

NOV 19 2018

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Robin B. Stilwell, Circuit Court Judge

DAVID W. CHILES, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000602

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
Attorney General Office
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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1 A Correct.

2 Q Now, your brother was also dating other women at
3 the time, wasn't he?

4 A Not that I can recall.

5 Q But you have no knowledge -- as far as being
6 boyfriend and girlfriend, you have no knowledge that
7 they were living together, do you?

8 A Huh-uh.

9 Q And would it surprise you they weren't living
10 together?

11 A Huh-uh.

12 MR. SMITH: Judge, if I can -- once again, the
13 witness has said "uh-huh" or "huh-uh," and he has to
14 answer out loud.

15 THE WITNESS: No. No. I'm sorry. I'm sorry.

16 THE COURT: Let's do this. Restate your question
17 and then he'll answer --

18 THE WITNESS: Yeah, yes or no.

19 THE COURT: Perfect. Right. Thank you, sir.

20 You may proceed.

21 BY MR. ROBINSON:

22 Q You have no personal knowledge as to whether they
23 were living together or not, do you?

24 A No.

25 Q Okay. And just to follow up -- and you have no

1 information -- you have no personal knowledge that your
2 brother was not dating other women as well at the time,
3 do you?

4 A Yes.

5 Q Okay.

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

7 THE COURT: All right.

8 Now, Mr. Weston.

9 REDIRECT EXAMINATION

10 BY MR. WESTON:

11 Q Mr. Williams, you are denying the substance of
12 this agreement with regard to the robbery -- of this
13 statement with regard to the robbery; is that correct?

14 A Yes.

15 Q All right. Just to be clear, you do agree that
16 this is your signature at the bottom here?

17 A Yes.

18 Q Is this your handwriting right here?

19 A Yes.

20 Q What does that say? Read it to the jury.

21 A "This is my statement" --

22 Q Hold on. Speak loudly and talk slowly.

23 A "This is my statement and it is true."

24 Q And that's what you wrote at the time you signed
25 the statement?

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Keith Williams - Redirect Exam by Mr. Weston

1 A Correct.

2 Q And this is the statement you signed on
3 August 17th of 2011; is that correct?

4 A Yes.

5 MR. WESTON: Your Honor, the State would offer
6 this as State's Exhibit 8.

7 THE COURT: All right.

8 MR. SMITH: No objection.

9 MR. ROBINSON: No objection.

10 THE COURT: Without objection, State's Exhibit
11 No. 8 is admitted.

12 (WHEREUPON, State's Exhibit Number 8 was admitted
13 into evidence.)

14 MR. WESTON: Permission to publish to the jury,
15 your Honor.

16 THE COURT: Certainly.

17 BY MR. WESTON:

18 Q Just one more question. A couple questions,
19 actually. Just now you said your brother Yank, your
20 brother David Chiles, was not living with Precious
21 Harris to your knowledge?

22 A To my knowledge.

23 Q When I asked you that 20 minutes ago and you said
24 yes, they were living together, were you lying?

25 A No, sir.

1 Q You can't remember the lies you are telling, can
2 you, sir?

3 A I don't tell stories.

4 Q Didn't you say --

5 MR. WESTON: I apologize, your Honor.

6 Q Didn't you say 20 minutes ago in answer to my
7 question, a simple question at the beginning of my
8 discourse with you, I said, "And they were living
9 together, weren't they?" And you said yes?

10 A I did.

11 Q So now why are you saying no in answer to your
12 brother's lawyer's question?

13 A Now that I can think about the situation, I know
14 that and my brother was basically running all over the
15 place.

16 Q But he asked you were they living together?

17 A Right.

18 Q And you said yes less than 30 minutes ago?

19 A From my knowledge. From my knowledge.

20 Q Right.

21 A Right.

22 Q And in answer to the question from your knowledge
23 in terms of his lawyer, you said no?

24 A Right.

25 Q You're trying to help him as best you can, aren't

1 you, sir?

2 A No. No. No. No.

3 Q You're trying to help your brother as best you
4 possibly can?

5 A My brother's innocent. And Ms. Harris is
6 innocent.

7 Q And you're innocent?

8 A Correct.

9 Q And your brother is just as innocent as you?

10 A Correct.

11 Q Thank you, sir.

12 THE COURT: All right. You may step down.

13 All right. You may call your next witness.

14 MR. WESTON: Your Honor, the State rests.

15 THE COURT: All right.

16 Mr. Foreman, ladies and gentlemen of the jury, I
17 need to take up some matters with the attorneys, so I'm
18 going to have to ask you to retire from the courtroom.

19 Now, the State has rested, meaning the State has
20 completed its case-in-chief as far as testimony and
21 exhibits, so now we need to decide how we're going
22 forward from here.

23 So if you would, please, retire to the jury room
24 for a few minutes, and I'll -- probably won't be too
25 much longer -- and I'll bring you back and we'll decide

1 how we will proceed.

2 THE COURT REPORTER: They have that exhibit. Do
3 we need to get that back?

4 THE COURT: Oh, yes, ma'am. We do. Can somebody
5 get it? Thank you.

6 (WHEREUPON, the jury exited the courtroom
7 at 12:00 p.m.)

8 THE COURT: Back on the record. The State has
9 rested. Is there anything else you've got -- you have
10 rested now, and I'm just asking is there anything else
11 you need to do?

12 MR. WESTON: No, sir, your Honor.

13 THE COURT: All right. Very good. Now, do we
14 have motions?

15 MR. SMITH: Judge, I guess we will have motions.
16 And then I was going to state I have talked with my
17 client about testifying, and he's still of the opinion
18 he is not going to testify.

19 THE COURT: And, Mr. Robinson, is your client --

20 MR. ROBINSON: Yes.

21 THE COURT: All right. She does not wish to
22 testify?

23 MR. ROBINSON: That's correct, your Honor.

24 THE COURT: All right. What we'll do, then, let
25 me go ahead and give the admonishments to or advice to

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1 the defendants as to their right to testify or to not
2 testify. And then, what is it, we can let the jury
3 really go to lunch and then we can go to lunch and
4 gather our thoughts and all and come back. And if the
5 defendants do not wish to testify or put up any
6 evidence, then I know, Mr. Robinson, you had it marked
7 only for I.D., so you haven't put any evidence in. You
8 didn't want to put up any evidence.

9 MR. ROBINSON: That's correct.

10 THE COURT: But the point is we'll come back and
11 then we'll continue. But this is a good place for the
12 jury to break as well.

13 Now, but we need some more time than normal. And
14 it looks like it will probably be about 12:30 before
15 we're finished with my instructions to the defendants.
16 So would 2 o'clock be too early?

17 MR. WESTON: 2 o'clock would be fine with the
18 State.

19 THE COURT: Mr. Smith?

20 MR. SMITH: 2 o'clock is fine.

21 THE COURT: Mr. Robinson?

22 MR. ROBINSON: Yes, your Honor.

23 MR. SMITH: Judge, when you say 2 o'clock, you
24 want us here. But now I know we have some things to
25 take up like looking at the --

1 THE COURT: Excuse me.

2 MR. SMITH: -- looking at the verdict sheets.

3 THE COURT: We're going to give you that before
4 lunch.

5 MR. SMITH: Okay.

6 THE COURT: Do you want to say 2:30? Let's do
7 this. Can we get back at 1:30? If we get out of here
8 by 12:30, if we finish up the preliminaries, and come
9 back, let's say, 1:45.

10 MR. WESTON: Yes, sir, your Honor.

11 THE COURT: 1:45, Mr. Robinson?

12 MR. ROBINSON: That sounds great, your Honor.

13 THE COURT: 1:45?

14 MR. SMITH: Yes, sir.

15 THE COURT: And ask the jury to come back at 2:15.
16 That gives us the time to get everything else ready.

17 All right. If there's nothing else, I'll bring
18 the jury back and release them for lunch.

19 Anything from the State?

20 MR. WESTON: No, sir, your Honor.

21 THE COURT: From Defendant Harris?

22 MR. ROBINSON: Your Honor, we'll do motions after
23 we get back?

24 THE COURT: Yes. We're just stopping. The State
25 is resting its case. We're going to take up motions

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1 and also instructions to the defendants.

2 Mr. Smith?

3 MR. SMITH: Good to go, your Honor.

4 THE COURT: Very good. All right. Ask the jury
5 to join us, please.

6 (WHEREUPON, the jury came into open court at
7 approximately 12:05 p.m.)

8 THE COURT: All right. Mr. Foreman, ladies and
9 gentlemen of the jury, as I say, the State has rested,
10 but there's still some things I need to take up with
11 the attorneys before we proceed. And rather than keep
12 you back here, I'm going to suggest you go ahead and
13 take your lunch break now and come back at 2:15.

14 Now, that's two hours, but we've got to take up
15 some matters before we reconvene and continue with the
16 case. So, please, if you would, go to lunch, come back
17 at 2:15, and we'll complete the case at that time.

18 Again, do not undertake the discussion of the case
19 among yourselves in any way. With that, very good. If
20 you would please retire and be back at 2:15. Thank
21 you.

22 (WHEREUPON, the jury exited the courtroom
23 at 12:07 p.m.)

24 THE COURT: Just for the record, as we discussed,
25 we will be back at 1:45 to take up motions and anything

1 that we need to before we proceed with the trial.

2 Do you understand, Mr. Weston?

3 MR. WESTON: Yes, sir, your Honor.

4 THE COURT: Mr. Robinson?

5 MR. ROBINSON: Yes, sir.

6 THE COURT: Mr. Smith?

7 MR. SMITH: Yes, sir.

8 THE COURT: Now, we're at that point where I need
9 to know whether or not the defendants are going to take
10 the stand or offer any evidence. I've been advised
11 that you have discussed with your clients whether or
12 not -- of their rights, but I do need to inform them or
13 advise them of those rights.

14 Mr. Robinson -- let's see.

15 Mr. Smith, as far as Mr. Chiles, have you
16 consulted with your client?

17 MR. SMITH: I have, your Honor.

18 THE COURT: And what's his wish?

19 MR. SMITH: For the record, we've consulted
20 numerous times about this, and he has always said that
21 he did not want to take the witness stand.

22 THE COURT: Mr. Robinson, have you consulted with
23 your client?

24 MR. ROBINSON: I have, your Honor.

25 THE COURT: What does Ms. Harris say?

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1 MR. ROBINSON: Yes, your Honor. She has no prior
2 record, nothing impeachable, but she feels
3 strategically it's a good idea in this case. So same
4 thing, she's not going to testify.

5 THE COURT: Very good.

6 David Wince Chiles, Jr., if would you please stand
7 and raise your right hand.

8 (WHEREUPON, Defendant Chiles was sworn.)

9 THE COURT: Very good. Thank you, sir.

10 Ms. Precious Jacquetta Harris, if would you please
11 stand and raise your right hand.

12 (WHEREUPON, Defendant Harris was sworn.)

13 THE COURT: Mr. Chiles and Ms. Harris, at this
14 time I'm going to explain to you certain of your
15 rights. If you do not understand anything I say,
16 please let me know. If you want me to explain anything
17 in more detail, please let me know.

18 Do you understand this, Mr. Chiles?

19 DEFENDANT CHILES: Yes, sir.

20 THE COURT: Ms. Harris?

21 DEFENDANT HARRIS: Yes, sir.

22 THE COURT: We have now reached a stage of the
23 trial where you may present your defense. You have the
24 right to claim the protections given to you by the
25 Fifth Amendment to the Constitution of the United

1 States.

2 This amendment states, in pertinent part, no
3 person shall be compelled in any criminal case to be a
4 witness against himself or herself.

5 Do you understand that, Mr. Chiles?

6 DEFENDANT CHILES: Yes, sir.

7 THE COURT: Ms. Harris?

8 DEFENDANT HARRIS: Yes.

9 THE COURT: This means that you cannot be required
10 to testify in this case. You have the right to testify
11 on your own behalf. However, no one can make you
12 testify. This is a personal right and no one can waive
13 this right except you.

14 Do you understand that, Mr. Chiles?

15 DEFENDANT CHILES: (Nodding.)

16 THE COURT: Do you understand that, Ms. Harris?

17 DEFENDANT HARRIS: Yes.

18 THE COURT: If you decide to testify, you will be
19 subject to the same rules that govern other witnesses.
20 You may be examined and cross-examined on any relevant
21 issue in this case.

22 In addition, if you have any convictions involving
23 dishonesty or false statement or for crimes punishable
24 by imprisonment for more than one year and this Court
25 determines that the probative value of admitting the

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1 evidence outweighs its prejudicial effect to you, the
2 Solicitor will be able to introduce your record to
3 attack your credibility.

4 Do you understand that, Mr. Chiles?

5 DEFENDANT CHILES: (Nodding).

6 THE COURT REPORTER: Is that a "yes"?

7 DEFENDANT CHILES: Yes.

8 THE COURT: Ms. Harris?

9 DEFENDANT HARRIS: Yes.

10 THE COURT: If you decide to testify, this
11 decision on your part must be freely, voluntarily and
12 intelligently made with the knowledge of the
13 protections given to you by the Fifth Amendment and the
14 consequences of your decision to testify.

15 If you decide not to testify, I will instruct the
16 jurors that they cannot give the fact that you did not
17 testify any consideration whatsoever and that there is
18 to be absolutely no prejudice to you because you did
19 not testify.

20 It is left entirely up to you whether or not you
21 testify. You may talk with your attorney, your family
22 and friends or anyone else, but the final decision will
23 be left entirely up to you.

24 And do you understand what I've explained to you,
25 Mr. Chiles?

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1 DEFENDANT CHILES: Yes, sir.

2 THE COURT: Ms. Harris?

3 DEFENDANT HARRIS: Yes.

4 THE COURT: Do you have any questions about what
5 I've explained to you, Mr. Chiles?

6 DEFENDANT CHILES: No, sir.

7 THE COURT: Ms. Harris?

8 DEFENDANT HARRIS: No, sir.

9 THE COURT: Very good.

10 Now, I'm going to wait until we come back, but I
11 want you to consider very carefully your right to
12 testify but also your right not to testify, and at that
13 time when we reconvene, then I will ask you your
14 decision.

15 Very good. As I say, I will be instructing the
16 jury, if you decide not to testify, they cannot
17 consider it against you in any fashion whatsoever or
18 even discuss it in the jury room.

19 Do you understand that, Mr. Chiles?

20 DEFENDANT CHILES: Yes, sir.

21 THE COURT: Ms. Harris?

22 DEFENDANT HARRIS: Yes.

23 THE COURT: Very good. All right. We'll recess
24 for lunch. Come back at 1:45.

25 Let me give you the verdict forms so you can look

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1 at them.

2 (WHEREUPON, lunch recess taken from 12:12 p.m.
3 to 1:49 p.m.)

4 THE COURT: Is the State ready to proceed?

5 MR. WESTON: Yes, sir, your Honor.

6 THE COURT: Is Defendant Chiles ready?

7 MR. SMITH: Yes, your Honor. And we do have a
8 couple of motions.

9 THE COURT: I just want to be sure we all start at
10 the same time.

11 Mr. Robinson, Defendant Harris ready?

12 MR. ROBINSON: Yes, your Honor.

13 THE COURT: All right. Now, anything further from
14 the State?

15 MR. WESTON: No, sir, your Honor.

16 THE COURT: All right.

17 Mr. Smith.

18 MR. SMITH: Judge, I would make a motion for a
19 directed verdict in this case. The evidence taken in
20 the light most favorable to the State I don't believe
21 would be enough to convict my client of the crimes
22 charged at this time.

23 I base that on a number of things, Judge, but
24 just -- the evidence as a whole, but specifically --
25 and, once again, Judge, I heard you talk to the jury

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1 about taking notes, and there is a lot of times I may
2 have been taking notes so I may have missed something.
3 But there's been a lot of testimony over the past two
4 days about an armed robbery that occurred. I don't
5 know that I heard anything from any witness that talked
6 about anything that was taken from McDonald's.

7 They talk about an armed robbery. They talk about
8 two men coming in the store and two men coming out of
9 the store, but I never heard anybody testify that, you
10 know, a certain amount of money was taken, hamburgers
11 were taken, French fries were taken or anything else.
12 I just don't remember that. So, you know, I'll defer
13 to the record, but, Judge, I don't believe they have
14 met their burden of proof to show that anything was
15 taken from McDonald's.

16 But even so, Judge, I don't believe that the
17 evidence in this case warrants enough to proceed, to go
18 forward based on the charges.

19 THE COURT: All right. Do you want to address
20 that? And that would be as to Mr. Chiles?

21 MR. SMITH: Yes, your Honor, as to Mr. Chiles.

22 MR. WESTON: Yes, your Honor. Specifically with
23 regard to the issue of the money taken, Mr. Lomax
24 specifically said \$1,200 was taken in his review of
25 this.

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1 Secondarily, your Honor, with regard to the
2 broader issue of the evidence not being sufficient,
3 there is testimony from a convicted codefendant that
4 these two defendants -- or there is evidence from a
5 convicted codefendant that these two defendants
6 conspired with him and committed the armed robbery,
7 which I think is sufficient for a jury to find them
8 guilty.

9 THE COURT: All right. I'll take both motions.
10 So, Mr. Robinson, on behalf of Defendant Harris.

11 MR. ROBINSON: I have a different way to --

12 THE COURT: Well, I'll take them separately.

13 MR. ROBINSON: I'd like to take it separately, if
14 I could.

15 THE COURT: All right. As far as Defendant
16 Chiles' motion for a directed verdict, of course I'm
17 governed by Rule 19 of the rules of criminal procedure.
18 In ruling on the motion, the trial judge shall consider
19 only the existence or nonexistence of evidence and not
20 its weight.

21 And there has been some testimony, as Mr. Weston
22 has said, that there was some funds taken from the
23 manager -- or was missing from the McDonald's' receipts
24 for that day and I think even from the safe as well, so
25 I do find that there is evidence.

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1 As far as the weight of that evidence, I will
2 instruct the jury there is evidence to go forward and
3 obviously sufficient evidence that there was some --
4 something happened, I think it's been referred to as an
5 incident, on, was it, June 26, 2011, that even the
6 witness said that he wasn't there when the incident
7 went down. I think he was at the club. So the fact
8 that it's controverted does not necessarily mean that
9 there is not evidence, and for that proposition I will
10 refer you to *Hoxit vs. Michelin*, that even the one
11 witness controverts his own testimony is sufficient to
12 support a finding.

13 All right. Now, Mr. Robinson.

14 MR. ROBINSON: May it please the Court.

15 THE COURT: Yes, sir.

16 MR. ROBINSON: Your Honor, there's a suspicion
17 here. There is innuendo here, but there's not enough
18 evidence in this case -- there's not evidence presented
19 by the State that would indicate that she was a hand in
20 this alleged hand of one, hand of all conspiracy.

21 And there's two parts to my argument, your Honor.
22 First, this is what the State has put forth in their
23 case-in-chief. They have put forth the fact that she
24 was a shift manager at McDonald's at the time. They
25 have put in the fact that she had employees. One of

1 the employees walked out the door without locking it
2 behind him. One of the employees came back in to get a
3 pizza without locking it behind him and so forth. She
4 was the shift manager at the time. She had the safe
5 open.

6 One of the employees testified that this was
7 common practice for them because it was an
8 end-of-the-night shift. Okay. We have her as a shift
9 manager, fine. We also have the fact -- and this is
10 what Officer Hoover testified to -- that that camera
11 had been broken for at least two weeks and was broken
12 at the time.

13 Because she was a shift manager, they're
14 assuming -- they are putting out the assumption that
15 because she's a shift manager, she knew about all this
16 stuff.

17 Well, I went back and looked at the exhibit that
18 the State put forth through their witness, Keith
19 Williams. If you look -- when looking at this
20 statement, there's nothing in this statement that --
21 this is bereft of any indication of any conspiracy in
22 this matter. There's an indication as far as, "She's
23 got something for me." That's about it in this matter.

24 This -- if this is what they're going to rely on
25 in putting this case before a jury, your Honor, this is

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1 not evidence. This is no evidence of any conspiracy
2 between Precious Harris, this individual Yank, or Keith
3 Williams. I think that -- I think suspicion is not
4 going to be enough to carry them to the point where
5 they can get this case to the jury.

6 So I think under the rules and under the case law,
7 a mere suspicion is not going to be enough to present
8 this case to the jury, and we believe -- I
9 believe we're entitled to a directed verdict on the
10 conspiracy charge.

11 THE COURT: Very well.

12 MR. WESTON: Thank you, your Honor. May it please
13 the Court.

14 Your Honor, going directly to the statement,
15 first, counsel is correct in terms of the line items he
16 read, but he neglected to read the items that confirmed
17 from the codefendant the phone calls between this
18 defendant using his phone to his brother in the car
19 with him about when they should come into the
20 restaurant or whether everybody had gone yet.

21 Also the fact that as soon as it was confirmed
22 that everyone was gone, they came in. His -- according
23 to the codefendant and his statement -- according to
24 the codefendant's statement, he robbed his girlfriend.
25 She then told the police afterwards she did not have

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1 any idea who this was, who these people were. She
2 basically lied to cover up the conspiracy.

3 And, your Honor, there is no requirement that the
4 conspiracy include -- that it be a conspiracy jointly
5 or a linear conspiracy. It could be a wheel
6 conspiracy. The fact that she had no conversation with
7 Keith Williams at the time does not mean she did not
8 conspire with her live-in boyfriend.

