing under Massiah v. United States,
2. Trial court error, in that;

¹ Respondent also received notice from Applicant's appointed counsel that additional amendments may be forthcoming regarding: 1) Trial Counsel's failure to object to the State's fingerprint evidence identifying the defendant as the perpetrator, 2) Trial Counsel's failure to call an expert witness at trial to rebut the State's fingerprint evidence, and 3) Trial Counsel's failure to subject the State's evidence identifying the defendant as perpetrator to meaningful adversarial testing. However, no formal amendment has been filed at this time.

- a. The court erred in allowing evidence of defendant's admission of guilt;
- 3. Ineffective assistance of PCR counsel, in that;
 - a. Counsel failed to file a notice of appeal following the denial of the application.

III.

Respondent submits that this is a successive application and the Court should summarily dismiss the current Application because it is clearly successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are clearly disfavored.

Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

As the record reflects, not only did Applicant have the opportunity to raise these issues in his prior application, but he did raise identical issues in his prior application and at the hearing.

IV.

The Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. The Respondent lacks sufficient information to admit or deny this allegation. The Respondent requests an evidentiary hearing on this ground for relief. Sharper, Id.; Austin, Id.

V.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of whether the Applicant was denied a right to appeal the denial of his first application for post-conviction relief. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that a hearing be held solely on the Applicant's Austin claim.

Respectfully submitted,

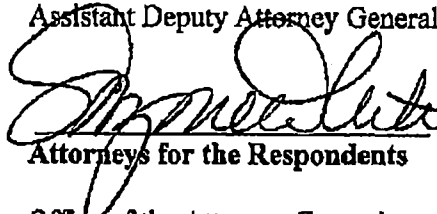
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By:


Attorneys for the Respondents

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

August 20, 2014.

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2011 AUG 21 AM 11 44
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE)

JONATHAN LEON SIMPSON, #318626)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2014-CP-11-0053

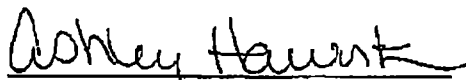
AFFIDAVIT OF SERVICE BY MAIL

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
AUG 21 AM 11 44
BRANDY W. MCBEE

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ms. Leah B. Moody
Law Office of Leah B. Moody, LLC
PO Box 1015
Rock Hill, SC 29730

DATED this 20TH day of August, 2014.



Ashley Haworth, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

Jonathan Leon Simpson,
S.C.D.C. No. 318626,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE SEVENTH JUDICIAL CIRCUIT

2014-CP-11-0053

**CONSENT ORDER GRANTING
AN APPEAL PURSUANT TO
AUSTIN V. STATE¹**

FILED IN THE OFFICE
CLERK OF COURT
2014 FEB - 8 P 2:59
BRANDY W. ICBEE
CHEROKEE COUNTY, SC

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 27, 2014. Respondent made its Return on August 21, 2014.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. Applicant was indicted at the September 2006 term of the Cherokee County Grand Jury for armed robbery (2006-GS-11-0873). Scott D. Robinson, Esquire, represented him. On November 6-8, 2006, Applicant underwent trial, pursuant to which he was found guilty as indicted. The Honorable John C. Hayes III, sentenced him to confinement for twenty (20) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Simpson, Op. No. 2009-UP-337 (S.C. Ct. App. filed September 10, 2009). The Remittitur was sent on September 28, 2009.

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

2009-CP-11-0992

Applicant subsequently filed an application for PCR on October 21, 2009, in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel, in that;
 - a. Counsel allowed person to testify without having a hearing under Massiah v. United States.
2. The trial court made improper ruling by allowing evidence of defendant's admission of guilt.

Respondent made its Return on or about March 15, 2010. An evidentiary hearing into the matter was convened on September 16, 2010, at the Spartanburg County Courthouse. Applicant was present and represented by Thomas B. Outlaw, Esquire, at the hearing. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented Respondent. By Order dated March 24, 2010, the Honorable Roger L. Couch denied and dismissed Applicant's application with prejudice.

Applicant attempted to file a notice of appeal. By Order dated February 22, 2013, the South Carolina Supreme Court dismissed the matter because Applicant's counsel failed to provide the Supreme Court with a copy of the order to be challenged on appeal and a proof of service showing that the notice of appeal has been served on opposing counsel as required by Rule 203(d)(1)(B) (i) and (ii) of the South Carolina Appellate Court Rules. Further Applicant's counsel failed to advise the Supreme Court of the date on which he received written notice of entry of the final order in this matter as requested by the Supreme Court in a letter dated January 25, 2013. The Remittitur was issued March 12, 2013.

Current Application (2014-CP-11-0053)

In this current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

RKK

1. Ineffective assistance of trial counsel, in that
 - a. Counsel allowed expert to testify at trial who was unqualified to testify as expert
 - b. Counsel allowed person to testify without having a hearing under Massiah v. United States
2. Trial court error, in that
 - a. The court erred in allowing evidence of defendant's admission of guilt;
3. Ineffective assistance of PCR counsel, in that;
 - a. Counsel failed to file a notice of appeal following the denial of the application.

Before this Court are the records of the Cherokee County Clerk of Court regarding Applicant's convictions, the records from the South Carolina Department of Corrections, Applicant's prior PCR application and the corresponding Order of Dismissal, the letter from the Supreme Court to Applicant's prior PCR attorney concerning the attempted direct appeal in Applicant's prior PCR, the Supreme Court's Order dismissing the attempted direct appeal in Applicant's prior PCR and the corresponding Remittitur, and Applicant's current PCR application and Respondent's Return thereto.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application.