9 Based on that, your Honor -- and, finally, your
10 Honor, I think this puts it to bed. The codefendant
11 testified under oath that at his plea he admitted that
12 he conspired with both defendants. And he said that
13 today, he admitted that he said that at his plea, he
14 conspired with both defendants to rob McDonald's,
15 including Precious Harris.

16 That, once again, your Honor, when considering the
17 evidence in the light most favorable to the State is
18 not a mere suspicion. It is sufficient evidence for
19 the jury to find her guilty of conspiracy as well as
20 the other charges.

21 THE COURT: All right. Anything further,
22 Mr. Robinson?

23 MR. ROBINSON: No, sir, your Honor.

24 THE COURT: All right. Again, the Court's not
25 concerned about the weight of the evidence, just the

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1 sufficiency of it as to whether or not there is any
2 evidence. And the Court does find that the evidence
3 here does rise above more than mere suspicion, that if
4 you believe the witnesses, one statement or the other
5 statement -- believe one of the statements of the
6 witness, Mr. Williams, that there was a conspiracy and
7 that there was participation by the manager,
8 Ms. Harris.

9 All right. Anything else?

10 MR. WESTON: Nothing from the State, your Honor.

11 THE COURT: All right. Mr. Smith?

12 MR. SMITH: Judge, I have had an opportunity to
13 review the verdict sheets, and we have no objection as
14 to the verdict sheets.

15 THE COURT: Mr. Robinson?

16 MR. ROBINSON: No, sir.

17 THE COURT: So there will be separate verdicts as
18 to each defendant, and each verdict will address only
19 those indictments against that defendant.

20 MR. SMITH: Correct, your Honor.

21 THE COURT: Very good. Is that your
22 understanding, too, Mr. Robinson, in reading the
23 verdict forms?

24 MR. ROBINSON: It is, your Honor.

25 And one thing I do want to just, in terms of the

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1 closings, your Honor, as far as Mr. Weston's closing in
2 this matter --

3 THE COURT: You're going to make him close on both
4 of them?

5 MR. ROBINSON: No, sir, your Honor. My concern is
6 this. He just made a statement about what this guy,
7 when he made a plea of guilty in this matter, okay.
8 Because he talked about that, when he went in front of
9 a judge and pled guilty and so forth. And I just want
10 to -- that transcript was not put into the record in
11 this case. And he can talk about it, but I don't want
12 him to go willy-nilly into all sorts of things in this
13 transcript that was not put into the record in this
14 matter.

15 MR. WESTON: Your Honor, I can assure the Court I
16 will only make reference to the fact that he pled
17 guilty to the charges of armed robbery and conspiracy.
18 I won't go into the specifics of exactly what was said.
19 I won't sort of extemporaneously start talking about
20 what was said in the plea allocution.

21 And, your Honor, the verdict form, for the record,
22 State has no objection.

23 THE COURT: Very good. All right. Inasmuch as
24 the State says it will not violate your concern, then
25 no reason to read it.

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1 As far as the testimony or the defendants putting
2 up any evidence or testifying, has Mr. Chiles made a --

3 MR. SMITH: Judge, he has not changed his mind.
4 He is not going to testify.

5 THE COURT: All right. And as far as Ms. Harris?

6 MR. ROBINSON: Yes, sir, your Honor.

7 THE COURT: All right.

8 Mr. Chiles, if you would please stand.

9 Now, you're under oath still. I do not need to
10 reswear you. Do you understand that?

11 DEFENDANT CHILES: Yes, sir.

12 THE COURT: Now, have you discussed with your
13 lawyer whether or not you should testify or not?

14 DEFENDANT CHILES: Yes, sir.

15 THE COURT: Do you wish to talk to your lawyer
16 anymore at this time?

17 DEFENDANT CHILES: No, sir.

18 THE COURT: And have you been able to make up your
19 mind as to whether or not you wish to testify?

20 DEFENDANT CHILES: Yes, sir.

21 THE COURT: And what is your decision?

22 DEFENDANT CHILES: No, sir.

23 THE COURT: All right. Now, do you have any
24 question about your decision, the decision that you
25 made?

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Motions

1 DEFENDANT CHILES: No, sir.

2 THE COURT: All right. I find that the decision
3 of the Defendant Chiles is freely, voluntarily,
4 knowingly and intelligently made not to testify.

5 Thank you, sir.

6 Ms. Harris, you understand you're still under
7 oath?

8 DEFENDANT HARRIS: Yes.

9 THE COURT: You don't have to be resworn.

10 DEFENDANT HARRIS: Okay.

11 THE COURT: Thank you.

12 Now, have you had a chance to talk to your lawyer
13 about whether you should testify or not testify?

14 DEFENDANT HARRIS: Yes.

15 THE COURT: Do you need any more time to talk to
16 your lawyer?

17 DEFENDANT HARRIS: No, sir.

18 THE COURT: Have you made up your mind as to
19 whether or not you wish to testify?

20 DEFENDANT HARRIS: Uh-huh. Yes.

21 THE COURT: And what do you wish to do?

22 DEFENDANT HARRIS: Not.

23 THE COURT: Not testify?

24 DEFENDANT HARRIS: Not testify.

25 THE COURT: Again, I find that the Defendant

1 Harris has freely, voluntarily, knowingly and
2 intelligently made a decision not to testify, to
3 exercise her constitutional right, but I will inform
4 the jury as to both parties, defendants -- both
5 parties, defendants, that that matter cannot be
6 considered by the jury in their deliberations in any
7 fashion.

8 I'll do that when -- again, what we will do is
9 ask, after we bring the jury back, I'll recognize,
10 let's see, Mr. Smith on behalf of Mr. Chiles as to
11 whether -- I will address you to say, "You may call
12 your first witness," then you will just advise the
13 Court as well as in front of the jury that the
14 Defendant Chiles rests.

15 MR. SMITH: That's right.

16 THE COURT: Same thing with Defendant Harris.
17 Do you understand, Mr. Robinson?

18 MR. ROBINSON: Yes, your Honor.

19 THE COURT: And then we'll go into argument.

20 Inasmuch as neither defendant put up any evidence
21 or testimony, other evidence, the State has the burden
22 of proof as well as opening and closing and one
23 argument. You open fully on the facts and the law.

24 Do you understand that, Mr. Weston?

25 MR. WESTON: Yes, sir, your Honor.

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Charge Conference

1 THE COURT: Is that what your understanding is,
2 Mr. Smith?

3 MR. SMITH: Yes, your Honor.

4 THE COURT: All right. Now, how are we going to
5 do this? Are you going to -- I'll leave it up to the
6 State to decide if they want to do it separately if the
7 conspiracy is there and also the hand of one, hand of
8 all has also been interjected here.

9 So you're going to argue against both of them at
10 the same time?

11 MR. WESTON: Yes, sir, your Honor. I would just
12 rather present the initial argument against both and
13 sit down.

14 THE COURT: And each of the defendants respond?

15 MR. SMITH: Correct, your Honor.

16 THE COURT: Mr. Robinson?

17 MR. ROBINSON: Your Honor --

18 THE COURT: Let me go over the charges that I have
19 put together.

20 MR. SMITH: Judge, when we come in and we say that
21 we've rested and before we do that, are you going to
22 then talk to the jury about their right not to testify
23 and not wait until the charge?

24 THE COURT: Right. And I also might -- let's do
25 this. Yeah, I cover it twice. Once you rest and then

Charge Conference

1 after the argument and the charge, I also reiterate
2 that charge in a more expansive form.

3 MR. SMITH: Yes, your Honor.

4 THE COURT: All right. The only thing is inasmuch
5 as you have not put up any evidence or whatever, you're
6 renewing your motions now at the close of the case for
7 directed verdict. And inasmuch as there is no other
8 evidence in the record other than what I ruled on in
9 the first, I am denying the motion at the close of the
10 case and the evidence as to both defendants, Mr. Chiles
11 and Ms. Harris.

12 MR. SMITH: You're correct, your Honor. We would
13 or I would renew that motion after we did this, but I
14 know in order to save time we're going to go ahead and
15 do it now.

16 THE COURT: We're doing it at this time. In other
17 words, we rested on the record but not in front of the
18 jury.

19 MR. SMITH: Correct.

20 THE COURT: And same thing with you, Mr. Robinson.
21 You've rested on the record but not in front of the
22 jury. I'm hearing your motions now and denying them
23 again as to both Mr. Chiles and Ms. Harris. But now
24 we'll go forward with the final argument subject to the
25 Court's previous rulings at the close of the State's

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1 case and also the resting of the defense.

2 MR. ROBINSON: Your Honor, can I get one moment
3 to --

4 THE COURT: Certainly.

5 MR. ROBINSON: This is what it is. Mr. Weston
6 just made a blanket statement regarding what this
7 individual pled to. And I've been looking at the
8 transcript. A lot of it is what Mr. Weston said, not
9 what this individual said. I want to kind of, if I
10 could look at exactly what was testified to, I want to
11 make sure when he does his closing that he doesn't -- I
12 respect him --

13 THE COURT: We'll go off the record unless you
14 have something specifically --

15 MR. ROBINSON: That's off the record.

16 THE COURT: You and Mr. Weston get together and
17 see.

18 (WHEREUPON, an off-the-record discussion was
19 held between Mr. Robinson and Mr. Weston.)

20 MR. WESTON: Your Honor, what I've indicated to
21 counsel is that -- and I just sort of elaborated on
22 what I said a few minutes ago -- that during my
23 closing -- and I do understand counsel's concern given
24 that the transcript was not read into the record, the
25 allocution during the transcript was not put in the

Charge Conference

1 record verbatim or given to the jury as an Exhibit, I
2 plan to limit my argument concerning Mr. Williams' plea
3 to simply saying that on whatever date he pled guilty
4 to armed robbery and conspiracy. That means that he
5 admitted to robbing, da, da, da, and that he conspired
6 with others or with at least one other, however they
7 would prefer I say it. That's all I'm going to say.
8 I'm not going to say who drove the car, who did this.
9 I'm not going to get into any of that with regard to
10 the circumstances surrounding his plea.

11 I'm going to do that in terms of the statement but
12 not the plea. I promise that's all I'm going to say
13 about the plea.

14 MR. ROBINSON: That's what I wanted, your Honor.
15 I'm satisfied.

16 THE COURT: All right. Gentlemen, just quickly
17 going over the charge, of course, it will be the
18 credibility charge. We have no expert witnesses. The
19 Court's instruction on law, presumption of innocence,
20 reasonable doubt. Now, I charge the Manning,
21 "Reasonable doubt is the kind of doubt that would cause
22 a reasonable person to hesitate to act." Now, if the
23 jury asks for further instructions, then I give them --
24 well, the *Victor v. Nebraska* charge which has been
25 adopted by our state in *State vs. Mahoney* and *State vs.*

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1 Needs.

2 Then, of course, as I said, I will again instruct
3 the jury as to the -- that they cannot consider the
4 defendants' exercise of their rights not to testify.

5 Direct and circumstantial evidence. And then
6 criminal intent. Multiple charges. I go through each
7 one of the defendants as well as the charges against
8 each one of the defendants, and each one is a separate
9 and distinct and you must -- offense and you must
10 decide each indictment separately on the evidence and
11 the law uninfluenced by your decision as to any other
12 defendant -- any other indictment or any other
13 defendant. Defendants may be convicted or acquitted on
14 any or all of the offenses charged or they can be
15 acquitted on all or one. And, of course, multiple
16 defendants, that you may convict one and acquit the
17 other or you may acquit both or you may convict both.

18 Conspiracy, section 16-17410, it tracks the
19 language. And armed robbery, section 16-11330.
20 Possession of a weapon during the commission of or
21 attempt to commit a violent crime, section 16-23-490.
22 Hand of one is the hand of all. And reasonable doubt.
23 If you have a reasonable doubt of the defendant's guilt
24 after considering all the evidence on either indictment
25 or any indictment, then you must find the defendant not

1 guilty on that indictment. On the other hand, if you
2 have no reasonable doubt as to defendant's guilt after
3 considering all the evidence on any of the indictments,
4 then you must find the defendant guilty on that or
5 those indictments. And that will be the charge.

6 Anything from the State?

7 MR. WESTON: No, sir, your Honor.

8 THE COURT: From the Defendant Chiles?

9 MR. SMITH: No, your Honor.

10 THE COURT: Defendant Harris?

11 MR. ROBINSON: No, Judge.

12 THE COURT: Very well.

13 Ask the jury to join us, please.

14 MR. WESTON: Your Honor, given that there's going
15 to be three closing arguments, and I don't know this,
16 but as you know, I have been practicing for a long,
17 long time. Is there a possibility that we might do a
18 break after closing argument before charging? I
19 understand we can't go in and out. And while I'm fine
20 right now, I don't know how I may feel in 25 minutes
21 from now.

22 THE COURT: You mean a comfort break?

23 MR. WESTON: Yes, sir. Just about two or
24 three minutes.

25 THE COURT: After argument and before charge?

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1 MR. WESTON: Yes, sir.

2 THE COURT: All right. Any objection, Mr. Smith?

3 MR. SMITH: No objection, Judge. I think we can
4 just find out how everybody is feeling after we argue,
5 and if somebody needs one, then --

6 THE COURT: Very good. The charge is not going to
7 be that long.

8 Mr. Robinson?

9 MR. ROBINSON: No objection.

10 THE COURT: Okay.

11 MR. WESTON: Thank you, your Honor.

12 (WHEREUPON, the jury came into open court at
13 approximately 2:15 p.m.)

14 THE COURT: All right. Let the record reflect the
15 jury and alternate are in the jury box.

16 Mr. Foreman, ladies and gentlemen of the jury, you
17 will now proceed with the trial of the case, and I'll
18 recognize Mr. Smith on behalf of Mr. Chiles.

19 MR. SMITH: Judge, on behalf of Mr. Chiles, we
20 rest.

21 THE COURT: Now I'll recognize Mr. Robinson on
22 behalf of Ms. Harris.

23 MR. ROBINSON: On behalf of Ms. Harris, your
24 Honor, we rest as well.

25 THE COURT: Mr. Foreman, ladies and gentlemen of

1 the jury, a defendant has a constitutional right to
2 remain silent, to put up no evidence and require the
3 State to meet its burden of proof beyond a reasonable
4 doubt.

5 The assertion of the constitutional right not to
6 testify or present evidence must not be considered by
7 you in your deliberations. Under your oath you are to
8 draw no conclusion whatsoever from the fact that the
9 defendant, either defendant in this case, did not
10 testify or put up any evidence.

11 As I stated, the defendant and each of the
12 defendants is not required to prove their innocence or
13 his or her innocence, and the burden of proof remains
14 upon the State to prove the guilt of the defendant and
15 each defendant beyond a reasonable doubt as to all
16 counts in the indictments relative to those defendants.

17 All right. With that, I'll recognize Mr. Weston
18 for his closing argument.

19 MR. WESTON: Thank you, your Honor. May it please
20 the Court.

21 Ladies and gentlemen, you've heard all the
22 evidence, and in a few moments the case will be yours
23 to decide. At the conclusion of my remarks, counsel
24 for the defense will give you their closing argument.
25 And what we give you, the three of us, is not evidence.

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Closing Argument by Mr. Weston

1 It's just our view of the evidence and what we hope you
2 will do with the evidence.

3 You will take your instructions on the law from
4 Judge Macaulay. And at the conclusion of our remarks,
5 when he gives you instruction on the law, he's going to
6 tell you a lot of things about a lot of things.

7 There's some specific things I'd like you to pay
8 particular attention to, however. One is the question
9 of criminal intent, that the perpetrators of the crime
10 have to have the intent to commit that particular
11 crime. That's obviously an issue in this case because
12 if you recall at the beginning of this case, I told you
13 at the conclusion of the case three things would be
14 clear.

15 That an armed robbery occurred was the first one.
16 There's no question an armed robbery occurred. Two men
17 robbed the McDonald's on June 26th of 2011. You had
18 three independent witnesses who testified to that, that
19 they were both armed and came in. Quinzell Davis tried
20 to get out the window. They told him to get down on
21 the floor or they would kill him. And they took money,
22 approximately \$1,200. That's an armed robbery.
23 There's no question about their intent to do that.

24 His Honor will talk to you about reasonable doubt.
25 The State has the burden of proof. We have to prove

1 each element of every offense beyond a reasonable
2 doubt. Now, a reasonable doubt, in my opinion, and his
3 Honor will define reasonable doubt for you, but a
4 reasonable doubt is not an absolute doubt. It is not
5 the absolute that there is no possibility that there
6 could be any other conclusion.

7 It is a doubt that would cause a reasonably
8 prudent person firm in their conviction to hesitate to
9 act. Do not get hung up on, "I'm not absolutely sure."
10 You don't have to be absolutely sure. You have to be
11 sure to the point where you are comfortable saying this
12 defendant committed this crime. All of the elements of
13 this crime have been met as it relates to this
14 defendant. Of course you will evaluate each defendant
15 separately.

16 His Honor is going to talk to you about
17 credibility of witnesses. Ladies and gentlemen, it
18 don't get any more key than that in this case because
19 there is but no question the three lay witnesses who
20 got up here were telling the truth.

21 And they did not identify either of these
22 defendants. They gave you -- they provided you with no
23 evidence as to the guilt of either one of these two
24 people. All they did was establish two offenses --
25 excuse me, three offenses: One, that an armed robbery

1 occurred, as I said. And, number two, that there was a
2 conspiracy, the two people were acting together. At
3 least two.

4 And as I said at the outset, his Honor will tell
5 you that a conspiracy is defined as the agreement
6 between two or more people to accomplish an unlawful
7 act, period. He and I get together and decide we're
8 going to rob Bojangle's. We go in and rob it. Not
9 only did we rob it, we conspired to do it because we
10 agreed this is what we're going to do, and we're going
11 to accomplish an unlawful act, the robbery.

12 So the first three lay witnesses did not talk
13 about the guilt or innocence of the accused. There was
14 not a lot of cross-examination of them. Because as I
15 said, they didn't identify either one of these parties
16 as a perpetrator of the crime, but they did establish
17 the crimes. So their credibility is not in an issue
18 here.

19 One of them may have said, "We were standing
20 here," and the other one said, "We were standing here."
21 But it's been two years ago -- three years ago, almost.
22 And they were basically telling you as they remember
23 it. They were telling the truth. There's no question
24 about that.

25 The credibility issue, there's no question about

1 credibility of the law enforcement officers who came in
2 here. They just came and did their -- they did what we
3 pay them to do. They had almost ten to 15 police
4 officers out there. They had officers who were
5 tracking the area, the surrounding area, looking for
6 these guys. They had dog trackers out there tracking a
7 trail that led to nowhere.

8 They cordoned off the area. They separated the
9 witnesses, interviewed them, got their statements.
10 They took pictures. They did what we paid them to do.
11 There's no question about their credibility. And once
12 again, they gave you no evidence as to the guilt or
13 innocence of either of these defendants. They have got
14 no friends to reward, no enemies to punish in this
15 case. Just did their jobs.

16 Deven Hoover. He did what we pay him to do as an
17 investigator with the Greenville County Sheriff's
18 Office. He came in. He followed the protocols, he
19 followed the leads, and that led him to Keith Williams.
20 He confronted Keith Williams with the evidence against
21 him, that being the phone calls going back and forth
22 from his phone to Precious Harris right before the
23 robbery, and at some point Keith Williams confessed.

24 I'm going to get to Keith Williams in a minute,
25 but in order for Keith Williams' story to be true,

1 basically this man has to be a monster. He has to have
2 not only sacrificed Keith Williams and these two other
3 innocent people in addition to innocent Keith Williams,
4 who is doing jail time in the Department of Corrections
5 right now for a crime he didn't commit because of this
6 man, according to him. Not only did he do that, he let
7 the real robbers go. He quit looking for the real
8 robbers. Must be a monster. He is not. He is an
9 investigator with the Greenville County Sheriff's
10 Office, a trained professional who did what we pay him
11 to do. In order for you to find that Keith Williams is
12 telling the truth, you've got to find that this man did
13 something horrendous for no reason.

14 No. Ladies and gentlemen, credibility is only a
15 question when it comes to the 5,000-pound elephant in
16 the room, and that's Keith Williams. That is where
17 y'all got to sit down and listen -- that's why I want
18 you to listen to the judge talk about the definition or
19 his instruction on the law with regard to the
20 credibility of witnesses.

21 Who has friends to reward, or relatives and their
22 live-in girlfriends, or enemies to punish? He clearly
23 has friends to reward. He's trying to protect his
24 brother and his brother's live-in girlfriend. I'd take
25 a bullet for my brother. Most people would. I'm not

1 going to get on the stand and lie for him, but we all
2 know how close family is.

3 Were you surprised that he got up here and said,
4 "No, my brother had nothing to do with it." I'm
5 surprised he said he had nothing to do with it after he
6 pled guilty to it, but is it surprising he got up here
7 and said, "Listen, I'm already doing time. I'm not
8 going to bring my brother down. I'm going to say for
9 some reason that none of this stuff is true." Were you
10 surprised by that, that he said that? It's his
11 brother. What do you expect? He's trying to save his
12 brother and his brother's live-in girlfriend.

13 With that backdrop, let's talk about the charges
14 for a moment. Both of these defendants are charged
15 with armed robbery. And assuming the evidence supports
16 the charge, we're asking you to find David Chiles came
17 into the McDonald's with a gun with Keith Williams with
18 a gun and robbed McDonald's. That's armed robbery.
19 They took \$1,200. Simple as that.

20 In order to find him guilty of possession of a
21 weapon during the commission of a crime, all you have
22 got to find is what I just said, and again, he had a
23 gun. He was in possession of a weapon when he
24 committed a violent crime.