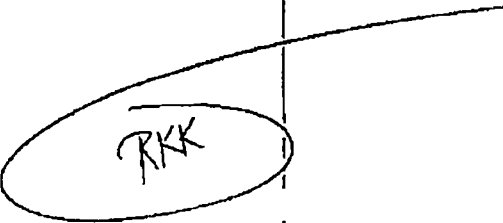
Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application. Applicant's other allegations of "ineffective assistance of counsel" and "trial court error" in this current application are successive to his prior PCR application or not proper for a PCR proceeding, and he understands that he waives the right to pursue any other PCR

claims with this consent order. Respondent consents to allow Applicant a belated PCR appeal of the dismissal of his first PCR application. After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that Applicant did not knowingly and voluntarily waive his right to appeal his first PCR application. Accordingly, this Court grants Applicant a belated PCR appeal pursuant to Austin v. State, in which he may raise on appeal any issues that were raised and ruled upon in his prior application. In order to secure this review, however, the Applicant must appeal from this Order.

CONCLUSION

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243 of the South Carolina Appellate Court Rules for the appropriate procedures for filing a belated appeal.

[order and signatures on following page]



RKK

IT IS THEREFORE ORDERED:

1. That the Applicant be granted an appeal of case 2009-CP-11-0992 pursuant to Austin v. State;
2. That all other PCR allegations are waived and dismissed with prejudice;
3. That the Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 5th day of February, 2015. 2016

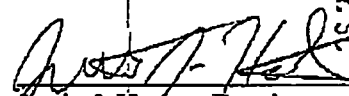

 R. KEITH KELLY
 Chief Administrative Judge
 Seventh Judicial Circuit

Spartanburg, South Carolina.

We Consent:


 Leah Moody, Esquire
 Attorney for the Applicant

Jonathan Leon Simpson
 Jonathan Leon Simpson, #318626
 Applicant


 Justin J. Hunter, Esquire
 Assistant Attorney General
 Attorney for the Respondent

FILED IN THE OFFICE
 CLERK OF COURT
 2016 FEB - 8 P 2:59
 BRADY W. MCREE
 CHEROKEE COUNTY, SC

FORM 5

STATE OF SOUTH CAROLINA

County of CherokeeJonathan Leon Simpson, #318626

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

016CP-110348APPLICATION 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 particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Allendale C.I., POB 1151, Fairfax, SC 29827
Trenton C.I. 84 Green House Road, Trenton SC, 29847
2. Name and location of Court which imposed sentence Cherokee County General Sessions
3. Name(s) of co-defendant(s) (if any) Marcellous Knuckles, Laquinton Foster
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Armed Robbery 2006-GS-11-08730 20 years
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) November 8, 2006- 20 years
- (b) _____
- (c) RECEIVED
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
The judgment of conviction and 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 September 1, 2009
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. September 1, 2009
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2009-UP-436
- 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 Counsel; Conviction obtained in viol. of constit.
- (a) trial counsel allowed expert to testify at trial who was not qualified by state during the
- (b) trial to do so. Allowed person to testify without having a hearing under Massiah v. U.S.
- (c) trial court made improper ruling by allowing evidence of Def.'s admission of guilt.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) trial counsel failure and court ruling violated the applicant's right to a fair trial.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes- post conviction of relief
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other _____
13. If you answered "yes" to any part of (12), list with respect to each petition motion application:
- (a) the specific nature thereof:
- i. Post Conviction Relief
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Cherokee County
- ii. _____
- iii. _____
- iv. _____

FILED IN THE OFFICE
CLERK OF COURT
MAY 16 A 11:32
GRAND JURY
CHEROKEE COUNTY, SC

9A2011-00810

(c) the disposition thereof:

i. denied with prejudice

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. Order of PCR Judge (Final Order) was denied and dismissed with prejudice.

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?

Yes.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. Ineffective Assistance of Counselii. Conviction obtained in violation of constitution.

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

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

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

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. Scott D. Robinson- Greenville, SC

ii. Thomas B. Outlaw

iii. Leah B. Moody

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

i. Trial

ii. PCR

iii. PCR

FILED IN THE OFFICE
 CLERK OF COURT
 2016 MAY 16 A 11:32
 BRANDY W. MOORE
 CHEROKEE COUNTY, SC

3180440370

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

15 years Ms. Leskanic for the State, for Applicant trial. Stated both of them hand of one ha
of all. Applicant clearly seeks (15 years) just as well trial co-def received.

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

No

STATE OF SOUTH CAROLINA

County of Cherokee

VERIFICATION

I, Jonathan Leon Simpson, # 318626, 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.

Jonathan Simpson 318626

SWORN to and subscribed before me this 28th
 day of April, 2016.

[Signature] (L.S.)
 Notary Public

My Commission Expires: October 7, 2024

016CP-110348

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

I, Johnathan Leon Simpson, #318626, 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.

Johnathan Simpson 318626
Applicant

SWORN or affirmed to and subscribed before me this
28th day of April, 2016.

[Signature]
Notary Public

My Commission Expires: October 7, 2024

FILED IN THE OFFICE
CLERK OF COURT
2016 MAY 16 A 11:32
BRANDY W. HOBBS
CHEROKEE COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Jonathan Leon Simpson, #318626,
Applicant,

v.

Motion to Amend Post-Conviction Relief
C.A. No.: 2016-CP-11-348

State of South Carolina,

Respondent.

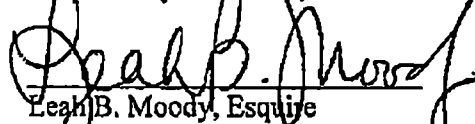
FILED IN THE OFFICE
CLERK OF COURT
2017 JUN -9 AM 10:02
CHEROKEE COUNTY, SC

To: Valerie Giovanoli, South Carolina Attorney General, and Cherokee County Clerk of Court for entry of record:

The Applicant, by and through the undersigned counsel, hereby moves the Court for an order permitting him to amend the application for post-conviction relief to include the following additional grounds for relief:

1. The undersigned PCR counsel and Attorney General consented to an Order Granting an Appeal Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395(1991). PCR Counsel failed to perfect the PCR Notice of Appeal¹.

Respectfully submitted,



Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
Post Office Box 1015
Rock Hill, SC 29731
lbmatty@comporium.net
Telephone: (803)327-4192
Facsimile: (803) 329-1344

¹ The executed and clocked Consent Order was inadvertently overlooked. The undersigned was under the impression she had not received the executed and clocked Consent Order. Therefore, the undersigned re-filed this PCR application on behalf to Applicant.

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Jonathan Leon Simpson, #318626,
Applicant,

v.

State of South Carolina,

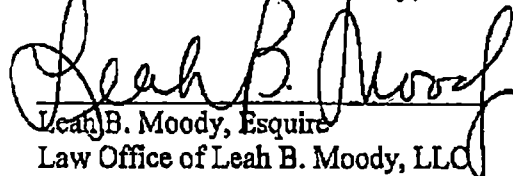
Respondent.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Motion to Amend Post-Conviction Relief
C.A. No.: 2016-CP-11-348

I certify that I have served the Motion to Amend PCR by depositing a copy of it in the United States Mail, postage prepaid, on June 6, 2017 addressed to its attorney of record, Valerie Giovanoli, Post Office Box 11549, Columbia, South Carolina, 29211-1549.

Law Office of Leah B. Moody, LLC



Leah B. Moody, Esquire

Law Office of Leah B. Moody, LLC

235 E. Main Street, Suite 115

Post Office Box 1015

Rock Hill, South Carolina 29731

June 6, 2017

FILED IN THE OFFICE
CLERK OF COURT
2017 JUN -9 A 11:02
JONATHAN L. SIMPSON
CHEROKEE COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Jonathan Leon Simpson, #318626,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2016-CP-11-0348

RETURN AND
MOTION TO DISMISS

FILED IN THE OFFICE
CLERK OF COURT
2017 MAY 18 A 10:59
JANET L. FLEENER
CLERK OF COURT
CHEROKEE COUNTY, GA

In response to the Application for Post-Conviction Relief filed
Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. Applicant was indicted at the September 2006 term of the Cherokee County Grand Jury for armed robbery (2006-GS-11-0873). Scott D. Robinson, Esquire, represented him. On November 6-8, 2006, Applicant underwent trial, pursuant to which he was found guilty as indicted. The Honorable John C. Hayes III, sentenced him to confinement for twenty (20) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Simpson, Op. No. 2009-UP-337 (S.C. Ct. App. filed September 10, 2009). The Remittitur was sent on September 28, 2009.

First PCR Application: 2009-CP-11-0992

Applicant subsequently filed an application for PCR on October 21, 2009, in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel, in that;
 - a. Counsel allowed person to testify without having a hearing under Massiah v. United States.
2. The trial court made improper ruling by allowing evidence of defendant's admission of guilt.

Respondent made its Return on or about March 15, 2010. An evidentiary hearing into the matter was convened on September 16, 2010, at the Spartanburg County Courthouse. Applicant was present and represented by Thomas B. Outlaw, Esquire, at the hearing. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented Respondent. By Order dated March 24, 2010, the Honorable Roger L. Couch denied and dismissed Applicant's application with prejudice.

Applicant attempted to file a notice of appeal. By Order dated February 22, 2013, the South Carolina Supreme Court dismissed the matter because Applicant's counsel failed to provide the Supreme Court with a copy of the order to be challenged on appeal and a proof of service showing that the notice of appeal has been served on opposing counsel as required by Rule 203(d)(1)(B) (i) and (ii) of the South Carolina Appellate Court Rules. Further Applicant's counsel failed to advise the Supreme Court of the date on which he received written notice of entry of the final order in this matter as requested by the Supreme Court in a letter dated January 25, 2013. The Remittitur was issued March 12, 2013.

Second PCR Application: 2014-CP-11-0053

Applicant filed a subsequent application for PCR on January 27, 2014, alleging the following:

1. Ineffective assistance of trial counsel, in that
 - a. Counsel allowed expert to testify at trial who was unqualified to testify as expert
 - b. Counsel allowed person to testify without having a hearing under Massiah v. United States

2. Trial court error, in that
 - a. The court erred in allowing evidence of defendant's admission of guilt;
3. Ineffective assistance of PCR counsel, in that;
 - a. Counsel failed to file a notice of appeal following the denial of the application.

Respondent made its Return on August 21, 2014. Thereafter, Respondent consented to a belated review of Applicant's prior post-conviction relief action. Judge R. Keith Kelly issued an Order Granting an Appeal Pursuant to Austin v. State filed February 8, 2016. Applicant did not file a Notice of Appeal.

II.

Current PCR Application

In his third and current application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Trial counsel allowed expert to testify at trial who was not qualified by state during the trial to do so."
2. Allowed person to testify without having a hearing under Massiah v. U.S."
3. Trial court made improper ruling by allowing evidence of Def.'s admission of guilt."
4. "Trial counsel failure and court ruling violated the applicant's right to a fair trial."