25 His Honor will instruct you armed robbery is a

1 violent crime. So he's guilty of possession of a
2 weapon during the commission of a violent crime.

3 Conspiracy. You may hear some talk that there's
4 no evidence that Keith Williams talked to her or that
5 Keith Williams talked to him or the three of them sat
6 down and had a meeting. Is that necessary for
7 conspiracy, ladies and gentlemen?

8 There's two types of conspiracy. There's linear
9 conspiracy, where we're all together. And there is a
10 wheel conspiracy, where I say, "Listen, this is your
11 job. You do this. I'm going to call Bill and Bill is
12 going to do that." I then call Bill and Bill does that
13 and y'all commit a crime. Bill never talked to him.
14 That's what is called a wheel conspiracy. Everybody
15 doesn't have to sit down and meet like in some huddle
16 of a football game: Ready, okay, hut, go.

17 A conspiracy is simply an agreement by two or more
18 people to commit an unlawful act. The fact that
19 Precious Harris was calling David Chiles on Keith
20 Williams' phone, the fact that they were outside in
21 Keith Williams' car as he drove him there, the fact
22 that Keith Williams didn't go in the back and take the
23 money, that David Chiles is the one that went in the
24 back and took the money, that doesn't make Keith
25 Williams any less responsible, and that doesn't make it

1 any less of a conspiracy. All three of them are guilty
2 of conspiring to steal from the McDonald's. They don't
3 have to do all the same things, but they have to agree,
4 This is what we're doing. It's no question if you find
5 the evidence supports what we think it does, that there
6 was a conspiracy between the three of them.

7 Armed robbery as to Precious Harris. Very simple.
8 I'll concede first she didn't have a gun. There's no
9 evidence that she had a gun. She didn't need a gun.
10 She's the night manager. She's got the money. She
11 gives it to her boyfriend when he comes in the back.
12 She starts yelling and screaming, "Oh, please don't
13 hurt me. Don't hurt me. Don't hurt me. Take the
14 money."

15 His Honor will instruct you on an axiom of the law
16 that is very simple and clear: The hand of one is the
17 hand of all. He and I go into a bank and rob the bank.
18 He shoots the bank teller. If I'm with him, I'm guilty
19 of murder. That's not complicated because I knew he
20 had a gun and it's possible somebody would get killed.
21 The law says I'm guilty of murder even though I may not
22 have had a gun. The hand of one is the hand of all.

23 Just listen to his instruction which means if
24 there is an armed robbery and she was a part of it,
25 Precious Harris is guilty of armed robbery even though

1 she had no gun.

2 Now, with that backdrop, let's briefly look at the
3 evidence. It's easy to say their whole case is just
4 Keith Williams. No. Ladies and gentlemen, you don't
5 leave your common sense home when you come and serve on
6 a jury. What are the odds that robbers would come to
7 this McDonald's when the video system is out when there
8 is nobody in the McDonald's except the night manager?

9 Now, keep in mind Quinzell Davis was in there.
10 But remember what he said. "I had gone outside. I
11 went back in to get my pizza." If he had not gone back
12 to get that pizza, the only person in the restaurant is
13 Precious Harris when her live-in boyfriend and his
14 brother come in.

15 Remember the phone calls. And look at his
16 statement -- and you will have it back there with
17 you -- when he talks about, "Are they gone yet?" The
18 only reason Quinzell Davis was in that place is
19 because he went back in to get his pizza. Otherwise
20 there's nobody in there but the three of them.

21 What are the odds? Video is down, the doors are
22 unlocked when she takes the money out of the safe and
23 is counting the money. What are the odds that that
24 rule would be violated that night when these two guys
25 just happened to come in here? What are the odds that

1 strangers would do that? What are the odds, once
2 again, that nobody else would be in the restaurant but
3 them, but her?

4 What are the odds that Precious Harris' phone was
5 showing that she was calling Chris (sic) Williams'
6 phone two or three times right before the robbery?
7 What are the odds? And what are the odds then that
8 subsequently Keith Williams would confess and
9 corroborate everything I just said? Like I say, you
10 are going to have this back there with you.

11 Let's talk about Keith Williams for a moment. He
12 started out lying. I asked him a question, "Where are
13 you staying at right now?" And he gave some street
14 address and thought that was going to be the end of
15 that. And he had to finish his first answer by
16 acknowledging, "I'm in the Department of Corrections."
17 He wouldn't know the truth if it came up and knocked
18 him in the head.

19 He says he didn't do it and they didn't do it.
20 And he was adamant. They didn't do it. And he said
21 something about he was at a nightclub or something that
22 night. How in God's name would he know that they
23 didn't do it? How can me make that statement? But he
24 is just as sure he didn't do it as he is that they
25 didn't do it. How can that possibly be? Because he is

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1 simply just covering for them, ladies and gentlemen.

2 The answers -- the true answer, if he didn't do
3 it, would have been, "I didn't do it, and I don't have
4 any reason to think they did it. I don't know whether
5 they did it or not. I was over here." But his answer
6 was, "I didn't do it and they didn't do it." He's
7 covering for his brother and his brother's live-in
8 girlfriend.

9 How does he explain the phone calls? He doesn't.
10 He explains his confession by saying for some reason
11 Deven Harris (sic) was out to get me, I guess get my
12 brother and get Precious Harris. Keep in mind Deven
13 Harris -- excuse me. I apologize, ladies and
14 gentlemen. I get a little confused.

15 This investigator told y'all long before Keith
16 Williams got on the witness stand, "I had never heard
17 of Keith Williams. I had never investigated him. I
18 had never came in contact with him as far as a witness
19 or a victim or anything. I had never heard of David
20 Chiles. I did not know David Chiles knew Precious
21 Harris. I did not know they lived together." How
22 could he possibly know those things and put those in
23 this statement unless Keith Williams told him? And in
24 this statement it sets out exactly who these people
25 are. How could he possibly know that unless he --

1 unless Investigator Hoover was told those things?

2 Two years after he gives this voluntary
3 confession -- and before I get to two years, let me
4 just make sure y'all notice. You see these little dot
5 things here you can't see from afar? They are KW's,
6 his initials, where he initialed every one of these
7 things as Investigator Hoover went over his rights with
8 him. He initialed the paragraph.

9 And at the bottom he initialed the whole thing.
10 Then he wrote and he admitted in his own words, "This
11 is my statement and it is true." How could he possibly
12 have gotten that young man to do that?

13 Almost two years later, in February of this year,
14 Keith Williams, in open court, in a courtroom just like
15 this, stood in front of a judge, swore an oath,
16 answered questions about the voluntariness of his plea,
17 whether he knew what he was doing and you're giving
18 your rights up, and are you pleading guilty because you
19 are guilty, all those things, and had a lawyer standing
20 next to him and pled guilty to armed robbery and
21 conspiracy as it relates to this acknowledgement. And
22 he comes in here and tells you, "I didn't do it and
23 they didn't do it."

24 What he didn't tell you, he didn't say -- and this
25 was February. It is now November. Did you hear him

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1 say, "I'm appealing my sentence"? Did you hear him
2 say, "I've applied to the Innocence Project"? No. He
3 is simply a man in jail doing his time for the crime he
4 committed. And if he is guilty, they are guilty
5 because he says so.

6 But not just him, all the circumstances say so.
7 What are the odds that he would rob his brother's
8 live-in girlfriend? What are the odds he would rob his
9 brother's live-in girlfriend and name his brother as a
10 codefendant? God, he must hate his brother.

11 Ladies and gentlemen, there were a lot of miss --
12 a lot of evidence you don't have. There was a lot of
13 rigamarole made about the footprint, about DNA, about
14 nothing other than stuff that was explained by the
15 officers. Said, no, the footprint was a vague
16 footprint, outline of a footprint. Looked like it
17 might be an Air Force 1 but I don't know. We had
18 nothing to match it to. We didn't arrest these people
19 until months later. This is not CSI or one of those TV
20 shows. This is real life. This officer and these
21 officers did their jobs. They did an outstanding job.

22 Finally, ladies and gentlemen, the last thing that
23 Keith Williams said that should nail this for y'all,
24 that being simply -- and, first of all, I don't think
25 there's any question Keith Williams is guilty. The

1 circumstances surrounding what he did, the phone calls,
2 the relationship to these people, especially the
3 manager, the night manager of the McDonald's, the fact
4 that he admitted his crime in a confession, the fact
5 that he pled guilty to it and admitted he committed
6 armed robbery and conspiracy, the fact that he just
7 came in here and said, "I didn't do it. They didn't do
8 it," without any explanation. Why would you do those
9 things? Why did you name them then? What did you put
10 them in this thing for? There's no question Keith
11 Williams is guilty. And as he said in the last
12 statement before I sat down, they're as innocent as he
13 is.

14 Thank you.

15 THE COURT: Mr. Smith.

16 MR. SMITH: Yes, your Honor.

17 Members of the jury, we were all listening to the
18 same case. We always have different opinions as to the
19 evidence, and that's why we've got our system. And
20 rigamarole and CSI, you're right. This isn't CSI
21 because after an hour we would have been done with this
22 case and everybody would have gone to jail.

23 But the problem is this. This isn't CSI. Dad
24 gum, it should be. You didn't hear from one forensic
25 officer in this case. Mr. Weston said you heard a lot

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1 of rigamarole talking about all the evidence and the
2 DNA. I agree we don't have DNA. Mr. Weston started
3 talking about DNA. So if it's not important, if mucus
4 or saliva and all that stuff isn't important, then why
5 bring it up? Because it is important. It is
6 important.

7 You know, you members of the jury, ya'll have got
8 a hard job. You've got to find that these two people,
9 these two innocent people, committed this crime or
10 these crimes beyond a reasonable doubt.

11 The judge is going to instruct you as to the law
12 in the case and what armed robbery and all that is.
13 I'm not going to waste my time or y'all's doing it.
14 He's going to instruct y'all as to that. He's going to
15 instruct ya'll as to what reasonable doubt is, too.
16 It's a doubt that would cause you to hesitate.

17 You know, is this the kind of evidence that we
18 want to convict people here in Greenville County or
19 anywhere in the United States on?

20 Mr. Weston brought up the Innocence Project. And
21 it's amazing that he did because it's just not what --
22 you can read about it in the paper and everything that
23 people give false confessions. Innocence Project comes
24 in. They take care of it. People are let out of jail
25 later on, 30 years down the road, because DNA matched.

1 They didn't have anything to do with the crime. And
2 we'll never know why people give false confessions or
3 why they say they did things and drag other people down
4 with them. But it happens.

5 And that's why you have something like the
6 Innocence Project out there. And the only reason I
7 think that Mr. Williams didn't say something about "I'm
8 appealing" or anything is because he never was asked
9 the question. To answer the question when you're up on
10 the witness stand, you've got to be asked a question.
11 And he never was asked.

12 So let's just go ahead. We're in it. Let's just
13 address Mr. Williams. There is a lot to talk about
14 with Mr. Williams. He testified that neither client
15 had anything to do with this. When I say "clients,"
16 I'm talking about my client, Mr. Chiles, or Ms. Harris.
17 I'm going to address both of them.

18 He said he did what his lawyer said. He talked
19 about that he took a ten-year plea because he didn't
20 really have any choice at that point. He didn't want
21 to go to trial and get 20 years, which is what his
22 lawyer told him he'd probably get. So why not just
23 take what he did. He made a mistake. Yes, he's 24,
24 but back then he was three years younger. He was
25 21 years old. Maybe even 20, depending on when his

1 birthday is.

2 You take somebody who is inexperienced versus
3 somebody who has had years of experience and training
4 and expertise, going to the classes, learning about
5 interrogation techniques and interviewing techniques
6 and could go to somebody, Hey, we know X, Y and Z. We
7 know this, this, this, and this. We know your number
8 was called. We know that you had something to do with
9 this. We know, you know, all these things. The next
10 thing you know, there is a signed statement.

11 Not only did they talk to him over here at this
12 one place, but then they take him down to the police
13 station and they question him down there. If you look
14 at his statement, parts of his statement aren't even
15 true.

16 Let's see here. They called. They started using
17 my phone to text. And then they called and then they
18 called some more. The evidence showed -- the evidence
19 showed that the only times the phone was used were
20 twice. Yes, they were around this incident, but they
21 were only called twice. And in between that time there
22 was even another phone call. Didn't have anything to
23 do with this or any of the other numbers. Two phone
24 calls.

25 They were texting left and right. Well, where are

1 the text messages? They have got her phone two days
2 later. It's in evidence. Officer, was there anything
3 in the text messages? Did you have any text messages?
4 Nothing to speak of.

5 You're right. If this was CSI, we probably
6 wouldn't even be here today. We have got a shoe print.
7 I'm sorry. What size is the shoe? What size is
8 Mr. Williams' footprint and what size is Mr. Chiles'
9 footprint? Well, maybe if we looked at the shoe print
10 and figured out what size it was -- I don't care if it
11 matches. Generally what size it is. Because if my
12 client has a size six shoe or a size 14 shoe, at least
13 you might have -- or Mr. Williams, you know, nine and a
14 half, at least you could say, "We found a nine and a
15 half shoe print on there," or, "We found a size six
16 shoe," or, "We found a size 14 shoe print." We don't
17 even have that. It's been three years.

18 And I'm going to tell you, in my opinion, and I'm
19 asserting that what happened is this. They got -- this
20 boy confessed, and they just stopped working on the
21 case. And that's it. Ooh, we got a confession. These
22 two did it. Let's go arrest them and, boom, that's it.
23 Nothing off her phone. Got all this evidence, but
24 we're not going to dot our I's and cross our T's
25 because we got a confession.

1 So why do we need anything else? And now, two and
2 a half years later, after the railroad goes pushing
3 through, you got Mr. Williams who has pled guilty
4 because he wanted to take a ten-year deal because he
5 screwed up by giving a statement in the first place
6 when he probably shouldn't have because he didn't have
7 anything to do with this because his lawyer told him
8 to.

9 And on my direct or, excuse me, my
10 cross-examination of him -- could have been a direct at
11 this point because at this point we don't know whose
12 witness he was -- "I told my lawyer in July of 2013
13 that I did not make that -- I mean these things were
14 not true." I went through and I told him what wasn't
15 true. It's not like he's coming in here today saying,
16 Oh, you know, all of a sudden, you know, "I didn't do
17 this." This was back in July. Way before he pled
18 guilty. But then the damage is done.

19 What do you do when you're a defendant? You've
20 got a choice to make. Our clients have made their
21 choice. They have sat here and said that they are not
22 guilty and the State has the burden of proof. Prove
23 your case. Prove that I'm guilty beyond a reasonable
24 doubt. Because Keith Williams, I don't begin to tell
25 you why he gave a statement saying what he said. I'm

1 no expert.

2 The characterization of this officer having to
3 have been a monster is completely false. You know,
4 here's the thing. Because I want to make sure you
5 understand something. You know, and that's why we
6 argue. And, look, we have got our training and we know
7 what we're doing. We have got to show -- you know,
8 we're trying, obviously, to persuade you to go with our
9 side. I mean, there's no secret about that. I mean,
10 that's what we do. But to do that, we have to point
11 out these things to make sure, Hey, wait a minute.
12 This is why we need to show you. This is why you ought
13 to look at this evidence and see this is what it is.

14 Because, as Mr. Weston said, he's not a monster.
15 Well, the bottom line is this. You don't have to find
16 that he's a monster. You don't have to say by saying
17 "No, we don't believe Keith Williams," that that man is
18 a monster. And I don't know if that was the intent,
19 but I'm just telling you, you don't have to say that.
20 That's not what it's about. We just don't know why
21 people give statements that aren't true, but it
22 happens, and it happened in this case.

23 You don't have to find that this officer was a
24 monster or did anything wrong to reach that conclusion.
25 If you're looking in the statement, he starts talking

1 about how or what was being talked about. He doesn't
2 know what Precious was saying because he wasn't on the
3 phone with Precious Harris.

4 Is it reasonable -- let's assume for a second,
5 let's assume for a second that that is or was at the
6 time Precious Harris' live-in boyfriend. Like
7 Mr. Weston said, you don't leave your common sense at
8 home when you come for jury duty. Is it reasonable to
9 assume that at some point, at some time that man, my
10 client, Mr. Chiles, had been to the McDonald's, had
11 come into the McDonald's before on other occasions? I
12 mean, is it reasonable to assume that your boyfriend,
13 girlfriend, spouse, whatever comes and visits you at
14 your work where other people are that might recognize
15 you later on down the road? I don't care whether
16 you've got a bandana around your face or not. You
17 know, your mannerisms, the way you dress, Oh, my gosh,
18 that's the coat that so-and-so wears. I know who that
19 guy is, just the mannerisms, what he looks like, just
20 hair, whatever.

21 There is a lot of things in this case. I'm going
22 to try not to take up too much more of your time, but
23 listen. Mr. Weston is right on certain things. You
24 have got a lot of witnesses who sat here and testified,
25 Well, I was here. No, we were here. Or, you know, we

1 both ran out that door, or we both ran out that door or
2 wherever they ran. One says they ran this way. The
3 people who committed this crime, they went up towards
4 the Spinx station. One says the Polo Apartments. They
5 were two black males. They were both tall. They had
6 bandanas on.

7 One of the good things about being on the jury is
8 you can observe the witnesses. And that's one of the
9 things that you can do. You saw Mr. Williams get up.
10 He's not that tall. Nobody recognized him, okay. But
11 what Quinzell Davis said, what Quinzell Davis said up
12 on the witness stand, Mr. Davis, they said what? One
13 of the boys or one of the men who came in and said --
14 or robbed the place said, "Come on, Brett. Let's go."
15 "Come on, Brett. Let's go." And on cross-examination
16 or redirect, Mr. Weston got up and he said, "Did he say
17 Bro?"

18 "Well, yeah."

19 On my recross -- three years ago, because he was
20 confused, you know. It's been three years. I don't
21 know. Three years ago he gave a statement to the
22 police officers, and three years ago he didn't say
23 anything about, "Oh, it could have been Bro," it could
24 have been this, it could have been that. The person in
25 the restaurant that was robbing the place said, "Come

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1 on, Brett. Let's go." And that's the statement that
2 he gave to police officers.

3 And the reason it's so important is because when
4 Mr. Weston says, "Could it be Bro," because he wants
5 you to believe that they said Bro because David Chiles
6 and Keith Williams are brothers. "Come on, Brother."
7 But that ain't what he said. He said that the people
8 who were robbing the place said, "Come on, Brett.
9 Let's go."

10 Keith Williams' name isn't Brett. David Chiles'
11 name isn't Brett. And Precious Harris' name certainly
12 isn't Brett. And that's a mistake that these two armed
13 robbers made or at least one of them, calling somebody
14 by their name. Calling somebody by their name. "Come
15 on, Brett. Let's go."

16 Not even that, but when they leave and they go
17 running outside, all of the witnesses testified that
18 Precious Harris was scared. She was crying. She got
19 on the phone with 911 and was talking to 911 about
20 coming.

21 Look, the evidence, the evidence here, I mean, if
22 you want physical CSI-type evidence, you're obviously
23 not going to get it. People go in, they rob the place,
24 and there's no fingerprints. There's no evidence put
25 forth that anybody was wearing anything over their

1 hands or anything else, but they can't get
2 fingerprints.

3 If I'm going to jump over a counter, there's a
4 footprint, but yet we don't get any fingerprints. I'm
5 going to open up a door, and I don't get any
6 fingerprints. I've got a footprint, but I'm not
7 looking to see even what size it is. Maybe we can't
8 match the shoe, but at least we can say it's the same
9 size as somebody.

10 There's no guns. There's no money. There's no
11 text messages. Even though the phone is sitting in
12 property in evidence, you don't even have the phone.
13 You don't have the footprint. It's just sitting in
14 property in evidence.

15 The bottom line is this. You can consider all the
16 evidence that is before you today, but you can also
17 consider the lack of evidence to establish a reasonable
18 doubt. If you're looking at that evidence or lack of
19 evidence and that causes you to hesitate, then that is
20 reasonable doubt, and that would mean a not guilty
21 verdict for Ms. Harris and Mr. Chiles.

22 I ask you to consider that. We're asking you to
23 return a verdict of not guilty in this case. Thank
24 you.

25 THE COURT: Mr. Robinson.

1 MR. ROBINSON: May it please the Court.

2 Good afternoon again. Now, I've heard that y'all
3 can't hear me sometimes, and I'm going to do my best to
4 talk as loud as I can. I'm not really a big, loud
5 talker, but I'll try. All right. I'll tell you what.
6 If you think that I'm talking really low, just let out
7 a big yell and I can hear you.

8 I want to tell you I appreciate all of you coming
9 to the court, and I appreciate your time and so forth
10 in this matter. As I said at the beginning, this is a
11 very important case for my client but also to her
12 family as well.

13 Now, I think one thing that I think all of you may
14 have gleaned from Mr. Weston's closing statement of
15 this case is that you have got to watch out who your
16 friends are, you have got to watch out who you
17 associate with because if you associate with someone,
18 you must be guilty. Because what Mr. Weston is saying,
19 this hand of one, hand of all we're talking about, what
20 that means is if you make some phone calls to somebody
21 or you call someone or you say something to someone,
22 that that means you must be associated with anything
23 that they do. That's not the law.

24 There has to be, this hand of one, you have to
25 have a hand. You have to have something, some

1 agreement between people that this happened. Here's
2 what they have. They have pretty much innuendo.
3 Innuendo, suspicion. Maybe, possibly, could be, so
4 forth.

5 At the beginning of this case, I told y'all this
6 case is not about maybe, should be, possibly. It has
7 nothing to do with this case. This case also, if you
8 listen to Jeff Weston or Mr. Weston over there, this
9 case has nothing to do with I. We're not in Las Vegas
10 here. We're not trying to imply what are the odds of
11 this happening. That's not the law.

12 They have to be able to prove to you all beyond a
13 reasonable doubt that my client committed this crime,
14 conspiracy and armed robbery. In order for them to do
15 that, they have got to show an agreement and they can't
16 do it.

17 They can say, Well, she was a shift manager at
18 McDonald's when this happened and her boyfriend was
19 this person, his brother was this person. I want you
20 to look at the State's exhibit that they have which is
21 a statement of Mr. Williams. Look at that statement
22 and look at the different lines. You will see some
23 things said.

24 One of the things that the person said the brother
25 said was she says that she's got something for him.

1 She's got something for him. What does that mean? It
2 could mean food. It could mean a lot of other things,
3 too, as well. But, again, when you look at the case,
4 you have to look at it in terms of has the State proven
5 their case beyond a reasonable doubt.

6 I want to go back for a second to some of the
7 testimony in this case. The officer in this matter.
8 He testified that he spoke to or one of the officers
9 spoke to a Mr. Goodman. He was the area manager for
10 McDonald's at the time. He said there were several
11 violations, but he said specifically at the beginning,
12 the outset, that that camera in that location had been
13 broken for at least two weeks and was broken at the
14 time of this incident.

15 This had nothing to do with Precious Harris. She
16 was a shift manager. There was also testimony that
17 there was an assistant manager above her, other
18 managers above her, as well as a manager of the whole
19 store. In that two-week period of time, who was
20 responsible for repairing that? She had nothing to do
21 with the repair of that camera. She couldn't repair
22 that camera herself. She didn't have the authority as
23 a shift manager to repair a camera that would cost
24 money to this franchise.

25 The next thing he talked about was the violations

1 that happened. First he said the individual, Michael
2 Culbertson, who testified a little bit differently than
3 what Mr. Weston talked about. Mr. Culbertson was not
4 supposed to leave without telling someone. He left
5 without telling anyone in that store that he was
6 leaving. How would Precious Harris know, if she was in
7 the back of the store, how would she know he was
8 leaving? How would she know that?

9 Then you have the other individual, the other
10 employee. He leaves, too. They violated a rule. They
11 violated it, not Precious Harris. These folks violated
12 the rule. You saw the two of them come in here. These
13 are basically teenagers. Young people. They want to
14 smoke. They want to have their pizza and so forth.
15 They're not concerned that much with this McDonald's
16 because, as you heard them say, they were just
17 employees. It's not their responsibility.

18 But they left the doors unlocked. Precious Harris
19 didn't leave the doors unlocked. She didn't go and
20 unlock these doors for anybody. These doors lock from
21 the inside. And if you look at one of the exhibits,
22 Exhibit 7, it shows you what this door looked like.

23 The inside of that door, according to the
24 testimony, was a little lock that you turn back and
25 forth to lock it. That's what you have. All they had

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1 to do when they left is tell the person they left, and
2 they could lock it behind them. They didn't do that.

3 And you also heard him talk about the fact that
4 Michael Culbertson, he was supposed to clean the grill.
5 And by the time the robbery happened, he would have
6 been there, too. That's not Precious Harris' fault
7 that he didn't do his job. But because she was a shift
8 leader or shift manager at this McDonald's, she must be
9 guilty. Come on. There's not one indicia of anything
10 that indicates that she got anything out of this.
11 Nothing.

12 The officer testified that he had no prior
13 experience with her. He didn't know who she was. They
14 didn't get anything from her place. They didn't search
15 her place, but they found no money. They didn't look
16 at her bank account, look at things like that to see if
17 she made some big purchase or something like that,
18 something for whatever. No, they didn't do that. They
19 didn't do anything like that. So they have nothing
20 that indicates that she got anything out of this whole
21 mess other than a huge headache from associating with
22 certain people.

23 But as I said before, association with someone is
24 not enough to prove a conspiracy. You have got to have
25 an agreement. If you don't have an agreement between

1 two or more people, you don't have conspiracy. Because
2 in Mr. Weston's world, if you listen to him, and he
3 did say -- I mean I'm glad he said this -- he said he
4 was confused for a moment there. I get that. I have
5 my own -- we all have our days when we're a little bit
6 confused and so forth.

7 This is a very important point. They haven't
8 proven a conspiracy. What they have shown is
9 association. In Mr. Weston's world, all of us are
10 going to have some problems because all of us at some
11 point meet people or associate with people. Come on.
12 If that's all there is to this, we should all be here
13 at that table over here. That's not the law.

14 And the judge in a minute is going to give you the
15 law in this case. And when you apply the law in this
16 case and you hold this table, this person, the State to
17 reasonable doubt, you will find that Ms. Harris is
18 innocent. She may have made bad choices in boyfriends
19 and people she associates with. We have all made
20 decisions or had problems with people we associate with
21 in our lives. But if you apply the law in this case,
22 she's innocent. You've got to have, for hand of all --
23 hand of -- we've heard this in the beginning of the
24 case. He trotted this out, this whole idea. Hand of
25 one, hand of all. He did it again in his closing

1 statement. But you've got to have a hand in this
2 thing. You can't just have a hand out here and say,
3 Well, she knew these guys and things like that, and she
4 was a shift leader so she must be part of it. That's
5 not the law.

6 I've noticed no one has gotten loud, so I'm
7 talking louder. Okay. But I want you to also look at
8 the exhibit of Mr. Williams in this case because he
9 uses that saying such and such. There's nothing in
10 there that indicates any sort of agreement or
11 conspiracy between Precious Harris and anybody.
12 Nothing. And everything that she did that night was,
13 according to Mr. Culbertson, normal. It was normal
14 during the closing at the end of the night for the
15 manager, the shift manager, to have the safe open
16 because there was going to be a deposit, to make a
17 deposit that night. According to Mr. Culbertson, who
18 was employed, that's just how it was.

19 But ask yourselves this, though. If this was some
20 big conspiracy or some whatever it is between these
21 people, why use a gun and why use masks to do this?
22 Why? You know this person. You aren't going to use
23 masks to cover faces.

24 In conclusion, there is a saying. It's a very
25 famous saying. And this is what the saying is. I want

Jury Charge

1 you to just think about this saying. And it really
2 does ring true in this case. Injustice anywhere is
3 injustice everywhere.

4 This case is about injustice. This case is about
5 trying to fit association with somebody and phone calls
6 into this cubbyhole of hand of one, hand of all. They
7 don't have a hand. And what they're trying to do is
8 make it so that no one can associate with anyone in
9 this case and not be subject to being charged with a
10 crime.

11 So, ladies and gentlemen of the jury, I'm going to
12 stop, and my voice is kind of getting hoarse now
13 because I don't usually talk this loud. But I will
14 tell you, I thank you very much for your time, but I
15 ask you again, as Mr. Weston and Mr. Smith has said,
16 use your common sense and apply the law. And if you do
17 that, you will do justice and find Precious Harris not
18 guilty. Thank you.

19 THE COURT: Mr. Foreman, ladies and gentlemen of
20 the jury, as jurors in this case you have certain
21 functions and responsibilities to perform which are
22 entirely separate and distinct from mine as a trial
23 judge.

24 I am prohibited by the Constitution of our
25 state from charging you on the facts of this case. I

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Jury Charge

1 am also prohibited from discussing the facts of the
2 case with you in any way intimating what my feelings,
3 if any, are about the facts of case.

4 It is your responsibility and yours alone to pass
5 upon all issues of fact presented in the case. I would
6 therefore charge you that if during the course of the
7 trial you have been given or left with the impression
8 or feeling that I do have a personal opinion about the
9 facts of this case, I would specifically instruct you
10 to disregard that feeling or impression.

11 Moreover, you are the sole judges of what the
12 testimony was and not the argument of counsel. It is
13 also your duty and your duty alone to weigh and
14 testify -- to weigh and evaluate the testimony and
15 evidence in the case and to pass upon the credibility
16 or believability of the witnesses.

17 In this connection you have the right to believe
18 all that a witness tells you or disbelieve all that a
19 witness tells you. You have the right to believe a
20 part of what a witness tells you and to disbelieve a
21 part of what a witness tells you.

22 You have the right to take into consideration any
23 bias or prejudice or interest you feel a witness may
24 have in the case. I say this merely to emphasize the
25 weight that you see fit to give to the testimony and

Jury Charge

1 the credibility of the witnesses as well as all the
2 issues of fact are for your sole determination.

3 As judges of the facts you are the sole judges of
4 the credibility, that is, the believability of the
5 witnesses who have testified in this case. In passing
6 upon their credibility you may take into consideration
7 many things such as the appearance and manner of the
8 witness on the stand sometimes referred to as the
9 demeanor of the witness. Was the witness forthright or
10 hesitant? Was the witness' testimony consistent or did
11 it contain discrepancies? What was the ability of the
12 witness to know the facts about which he or she
13 testified? Did the witness have a cause or a reason to
14 be biassed or prejudiced in favor of the testimony he
15 gave? Was the testimony of the witness corroborated or
16 made stronger by other testimony and evidence, or was
17 it made weaker or impeached by such other testimony and
18 evidence?

19 As jurors, you have the right to believe a small
20 portion of a witness' testimony and disregard the
21 larger or vice versa. You may believe all of a
22 witness' testimony or none. Most certainly you do not
23 determine the matter of credibility or believability by
24 counting up the number of witnesses who may have
25 testified on behalf of the parties.

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Jury Charge

1 Throughout this entire process you have but one
2 single objective and that is to seek the truth
3 regardless from what witness' testimony it may have
4 come. And by the same Constitution and law which makes
5 you the finders of the facts and the evidence, as I
6 discussed with you, I am the judge, made the sole and
7 only instructor on the law. You must accept as correct
8 the law which I charge and apply it to the evidence as
9 you find it and reach a verdict. If I should make an
10 error in the law as I instruct it to you, there is
11 another time and place that error can be considered
12 and, if necessary, corrected. But for the purposes of
13 this case, you must obey the law as I charge it to you
14 to be the correct law.

15 Finally, I charge you that in this regard you, nor
16 for that matter I, should be concerned with what we
17 think the law ought to be, but rather what I charge you
18 the law to be.

19 Now, the defendants have pled not guilty to the
20 indictments, and that plea puts the burden on the State
21 to prove each defendant guilty of each count. The
22 person charged with committing a criminal offense in
23 South Carolina is never required to prove himself or
24 herself innocent.

25 I charge you that it is an important rule of the

Jury Charge

1 law that the defendant in a criminal trial no matter
2 what the seriousness of the charge may be will always
3 be presumed to be innocent of the crime for which the
4 indictments were issued unless guilt has been proven by
5 evidence satisfying you of the guilt beyond a
6 reasonable doubt.

7 The presumption of innocence does not end when you
8 begin your deliberations, but it accompanies the
9 defendant throughout the trial until you reach a
10 verdict of guilt based upon evidence satisfying you of
11 that guilt beyond a reasonable doubt.

12 The presumption of innocence is like a robe of
13 righteousness placed about the shoulders of the
14 defendants which remains with the defendants until it
15 has been stripped from each defendant by evidence
16 satisfying you of the defendant's guilt beyond a
17 reasonable doubt.

18 The presumption of innocence is not a mere legal
19 theory. It's not just a legal phrase. It's a
20 substantial right to which every defendant is entitled
21 unless you, the jury, are satisfied from the evidence
22 of the defendant's guilt beyond a reasonable doubt.

23 What is a reasonable doubt in the law? A
24 reasonable doubt is the kind of doubt that would cause
25 a reasonable person to hesitate to act. I instruct you

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1 and emphasize the fact -- that the fact that the
2 defendants did not testify or put up any evidence in
3 this case is not a factor to be considered by you in
4 any way in your deliberations and in your consideration
5 on the question of whether the State has proven
6 defendants are guilty or not guilty on all of the
7 charges or any of the charges in the indictments.

8 It must not be considered by you in any manner
9 whatsoever. A defendant has the constitutional right
10 to remain silent, and that exercise of that right must
11 not be considered by you in your deliberations. I
12 repeat, under your oath you are to draw no conclusions
13 whatsoever from the fact that the defendant in this
14 case or defendants in this case did not testify or
15 present evidence. The fact that the defendants did not
16 testify should not even be discussed by you in the jury
17 room.

18 The burden of proof, as I have stated to you, is
19 on the State. The defendants and each of them are not
20 required to prove their innocence from beyond -- or
21 they are not to prove -- they are not required to prove
22 their innocence. The burden of proof is on the State
23 to prove each defendant on each count in each
24 indictment guilty beyond a reasonable doubt.

25 Now, there are two types of evidence which are

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1 generally presented during a trial: Direct evidence
2 and circumstantial evidence. Direct evidence is the
3 testimony of a person that comes -- who claims to have
4 actual knowledge of a fact such as an eyewitness. It
5 is evidence that immediately establishes the main fact
6 to be proved and does not require deduction.

7 Circumstantial evidence is proof of a chain of
8 facts and circumstances indicating the existence of a
9 fact. It is evidence which immediately establishes
10 collateral facts from which the main fact may be
11 inferred.

12 Circumstantial evidence is based on inference and
13 not on personal knowledge or observation. Crimes may
14 be proven by circumstantial evidence. The law makes no
15 distinction between the weight or value to be given
16 either direct or circumstantial evidence. However, to
17 the extent the State relies on circumstantial evidence,
18 all of the circumstances must be consistent with each
19 other and when taken together point conclusively to the
20 guilt of the accused beyond a reasonable doubt.

21 These circumstances merely portray the defendants'
22 behavior as suspicion -- if these circumstances merely
23 portray the defendants' behavior as suspicious, the
24 proof has failed. The State has the burden of proving
25 the defendants' guilt beyond a reasonable doubt. The

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1 burden rests upon the State regardless of whether the
2 State relies on direct evidence or circumstantial
3 evidence or some combination of the two.

4 You should weigh all of the evidence in the case.
5 After weighing all of the evidence, if you are not
6 convinced of the guilt of the defendant on that
7 indictment or that count of the indictment beyond a
8 reasonable doubt, you must find the defendant not
9 guilty on that indictment and that count of the
10 indictment.

11 In order to establish criminal liability, criminal
12 intent is required. Criminal intent must be proved by
13 the State beyond a reasonable doubt. Criminal intent
14 is always a matter that must be determined by the jury
15 from the circumstances surrounding the situation.

16 There is no way to prove intent to a mathematical
17 certainty. There is no way medical science can dissect
18 a person's brain and determine what the person had in
19 mind, so the law says that criminal intent may be
20 inferred from the circumstances shown to have existed.

21 This is how you make a determination of whether or
22 not the element requiring intent is present. It is not
23 necessary to establish intent by direct and positive
24 evidence, but intent may be established by inference in
25 the same way as any other fact, by taking into

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1 consideration the acts of the parties and all of the
2 facts and circumstances of the case.

3 Criminal intent is a mental state, a conscious
4 wrongdoing. It is up to you to determine what the
5 defendant intended to do based on the circumstances
6 shown to have existed. Criminal intent is a state of
7 mind that operates jointly with an act or omission in
8 the commission of crime. Criminal intent is a mental
9 state.

10 Criminal liability is normally based upon the
11 concurrence of two factors: An evil, mean mind and an
12 evil-doing hand. Suspicion, however strong, is not
13 enough to sustain a conviction. The evidence presented
14 by the State must be substantial evidence that tends to
15 prove the guilt of the defendant beyond a reasonable
16 doubt.

17 Now, the indictments in this case charge both
18 defendants with conspiracy and armed robbery. And as
19 to the defendant David Wince Chiles, Jr., possession of
20 a weapon during the commission of a violent crime.

21 I remind you that the fact that a defendant was
22 arrested, charged and indicted in this case is not
23 evidence in this case and cannot be considered by you
24 as evidence of guilt of the defendant in this case or
25 either one of the defendants, nor does it create any

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1 presumption or inference of guilt.

2 These documents are simply the formal written
3 instruments which contain the charges made against the
4 defendants. It is a formal document by which this case
5 is brought into court.

6 Now, the indictments in this case allege several
7 different offenses against the defendants. As to the
8 defendant David Wince Chiles, Jr., the charges are:
9 Indictment number 2012-GS-23-965, conspiracy, and
10 indictment number 2012-GS-23-966, Count One, armed
11 robbery, and Count Two, possession of a weapon during
12 the commission of a violent crime.

13 As to the defendant Precious Jacquetta Harris, the
14 charges are: In indictment number 2012-GS-23-1 --
15 excuse me -- 1727, conspiracy, and indictment number
16 2012-GS-23-3108, armed robbery.

17 Each indictment charges a separate and distinct
18 offense. You must decide each indictment separately on
19 the evidence and the law applicable to it uninfluenced
20 by your decision as to any other indictment.
21 Defendants may be convicted or acquitted on any or all
22 of the offenses charged. You will be asked to write a
23 separate verdict of guilty or not guilty for each
24 indictment and each count of each indictment as to each
25 defendant.

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1 I charge you that there are the two defendants in
2 this case, each of whom is charged with conspiracy and
3 armed robbery. Additionally, one defendant, David
4 Wince Chiles, Jr., is charged with possession of a
5 weapon during a violent crime. The case of
6 each defendant and evidence and the law concerning that
7 defendant should be considered separately and
8 individually. Your verdict does not have to be the
9 same for both defendants. The fact that you may find
10 one defendant guilty or not guilty should not control
11 your verdict as to the other defendant.

12 Where more than one person is charged with a
13 crime, if the evidence warrants it, you may convict one
14 and acquit the other, or you may acquit both or you may
15 convict both. It will depend upon your view of the
16 testimony and evidence. You must take each defendant
17 and consider the evidence as to that defendant and my
18 instructions to you on the law. You will then write a
19 separate verdict of guilty or not guilty to each
20 individual on each count of each indictment.

21 Now, the defendants are charged with conspiracy.
22 The State must prove beyond a reasonable doubt that the
23 defendants combined with one or more persons for the
24 purposes of committing an unlawful act or committing a
25 lawful act by unlawful means.

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1 There must be a mutual understanding, agreement of
2 common intention and plan. Mere passive knowledge of
3 or consent to the criminal conduct of another is not
4 enough to make a person a conspirator. There must be
5 guilty knowledge and participation.

6 Similarly, the mere fact that the defendants may
7 have associated with one another or met with another
8 person and discussed common aims and interests does not
9 necessarily establish the proof of existence of a
10 conspiracy although the defendants were involved in a
11 conspiracy.

12 On the other hand, it is not necessary that the
13 agreement be a formal one, that is, that it be in
14 writing, that the persons hold a meeting and expressly
15 state the terms of the common plan or that agreement be
16 stated in words between them. Agreement of -- excuse
17 me -- the agreement of a criminal conspiracy may come
18 into being through an implied mutual understanding.

19 Willful, intentional and knowing adoption by two
20 or more persons of a common plan is sufficient. No
21 overt act needs to be shown to establish a conspiracy.
22 A conspiracy may be shown by circumstances, evidence
23 and the conduct -- circumstantial evidence and the
24 conduct of the parties.

25 In order to convict the defendants of conspiracy,

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1 the State must prove beyond a reasonable doubt not only
2 that the defendants knew of the unlawful conduct but
3 the defendants agreed to combine with the other person
4 for the purpose of accomplishing the unlawful conduct.

5 Now, the defendants are charged also with armed
6 robbery. In order to prove the offense, the State must
7 first prove beyond a reasonable doubt that the
8 defendants took personal property from the person or
9 presence of another person. Now, that includes a
10 corporation.

11 Property is in the presence of a person if it is
12 within that person's reach, inspection, observation or
13 control so that the person could, if not overcome with
14 violence or prevented by fear, keep possession of the
15 property.

16 The State must also prove beyond a reasonable
17 doubt that the defendants carried the property away
18 intending to permanently deprive the owner of the
19 property and to keep the property for the defendants'
20 own use. The slightest removal of the property or the
21 complete possession of the property, even for an
22 instance, by the defendants is sufficient to show a
23 taking and carrying away of the property. The taking
24 and carrying away of the property must have been done
25 with violence or by putting the owner of property in

1 fear of violence.

2 Finally, the State must prove beyond a reasonable
3 doubt the defendants were armed with a deadly weapon
4 during the robbery. A deadly weapon is any article,
5 instrument or substance that is likely to cause death
6 or great bodily harm. Whether an instrument has been
7 used as a deadly weapon depends on the facts and
8 circumstances of each case.

9 The following are examples of instruments which
10 may be deadly weapons: A pistol, shotgun, rifle, dirk,
11 dagger, knife, razor, fire bomb, and a gun may be a
12 deadly weapon even if it's not operating.

13 The defendant, David Wince Chiles, Jr., is charged
14 with possession of a weapon during the commission or
15 attempt to commit a violent crime. The State must
16 prove beyond a reasonable doubt the defendant was in
17 possession of a firearm or visibly displayed what
18 appeared to be a firearm during the commission of a
19 violent crime. A firearm means any machine gun,
20 automatic rifle, revolver, pistol, any weapon which is
21 designed to and may be readily converted to expel a
22 projectile.

23 In order to find the defendant guilty of
24 possession of a weapon during the commission of a
25 violent crime, you must first find the defendant guilty

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1 of either committing a violent crime or attempting to
2 commit a violent crime. Armed robbery is a violent
3 crime.