Attached to and incorporated herein are the records of the Cherokee County Clerk of Court regarding the subject conviction(s), Applicant's appellate records, the records from Applicant's prior PCR actions, and Applicant's direct appeal records. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits this application should be summarily dismissed because it is successive to the previous application for post-conviction relief. Successive applications for

post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737

(1980). S.C. Code Ann. § 17-27-90 requires that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. The applicant bears the burden of showing that the allegations could not have been raised previously. Id.

Applicant could have raised these current claims for relief in his prior post-conviction relief application. In fact, these exact claims *were* raised and ruled upon in the prior applications. Applicant has failed to present any reasons why he should be allowed to proceed with a successive application. Accordingly, Respondent moves for a summary dismissal of the Application because it is successive.

IV.

Respondent submits this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996).

The Court of Appeals issued the remittitur in Applicant's direct appeal on September 28, 2009. This application was filed on May 16, 2016, which was well beyond the time that the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, Respondent requests this Court summarily dismiss the application for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

V.

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

VI.

WHEREFORE, Respondent moves to summarily dismiss the application as successive and untimely.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

May 16, 2017

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

JONATHAN L. SIMPSON, #318626,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

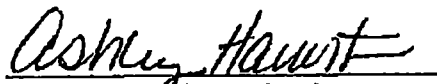
2016-CP-11-0348

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion to Dismiss on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ms. Leah B. Moody, Esquire
 Law Office of Leah B. Moody, LLC
 PO Box 1015
 Rock Hill, SC 29730

DATED this 16th day of May, 2017.


 Ashley Haworth, Paralegal
 For Respondent

FILED IN THE OFFICE
 CLERK OF COURT
 2017 MAY 18 A 10:59
 BRADY R. ROBE
 CHEROKEE COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Jonathan Leon Simpson, #318626,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2016-CP-11-0348

**CONDITIONAL ORDER
OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 16, 2016. The Court finds as follows:

I. PROCEDURAL HISTORY

A. Underlying Conviction

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. Applicant was indicted at the September 2006 term of the Cherokee County Grand Jury for armed robbery (2006-GS-11-0873). Scott D. Robinson, Esquire, represented him. On November 6-8, 2006, Applicant underwent trial, pursuant to which he was found guilty as indicted. The Honorable John C. Hayes III, sentenced him to confinement for twenty (20) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Simpson, Op. No. 2009-UP-337 (S.C. Ct. App. filed September 10, 2009). The Remittitur was sent on September 28, 2009.

FILED IN THE OFFICE
CLERK OF COURT
2017 MAY 24 A 10:08
CHEROKEE COUNTY, SC

B. First PCR Application: 2009-CP-11-0992

Applicant subsequently filed an application for PCR on October 21, 2009, in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel, in that;
 - a. Counsel allowed person to testify without having a hearing under Massiah v. United States.
2. The trial court made improper ruling by allowing evidence of defendant's admission of guilt.

Respondent made its Return on or about March 15, 2010. An evidentiary hearing into the matter was convened on September 16, 2010, at the Spartanburg County Courthouse. Applicant was present and represented by Thomas B. Outlaw, Esquire, at the hearing. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented Respondent. By Order dated March 24, 2010, the Honorable Roger L. Couch denied and dismissed Applicant's application with prejudice.

Applicant attempted to file a notice of appeal. By Order dated February 22, 2013, the South Carolina Supreme Court dismissed the matter because Applicant's counsel failed to provide the Supreme Court with a copy of the order to be challenged on appeal and a proof of service showing that the notice of appeal has been served on opposing counsel as required by Rule 203(d)(1)(B) (i) and (ii) of the South Carolina Appellate Court Rules. Further Applicant's counsel failed to advise the Supreme Court of the date on which he received written notice of entry of the final order in this matter as requested by the Supreme Court in a letter dated January 25, 2013. The Remittitur was issued March 12, 2013.

C. Second PCR Application: 2014-CP-11-0053

Applicant filed a subsequent application for PCR on January 27, 2014, alleging the following:

1. Ineffective assistance of trial counsel, in that
 - a. Counsel allowed expert to testify at trial who was unqualified to testify as expert
 - b. Counsel allowed person to testify without having a hearing under Massiah v. United States
2. Trial court error, in that
 - a. The court erred in allowing evidence of defendant's admission of guilt;
3. Ineffective assistance of PCR counsel, in that;
 - a. Counsel failed to file a notice of appeal following the denial of the application.

Respondent made its Return on August 21, 2014. Thereafter, Respondent consented to a belated review of Applicant's prior post-conviction relief action. Judge R. Keith Kelly issued an Order Granting an Appeal Pursuant to Austin v. State filed February 8, 2016. Applicant did not file a Notice of Appeal.

II. CURRENT APPLICATION

Current PCR Application

In his third and current application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Trial counsel allowed expert to testify at trial who was not qualified by state during the trial to do so."
2. Allowed person to testify without having a hearing under Massiah v. U.S."
3. Trial court made improper ruling by allowing evidence of Def.'s admission of guilt."
4. "Trial counsel failure and court ruling violated the applicant's right to a fair trial."

The Court has before it the records of the Cherokee County Clerk of Court regarding the subject conviction(s), Applicant's appellate records, records from Applicant's prior PCR actions, and Applicant's direct appeal records.

III. FINDINGS OF FACT AND CONCLUSION OF LAW

S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” See also Rule 56(c), SCRPC. The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law in ruling on Respondent’s motion to dismiss:

A. Successive Application

The Court finds this application should be dismissed because it is successive to Applicant’s previous collateral actions. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). S.C. Code Ann. § 17-27-90 requires that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a “sufficient reason” why new grounds for relief were not raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those that “could not have been raised . . . in the previous application.” Id. If the applicant could have raised these allegations in a

previous application, then the applicant may not raise those grounds in successive applications.

Id. The applicant bears the burden of showing that the allegations could not have been raised previously. Id.

Applicant could have raised these current claims for relief in his prior post-conviction relief application. In fact, these exact claims *were* raised and ruled upon in the prior applications. Applicant has failed to present any reasons why he should be allowed to proceed with a successive application on these grounds. Therefore, the Court finds summary dismissal is appropriate.

B. Failure to Timely File

The Court further finds this Application should be dismissed based on Applicant's failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-45(a) provides that:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

This statute of limitations applies to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996).

The Court of Appeals issued the remittitur in Applicant's direct appeal on September 28, 2009. This application was filed on May 16, 2016, well beyond the expiration of the statutory filing period. Therefore, the Court finds summary dismissal is appropriate.

IV. CONCLUSION

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this order upon him to show why this ruling should not become final. Applicant shall file any reasons he may have with the Cherokee County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Valerie Garcia Giovanoli
Post Office Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Cherokee County Clerk of Court and opposing counsel within twenty (20) days, and his failure to timely file and serve any response will result in the Court not considering any issues raised therein.

IT IS SO ORDERED THIS 19 DAY OF July, 2017.



J. DERHAM COLE
Chief Administrative Judge
Seventh Judicial Circuit

_____, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-11-348

Jonathan Leon Simpson, #318626

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/J. Derham Cole
Circuit Court Judge

2053
Judge Code

05/24/2017
Date

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)
)
 Jonathan Leon Simpson,)
 S.C.D.C. No. 318626,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 OF THE SEVENTH JUDICIAL CIRCUIT
 2016-CP-11-0348

**CONSENT ORDER GRANTING
 AN APPEAL PURSUANT TO
AUSTIN V. STATE¹**

FILED IN THE OFFICE
 CLERK OF COURT
 2017 JUN 22 A 10:57
 JONATHAN L. SIMPSON
 CHEROKEE COUNTY, SC

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed May 16, 2016.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. Applicant was indicted at the September 2006 term of the Cherokee County Grand Jury for armed robbery (2006-GS-11-0873). Scott D. Robinson, Esquire, represented him. On November 6-8, 2006, Applicant underwent trial, pursuant to which he was found guilty as indicted. The Honorable John C. Hayes III, sentenced him to confinement for twenty (20) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Simpson, Op. No. 2009-UP-337 (S.C. Ct. App. filed September 10, 2009). The Remittitur was sent on September 28, 2009.

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

First PCR Application: 2009-CP-11-0992

Applicant subsequently filed an application for PCR on October 21, 2009, in which he alleged the following grounds for relief:

1. Ineffective Assistance of Counsel, in that;
 - a. Counsel allowed person to testify without having a hearing under Massiah v. United States.
2. The trial court made improper ruling by allowing evidence of defendant's admission of guilt.

Respondent made its Return on or about March 15, 2010. An evidentiary hearing into the matter was convened on September 16, 2010, at the Spartanburg County Courthouse. Applicant was present and represented by Thomas B. Outlaw, Esquire, at the hearing. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented Respondent. By Order dated March 24, 2010, the Honorable Roger L. Couch denied and dismissed Applicant's application with prejudice.

Applicant attempted to file a notice of appeal. By Order dated February 22, 2013, the South Carolina Supreme Court dismissed the matter because Applicant's counsel failed to provide the Supreme Court with a copy of the order to be challenged on appeal and a proof of service showing that the notice of appeal has been served on opposing counsel as required by Rule 203(d)(1)(B) (i) and (ii) of the South Carolina Appellate Court Rules. Further Applicant's counsel failed to advise the Supreme Court of the date on which he received written notice of entry of the final order in this matter as requested by the Supreme Court in a letter dated January 25, 2013. The Remittitur was issued March 12, 2013.

Second PCR Application: 2014-CP-11-0053

Applicant filed a subsequent application for PCR on January 27, 2014, alleging the following:

1. Ineffective assistance of trial counsel, in that
 - a. Counsel allowed expert to testify at trial who was unqualified to testify as expert
 - b. Counsel allowed person to testify without having a hearing under Massiah v. United States
2. Trial court error, in that
 - a. The court erred in allowing evidence of defendant's admission of guilt;
3. Ineffective assistance of PCR counsel, in that;
 - a. Counsel failed to file a notice of appeal following the denial of the application.

Respondent made its Return on August 21, 2014, requesting an evidentiary hearing solely on the issue of whether Applicant was entitled to an appellate review of his first PCR action pursuant to Austin. An evidentiary on the matter was scheduled for September 3, 2015, at the Spartanburg County Courthouse. Prior to the hearing, Respondent consented to a belated review of the dismissal of Applicant's prior PCR application.

Judge R. Keith Kelly issued a Consent Order Granting an Appeal Pursuant to Austin v. State filed February 8, 2016. Applicant did not file a Notice of Appeal.

Current PCR Application

Thereafter, Applicant filed his third and current application for PCR, alleges he is being held unlawfully for the following reasons:

1. "Trial counsel allowed expert to testify at trial who was not qualified by state during the trial to do so."
2. Allowed person to testify without having a hearing under Massiah v. U.S."
3. Trial court made improper ruling by allowing evidence of Def.'s admission of guilt."
4. "Trial counsel failure and court ruling violated the applicant's right to a fair trial."