4 The State must prove beyond a reasonable doubt
5 that the weapon further advanced or helped in the
6 commission of the crime. Now, if a crime is committed
7 by two or more people who are acting together in
8 committing a crime, the act of one is the act of all.
9 A person who joins with another to commit an unlawful
10 act is criminally responsible for everything done by
11 the other person which happens as a probable or natural
12 consequence of the acts done in carrying out the common
13 plan and purpose.

14 For example, two people can be guilty of killing
15 another person when only one of the two had a gun.
16 There was only one bullet and only one of the two fired
17 the shot that caused the death. If two or more people
18 are together, acting together, assisting each other in
19 committing the offense, the act of one is the act of
20 all. Or as it's sometimes said, the hand of one is the
21 hand of all.

22 Prior knowledge that a crime is going to be
23 committed without more is not sufficient to make a
24 person guilty of that crime. Mere knowledge that
25 another person is going to commit a crime, even if the

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1 defendant is present when the crime is committed, is
2 not sufficient to convict the defendant as a principal.

3 The guilt as a principal is shown by actual or
4 constructive presence at the scene as a result of a
5 prior agreement or arrangement. Therefore, a finding
6 of a prior arranged plan or common scheme is necessary
7 for a finding of guilt as a principal.

8 The State must prove beyond a reasonable doubt by
9 competent evidence the theory -- excuse me. The State
10 must prove beyond a reasonable doubt by competent
11 evidence the theory of the hand of one is the hand of
12 all. A principal in a crime is one who either actually
13 commits the crime or is present aiding, abetting or
14 assisting in committing the crime.

15 When a person does an act in the presence of and
16 with the assistance of another, the act is done by
17 both. When two or more acting with a common plan or
18 intent are present at the commission of a crime, it
19 does not matter who actually commits the crime. All
20 are guilty. Hand of one is the hand of all. "Present
21 at the commission of the crime" means to be
22 sufficiently near to aid and abet and assist in the
23 commission of a crime.

24 However, mere presence at the scene of a crime is
25 not sufficient to convict one as a principal on the

1 theory of aiding and abetting. Intent is also a
2 necessary element, for there must have been a common
3 design or intent to commit the crime and the crime must
4 have been committed pursuant thereto with the person
5 aiding and abetting by some overt act.

6 "Intent" means intending the result which actually
7 occurs, not accidentally or involuntarily. Intent may
8 be shown by acts and conduct of the defendant and other
9 circumstances which may naturally and reasonably infer
10 intent. The State must prove these elements beyond a
11 reasonable doubt.

12 If you have a reasonable doubt of the defendants'
13 guilt or each of the defendants after considering or
14 either of the defendants after considering all the
15 evidence on either indictment, any of the counts in
16 those indictments, then you must find the defendant not
17 guilty on that indictment or that count.

18 On the other hand, if you have no reasonable doubt
19 as to the defendants' guilt after considering all the
20 evidence on either or both of the indictments as to
21 each of the defendants and the counts of those
22 indictments, you must find the defendant guilty on that
23 or those indictments and the counts of those
24 indictments.

25 Mr. Foreman, ladies and gentlemen, you have been

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1 selected as fair and impartial jurors, sworn to
2 impartially try and determine the facts of this case.
3 And when you comply with your oath to do so, then no
4 one will have the right to criticize your verdict and
5 you will have fully discharged your duty as jurors.

6 You should not be influenced by opinions or
7 expression of opinions, if any, which you may have
8 heard on the outside, but you will decide this case
9 according to the testimony that you have heard from the
10 lips of the sworn witnesses along with the other
11 evidence that may have been introduced.

12 As to those questions to which an objection was
13 sustained, you must not speculate as to what the answer
14 might have been or the reason for the objection. As I
15 said earlier, you are the judges of the facts in this
16 case, and you are to determine only if the defendant
17 and each of the defendants is guilty or not guilty
18 based on the testimony and evidence presented in the
19 trial and after applying the law as I have given it to
20 you.

21 If, from the evidence, you have a reasonable doubt
22 as to whether or not either of the defendants are --
23 whether or not the defendant is guilty, it is your duty
24 to acquit that defendant and write that, the two words
25 "not guilty," as to that indictment and that charge in

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1 the counts in those indictments.

2 Under the oath you took you swore to try this case
3 based only and solely on the testimony, evidence and
4 law presented and heard in this courtroom. It's your
5 duty to lay aside all bias or prejudice or sympathy you
6 may have in reaching your verdict. You have no friends
7 to reward or enemies to punish in this case.

8 I might note that the word "verdict" comes from
9 the Latin term "veredictum," which means "to speak the
10 truth." Abide by your oath and return a verdict which
11 speaks the truth.

12 Now, Mr. Foreman, ladies and gentlemen of the
13 jury, I have prepared two sets of verdict forms for
14 your use during the trial -- during your deliberations.

15 Madam Bailiff, could you give these to the
16 Foreman, please.

17 THE BAILIFF: Sure.

18 THE COURT: Thank you.

19 As you will notice, as to the State of South
20 Carolina versus David Wince Chiles, Jr., on indictments
21 number 2012-GS-23-965 and 966, the verdict form
22 provides on indictment number 2012-GS-23-965
23 conspiracy. And remember, as I mentioned earlier in
24 these proceedings, that whatever your verdict is must
25 be unanimous. That means all 12 of you must agree to

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1 that verdict.

2 And so on the indictment for conspiracy against
3 the defendant, David Wince Chiles, Jr., it is provided,
4 "We, the Jury, unanimously find on the indictment
5 number 2012-GS-23-965 that the defendant, David Wince
6 Chiles, Jr., is guilty of conspiracy" or "not guilty."

7 Then you go to the next page as to indictment
8 number 2012-GS-23-966, Count One, "We, the Jury, on
9 Count One, armed robbery, We, the Jury, unanimously
10 find on indictment number 2012-GS-23-966, Count One,
11 that the defendant, David Wince Chiles, is guilty of
12 armed robbery or not guilty." Again, whatever your
13 verdict is on that count of that indictment must be
14 unanimous.

15 Then Count Two of the indictment, possession of a
16 weapon during a violent crime: "We, the Jury,
17 unanimously find on indictment number 2012-GS-23-966,
18 Count Two, the defendant, David Wince Chiles, Jr., is
19 guilty of possession of a weapon during the commission
20 of a violent crime" or "not guilty."

21 Now, once you complete all of the verdicts on that
22 indictment, if you would then sign your name above the
23 line as provided.

24 Then the second verdict form is as to the State of
25 South Carolina versus Precious Jacquetta Harris,

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1 indictment number 2012-GS-23-1727 charging conspiracy.
2 And your verdict would be: "We, the Jury, unanimously
3 find on indictment number 2012-GS-23-1727 that the
4 defendant, Precious Jacquetta Harris, is" either guilty
5 of conspiracy or not guilty.

6 And then on the second indictment,
7 2012-GS-23-3108, armed robbery, your verdict would be:
8 "We, the Jury, unanimously find on the indictment
9 number 2012-GS-23-3108 that the defendant, Precious
10 Jacquetta Harris, is" either "guilty of armed robbery"
11 or "not guilty."

12 Again, it must be unanimous verdicts on each
13 indictment. And once the verdict form is completed as
14 to that defendant, then sign your name. And once you
15 complete that, if you would, get the verdict forms
16 back.

17 I'm going to ask you to retire to the jury room
18 one more time without beginning your deliberations.
19 But when the bailiff brings in the verdict forms and
20 all the exhibits that have been introduced and admitted
21 into evidence in this case, then you will commence your
22 deliberations.

23 Once you reach your verdicts as to all -- both
24 indictments -- all indictments and all counts of the
25 indictments as to each of the defendants, then you will

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1 knock on the door and we'll return you and receive your
2 verdicts.

3 And with that, I would ask you to retire to the
4 jury room one more time. Again, do not begin your
5 deliberations until I send in the verdict forms.

6 Madam Alternate, you get to stay with us.

7 But the 12 members of the jury, if they would,
8 please.

9 (WHEREUPON, the jury, with the exception of the
10 alternate juror, exited the courtroom
11 at 3:36 p.m.)

12 THE COURT: All right. Are there any exceptions
13 or requests from the State?

14 MR. WESTON: No, sir, your Honor.

15 THE COURT: From the Defendant Chiles?

16 MR. SMITH: No, your Honor.

17 THE COURT: From the Defendant Harris?

18 MR. ROBINSON: No, sir, your Honor.

19 THE COURT: Very good. All right. Look through
20 the exhibits and be sure that everything that's
21 supposed to go back does go back and nothing that is
22 not supposed to go back does not go back.

23 All right. We'll stand at ease while awaiting a
24 verdict.

25 MR. SMITH: Judge, the alternate.

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1 THE COURT: I'm sorry. I'll be right with you.

2 Y'all do check on your exhibits. And here's the
3 verdict forms, Mr. Bailiff.

4 MR. WESTON: State has no objection or problem
5 with the exhibits that are going to go back, your
6 Honor.

7 THE COURT: Is that correct, Mr. Robinson?

8 MR. ROBINSON: That's correct, Judge.

9 THE COURT: Be sure they understand to begin
10 deliberations, just knock on the door when they're
11 complete.

12 Wonderful. Thank you.

13 I think you understand why we have an alternate
14 because this case went over two days, and, of course,
15 something could have happened to one of them, and you
16 would slide into their place on the jury reaching their
17 verdict.

18 I know that it looks like I'm doing everything but
19 paying attention up here, but I have developed a
20 certain knack, I guess, for keeping up with what goes
21 on in the courtroom, and I noticed that throughout the
22 trial of this case you were very -- you paid very
23 careful and close attention to all of the testimony and
24 evidence, and I saw you responding sometimes to the
25 testimony and evidence. And so I'm confident if you

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1 did have to sit as a juror, you would have been an
2 excellent juror, and I wish there was something I could
3 do to thank you for your service.

4 Of course, Madam Clerk, that does complete their
5 service?

6 THE CLERK: Yes, it does.

7 THE COURT: Do you have anything for the juror?

8 THE CLERK: If she needs a statement, she can get
9 it from Judy downstairs.

10 THE COURT: Do you know where the clerk's office
11 is?

12 ALTERNATE JUROR: I've already got it.

13 THE COURT: That does complete your service. I do
14 want to thank you. I know you would have rather been
15 somewhere else than where you've been the last two
16 days.

17 ALTERNATE JUROR: No, I've learned a lot.

18 THE COURT: Well, wonderful. Thank you so much
19 because that's the one thing I would want to say, I
20 hope it has been of some benefit.

21 ALTERNATE JUROR: Yes.

22 THE COURT: Because we could not have the system
23 of justice we have without citizen participation.

24 ALTERNATE JUROR: Thank you.

25 THE COURT: Thank you, ma'am.

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1 All right. As I said earlier, we stand at ease
2 awaiting a verdict.

3 By the way, I do want to thank all the attorneys
4 not only for their patience with the Court but also for
5 the very professional way y'all tried this case. I
6 don't think any of you left anything unturned, and I
7 want to thank you all for it. And that goes for the
8 State and each of the defendants and all that. I thank
9 you very much. All right.

10 We'll stand at ease awaiting a verdict.

11 (Court in recess, pending verdict, from 3:40 p.m.
12 to 5:13 p.m.)

13 THE COURT: Back on the record. The Court has
14 received a question from the jury. "Is the police
15 report evidence and can we have it?"

16 Mr. Weston.

17 MR. WESTON: Your Honor, my answer would be no and
18 no.

19 THE COURT: All right. Mr. Smith.

20 MR. SMITH: I would not disagree with Mr. Weston,
21 your Honor.

22 THE COURT: I understand. Mr. Robinson?

23 MR. ROBINSON: I do as well.

24 THE COURT: All right. Now, of course, I think
25 the actual investigative report is probably

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1 inadmissible because it does contain, obviously,
2 opinions and things of that nature and also the rule
3 prohibits investigative reports. So, no, it will not
4 be -- it's not admissible and would not be permitted to
5 go to the jury.

6 I can approach it in two ways: By giving them
7 that law that it's not admissible and cannot go to the
8 jury, or I can just say, "You have to try the case on
9 the evidence and exhibits that are submitted."

10 What do you say, Mr. Weston?

11 MR. WESTON: I would prefer, your Honor, that you
12 give them both, but I think we all agree that you give
13 them the second one.

14 MR. ROBINSON: Yes.

15 MR. SMITH: Judge, are you talking about bringing
16 the jury in and --

17 THE COURT: Well, I've got to bring them in,
18 right?

19 MR. SMITH: I -- I -- I guess my experience has
20 been just saying, look, they have got the evidence,
21 whatever has been presented, and that's it.

22 THE COURT: That's just it. That's why I'm asking
23 what would be the preference.

24 MR. ROBINSON: I would concur with Mr. Smith.

25 THE COURT: That sounds like Mr. Weston and y'all

Jury Charge

1 are in agreement.

2 All right. Ask the jury to join us, please.

3 (WHEREUPON, the jury came into open court at
4 approximately 5:20 p.m.)

5 THE COURT: All right. Let the record reflect the
6 jury is in the jury box.

7 Mr. Foreman, ladies and gentlemen of the jury, the
8 Court has been provided a question: "Is the police
9 report evidence and can we have it?"

10 Mr. Foreman, ladies and gentlemen of the jury, the
11 police report is not in evidence and as a separate
12 exhibit, and you must decide -- and the record is
13 closed now, so you must decide your verdicts on each of
14 these indictments and each count of the indictment
15 based on what is in evidence, what you have either by
16 way of testimony or exhibits that have been admitted.

17 JURY FOREMAN: We have all the evidence?

18 THE COURT: You have all of the evidence that has
19 been admitted. When I say all the evidence, I'm
20 talking about the exhibits.

21 JURY FOREMAN: Yes.

22 THE COURT: Now, the testimony can be replayed if
23 you want that or portions of it. Not the whole thing,
24 of course. But if you have some question about that.

25 JURY FOREMAN: No.

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Verdict

1 THE COURT: All right. Anything else? Very good.
2 Retire to the jury room and continue deliberations.
3 (WHEREUPON, the jury exited the courtroom
4 at 5:21 p.m.)
5 THE COURT: All right. Any exceptions or requests
6 from the State?
7 MR. WESTON: No, sir, your Honor.
8 THE COURT: From the Defendant Chiles?
9 MR. SMITH: No, your Honor.
10 THE COURT: From the Defendant Harris?
11 MR. ROBINSON: No, sir, your Honor.
12 THE COURT: Very good.
13 MR. SMITH: Nothing, your Honor. I just noticed
14 that one of the props that Mr. Weston was using was
15 still up there and I was going to ask -- I don't know
16 that it makes any difference at this point.
17 THE COURT: Well, the thing is I've already told
18 them they can't have it.
19 MR. WESTON: I'll take it back to my office now,
20 your Honor.
21 THE COURT: Or turn it around.
22 MR. WESTON: Yes, sir.
23 MR. SMITH: That's fine.
24 THE COURT: Either way.
25 (Court in recess, pending verdict, from 5:22 p.m.)

Verdict

1 until 6:51 p.m.)

2 THE COURT: All right. We're back on the cases of
3 State versus Chiles and Harris. I understand the jury
4 has reached a verdict.

5 Is there anything from the State before we bring
6 the jury in?

7 MR. WESTON: No, sir, your Honor.

8 THE COURT: From the Defendant Harris?

9 MR. ROBINSON: No, sir, your Honor.

10 THE COURT: Defendant Chiles?

11 MR. SMITH: No, your Honor.

12 THE COURT: Inasmuch as we have had some interest
13 in this trial and obviously welcome any interest that
14 can be demonstrated but not demonstrated in a vocal way
15 but demonstrated in the sense of paying attention and
16 being aware of what is going on, but in this regard, as
17 I say, the Court cannot in any way abide any sort of
18 outburst or boisterous remarks regardless of what the
19 verdict is.

20 In the event that there is such an outburst, as I
21 mentioned the other day, the Court would consider that
22 contempt of its decorum and will fine the individual or
23 sentence them, as the case may be, to as much as six
24 months in jail as the circumstances deserve.

25 So with that admonition: No outburst, no response

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2012-GS-23-965 & 966

Verdict

1 whatsoever to the jury, jury's verdict, if anybody has
2 any question about it and what they're going to do and
3 not do, leave the courtroom now.

4 Very well. Ask the jury to join us.

5 (WHEREUPON, the jury came into open court at
6 approximately 6:55 p.m.)

7 THE COURT: Mr. Foreman, I understand the jury has
8 reached verdicts in these cases.

9 JURY FOREMAN: Yes.

10 THE COURT: If you would, please, pass them up to
11 the bailiff.

12 Thank you.

13 THE COURT: State of South Carolina versus David
14 Wince Chiles, Jr., indictment number 2012-GS-23-965,
15 we, the Jury, unanimously find on indictment number
16 2012-GS-23-965 that the defendant, David Wince Chiles,
17 Jr., is guilty of conspiracy.

18 Indictment number 2012-GS-23-966, Count One, armed
19 robbery, we, the Jury, unanimously find on indictment
20 number 2012-GS-966, Count One, that the defendant,
21 David Wince Chiles, Jr., is guilty of armed robbery.

22 Indictment number 2012-GS-23-966, Count Two,
23 possession of a weapon during a violent crime, we, the
24 Jury, unanimously find on indictment number
25 2012-GS-966, Count Two, that the defendant, David Wince

Verdict

1 Chiles, Jr., is guilty of possession of a weapon during
2 the commission of a violent crime. Signed, Steven G.
3 Aden.

4 Mr. Foreman, ladies and gentlemen of the jury, are
5 these your verdicts and are they still your verdicts in
6 the State of South Carolina versus David Wince Chiles,
7 Jr., as to each -- as to the indictments and each count
8 in each indictment? If so, indicate by raising your
9 right hand.

10 Very good. Let the record reflect that the jury
11 affirms its verdict.

12 State of South Carolina versus Precious Jacquetta
13 Harris, indictment number 2012-GS-23-1727, conspiracy,
14 we, the Jury, unanimously find on indictment number
15 2012-GS-23-1727 that the defendant, Precious Jacquetta
16 Harris, is not guilty.

17 Indictment number 2012-GS-23-3108, armed robbery,
18 we, the Jury, unanimously find on indictment number
19 2012-GS-23-3108 that the defendant, Precious Jacquetta
20 Harris, is not guilty. Signed, Steven Aden, Foreman,
21 Greenville, South Carolina, November 6, 2014.

22 Mr. Foreman, ladies and gentlemen of the jury, if
23 this is your verdict on both -- on these indictments,
24 as to both of these indictments, excuse me, and it's
25 still your verdicts, if so, indicate by raising your

State of South Carolina vs. David Wince Chiles, Jr.
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Verdict

1 right hand.

2 Very good. Let the record reflect --

3 (Outburst from gallery.)

4 THE COURT: Just ask them to leave, if you would,
5 please.

6 Let the record reflect that the jury does affirm
7 its verdicts in the cases of Precious Jacquetta Harris.

8 All right. Is there anything from the State
9 before I dismiss the jury?

10 MR. WESTON: No, sir, your Honor.

11 THE COURT: From the Defendant Chiles?

12 MR. SMITH: No, your Honor.

13 THE COURT: From the Defendant Harris?

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

15 THE COURT: Mr. Foreman, ladies and gentlemen of
16 the jury, the Court is never interested in a verdict,
17 only how that verdict is reached. And I can assure you
18 that in this particular trial -- and it was a unique
19 trial, if you will forgive me, with codefendants and
20 the issues that were involved -- and also you might
21 give me at least patience with the Court, it looks like
22 I'm doing everything up here except paying attention.
23 But I did pay attention to the things that go on in the
24 courtroom, and one of the things that I am particularly
25 aware of is the attention that you, each of you, have

Verdict

1 given to the testimony, the evidence, the exhibits, the
2 argument by counsel and the proceedings we have had in
3 these two cases. And I am satisfied that you gave both
4 the State and the defendants, both defendants, a fair
5 and impartial trial in this case.

6 None of you asked to be here this week. There's
7 many places you would have rather been than where you
8 have been for the last two days, but I can assure you
9 our system of justice would not function if it did not
10 have citizen participation. And for that reason not
11 only is this Court but also the people of South
12 Carolina and in particular Greenville County are
13 indebted to you for your service.

14 I wish there was something I could do for you in
15 recognition of your service. Of course this will
16 conclude your service as jurors this week. But if you
17 remember when you were qualified on Monday, I think you
18 were asked the questions, how many of you served on a
19 jury in the last three years. At least you won't have
20 to serve for another three years. I do thank you for
21 your service. As I say, without citizen participation,
22 this system of justice would not be what it is.

23 And also I would suggest this to you or at least
24 mention it to you. Your verdict is something that was
25 reached by all 12 of you but in a unanimous way in each

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Sentencing

1 of those verdicts. So, therefore, it's not the verdict
2 of any one of you, but the collective body as a jury.
3 So, therefore, none of you or any one of you have any
4 duty or responsibility to answer for that verdict.

5 In fact, if anybody should seek to find out about
6 how you reached your verdict or discuss the verdict
7 with you and you do not wish them to do that, then you
8 are to report them to the clerk of court and I'll take
9 the appropriate action because, as I say, you have
10 performed your duty as citizens, not in any other
11 personal way, and I thank you for it.

12 With that, I excuse you from your service in the
13 Court of General Sessions in Greenville County for this
14 week and for three years. Good luck to you all and
15 thank you again.

16 (WHEREUPON, the jury exited the courtroom
17 at 7:03 p.m.)