Respondent made its Return and Motion to Dismiss on or about May 16, 2017 requesting the application be summarily dismissed as untimely and successive. The Honorable J. Derham Cole issued a Conditional Order of Dismissal, filed May 24, 2017, allowing Applicant 20 days from

the date of service to provide sufficient reason why the Conditional Order of Dismissal should not become final. Applicant filed a Motion to Amend Post-Conviction Relief on or about June 6, 2017 adding an allegation that:

1. "The undersigned PCR counsel and Attorney General consented to an Order Granting an Appeal Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). PCR Counsel failed to perfect the PCR Notice of Appeal." (footnote omitted).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application.

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Counsel for Applicant asserts the previous Consent Order was inadvertently overlooked and therefore Counsel failed to file the Notice of Appeal from that order. Pursuant to Austin v. State, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application. Applicant's other allegations of "ineffective assistance of counsel" and "trial court error" in this current application are successive to his prior PCR application or not proper for a PCR proceeding, and he understands that he waives the right to pursue any other PCR claims with this consent order. Respondent consents to allow Applicant a belated PCR appeal of the dismissal of his first PCR application. After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that Applicant did not knowingly and voluntarily waive his right to appeal his first PCR

application. Accordingly, this Court grants Applicant a belated PCR appeal pursuant to Austin v. State, in which he may raise on appeal any issues that were raised and ruled upon in his prior application. In order to secure this review, however, the Applicant must appeal from this Order.

CONCLUSION

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243 of the South Carolina Appellate Court Rules for the appropriate procedures for filing a belated appeal.

[order and signatures on following page]

IT IS THEREFORE ORDERED:

1. That Applicant be granted an appeal of case 2009-CP-11-0992 pursuant to Austin v. State;
2. That all other PCR allegations are waived and dismissed with prejudice;
3. That Applicant remain in the custody of the South Carolina Department of Corrections.

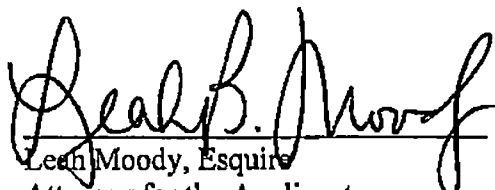
AND IT IS SO ORDERED this 20 day of June, 2017.

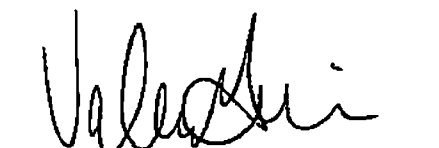

 J. DERHAM COLE
 Chief Administrative Judge
 Seventh Judicial Circuit

FILED IN THE OFFICE
 CLERK OF COURT
 2017 JUN 22 A 10:57
 CHARLES H. MOORE
 CLERK OF COURT
 CHANDLER COUNTY, SC

_____, South Carolina.

We Consent:


 Leah Moody, Esquire
 Attorney for the Applicant


 Valerie Garcia Giovanoli, Esquire
 Assistant Attorney General
 Attorney for the Respondent

 Jonathan Leon Simpson, #318626
 Applicant

WITNESSES

David L. Clary

ARREST WARRANT NUMBER

1067100

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: 9/17/06

VERDICT

[Signature]

[Signature]
Foreperson of Petit Jury
Date: 11-9-06

DOCKET NO. 06-GS-11- 873

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

SEP 07 2006

TERM

THE STATE

vs.

Jonathan Leon Simpson

Indictment for

ARMED ROBBERY

SC Code: 16-11-330

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

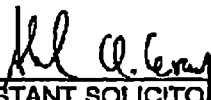
INDICTMENT

At a Court of General Sessions, convened on SEP 07 2006, the Grand Jurors of Cherokee County present upon their oath:

ARMED ROBBERY

That Jonathan Leon Simpson, did in Cherokee County on or about January 18, 2006, commit a robbery while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of robbery reasonably believed to be a deadly weapon, and did feloniously take from the person or presence of a person by means of force, violence, and/or intimidation, goods or monies of the East-Side-Save-Way, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
 STATE VS.
Jonathan Leon Simpson
 AKA: _____
 Race: _____ Sex: _____ Age: _____
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip _____
 DL# _____ SID# _____

INDICTMENT/CASE#: _____
016 -GS- 11 - 813
 A/W#: T-067100
 Date of Offense: 11/18/00
 S.C. Code §: 16-11-330(A)
 CDR Code #: 0111319
☐ CASE RESTORED
 SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: Armed Robbery (10-3042 - NO SUSP., NO PROB.)In violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0111319
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kimberly J. Jackson Jonathan Simpson [Signature]
 Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. May 10, 2006☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Heard, ☐ Waived, ☒ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____

\$14-1-206 (Assessments 107.5%)	\$	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$35.13 (Public Def/Prob)	\$500	\$
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.00</u>
TOTAL		\$ <u>103.00</u>

Brandy W. McBee

Clerk of Court/Deputy Clerk

Court Reporter: Mike Watkins

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: _____

Sentence Date: Apr 5, 2006

ARREST WARRANT

1-067100

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
GAFFNEY

THE STATE

against

SIMPSON, JONATHAN LEON

Address: _____

Phone: _____ SSN: _____

Sex: M Race: B Height: 506 Weight: 148

DL State: SC DL#: _____

DOB: _____ Agency ORI #: SC0110200

Prosecuting Agency: POLICE

Prosecuting Officer: DAVID L CLARY

Offense: ARMED ROBBERY WHILE ARMED OR

Offense Code: _____

Code/Ordinance Sec. _____

This warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality of
CHEROKEE

The Accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to

defendant Jonathan L. Simpson

on 5-12-06

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

KAYE SEALS

201 N. LIMESTONE ST.

GAFFNEY SC 29340

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
GAFFNEY

AFFIDAVIT

Personally appeared before me the affiant DAVID L CLARY who
being duly sworn deposes and says that defendant SIMPSON, JONATHAN LEON
did within this county and state on 01/18/2006 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of GAFFNEY)
in the following particulars:

DESCRIPTION OF OFFENSE:

ARMED ROBBERY WHILE ARMED OR ALLEGEDLY ARMED WITH A DEADLY WEAPON

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
THAT ON 01/18/2006, THE DEFENDANT, JONATHAN LEON SIMPSON, DID WHILE ARMED OR ALLEGING, EITHER BY
ACTIONS OR WORDS, TO BE ARMED WITH A DEADLY WEAPON, A HANDGUN, COMMIT A ROBBERY, BY TAKING MONEY
FROM THE POSSESSION OF AN EMPLOYEE OF EAST-SIDE-SAVE-WAY. THIS INCIDENT OCCURRED AT _____
WITHIN THE CITY LIMITS OF GAFFNEY, SC, COUNTY OF CHEROKEE. PROBABLE CAUSE
BASED ON THE INVESTIGATION OF THE GAFFNEY POLICE DEPARTMENT DETECTIVE DIVISION.

CASE#: 08-000748.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
GAFFNEY

Affiant's Address 201 N. LIMESTONE ST.

GAFFNEY SC 29340

Affiant's Telephone 864-487-8524

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 01/18/2006 defendant SIMPSON, JONATHAN LEON

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of GAFFNEY) as set forth below:

DESCRIPTION OF OFFENSE:

ARMED ROBBERY WHILE ARMED OR ALLEGEDLY ARMED WITH A DEADLY WEAPON

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on May 12, 2006

Signature of Issuing Judge

Judge Code: KS

Judge's Address 201 N. LIMESTONE ST.

GAFFNEY SC 29340

Judge's Telephone 864-487-8524

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JONATHON SIMPSON,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

ELEANOR DUFFY CLEARY
Appellate Defender

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

ATTORNEY FOR APPELLANT

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<u>State v. Rayfield</u> , 369 S.C. 106, 631 S.E.2d 244 (2006)	6
<u>State v. Shuler</u> , 344 S.C. 604, 545 S.E.2d 805 (2001).....	6

STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in denying appellant's Batson motion and ruling that two of the State's peremptory challenges of African Americans were not racially motivated when the state's reason was based on the fact they lived in the same predominately African American neighborhood as the African American defendants?

STATEMENT OF THE CASE

Appellant Jonathan Simpson was indicted by the Cherokee County grand jury in September 2006 for armed robbery. The charges arose out of January 2006 armed robbery of a convenient store. ROA p. 250. He went to trial, along with co-defendant Marcellous Knuckles, before the Honorable J. Mark Hayes, III, on November 6, 2006. The jury found both men guilty of armed robbery. ROA p. 239. The judge sentenced appellant to twenty years in prison and Knuckles to fifteen years in prison. ROA p. 247.

This appeal follows.

ARGUMENT

The trial judge erred in denying appellant's Batson motion and ruling that two of the State's peremptory challenges of African Americans were not racially motivated when the state's reason was based on the fact they lived in the same predominately African American neighborhood as the African American defendants.

The state struck three African American panel members when selecting the jury for appellant and his co-defendant's armed robbery trial. ROA p. 16. Appellant and his co-defendant objected to the state's exercise of its peremptory strikes under Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). The solicitor stated that one African American panel member was struck because he had a criminal record. The other two lived in an area near where the armed robbery occurred, which was in the defendants' neighborhoods. ROA p. 16, lines 9-17. The solicitor stated, "that's a little too close to home to put someone on a jury that may know him or his family or have some sort of tie." ROA p. 18, lines 14-18.

Upon questioning during jury qualification, the two panel members who lived in the defendants' neighborhood had not stated that they knew any of the parties involved or anything about the crime. ROA p. 6-19. Appellant and his co-defendant argued that since the neighborhood was predominately African American, striking on that basis was mere pretext for striking them because they were African American.

The trial judge denied the Batson motion and found the state had valid race neutral reasons for striking the jurors. ROA p. 18, lines 19-22. This was error.

The Equal Protection Clause of the Fourteenth Amendment to the Constitution prohibits the striking of a jury panel member on the basis of race or gender. State v.

Evins, 373 S.C. 404, 415, 645 S.E.2d 904, 909 (2007), State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244 (2006); State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001). After a party objects to a jury strike, the proponent of the strike must offer a facially race-neutral explanation. Evins, 373 at 415, 645 S.E.2d at 909.

Once the proponent states a reason that is race-neutral, the burden is on the party challenging the strike to show the explanation is mere pretext, either by showing similarly situated members of another race were seated on the jury or that the reason given for the strike is so fundamentally implausible as to constitute mere pretext despite a lack of disparate treatment. Id.

The exercise of a peremptory challenge may not be based on either the race of the juror or racial stereotypes held by the party. Georgia v. McCollum, 505 U.S. 42, 112 S.Ct. 2348 (1992). Justice Thurgood Marshall stated in his dissent in Lynn v. Alabama, 493 U.S. 945, 947, 110 S.Ct. 351, 352, 107 L.Ed.2d 338 (1989) (dissent to denial of a petition for certiorari):

[m]ere place of residence, or any other factor closely related to race, should not be regarded as a legitimate basis for exercising peremptory challenges without some corroboration on voir dire that the challenged venirepersons actually entertain the bias underlying the use of that factor.

Id.

Similarly, in this case, there was no evidence that the two improperly stricken jurors actually entertained any bias regarding the case based on their residence. As Justice Marshall noted:

In a small community with racially identifiable neighborhoods, an individual's address closely corresponds to his or her race. In this case, the prosecutor justified two of his strikes on the possibility that the challenged

venirepersons "might" have known persons connected with or interested in the trial merely because they lived in the same neighborhood.

Id.

Similarly, the solicitor in appellant's case justified his strikes on the possibility of a connection. This reason, without any evidence to support a connection between the two panel members and the case, was mere pretext for racially based reasons and the defense motion should have been granted. Congdon v. State, 262 Ga. 683, 424 S.E.2d 630 (Ga. 1993).

CONCLUSION

Based on the foregoing, appellant's conviction should be vacated.

Respectfully submitted,


Eleanor Duffy Cleary
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of March, 2008.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Cherokee County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JONATHON SIMPSON,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jonathon Simpson states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge John C. Hayes, III, which was held on November 8, 2006, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Jonathon Simpson.

Respectfully submitted,


Eleanor Duffy Cleary
Appellate Defender

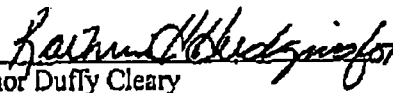
ATTORNEY FOR APPELLANT

This 3rd day of March, 2008.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

March 3rd, 2008


Eleanor Duffy Cleary
Appellate Defender

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

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

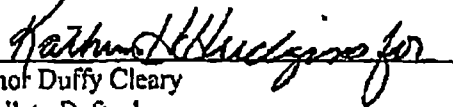
V.

JONATHON SIMPSON,

APPELLANT

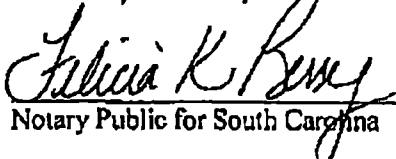
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Final Anders Brief of Appellant and Record on Appeal has been served on Jonathon Simpson, #318626 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010 this 3rd day of March, 2008.


Eleanor Duffy Cleary
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of March, 2008.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: August 15, 2010

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Jonathon Simpson,

Appellant.

Appeal From Cherokee County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2009-UP-436
Submitted September 1, 2009 – Filed September 10, 2009

APPEAL DISMISSED

Appellate Defender Eleanor Duffy Cleary, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
all of Columbia; and Solicitor Harold W. Gowdy, III,
of Spartanburg, for Respondent.

PER CURIAM: Jonathon Simpson appeals his conviction and sentence for armed robbery, arguing the trial judge erred in failing to conclude the State violated Batson v. Kentucky, 476 U.S. 79 (1986), when it struck two African Americans during jury selection. After a thorough review of the record, counsel's brief, and Simpson's pro se brief, pursuant to Anders v. California, 386 U.S. 738 (1967) and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

HUFF, THOMAS, and PIEPER, JJ., concur.

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



RECEIVED
SEP 29 2009

ATTORNEY GENERAL
OFFICE

The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIKE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11623
COLUMBIA, SOUTH CAROLINA 29211
(715) SUMMIT STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1350
FAX (803) 734-1119
WWW.IJCCOLLEGE.ORG

September 28, 2009

REMITTITUR

The Honorable Brandy W. McBee
125 E Floyd Baker Blvd
PO Drawer 2289
Gaffney, SC 29342-2289

Re: The State v. Simpson, Jonathon
2006-GS-11-00873

Dear Ms. McBee:

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

The exhibits being returned are: State's Exhibit 1 (CD-Video) and State's Exhibit 2-7 (Photos). Please sign attached copy of this letter and return to acknowledge receipt of this item.

Sincerely,

J. Barber
Jeanette F. Barber
Clerk of Court

JFB/ות

cc: Appellate Defender Eleanor Duffy Cleary
Jonathon Simpson # 318626
Assistant Deputy Attorney General Salley W. Elliott
Harold W. Gowdy, III, Esquire

Receipt Acknowledgement:

Name _____ Date _____

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUL 11 2017

APPEAL FROM CHEROKEE COUNTY S.C. SUPREME COURT
Court of Common Pleas

J. Derham Cole, Presiding in Spartanburg County

Case No. 2016-CP-11-0348

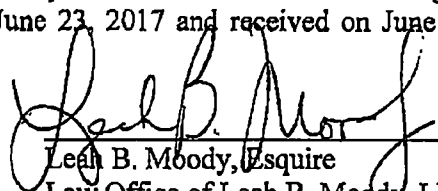
Jonathan Leon Simpson, ... Appellant,

v.

State of South Carolina, ... Respondent.

NOTICE OF APPEAL

Jonathan Leon Simpson appeals< pursuant to Austin v. State, Order (2009-CP-11-0992) of the Honorable Roger L. Couch denying Post Conviction Relief, dated March 24, 2010. Appellant received written notice of entry of the Consent Order Granting an Appeal pursuant to Austin v. State mailed on June 23, 2017 and received on June 26, 2017.


Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
235 E. Main Street, Suite 115
Post Office Box 1015
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IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Keith Kelly, Presiding in Spartanburg County

Case No. 2016-CP-11-0348

Jonathan Leon Simpson, ... Appellant,

v.

State of South Carolina, ... Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Justin J. Hunter by depositing a copy of it in the United States Mail, postage prepaid, on July 5, 2017 addressed to its attorney of record, Justin J. Hunter, Post Office Box 11549, Columbia, South Carolina, 29211-1549.


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July 5, 2017

cc Jonathan Leon Simpson
Justin J. Hunter, SC Attorney General's Office
Sharon A. Graham, SCCID
Brandy W. McBee, Clerk of Court, Cherokee County