18 THE COURT: All right. In the matter of the State
19 of South Carolina versus Precious Jacquetta Harris, the
20 jury having found you not guilty on both indictments, I
21 hereby discharge you from your arrest and dismiss you.

22 MR. ROBINSON: Thank you, Judge.

23 THE COURT: All right. You may retire if you
24 would like. Good luck to you, ma'am.

25 MR. ROBINSON: Thank you, Judge.

Sentencing

1 THE COURT: In the matter of State of South
2 Carolina versus David Wince Chiles, Jr., is the State
3 ready to proceed?

4 MR. WESTON: Yes, sir, your Honor.

5 THE COURT: Is the defendant ready to proceed?

6 MR. SMITH: Yes, sir, your Honor.

7 THE COURT: If you would please come around.

8 All right. Mr. Solicitor, the defendant has been
9 convicted of conspiracy on indictment number
10 2012-GS-23-965, found guilty on that indictment, that
11 is indictment for conspiracy. I understand the maximum
12 sentence is not to be imprisoned more than \$5,000 -- of
13 course fined more than \$5,000 or imprisoned not more
14 than five years. But the fine must not be greater or
15 the sentence greater than five years.

16 And on indictment number -- let's see -- 966,
17 Count One, armed robbery, the maximum sentence on that
18 would be for a mandatory minimum term of not less than
19 ten years nor more than 30 years, no part of which may
20 be suspended or probation granted.

21 And possession of a weapon during a violent crime,
22 if convicted of that offense, you must be imprisoned
23 for five years in addition to the punishment provided
24 for the principal crime, mandatory five-year sentence
25 to run consecutively or concurrently.

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Sentencing

1 Is that your understanding?

2 MR. WESTON: Yes, sir, your Honor.

3 THE COURT: Is that your understanding, Mr. Smith?

4 MR. SMITH: Yes, sir. It is mandatory unless a
5 longer mandatory minimum term is prescribed for the
6 violent crime, which is the armed robbery, which is the
7 ten years. So it's like you said, it can be concurrent
8 to the ten years or it can be consecutive or whatever
9 you --

10 THE COURT: After the ten years.

11 MR. SMITH: Yes.

12 THE COURT: Right.

13 MR. SMITH: Yes, sir.

14 THE COURT: All right. Very well. What's the
15 record of the defendant?

16 MR. WESTON: He has no prior record, your Honor.

17 THE COURT: Is there any recommendation?

18 MR. WESTON: No, sir, your Honor.

19 And just while I'm speaking, the victim obviously
20 is not here. They indicated that they did not wish to
21 be here for the outcome of the trial. We will advise
22 them, of course, of the outcome. And with regard to
23 jail time, your Honor, Mr. Smith and I have agreed that
24 he has been in the detention center since December the
25 either 11th or 30th of 2011. I'm not sure.

1 THE COURT: Let me ask you. Have you calculated
2 that or do I just leave it as to be determined by the
3 Department of Corrections?

4 MR. WESTON: I think that would be the appropriate
5 thing to do, your Honor.

6 THE COURT: All right. Do you have any problem
7 with that, Mr. Smith?

8 MR. SMITH: As long as they do it correctly,
9 Judge. For the record, can I say that I'm looking at a
10 supplemental report that shows that the date of arrest
11 or the warrant was served on December the 30th, 2011,
12 so credit for time served since that date is what we
13 would be asking for.

14 THE COURT: What I'll do, then, is I'll mark it to
15 be credit be given for time served from --

16 MR. SMITH: From December 30th, 2011.

17 MR. WESTON: Well, your Honor, I think it will be
18 more appropriate to let the Department of Corrections
19 calculate it because apparently there was some house
20 arrest at some point. He was released on house arrest.
21 I'm not sure how that calculates in.

22 MR. SMITH: Well, the statute says that you can
23 get credit for house arrest.

24 THE COURT: Well, the only problem with that, the
25 statute also says that if the Department of

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Sentencing

1 Corrections, what is it, determined the credit for time
2 served to be calculated and applied by the State
3 Department of Corrections.

4 MR. SMITH: Okay.

5 THE COURT: I mean, if we're going to talk about
6 statutes.

7 MR. SMITH: Yes, sir. But, I mean, I guess what
8 I'm saying is --

9 THE COURT: In other words, if there is often,
10 what is it, if there is no question about it, the time
11 to be given credit for, of course, I accept the
12 agreed-to amount.

13 MR. SMITH: Yes, sir.

14 THE COURT: But here there seems to be some
15 questions about calculation of it, and inasmuch as the
16 statute provides for the calculations to be made and
17 applied by the State Department of Corrections, I'll
18 leave it for them to do.

19 MR. SMITH: As far as your Honor is concerned and
20 based on our agreement and just for the record, Judge,
21 just in case it comes up, you don't have any problem
22 with giving him credit for time served back to
23 December 30, 2011?

24 THE COURT: Of course I do because I understand
25 there's some question where that time was served and

Sentencing

1 under what conditions, and that's something for the
2 interpretation -- of course, Mr. Smith, you understand
3 according to *Shabazz*, it's a matter for the
4 administrative division of our courts, not general
5 sessions.

6 MR. SMITH: Yes, sir.

7 THE COURT: All right. So, in other words, I will
8 give -- do it according to the statute, give him credit
9 for time served pursuant to South Carolina Section
10 24-13-40 to be calculated and applied by the State
11 Department of Corrections on both indictments.

12 MR. SMITH: Thank you, your Honor.

13 THE COURT: Very good. All right. Anything else
14 from the State?

15 MR. WESTON: No, sir, your Honor.

16 THE COURT: All right. Mr. Smith?

17 MR. SMITH: Well, Judge, you know, we obviously
18 went through a two-day trial, and we may have to find
19 out if it was some sort of a compromise verdict where
20 one person was let go and the other one was convicted
21 or something of that nature, if anybody will talk to
22 us.

23 THE COURT: Well, the only thing is, that's
24 something by the rules you can't do.

25 MR. SMITH: Yes, sir.

Sentencing

1 THE COURT: If I'm not mistaken, I think it's rule
2 1011 or 12 that one of the things that you're
3 prohibited from doing is inquiring about the jury's
4 verdict.

5 MR. SMITH: You've heard the evidence. It's
6 possible they could have done that. But the bottom
7 line is, I mean, my client has maintained his innocence
8 this entire time. Precious Harris did the same thing.
9 They found her not guilty. They found him guilty. You
10 judged the witnesses and seen how they testified. My
11 client has no prior record, Judge.

12 THE COURT: Well, let me find a little bit out
13 about the defendant. How old is he?

14 MR. SMITH: Go ahead and answer.

15 DEFENDANT CHILES: 21.

16 THE COURT: How far did he go in school?

17 You can answer, Mr. Chiles, if you would,
18 please -- well, you're still under oath. Do you
19 understand that?

20 DEFENDANT CHILES: (Nodding.)

21 THE COURT: You're shaking your head. Is that
22 saying that you understand you're still under oath and
23 you do not have to be resworn?

24 DEFENDANT CHILES: Yes, sir.

25 THE COURT: All right. How far have you gone in

1 school?

2 DEFENDANT CHILES: Eleventh.

3 THE COURT: Eleventh grade? What kind of work do
4 you do?

5 DEFENDANT CHILES: None.

6 THE COURT: Have you ever been employed?

7 DEFENDANT CHILES: No, sir.

8 THE COURT: All right. Are you married?

9 DEFENDANT CHILES: No, sir.

10 THE COURT: Do you have any children?

11 DEFENDANT CHILES: Yes, sir.

12 THE COURT: How many children?

13 DEFENDANT CHILES: One.

14 THE COURT: And who does your child live with?

15 DEFENDANT CHILES: The mom.

16 THE COURT: Do you contribute towards your son's
17 support?

18 DEFENDANT CHILES: I have.

19 THE COURT: Pardon?

20 DEFENDANT CHILES: I just had her.

21 THE COURT: All right. Do you do it voluntarily
22 or through court order?

23 MR. SMITH: Judge, what had happened was I think
24 he was -- he was put in the detention facility, had
25 gotten out on house arrest and then was put back in,

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1 and he hasn't had an opportunity to support.

2 THE COURT: How old is your son?

3 DEFENDANT CHILES: She's a girl.

4 THE COURT: Oh, a girl. I thought you said he.

5 All right. I'm sorry. How old is your daughter?

6 DEFENDANT CHILES: Two months.

7 THE COURT: Oh, just two months. I see what you
8 mean.

9 MR. SMITH: Yes, sir.

10 THE COURT: But you're not under any court order
11 to support the daughter?

12 DEFENDANT CHILES: (Shaking head.)

13 THE COURT: In other words, any support that you
14 would do for your child, your daughter, would be
15 voluntary?

16 MR. SMITH: He's not under any order, Judge.

17 THE COURT: That's what I'm saying, it would be
18 voluntarily, if there was any.

19 MR. SMITH: That's correct.

20 THE COURT: And you went to the eleventh grade.

21 MR. SMITH: You have to answer out loud.

22 DEFENDANT CHILES: Yes, sir. Yes, sir.

23 THE COURT: But he has no record; is that correct?

24 MR. WESTON: That's correct, your Honor.

25 THE COURT: How about juvenile?

1 I mean, I'm just asking, do you know if there is a
2 juvenile record? Have you even looked? I don't want
3 to know what it was, I just want to know.

4 MR. WESTON: Yes, sir, your Honor. He does have a
5 juvenile record.

6 THE COURT: That's the only thing I want to know.
7 I don't need to know what it is because I'm not going
8 to consider it. I'm just curious. He's 21 and he
9 doesn't have -- no adult record?

10 MR. SMITH: Correct.

11 THE COURT: Very well.

12 Mr. Smith.

13 MR. SMITH: Well, Judge, you heard from his
14 brother who is 24 now, was 21 when this incident
15 happened. He would have been 18 when this incident
16 happened. Judge, the only thing -- there's not much I
17 can add as far as the facts and everything. We put
18 everything out there.

19 What I'm going to ask your Honor to do, take into
20 consideration his age, please. Take into consideration
21 the fact that he has been incarcerated pretty much this
22 entire time or on house arrest.

23 I know he went to trial. I know that the
24 mandatory minimum is ten years. He's very well aware
25 of that. He knows that he's going to have to serve

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1 85 percent of that time if you gave him ten years. And
2 that's eight and a half years. And that's with good
3 time, if he even gets good time down there. Otherwise
4 he's got to serve the entire ten years. So he is aware
5 of that, but he has no adult record.

6 And I know that sometimes if people are -- if they
7 went ahead and pled guilty, they may be given credit
8 for standing up and saying something that they did. I
9 know his brother did the same thing and got ten years
10 and had a prior record. This young man does not have
11 any prior record. Maybe a juvenile thing, but as an
12 adult, he does not have a prior record.

13 Judge, I'm going to ask you to give him the
14 minimum, the ten years. I know that may be -- and it
15 may not be abnormal, but a lot of times -- it's just
16 such a harsh penalty. And it's a harsh crime. But the
17 fact that it is a mandatory minimum, ten to 30 years,
18 I'm going to ask you to give him the minimum based upon
19 his age and the evidence that you've heard here today.
20 That way it will give him a chance to learn, to get out
21 and still have a life, to still be able to see his
22 child while she's still a child, and to be productive.

23 THE COURT: Well, he says he hasn't done anything
24 since he dropped out of the eleventh grade.

25 MR. SMITH: Well -- and, Judge, he's going to be

1 incarcerated now. He'll still be able to get out at
2 some point, and that's what this is about is
3 rehabilitation and hopefully give him some skills, get
4 his GED while he's in there, and hopefully be
5 employable when he gets out.

6 THE COURT: Mr. Chiles, what do you have to say?

7 DEFENDANT CHILES: I have nothing to say, sir.

8 THE COURT: Well, there is a reason for mandatory
9 and minimum sentences.

10 Anything you have to say, Mr. Weston?

11 MR. WESTON: No, sir, your Honor.

12 THE COURT: I most certainly don't punish anybody
13 for exercising their right to a trial, and it's hard
14 enough to understand what to do when the offenses are
15 not so dangerous. Armed robbery. Grand larceny. And,
16 of course, the conspiracy to commit the armed robbery.

17 MR. SMITH: Judge, if I may, I would ask again --
18 and I didn't say this before so it wouldn't be again, I
19 don't guess, but I would ask that you run everything
20 concurrent with each other rather than consecutively.

21 THE COURT: Mr. Smith, are you appointed?

22 MR. SMITH: I was appointed, yes, sir.

23 THE COURT: All right. Is there anything else
24 from the State?

25 MR. WESTON: No, sir, your Honor.

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Sentencing

1 THE COURT: Anything else on behalf of Mr. Chiles,
2 Mr. Smith?

3 MR. SMITH: No, your Honor.

4 THE COURT: Mr. Chiles, anything else you would
5 like to say?

6 DEFENDANT CHILES: No, sir.

7 THE COURT: Indictment number 2012-GS-23-966, it's
8 the sentence of the Court that the defendant, David
9 Wince Chiles, Jr., be committed to the State Department
10 of Corrections for a term of 15 years plus pay the
11 costs and assessments as applicable. Defendant be
12 given credit for time served pursuant to the law as
13 provided.

14 Special condition of probation -- excuse me --
15 special condition of the sentence he is to obtain his
16 GED, undergo drug and alcohol testing and treatment and
17 substance abuse counseling as directed. That was on
18 Count One, armed robbery.

19 Indictment number 2012-GS-23-966, Count Two,
20 possession of a weapon during a violent crime, it's the
21 sentence of the Court the defendant, David Wince
22 Chiles, Jr., be committed to the State Department of
23 Correction for a term of five years and payment of the
24 costs and assessments as applicable. Sentence to run
25 consecutive to the sentence on 2012-GS-23-966, Count

1 One.

2 Indictment number 2012-GS-23-965, it's the
3 sentence of the Court that the defendant, David Wince
4 Chiles, Jr., be committed to the State Department of
5 Corrections for a term of five years provided upon
6 payment of costs and assessments as applicable. The
7 balance is suspended with probation for five years.
8 Sentence to run concurrent to 2012-GS-23-966, and
9 defendant is to be given credit for time served
10 pursuant to laws made and provided.

11 Special condition is that he is to perform
12 240 hours public service employment during probation,
13 obtain his GED, and probation to be suspended while
14 serving an active sentence. Public service employment
15 is suspended while being -- public service suspended
16 while gainfully employed and to pay \$500 to the clerk
17 of court during probation. All right.

18 Good luck to you, sir.

19 MR. WESTON: Thank you, your Honor.

20 (WHEREUPON, proceedings concluded at 7:32 p.m.)
21
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Greenville)David W. Chiles, Jr # 362035)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2017-CP-23

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-CLERK OF COURT
PAUL B. WICKENBARGER
GREENVILLE, SC 29601
2017 MAR 7 AM 9:51INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence General Sessions, Greenville SC.
3. Name(s) of co-defendant(s) (if any) Previous Harris
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-23-965, conspiracy
 - (b) 2012-GS-23-966, armed robbery Count one, possession of a weapon during a crime
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 11-5-14, 5 years suspended with probation for 5 years
 - (b) 11-5-14, 15 years count one, 5 years consecutive count two

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. March 2, 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Applicant was denied Effective Assistance of counsel guaranteed by Federal and state law
 (b) _____
 (c) _____

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

- (a) Counsel acts and or omissions during trial fell below the standard required by law.
 (b) _____
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. N/A
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. N/A
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. N/A
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. N/A _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No _____
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A _____
- 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) This is the first PCR _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes _____
- (c) your sentencing? yes _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? 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. Marcus L. Smith 522 N. Church St 29601
- ii. Kathrine H. Hodgins PO Box 11589 Columbia, SC 29211
- iii. _____

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

- i. trial and sentencing
- ii. Direct Appeal
- iii. _____

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

Reverse and Remand

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

No

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, DK, 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.

1/ [Signature]

SWORN to and subscribed before me this 27th
day of February, 2017

[Signature] Michael Comare
(L.S.)
Notary Public

My Commission Expires: July 09, 2026

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
David W. Chiles, #362035,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2017-CP-23-1521

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on March 7, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In April 2012, the Greenville County Grand Jury indicted Applicant for conspiracy (2012-GS-23-0965), armed robbery and possession of a weapon during the commission of a violent crime (2012-GS-23-0966). Marcus L. Smith, Esquire represented Applicant. Assistant Solicitor Jeff Weston, Esquire prosecuted the case. On November 5, 2014, Applicant proceeded to trial before the Honorable Alexander S. Macaulay and a jury. The jury found Applicant guilty as indicted. Judge Macaulay sentenced Applicant to imprisonment for fifteen years for armed robbery, five years for conspiracy and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Kathrine H. Hudgins, Esquire South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Chiles, Op. No. 2016-UP-108 (S.C. Ct. App. filed March 2, 2016). The Remittitur was sent on March 18, 2016.

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

Attached to this Return and incorporated by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, trial transcript and appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Ineffective Assistance of Counsel"
 - a. Counsel acts and omissions during trial fell below the standard required by law.

In his amended application for post-conviction relief filed on May 22, 2017, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. Counsel failed to conduct an appropriate investigation, review case files, and prepare for trial in a timely manner. *Coles vs. Payton*, 393 U.S. 894 (4th cir 968). Counsel's Failure to abide by these requirements deprived the jury of critical information relevant to an accurate assessment of the Applicant's guilt or innocence. See *Wiggins Vs. Smith* 539 U.S. 510 (2003).
 - b. Counsel failed to timely subpoena witness(s), preventing mitigating evidence to be submitted into the record, due to S.C.R Evi. 801 (c).
 - c. Counsel failed to motion to suppress evidence, that was going to be recanted at trial, as well as failed to investigate the possibility that evidence was procured by unlawful means.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied

upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed

by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCPP.

V.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

November 3, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2017-CP-23-1521

DAVID W. CHILES, 362035)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rodney W. Richey, Esquire
Post Office Box 10916
Greenville SC 29603

DATED this 3rd day of November, 2017.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	2017-CP-23-01521
	)	
	)	
DAVID W. CHILES, JR.	)	
	)	ORIGINAL
	)	
	)	
	)	
APPLICANT)	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THE STATE OF SOUTH CAROLINA	)	
RESPONDENT)	)	

December 15, 2017
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

RODNEY RICHEY, ESQ.
Attorney for the Applicant

DESHAWN MITCHELL, ESQ.
Attorney for the Respondent

APRIL HERRON
Official Court Reporter

2020

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS

2017-CP-23-01521

ORIGINAL

DAVID W. CHILES, JR.)

APPLICANT)

vs.)

TRANSCRIPT OF RECORD)

THE STATE OF SOUTH CAROLINA)

RESPONDENT)

December 15, 2017
 Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

RODNEY RICHEY, ESQ.
 Attorney for the Applicant

DESHAWN MITCHELL, ESQ.
 Attorney for the Respondent

APRIL HERRON
 Official Court Reporter

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There we no exhibits.

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Certificate of Reporter 38

1 THE COURT: All right, Mr. Mitchell, you can
2 call your first case, sir.

3 MR. MITCHELL: May it please the Court, Your
4 Honor?

5 THE COURT: Yes, sir.

6 MR. MITCHELL: DeShawn Mitchell for The State.
7 This is 2017-CP-23-1521, David Chiles vs. State of
8 South Carolina. The Applicant is presently confined
9 in The South Caroline Department of Corrections
10 pursuant to Orders of Commitment to the Greenville
11 County Clerk of Court. In April of 2012, the
12 Greenville County Grand Jury indicted Applicant for
13 conspiracy, armed robbery, and possession of a weapon
14 during the commission of a violent crime. Marcus
15 Smith represented the Applicant. On November 5th,
16 2014, Applicant proceeded to trial before the
17 Honorable Alexander S. Macaulay and a jury. The jury
18 found Applicant guilty as indicted. Judge Macaulay
19 sentenced Applicant to imprisonment for 15 years for
20 armed robbery, five years for conspiracy and five
21 years for possession of a weapon during the
22 commission of a violent crime.

23 The Applicant filed a timely notice of appeal.
24 The Court of Appeals dismissed that appeal, the
25 remitter was sent on March 18th, 2016. Mr. Chiles is

DAVID CHILES-DIRECT BY MR. RICHEY

1 present in the courtroom represented by Mr. Richey.

2 THE COURT: Okay, Mr. Richey.

3 MR. RICHEY: Thank you, Your Honor, we call
4 Mr. Chiles.

5 THE CLERK: Mr. Chiles, please step around to
6 the witness booth. Place your left hand on the Bible
7 and raise your right hand. You can turn around this
8 way. Yeah, that's good.

9 David Chiles, after being duly sworn, testified
10 as follows:

11 THE CLERK: Thank you, you may be seated. State
12 your full name for the record.

13 THE WITNESS: David West Chiles.

14 DIRECT EXAMINATION

15 BY MR. RICHEY:

16 Q Mr. Chiles, are you incarcerated right now?

17 A Yes, sir.

18 Q Where are you incarcerated?

19 A McCormick.

20 Q And were you convicted in Greenville County?

21 A Yes, sir.

22 Q On what charges?

23 A Armed robbery.

24 Q And what is your current sentence?

25 A Fifteen years, consecutive five.

DAVID CHILES-DIRECT BY MR. RICHEY

1 Q Okay. And who represented you on those charges?

2 A Mr. Smith.

3 Q Okay. And you have filed an Application for
4 Post-Conviction Relief; is that correct?

5 A Yes, sir.

6 Q And it is your position, as petitioner, that
7 Mr. Smith did not effectively represent you; is that
8 correct?

9 A Correct.

10 Q And one of the grounds that you have alleged
11 that he did not properly investigate your case; is that
12 correct?

13 A Correct.

14 Q And can you tell me what -- about the lack of
15 investigation in your case?

16 A He didn't do a full investigation into my case.
17 As far as my sentence.

18 Q When you say full investigation, define that for
19 me, please.

20 A Like sit down and really just tell me what's
21 really going on with my case. Instead of just shoving
22 time in my face.

23 Q Okay. So, did y'all talk about the facts of the
24 case?

25 A Not really.

DAVID CHILES-DIRECT BY MR. RICHEY

1 Q Let's go back just briefly. This case involved
2 a McDonald's, correct?

3 A Correct.

4 Q And what did The State allege that y'all -- that
5 you did?

6 A Robbed McDonald's.

7 Q Okay. And you and Mr. Smith did not talk about
8 the facts of the alleged robbery or anything?

9 A We talked about it. But it wasn't like -- it
10 wasn't -- I really don't even know what you're talking
11 about, Mr. Richey.

12 Q Okay. Did y'all talk about the elements of the
13 crime that The State would have to prove and all of that?

14 A Yeah, we talked about that. But they didn't
15 really have nothing to prove against me but one statement.

16 Q Okay. And that -- that statement was allegedly
17 given by your brother, correct?

18 A Correct.

19 Q Did you and Mr. Smith discuss the consequences
20 of that statement?

21 A He just said my brother did -- he did his part.
22 He said my brother was going to get me or whatever.

23 Q And at trial your bother denied the statement,
24 right?

25 A Correct.

DAVID CHILES-DIRECT BY MR. RICHEY

1 Q Okay. Did you testify in your case or put up
2 any evidence?

3 A No, sir?

4 Q And why didn't you testify? Well, let me ask
5 you this question, did you want to testify?

6 A I really didn't know at the time that I could
7 testify.

8 Q You did not know?

9 A Right.

10 Q Okay. Now, we discussed, I think it's on Page
11 320 of the transcript where the Judge goes through all
12 that, correct?

13 A (The witness nods.)

14 Q Do you remember us going over that?

15 A Yes, correct.

16 Q At the time that the Judge is going over all
17 that information to you, what was your thought process in
18 terms of being able to testify?

19 A What I got from my lawyer that he was going to
20 try to help me out, get the best thing I could get but
21 obviously he didn't.

22 Q Was there a plea offer made in the case?

23 A It was like 10 years.

24 Q Okay. Did y'all discuss the pros and cons of
25 accepting that?

DAVID CHILES-DIRECT BY MR. RICHEY

1 A After that it was nothing else. After he told
2 me to plead, ask about my plea, I told him I wun't
3 [verbatim] pleading, I'm going to trial.

4 Q Okay. But did y'all ever discuss the benefits
5 and the negative of doing that?

6 A No, sir.

7 Q Y'all didn't?

8 A No, sir.

9 Q Y'all didn't have a discussion about the
10 evidence shows this--

11 A Yeah, yeah.

12 Q -- therefore, you may want to do this and all of
13 that?

14 A But he was telling me that they didn't have no
15 evidence, only but the one statement. Again, from my
16 brother.

17 Q So, it's your testimony that you went to trial
18 on a case that you didn't know anything about?

19 A Correct.

20 Q Did you express that Mr. Smith?

21 A Yeah, I told him that I didn't like what he was
22 doing.

23 Q Did -- you told him what?

24 A I didn't like what he was doing by offering me a
25 plea or trying to help me or. I was trying to get another

DAVID CHILES-DIRECT BY MR. RICHEY

1 lawyer at that time.

2 Q Okay. And what was his response to all of that?

3 A He was like, I'm going to try to help you out.
4 I couldn't fight him. So, I'm going to try to give you
5 the best thing, we go on and do this and do that. But it
6 turned out different.

7 Q Okay. And you had a co-defendant also in this
8 case, correct?

9 A Correct.

10 Q And both of y'all went to trial simultaneous, at
11 the same time, correct?

12 A Correct.

13 Q And the co-defendant, what was the results of
14 her case?

15 A We had the same charges.

16 Q What happened to her case at the same time?

17 A They let her go.

18 Q And you -- go ahead, I'm sorry?

19 A And convicted me.

20 Q So, y'all both got tried together, the jury
21 convicted you and found her not guilty?

22 A Correct.

23 Q Okay. And did you and Mr. Smith talk about
24 that, those inconsistencies?

25 A After that we never talked no more, after I went

DAVID CHILES-DIRECT BY MR. RICHEY

1 to trial.

2 Q Okay. And you also believed that he could have
3 brought witnesses to help you?

4 A Correct.

5 Q And who were those witnesses? Because
6 essentially, there was no -- they brought no fact witness
7 against you at trial, correct?

8 A Correct.

9 Q They just had your brother give a statement
10 saying, Hey -- well, your brother gave a statement to law
11 enforcement at the time of the investigation but at trial
12 he recanted all of it, correct?

13 A Correct.

14 Q So, what witness do you believe that Mr. Smith
15 could have brought forward to help this case in that
16 regard?

17 A My mother.

18 Q Okay. And how was it your mother could have
19 helped?

20 A Because I was with her.

21 Q Okay. You were with your mother at the time?

22 A Yeah.

23 Q Did you tell Mr. Smith that?

24 A Yeah, I told him that.

25 Q Okay. And did your mother ever talk to

DAVID CHILES-CROSS BY MR. MITCHELL

1 Mr. Smith?

2 A She talked to him, they couldn't get in touch
3 with him.

4 Q Was she available to testify?

5 A Sir?

6 Q Was she available to testify?

7 A Yes.

8 Q Okay.

9 Answer any questions that the attorney
10 general has for you.

11 THE COURT: Yes, sir.

12 MR. MITCHELL: May it please the Court, Your
13 Honor?

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. MITCHELL:

17 Q Good morning, Mr. Chiles, how are you?

18 A Good.

19 Q Good. I just have a few questions for you. How
20 many times did you meet, Mr. Smith, do you recall?

21 A At least about three or four times.

22 Q About three or four times. And I think there's
23 been some testimony already by you, did you go over the
24 discovery or the evidence in the case with him?

25 A Yeah, we looked at it.

DAVID CHILES-CROSS BY MR. MITCHELL

1 Q Did you guys talk about it?

2 A Really didn't.

3 Q No.

4 A Not like as far as really deep down in it, we
5 didn't.

6 Q What do you mean by deep down in it?

7 A Like look over it with me. I was, like, 18 at
8 the time when this happened. Nineteen at the time, you
9 know what I'm saying?

10 Q Okay.

11 A So, I really didn't know nothing about this.

12 Q Okay. Did he talk to you about any possible
13 defenses to the case at all?

14 A No, sir.

15 Q No. So, you say you got a plea offer?

16 A Yeah, 10 years.

17 Q And you decided not to take it?

18 A Yes, sir.

19 Q Why was that?

20 A Because I felt like I didn't have nothing to do
21 with the case. Like, I ain't have nothing to do with it.

22 Q And you said that -- you said that you weren't
23 there when this incident happened, correct?

24 A Correct.

25 Q And you told Mr. Smith that you were with your

DAVID CHILES-CROSS BY MR. MITCHELL

1 mother?

2 A Correct.

3 Q Okay. And she didn't testify at the trial,
4 right?

5 A Right.

6 Q Okay. Do you know if Mr. Smith contacted her at
7 all?

8 A I don't think so.

9 Q Okay. You don't think so. Was she at the
10 trial?

11 A Yes, sir.

12 Q Okay. She was at the trial, you told him that
13 you were with her and he just decided not to call her?

14 A I guess so.

15 Q Okay. Do you recall during the trial where the
16 Judge asked you if you wanted to testify yourself?

17 A Correct, he asked me that. But at the same
18 time, I wasn't, like, all the way know what's going on
19 with this case. So, I really--

20 Q Did you -- I'm sorry, I didn't mean to cut you
21 off.

22 A I really didn't have enough time. I got my
23 transcript late.

24 Q Okay. Did you have any issues understanding
25 about what was going on, any competency issues or

DAVID CHILES-CROSS BY MR. MITCHELL

1 anything?

2 A Only I think I know what was going on, like, I
3 had -- I was going to trial for the armed robbery.
4 Fifteen -- say I was going to trial.

5 Q Okay. So, you didn't look at the discovery
6 yourself?

7 A No, sir.

8 Q Since you were going to trial, you didn't--

9 A No, sir.

10 MR. MITCHELL: Okay. Judge, that's all the
11 questions I have.

12 THE COURT: All right.

13 MR. RICHEY: No other questions.

14 THE COURT: All right, Mr. Chiles, you can step
15 down, I appreciate your being here, sir.

16 Who you calling, Mr. Richey?

17 MR. RICHEY: I'm calling Jackie Williams.

18 THE COURT: Ms. Williams, if you'd come up,
19 place your left hand on the Bible, raise your right
20 hand.

21 THE CLERK: Place your left hand on the Bible,
22 raise your right hand.

23 Jackie Williams, after being duly sworn,
24 testified as follows.

25 THE CLERK: Please state your full name for the

JACKIE WILLIAMS-DIRECT BY MR. RICHEY

1 record.

2 THE WITNESS: I'm Jacqueline M. Williams.

3 THE CLERK: Thank you, you may be seated.

4 DIRECT EXAMINATION

5 BY MR. RICHEY:

6 Q Ma'am, do you know, Mr. Chiles in here?

7 A Yeah, that's my son.

8 Q Okay. And you were in the courtroom during his
9 testimony, correct?

10 A I was.

11 Q And you heard them state that at the time of
12 this robbery at McDonald's happened, that he was with you;
13 is that correct?

14 A Well, it's been a while and I can't recall that.
15 But he stayed with me. He was at my house, he stays with
16 me. But it's been a long time since this been going on
17 so.

18 Q But you do recall when this incident occurred,
19 correct?

20 A Yes, uh-huh.

21 Q And you recall that he got arrested and all this
22 stuff, right?

23 A Yes, correct.

24 Q And you recall that he said that he was not
25 guilty, correct?

JACKIE WILLIAMS-DIRECT BY MR. RICHEY

1 A Correct.

2 Q And you recall that there was a trial in this
3 case?

4 A Yes.

5 Q Did you discuss with your son the facts of what
6 happened? Well, let me ask you this. Did you discuss
7 with him that he had a lawyer?

8 A Well yes, I think I did. I think I did. I
9 think I did at that time.

10 Q And remember Mr. Smith representing him,
11 correct?

12 A Yes.

13 Q Okay. And did you ever go to Mr. Smith's
14 office?

15 A Never.

16 Q Did you ever talk to your son about his talks
17 with Mr. Smith? You don't have to tell me what he said
18 but did you ever talk to your son about the conversations
19 he had with his lawyer?

20 A Yes, I did.

21 Q And during those conversations, did he talk to
22 you about the fact that he was not there?

23 A He was not there? Yes.

24 Q At the McDonald's, correct?

25 A Correct.

JACKIE WILLIAMS-DIRECT BY MR. RICHEY

1 Q And did y'all have discussions about him being
2 at your house at that time?

3 A Yeah, because he -- as far as I remember, like I
4 said, it's been years but he was there. He stays there
5 with me.

6 Q Okay. Did you all have an opportunity -- did
7 you an opportunity to go to Mr. Smith's office and discuss
8 that?

9 A I did not, sir. If I recall, I did not.

10 Q Did Mr. Smith ever call you about discussing
11 that?

12 A No, I don't recall that either.

13 Q Okay. Do you believe it would have been in your
14 son's best interest if Mr. Smith had contacted you about
15 the case?

16 MR. MITCHELL: Objection, Your Honor, that calls
17 for speculation.

18 THE COURT: All right, restate the question if
19 you would, please, sir.

20 MR. RICHEY: All right.

21 BY MR. RICHEY:

22 Q Do you think it would have helped -- do you
23 think your son would have benefited from you talking to
24 Mr. Smith?

25 A I would think so.

JACKIE WILLIAMS-CROSS BY MR. MITCHELL

1 THE COURT: I'll overrule it, I'll let her
2 answer the question.

3 Go ahead.

4 THE WITNESS: I think so because I would like to
5 know what was going on with him at all times.

6 BY MR. RICHEY:

7 Q Okay.

8 A Not only him talking but I would have liked for
9 him to discuss it with me also. I'm his mother.

10 Q And you would have no problem coming to court
11 testifying that he stayed with you number one, correct?

12 A Correct.

13 Q And that at the time this happened, that you all
14 were together you and him?

15 A Correct.

16 Q Okay.

17 A But it wasn't -- it wasn't -- nobody asked me
18 that.

19 MR. RICHEY: Okay, thank you, ma'am.

20 THE COURT: Yes, sir.

21 MR. MITCHELL: Just a few questions.

22 CROSS-EXAMINATION

23 BY MR. MITCHELL:

24 Q You were at the trial?

25 A I was.

JACKIE WILLIAMS-CROSS BY MR. MITCHELL

1 Q You were?

2 A Yes.

3 Q Did Mr. Smith ever talk to you about testifying
4 at all in this case?

5 A The only time I recall is, like I said it's been
6 a couple of years, the only time I seen Mr. Smith is once
7 I got out the courtroom, I think he had been sentenced and
8 all, and as I recall, I'm thinking Mr. Smith told me that
9 whatever we can go back and do it again. But after that I
10 never heard from this man never after that no more.

11 Q Let me just ask you this question for
12 clarification. Was your son with you the night of the
13 robbery or not?

14 A Yeah, as far as I know. Like I say, it's been
15 some time because he does live with me. He does live with
16 me.

17 Q Is a that yes?

18 A Yes.

19 MR. MITCHELL: Okay, thank you, Judge, that's
20 all the questions I have.

21 THE COURT: Okay.

22 MR. RICHEY: No other questions.

23 THE COURT: All right, thank you, ma'am, I
24 appreciate your being here. You may step down.

25 MR. RICHEY: We call Mr. Smith.

MARC SMITH-DIRECT BY MR. RICHEY

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

3 MARC SMITH, after being duly sworn, testified as
4 follows:

5 THE CLERK: Thank you, you may be seated.
6 Please state your full name for the record.

7 THE WITNESS: Marcus Lynn Smith.

8 DIRECT EXAMINATION

9 BY MR. RICHEY:

10 Q Mr. Smith, do you remember representing David
11 Chiles?

12 A I do.

13 Q And that was -- was a case that you were
14 appointed to or retained to?

15 A I was appointed. Michael Cullinan was the
16 original attorney and had that case for a while. Then he
17 ended up going to the foreign services, I think is where
18 he went.

19 Q Okay.

20 A Then I was appointed after he left.

21 Q Okay. I'm going to go over these points with
22 you. You were in the courtroom with the testimony of
23 Mr. Chiles, correct?

24 A Yes.

25 Q Okay. And you know there was an issue of

MARC SMITH-DIRECT BY MR. RICHEY

1 whether you conducted an appropriate investigation with
2 his case?

3 A That's right. From what his testimony said.

4 Q Can you tell me what type of investigation that
5 you recall doing?

6 A At this point I -- when I get the case I look at
7 all the evidence. And that's the case file and
8 everything, the property and evidence sheets to see what
9 physical evidence they have. We -- I think Michael had
10 already had a preliminary hearing in the case. So, I
11 didn't have a preliminary hearing or anything like that.
12 I ended up calling Jeff Weston to try to figure out if
13 there were any offers or anything that were to be made.
14 And just kind of where we were. Because like I said,
15 Michael had already been on this case for a while. So
16 then, you know, I started out just trying to get
17 aquatinted with the facts of the case and everything and
18 then I went down to see Mr. Chiles.

19 Q And who is Jeff Weston? I know but just for the
20 record.

21 A Yeah, for the record, Jeff Weston is the
22 assistant solicitor.

23 Q Okay.

24 A I actually, on June 10th, 2013, that's when I
25 wrote my letter to the solicitor with my motion for

MARC SMITH-DIRECT BY MR. RICHEY

1 discovery just in case Michael had left something out, I
2 wanted to make sure that I sent a letter of discovery.
3 And we wrote a letter to Mr. Chiles about being reassigned
4 on the case. And, you know, we were just kind of trying
5 to get the discovery after that point.

6 Q When you got the case, in terms of, I use the
7 phrase legwork and trying to identify witnesses and that
8 type stuff, can you tell me what preparation -- or is this
9 a case that you would find witnesses?

10 A Well, at the time, based on the case file and
11 everything, you know, it was exactly what Mr. Chiles said.
12 There really wasn't that much evidence. The worst thing
13 out there was a statement from his brother that said that
14 they were together. And that the brother had already pled
15 guilty and said that he did it and that David was with
16 him. And, you know, that was that worst piece of evidence
17 that you can have. As far as any other physical evidence
18 or anything else, they didn't really have anything.

19 Q So, it was, and I use the word, skinny case;
20 would that be a correct saying? That they didn't have all
21 this volume of evidence against him?

22 A That's right.

23 Q Okay.

24 A In my opinion. But they did have a statement.
25 And, I mean, that was -- that's, in my opinion, what did

MARC SMITH-DIRECT BY MR. RICHEY

1 him in. As far as a guilty verdict.

2 Q Well, let when he talked to you, he was offered
3 10 years to plead guilty; is that correct? Or do you
4 recall? He got a plea offer.

5 A I'd have to look back at my notes and see.

6 Q Okay.

7 A But, I mean, I don't know if that was with
8 Michael Way back when. Because I remember there being --
9 I reviewed emails back and forth from Jeff and Michael.
10 And then when I got assigned the case, I started talking
11 to Jeff about, look, what can we do on this case? Give me
12 your best offer and I'll figure out what we can do.

13 Q I'm going to ask you about the mechanics of
14 that. You get an offer for a client in a case, let's just
15 assume it's 10 years on this case.

16 A I have to take it to my client.

17 Q Do you -- tell me the process that you would go
18 through to relay that offer to the client?

19 A Well, I can tell you that I actually -- I mean,
20 I'm looking at the -- this is an appointed case so I kept
21 track of my time and when I did things and everything
22 else. But back in April of '14, I had met with him,
23 Mr. Chiles. I had already talked to Jeff Weston regarding
24 the status of the case and plea offer. So, I met with
25 Mr. Chiles about that. A couple of times. On 4/15 I met

MARC SMITH-DIRECT BY MR. RICHEY

1 with him and then two days later on 4/17 I met with him.
2 Regarding the guilty plea offer and everything. So, what
3 I tried to do is -- I mean, I don't just send him a
4 letter. I mean, I went down there and talked to him and
5 just say, look here's what they're offering. But, you
6 know, Mr. Chiles kept telling me, I didn't do this.

7 And we actually talked at some point
8 because his brother was going to recant his statement.
9 So, we knew that he was going to recant the statement.
10 So, that was something that would have been in his favor.
11 But I know we talked about the fact that -- of what would
12 happen if he recanted his statement. And that is, Jeff
13 was going to be able to treat him as a hostile witness and
14 cross-examine him and just go point by point through that
15 statement. And, in fact, that's what he ended up doing at
16 that trial.

17 Q And you heard testimony from Mr. Chiles -- and I
18 would note that on Page 320 of the transcript, The Court
19 goes through his right to testify, not testify. Outside
20 of the Judge's instructions, did you discuss that with him
21 about testifying, not testifying?

22 A Oh, yeah. We talked about that a few times.
23 Because we didn't know -- we didn't know whether or not --
24 I mean, we didn't know how the evidence was going to play
25 out. But, you know, we talk about any prior record that

MARC SMITH-DIRECT BY MR. RICHEY

1 he may have that maybe able to be brought out by the
2 prosecutor. We talk about the evidence that might be
3 presented against him. We talk about the evidence that --
4 or the lack of evidence that would be out there. And, you
5 know, that's the kind of things that we would talk about.
6 Then a decision would have to be made. And I think,
7 actually, before the -- I think there was a recess or
8 something at the time and we talked again before that was
9 going to happen. Just said, look, here's what about to
10 happen. Here's where we are. What do you want to do?
11 And I think we discussed some pros and cons of testifying
12 versus not testifying. And The Judge actually went
13 through his questions. And the decision was made for him
14 not to testify.

15 Q And I'm looking at the transcript on Page 408,
16 Jeff Weston says, He has no prior record.

17 Do you believe, with that information, do
18 you believe him testifying, he wouldn't be hurt by the
19 prior record by testifying?

20 A He would not been hurt by the lack of a prior
21 record.

22 Q And do you believe that that -- that waived the
23 benefit of him not testifying versus testifying with no
24 record? Did y'all go through that analysis, do you
25 recall?

MARC SMITH-DIRECT BY MR. RICHEY

1 A Yeah. I mean, because there were some things,
2 if I'm not mistaken, there were some things in the case
3 that they might have been able to ask him about. That we
4 didn't want them to ask him about. That we thought might
5 actually hurt his case.

6 Q Okay. You were in the courtroom, also, when his
7 mother testified, Ms. Williams, that, and I don't know how
8 strong she said this, but on the date this happened he was
9 with her. Did you have that information at the time of
10 trial?

11 A When she testified I started looking through my
12 file because, look, this is all from memory. But I've
13 got -- I've got here in May of 2014, meet the family of
14 Defendant. So, that would be with the family of
15 Mr. Chiles. Then again on May, in May of '14, meeting
16 with the family. As far as family, you know, I had met
17 with them a couple of times. That, I don't remember that.
18 And I can assure you that if -- when you're talking about
19 defenses and they've already sent out their reciprocal
20 discovery request, asking for alibi witnesses. So, I was
21 actually trying to go back through the communication and
22 look to see if there were any notes that Michael Cullinan
23 had as well. To see if anybody had told Michael that, I
24 mean, let's face it, it's not me, I was with somebody
25 else. I mean, that's one of the first things that you

MARC SMITH-DIRECT BY MR. RICHEY

1 would expect to be told from your client. I don't think I
2 was ever told anything like that, my notes don't review
3 it, I don't remember that. And I don't see anything in
4 Michael's notes that say that.

5 Q But assuming that's their assumption, that would
6 be beneficial to the case?

7 A Yes, it would.

8 Q And that would be the type of information you
9 would like to know in a timely matter, right?

10 A Well, yeah. Because when you're going through
11 possible defenses of the case, it's kind of like, if
12 you -- because like his brother said, he wasn't there, he
13 was in the club. That's what he testified to. We didn't
14 know what the brother was going to say until before. We
15 just knew he was going to recant the statement but we
16 didn't know what he was going to say. If Mr. Chiles
17 wasn't there, it's kind of like where were you? You said
18 you weren't there, where were you, who were you with, is
19 there anybody I can call? And we have tried to get in
20 touch -- we got in touch with Alex Stalvey. Alex was the
21 brother's attorney to talk about -- because we had -- we
22 had word that there was a possible alibi witness for his
23 brother. So, we were trying to get in touch with that
24 person. But based on my conversation with Alex, we
25 weren't going to be able to do that.

MARC SMITH-CROSS BY MR. MITCHELL

1 Q All right. And last thing. In this case, there
2 were, and I use the phrase inconsistent verdicts between--

3 A Yes.

4 Q -- Mr. Chiles and the girlfriend, correct?

5 A Yes, there were.

6 Q And the girlfriend was acquitted and Mr. Chiles
7 was convicted, correct?

8 A Yes.

9 Q Okay. Did -- did you -- did you -- do you
10 believe filing some type of motion to set aside the
11 verdict would have been helpful or to his benefit or
12 anything like that?

13 A I don't know. I mean, I have to speculate on
14 that.

15 Q Okay.

16 A But, I mean, yes, was inconsistent, I thought
17 so.

18 MR. RICHEY: Thank you, answer any questions the
19 attorney general has for you.

20 MR. MITCHELL: Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. MITCHELL:

24 Q Good morning, Mr. Smith.

25 A Good morning.

MARC SMITH-CROSS BY MR. MITCHELL

1 Q Just want to go back over some of the things
2 that Mr. Richey talked to you about. I know we didn't get
3 heavy into the facts but can you give me a little bit
4 about the factual scenarios about what happened in this
5 particular case?

6 A The allegations against Mr. Chiles were that his
7 brother and he, along with the co-defendant, girlfriend of
8 Mr. Chiles at the time, had all acted together in
9 conspiracy to rob the McDonald's where she worked. His
10 girlfriend. The cameras at the McDonald's there had not
11 worked for a couple of weeks. And we're not sure why they
12 weren't fixed or anything else. But the thing -- what
13 happened was she was working that night. Once again,
14 these are all allegations that they sought to prove. The
15 two brothers were in the car. And a lot of this is
16 according to Mr. Williams' own statement. Mr. Williams,
17 the brother. That David and Precious, the girlfriend,
18 were texting back and forth. Saying, you know, should we
19 come in now or what about -- what about later? I mean,
20 who's there? They haven't left yet, things like that.
21 And just a few texts back and forth.

22 I think one time they even said somebody
23 got out of the car just to check. And they were about to
24 leave apparently and they said that Precious sent
25 something back saying don't leave yet. I think there was

MARC SMITH-CROSS BY MR. MITCHELL

1 a coworker, that had left and they were saying that
2 Precious left the door opened. But actually, I think what
3 happened was the co-defendant -- not to co-defendant, but
4 one of the coworkers left and left the door opened. And
5 then, two guys come running in. One has a gun. Somebody
6 jumps over the counter, leaving a shoe print on the
7 counter. And going up to Precious saying, Give us the
8 money, give us the money. And they got about \$1,200 or so
9 and then they left.

10 And there were witnesses. There was one
11 witness who -- different statements. One said they went
12 one way, another said they went a different way. There
13 were no positive IDs or anything. Just covered faces.
14 There was a complete lack of evidence. There were no
15 fingerprints, the police officers didn't come in and
16 examine the shoe print. And, I think, I mean, that was
17 something that we tried to bring out. It's kind of like,
18 they didn't do thinking on this case other than getting
19 the brother's statement. And the shoe print they didn't
20 even look at to see what size it was or what type of shoe
21 it was or anything. And if it had been a size 13 shoe and
22 Mr. Chiles wore a size 10 and his brother wore a size 10,
23 then they would known it wasn't them. So, we tried to
24 point that out.

25 Q Let me stop you right there--

MARC SMITH-CROSS BY MR. MITCHELL

1 A I'm sorry--

2 Q Aks you a couple of questions. That's okay.
3 So, that's how the charges arose. Now, when you were
4 appointed to Mr. Chiles you met with him several times,
5 correct?

6 A Not at first. I had to get all the evidence and
7 everything try to figure it out, review the file. It was
8 a pretty thick file at the time. But, you know, I got
9 involved in the case. I wanted to have enough information
10 not only that I felt comfortable looking at but also from
11 Mr. Weston and find out where were we, what were any of
12 the negotiations what could we work out type situation.
13 Have all the discovery. Then I went down and I finally
14 talked with Mr. Chiles. And basically said, here's where
15 we are, what's your side of the story, what do we do?

16 Q It is fair to say that you went over the
17 possible sentences and punishments for the crimes that he
18 was charged with?

19 A Oh, yeah. When I usually meet with a client,
20 you know, I don't usually wait until the guilty plea or
21 the trial or whatsoever. I usually say, you got the right
22 to remain silent, you don't have to say anything and I go
23 through those questions that a Judge would normally go
24 through. This is what they're going to have to prove.
25 You know, I think Mr. Chiles even said, we went over the

MARC SMITH-CROSS BY MR. MITCHELL

1 elements of the crime. Here's what they have to prove.
2 And then we tried to look at the strength of the evidence
3 or the lack of evidence.

4 Q Okay. Did I hear you testify earlier that he
5 rejected any plea offers that had been submitted to him by
6 you?

7 A Yeah, I mean, no plea offers were accepted.

8 Q No plea offers, okay. Fair enough.

9 A Well and that -- quite honestly, that actually
10 goes with what he testified to.

11 He said, I didn't have anything to do with
12 this.

13 So, you know.

14 Q Turning our attention to the investigation and
15 kind of the evidence in the actual case, you heard
16 testimony from his mother that he could have -- or he was
17 with her at that time. It is fair to say that having an
18 alibi witness in this case could have won the case or
19 would have been stronger for you?

20 A I think it would have been strong, yes.

21 Q Okay--

22 A If I had known about that I would have talked to
23 her and probably had her on the witness stand.

24 Q She was at the trial everyday day, right?

25 A I don't know if she was or not.

MARC SMITH-CROSS BY MR. MITCHELL

1 Q Okay. But you never heard that information?

2 Nobody every gave that information to you?

3 A Not that I know of. And I've actually looked
4 through, like I said, the case file and I've looked
5 through letters between Mr. Cullinan and from Mr. Chiles.
6 I've also looked through anything that was written to me,
7 I didn't see anything about that. I also had a couple of
8 conversations with the family so I don't remember anything
9 about that.

10 Q Okay. So, you talked to the family?

11 A Yeah, a couple of times.

12 Q Okay. Let me ask you this, I know you said--

13 A It just says, With the Defendant's family. It
14 doesn't say who in the Defendant's family that I talked
15 with.

16 Q So, fair enough. You said the statement was the
17 most damming piece of evidence in this particular case?

18 A Yeah, his brother hung him out to dry.

19 Q But let me ask you this, how did that statement
20 come about? How did they connect the brother to the
21 actual crime, do you recall?

22 A I don't. Not right off the bat, I'd have to
23 look back through the notes and stuff.

24 Q Let me ask you this, do you know if there was
25 every any text messages between Mr. Chiles and his

MARC SMITH-CROSS BY MR. MITCHELL

1 girlfriend, the manager at McDonald's, did they search her
2 cell phone or anything like that?

3 A They did search her cell phone and I don't
4 believe they actually had the text messages themselves
5 that said what said they said. I think what they had was
6 a couple of here's one number from the phone to her phone
7 number. And then maybe something from her phone number
8 back to his. And it was just a number to number thing.
9 But they didn't have, from my recollection, they didn't
10 have any kind of actual text messages. And that would go
11 once, again, to the lack of evidence that they had. To
12 prove what the brother said they were saying.

13 Q So, the brother's statement comes in at trial,
14 he gets there and he testifies at trial?

15 A He does.

16 Q And what does he testify to?

17 A He basically says -- and I had talked with him
18 prior to the court case. You know, they brought him up--

19 Q You talked to the brother prior to?

20 A Yeah, when they brought him up, I actually -- I
21 talked to Alex Stalvey. But then when he came up, I
22 talked with him just and just said, Hey, you know, I
23 understand you're going to recant what was is it -- is
24 that correct?

25 Yes.

MARC SMITH-CROSS BY MR. MITCHELL

1 Then I talked with David right before the
2 trial and let him know, Yeah, your brother's going to
3 recant it. So, we talked about that a little bit. But I
4 also talked with both of them, you know, Jeff's going to
5 come after you. I mean, Mr. Weston, the solicitor, he's
6 going to come after you. He's going to go through that
7 statement point by point and you got to be ready for that.
8 Because at that point I kind of assumed he was our witness
9 more than he was Jeff's.

10 But at trial what he basically said was, I
11 didn't have anything to do with it. And that wasn't --
12 that's not what I told the police officer. And I didn't
13 have anything to do with the robbery itself.

14 And everything -- not everything in the
15 statement was incorrect because there were a few things
16 that he said that he actually did say. But he testified
17 that he wasn't there, that he was actually at the club.
18 And that would have been about the same time that they
19 had -- or that the robbery was going on.

20 He also testified that there was a possible
21 alibi witness for him and that's why I called Mr. Stalvey
22 in the first place to find out about the alibi. And we
23 tried to get into that. But the Judge wouldn't let us get
24 into it. And I didn't know where to find the person who
25 said but they were the alibi. And Mr. Stalvey, basically,

MARC SMITH-CROSS BY MR. MITCHELL

1 told me that, go from memory here, but he basically was
2 saying that didn't pan out for him.

3 Q Fair enough. He recanted his statement at
4 trial?

5 A He recanted his statement.

6 Q But he pled --

7 A And he never implicated his brother in the
8 trial. But his statement prior to that did.

9 Q And he pled guilty to the armed robbery of the
10 McDonald's prior to?

11 A He pled guilty to it. I think he received a 10
12 year sentence. And the -- his testimony at trial,
13 basically, was I did what my lawyer said I should do to
14 get the best deal that he could. Because, you know,
15 the -- basically, his statement and some other things I
16 think were -- I don't know what went on between the two of
17 them but whatever he testified to was in there. But the
18 bottom line is he said I did what my lawyer told me to do
19 so I can get the least amount of time that I could get.

20 Q Fair enough.

21 MR. MITCHELL: Thank you, Mr. Smith.

22 MR. RICHEY: No other questions.

23 THE COURT: Okay, all right, you can step down
24 Mr. Smith.

25 Anything further from The Applicant?

1 MR. RICHEY: No, sir.

2 THE COURT: Anything from The State?

3 MR. MITCHELL: Nothing from The State, Your
4 Honor.

5 THE COURT: All right. I'll take the matter
6 under advisement. I've taken notes based on the
7 testimony that's been presented. I have a full copy
8 of the transcript of the proceedings and all of the
9 submissions of both The Applicant and The State.
10 I'll review it and I'll issue a ruling over the next
11 couple of weeks. Thank you.

12 Good luck to you, Mr. Chiles.

13 MR. RICHEY: Thank you, Your Honor.

14 (WHEREUPON, the proceedings were concluded.)
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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth 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 for Greenville County, South Carolina, on the 15th day of December, 2017.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

June 19, 2018

April P. Heron

APRIL P. HERRON, Court Reporter

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth 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 for Greenville County, South Carolina, on the 15th day of December, 2017.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

June 19, 2018

April P. Herrera

APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

David W. Chiles, #362035,)
 Applicant,)

v.)

State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

2017-CP-23-1521

ORDER OF DISMISSAL

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This matter comes before the Court by way of an application for post-conviction relief filed on March 7, 2017 by David W. Chiles (Applicant) and an amended application on May 22, 2017. Respondent made its Return on or about November 3, 2017. An evidentiary hearing into the matter was convened on December 15, 2017, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by Rodney W. Richey, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's Trial Counsel Marcus L. Smith, Esquire also testified as did Applicant's mother. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's trial, the PCR application, Respondent's Return, Applicant's records from the Department of Corrections and Applicant's appellate records. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In April 2012, the Greenville

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County Grand Jury indicted Applicant for conspiracy (2012-GS-23-0965), armed robbery and possession of a weapon during the commission of a violent crime (2012-GS-23-0966). Marcus L. Smith, Esquire represented Applicant. Assistant Solicitor Jeff Weston, Esquire prosecuted the case. On November 5, 2014, Applicant proceeded to trial before the Honorable Alexander S. Macaulay and a jury. The jury found Applicant guilty as indicted. Judge Macaulay sentenced Applicant to imprisonment for fifteen years for armed robbery, five years for conspiracy and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Kathrine H. Hudgins, Esquire South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Chiles, Op. No. 2016-UP-108 (S.C. Ct. App. filed March 2, 2016). The Remittitur was sent on March 18, 2016.

FACTUAL HISTORY

Applicant, his girlfriend Precious Harris, and his brother, Keith Williams, were charged with robbing the McDonald's on Old Spartanburg Road on June 26, 2011. Harris was a manager at the McDonald's and on duty at the time of the robbery. Williams pled guilty to the charge and was called as a State's witness at trial. Upon his arrest Williams made a statement implicating himself, Appellant and Harris in the robbery. Appellant and Harris were tried at the same time. At trial, Williams denied making the statement. The jury found Applicant guilty while finding Ms. Harris not guilty. (ROA p.83-89).

ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

1. "Ineffective Assistance of Counsel"

- a. Counsel acts and omissions during trial fell below the standard required by law.

In his amended application for post-conviction relief filed on May 22, 2017, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"

- a. Counsel failed to conduct an appropriate investigation, review case files, and prepare for trial in a timely manner. Coles v. Payton, 393 U.S. 894 (4th cir 968). Counsel's Failure to abide by these requirements deprived the jury of critical information relevant to an accurate assessment of the Applicant's guilt or innocence. See Wiggins v. Smith 539 U.S. 510 (2003).
- b. Counsel failed to timely subpoena witness(s), preventing mitigating evidence to be submitted into the record, due to S.C.R Evi. 801 (c).
- c. Counsel failed to motion to suppress evidence, that was going to be recanted at trial, as well as failed to investigate the possibility that evidence was procured by unlawful means.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Applicant's Testimony

Applicant testified Trial Counsel did not properly investigate his case. Applicant testified Trial Counsel did not sit down and discuss the facts of his case with him. Applicant testified Trial Counsel did talk to him about the elements of the crime he was charged with and the sentences he was facing. Applicant testified there was a statement given by his brother, his co-defendant in the case. He testified he did not testify at trial but that he wanted to. Applicant testified he did not know anything about the case because of Trial Counsel but that he could have brought witnesses to help at trial. Applicant testified he was with his mother when this incident happened.

On cross-examination Applicant testified he met with Trial Counsel a couple of times and reviewed the discovery with him.

Applicant's Mother's Testimony

Applicant's mother testified she could not remember if Applicant was with her at the time of the incident. She testified Trial Counsel never contacted her about testifying at Applicant's trial concerning his whereabouts the night of the incident.

Trial Counsel's Testimony

Trial Counsel testified he was appointed to represent Applicant and that he was not Applicant original counsel. Trial Counsel testified once he was appointed he requested discovery. He testified there was not a lot of evidence in Applicant case other than the statement given by Applicant's brother. Trial Counsel testified he believed the statement which implicated Applicant was extremely damaging to Applicant's case. Trial Counsel testified he met with Applicant and relayed a plea offer to him but Applicant did not want to take it. Trial Counsel testified he discussed with Applicant whether he should testify at trial and that he met with Applicant family to keep them informed. Trial Counsel testified he also talked to Applicant's brother who was his co-defendant and Applicant's brother told him he would probably testify to something different at trial from what he said in his statement to the police. Trial Counsel testified he discussed the discovery in the case with Applicant and talked to him about his charges and the sentences he was facing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth

below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). 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. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel discussed below.

Failure to investigate

Applicant failed to present any evidence in support of this allegation. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have discovered had he more fully investigated. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Applicant has failed to show what beneficial information could have been discovered had Counsel done more investigation. Even so, Trial Counsel testified credibly that not only did he review all of the discovery with Applicant but he spoke to Applicant's brother, the co-defendant in this case regarding his statement implicating his brother. This Court finds Counsel's investigation was beyond reasonable. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

Failure to subpoena/call witnesses

Applicant alleged Trial Counsel failed to subpoena witnesses. Applicant testified he did not know anything about the case because of Trial Counsel but that he could have brought

witnesses to help at trial. Applicant testified he was with his mother when this incident happened. The Applicant has failed to demonstrate by a preponderance of the evidence that Trial Counsel's performance was deficient or that he was prejudiced by any deficiency. The Applicant contends his mother should have been called to testify as an alibi witness. This Court finds Applicant's mother's testimony at the hearing in this Post-Conviction Relief Application was, at best, equivocal. She would not say clearly and with any certainty that Applicant was with her at the date and time of the offense. Furthermore, this Court finds she failed to state under oath that she disclosed any alibi evidence to Trial Counsel. Therefore, Applicant's contention that the failure to call his mother as an alibi witness was deficient performance by trial counsel is without merit. Further, Applicant presented no other witnesses to testify at his evidentiary hearing. This Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. Applicant has failed to show the outcome of his trial would have been different had Trial Counsel called his mother to the stand as her testimony at the PCR hearing was not convincing. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

Failure to suppress evidence

Applicant alleged in his application Trial Counsel failed to motion to suppress evidence that was going to be recanted at trial, specifically his brother's statement. Trial Counsel testified he talked to Applicant's brother who was his co-defendant and Applicant's brother told him he

would probably testify to something different at trial than what he said in his statement to the police. After a review of the trial transcript, this Court finds Applicant had failed to show Trial Counsel was deficient for failing to motion to suppress this evidence. This Court finds that a motion to suppress the statement of Applicant's brother would have been unsuccessful and that there were no reasonable grounds for suppression. This Court finds the jury clearly believed Applicant's brother's original statement and relied upon the same, at least in part, to convict the Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This allegation is denied and dismissed with prejudice.

Advice not to testify

Applicant presented testimony in a cursory fashion concerning Trial Counsel's advice not to testify. Out of an abundance of caution, this Court addresses the merits of this allegation. Applicant has failed to show deficiency or prejudice with respect to this allegation. The trial judge fully advised Applicant of his right to testify at trial. The record indicates clearly that Applicant made a choice, of his own free will and volition, not to testify after having been fully advised of his rights and ramifications of testifying or, in the alternative, not testifying. Applicant chose not to testify. Accordingly, he has also failed to show prejudice with respect to this allegation, and it is denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations 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 notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. Refer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 21st day of March, 2018.



ROBIN B. STILWELL
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina

WITNESSES

D A Hoover

Greenville County Sheriffs Office

12/29/2011

ARREST WARRANT NUMBER

J993032

ACTION OF GRAND JURY

TRUE BILL

John P. [Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-23-

BSD

000965

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2012

THE STATE

vs.

DAVID WINCE CHILES JR

Indictment for

0049

CONSPIRACY

VIOLATION § 16-17-0410

RECEIVED

FEB 23 2012

Clerk of Court
Greenville County

ENTERED
ACCT. 12/29/11

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CONSPIRACY

At a Court of General Sessions, convened on
County present upon their oath:

APR 24 2012

the Grand Jurors of Greenville

That DAVID WINCE CHILES JR did in Greenville County, on or about the 26th day of June 2011, willfully and unlawfully combine with KEITH WILLIAMS for the purpose of accomplishing an unlawful object or a lawful object by unlawful means, to wit: armed robbery. This is in violation of §16-17-410 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Byrna S. Seay
SOLICITOR

WITNESSES

D A Hoover

Greenville County Sheriffs Office

12/29/2011

ARREST WARRANT NUMBER
J993031 and J993033

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012-GS-23-

BSD

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2012

THE STATE

vs.

DAVID WINCE CHILES JR

✓ ✓ **Indictment for**
0139 and 0549

ARMED ROBBERY and POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

VIOLATION § 16-11-0330 and § 16-23-0490

ENTERED
ACCT
LOH

RECEIVED

FEB 23 2012

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE) INDICTMENT FOR
) ARMED ROBBERY and POSSESSION OF A WEAPON DURING
) THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on APR 24 2014 the Grand Jurors of Greenville
 County present upon their oath:

COUNT I - ARMED ROBBERY

That DAVID WINCE CHILES JR did in Greenville County, on or about the 26th day of June 2011, 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 the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: U.S. currency belonging to McDONALDS from the person or presence of an employee, PRECIOUS HARRIS. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

**COUNT II - POSSESSION OF A WEAPON
 DURING THE COMMISSION OF A VIOLENT CRIME**

That DAVID WINCE CHILES JR did in Greenville County, on or about the 26th day of June 2011, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: armed robbery. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR