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STATE OF SOUTH CAROLINA

S.C. SUPREME COURT

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Roger L. Couch, Circuit Court Judge

JOHNNY RAY WILKINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001182

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4) TRANSCRIPT OF RECORD
5 Johnny Ray Wilkins,) 2008-GS-42-1183
6 Defendant.) March 9 - 10, 2008
7) Spartanburg, South Carolina
8
9

10 B E F O R E:

11 HONORABLE J. DERHAM COLE; JUDGE; and a jury
12
13

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

15 BARRY BARNETTE, ESQUIRE
16 Attorney for the State

17 TIMOTHY RAY, ESQUIRE
18 Attorney for the Defendant
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20

21 Linda D. Moffitt
22 Circuit Court Reporter
23
24
25

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1 (Proceedings March 9, 2009)

2 (Taped statement marked State's Exhibit No. 1 for
3 Identification; written waiver marked State's Exhibit No. 2
4 for Identification; video marked State's Exhibit No. 3 for
5 Identification; clothing marked State's Exhibit No. 4 for
6 Identification; photograph marked State's Exhibit No. 5 for
7 Identification; photograph marked State's Exhibit No. 6 for
8 Identification; Enterprise lease marked State's Exhibit No.
9 7 for Identification.)

10 THE COURT: All right. Ladies and gentlemen, we are
11 ready to begin with jury selection in the first case that's
12 going to require some of your participation. And the title
13 of the case is the State vs. Johnny Ray Wilkins.

14 Mr. Wilkins has been accused by the state through the
15 prosecutor of having committed the crime of armed robbery.
16 And the state alleges by way of a document called an
17 indictment that Mr. Wilkins did here in Spartanburg County
18 on or about January the 13th of 2008 while armed with a
19 deadly weapon, did take, steal and carry away from the
20 person or presence of Jamie McAbee and the Li'L Cricket
21 store located on Highway 221 in Mayo by the use of force
22 and/or intimidation certain good or monies. And they
23 allege it was, in fact, money that was taken.

24 Now, as to those allegations and to that charge the
25 defendant has entered a plea of not guilty. And that plea

1 of not guilty therefore places upon the state the burden of
2 proving the allegations that are set forth in the
3 indictment, the burden of proving each of the essential
4 elements of the crime alleged in the indictment; and
5 therefore the burden is upon the state to establish the
6 defendant's guilt to the satisfaction of 12 jurors beyond a
7 reasonable doubt before any such verdict could be returned.

8 So we're going to be selecting 13 of you. There will
9 be 12 primary jurors and one additional juror that will
10 serve as an alternate. And by way of your participation
11 you're simply called upon to listen to the testimony and
12 consider any other evidence introduced during the trial of
13 the case.

14 From that evidence you'll determine what you believe
15 to be the facts. That is you will determine what, if
16 anything, you believe occurred back on January the 13th of
17 2008 as it relates to these allegations.

18 Once you determine those facts, you will then apply
19 the law that I will have provided you. And you will
20 determine whether or not the defendant's guilt has been
21 proven beyond a reasonable doubt. And if it has, then your
22 verdict would be guilty. And if it has not, then your
23 verdict would be not guilty.

24 Now, I'm going to ask you some questions. And the
25 purpose of the questions is to determine whether or not

1 there's some reason why any one of you jurors should not be
2 selected to participate in the trial of this particular
3 case.

4 And so as these questions are asked should you need to
5 respond to them, I'm going to ask that you please stand.
6 And I will address those matters with you individually in
7 the event that should become necessary.

8 Now, first of all, as I have told you, the person who
9 is accused of the crime of armed robbery is Johnny Ray
10 Wilkins.

11 Mr. Wilkins, if you will, please stand and face the
12 jury panel so that they may see who you are.

13 (Whereupon, the defendant stood.)

14 THE COURT: All right. Thank you. Be seated.

15 Seated with Mr. Wilkins at the defense table is Tim
16 Ray. Tim Ray is his lawyer. He'll be assisting him in the
17 trial of this case.

18 (Whereupon, Mr. Ray stood.)

19 THE COURT: The person who is alleged to have been the
20 victim of this armed robbery is Jamie McAbee.

21 Ms. McAbee, if you will, please stand and face the
22 jury panel.

23 (Whereupon, the victim stood.)

24 THE COURT: And at the time of the event in question
25 she was employed and working at the Li'L Cricket store on

1 Highway 221 in Mayo, South Carolina.

2 Presenting the case on behalf of the state is Barry
3 Barnette, the Deputy Solicitor for the 7th Judicial
4 Circuit.

5 (Whereupon, Mr. Barnette stood.)

6 THE COURT: Now, I'm going to ask you some questions.
7 And if you can respond to the question where you are,
8 that's fine. If you don't want to respond to the question
9 where you are and you'd rather come down here, that's fine
10 too. I'll leave that up to you. But I need to find out if
11 any member of the jury panel or any member of your
12 immediate family has ever been the victim of or has ever
13 been accused of the commission of a violent crime.

14 Now, let me define an immediate family member as a
15 parent, a spouse, a child or a sibling -- a parent, spouse,
16 child or sibling. I need to know if you or any immediate
17 family member has ever been the victim of or been accused
18 of the commission of a violent crime.

19 And I'm going to define violent crimes as those
20 including murder, manslaughter, burglary, armed robbery,
21 criminal sexual conduct, criminal domestic violence of a
22 high and aggravated nature, assault and battery with intent
23 to kill or any other similar type of an offense.

24 All right. If that applies to any juror, I would ask
25 that you please stand.

1 All right. And I've got four standing. I'm going to
2 start to my right, and I will work to my left.

3 Ma'am, if you will, please, give me your name and your
4 juror number. And then you can respond to the question.
5 And, as I say, if you'd rather answer the question down
6 here at the bench, you may have that choice also.

7 Yes, ma'am.

8 JUROR NO. 72: Esther Hendricks, No. 72. And my son
9 on two separate occasions while working at two separate
10 fast food restaurants was a victim of armed robbery.

11 THE COURT: Okay. And was somebody apprehended and
12 have those cases been ended or disposed of?

13 JUROR NO. 72: Yes, sir.

14 THE COURT: Okay. Is there anything about that
15 circumstance or that situation or that experience that
16 would affect your judgment in this case or prevent you from
17 being able to be fair and impartial?

18 JUROR NO. 72: No, sir.

19 THE COURT: All right. Thank you, ma'am. You may be
20 seated.

21 Yes, sir.

22 JUROR NO. 40: Mark Lee, Juror No. 40 or Juror 95.
23 When I was a young kid my dad was mugged and hit over the
24 head and robbed at gunpoint.

25 THE COURT: All right. And is there anything about

1 that experience or that event that would affect your
2 ability to be fair and impartial in this case?

3 JUROR NO. 40: No, sir.

4 THE COURT: Okay. Thank you. Be seated.

5 Yes, ma'am.

6 JUROR NO. 7: Jean Black, No. 7. My son has domestic
7 violence against him twice, but it was closed out.

8 THE COURT: And is there anything about that that
9 would affect your judgment in this case?

10 JUROR NO. 7: No.

11 THE COURT: Thank you. Be seated.

12 Yes, sir.

13 JUROR NO. 97: Rickie Littlejohn, No. 97. My mom's
14 house was burglarized, broken in on. And they, you know,
15 got everything.

16 THE COURT: All right. Your mother's home was
17 burglarized. And what else?

18 JUROR NO. 97: They caught the guy and everything.

19 THE COURT: Okay. Is there anything about that
20 experience or that event that would affect your judgment in
21 this case?

22 JUROR NO. 97: No, sir.

23 THE COURT: You could be fair to both sides?

24 JUROR NO. 97: Yes, sir.

25 THE COURT: Okay. Thank you. Be seated.

1 Anyone else need to respond to that question?

2 (No response.)

3 THE COURT: Is there any member of the jury panel who
4 is a member of or you contribute time or money to any types
5 of organizations that might be characterized as law
6 enforcement support organizations or victims' advocacy type
7 groups?

8 Those might include Mothers Against Drunk Drivers,
9 Citizens Against Violent Crime, the honorary troopers'
10 association or, excuse me, the troopers' association, the
11 honorary sheriffs' association, the fraternal order of
12 police, any neighborhood watch group or any other similar
13 type of organization.

14 I need to know if you belong to any such or you
15 contribute time or money to any types of those
16 organizations. If so, please stand.

17 All right. I'll start over here with you, ma'am. If
18 you will, give me your name and your juror number, please.
19 And then tell me how that question relates to you.

20 JUROR NO. 3: I'm Janie Babb, No. 3, volunteer of Safe
21 Homes, Spartanburg.

22 THE COURT: Okay. Thank you, ma'am. Be seated.
23 Yes, sir.

24 JUROR NO. 165: I contribute to the sheriff's thing.

25 THE COURT: And your name and number?

1 JUROR NO. 165: 165, Edward Wells.

2 THE COURT: All right. Thank you.

3 Yes, sir.

4 JUROR NO. 146: My name is Joe Stavick, 146. And I'm
5 a member of the N. R. A.

6 THE COURT: All right. Thank you, sir.

7 Yes, sir.

8 JUROR NO. 112: 112, Tom Nèderostek. Do business with
9 the sheriff's association.

10 THE COURT: Okay. Thank you. Be seated.

11 Is there any member of the jury panel who is connected
12 by blood or marriage to any person who is now or has ever
13 been employed as a law enforcement officer?

14 I need to know if you have been also employed at any
15 time, employed as a law enforcement officer, you or an
16 immediate family member. And that would include the
17 sheriff's department or city, town or municipal law
18 enforcement agency, the law enforcement division, working
19 at a corrections facility or county detention facility or a
20 military police officer. Any person employed as a law
21 enforcement officer.

22 Yes, ma'am.

23 JUROR NO. 138: Megan Skinner, Juror 138. My father.
24 He worked for the corrections facility. And he is a South
25 Carolina firearms instructor.

1 THE COURT: Okay. Thank you, ma'am.

2 Yes, sir.

3 JUROR NO. 165: My live-in girlfriend's daughter works.
4 for the county and her husband works for SLED. I don't
5 know if that counts or not.

6 THE COURT: That's all right. And you are Juror 65?

7 JUROR NO. 165: 165, Ed Wells.

8 THE COURT: All right. Thank you. Be seated.

9 Yes, sir.

10 JUROR NO. 55: Randy Fox, Juror 55. I was employed
11 with Spartanburg County Detention Facility.

12 THE COURT: All right. Thank you, sir.

13 Yes, ma'am.

14 JUROR NO. 104: Juror 104, Debbi McDowell. My brother
15 works for Spartanburg County.

16 THE COURT: Spartanburg County Sheriff's Department.

17 JUROR NO. 104: Yes, sir.

18 THE COURT: And his name is what?

19 JUROR NO. 104: Danny Shields.

20 THE COURT: Okay. Thank you.

21 That was Juror 104.

22 I identified the defendant and the person alleged to
23 be the victim and the lawyers involved in the case.

24 Does any member of the jury panel know any of those
25 persons or any members of their respective families? If

1 so, please stand.

2 (No response.)

3 THE COURT: Has any member of the jury panel heard,
4 seen or read anything about this particular case, or have
5 you received any information about the case from any
6 source? If so, please stand.

7 (No response.)

8 THE COURT: Is there anything about the nature of the
9 case itself, that is what has been alleged, that would
10 prevent any juror from being able to be fair and impartial?
11 If so, please stand.

12 (No response.)

13 THE COURT: Has any member of the jury panel already
14 formed an opinion or made up your mind as to what you think
15 the ultimate outcome in this case ought to be based upon
16 what you've heard up until this point or based upon any
17 other consideration? I just need to know simply whether or
18 not you've already made up your mind. If so, please stand.

19 (No response.)

20 THE COURT: Does any member of the jury panel know of
21 any reason whatsoever why you believe you could not be fair
22 and impartial if you were called upon to serve as a juror
23 in this case? If so, please stand.

24 (No response.)

25 THE COURT: Any other questions requested by the

1 state?

2 MR. BARNETTE: Your Honor, if I could just request No.
3 7 and No. 8.

4 THE COURT: All right. Has any member of the jury
5 panel or any member of your immediate family ever been
6 involved in a case that was being prosecuted by Mr.
7 Barnette and/or any other prosecutor in the 7th Judicial
8 Circuit Solicitor's Office? If so, please stand.

9 All right. Your name, please, sir.

10 JUROR NO. 38: Name is Wayne Culp, Juror No. 38. And
11 my father was killed by a drunk driver, and the driver was
12 prosecuted by the 7th Circuit.

13 THE COURT: And about how long ago was that?

14 JUROR NO. 38: 1989.

15 THE COURT: All right. And is there anything about
16 that event or that experience that would affect your
17 judgment in this case?

18 JUROR NO. 38: Not a thing.

19 THE COURT: Okay. Thank you. Be seated.

20 Anyone else?

21 (No response.)

22 THE COURT: You should have the information on No. 8.
23 I'm going to decline to ask that one.

24 MR. BARNETTE: Thank you, Your Honor.

25 THE COURT: All right. Any other questions requested

1 by the defense?

2 MR. RAY: No, sir, Your Honor.

3 THE COURT: All right. Draw us a jury, please, ma'am.
4 (Whereupon, a jury was impanelled.)

5 THE COURT: All right. Those who have been selected,
6 I'll ask you to please go with a bailiff to a jury room.
7 I'll bring you back in just a few minutes to begin with the
8 trial. And it will just be -- we'll probably break for
9 lunch at 1:00. So please go to your jury room right now,
10 and I'll bring you back in just a moment.

11 (The following takes place outside the presence of the
12 jury.)

13 THE COURT: Are there any matters that need to be
14 addressed regarding jury selection by the state?

15 MR. BARNETTE: None from the state, Your Honor.

16 THE COURT: By the defendant?

17 MR. RAY: No, sir, Your Honor.

18 (Whereupon, the remaining members of the jury venire
19 were excused.)

20 THE COURT: Have the record reflect that Juror No. 17
21 that was drawn was excused by the Court based upon a
22 disqualifying conviction for failing to stop. And upon
23 inquiry the juror agreed that he had such a conviction. He
24 misunderstood the maximum sentence that could have been
25 imposed. But, nevertheless, it is a disqualifying

1 conviction, and therefore he was excused.

2 All right. Any other matters we need to address
3 before the jury is brought back in?

4 MR. BARNETTE: Your Honor, I have State's Exhibits 1
5 and 2, are premarked. I don't know if it will become
6 relevant or not.

7 No. 1 is the, I believe the, tape or the C. D.
8 statement given by the defendant in this case.

9 State's Exhibit 2 for I. D. purposes is a written
10 waiver that was taken by Investigator Mark Williams of the
11 sheriff's department, Investigator Williams.

12 At this point I think they're contesting it. I don't
13 know if I'm going to play it at this point. It depends on
14 how the evidence develops in the trial. I don't think
15 they're contesting the voluntariness of it at this point
16 though.

17 MR. RAY: Yes, Your Honor.

18 It was my understanding that the state is not going to
19 present that evidence or any type of Lyle evidence. There
20 will be no need for a motion or a hearing on that at the
21 time unless the state were to change its position.

22 THE COURT: Well, we're not going to get to the
23 testimony before lunch. So I'll let y'all make that
24 determination during the lunch break. Then when we come
25 back you can let me know if there's been any change in your

1 position in that respect.

2 MR. RAY: Yes, sir.

3 THE COURT: Okay. Bring the jury in. And ask
4 Ms. Ivey to take the foreperson's seat.

5 (The following takes place in the presence of the
6 jury.)

7 THE COURT: All right. Ladies and gentlemen, we are
8 going to begin with the trial of the case, but we're not
9 going to actually start taking the testimony because it's
10 close to 1:00 o'clock.

11 We'll recess for lunch, and then we'll start with the
12 opening statements of the lawyers and the testimony after
13 lunch. But there are a couple of things we can accomplish
14 before we break.

15 Ms. Ivey, I'm going to ask you to serve as the
16 foreperson of this jury. And as the foreperson of the jury
17 you're going to have three specific duties that none of the
18 other jurors will have.

19 Number one, you're going to be asked to serve as the
20 spokesperson for the jury. And so if during the trial of
21 this case something arises that needs to be brought to my
22 attention, you or a fellow juror has some difficulty or
23 problem or question, if you'll let the bailiff know, he'll
24 let me know, and I'll address those difficulties or answer
25 those questions.

1 Secondly, you're going to be asked to preside over the
2 jury deliberations when the time comes for those
3 deliberations. And that of course won't be until the end
4 of the trial after all of the evidence has been received
5 and I have instructed you on the law that's applicable in
6 the case.

7 But when the time does come for jury deliberations
8 you're going to be called upon to preside over that process
9 in the jury room simply to ensure that those deliberations
10 are carried out in some orderly fashion.

11 And, thirdly, you'll be asked to actually write the
12 verdict or the decision of the jury. And you'll do that on
13 a verdict form that I'll provide you at the trial's
14 conclusion on which you will indicate the jury's unanimous
15 decision.

16 Now, the foreperson has those specific duties that I
17 have just indicated. That does not however mean that she
18 is any more important than any of you other jurors, because
19 the decision of a jury panel is the unanimous consensus
20 opinion of all 12 jurors. And so all of you will have an
21 equal say and an equal vote in what the ultimate decision
22 will be in this case.

23 Someone simply has to be delegated those
24 responsibilities that I have just indicated, and I have
25 delegated those to Ms. Ivey in appointing her as the

1 foreperson. But all of you jurors are equally important so
2 far as the ultimate decision in this case is concerned
3 because, as I have stated, the verdict has to be unanimous.
4 All of you must be in agreement.

5 Now, Ms. Nunnery, you've been selected as an alternate
6 juror. And the function of an alternate juror is to take
7 the place of one of the original 12 jurors in the event one
8 of these original 12 cannot continue to serve during the
9 trial.

10 If one is called away because of an illness or an
11 emergency or some other reason that prevents them from
12 continuing to serve as a juror, then it would be you who
13 would take that person's place. In that event you would
14 become the 12th juror. And in that event you would
15 participate throughout the trial, including in the jury
16 deliberations.

17 If however when the time comes for jury deliberations
18 at this trial's conclusion the original 12 are all able to
19 participate in that function, then your service ends. And
20 you don't participate any further, because the decision of
21 a jury is that of 12. But no more than 12 are permitted to
22 engage in that deliberation process.

23 But it is important that you pay just as careful
24 attention as we ask of all of the jurors in the case
25 because it does occur from time to time for one reason or

1 another one of these original 12 may be unable to continue.
2 In that event you become the 12th.

3 So we do appreciate your participation as an alternate
4 juror, just as we appreciate the participation of each of
5 you jurors who have been selected for the purpose of
6 deciding the verdict in this particular case.

7 You may swear the panel.

8 (Whereupon, the jury was duly sworn.)

9 THE COURT: All right. Ladies and gentlemen, as you
10 know, you have been selected to decide the verdict in the
11 case of the State vs. Johnny Ray Wilkins.

12 As you know, Mr. Wilkins has been accused by the state
13 of having committed the crime of armed robbery. And the
14 allegations that are setting forth that crime are contained
15 in the document called an indictment. And that's the
16 document that I referred to prior to your selection as
17 jurors.

18 In that indictment the state is alleging that Mr,
19 Wilkins did here in Spartanburg County on or about January
20 the 13th of last year commit the crime of robbery while
21 armed with a deadly weapon, and further that he did take,
22 steal and carry away from the person of Jamie McAbee at the
23 Li'L Cricket store on Highway 221 in Mayo certain goods
24 being described as money, and he took that money by the use
25 of force and/or intimidation and while armed with that

1 deadly weapon.

2 Also, as I told you, as to those charges the defendant
3 has entered a plea of not guilty. And therefore that plea
4 of not guilty places upon the state the burden of proving
5 the allegations contained in the indictment, the burden of
6 proving each of the essential elements of the crime they
7 have alleged against the defendant; and therefore the
8 burden is upon the state to establish the defendant's guilt
9 to the satisfaction of you 12 jurors beyond a reasonable
10 doubt before any verdict of guilty could be returned.

11 The indictment, while it will be in the jury room,
12 because it is on the back of the indictment, Madam
13 Forelady, that you will indicate the jury's unanimous
14 decision, the indictment serves no purpose so far as you
15 jurors are concerned other than just being useful as the
16 verdict form.

17 The indictment is not proof of anything. It doesn't
18 establish anything. It simply puts the defendant on notice
19 as to what crime the state claims that he has committed.

20 The state has the burden of proving the allegations
21 and the charge against the defendant to your satisfaction
22 beyond a reasonable doubt.

23 And, in fact, every person accused of a crime, and it
24 doesn't matter how serious the offense might be, every
25 person accused of a crime is under the law presumed to be

1 innocent of the charge.

2 That presumption of innocence remains with every
3 defendant, as it does with this defendant, from the time
4 that he is placed under arrest and throughout the course of
5 the criminal process and even throughout the course of the
6 actual trial.

7 That presumption of innocence will be with Mr. Wilkins
8 even as you go back into your jury room to begin with your
9 deliberations in this case. And that presumption of
10 innocence will be with him in that jury room, and it will
11 be with him forever unless you 12 jurors determine that he
12 is no longer entitled to that presumption of innocence.

13 That is if, after you have considered all of the
14 evidence in the case and from that evidence you decided the
15 facts, and upon deciding the facts you apply the law that I
16 will have provided you, if you 12 jurors unanimously
17 determine that his guilt has been proven beyond a
18 reasonable doubt, then he would no longer be entitled to
19 that presumption of innocence.

20 But it's only if, unless and until you are satisfied
21 of his guilt beyond a reasonable doubt that the presumption
22 of innocence would no longer be applicable.

23 Now, the way the trial will proceed is that after
24 lunch the lawyers are going to address you in what are
25 called opening statements.

1 Now, there are two occasions in the trial of a case
2 where lawyers are permitted to address the jury directly,
3 and that is at the beginning of the trial before any
4 evidence has been introduced and then again at the
5 conclusion of the trial after all of the evidence has been
6 received.

7 Keep in mind, as I have just stated, the evidence
8 comes in between the opening statements and the closing
9 statements of the lawyers. And therefore what the lawyers
10 tell you in their statements is not evidence upon which you
11 will base your decision. And that's because the lawyers
12 aren't witnesses to anything.

13 They're not going to be telling you anything they know
14 about this case of their own personal knowledge or
15 experience as witnesses will be. And they're not going to
16 take the witness stand. They're not going to testify under
17 oath. They will not be subjected to direct and
18 cross-examination as witnesses will be; and therefore what
19 they tell you in their statements is not to be considered
20 by you as evidence. But you should listen to what the
21 lawyers have to say because those statements do serve a
22 purpose.

23 The opening statements serve to provide you with a
24 basic understanding as to what this case is about from the
25 perspective of the state and the defense so that you'll

1 have some context in which to place the evidence that we
2 will be receiving shortly thereafter.

3 The closing statements occur after all of the evidence
4 has been received. And, again, as I have told you, those
5 aren't evidence. But it does permit the lawyers an
6 opportunity to discuss with you the evidence that you have
7 seen and heard during the trial of the case. And it allows
8 them an opportunity to try to convince you or to persuade
9 you that that evidence does or does not support a
10 particular decision.

11 And, as I've stated, the evidence upon which you will
12 base your decision comes between the opening and the
13 closing statements.

14 The state has the burden of proof because they have
15 brought the charge against the defendant. They have the
16 burden of establishing his guilt to your satisfaction
17 beyond a reasonable doubt. And therefore the state will go
18 forward first in its presentation of evidence.

19 After the state has concluded with its presentation
20 the defendant has the same opportunity to present evidence
21 by way of testimony or otherwise. But a defendant in a
22 trial is never obligated to take the witness stand and
23 testify or to present any other evidence or to call any
24 witness, because the burden is not upon a defendant to
25 prove that he is not guilty because in some cases that

1 wouldn't even be possible.

2 The burden is always upon the state to prove that he
3 is guilty. And therefore in a given case where a defendant
4 does not testify or call witnesses or produce evidence the
5 jury may not consider that fact in the slightest degree
6 against the defendant.

7 You may not allow that to enter into your
8 deliberations or into your discussions, as well as into
9 your determination as to whether or not his guilt has been
10 proven beyond a reasonable doubt.

11 You simply may not consider such a fact in any way.
12 It would be improper for you to do so. But a defendant is
13 afforded an opportunity to present evidence in the event
14 that defendant wishes to do so.

15 So after all of the evidence has been received and
16 after you've heard the final summations of the lawyers, I
17 will then instruct you fully on the law that's applicable
18 in a case of this nature and to the criminal law in
19 general, after which you'll be asked to go back into your
20 jury room and to begin with your deliberations in the case.

21 Through that process you will carefully examine all of
22 the evidence. You will determine the credibility of
23 witness testimony. You will decide what evidence is the
24 most credible, and that's the evidence you will accept.
25 You will determine any evidence that you find not to be

1 credible, and that's the evidence that you will reject.

2 But you're simply called upon through the exercise of
3 good judgment and common sense conscientiously applied to
4 the testimony and evidence in the case to decide what you
5 believe to be the true facts as they relate to these
6 particular allegations.

7 And then once you decide the facts, you'll apply the
8 law that I will have provided you. And you will arrive at
9 a fair and just decision in the case.

10 So all we're going to ask for you to do is to pay
11 careful attention throughout the course of the trial.

12 We're also going to ask that you keep an open mind,
13 which just simply means you're not to begin making up your
14 minds or formulating your opinions as to what you think the
15 ultimate decision in the case ought to be until all of the
16 evidence has been received, I've instructed you on the law
17 and you've been asked to begin deliberations. That is the
18 process that is designed for you 12 jurors to arrive at a
19 fair and just decision in this case.

20 Now, it's lunchtime, so we're going to break for
21 lunch.

22 Keep in mind at any time during a break in the trial
23 when you're sent back to your jury room, or even if perhaps
24 this case goes into tomorrow, during the overnight recess,
25 you're never permitted to talk about the case with any

1 person whatsoever. That includes family; that includes
2 friends; that even includes your fellow jurors.

3 You're only permitted to discuss this case when you
4 and your fellow jurors have been sent back to begin with
5 your deliberations at the trial's conclusion.

6 So during the lunch recess no discussions with any
7 person whatsoever in any fashion whatsoever about the case.

8 And also you are not permitted to conduct any research
9 or do your own investigation into any issue. You're also
10 not permitted to be -- to allow yourselves to be exposed to
11 any type of media coverage that might relate to the case.
12 So no television, no radio, no newspapers, no internet
13 searches, no nothing.

14 You have to base your decision strictly upon the
15 testimony and the evidence received during the trial of the
16 case, and you're not to be influenced by any outside or
17 extraneous information or consideration.

18 So with that in mind, do have a good lunch. I'm going
19 to ask that you please report back to your jury room, and
20 that's the room that you've just been introduced to.
21 Report back to that jury room at 2:30, at 2:30 this
22 afternoon.

23 If you're not sure how to get back to that room be
24 sure you discuss that with the bailiff. They'll assist you
25 with those directions. Have a good lunch. I'll see you at

1 2:30.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: All right. Any other matters we need to
5 address before we recess?

6 MR. BARNETTE: Yes, sir. May we approach the bench
7 for one second?

8 THE COURT: Yes.

9 (Bench conference held off the record.)

10 THE COURT: All right. Court is in recess until 2:30.

11 (Whereupon, a recess was taken.)

12 THE COURT: All right. I have been provided some
13 information.

14 Apparently one of the jurors was involved in an
15 accident, and I'm not certain as to what injuries might
16 have been suffered, if any. But, nevertheless, the juror
17 is not going to be able to come back today. Probably
18 likely to be available tomorrow.

19 Any objection to just excusing the jury and having
20 them come back in the morning to begin with the trial?

21 MR. BARNETTE: None from the state, Your Honor.

22 MR. RAY: None from the defense, Your Honor.

23 THE COURT: Okay. Bring the jury in, please.

24 (The following takes place in the presence of the
25 jury.)

1 THE COURT: Good afternoon, ladies and gentlemen.

2 As you know, one of your fellow jurors is absent. And
3 he apparently was involved in an automobile accident, but I
4 don't think he's been injured. But, nevertheless, he
5 couldn't get back this afternoon.

6 I anticipate that he will be able to be here in the
7 morning. So we're just going to wait for him since he was
8 kind enough to call in and let us know just like we asked
9 him to do.

10 So what we'll do is begin with the trial first thing
11 in the morning beginning at 9:30, at 9:30 in the morning.

12 So you're going to be excused for the balance of the
13 afternoon. Keep in mind the caution I've already provided
14 you. Do not discuss the case with anyone during the
15 overnight recess. Don't conduct any research or do your
16 own investigation into any issue. Do not permit yourselves
17 to be exposed to any type of media coverage that might
18 relate to the case.

19 Do have a good afternoon, and please report back to
20 your jury room at 9:30 in the morning, 9:30 in the morning.
21 Have a good afternoon.

22 (The following takes place outside the presence of the
23 jury.)

24 END OF PROCEEDINGS MARCH 9, 2009

25

1 (Proceedings March 10, 2009)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: All right. Are we ready for the jury?

5 MR. BARNETTE: The state is ready, Your Honor.

6 MR. RAY: Yes, Your Honor.

7 THE COURT: Okay. Bring them in, please.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: Good morning, ladies and gentlemen.

11 As you know, when we recessed yesterday you had been
12 sworn but we had not begun with the trial of the case
13 because of some difficulty. But it appears that we are now
14 ready to begin with the trial of the case.

15 So we will begin with the opening statements by the
16 lawyers beginning with the solicitor.

17 Mr. Barnette.

18 MR. BARNETTE: May it please the Court, Your Honor.

19 Madam forelady and ladies and gentlemen of the jury,
20 good morning.

21 Like the judge introduced me earlier, my name is Barry
22 Barnette. I'm a deputy solicitor here. And I'll be
23 representing Jamie McAbee. She was the victim in this case
24 of this armed robbery.

25 Let me tell you a little bit about it, give you a

1 preview or an idea of what you're going to be seeing in
2 court today.

3 I take you back to January the 13th of 2008.
4 Ms. McAbee is working at a Li'L Cricket up in Mayo, South
5 Carolina. If you're familiar with that area up on 221,
6 there's a Li'L Cricket there. And in that Li'L Cricket,
7 she was working that evening about 6:20 to 6:45 that
8 evening. And you're going to see the video.

9 The defendant, Mr. Wilkins, comes in. He's wearing a
10 mask and has camouflage pants and a black jacket on.

11 Robert Benson, his codefendant, is driving the
12 vehicle, parks it outside.

13 And he comes in and does the robbery. No question.
14 It's armed robbery. The gun is pointed right at her. She
15 complies. She gives him the till. He takes the money and
16 goes.

17 Shawn Plount which you'll hear from is a deputy with
18 the Spartanburg County Sheriff's Department. He's on
19 patrol. He gets a BOLO about a white car being involved in
20 an armed robbery.

21 He is up on Route 110 beside Cannons Campground Road.
22 If you're familiar with Cowpens, there's a Hot Spot right
23 there at that exit. I think it's Exit 83 off I-85.
24 There's a Hot Spot there at Cannons Campground Road and
25 110.

1 He is patrolling that area. He's waiting and just
2 making sure there. A white car pulls in matching the
3 description, and he pulls out to look into it. The car
4 takes off and goes at a high rate of speed and goes down
5 Kelly Road if you're familiar with that area.

6 What happens is Robert Benson is the driver. Mr.
7 Wilkins had gotten out of the car to go into the Hot Spot,
8 jumped back in the car when it took off because once they
9 saw the black-and-white.

10 When they did, they come to a rolling stop after they
11 go a period of time. Mr. Benson jumps out of the driver's
12 side. Mr. Wilkins jumps out the passenger side. Deputy
13 Plount catches Mr. Benson. He calls for backup. All kinds
14 of officers come in. And they call the bloodhounds. And
15 you will be hearing from the bloodhound handler in this
16 case where he -- as a matter of fact, Officer Plount is
17 also a part of the dog-handling team they had too.

18 They take the bloodhounds, and they track and find Mr.
19 Wilkins behind an outhouse over in that area. He's wearing
20 his camouflage pants and his black shirt. He had ran out
21 of his shoes he run so hard, and when they're caught. Then
22 they catch him there.

23 You're going to hear from Mr. Benson. He's already
24 pled guilty to the charge in this case. He is going to be
25 sentenced by a judge. There is no recommendation on his

1 case. He pled what we call straight-up. The judge will
2 determine his sentence.

3 Obviously, he's cooperating now as we told the judge
4 he's cooperating. But he's still facing a sentence from
5 ten to 30 years for what he did, Mr. Benson did.

6 He's going to get up on the stand and tell you what
7 happened concerning that night, or actually it's within a
8 24-hour period when the situation happened in this Cowpens
9 incident. That happened in the early morning hours of
10 January the 14th. So this is a period of time.

11 You'll also hear from Enterprise where the car was
12 rented by the defendant's girlfriend, the white car. And
13 we will have that testimony brought to you too.

14 What I'd like for you to do is just listen to the
15 testimony. I wanted to give you a preview of what you were
16 going to be hearing today.

17 And you're going to be hearing from Jamie McAbee, what
18 she saw. And you're going to see what she saw on the
19 video. You're going to see the defendant was dressed in
20 these clothes, the clothes he was wearing. Another thing
21 too, if you notice the size of it. He's 5'6. Mr. Benson
22 is 6'2". A big difference in the size between the two men.
23 You will see the fellow was the small fellow that came into
24 the store and did the robbery.

25 Again, I'll be coming back to you, like the judge

1 said, after you hear all the testimony in the case. And
2 I'll be asking you to look at the evidence we are giving to
3 you. And basically you've heard from here. And we're
4 going to show that to you in this courtroom today.

5 And once you hear that evidence I'm going to ask you
6 to return a verdict of guilty of armed robbery against
7 Mr. Wilkins for what he did to Ms. McAbee in this case.
8 Thank you very much.

9 Thank you, Your Honor.

10 THE COURT: Mr. Ray.

11 MR. RAY: Thank you, Your Honor. May it please the
12 Court.

13 Good morning. As the judge told you yesterday, my
14 name is Tim Ray. I'm here representing Johnny Ray Wilkins.
15 I'm just going to call him Joe-Joe. That's what his
16 friends and family members and everybody calls him.

17 The state has their idea of what happened. You're
18 going to hear from Mr. Benson. He goes by the name Corn.
19 He's going to tell you that Joe-Joe was involved in this
20 armed robbery. He's going to tell you these things. And
21 he's already pled guilty, as the state said. But he has
22 not been sentenced.

23 The judge is going to tell you when we close all the
24 evidence and before you deliberate, he's going to explain
25 to you what the law is. He's going to explain to you the

1 state has the burden of proof. And they have to prove
2 beyond a reasonable doubt that Johnny Ray Wilkins, Joe-Joe,
3 was the one that went in and did this armed robbery.

4 There's going to be several different witnesses.
5 They're going to tell you what they know happened. And
6 it's your job, and maybe the most interesting but maybe one
7 of the toughest jobs in here, to determine what the truth
8 is and who is telling the truth.

9 There's, I think, concern for you, that especially
10 look at Mr. Benson, the codefendant, when he testifies, and
11 determine what the truth is in this case, what was really
12 going on. And we'll talk about that more later at the
13 close of all of the testimony when we do our closing
14 arguments.

15 But I really think it's important in this case beyond
16 any legal issues that we'll take up with the judge, I think
17 the most important part of this case is determining what
18 really happened, what the truth is.

19 I think when you take that and put it all together and
20 go back to deliberate and understand that the state has the
21 burden of proof and has to prove beyond a reasonable doubt
22 that Johnny Ray Wilkins is guilty, I think you'll see they
23 have not met that burden and you'll find him not guilty.
24 Thank you.

25 THE COURT: Mr. Barnette.

Direct examination by Mr. Barnette

1 MR. BARNETTE: May it please the Court. I would like
2 to call Ms. McAbee to the stand please.

3 JAMIE McABEE, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. BARNETTE

6 Q Ms. McAbee, I'm going to have to ask you to speak. I
7 know you speak softly. So if you could, speak loud enough
8 so the jury can hear you. Okay.

9 A Okay.

10 Q So the last person can hear you. It's going to be
11 hard, I know. If you can, pull that microphone as close as
12 you can to you.

13 Can you give me your full name for the record, ma'am?

14 A Jamie Victoria McAbee.

15 Q And what town do you live in, ma'am?

16 A Chesnee.

17 Q And where do you work at ma'am?

18 A Li'L Cricket.

19 Q Work at back on January the 13th of 2008?

20 A Li'L Cricket.

21 Q And what was your position there, ma'am?

22 A Cashier.

23 Q And how long had you been a cashier there, ma'am?

24 A Almost eight years.

25 Q And what was part of your duties there?

Direct examination by Mr. Barnette

1 A I do cashier, stocking, make sure the parking lot is
2 clean and stuff like that.

3 Q Back on January the 13th of 2008, was you working that
4 evening, ma'am?

5 A Yes, sir.

6 Q And did an armed robbery occur to you?

7 A Yes, sir.

8 Q And was that on video tape?

9 A Yes, sir.

10 Q Let me show you what's been marked as State's Exhibit
11 No. 3. Have you got a chance to review this video tape?

12 A Yes, sir.

13 Q Or that's actually on a C. D., but this video, ma'am.

14 A Yes, sir.

15 Q And was that a fair representation of what happened
16 that evening?

17 A Yes, sir.

18 MR. BARNETTE: Your Honor, I'd like to enter State's
19 Exhibit No. 3 into evidence at this time.

20 MR. RAY: No objection, Your Honor.

21 THE COURT: It's admitted.

22 (Video marked State's Exhibit No. 3.)

23 MR. BARNETTE: May I publish it to the jury, Your
24 Honor?

25 THE COURT: You may.

Direct examination by Mr. Barnette

1 (Whereupon, a portion of the tape was played for the
2 jury.)

3 Q If you would, Ms. McAbee, just come down, and step
4 down right here if you would, ma'am.

5 (Whereupon, the witness left the stand.)

6 Q Ma'am, is this the video tape of your store?

7 A Yes, sir.

8 Q And you're behind the counter?

9 A Yes, sir.

10 Q And he comes in the door here shortly.

11 A Yes, sir.

12 THE COURT: You can't enlarge that screen?

13 MR. BARNETTE: I'll try, Your Honor. One of the
14 problems, the pixels is trying to break up. It starts
15 breaking up. I'll probably play it both ways so we will
16 have more detail.

17 (Whereupon, a portion of the tape was played for the
18 jury.)

19 MR. BARNETTE: Let me play that back again.

20 (Whereupon, a portion of the tape was played for the
21 jury.)

22 Q Okay. What was he wearing on his hands, ma'am?

23 A White gloves.

24 Q And what kind of pants was he wearing?

25 A Camouflage.

Direct examination by Mr. Barnette

- 1 Q And what kind of jacket was he wearing?
- 2 A Black, and a white t-shirt.
- 3 Q And he had a mask on.
- 4 A Uh-huh.
- 5 Q And what kind of gun was that, ma'am?
- 6 A A revolver.
- 7 Q How tall did he appear to you, ma'am?
- 8 A About 5'6".
- 9 Q Fairly small fellow?
- 10 A Yes.
- 11 Q If you would, I'm going to play it one more time.
- 12 (Whereupon, the tape was played for the jury.)
- 13 Q And another thing, the door handles on the door is not
- 14 very high up, are they?
- 15 A Uh-uh.
- 16 Q How much money did he take, ma'am?
- 17 A I don't know.
- 18 Q Thank you, ma'am. If you would, have a seat.
- 19 (Whereupon, the witness returned to the stand.)
- 20 Q Ma'am, let me show you what's been marked for State's
- 21 Exhibit 4 purposes.
- 22 MR. BARNETTE: And may I show this to the witness?
- 23 Q Showing you part of State's Exhibit No. 4. Do these
- 24 pants appear to be like the camouflage pants that the
- 25 person that came in the store was wearing?

Cross-examination by Mr. Ray

1 A Yes, sir.

2 Q Does this jacket appear to be the type of jacket that
3 he was wearing that night?

4 A Yes, sir.

5 MR. BARNETTE: Your Honor, I'd like to move State's
6 Exhibit 4 into evidence at this time.

7 MR. RAY: Objection, Your Honor. I don't think a
8 foundation has been made for it yet.

9 MR. BARNETTE: I'll just, I'll redo that later, Your
10 Honor.

11 Q And, ma'am, your store, it's in Spartanburg County.

12 A Yes, sir.

13 MR. BARNETTE: One moment, Your Honor, please.

14 (Pause.)

15 Q Please answer any questions Mr. Ray may have for you,
16 ma'am.

17 A Okay.

18 CROSS-EXAMINATION

19 BY MR. RAY

20 Q Ms. McAbee, the night of the robbery there, did you
21 give a description of what the robber was wearing to the
22 police?

23 A Yes, sir.

24 Q Did you tell them that he was wearing white gloves?

25 A Yes, sir.

Cross-examination by Mr. Ray

- 1 Q Camo pants?
- 2 A Yes, sir.
- 3 Q Did you say a white mask?
- 4 A White shirt.
- 5 Q Did you say white mask?
- 6 A Uh-uh.
- 7 Q Did you say a dark shirt?
- 8 A Yes, sir.
- 9 Q So what the robber was wearing there was a dark shirt.
- 10 A There was a white shirt up underneath a jacket.
- 11 Q But did you tell the police that he was wearing a dark
- 12 shirt?
- 13 A It looked like a shirt because it happened so fast.
- 14 Q So it looked like a shirt. When the person that
- 15 robbed you left, did you see which way they headed?
- 16 A No, sir.
- 17 Q What did you do? I saw you duck underneath the
- 18 counter there on the video. What were you doing there?
- 19 A Tripping an alarm.
- 20 Q And after you tripped the alarm what did you --
- 21 A Called 9-1-1.
- 22 Q Called 9-1-1. Did you give the police a description
- 23 that the robber could have been 6'3"?
- 24 A No, sir.
- 25 Q Could you have said that he would have been between

Redirect examination by Mr. Barnette

1 5' and 6'3"?

2 A Somewhere in there.

3 Q And that would be the description that you gave the
4 police.

5 A Uh-huh.

6 Q Thank you, Ms. McAbee.

7 MR. RAY: No more questions.

8 MR. BARNETTE: Just one question, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. BARNETTE

11 Q On the door there, the handle, how far is it up off
12 the floor?

13 A I'd say probably starts at your knees up.

14 Q But it's not very high off the floor, is it?

15 A No.

16 MR. BARNETTE: Thank you, Your Honor.

17 Q Thank you, ma'am. Answer any other questions Mr. Ray
18 has.

19 MR. RAY: No more questions.

20 THE COURT: You may step down.

21 MR. BARNETTE: Your Honor, I would ask the witness be
22 excused. I think she has to work.

23 THE COURT: Any objection?

24 MR. RAY: No, sir, Your Honor.

25 THE COURT: She may be.

Direct examination by Mr. Barnette

1 (Whereupon, the witness was excused.)

2 THE COURT: Who is next?

3 MR. BARNETTE: Mr. Benson. They are having to get
4 him, Your Honor.

5 ROBERT BENSON, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. BARNETTE

8 Q Mr. Benson, I'm going to have to ask you to speak
9 loud, okay, so the jury can hear you back over here.

10 Give me your full name, please.

11 A Robert Marcellus Benson.

12 Q And, Mr. Benson, where did you live at, sir?

13 A Bradford Road, Cowpens, on Carver Street.

14 Q Who lives with you there?

15 A My wife, Candy Coast (sic).

16 Q What kind of work did you used to do, sir?

17 A Worked for Benson Nissan on 221, on Chesnee Highway,
18 right below the road.

19 Q And what kind of work did you do there, sir?

20 A Detailing cars.

21 Q Do you know the defendant in this case, Johnny
22 Wilkins?

23 A Yes, sir.

24 Q When did you first meet Mr. Wilkins?

25 A Around about September or October through my wife.

Direct examination by Mr. Barnette

1 Q And what year was that, sir?

2 A That would be '07.

3 Q And how did your wife know Mr. Wilkins?

4 A That's her uncle.

5 Q And who was his girlfriend?

6 A I think her first name was Rhonda.

7 Q Okay. And when you met him October of 2007, did y'all
8 start to get to know each other?

9 A Yes, sir, a little bit.

10 Q And starting in January of 2008, what did y'all start
11 doing a lot of?

12 A Started just really hanging out together and really
13 basically just doing drugs and stuff like that.

14 Q What kind of drugs were y'all doing?

15 A Mostly cocaine and crack cocaine.

16 Q On January the 13th of 2008 had his girlfriend rented
17 a white car?

18 A Yes, sir.

19 Q What kind of car was it, sir?

20 A A 2007 G6 Pontiac.

21 Q And did y'all start driving that car that day?

22 A Yes, sir.

23 Q What had y'all done the night before, before all of
24 this happened?

25 A Armed robbery.

Direct examination by Mr. Barnette

1 Q Okay.

2 MR. RAY: Objection, Your Honor. May we approach?

3 THE COURT: Let me see y'all just a minute.

4 (Bench conference held off the record in the presence
5 of the jury but out of the hearing of the jury.)

6 Q Mr. Benson, I was talking about the night before all
7 of this, not the night that the armed robbery occurred.
8 I'm talking about the night.

9 Did y'all watch anything, T. V.-wise or anything like
10 that, the night before?

11 A You referring to Saturday night, I mean, the 13th or
12 the 14th?

13 Q No. Actually I was referring, did y'all watch T. V.
14 the night before?

15 A Yeah, I believe so. I believe the football game was
16 on.

17 Q And did y'all get up later on the 13th, sir?

18 A Yes, sir.

19 Q And what kind of football game was you watching? Was
20 you watching the play-off game?

21 A Yes, sir.

22 Q And on the 13th did y'all go to a store in Mayo, Li'L
23 Cricket?

24 A Yes, sir.

25 Q If you would, tell the jury what happened there, sir.

Direct examination by Mr. Barnette

1 A Just driving toward Chesnee, just riding around,
2 basically just getting high or whatever.

3 Got to the Li'L Cricket right there in Mayo. Turned
4 in, went in for a minute, reviewed everything, was going to
5 get some gas.

6 I can't, I ain't telling no lie, said whether I went in
7 or not the first time when we pulled in. But we pulled
8 around to the back and got out of the car and went to the
9 store and came back to the car two or three times. And then
10 we left.

11 Q Okay. Did he go in? What was he wearing that day?

12 A Fatigue or camouflage pants, black hooded shirt, black
13 jacket and white tennis shoes.

14 Q Did -- and what was you wearing that day?

15 A I had on some blue jeans, some blue jeans with diamond
16 pants on the inside of them, some black shoes and a
17 multicolored shirt.

18 Q How tall are you, sir?

19 A About 6'2".

20 Q How tall is Mr. Wilkins?

21 A About 5'9" or 5'10".

22 Q So he's shorter than you, right?

23 A Oh, yeah.

24 Q And did y'all have a gun with you?

25 A Yes, sir.

Direct examination by Mr. Barnette

- 1 Q What kind of gun was it?
- 2 A About a five shot, .32 or .38 revolver.
- 3 Q And who took the gun in that store that day?
- 4 A Mr. Wilkins.
- 5 Q When he came back did he bring money with him?
- 6 A Yes, sir.
- 7 Q How much money did he have?
- 8 A A sum of money. I ain't going to put no certain amount
- 9 on it because I be telling a lie.
- 10 Q And what did y'all do with that money?
- 11 A Went and got some drugs with it.
- 12 Q And where did y'all go get drugs at?
- 13 A From the hood right over there by the Cotton Drive,
- 14 over there in that area.
- 15 Q And was y'all -- what kind of drugs, or what was you
- 16 doing with those drugs?
- 17 A Using it.
- 18 Q Later on, later on that morning on the 14th, did y'all
- 19 go to a Hot Spot over on Cannons Campground Road in Cowpens
- 20 on 110?
- 21 A Yes, sir.
- 22 Q And if you would, who was driving then?
- 23 A Me.
- 24 Q And who was the passenger on that one?
- 25 A Mr. Wilkins.

Direct examination by Mr. Barnette

1 Q Did -- tell the jury what happened when you pulled in
2 that Hot Spot.

3 A We just pulled in to get some gas. Joe-Joe got out to
4 get some gas. He gave them \$5. He took \$5 in the store,
5 but they wouldn't turn on the pumps.

6 Stood there for a few minutes. And I knew the lady
7 that, the manager there. And her husband was there. And I
8 sat there for about, at least about five minutes. They
9 still wouldn't turn on, you know, turn on the pumps, the gas
10 pumps.

11 So finally they all came outside. So finally Joe-Joe
12 just told them, he said, you know, why y'all won't, you
13 know, turn on the pumps. So finally she turned on the
14 pumps. So finally we put gas in the car. We might have put
15 \$3 or something in there. But, I mean, just by so many
16 people, you know, getting closer and closer to the car and
17 on their cell phone, we just left the scene.

18 Q Did y'all see a black-and-white?

19 A Uh-uh, not at that particular time, no, sir.

20 Q Did you see a black-and-white pull behind you?

21 A Oh, yeah.

22 Q And when you saw a black-and-white, what did y'all do?

23 A I kept driving.

24 Q Did he turn on his blue lights?

25 A Yes, sir.

Direct examination by Mr. Barnette

1 Q And why did you keep on driving?

2 A Because I had drugs in the car. I was dirty.

3 Q Did -- how far did y'all run?

4 A I didn't make it very far. I made it about to right
5 there on Dietz Drive, about my cousin's house, and passed
6 out.

7 Q Okay. Did you run from the car?

8 A Oh, yes, sir.

9 Q How did you stop the car?

10 A Just put it in park, and we both got out. He went one
11 way and I went the other.

12 As soon as I started running down the hill -- I think
13 the officer's name was Officer Blunt (sic) -- he hit the
14 front of the car. I thought he was going to kill me, you
15 know what I'm saying, to be honest with you.

16 So I ran down the hill to the left. And when I -- I
17 missed the jump of the next fence. Police was just
18 everywhere. And that's when I went out. And then I don't
19 know who the officer was. But then, you know, they woke me
20 up then.

21 Q And the clothes you was wearing was the clothes that
22 you had on when they caught you, is that right?

23 A Yes, sir.

24 Q Was Mr. Wilkins still wearing the same clothes he wore
25 earlier?

Direct examination by Mr. Barnette

1 A Yes, sir.

2 Q Let me show you what's been marked as State's Exhibit

3 No. 4. Was these the pants he was wearing?

4 A Yes, sir.

5 Q Was this the jacket he was wearing?

6 A Yes, sir.

7 Q Now, you've pled guilty to the armed robbery because

8 you was the driver obviously of the one in Mayo. You've

9 also pled guilty to failure to stop.

10 A Yes, sir.

11 Q Was you guilty of those crimes?

12 A Yes, sir.

13 Q Have you been promised anything for your testimony

14 here today?

15 A No, sir.

16 Q You realize that you're facing a minimum of ten years

17 at least.

18 A Yes, sir.

19 Q And it could be more than that. It could be up to 30

20 years for armed robbery. And you're also facing up to

21 three years on the failure to stop.

22 A Yes, sir.

23 Q Do you realize the judge is going to be the one to

24 sentence you and the judge is going to determine your

25 sentence?

Cross-examination by Mr. Ray

1 A Yes, sir.

2 Q Who is the man that went in and robbed that store in
3 Mayo, sir?

4 A Mr. Johnny Wilkins.

5 Q Is that the man? Can you tell me what he's wearing,
6 sir?

7 A Got on blue pants and green, green and beige pants,
8 blue shirt and green pair of pants.

9 MR. BARNETTE: Your Honor, I'd like to show he
10 identified the defendant in this case.

11 THE COURT: All right. The record reflects he's
12 identified the defendant.

13 Q And you was in the car when that happened.

14 A Yes, sir.

15 Q And the car rented by his girlfriend. And he was the
16 man with you later on when y'all pulled in the Hot Spot.

17 A Yes, sir.

18 MR. BARNETTE: One moment, Your Honor, please.

19 (Pause.)

20 Q Please answer any questions that Mr. Ray may have for
21 you, sir. Thank you.

22 CROSS-EXAMINATION

23 BY MR. RAY

24 Q Mr. Benson, you go by the name of Coin, don't you?

25 A No, sir.

Cross-examination by Mr. Ray

1 Q Nobody has ever called you that before?

2 A No. On my, I think it was the statement that was
3 wroten (sic), that was wrote on there, I think it was
4 spelled C-O-A-T-N. But a lot of people called me Corn, not
5 Coin. I don't know who call me that.

6 Q They call you what?

7 A Corn.

8 Q Corn. Like C-O-R-N?

9 A The thing say C-O-H-E-N, and, I mean.

10 Q Okay. But it's Corn.

11 A Yes, sir.

12 Q Now, you say that Joe-Joe went in and robbed this Li'L
13 Cricket.

14 A Yes, sir.

15 Q You said he was wearing a black hoody.

16 A Yes, sir.

17 Q Black jacket, black tennis shoes.

18 A No, sir.

19 Q Isn't that what you just said a few minutes ago?

20 A No. I said he had on camouflage pants and white tennis
21 shoes.

22 Q Okay. And then you said a black jacket.

23 A Yes, sir.

24 Q Black hoody, black jacket, white tennis shoes,
25 camouflage pants, right? You've known Joe-Joe for how

Cross-examination by Mr. Ray

- 1 long?
- 2 A Just a couple of months.
- 3 Q And you said that his niece was your wife.
- 4 A Yes, sir.
- 5 Q You aren't really married, are you?
- 6 A No. My common-law wife.
- 7 Q Okay. Did you go into the Li'L Cricket?
- 8 A No, sir.
- 9 Q So you didn't see Joe-Joe rob anybody, did you?
- 10 A No, sir.
- 11 Q Now, later that night at the Hot Spot you said y'all
- 12 had pulled in to get gas, correct?
- 13 A Yes, sir.
- 14 Q And Joe-Joe's pumping gas, is that right?
- 15 A Yes, sir.
- 16 Q And you said a crowd of people started coming around.
- 17 And you got nervous, right?
- 18 A We both got nervous.
- 19 Q You told Joe-Joe to get in the car, didn't you?
- 20 A No. Actually, it was a mutual agreement with that many
- 21 people coming around the car.
- 22 Q It was a mutual agreement. So y'all had a chance to
- 23 talk about this and make an agreement of what y'all were
- 24 going to do.
- 25 A Well, yeah, if, yeah, if you talk real fast where

Cross-examination by Mr. Ray

1 people coming around.

2 Q Or did you hop in the car and say let's go?

3 A I never got out of the car. It was in the driver's
4 seat.

5 Q So you were in the driver's seat the whole time. Did
6 you yell at him through the window come, hey, come on,
7 let's go, anything like that?

8 A No. Those were actually his words.

9 Q Those were his words. So he was standing outside of
10 the car and you were sitting in the car. But he told you
11 come on let's go.

12 A Yes, sir.

13 Q Does that make a lot of sense?

14 A Yes, sir.

15 Q So y'all drove out of the parking lot of the Hot Spot
16 going down the road. Did you notice a police car behind
17 you?

18 A Initially, not at first, no, sir.

19 Q When did you notice it?

20 A As we take a right to the first 4-way stop, you be
21 right there at the Cowpens Elementary School. And that be
22 the first 4-way.

23 We got to the second 4-way, which would be right there
24 at Jehovah's Witnesses Kingdom Hall. After not stopping,
25 after going through both of them when we got behind Cannons

Cross-examination by Mr. Ray

1 Elementary School, that's when I seen the approaching
2 black-and-white car or state trooper car.

3 Q And he didn't have his lights on then, did he?

4 A Yes, sir.

5 Q He did?

6 A Yes, sir.

7 Q So his lights were already on.

8 A Yes, sir. As a matter of fact, when we was coming --
9 when I come past Cannons Elementary School and when I come
10 around that curve, you know, like you coming from the Fast
11 Fuel or the Lincoln Memorial, it was flashing lights coming
12 all the way down through a bunch of cars.

13 Q So you hit the gas --

14 A Oh, yeah.

15 Q -- and took off. And you say because you had drugs on
16 you.

17 A Oh, yes, sir.

18 Q So at that point how far did you drive trying to evade
19 the police?

20 A Turn right there where the little store is right there
21 on Cannons Campground Road, driving straight up Kelly Road
22 and then taking a right, not at the first, not at the first
23 right but at the second right, and going around the curve
24 and got out right there.

25 Q About how far is that -- a mile, half a mile, two

Cross-examination by Mr. Ray

1 miles?

2 A It ain't far. I mean, by me telling you a distance,
3 I'd be telling a lie.

4 Q Well, just in your best approximation, how far did you
5 drive?

6 A Probably about a good 30 or 45 seconds.

7 Q Okay. At top speed?

8 A Yeah, at certain parts, certain points.

9 Q As fast as you could go and manage the turns and such.

10 So Joe-Joe is sitting in the passenger seat while
11 you're doing all of this, right? Did you tell him you had
12 drugs on you?

13 A He already knew.

14 Q So he knew you had drugs on you. Okay. Now, so you
15 stopped, bailed out of the car and ran, correct?

16 A Yes, sir.

17 Q Now, you pled guilty to the armed robbery and the
18 failure to stop, correct?

19 A Yes, sir.

20 Q And the failure to stop is from that night trying to
21 get away from the police, right?

22 Now, the armed robbery, as we've already stated, you're
23 looking at ten to 30 years.

24 Did you have some kind of agreement with the state to
25 come in here and testify today?

Cross-examination by Mr. Ray

1 A No, sir.

2 Q No agreement. Have you been sentenced yet?

3 A No, sir.

4 Q So is that the way it normally works? Do you plead
5 one day and usually get sentenced on a different day?

6 A Mr. Pruett (sic), that's a good question. I'm going to
7 tell you something I honestly did.

8 The other day I wrote a request form for a bond
9 arrangement (sic) and got locked up on P. C. for escape. So
10 I really can't tell you the truth about the matter. I mean,
11 it, things can work different ways. I'm not, I'm not really
12 sure how the system works.

13 Q Well, how long have you been in jail?

14 A I been in there 14 months this month.

15 Q And you've probably made friends in the jail, haven't
16 you?

17 A Not on a regular basis.

18 Q And there's some people in there you know, right? You
19 know what's going on with some of the people in there,
20 right?

21 A In there, yes, sir.

22 Q So.

23 MR. BARNETTE: Your Honor, I'm going to object at this
24 time. I don't know what the relevance is of this about
25 what other people do and other people say.

Cross-examination by Mr. Ray

1 MR. RAY: Your Honor, what I am trying to see --

2 THE COURT: Come here just a minute.

3 (Bench conference held off the record in the presence
4 of the jury but out of the hearing of the jury.)

5 Q Mr. Benson, how long has it been since you pled guilty
6 to today?

7 A I want to say probably about that week right after
8 Thanksgiving.

9 Q So quite a while. And you say you don't have any deal
10 with the state.

11 A No, sir.

12 Q But they sure would be able to help you out, couldn't
13 they?

14 A I don't know. It's up to the judge.

15 Q It's up to the judge, but the state can speak up for
16 you, couldn't they?

17 A I guess. I ain't never been in no situation like this.

18 Q So you're here today testifying not trying to help
19 yourself out.

20 A The only thing I know, I'm just supposed to come here
21 and just tell the truth.

22 Q So you're just doing this out of the goodness of your
23 heart, not looking for any benefit out of it.

24 A Mr. Pruett (sic), I got a 16-month year old. The
25 longer I sit in that jail at Spartanburg County, I'm taking

Cross-examination by Mr. Ray

1 a day away from her. I need to get this over with and come
2 and tell the truth.

3 Q But you're looking at ten to 30 years. So you'd
4 rather be on that 10-year side than that 30-year side,
5 right?

6 A It's up to the judge.

7 Q Well, what would you prefer, doing ten or doing 30?

8 A I wish I would be doing none at all to be honest with
9 you.

10 Q But is it going to be better to do the ten, or had you
11 just rather do the whole 30? I'm sure the judge would be
12 happy to give that to you if that's what you want.

13 A Well, I mean, yeah, of course I'd love to do the ten.

14 Q And that's why you're here today, is trying to keep it
15 down towards that 10-year mark, isn't it?

16 A No, sir.

17 Q No.

18 MR. RAY: No more questions, Your Honor.

19 MR. BARNETTE: No further questions, Your Honor. We
20 would like for him to be excused.

21 THE COURT: You may step down.

22 MR. BARNETTE: I would like to call Deputy Plount to
23 the stand, please.

24

25

Direct examination by Mr. Barnette

1 SHAWN MICHAEL PLOUNT, having
2 been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BARNETTE

4 Q If you would, sir, state your full name for the
5 record, please.

6 A Shawn Michael Plount.

7 Q And where do you work at, sir?

8 A Spartanburg County Sheriff's Office.

9 Q And how long have you been there, sir?

10 A About six years.

11 Q And what's your position there?

12 A I'm a uniform patrol deputy, now the K-9 handler.

13 Q Back on January the 14th of 2008, the early morning
14 hours, were you working that day?

15 A I was.

16 Q And what area was you patrolling, sir?

17 A East side of town.

18 Q Had you received a BOLO about an armed robbery, sir?

19 A Yes, sir.

20 Q And what was the description of that BOLO?

21 A Small white car, the subject wearing camouflage pants
22 and a dark top.

23 Q Did -- was y'all, was you in your area? Was you
24 watching the convenience stores?

25 A Yes, sir.

Direct examination by Mr. Barnette

1 Q Which convenience store was you watching at that time?

2 A The Hot Spot on 110.

3 Q And that's in Spartanburg County?

4 A It is.

5 Q And, if you would, tell the jury what you saw there,
6 sir.

7 A I was parked a pretty good ways the other side of the
8 street back in the dark where nobody could see me.

9 I saw a small white car pull into the convenience
10 store. I put it in drive to go check it out. And I saw a
11 commotion beginning to form in front of the business.

12 I was able to see a person get out of the passenger
13 side of the car. They were at the pumps like they were
14 getting gas. I couldn't identify the person because I was
15 too far away.

16 I saw the clerk inside the store appeared to be
17 agitated. As I pulled in the parking lot the white vehicle
18 pulled out the other side and went down back towards town.

19 I stopped just long enough to ask the clerk if they
20 were all right and what happened. They told me that the
21 person who had gotten out of the car matched the description
22 that they had been given to be looking out for for robbery.

23 I went down and followed the vehicle. It was in an
24 extremely high rate of speed. I had a hard time catching
25 up. It took quite a distance for me to catch up to them.

Direct examination by Mr. Barnette

1 Right as I caught up to them I activated my lights and
2 siren. The vehicle failed to stop. It continued and turned
3 left on Kelly Road, then right on Clearview Drive. At the
4 end of Clearview Drive it turns into Murray Court to the
5 left and Dietz to the right. And right before that
6 intersection both occupants of the vehicle bailed out and
7 ran in opposite directions.

8 Q And did you catch the driver, sir?

9 A I did.

10 Q And was that Mr. Benson?

11 A It was.

12 Q That was the gentleman that just testified.

13 A Yes, sir.

14 Q And was backup coming behind you, sir?

15 A Oh, yes, sir.

16 Q And when the backup got there was Jim Rhodes part of
17 that backup?

18 A Not at that time, no, sir. We sat up the perimeter.
19 We called for -- Deputy Rhodes was the on-call K-9 handler
20 for the evening. And he responded shortly thereafter with
21 his dog.

22 Q And when his dog got there did he start -- how did
23 they start the trail or whatever? Where did they start the
24 trail?

25 A We kept the area where the second subject had run, the

Direct examination by Mr. Barnette

1 passenger of the vehicle had run, clear to avoid
2 contamination.

3 When he arrived on the scene I showed him the area
4 where I had seen the subject run and he started his, his
5 bloodhound in that direction. We followed the trail from
6 there.

7 Q And did he track?

8 A Yes, he did.

9 Q And where did you track him to?

10 A Throughout the neighborhood. We found a couple of
11 locations. He'd be better able to describe what his dog
12 did.

13 And I was, I had stopped to check a, an outbuilding
14 near a house under construction or a house being remodeled.
15 And he and another team member had gone down the hill.

16 And I heard him call they'd found the subject and given
17 verbal commands to the subject. We went down and joined him
18 and assisted in placing, excuse me, placing the subject in
19 custody.

20 Q Do you see the man that y'all arrested that day?

21 A Yes, sir. He's the defendant in the blue shirt.

22 MR. BARNETTE: Your Honor, let the record show that he
23 identified the defendant.

24 THE COURT: It shall.

25 Q And when y'all caught him, sir, let me show you what's

Direct examination by Mr. Barnette

1 been marked as State's Exhibit No. 4. Is these the
2 camouflage pants that he was wearing?

3 A Yes, sir.

4 Q And was this the black jacket that he was wearing?

5 A Yes, sir.

6 Q Did he have any shoes on?

7 A Not at that time, no, sir. He was in sock feet.

8 Q Okay. How cold was it that day?

9 A It was chilly.

10 Q This is in the middle of January, is that right?

11 A Yes, sir.

12 Q This was in the early morning hours.

13 A Yes, sir.

14 Q But it's still dark.

15 A Yes, sir.

16 MR. BARNETTE: One moment, Your Honor. One second.

17 (Pause.)

18 MR. BARNETTE: Your Honor, may I approach the court
19 reporter?

20 (Clothing marked State's Exhibit No. 8 for
21 Identification.)

22 Q Let me show you what's been marked as State's Exhibit
23 No. 8, sir. Was these the jeans that Mr. Benson was
24 wearing?

25 A Looks like them, sir.

Cross-examination by Mr. Ray

1 Q Was that the shirt he was wearing?

2 A Yes, sir.

3 Q And was those the shoes he was wearing?

4 A Yes, sir.

5 MR. BARNETTE: Your Honor, I would move State's

6 Exhibit 8 at this time.

7 I can set a chain up. I don't know if he wants to
8 object to them or not at this point.

9 MR. RAY: I don't object to that exhibit, Your Honor.

10 THE COURT: It's admitted.

11 (Clothing marked State's Exhibit No. 8.)

12 Q Again, these are Mr. Benson's clothes that he was
13 wearing that night.

14 A Yes, sir.

15 Q Not the defendant's?

16 A Correct.

17 Q If you would, sir, please answer any questions Mr. Ray
18 would have for you, sir.

19 CROSS-EXAMINATION

20 BY MR. RAY

21 Q Deputy Plount --

22 A Yes, sir.

23 Q -- am I saying that right?

24 A Correct.

25 Q The night that you arrested Mr. Benson and

Cross-examination by Mr. Ray

1 Mr. Wilkins, you said they had both jumped out of the car.

2 A Yes, sir.

3 Q Correct? And actually Mr. Wilkins when he jumped out
4 of the car, his shoes came off, is that correct?

5 A At some point. I didn't see them come off. He didn't
6 have them on when we found him.

7 Q Right. Officer, when you make a police report do you
8 try to make it as accurate as possible?

9 A I do.

10 Q And as complete as possible?

11 A I do.

12 Q And have you seen your report recently?

13 A I saw it again today.

14 Q Just to refresh your memory, let me show it to you
15 here, particularly this sentence right here.

16 A Uh-huh.

17 Q Would I be correct in saying that Mr. Wilkins -- his
18 boots were by the car when he had jumped out?

19 A That's what it says here. I didn't collect those or
20 have any contact with them. That's what I was told at the
21 scene. That's the words we used.

22 Q Okay. But it was your report, correct?

23 A Yes, sir.

24 Q Okay.

25 MR. RAY: No more questions, Your Honor.

Redirect examination by Mr. Barnette

1 MR. BARNETTE: Just one question.

2 REDIRECT EXAMINATION

3 BY MR. BARNETTE

4 Q What kind of car was that, sir, that they were
5 driving?

6 A It's a small white. I'm not sure what the make was. I
7 don't remember.

8 Q Thank you, sir.

9 THE COURT: You may step down.

10 MR. BARNETTE: We ask this witness be excused, Your
11 Honor.

12 THE COURT: He may be.

13 MR. RAY: No objection, Your Honor.

14 (Whereupon, the witness was excused.)

15 MR. BARNETTE: I would like to call Jim Rhodes to the
16 stand, Your Honor.

17 JAMES RHODES, having been
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. BARNETTE

20 Q If you would, sir, state your full name for the
21 record, please.

22 A James Spencer Rhodes.

23 Q Where do you work at, sir?

24 A Spartanburg County Sheriff's Office.

25 Q And what's your position there, sir?

Direct examination by Mr. Barnette

1 A I'm uniform patrol officer, as well as a K-9 handler
2 for the sheriff's office.

3 Q And how long have you been with the sheriff's
4 department, sir?

5 A This May will be 11 years.

6 Q And how long have you been a dog handler, sir?

7 A Handled since December of 2003.

8 Q And what kind of training did you receive concerning
9 the dog handling, sir?

10 A I've been through the state law enforcement division,
11 went through training with them.

12 I've also gone to York County through the National
13 Bloodhounds Association's training and been to Greenville
14 County to several schools over there as well, as well as
15 on-the-job training. We train roughly four hours every week
16 training track to trails and just basic K-9 training.

17 Q And who is your dog?

18 A My dog for this night was Hause, a bloodhound.

19 Q And was you called out to the scene to help Officer
20 Plount and everybody at the sheriff's department that
21 night?

22 A Yes, sir. I received a call from the sheriff's office
23 to go out for an on-call. I was on call that week for K-9
24 for trapping.

25 Q And when you got there did you start tracking the

Direct examination by Mr. Barnette

1 individual that ran from the car?

2 A I received information from Deputy Plount that where
3 the subject -- he had seen the subject run from the pavement
4 to the grass. And I usually want to start where he's seen
5 on the grass. They usually tend to pick up the trail better
6 right there.

7 I placed the harness on him and placed the lead on him
8 and gave him the start command. And we trailed from where
9 he had been seen, where he had bailed out of the car, down
10 to the, down the roadway along the edge of the fences, came
11 to a T-intersection there in the neighborhood.

12 He made. He angled up across a yard there at the
13 T-intersection, came to a fence. And at that fence we made
14 our way through it. He made another left down the back side
15 of that fence line through some real thick pines.

16 I accidentally, getting caught up in the weeds and
17 whatnot, briars, pines, I dropped the lead. And he really,
18 he had his head down and tail up. I knew he was on the
19 track.

20 He took off running just as hard as he could go. I, we
21 usually run a security team. Deputy Plount was part of that
22 that night, along with two other deputies, and behind me
23 because my job is so watch that dog and keep up with him. I
24 realize he's on the track. We run.

25 He gets to an open area of a gravel driveway and makes

Direct examination by Mr. Barnette

1 a left. We go down in front of the house that's being
2 remodeled. He stops momentarily to sense. There was some
3 scatterer or what there from another man.

4 I'm able to catch up at that point after a pretty brief
5 run to get the lead. I give him the command to leave it.
6 He knows what to do. Goes right back to work.

7 We cast on down the hill or track on down the hill.
8 Deputy Plount and another deputy stops checking the
9 outbuilding that they had heard some noise in. Myself and
10 another deputy went down the hill into a little what we
11 would call a bowl or an indentation.

12 The dogs starts circling. And I'm watching the dog
13 trying to figure out, okay, where did it go from here. He's
14 actually reading, is in a scent pool where the subject may
15 have laid down or where he's at.

16 At that point I look up. I see a locked outbuilding.
17 I see it. The deputy that's with me steps around the
18 outbuilding as I'm working around this direction of it. And
19 we locate Mr., locate Mr. Wilkins up under the outbuilding.
20 He's pulled out and taken into custody at that time.

21 Q And is Mr. Wilkins the individual y'all saw that
22 night?

23 A Yes, sir.

24 Q And can you tell me what he was wearing, sir?

25 A He was wearing like a black flack jacket and camouflage

Direct examination by Mr. Barnette

1 britches, and he was sock feet.

2 Q And I can show you again. But state's Exhibit 4 that
3 I've showed everybody else, is that the clothes he was
4 wearing that day?

5 A Yes, sir.

6 Q And do you see him in the courtroom here today?

7 A Yes, sir.

8 Q And can you tell me what he is wearing, sir?

9 A A blue shirt, and I believe that's khaki britches.

10 MR. BARNETTE: Your Honor, I ask the Court to reflect
11 he's identified the defendant.

12 THE COURT: It shall.

13 Q And you said he was underneath the outbuilding.

14 A Yes, sir. He was wedged up under. The outbuilding was
15 up on cement blocks or some type of something to hold it up
16 off the ground. And he was actually on the -- if we're
17 looking at the outbuilding, he was on the left side up under
18 it. And the deputy happened to see him and assisted pulling
19 him out to take him into custody.

20 Q And was it cold that night?

21 A Yes, sir. It was real cold.

22 Q Please answer any questions Mr. Ray may have for you,
23 sir. Thank you.

24

25

Cross-examination by Mr. Ray

1 CROSS-EXAMINATION

2 BY MR. RAY

3 Q Deputy, can you tell me your name again?

4 A Deputy James Rhodes. I go by Jim.

5 Q Now, when you arrived on the scene there that night
6 did you happen to see the boots that had been left by the
7 car?

8 A I don't recall anything. I was told where he had last
9 been seen, and that's where I started.

10 Q You just went straight to the grass there.

11 A I went to the grass.

12 MR. RAY: No more questions, Your Honor.

13 MR. BARNETTE: I ask the witness be excused, Your
14 Honor.

15 THE COURT: You may step down. You may also be
16 excused.

17 MR. BARNETTE: I would like to call Sergeant Ashley to
18 the stand, Your Honor.

19 KIMBERLY ASHLEY, having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. BARNETTE

22 Q If you would, ma'am, please give your full name for
23 the record.

24 A Kimberly Ashley.

25 Q Where do you work at, ma'am?

Direct examination by Mr. Barnette

- 1 A At the Spartanburg County Jail.
- 2 Q And what is your duties there, ma'am?
- 3 A I'm a sergeant over the I. D. and property area. We're
- 4 responsible for all of the clothing and paperwork for the
- 5 inmates.
- 6 Q So you maintain. That's part of your duties there.
- 7 A Yes, sir.
- 8 Q And how long have you been there, ma'am?
- 9 A Over 15 years.
- 10 Q Did, obviously, Mr. Wilkins and Mr. Benson, have been
- 11 in jail, our jail, is that correct?
- 12 A Correct.
- 13 Q And did y'all get the clothes that they had when they
- 14 were booked into the county jail?
- 15 A Yes.
- 16 Q Let me show you what's been marked as State's Exhibit
- 17 No. 4. Was these camouflage pants and black jacket, was
- 18 these Mr. Wilkins' clothes when he was booked into the
- 19 jail?
- 20 A Yes.
- 21 Q Have they been maintained by y'all since then?
- 22 A Yes.
- 23 Q How do y'all maintain these, ma'am?
- 24 A When the individual has a bond set and they're not
- 25 going to be going home, we go ahead and shower the inmates

Direct examination by Mr. Barnette

1 out. And all the clothing, all personal clothing including
2 underwear and socks, go into a gray bin box, and it's
3 labeled. And that's there it stays until they are
4 transferred out to either go home or go elsewhere.

5 Q As a matter of fact, these were secured there until
6 Investigator Bryant came to pick these clothes up.

7 A Yes, sir.

8 Q And they were maintained there. Nobody has tampered
9 with these. Nobody has switched clothes or anything like
10 that.

11 A No, sir.

12 MR. BARNETTE: Your Honor, I would ask to enter
13 State's Exhibit No. 4 into evidence at this time.

14 MR. RAY: No objection, Your Honor.

15 THE COURT: It's admitted.

16 (Clothing marked State's Exhibit No. 4.)

17 Q And let me show you what's been marked as State's
18 Exhibit No. 8. Was these Mr. Benson's clothes?

19 A Yes, sir.

20 Q And they were done the same procedure?

21 A Correct.

22 Q When he was booked in the jail, they were secured at
23 that time?

24 A Yes, sir.

25 Q And this would have been his clothes.

Direct examination by Mr. Barnette

1 A Correct.

2 Q Including his shoes or anything else that he might
3 have had with him.

4 A Yes, sir..

5 Q His pants and so forth.

6 A Correct.

7 Q And you brought those clothes today.

8 A Yes, sir.

9 Q And they was in y'all's custody all of the time.

10 A Yes, sir.

11 Q Thank you. Please answer any questions Mr. Ray has
12 for you.

13 A Yes, sir.

14 MR. RAY: No questions, Your Honor.

15 THE COURT: You may step down.

16 MR. BARNETTE: May we approach for a second, Your
17 Honor?

18 (Bench conference held off the record in the presence
19 of the jury but out of the hearing of the jury.)

20 THE COURT: All right. Ladies and gentlemen, I have
21 got one matter I'm going to need to address before we can
22 go further. So I'll ask you to please go to your jury
23 room.

24 Don't talk about the case. I'll bring you back in
25 just a few minutes to continue.

Direct examination by Mr. Barnette

1 (The following takes place outside the presence of the
2 jury.)

3 (Bench conference held off the record.)

4 THE COURT: All right. Bring the jury back, please.

5 (The following takes place in the presence of the
6 jury.)

7 THE COURT: Okay. You may continue.

8 MR. BARNETTE: May it please the Court, Your Honor. I
9 would like to call Brian Sneed to the stand please.

10 BRIAN SNEED, having been first
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. BARNETTE

13 Q State your name for the record, please.

14 A Brian Sneed.

15 Q And where do you work at, sir?

16 A Enterprise Rent-A-Car.

17 THE COURT: You don't have to get right up on the
18 microphone. It will pick it up. Just speak out.

19 THE WITNESS: Okay.

20 Q And what position do you hold there, sir?

21 A I'm a branch manager.

22 Q And is part of your duties there maintaining the
23 records and the rental agreements there at the, at
24 Enterprise, sir?

25 A Yes, sir.

Direct examination by Mr. Barnette

1 Q Let me show you what's been marked as State's Exhibit
2 No. 7. Is this a copy of y'all's contract, sir?

3 A Yes, sir.

4 Q And on that contract who was the person that signed
5 for that vehicle?

6 A Ms. Miranda Allen.

7 Q And what kind of vehicle was it, sir?

8 A It was a Pontiac G6, white in color.

9 Q It was a white Pontiac G6.

10 A Yes, sir.

11 Q Thank you.

12 MR. BARNETTE: Your Honor, I'd like to enter this into
13 evidence at this time.

14 MR. RAY: No objection, Your Honor.

15 THE COURT: It's admitted.

16 (Enterprise rental agreement marked State's Exhibit
17 No. 7.)

18 Q That's all the questions I have. Please answer any
19 questions Mr. Ray or the judge may have for you.

20 MR. RAY: No questions, Your Honor.

21 THE COURT: Step down. Thank you.

22 MR. BARNETTE: We would ask for this witness to be
23 excused, Your Honor.

24 THE COURT: He may be.

25 (Whereupon, the witness was excused.)

1 MR. BARNETTE: Your Honor, the only other thing I'd
2 like the defendant to stand up in front of the jury and let
3 them see how tall he is, sir.

4 THE COURT: All right.

5 (Whereupon, the defendant stood.)

6 THE COURT: Just come out here in the middle if you
7 will, Mr. Wilkins. That's good.

8 (Pause.)

9 MR. BARNETTE: Thank you, Your Honor.
10 Your Honor, the state would rest.

11 THE COURT: All right. Ladies and gentlemen, that is
12 all of the testimony or other evidence to be offered by the
13 state, at least in their case in chief.

14 Before we go any further I've got a couple of matters
15 I'll need to address with the lawyers, after which we'll
16 bring you back to continue with the balance of the trial.

17 So please again retire to your jury room, but do not
18 discuss the case in any fashion. I'll bring you back in
19 just a few minutes.

20 (The following takes place outside the presence of the
21 jury.)

22 THE COURT: Mr. Ray, any motions or other matters to
23 address?

24 MR. RAY: Yes, sir, Your Honor.

25 The defense makes a motion for a directed verdict

1 based on the fact that viewing the evidence in the light
2 most favorable to the state there's no evidence to support
3 a conviction.

4 THE COURT: Where do you perceive that the evidence is
5 lacking?

6 MR. RAY: Your Honor, I would say it's to the
7 identification of Mr. Wilkins as being the perpetrator of
8 the robbery.

9 THE COURT: You're saying as a matter of law I ought
10 to find Mr. Benson's testimony to be not credible?

11 MR. RAY: Yes, Your Honor.

12 THE COURT: Okay. The motion for a directed verdict
13 is denied.

14 Any others?

15 MR. RAY: Not from the defense, Your Honor.

16 MR. BARNETTE: Not from the state either.

17 THE COURT: Have you discussed with Mr. Wilkins his
18 right to testify, as well as not?

19 MR. RAY: Yes, sir, I have.

20 THE COURT: And does he appear to understand the
21 right?

22 MR. RAY: Yes, sir.

23 THE COURT: Has he indicated to you a preference?

24 MR. RAY: He has indicated to me that he would prefer
25 not to testify, but if Your Honor would inquire.

1 THE COURT: All right. Mr. Wilkins, Mr. Ray tells me
2 that you and he have discussed your right to testify, as
3 well as not testify, during the trial of this case. Have
4 you discussed it with him?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And has he explained to you that you have
7 an absolute right to remain silent and that nobody can make
8 you take the witness stand, nobody can require that you
9 give any statement, no one can require that you answer any
10 questions as it relates to these charges?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And did he also explain to you that if you
13 wish to testify you may? It's your choice, it's your
14 decision. And only you can make it.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: But you understand that now that the state
17 has concluded with their presentation of evidence, now is
18 the only opportunity that will have to take the witness
19 stand and testify.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that if you choose to
22 take the witness stand and testify you'll have to answer
23 all the questions asked by the lawyers, not just your
24 lawyer's questions but also the prosecutor's questions,
25 even if those responses might tend to prove you guilty?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you also understand that if you choose
3 not to take the witness stand I'll instruct the jury they
4 can't hold that against you, they can't consider it in any
5 way?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Have you and Mr. Ray discussed the
8 advantages and disadvantages of your testifying, as well as
9 not testifying?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And do you appreciate what those
12 advantages and disadvantages are?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And have you had time to reflect upon your
15 decision as to whether or not you will testify?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And have you reached a decision?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And what is that decision?

20 THE DEFENDANT: I won't testify.

21 THE COURT: You do not wish to testify?

22 THE DEFENDANT: No, sir.

23 THE COURT: And is that a decision that you reached of
24 your own free will and accord?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Has anybody forced you into it?

2 THE DEFENDANT: No, sir.

3 THE COURT: Pressured you into it?

4 THE DEFENDANT: No, sir.

5 THE COURT: That's a decision that you made on your

6 own.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you're satisfied with it?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you have any other witnesses you want

11 Mr. Ray to call on your behalf?

12 THE DEFENDANT: No, sir.

13 THE COURT: Okay. Thank you.

14 Any requests for jury instructions by the state?

15 MR. BARNETTE: Your Honor, I would request the hand of

16 one, hand of all charge in the case.

17 I don't know what Mr. Ray is going to argue, possibly

18 they were both together and he didn't have anything

19 involved with it. I'm sure he's going to argue mere

20 presence. I don't know, but from there I think it'd be an

21 appropriate charge in this situation.

22 THE COURT: All right. Mr. Ray.

23 MR. RAY: Your Honor, I don't know that the hand of

24 one, the hand of all would be appropriate as seeing as how

25 Mr. Wilkins is the one alleged to have committed the

1 robbery.

2 Your Honor, other than Your Honor's normal charges for
3 burden of proof and such, the defense has no additional
4 charges.

5 The mere presence, we don't wish to argue mere
6 presence. I don't think that that would be appropriate
7 here either.

8 THE COURT: Okay. Mr. Barnette, isn't the testimony
9 that it was, in fact, Mr. Wilkins that went in?

10 MR. BARNETTE: I will withdraw my request since mere
11 presence will not be charged, so.

12 THE COURT: Okay. You're not requesting mere
13 presence.

14 MR. RAY: No, sir.

15 THE COURT: Okay. All right. Anything else we need
16 to address, any other requests?

17 MR. BARNETTE: No, sir.

18 THE COURT: Of the defense?

19 MR. RAY: No, sir, Your Honor.

20 THE COURT: All right. Are y'all ready to argue or do
21 you need five minutes?

22 MR. BARNETTE: If I can just go to the bathroom.

23 THE COURT: We will take five minutes and then come
24 back.

25 (Whereupon, a recess was taken.)

1 THE COURT: All right. Are we ready for the jury?

2 MR. BARNETTE: The state is ready, Your Honor.

3 THE COURT: All right. Bring them in, please.

4 (The following takes place in the presence of the
5 jury.)

6 THE COURT: All right. Ladies and gentlemen, as you
7 know, you've heard and seen all the evidence to be
8 presented by the state.

9 So we will now proceed with any to be offered by the
10 defendant.

11 Mr. Ray, do you have any additional evidence you want
12 to present?

13 MR. RAY: No, sir, Your Honor.

14 THE COURT: Ladies and gentlemen, that is all the
15 testimony and other evidence to be offered in the trial of
16 the case, and therefore what remains to be done are the
17 lawyers' final summations, after which I'll instruct you on
18 the law, and then you'll begin with your deliberations.

19 So please give the lawyers your attention now as they
20 give you their final summations.

21 MR. RAY: Your Honor, I believe, for the record, I
22 will make one motion at this point.

23 THE COURT: All right. Let me see you.

24 (Bench conference held off the record in the presence
25 of the jury but out of the hearing of the jury.)

1 THE COURT: All right. Note the motion.

2 MR. BARNETTE: May it please the Court, Your Honor.

3 THE COURT: Yes, Mr. Barnette.

4 MR. BARNETTE: Thank you, Your Honor.

5 Madam forelady and ladies and gentlemen of the jury,
6 before -- well, I'm at this point before we started the
7 case, I guess, about an hour and ten or 15 minutes ago.
8 It's been a very quick case. But the thing I want you to
9 remember is the evidence you have, the evidence that you
10 received in this case.

11 The one thing you bring here to the Court is your
12 common sense. Y'all every day are judges. You discern
13 what you accept and what you don't accept.

14 The thing is that you see in this video that we showed
15 you earlier. I'll be glad to show it to you again so you
16 can see it. I may show it to you one more time. When you
17 go back in the jury room you may not have it with you.

18 But looking at it and everything, the clothes tells
19 the tale. If you look at what the defendant was wearing
20 that night, and you'll have these back in evidence too.
21 You saw Mr. Benson. He's my size, even probably a little
22 bit bigger than me. Look at these pants. Look at the size
23 of the pants, look at the waist of the pants.

24 You've also seen the defendant. You saw who went in
25 the store wearing these pants, is the defendant,

1 Mr. Wilkins.

2 He had a black jacket over the top. That's what he
3 was wearing when they caught him underneath an outhouse,
4 which he had ran from a car.

5 Like I say, you'll have the clothes that Mr. Benson
6 had on wearing blue jeans, wearing a shirt like this. And
7 he was wearing black shoes, I mean black, and you can
8 clearly tell they're white shoes Mr. Wilkins was wearing
9 when he went in the store that day.

10 And I'm sure, and I can't. I'm not going to get a
11 chance to speak to you again. Mr. Ray will have the last
12 argument, and the judge will give you the law you apply to
13 the case.

14 Let me talk about Mr. Benson. Here's Mr. Benson was
15 driving a vehicle in the case. He's not the one that went
16 in, but he's just as guilty under the theory of accomplice
17 liability, is what we call it, when you both do the crime.

18 He's pled. He's facing ten to 30 for what he did.
19 I'm sure he would like to testify, and the judge is going
20 to have to sentence him afterwards and determine it. And
21 sure he'd like it to be the lower of the ten. He's facing
22 the music. He's facing what he did in this case. But he's
23 not the one that went into Ms. McAbee and pointed a gun at
24 her, a revolver, a real gun as you can see on the video.

25 What could have happened? Thank goodness nothing else

1 happened other than the money was taken that night. Both
2 of them was high on drugs and used the money to get the
3 drugs, both of them in the car together, the car that was
4 rented by the defendant's girlfriend.

5 This is a case if you look at the evidence presented
6 and look at the evidence that's been presented to you,
7 there is only one logical conclusion. The man that went in
8 that store is this gentleman.

9 And then look on the video, like I said, I'm going to
10 show you here. The handles on the door. And y'all been in
11 stores, where the handles are where you can reach down and
12 push them open if you need to.

13 Look how tall the defendant was. Look how short he is
14 compared to that handle, especially if he went outside that
15 door. And look at Mr. Benson, that man right there, the
16 man that was with him on that night doing the armed
17 robbery, doing the drugs, riding with him. He's the one
18 that went in and robbed Jamie McAbee.

19 Let me show you the video real quick.

20 (Whereupon, the tape was played for the jury.)

21 MR. BARNETTE: You can look at the shoes. They're
22 white shoes. They're not black shoes, like I said. These
23 are pants he was wearing. Mr. Wilkins was wearing those
24 pants. Black jacket. He's wearing a white t-shirt
25 underneath that.

1 And he's definitely got a gun. He has white gloves
2 on. There wouldn't be any fingerprints. He's clearly got
3 a gun.

4 You can see the camouflage pants even better there.
5 You can see he had a black hoody under that and a black
6 jacket over the top of it. Definitely takes the money,
7 definitely has a gun.

8 Look how short he is. I know you can see he is on his
9 knees or whatever, but that's not Mr. Benson. Mr. Benson
10 is a lot taller than that. It's his height. That's him.

11 I know I can stand up and talk to you all day about
12 this, but the bottom line is y'all seen the evidence. The
13 evidence has been presented here to you today, the evidence
14 that you need in this case, because those things don't
15 change.

16 The clothes does not change in this situation. The
17 clothes tells the tale, and that along with what Mr. Benson
18 told you, that's not Mr. Benson that went in there.
19 Mr. Wilkins, the man he was with, doing the robbery, doing
20 the drugs, in the car together. The car was driven by him
21 and rented by his girlfriend.

22 I ask you to please based on the evidence presented
23 here today to you, that this defendant had. We don't to
24 prove beyond a shadow of a doubt. We have to prove beyond
25 a reasonable doubt. And everything points, all the

1 evidence points, to that man being guilty of armed robbery.

2 Thank y'all very much.

3 THE COURT: Mr. Ray.

4 MR. RAY: Thank you, Your Honor.

5 This was a pretty short trial today. There wasn't a
6 lot that we really needed to focus on much other than a
7 couple of key things.

8 First, let's talk about Ms. McAbee's testimony, the
9 clerk at the store. She testified that, and you saw on the
10 video that, the person who robbed the store had a white
11 shirt on. She said they were wearing a dark shirt.

12 She didn't say -- she testified here today jack, that
13 she said jacket. But I talked to her about what she told
14 the police that night, and she said dark shirt.

15 She also said the person who committed the robbery was
16 between 5' tall and 6'3". And that's a huge range. And we
17 can look at a video all day and handles on doors, which are
18 in all different sorts of heights. And until you have
19 something real to measure height by, I think you have to go
20 by what the person there says, and that's not very helpful,
21 between 5' and 6'3".

22 After the person arrived at the store, they left.
23 Ms. McAbee signaled the alarm and called 9-1-1. That's it.
24 She doesn't see where they go, if they're with anybody.
25 That was all she saw.

1 Mr. Barnette said that the clothes tell the tale.

2 Let's look at the clothes. A dark shirt, or they say a
3 black jacket, a white shirt.

4 Well, I haven't seen a white shirt here today. If he
5 was arrested wearing these clothes, where's the white
6 shirt?

7 You look at this jacket. It's, you got a little
8 thickness to it. I see a zipper here on the arm. Did you
9 see a zipper on the arm of the person who committed that
10 robbery?

11 The shoes. I don't see any shoes here today.
12 Apparently the police didn't think that was important. So
13 who knows where the shoes are? It would have been pretty
14 helpful if they would have gotten the shoes, wouldn't it?

15 One of the police officers told us there were boots.
16 Well, boots are very different from white tennis shoes that
17 the person who robbed the store was wearing.

18 The officer from the jail, Sergeant Ashley, testified
19 that these were the clothes he was brought in with. We all
20 know that he was found in sock feet as the officer said.
21 That's it.

22 There's more in that video. Also, in the video you
23 can see that whatever the person is wearing, whether it's a
24 shirt, jacket, whatever it is, you can see that it's opened
25 a little bit in the front. You see what the inside of this

1 jacket is. It's orange.

2 You see a white shirt in that video. I don't see
3 anything in this jacket that looks orange to me. Maybe
4 that's something to look at there..

5 Camouflage pants. Tons of people have camouflage
6 pants.

7 So let's look at Mr. Benson. He's the one that says
8 that Joe-Joe did this robbery. Well, for one, Corn as he
9 goes by. I was mistaken when I said Coen. I am glad he
10 corrected me.

11 Corn had been using drugs all day. He had drugs on
12 him that night. He -- I don't know if his recollection of
13 the day would be that reliable. He was confused about the
14 night before. He says he wasn't in the store, he didn't
15 see the robbery.

16 Of course he's pled guilty to robbery and failure to
17 stop. He's looking at ten to 30 years.

18 And did you see how evasive he was? It's pretty
19 straightforward. If somebody is in that situation and
20 they're looking at ten to 30 years, wouldn't they want the
21 ten years versus the 30? He was evasive to that.

22 He was evasive to whether or not he was going to get
23 any benefit from the state. Seems pretty straightforward
24 that he had a reason to try to help himself out. Didn't
25 he?

1 He was charged with armed robbery, and maybe he
2 thought, heck, I'm not going to be able to get out of this,
3 let me see what I can do to lessen my time, let me blame it
4 on Joe-Joe over here that did this one, say I was out in
5 the car while Joe-Joe went in and did it.

6 That night there at the Hot Spot, they're just there.
7 Joe-Joe is pumping gas. And Benson is sitting in the car.

8 A crowd of people starts coming around. Well,
9 Mr. Benson knows he's got drugs on him. I don't know what
10 all he's done.

11 But he says that it was kind of a mutual thing that
12 Joe-Joe is yelling, hey, let's get out of here, let's go.
13 And he says he was saying it too.

14 Does that really make a lot of sense? If Joe-Joe is
15 concerned with all the people coming around, wouldn't he
16 have hopped in the car and said let's go? Or would he
17 stand outside the car yelling at him, hey, let's get out of
18 here?

19 Seems to me that Mr. Benson was the one really
20 concerned with getting out of there and getting away. So
21 they hop in the car. They go down the road. The police
22 get behind them.

23 Mr. Benson doesn't want to get pulled over, so he hits
24 the gas and takes off. Joe-Joe knows Mr. Benson had drugs
25 on him.

1 They get pulled over. Probably the last thing anybody
2 wants to do is get arrested for drugs somebody else has on
3 them. He takes off running too. Runs out of his boots
4 trying to get out of there.

5 Things with Mr. Benson's story just don't quite seem
6 to add up. Seems like he has a reason to blame something
7 on Joe-Joe to try to get down to that ten years instead of
8 the 30 that he's looking at.

9 The clothes tell the tale. They don't quite tell it
10 the way the state would like for it to. There's
11 differences. The similarity is there's camouflage pants.
12 Different shoes, different top, whatever it is, whether
13 it's a shirt or jacket. It's not quite the same.

14 Where is the mask? Where is the gloves? You'd think
15 that if they got the same clothes here they're going to
16 have the others too. Where is all of that stuff? Where is
17 the gun? It's not there. It's because it wasn't Joe-Joe
18 that did that armed robbery. I think when you go back and
19 think about all of this, I think you'll agree.

20 The last thing I want to talk about is Mr. Benson said
21 before the armed robbery he and Joe-Joe went in and out of
22 the store several times. Did y'all see that anywhere? I
23 didn't. I just don't see very much to corroborate Mr.
24 Benson's story, and the obvious reason is he's just trying
25 to help himself out. Thank you.

1 THE COURT: Madam forelady and ladies and gentlemen of
2 the jury, you of course have heard and seen all the
3 evidence in the case. You've now heard the final
4 summations of the lawyers; and therefore it now becomes my
5 duty and obligation to instruct you on the law that's
6 applicable, and then you'll be asked to go back and begin
7 with your deliberations. And through that process you'll
8 examine the evidence, decide the facts, apply the law and
9 arrive at a fair and just decision in the case.

10 It is your exclusive duty to determine what the facts
11 are. And you do that through your own common sense
12 examination and evaluation of all of the testimony and
13 other evidence received during the trial of this case.

14 And you 12 jurors alone will decide what weight, value
15 and effect to give to any particular witness' testimony or
16 other evidence in the case. Your sole objective is to
17 simply reach the truth in the matter, and by doing that you
18 will have fulfilled your obligations as jurors, and that is
19 to simply give both the state and the defendant a fair and
20 impartial trial.

21 Now, as you know, in this case the state through the
22 prosecutor has charged the defendant, Johnny Ray Wilkins,
23 with the crime of armed robbery. And the charge setting
24 forth that offense is contained in the indictment which I
25 referred to earlier.

1 As I've told you, this indictment is not evidence of
2 anything. It's not proof of anything. It simply contains
3 the allegations and the charge brought against the
4 defendant. It puts him on notice as to what the state
5 claims that he has done by way of the commission of some
6 criminal offense.

7 The indictment will be in the jury room, Madam
8 Forelady, because it's going to be on the back of the
9 indictment that you're going to be asked to indicate the
10 jury's unanimous decision. But other than serving as the
11 verdict form, the indictment serves no purpose so far as
12 you jurors are concerned.

13 The defendant is charged with the crime of armed
14 robbery. The state alleges that on or about January the
15 13th of 2008 that he did commit the crime of robbery while
16 armed with a deadly weapon in that he took, stole and
17 carried away from the person or the presence of Jamie
18 McAbee at the Li'L Cricket store located on Highway 221 in
19 Mayo by the use of force or intimidation a certain sum of
20 money and intended to deprive the owner of that property
21 and convert that property to the taker's own use.

22 Those are the allegations in the indictment to which
23 the defendant has entered a plea of not guilty. And, as
24 I've told you, that plea of not guilty has therefore placed
25 upon the state the burden of proving the allegations that

1 are set forth in the indictment, the burden of proving each
2 of the essential elements of the crime alleged in the
3 indictment; and therefore the burden is upon the state to
4 establish the defendant's guilt to the satisfaction of you
5 12 jurors beyond a reasonable doubt.

6 The burden is never upon a defendant to prove that he
7 is not guilty or to prove that he is innocent because in
8 many cases that might not be possible.

9 I instruct you that it is a vital, important and
10 cardinal rule of law that every defendant in a criminal
11 trial, and it does not matter how serious the offense might
12 be for which that person stands charged, that person shall
13 always be presumed innocent of that charge.

14 And, as I've told you, that presumption of innocence
15 remains with any defendant, as it does with this defendant,
16 from the time that he is placed under arrest and throughout
17 the course of the criminal process and even throughout the
18 course of the actual trial in the case.

19 And that presumption of innocence will be with Mr.
20 Wilkins even as go back into your jury room to begin with
21 your deliberations in this case. And that presumption of
22 innocence will be with him in that jury room, and it'll be
23 with him forever unless you 12 jurors determine that he's
24 no longer entitled to that presumption of innocence.

25 That is after you have carefully considered all the

1 evidence in the case, from that evidence you decided the
2 facts, and upon deciding the facts you have applied the
3 law, if you 12 jurors unanimously determine that his guilt
4 has been proven beyond a reasonable doubt, then he would no
5 longer be entitled to the presumption of innocence.

6 But it's only if, unless and until you are satisfied
7 of his guilt beyond a reasonable doubt that the presumption
8 of innocence would no longer be applicable.

9 Now, while the state does have the burden of proving a
10 defendant's guilt beyond a reasonable doubt, that doesn't
11 mean that they have to prove his guilt beyond all doubt or
12 beyond any possible doubt. But it does require the state
13 to prove his guilt to your satisfaction beyond a reasonable
14 doubt.

15 The term reasonable doubt should be given its plain
16 and ordinary meaning. A reasonable doubt is the kind of
17 doubt that would cause a reasonable person to hesitate to
18 act upon the information provided.

19 A defendant in a criminal trial is entitled to any
20 reasonable doubt that arises from the evidence or lack of
21 evidence in a case. And if upon any factual issue
22 essential to a finding of a verdict of guilty you have some
23 reasonable doubt as to how that issue should be resolved,
24 it would be your duty to resolve that doubt in favor of the
25 defendant.

1 And therefore if upon your consideration of the whole
2 case you have a reasonable doubt as to his guilt, you must
3 resolve that doubt in his favor and return a verdict of not
4 guilty.

5 And, at the same time, after you have carefully
6 considered all the evidence and applied the law if you have
7 no reasonable doubt as to the defendant's guilt, then it
8 would be your corresponding duty to find him guilty of the
9 crime that has been proven to your satisfaction beyond a
10 reasonable doubt.

11 Now, the same law that provides that you are the
12 judges of the facts also provides that I am the judge of
13 the law. And that simply means that nobody is going to
14 tell you how to arrive at your determination of fact in
15 this case. You do that, as I've stated, through the
16 exercise of good judgment and common sense conscientiously
17 applied to the testimony and evidence received during the
18 trial of the case.

19 You must however under your oath as a juror accept the
20 law as I provide it to you as being the law that is
21 applicable in this particular case. In other words, you're
22 never to concern yourself with what you thought the law was
23 before you came to serve as a juror this week or what you
24 think the law ought to be.

25 Under your oath you simply accept the law as I provide

1 it to you as being the law that you are to apply in the
2 case. And then you take that law and you apply it to the
3 facts as you 12 jurors determine the facts to be based upon
4 your common sense examination and evaluation of the
5 evidence in the case.

6 Now, because you are the sole judges of the facts in
7 this case you are therefore necessarily the sole judges of
8 the credibility or the believability of each witness that
9 has testified during the trial of the case.

10 You 12 jurors alone will decide what weight, value and
11 effect to give to any particular witness' testimony, or
12 even portions of that testimony. And therefore there are a
13 number of factors which you should consider in arriving at
14 your assessment upon the evaluation of a witness'
15 testimony, and I'm going to list several of those factors
16 for you.

17 You may consider the demeanor of the witness, that is
18 how the witness appeared to you as the witness testified
19 from that witness stand. Was the witness straightforward
20 in responding to questions, or was the witness hesitant or
21 evasive in responding to questions that were asked of that
22 witness?

23 Simply put, did the witness appear to you to be
24 telling the truth and to have knowledge of the facts to
25 which that witness has testified?

1 You may also consider whether or not the testimony of
2 a witness is consistent or inconsistent with testimony or
3 information provided by that witness, whether it be in
4 court or out of court, as well as whether or not the
5 testimony of a witness is consistent or inconsistent with
6 other testimony or other evidence received during the trial
7 of the case.

8 You may also consider how the witness came to know the
9 facts to which a witness has testified. In other words,
10 what was that witness' opportunity and ability to perceive
11 the existence of those facts to which that witness has
12 testified by having previously used his or her senses, and
13 then what is that witness' ability to be able to come into
14 court and to accurately recollect to you as to what that
15 witness has previously perceived?

16 You may also consider any bias or prejudice or
17 interest that a witness might have in the case. In other
18 words, do you find some reason that a particular witness
19 would come into court and would testify one way or another
20 to help or to hurt one side or the other?

21 You may consider any interest that a witness might
22 have in the outcome of the case if you determine that a
23 witness does have such an interest and you find that that
24 interest would bear upon that particular witness'
25 credibility.

1 You may also consider whether or not the testimony of
2 a witness is strengthened, or is it weakened by other
3 testimony or other evidence received during the trial of
4 the case?

5 So you as the finders of the fact and you as the
6 judges of the credibility of each witness that has
7 testified are permitted to believe as much or as little of
8 what a witness has testified to as you deem is appropriate.
9 And therefore you may believe everything that a witness
10 testified to. You may choose to believe none of it. You
11 may believe one portion of a witness' testimony and reject
12 some other portion of that same witness' testimony.

13 In a given case you could believe one witness as
14 opposed to several, or several as opposed to one. But
15 whatever your good judgment and common sense tells you is
16 the most believable and credible testimony is the testimony
17 you should accept. And you should reject any testimony or
18 other evidence that you find not to be credible and
19 believable.

20 Again, your sole objective is to simply reach the
21 truth in the matter. And by doing that you will fulfilled
22 your obligations as jurors.

23 Now, while there are various forms of evidence such as
24 testimony, photographs, videos, documents, charts and other
25 types of physical exhibits, there are really only two types

1 of evidence. But either or both of those types of evidence
2 may be used to prove any fact in issue. But the two types
3 of evidence are direct evidence and circumstantial
4 evidence.

5 Now, direct evidence is the testimony of a person who
6 testifies from actual knowledge of the fact. It is
7 testimony by a person who has perceived the existence of
8 some fact by means of his or her senses. And then they
9 come into court and they testify as to what they have
10 previously seen or heard, or felt for that matter.

11 Circumstantial evidence, on the other hand, is the
12 proof of some other fact or set of facts which taken either
13 singly or collectively may prove the existence of a fact in
14 question as a necessary consequence, that is through an
15 inference.

16 An inference is simply a deduction of fact that may
17 logically and reasonably be drawn from the proof of some
18 other fact or set of facts. It is a fact which is not
19 proven by the direct testimony of a witness based upon
20 personal perception. But it is a conclusion which might
21 reasonably be drawn from the proof of other facts.

22 In other words, you may infer that a particular event
23 occurred or that a particular fact exists based upon the
24 proof of sufficient factual circumstances which would
25 reasonably warrant your arriving at such a conclusion.

1 The law however makes absolutely no distinction
2 between the weight or value to be given to either direct
3 evidence or circumstantial evidence, nor is a greater
4 degree of certainty required of circumstantial evidence as
5 opposed to direct evidence.

6 Whatever the type of evidence used to prove a fact in
7 issue, you should consider all of the evidence presented
8 during the trial of the case. And after carefully
9 considering all of that evidence and weighing it in your
10 minds if you are not convinced of the guilt of the
11 defendant beyond a reasonable doubt, then you must resolve
12 that doubt in his favor and return a verdict of not guilty.

13 Now, as you know, the defendant is charged with the
14 crime of armed robbery. And armed robbery is a statutory
15 offense. It is set forth in the Code of Laws, the Code of
16 Laws being these number of blue volumes you'll see.

17 Every year the legislature meets in Columbia. They're
18 meeting right now. They pass various statutes, laws, rules
19 and regulations that govern our conduct in a lot of ways.

20 Some of those statutes are criminal statutes. In
21 other words, the legislature passes a statute that
22 prohibits citizens engaging in particular types of conduct.
23 And where a person is found to have engaged in that conduct
24 which is prohibited by that statute, then it subjects that
25 person to some form of punishment or penalty.

1 Please keep in mind however that the jury is never to
2 be concerned with punishment or penalty. The sole
3 obligation and function of a jury is to determine whether
4 or not a person's guilt has been proven beyond a reasonable
5 doubt. And you are to make that determination without
6 consideration being given to any consequence of your
7 decision.

8 But in this case the statute that the state claims the
9 defendant has violated is set forth in Section 16-11-330 of
10 the Code of Laws. And that refers to the criminal offense
11 known as armed robbery.

12 The offense of armed robbery necessarily includes the
13 lesser offense of robbery, and it also includes the offense
14 of larceny. So I'm going to first define for you the term
15 larceny, then robbery and then the offense of armed
16 robbery.

17 Larceny is commonly referred to and known as stealing.
18 Larceny is defined in the law as the taking, the stealing
19 and the carrying away of the personal property of another
20 with the intention of stealing it and converting that
21 property to the taker's own use.

22 Robbery is commonly referred to as a larceny by force.
23 Robbery is defined in the law as the taking, the stealing,
24 the carrying away of personal property of another having
25 any value whatsoever from the person or from the presence

1 of any person without his or her consent and with an intent
2 to steal by using force or violence or the threat of using
3 force or violence to accomplish the theft.

4 A thing is deemed to be in the presence of a person
5 with respect to the crime of robbery when it is so within
6 his or her reach, inspection, observation or control that
7 he or she could if not overcome by violence or the threat
8 of the use of violence or prevented by fear, could have
9 retained possession of the property.

10 Forcing a person to surrender property out of fear
11 from intimidation through the use of force or violence or
12 through the threat of the use of force or violence with an
13 intent to steal the property is a robbery under the law.
14 And, as I've stated, Section 16-11-330 refers to the crime
15 of armed robbery.

16 That statute provides that a person who commits the
17 crime of robbery while armed with a pistol, dirk, slingshot
18 metal knuckles or razor or other deadly weapon is guilty of
19 the crime of armed robbery.

20 Now, ladies and gentlemen, I further instruct you and
21 I emphasize to you that the fact that a defendant does not
22 testify during the trial of a criminal case is not a
23 consideration that you may take into account in any fashion
24 whatsoever during your deliberations or in your
25 determination as to whether or not his guilt has been

1 proven beyond a reasonable doubt.

2 As I have stated, the burden is never upon a defendant
3 to prove that he is not guilty or to prove that he is
4 innocent because in some cases that might not be possible.

5 The burden is always upon the state because they bring
6 the charge against another to establish that person's guilt
7 beyond a reasonable doubt. And therefore you are not to
8 draw any inference or reach any conclusion from the fact
9 that a defendant does not testify during the trial of a
10 case, nor may that fact be considered by you in any fashion
11 whatsoever, nor may that fact even be discussed while you
12 are engaged in your deliberations in this case.

13 Now, Madam Forelady, I am not in any way concerned
14 with what you and your fellow jurors' verdict is, but you
15 are instructed that the verdict must be unanimous. All 12
16 must be in agreement.

17 And so when the jury has reached a unanimous decision,
18 Madam Forelady, I'll ask that you indicate that unanimous
19 decision on the back of the indictment in the lower
20 left-hand corner.

21 You'll see the word verdict. And beneath that word
22 you'll also see some lines. And on those lines is a date
23 stamp. That date stamp shouldn't be there. It's
24 interfering with you being able to sign your name at the
25 end of the verdict. So don't pay any attention to it.

1 Hopefully in the future they'll move it to the other side
2 of the indictment. But, nevertheless, beneath that word
3 verdict just ignore the stamp and write in the verdict,
4 whatever that verdict is.

5 In this case you have two choices. They are guilty or
6 not guilty. So whatever that decision is, it must be
7 unanimous. Indicate it in the space provided and sign your
8 name as the foreperson and also place today's date.

9 Now, during your deliberations -- I don't know if we
10 have any smokers on the jury. If you do want to smoke, you
11 are permitted to do so. But you can't smoke in the jury
12 room. You have to go outside for that purpose.

13 So if anybody wants to smoke you'll have to let the
14 bailiff know. He'll take you outside to accomplish that
15 purpose. But you are instructed that the deliberations
16 must stop. And they may only resume when all 12 jurors are
17 present. So if any juror is absent for an authorized
18 purpose, stop the deliberations. Only resume them once all
19 12 jurors are present so that all may participate.

20 If during the course of your deliberations you have a
21 question about the facts or the evidence, I am not
22 permitted to answer any questions that relate to questions
23 of fact.

24 And if you are -- if you've, by chance, wonder if
25 there's some other piece of evidence that you could have,

1 you can't have any additional evidence now that you're
2 going to begin deliberations. So even if something else
3 existed, you couldn't have it, because the evidence has
4 been closed and you're now going back to begin
5 deliberations.

6 If however you have a question about testimony and you
7 think that question can be answered by having testimony
8 replayed, we can bring you back into the courtroom to have
9 a witness' testimony replayed in whole or in part. But we
10 don't have transcripts of the witnesses' testimony. But we
11 can bring you back to have that testimony replayed.

12 If at any time you have a question about the law that
13 is applicable, I can always respond to those questions. So
14 if you need any additional explanation or a clarification
15 of the law that you are to apply, if you let me know of
16 that fact I can always respond to those questions and
17 provide you with an additional explanation or a
18 clarification of what's already been provided.

19 And so far as lunch is concerned, it's not quite noon.
20 But as you go back to begin your deliberations if you get
21 to a point in your deliberations where you want to stop and
22 have lunch, if you'll let the bailiff know, he'll let me
23 know. And we'll make arrangements to stop the
24 deliberations and perhaps have you excused for lunch. And
25 then you can come back and continue to deliberate after

1 your lunch.

2 So I'll leave that up to you. As you go back to
3 deliberate, you'll deliberate as long as you determine it's
4 appropriate. If you reach a verdict, you let us know of
5 that fact. If you have not reached a verdict but you want
6 to have lunch, let us know of that fact and we'll perhaps
7 excuse you so that you can go to lunch.

8 I think that covers everything. So I'll ask the 12
9 primary jurors with the exception of Ms. Nunnery, I'll ask
10 the original 12 to please go with the bailiff to the jury
11 room.

12 But do not begin your deliberations until I send you
13 word to do so. I've got some matters I'll need to address
14 with the lawyers. If I don't need to bring you back for
15 any reason, I'll send word by the bailiff that you can
16 begin deliberations. And in that event he'll bring all of
17 the exhibits to the jury room.

18 And to you, Madam Forelady, he'll also bring the
19 verdict form.

20 As far as the video is concerned, if we have something
21 that -- if you want so see it again, if we have something
22 we can send back, then we'll send it back with the D. V. D.
23 so you can watch it if you need to. And if we don't have
24 something to play it on the jury room, if you need to see
25 the video again, we'll have to bring you back into the

1 courtroom to view it.

2 You can look at it as many times as you want to. So
3 don't be shy about that. But I just don't know that we can
4 arrange to have a machine sent to the jury room itself.
5 But I'll make that determination. If we can, we'll send it
6 back. If he can't, then you'll have to let us know if you
7 want to view the D. V. D. again.

8 Okay. All right. With the exception of Mr. Nunnery,
9 if the 12 jurors will go back, but await my instruction as
10 to when to begin deliberations.

11 (Whereupon, the jury retired to deliberate at
12 11:50 a.m.)

13 (Whereupon, the alternate juror was excused.)

14 THE COURT: Are there any exceptions taken to the
15 instruction or requests for additions to the instruction by
16 the state?

17 MR. BARNETTE: None from the state, Your Honor.

18 THE COURT: By the defendant?

19 MR. RAY: No, sir, Your Honor.

20 THE COURT: Let me ask y'all to please verify the
21 exhibits before they go back.

22 (Pause.)

23 THE COURT: All right. Are all the exhibits accounted
24 for?

25 MR. BARNETTE: Yes, sir.

1 MR. RAY: Yes, sir.

2 THE COURT: Okay. Send them back and ask the jury to
3 begin deliberations and notify us when they have concluded.

4 We will be at ease while the jury is deliberating.

5 (Whereupon, a recess was taken.)

6 THE COURT: All right. Bring the jury in, please.

7 (Whereupon, the jury returned to the courtroom at
8 12:14 p.m.)

9 THE COURT: Ladies and gentlemen, I understand you
10 want to look at the video again. I'm sorry I don't have
11 something I can send back to the jury room to allow you to
12 view it back there. I just don't have it. Hopefully, one
13 day we'll get it, but we don't have it right now.

14 Nevertheless, we're going play it for you. And if you
15 want to look at it more than once, you can look at it as
16 many times you want to. You just tell us you want to see
17 it again.

18 But I am going to ask that you not discuss anything
19 while you're in here, see, because you're outside the jury
20 room. So don't talk about it. But anybody that needs to
21 see it more than once, you let us know. We'll replay it
22 for you.

23 (Whereupon, the tape was played for the jury.)

24 THE COURT: Do you want to see again?

25 UNIDENTIFIED JUROR: I have one question. Is there

1 any way you can freeze it at a certain point, slow it down
2 and just freeze it?

3 THE COURT: All right. The lawyers can do that. And
4 you tell us when you want to stop it.

5 MR. BARNETTE: I can't do that, Judge. I can freeze
6 it and then they can watch it at that point.

7 THE COURT: Oh.

8 MR. BARNETTE: Thank you.

9 THE COURT: Okay.

10 UNIDENTIFIED JUROR: Right, right there. I think it
11 just like, like, stepping one time, step so as far as his
12 arm come down.

13 MR. BARNETTE: Okay.

14 (Whereupon, the tape was played for the jury.)

15 MR. BARNETTE: Do you want me to back it up?

16 UNIDENTIFIED JUROR: It is hard to catch, right? Keep
17 moving.

18 THE COURT: I tell you something else y'all can do if
19 you want to. If you want to come out of the jury box and
20 stand right out here in front, I mean, you can't block the
21 projector. But if you think you can see better by coming
22 out here in front of the screen, you're welcome to do that.

23 UNIDENTIFIED JUROR: Can you freeze it when he is at
24 the counter facing the lady at the counter?

25 THE COURT: All right. We'll see.

1 (Whereupon, the tape was played for the jury.)
2 UNIDENTIFIED JUROR: Request you enlarge that.
3 (Whereupon, the tape was played for the jury.)
4 MR. BARNETTE: Do you want me to play it again?
5 THE COURT: Do you want to see it again? Okay.
6 Replay it.
7 THE FOREMAN: Could you stop it as he is coming in the
8 door?
9 MR. BARNETTE: I can try.
10 UNIDENTIFIED JUROR: I can if you might the two
11 double -- it might slow -- do it.
12 UNIDENTIFIED JUROR: The other.
13 MR. BARNETTE: Would you like to see it again?
14 UNIDENTIFIED JUROR: One more time.
15 MR. BARNETTE: Okay. Tell me when anybody wants to
16 stop it and I will try.
17 (Whereupon, the tape was played for the jury.)
18 UNIDENTIFIED JUROR: Stop.
19 MR. BARNETTE: Do you want me to keep going, sir?
20 UNIDENTIFIED JUROR: Just keep going.
21 MR. BARNETTE: I didn't know if you wanted me to stop
22 it again.
23 THE COURT: All right. Any more? Okay. Please
24 retire to your jury room but continue with your
25 deliberations.

1 (Whereupon, the jury retired to deliberate at
2 12:23 p.m.)

3 THE BAILIFF: Do I need to take that video, C. D.,
4 back?

5 THE COURT: No. They can't use it. We are going to
6 leave it in case they want to see it again.

7 (Whereupon, a recess was taken.)

8 THE COURT: All right. I understand the jury has
9 reached a verdict. Are we ready to receive it?

10 MR. BARNETTE: The state is ready, Your Honor.

11 MR. RAY: Yes, sir, Your Honor.

12 THE COURT: All right. Bring them in, please.

13 (Whereupon, the jury returned to the courtroom at
14 12:32 p.m.)

15 THE COURT: Madam forelady, have you and your fellow
16 jurors reached a unanimous decision?

17 THE FOREMAN: Yes, Your Honor, we have.

18 THE COURT: And have you indicated that decision on
19 the back of the indictment as requested?

20 THE FOREMAN: Yes, sir.

21 THE COURT: Did you sign your name as the foreperson?

22 THE FOREMAN: Yes, sir.

23 THE COURT: If you will, please hand that up by way of
24 the bailiff.

25 You may publish the verdict.

1 THE CLERK: State of South Carolina, County of
2 Spartanburg, State vs. Johnny Ray Wilkins, Indictment No.
3 2008-GS-42-1183, we, the jury, find the defendant guilty.
4 Signed today's date. Foreperson, Donna Ivey.

5 Ladies and gentlemen, if this is your verdict and
6 still your verdict, please raise your right hand.

7 (Whereupon, all responded in the affirmative.)

8 THE CLERK: So say you all.

9 THE COURT: Does the defendant wish to have the jury
10 polled?

11 MR. RAY: Yes, Your Honor.

12 THE COURT: All right. Poll the jury, please, ma'am.

13 THE CLERK: When I call your name, I will pose to you
14 a question. That question is is this your verdict and
15 still your verdict. Please answer yes or no.

16 Lemont Gaff.

17 THE JUROR: Yes.

18 THE CLERK: Keith McCollum.

19 THE JUROR: Yes.

20 THE CLERK: Martha Soto.

21 THE JUROR: Yes.

22 THE CLERK: Junior Spivey.

23 THE JUROR: Yes.

24 THE CLERK: Donna Ivey.

25 THE JUROR: Yes.

1 THE CLERK: Jonathan Atkins.
2 THE JUROR: Yes.
3 THE CLERK: Sharon Burnett.
4 THE JUROR: Yes.
5 THE CLERK: Christopher Williams.
6 THE JUROR: Yes.
7 THE CLERK: Brian Dully.
8 THE JUROR: Yes.
9 THE CLERK: Kayla Young.
10 THE JUROR: Yes.
11 THE CLERK: Terry Millwood.
12 THE JUROR: Yes.
13 THE COURT: And Ricky Littlejohn.
14 THE JUROR: Yes.
15 THE CLERK: The jury has been polled.
16 THE COURT: All right. Any other matters to address
17 with the jury present?
18 MR. BARNETTE: None from the state, Your Honor.
19 MR. RAY: None from the defense, Your Honor.
20 (Whereupon, the trial jury was excused.)
21 THE COURT: All right. Let the record reflect at the
22 conclusion of all of the evidence the defense made a
23 motion, and I noted the motion for the record.
24 Mr. Ray, do you want to state that motion now?
25 MR. RAY: Yes, sir, Your Honor. That was renewing a

1 motion for a directed verdict.

2 THE COURT: All right. And that motion was denied
3 based on the same grounds as previously noted.

4 Any other matters we need to address prior to
5 imposition of sentence?

6 MR. RAY: Just the defense would move for a new trial
7 based on the denial of the previous motions and lack of
8 evidence to support the jury's finding.

9 THE COURT: All right. That motion is denied.

10 MR. BARNETTE: I do have the sentencing sheets to pass
11 to Mr. Ray. I do have some indictments I need to mark as
12 court exhibits, Your Honor.

13 THE COURT: Okay.

14 (Affidavits of service and notice marked Court's
15 Exhibit No. 1; copy of Indictment 97-GS-11-367 marked
16 Court's Exhibit Nos. 2; copy of Indictment 97-GS-11-366
17 marked Court's Exhibit No. 3.)

18 THE COURT: All right. Bring the defendant around.

19 All right. Anything further on behalf of the state?

20 MR. BARNETTE: Yes, sir, just for the record. Court's
21 Exhibit 1, Your Honor, is two affidavits that was done by
22 Investigator Rick Gregory. He served the defendant
23 personally and served Mr. Tim Ray, his attorney, personally
24 of the life notice on page three of that.

25 We included that life notice, his rap sheet which

1 contains two prior convictions, two most serious prior
2 convictions, one for ABWIK and one for armed robbery. He
3 received 12 years apiece.

4 Court's Exhibit 2, Your Honor, is a copy, certified
5 copy, of the indictment from Cherokee County where he was
6 sentenced to ABWIK, I believe by Your Honor over in
7 Cherokee County and received a 12-year sentence.

8 Then Court's Exhibit 3, Your Honor, is a certified
9 indictment for armed robbery where he received the same
10 conviction, I believe, at the same time from Your Honor.
11 And we would like to put those part of the record, Your
12 Honor.

13 And based off that, Your Honor, and based off the
14 notice, he is a life-without-parole sentence in this case.

15 THE COURT: All right. This Courts Exhibit No. 1, the
16 first affidavit, is not sworn to. Is it supposed to be?

17 MR. BARNETTE: Yes, sir. And I have him here too if
18 you'd like to hear from him also on the record.

19 THE COURT: Okay. I guess we'll have to.

20 MR. BARNETTE: Or can I have one of the notaries
21 notarize it?

22 THE COURT: That will be fine.

23 MR. BARNETTE: May I approach the bench again?

24 THE COURT: Yes.

25 MR. BARNETTE: May I ask Mr. Gregory on the record

1 just to cover that, Your Honor, just to make sure there's
2 no question about it?

3 THE COURT: Okay.

4 MR. BARNETTE: Investigator Gregory, did you serve
5 personally on the defendant on February the 25th of 2009?

6 INVESTIGATOR GREGORY: Yes, sir, I did.

7 MR. BARNETTE: Did you also serve his attorney,
8 Mr. Tim Ray, on February the 25th of 2009?

9 INVESTIGATOR GREGORY: Yes, sir.

10 THE COURT: All right. I have before me three
11 exhibits.

12 Court's Exhibit No. 1 contains two affidavits of
13 service by Richard Gregory of the 7th Judicial Circuit
14 Solicitor's Office indicating that notice of a life
15 sentence was served upon Mr. Ray, the defendant's counsel,
16 on the 25th day of February of 2009, and further that a
17 notice of a life sentence was served upon the defendant
18 personally also on the same date.

19 I also have Exhibits 2 indicating that the defendant
20 was convicted by a plea or trial for the offense of assault
21 and battery with intent to kill, which is classified as a
22 most serious offense under the law.

23 And also Exhibit No. 3, an indictment for armed
24 robbery, wherein the defendant was convicted or pled guilty
25 to armed robbery, that also being a most serious offense

1 under the law.

2 Mr. Ray, do you or your client take exception to any
3 of those exhibits?

4 MR. RAY: No, sir, Your Honor.

5 THE COURT: All right. Anything else the state needs
6 to add?

7 MR. BARNETTE: No, sir.

8 THE COURT: Anything from you, Mr. Ray?

9 MR. RAY: No, sir, Your Honor.

10 THE COURT: What about Mr. Wilkins? Is there anything
11 you'd like to tell me before I impose a sentence,
12 Mr. Wilkins?

13 THE DEFENDANT: I didn't do it.

14 THE COURT: All right. On Indictment 2008-1183, an
15 indictment for armed robbery, wherein the defendant has
16 been found guilty by a jury of that offense, that offense
17 being classified as most serious offense under the law, and
18 the defendant having at least one prior conviction for a
19 most serious offense, the Sentence of the Court is you,
20 Johnny Ray Wilkins, be confined to the South Carolina
21 Department of Corrections for the period of your natural
22 life pursuant to Section 17-25-45.

23 Now, Mr. Wilkins, you have a right to appeal the
24 verdict of the jury and the Sentence of the Court. You
25 must file any notice of your intention to appeal those

1 decisions within ten days of today's date. Okay.

2 END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 9th and 10th days of March 2009.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 9, 2009



Linda D. Moffitt
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURGJohnny Roy Wilkins

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2013-CP-42-21657

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LIEBEN
2. Name and location of Court which imposed sentence General Session
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-ES-42-1183
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) LWOP 17-25-45
 - (b) _____

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CLERK OF COURT
SPARTANBURG COUNTY
JUN 13 AM 11:52
JULIE BLASLEY

- (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. SC Court Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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SPARTANBURG COUNTY
2013 JUN 13 AM 11:52
M. HOPE CLAWLEY

STRICKLAND 12710
(US V. CROW)

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) CONSPIRACY TO VIOLATE CIVIL RIGHTS
- (c) VIOLATION OF DUE PROCESS & EQUAL PROTECTION

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

- (a) WILL BE AMENDED BY PCN COUNSEL
- (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 YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

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

(a) the specific nature thereof:

- i. PCN ON THIS CONVICTION BUT
- ii. FILED IN WRONG COUNTY SEE 012-CR-17
- iii. 04 53 ATTACHED HERE TO AS EXHIBIT
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. CHEROKEE CO. BY MISTAKE, SHOULD
- ii. HAVE BEEN FILED SPARTANBURG.
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. PENDING
- ii. _____
- iii. _____

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CLERK OF COURT
SPARTANBURG, SOUTH CAROLINA
2013 JUN 13 AM 11:52
H. J. C. BLANCHARD

- iv. _____
- (d) the date of each such disposition:
- i. Pending
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. Pending
- 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?

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

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

- (b) the proceedings in which each ground was raised:

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

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

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CLERK OF COURT
SPARTANBURG COUNTY
2013 JUN 13 AM 11:52
M. J. E. CLARKLEY

- (a) your arraignment and plea? Tim Ray Esq
- (b) your trial, if any? Tim Ray Esq
- (c) your sentencing? Tim Ray Esq
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Kathy Hudkins (Esq)
- (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. Tim Ray
- ii. _____
- iii. _____

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

- i. TRIAL
- ii. APPEAL
- iii. _____

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

NEW TRIAL

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

(Circled X)

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CLERK OF COURT
SPARTANBURG COUNTY
2013 JUN 13 AM 11:52
M. HORE BLANKNEY

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James Ray Underwood

SWORN to and subscribed before me this 7th
day of JUNE, 2____.

Shirley A. Jones (L.S.)
Notary Public

My Commission Expires: AUG 14, 2018

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 JUN 13 AM 11:52
M. HORT BLANCHLEY

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

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, 2_____.

Notary Public

My Commission Expires: _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 JUN 13 AM 11:52
M. holt BLANCHLEY

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Full name and prison number (if any) of Applicant.

Johnny Ray Wilkins 244320
v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2013-CP-42- 2847

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention lieber Correctional Inst.
2. Name and location of Court which imposed sentence spartanburg SC
3. Name(s) of co-defendant(s) (if any) Robert M. Benson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 97-GS-367
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) march 9, 2009
 - (b) life

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____ Court of Appeal

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____ dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. _____ October 1, 2011

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____ unpublished opinion no, 2011-up482
Submitted October 1, 2011 filed October 28, 2011

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____ I did Appeal

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

M. HOPE BLACKLEY

2013 JUL -3 AM 9:28

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CLERK OF COURT

- (a) _____ Ineffective Assistance of Counsel
 (b) _____ violation of due process of law Equal
 (c) _____ protection return
11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) _____ fell to call witnesses
 (b) _____ Identification
 (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes
 (b) any petition in State or Federal Courts for habeas corpus or post-conviction 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. _____ Court of Appeals SC
 ii. _____ 1015 Sumter Street Box 1629 Columbia 29211
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____ South Carolina Commission on Indigent Defense
 ii. _____ Appellate Division
 iii. _____ Post Office Box 11589
 iv. _____ Columbia SC, 29211, 1589
- (c) the disposition thereof:
- i. _____ Dismissed
 ii. _____
 iii. _____

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 SPARTANBURG COUNTY
 2013 JUL -3 AM 9:28
 M. HOPE BLACKLEY

iv. _____

(d) the date of each such disposition:

i. _____ dismissed

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. no

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. no

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) _____ Petitioner is raising ground now because they
 (b) _____ could not have been presented on direct appeal
 (c) _____

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

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 SPARTANBURG COUNTY
 2013 JUL -3 AM 9:28
 M. HOPE BLACKBERRY

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Timothy M. Ray Attorney at Law 184 North Laurel
- ii. Morgan Ave.
- iii. Kathrine H. Hudgins, Division of Appellate Justice
- (b) the proceedings at which each such attorney represented you:
- i. Timothy M. Ray, at Trial.
- ii. Kathrine H. Hudgins, Court of Appeals
- iii.
19. State clearly the relief you seek in filing this application:
- vacate
20. Are you now under sentence from any other court that you have not challenged?
- no

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 JUN -3 AM 9:28
M. HOBBS BLACKLEY

STATE OF SOUTH CAROLINA)

County of Spartanburg SC)

VERIFICATION

I, _____, being duly sworn, upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Johnny Ray Wilkins

SWORN to and subscribed before me this 24th
day of June, 2013.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 JUL -3 AM 9:20
MSHOPE BLACKLEY

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

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Johnny Ray Wilkins
Applicant

SWORN or affirmed to and subscribed before me this
24th day of June, 2013.

Ludrean Bryant
Notary Public

My Commission Expires: May 26, 2020

FILED
 CLERK OF COURT
 STANTON COUNTY
 2013 JUL -3 AM 9:20
 MS HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Johnny Ray Wilkins, #244320	)	2013-CP-42-2657
	)	2013-CP-42-2847
	)	
Applicant,	)	
	)	ORDER OF MERGER
vs.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Applicant in the above-captioned matters has filed two applications for post-conviction relief; the first of those was filed June 13, 2013 (2013-CP-42-2657), and the second was filed July 3, 2013 (2013-GS-42-2847). Since an applicant is not generally allowed to have two post-conviction relief proceedings in regard to the same conviction (See Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); S.C. Code Ann. § 17-27-90), this Court hereby orders that the two proceedings be merged. The application for post-conviction relief filed July 3, 2013 (2013-GS-42-2847) will be considered an amendment to the initial application for post-conviction relief filed June 13, 2013 (2013-CP-42-2657).

The Clerk of Court is therefore ordered to merge the two cases, with docket number 2013-CP-42-2657 being the surviving case. Hereafter, the word "Application" will refer to docket number 2013-CP-42-2657; the word "Amendment" will refer to docket number 2013-CP-42-2847, which will be considered as an amendment to the application for post-conviction relief.

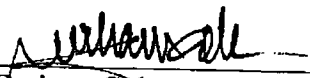
IT IS THEREFORE ORDERED that the Spartanburg County Clerk of Court merge docket number 2013-CP-42-2847 into docket number 2013-CP-42-2657, with file 2013-CP-42-2847

CLERK OF COURT
SPARTANBURG COUNTY
2014 MAR 24 AM 9:17
HOPE BLACKLEY

2657 being the surviving file and all future pleadings bearing docket number 2013-CP-42-2657.

Docket number 2013-CP-42-2847 will be dismissed upon the merger.

AND IT IS SO ORDERED this 31 day of March, 2014.



J. Derham Cole
Chief Judge for Administrative Purposes
Seventh Judicial Circuit

_____, South Carolina.

CLERK OF COURT
SPARTANBURG, S.C.
2014 MAR 24 AM 9
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2013-CP-42-2647
Johnny Ray Wilkins, #244320,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed June 13, 2013, and amendment filed July 3, 2013¹, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the February 2008 term of the Spartanburg County Grand Jury for charges of armed robbery (2008-GS-42-1183). The Applicant was represented by Timothy M. Ray, Esquire. On March 10, 2009, the Applicant proceeded to trial and was found guilty by a jury. The Honorable J. Derham Cole sentenced Applicant to confinement for life.

A timely notice of appeal and Anders brief were filed on Applicant's behalf. The South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Wilkins, Op. No. 2011-UP-482 (filed October 28, 2011). The Remittitur was returned November 15, 2011.

¹ Respondent notes that the Applicant filed an application for post-conviction relief on June 27, 2012, but filed the application in the wrong county and listed only his 1997 Cherokee County charges. This application was dismissed on August 20, 2013. Respondent is requesting an evidentiary hearing solely on the 2009 conviction instead of moving to dismiss as barred by the statute of limitations.

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

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - b. Counsel failed to call witnesses,
2. Violation of due process and equal protection, in that;
 - a. "Identification."

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

As to any claims relating to the Applicant's 1997 Cherokee County convictions, the Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq.

S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The

Applicant was convicted of the offense(s) he appears to challenge from Cherokee County in this Application on September 4, 1997. The Applicant was therefore required to file his application before September 4, 1998. This Application was filed on June 13, 2013, which was well after the expiration of the statutory filing period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on allegations against his 2009 conviction from Spartanburg County.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 1549
Columbia, SC 29211
Telephone: (803) 734-3737

March 28, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2013-CP-42-2647
	)	
JOHNNY RAY WILKINS, #244320	)	
	)	
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:

Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
235 East Main Street, Suite 115
Post Office Box 1015
Rock Hill, South Carolina 29730

DATED this 28th day of March, 2014.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY
3

4 JOHNNY RAY WILKINS,)
5 APPLICANT,)
6 VS.)
7 STATE OF SOUTH CAROLINA,)
8 DEFENDANT.)

TRANSCRIPT
OF
RECORD
2011-CP-42-3059

9
10 March 25th, 2015
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge.

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

16 LEAH B. MOODY
17 ESQ.
18 Attorney for the Applicant

19 SUZANNE H. WHITE
20 ASSISTANT ATTORNEY GENERAL
21 Attorney for the Defendant

22 PAMELA E. GREEN
23 Circuit Court Reporter
24 Seventh Judicial Circuit
25

1	<u>I N D E X O F W I T N E S S E S</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
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4	JOHNNY WILKINS	
5	Direct examination by Ms. Moody	4
6	Cross-examination by Ms. White	13
7	TIMOTHY RAY	
8	Direct examination by Ms. White	17
9	Cross-examination by Ms. Moody	21
10		
11	Certificate	30

12

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P R O C E E D I N G S

THE COURT: All right. This one is?

MS. WHITE: Mr. Johnny Ray Wilkins, Your Honor.

THE COURT: Wilkins. Just one second.

(Pause.)

THE COURT: All right. We're on the record in the case of Johnny Ray Wilkins versus The State of South Carolina.

I'll hear from the State concerning the status of the case.

MS. WHITE: Thank you, Your Honor.

It's Case Number 2013-CP-42-2647. Application was filed. He's represented today by Ms. Leah Moody.

Mr. Wilkins was indicted, February 2008, on charges of armed robbery. I believe it was an initial eight charges, but he proceeded to trial on one charge at which time he was represented by Mr. Timothy Ray. March 10th, 2009, he was found guilty and was sentenced to life without parole based on prior notice by the State. An Anders brief was filed on his behalf, and the application, excuse me, the convictions were affirmed.

He's filed an application alleging ineffective assistance of counsel in that counsel failed to call witnesses, and then he also said a violation of his due process and equal protection rights, and then quoted the

150 Johnny Wilkins - Direct examination
by Ms. Moody

1 word identification. So I assume that's an attack on the
2 identification, and I will turn it over to Ms. Moody at this
3 time.

4 THE COURT: Ms. Moody.

5 MS. MOODY: Thank you, Your Honor.

6 May it, may it please the Court?

7 THE COURT: Yes, ma'am.

8 MS. MOODY: At this time I'd like to call Johnny
9 Wilkins to the stand.

10 THE COURT: All right. Come forward, Mr. Wilkins.

11 Mr. Wilkins, if you'll come over here to my left. And,
12 when you get there, place your left-hand on the Bible. To
13 the best of your ability, raise your right-hand.

14 JOHNNY WILKINS, being first duly
15 sworn, testified as follows:

16 THE COURT: All right. You may have a seat in the
17 witness stand.

18 (Witness complies.)

19 THE COURT: State your name, sir.

20 THE WITNESS: I'm Johnny Ray Wilkins.

21 THE COURT: Thank you.

22 Ms. Moody, your witness.

23 MS. MOODY: Thank you, Your Honor.

24 THE COURT: Yes, ma'am.

25 DIRECT EXAMINATION

1 BY MS. MOODY:

2 Q Mr. Wilkins, where are you currently incarcerated?

3 A Lieber Correctional Institution.

4 Q Okay. And when did you begin serving a sentence there?

5 A In 2009.

6 Q Okay. And you're serving a sentence on what charges?

7 Convictions I should say.

8 A Oh, armed robbery.

9 Q Okay. And what is your sentence?

10 A Life.

11 Q Okay. And, for that armed robbery, who was your
12 attorney?

13 A Timothy Ray.

14 Q Okay. And was he your only attorney on this case?

15 A Yes, ma'am.

16 Q Okay. And what, if any, contact did you have with
17 Mr. Ray?

18 A Well, about two weeks before I went to Court he came to
19 see me twice.

20 Q Okay. And when he came to see you on those occasions,
21 what, if anything, did you-all discuss?

22 A Witnesses, what my codefendant was, was saying.

23 Q Okay. And when you talked about witnesses, do you
24 recall what you said about witnesses?

25 A I asked him to ask Miranda Allen is one of my

1 witnesses, and she would tell him where I was at at the
2 point of time of the, of the robbery.

3 Q Okay. So that -- you, you indicated to your attorney
4 that you had an alibi?

5 A Yes.

6 Q Okay. And what, if anything, happened with that alibi?

7 A He, he -- evidently he didn't even say nothing to her
8 about it. He didn't try to contact her.

9 Q All right. So did you give him or what, if any,
10 information did you give him to contact her?

11 A I gave him the phone number and the address to talk to
12 her.

13 Q Okay. And was Ms. Miranda -- I'm saying it---

14 A Yeah, Miranda.

15 Q Was she at the trial?

16 A No.

17 Q Okay. So she never testified or talked to anybody
18 about where you were?

19 A No, only thing she told me, after the trial, she said
20 that Mr. Ray asked her, when she brought my clothing to, to
21 trial, he asked her, that morning, about where, where was,
22 where was I at that night, and she said she told him, but he
23 ain't ask her to come and be a witness or nothing.

24 Q Okay. And so, in fact, that's one of your allegations
25 for ineffective assistance of counsel --

1 A Yes, ma'am.

2 Q -- is that your attorney did not call a witness on your
3 behalf?

4 A Yes, ma'am.

5 Q Okay. Were there any other witnesses that you had?

6 A No, ma'am.

7 Q Okay. Now, you have a second allegation. It's the
8 violation of due process and equal protection.

9 A Yes, ma'am.

10 Q And under that you have -- well, not under that. As a
11 sub-issue, you say identification.

12 A Yes, ma'am.

13 Q Okay. Can you explain to the Court what you mean by
14 that?

15 A No one identified me as, as a robber. When they put
16 the lady on the stand, she said she couldn't identify me.
17 They never put in the lineup. They never did none of that,
18 and I was telling him about it, and he was like well, I seen
19 you on the video.

20 Q Okay.

21 A He say it was a video. He say I seen you on it.

22 Q Okay.

23 A I said you never seen me on no video. He suppose to
24 brought the video to the jailhouse to let me see it, but
25 then, when he brought it, he said the video wasn't working

1 in the jailhouse. So a week later, when I come to Court
2 then before my trial, he brought the video and showed it to
3 me, but he showed a portion. I asked him to ask the
4 solicitor and them to get the whole video because the -- my
5 codefendant said that me and him was going in and out the
6 place casing the place.

7 Q All right. Well, let's slow down.

8 So there's video that captures all of the events as far
9 as it relates to this armed robbery?

10 A Yes.

11 Q Okay. And you discussed that video with your attorney,
12 but you didn't get to see it until the day of trial?

13 A Yes.

14 Q Okay. And, to your knowledge, do you know if there was
15 more than what was presented to you on the day of trial?

16 A To my knowledge, I feel like they suppose to had the
17 whole video from that, that whole incident, that whole day
18 from that incident and whoever been coming in out and the
19 store because, if they got that portion of it, it's suppose,
20 it's suppose to be more to it.

21 Q Okay. So the portion that you saw is, you're
22 testifying to the Court, that you were not on that video?

23 A That's right.

24 Q Okay.

25 A Yes, ma'am.

1 Q And so did you have the opportunity to discuss that
2 with your attorney?

3 A Yes, I told him that wasn't me, but he said well, we
4 gonna go on and we gonna, we gonna fight it like this.

5 Q Okay. So like when you say you told him it wasn't you,
6 why did you say it wasn't you?

7 A Because it wasn't me. I know I didn't do it.

8 Q I understand that. What I'm trying to get at is like
9 the identification of an individual on the video?

10 A Oh, yeah.

11 Q Okay. How could you say that it wasn't you from
12 that -- watching that video?

13 What was the difference between you and that person or
14 the individual on the video?

15 A Because the clothing that they had in the evidence, it
16 didn't even match. Didn't match the clothing that they was
17 on the video, and I know I wasn't there. That's most of the
18 time.

19 Q Okay. So this video that you're talking about, this
20 was introduced into evidence at the trial?

21 A Yes.

22 Q Okay. And is that the only portion of identification
23 that you are taking issue with?

24 A Yes.

25 Q Okay. And so, so there's no other identification, as

1 you've testified, from any witness?

2 A Because it wasn't -- the witness -- the witness didn't
3 had -- said that they can't identify me.

4 Q Okay. All right. And then, as it relates to your
5 alibi witness, that person would of been able to say where
6 you were at that time?

7 A Yes.

8 Q Okay. And are those the only issues that you take up
9 with your attorney?

10 A Yes.

11 Q Okay. Now, how do you feel that that prejudiced,
12 prejudiced you, I can't talk today, prejudiced you in terms
13 of this matter?

14 A Because if I'd of got my witness and my witness would
15 of explained to them where I was at, and I wouldn't of
16 got -- I wouldn't of been found guilty and got a life
17 sentence.

18 Q All right. And so did you have an opportunity to
19 discuss this with your attorney at any point in the trial?

20 A No, the only thing he kept telling me in trial is that
21 he got it.

22 Q What you mean?

23 A That's all he kept saying, he got it, cause when I was
24 asking him about certain things that they was showing in
25 Court or they was saying in Court and I was talking to him

1 about it, he kept telling me I got it, I got it, I got it.
2 Just like, like the clothing and stuff like that, I was like
3 no, that, that don't match cause my codefendant saying that
4 me and him had been together all day. We hadn't split up no
5 time. But when I was brought into custody, and what they
6 showed on the video, that the jacket didn't match what was
7 on the video.

8 Q Okay.

9 A The shoe didn't match what was on the video. It was
10 just a pair of camouflaged pants. I asked him to send --
11 asked them to send them to SLED and do the stitching on them
12 to see if that's the same thing, if them the same pants. He
13 wouldn't do it. He said they ain't gonna do it.

14 Q Okay.

15 THE COURT: Do the what on the pants?

16 MS. MOODY: The stitching on the pants.

17 THE COURT: Stitching?

18 MS. MOODY: Yes, the camo -- I guess camouflaged.

19 THE WITNESS: It's got -- all clothes got different
20 stitches. They may look the same, but they got different
21 stitches. Just patterns.

22 Q Oh, you're talking about the pattern of---

23 A Yeah.

24 Q ---of the camouflage?

25 A Yeah. So I was wanting him to send the pants to see if

1 they can match with the, the video.

2 Q The video.

3 Okay.

4 A But he say they won't do it?

5 THE COURT: Oh, I understand what he's saying.

6 Go ahead.

7 MS. MOODY: You do or you don't?

8 THE COURT: I do now.

9 MS. MOODY: Okay.

10 THE COURT: Uh-huh. (Affirmative).

11 Q All right. Is there any other prejudice that you found
12 that you feel that affected you in your case?

13 A I feel like he didn't -- he, he wasn't -- he didn't try
14 to do what he was suppose to do.

15 Q Okay. And what relief are you seeking from the Court
16 here today?

17 A Vacate my sentence.

18 Q Well, you know that he can't just vacate your sentence.

19 A I know it.

20 Q But you want -- are you asking for a new trial?

21 A Yes.

22 Q Okay. And you know that means you start all the way
23 over?

24 A Yes.

25 Q Okay. At the very very beginning?

1 A Yes.

2 Q Okay. Is there anything else?

3 A No, ma'am.

4 Q Okay. Is there anything else you'd like to relay to
5 the Court?

6 A No, ma'am.

7 Q Okay. Thank you. Please answer any questions the
8 State may have for you.

9 THE COURT: Your witness, Ms. White.

10 MS. WHITE: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. WHITE:

13 Q Mr. Wilkins, you did testify that your attorney spoke
14 with Ms. Allen prior to trial.

15 Is that right?

16 A That morning --

17 Q Okay.

18 A -- of the trial.

19 Q And you said that she would of provided an alibi?

20 A Yes.

21 Q Ms. Allen's not here to testify today, is she?

22 A No.

23 Q Okay. In regards to the, excuse me, the
24 identification, you said that your attorney told you that it
25 was clear that it was you on the, on the video?

1 A That's what he told when he came to the county jail.

2 Q Okay. And---

3 A Can---

4 Q When you saw the video, you disagreed with his---

5 A Yes.

6 Q ---understanding of that?

7 Okay. Now, your codefendant testified against you,
8 didn't he?

9 A Yes.

10 Q All right. And did he say that you were the one that
11 had robbed the store?

12 A Yes.

13 Q Okay. And, in addition, they did present some clothes
14 in evidence, did they?

15 A Yes.

16 Q All right. And those are clothes you're referencing as
17 when it comes to camouflaged patterns?

18 A Yes.

19 Q Okay. Were you offered a plea prior to this?

20 A They -- he never said that I -- he never said it.

21 Q Okay. So you were never -- you never discussed this
22 with Mr. Ray the fact that the State maybe would take life
23 without parole off of the table if you pled guilty to the
24 armed robberies?

25 A No, ma'am, he never said nothing about it.

1 Q Okay. All right. Thank you.

2 That's all I have, Your Honor.

3 THE COURT: Redirect.

4 MS. MOODY: No, sir, Your Honor, but I would ask
5 something I -- before I close, and I do want---

6 THE COURT: Do you want to ask any more questions of
7 this witness?

8 MS. MOODY: Oh, no, sir.

9 THE COURT: You may step down. Thank you, Mr. Wilkins.
10 Yes, ma'am.

11 MS. MOODY: May we approach?

12 THE COURT: Certainly.

13 Ms. White.

14 (WHEREUPON, a bench conference was held at this time.)

15 THE COURT: Any other witnesses at this time, Ms.
16 Moody?

17 MS. MOODY: Your Honor, if -- I would ask the Court to
18 leave open the record for Ms. Allen's testimony to be taken
19 till the next term.

20 THE COURT: Any objection to leaving it open for the
21 next term?

22 MS. WHITE: No, Your Honor.

23 THE COURT: All right. We'll leave it open to receive
24 her testimony to the next term of when I'll be handling
25 PCRs.

1 when's that going to be?

2 MS. WHITE: The next term actually that you're
3 handling, Your Honor, I am not aware of that they have got
4 you scheduled in the next -- in the near future.

5 THE COURT: well, I may have to set it for a nonjury
6 term of Court.

7 MS. WHITE: And that's what I was gonna say. I believe
8 the next term is actually in the beginning of June, but
9 that's another judge.

10 THE COURT: All right.

11 MS. WHITE: But if we could set it for another---

12 THE COURT: I'll notify counsel as to when that will
13 be.

14 MS. WHITE: Thank you.

15 MS. MOODY: Thank you, Your Honor.

16 THE COURT: All right.

17 MS. MOODY: At this time, Your Honor, there's no other
18 witnesses.

19 THE COURT: Do you wish to call Mr. Ray at this time or
20 do you want to wait until we do the other witness?

21 MS. WHITE: I'll go ahead and call Mr. Ray, Your
22 Honor---

23 THE COURT: All right.

24 MS. WHITE: ---and then---

25 THE COURT: Come forward, Mr. Ray.

1 THE WITNESS: Yes, sir.

2 TIMOTHY RAY, being first duly
3 sworn, testified as follows:

4 THE COURT: Have a seat. Once seated, state your name.

5 THE WITNESS: Timothy Ray.

6 THE COURT: Thank you.

7 Your witness.

8 MS. WHITE: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MS. WHITE:

11 Q Mr. Ray, do you recall representing Mr. Wilkins?

12 A Yes, ma'am.

13 Q And were you appointed or retained in this case?

14 A I was appointed. Apparently the Public Defender's
15 Office had a conflict and it was Mr. Andy -- Andrew Johnston
16 was appointed. At the time he was -- he had a death penalty
17 case he was dealing with, asked me if I'd be willing to take
18 the appointment, and I did.

19 Q Okay. And in regards to the last question I asked Mr.
20 Wilkins, had he ever been offered a plea on these charges,
21 do you recall any conversations with him about a possible
22 plea?

23 A Yes, ma'am.

24 Q And can you tell us what that was?

25 A We spoke extensively and at times it became heated

1 because they had several armed robbery charges against him,
2 and they had served him notice of a life sentence.
3 Mr. Barnette, the solicitor, was willing to take the life
4 sentence off the table, but it would require him to plead to
5 all the charges that he had pending. And at -- basically,
6 what I was telling him is out of all these different charges
7 you have, the different trials you have, they're probably
8 gonna get you on one of them at least, and because of his
9 prior record, that's all they needed.

10 So we spoke extensively about the fact that I thought
11 he should take their offer and plead to the charges, and,
12 and have a light at the end of the tunnel instead of life
13 without parole.

14 Q And, ultimately, obviously he decided against that?

15 A Yes, ma'am.

16 Q Okay. In regards to Ms. Allen, did you discuss -- talk
17 with her?

18 A Yes, ma'am, I did, and obviously because she was there
19 to bring clothes for trial, I actually spoke to her prior to
20 that point. But in speaking with her, she was not gonna be
21 able to, to be a witness for an alibi defense. If she would
22 of been able to, I'd love to have an alibi defense in my
23 cases, but she was not gonna be able to provide that. So I
24 didn't call her as a witness.

25 Q Okay. And, in fact, her name was mentioned during the

1 trial because the car that was used supposedly had been
2 rented in her name.

3 Is that right?

4 A Yes, ma'am.

5 Q Okay. In regards to the clothing and that
6 identification, do you recall discussions with him or
7 discussions about how that was gonna proceed?

8 A Yes, ma'am, I do. I don't believe they ever recovered
9 the white tennis shoes that were testified to. Actually
10 there were boots that were his that basically, when the --
11 there was one point when the, the police are chasing the
12 vehicle driven by the codefendant of Mr. Wilkins, and they
13 stopped and they both run out of the car.

14 At that point he basically -- my understanding was he
15 ran out of his boots that he had on. So they're actually
16 boots there and not tennis shoes, and I brought that up at
17 trial and in closing.

18 Additionally, the -- there were issues as far as the
19 coat that he was wearing. When you watched the video, the
20 quality of the video was not such that you could see certain
21 details on the coat. Specifically I remember there was a
22 zipper on a sleeve. You couldn't really see that on the
23 video. There was a orange shirt versus testimony, that he
24 was found in, versus testimony that there was a white shirt.

25 But the pants were the biggest issue, and what I

1 believe he was trying to relay in his testimony was I
2 brought up the issue of the pants, and we did not want SLED
3 to look at those. We didn't even want to bring that up
4 because, when you look at those pants, they're woodland
5 camo, and what that is it has these patterns, these, these
6 curved patterns and such of green, black, and tan.

7 And when those pants are -- and I'm no expert on
8 clothing. But when you purchase these types of clothing,
9 they may be all the same brand, all made by the same
10 manufacturer, but when the cloth is sewn together, it's
11 never sewn together in the same place. When you look at the
12 video and the pattern on the pants in the video versus the
13 pattern on the pants that he was found in, they match up.

14 There's, around the knee, there's a particular mark on
15 the pants he was found in. If you look on the video, it's
16 the same mark and kind of, kind of across the board on the
17 pants. That was the case. It was kind of like a
18 fingerprint.

19 Well, my strategy was I didn't want them to even think
20 of using that against him because that was going to identify
21 him. So I didn't bring that up and I didn't send it to be
22 processed or anything because it was just gonna hurt us.

23 Q Okay. And, in fact, you had -- do you recall any
24 conversation with him about, after viewing the video, how
25 you felt that that might harm your defense?

1 A Yes, ma'am.

2 Q Did you feel like it was, I guess, he was identifiable
3 in the video?

4 A I believed so.

5 MS. WHITE: Okay. Your Honor, that's all the questions
6 I have at this time.

7 THE COURT: You may cross-examine.

8 MS. MOODY: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. MOODY:

11 Q Mr. Ray, going back to you -- I didn't hear the name of
12 the pants that you said, the camouflaged pants.

13 A The, the pattern I believe was a woodland
14 camouflaged---

15 Q Woodland?

16 A ---is what they call it.

17 THE COURT: Mr. Ray, that's a type of camouflaged, not
18 a brand name?

19 THE WITNESS: Yes, sir.

20 MS. MOODY: All right.

21 THE COURT: Okay.

22 Q All right. And so you, you testified that, at the
23 knee, on the video, you could see it, the knee?

24 A I was, I was trying to give an example cause I don't
25 remember exactly, but when you look at those pants and you

1 look at the position of the marks on the pants --

2 Q Uh-huh. (Affirmative).

3 A -- you can see that in the video. And when you -- if
4 you were to hold the pants that he was wearing when he was
5 apprehended, if you hold them up and look at the video and
6 look at those pants, the markings seem to be in the same
7 areas on the pants.

8 Q All right. And---

9 A That's, that's -- so I don't remember if it was
10 specifically the knee. It was just an example. If you look
11 at the knee area, you can see this marking and the way the
12 colors come together --

13 Q Okay.

14 A -- as a, as a whole on the pants.

15 Q Now, was it a -- it's a color video or it's a black and
16 white video?

17 A I don't recall if it was color or black and white. I
18 seem to think it was color because I think you could see on
19 the video there was the orange shirt that was worn. So, as
20 best I can recall, it was color, but even, even in a black
21 and white video with that type of camouflaged pants, it's,
22 it's the shape of the patterns and the---

23 Q Okay.

24 A ---dark patterns versus the light pattern. But I
25 believe it was actually a color video.

1 Q Okay. So in terms of -- I think you -- earlier you
2 testified that you spoke with Mr. Wilkins about viewing the
3 video and that you saw him on the video.

4 So the basis of identifying him for you, identifying
5 the person on the video, was based off of what you just
6 testified in the terms of like the shirt, the camouflaged
7 pants?

8 A Right, and we talked about you couldn't see the
9 person's face cause the person on the video was wearing a
10 mask. And so, other than, other than those camouflaged
11 pants, and other than the camouflaged pants, it would be
12 very hard to identify the person on the video, and I don't
13 know that you can identify them just from the pants because
14 someone else could of been wearing the pants. But the fact
15 that he was wearing those pants when he was apprehended was
16 gonna make it much more difficult if the State figured out
17 they could use that against him.

18 Q But you argued in your -- as far as like when you
19 argued to the jury, the case, you did not bring up the
20 pants?

21 A We did not mention the pants.

22 Q Okay. All right. And---

23 A But other, other than the fact that millions of people
24 wear camouflaged pants---

25 Q Right.

1 A ---and that -- and that it's -- if you don't look at
2 the specifics of those pants, and how the, the shapes and
3 colors are arranged, one person -- like I said, tons of
4 people wear camouflaged pant. So it's hard to exactly
5 pinpoint---

6 Q Okay.

7 A ---who it was.

8 Q All right. And that, and that video went into
9 evidence?

10 A It did.

11 Q Okay. And as far as that video is concerned, was that
12 video -- that was the amount of video the State gave you or
13 was there more to that video?

14 A I'm not aware that there was anymore.

15 Q All right.

16 A I don't -- I have to say I don't recall exactly that
17 that was more, but the, the part of the, the actual robbery
18 that took place went into evidence.

19 Q Okay.

20 A I don't, I don't recall seeing anymore.

21 Q Okay. And you, today, you don't have that video in
22 your file?

23 A I don't have it with me. I generally keep the DVDs
24 separate than the closed files cause I just hate the idea of
25 them sliding out of files and getting lost.

1 Q All right. So as to Ms. Allen, I believe you testified
2 here earlier that you talked to her at some point, and
3 that's how you got the clothes, and that you spoke to her on
4 the day of the trial?

5 A I believe I spoke to her about an alibi before the day
6 of trial.

7 Q Okay.

8 A But I, I do recall the fact that I did speak with her
9 about it and she wasn't gonna -- going to be able to help
10 us.

11 Q Okay. And when you say she wasn't gonna be able to
12 help you or us, what do you -- can you tell me specifically
13 why not?

14 A From what I remember, I think she would testify they
15 were together earlier in the day, but not when this robbery
16 actually occurred.

17 Q Okay. So you were breaking it down to the timeframe of
18 when the robbery allegedly occurred?

19 A Right.

20 Q Okay. And obviously you had that information from the
21 incident report and dispatch?

22 A Right.

23 Q Okay. So when she -- she said that she had been with
24 him.

25 Did she ever testify as to any or tell you, not

1 testify, tell you that she was with him at any other point
2 during that day?

3 A I -- from what I recall, we spoke about the fact that
4 they had been together earlier in the day, but what I was
5 specifically interested in was the time that this robbery
6 occurred because that was, that was when I needed his alibi.

7 Q All right. And so as to his codefendant, he testified
8 in the trial.

9 Did you have opportunity or did you get a chance to
10 talk to him and find out what his position was before the
11 trial?

12 A The codefendant?

13 Q Yes.

14 A I read his statement beforehand and had an idea---

15 Q Okay.

16 A ---of what he was gonna say and I knew that he was
17 gonna be testifying against him.

18 Q Okay. And that statement that you read, was it
19 consistent with what he testified to on the day of the
20 trial?

21 A Yes.

22 Q Now, were there any other witnesses that you talked to
23 on behalf of Mr. Wilkins?

24 A He didn't advise me that he had anyone else that would
25 know anything about it.

1 Q Okay. Now, you indicated you wanted him to plead to
2 the charges, and you -- I think you testified, correct me if
3 I'm wrong, you testified that there were other charges that
4 he had, like seven other charges?

5 A Yes.

6 Q Okay. And of those charges, they had somewhat of a
7 case against him or they didn't have a case against him?

8 A Yes, they had somewhat of a case, of a case against
9 him. Some were -- some of them were definitely not very
10 strong other than the fact that this codefendant's gonna
11 come in and testify against him. They picked, I believe,
12 their best one to try or one of their best to, to try. But
13 what I was trying to explain to him was they only needed
14 one.

15 Q So -- okay. So, based on all that, you had an
16 opportunity to look at those cases?

17 were you appointed on all those cases?

18 A Yes.

19 Q Okay. So, at the time that you were appointed, you had
20 all eight cases?

21 A (Witness nods affirmatively.)

22 Q You had all discovery for all eight cases and you were
23 able to compare them?

24 A Yes, ma'am.

25 Q Okay.

1 A And we talked about it quite a bit.

2 Q Okay. And so, as it related to this case, prior to you
3 going to trial, did you advise him about pleading at any
4 point in time then?

5 A Yes, ma'am, all the way up until the week of trial, I
6 remember meeting with him in the old jail where they hold
7 prisoners awaiting trial, meeting down there extensively for
8 a long time talking about that.

9 MS. MOODY: Okay. No further questions, Your Honor,
10 but I would ask that we be allowed to submit that video. I
11 think it's in the State's custody of what was -- well, not
12 in the State's custody. I mean the, the evidence from --
13 that was turned over to the Clerk's Office if it's
14 available?

15 THE COURT: Well, we'll -- as I said, I'm gonna reopen
16 the evidence and I'll allow you to produce that at that
17 time.

18 MS. MOODY: Okay.

19 THE COURT: So if you can't get it by any other means,
20 you could issue a subpoena for it at that time.

21 MS. MOODY: All right. Thank you.

22 THE COURT: I don't think it's in the State's custody.
23 He indicated it's in his files.

24 MS. MOODY: Okay.

25 MS. WHITE: Right.

1 THE COURT: Thank you very much. You may step down.

2 THE WITNESS: Thank you.

3 MS. WHITE: Thank you, Your Honor. The State has no
4 other witnesses.

5 THE COURT: All right. We'll adjourn the case to
6 reconvene at a later date.

7 MS. MOODY: Thank you, Your Honor.

8 THE COURT: Thank you.

9

10

11 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 25th day of March, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 19th, 2016



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Johnny Ray Wilkins, #244320
Applicant,

2013-CP-42-2657

v.

State of South Carolina,
Respondent.

ORDER OF DISMISSAL

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 MAY 18 AM 10:10
M. HOPE BLANCHETT

This matter comes before the Court by way of an application for post-conviction relief filed on June 13, 2013, and amended on July 3, 2013 by Johnny Ray Wilkins (Applicant). Respondent made its Return on or about March 28, 2014. An evidentiary hearing into the matter was convened on March 25, 2015, at the Spartanburg County Courthouse in Spartanburg, South Carolina. Applicant was present and represented by Leah B. Moody, Esquire. Respondent was represented by Suzanne H. White, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's trial counsel Timothy M. Ray, Esquire testified on behalf of the Respondent. No other witnesses testified at the evidentiary hearing, but the record was left open to reconvene for the testimony of a subsequent witness on behalf of the Applicant. Applicant later withdrew his request to call any other witnesses and the record was closed. This Court had before it a copy of the records of the Spartanburg County Clerk of Court regarding Applicant's conviction, 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 the Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

[Handwritten signature]
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PROCEDURAL HISTORY

Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted Applicant at the February 2008 for charges of armed robbery (2008-GS-42-1183). The Applicant was represented by Timothy M. Ray, Esquire.

On March 10, 2009, Applicant was tried before the Honorable J. Derham Cole and a jury. The jury convicted Applicant of armed robbery as indicted. Judge Cole sentenced Applicant to confinement for life.

On behalf of the Applicant, a timely notice of appeal and Anders brief were filed on May 3, 2010 by Katherine H. Hudgins, Esquire. The South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Wilkins, Op. No. 2011-UP-482 (filed October 28, 2011). Remittitur was returned on November 15, 2011.

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CLERK OF COURT
SPARTANBURG COUNTY
2013 MAY 10 AM 10:10
H. DEERHAM COLE

FACTUAL HISTORY

The charge against Applicant resulted from an incident taking place on the evening of January 13, 2008 in Mayo, South Carolina. (Tr. p. 33, lines 3-5). Applicant entered a Lil' Cricket convenience store wearing a mask and camouflaged pants, while his co-defendant Mr. Robert Benson waited outside in a parked vehicle. (Tr. p. 33, lines 6-12). Armed with a gun, Applicant robs the convenience store and leaves the scene with Mr. Benson. (Tr. p. 33, lines 13-16). This incident was captured on video and was presented at trial as evidence against the Applicant. (Tr. p. 39, lines 6-25). Later that evening, Applicant's vehicle was pursued by a Spartanburg County Sheriff's Deputy, eventually attempting to flee the officer on foot. (Tr. p. 50, line 22-p. 51, line

11). Applicant was placed in custody following a K-9 search of a nearby neighborhood. (Tr. p. 65, lines 3-21).

At trial, Applicant was identified as the suspect fleeing law enforcement and as having worn the same camouflaged pants admitted into evidence. (Tr. p. 73, lines 1-11). Applicant's co-defendant testified at trial and identified Applicant as the person who robbed the Lil' Cricket convenience store. (Tr. p. 49, lines 1-9). Trial counsel for Applicant moved for a directed verdict, claiming a lack of evidence to support the identification of Applicant as the perpetrator of the armed robbery. (Tr. p. 81, lines 1-11). The motion was denied. Applicant did not testify at trial and presented no defense witnesses. The jury convicted Applicant of armed robbery and the trial Judge sentenced him to confinement for life.

ALLEGATIONS

Applicant filed for post-conviction relief originally on June 13, 2013 and subsequently filed an amended application on July 3, 2013. In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. Failure to call Defense witnesses
2. Violation of Due Process and Equal Protection, in that:
 - a. "Identification"

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

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CLERK OF COURT
JACKSON COUNTY

Applicant testified that Timothy Ray, Esquire represented him at trial on the armed robbery charge. Applicant testified that he could provide an alibi witness in order to refute the allegations against him. He informed his trial counsel of the witness and the witness's ability to provide his whereabouts the night of the armed robbery. Applicant testified that he gave his trial counsel a phone number and address in order for counsel to contact the witness, but that his trial counsel never contacted the witness. This witness never testified at trial, nor was any evidence of a potential alibi presented at trial.

Applicant testified that had his trial counsel called his alibi witness, then he would not have been identified as the one who committed the armed robbery. At the hearing, Applicant disputed the trial testimony that the clothes he was wearing when he was arrested matched those of the suspect on the armed robbery video.

Trial Counsel's Testimony

Timothy Ray, Esquire testified that he represented Applicant at this trial for armed robbery. Trial counsel testified that he was appointed to represent after a conflict arose with Applicant's original counsel. Trial Counsel testified that he discussed the strategy of calling Applicant's witness at trial and advised against it. Trial counsel testified that he spoke to the witness on multiple occasions, including before trial when the witness provided clothing for Applicant to wear during trial. Trial Counsel did not believe the witness would provide alibi testimony, but had an alibi defense been available, Trial Counsel would have called the witness.

As to the identification of the Applicant, Trial Counsel testified that there were issues surrounding Applicant's pants and those found on the admitted video. Trial Counsel's strategy was to avoid discussing the pants, as he believed they would easily identify the Applicant as the suspect.

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He testified that there were discussions with the Applicant about the video and Trial Counsel's belief that the video showed the Applicant as the suspect.

Trial Counsel testified that a plea offer was made to avoid a life sentence, but Applicant would have to plead guilty to all pending charges against him. He testified that this was discussed with Applicant and he advised Applicant to plead guilty. These discussions were held up until the week of trial, according to Trial Counsel's testimony.

Testimony of Miranda Allen

Following Applicant's testimony at the evidentiary hearing, Applicant requested the record remain open to allow for the testimony of Miranda Allen. This witness never appeared before this Court and her testimony was never provided for review. Applicant has conceded that this witness is no longer needed and the record for the evidentiary hearing was closed.

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

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trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Buller, 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.

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden of proof and had not established any ineffectiveness of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant:

Allegation: Ineffective assistance of counsel for failing to call an alibi witness

Applicant asserts counsel was ineffective for failing to call an alibi witness, Miranda Allen, in Applicant's defense. Counsel testified credibly that he met with Applicant's proposed witness,

PC

but the witness was unable to provide an alibi for the Applicant. The Applicant failed to produce Ms. Allen, or any other alibi witnesses, at the evidentiary hearing. Therefore, this Court finds this allegation must be denied and dismissed. See Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (where witnesses applicant claimed could have provided an alibi defense did not testify at the PCR hearing; he could not establish any prejudice from counsel's failure to contact these witnesses); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992) (where applicant did not offer witnesses at PCR hearing but merely alleged they would have provided him with alibi defense and testified victims had recanted their trial testimony, he failed to establish prejudice).

Allegation: Violation of due process and equal protection based on "Identification."

Applicant asserted in his application for post-conviction relief that his custody was in violation of due process and equal protection, but states "identification" as his only reasoning. At the evidentiary hearing, Applicant never presented evidence of a violation to his due process or equal protection rights, therefore this claim is denied and dismissed.

During the evidentiary hearing, Applicant asserted that had trial counsel called as a witness, then the State would not have been able to properly identify him as the suspect. This appears to be his "identification" claim found in his application for post-conviction relief. Trial Counsel testified that Ms. Allen was not called as a witness, because she would not have been able to provide an alibi defense. Trial Counsel also testified that based on the video and clothing evidence admitted by the State, Applicant would have been identified. Trial Counsel testified that Applicant was identifiable from the video, alone.

This Court finds that counsel's performance was ~~deficient~~ ^{not} in any regarding the identification of the Applicant. This Court finds this allegation must be denied and dismissed.

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CONCLUSION

Based on all the foregoing, this Court finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this allegation is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 17th day of May, 2018.


 ROGER L. COUCH
 Presiding Judge
 Seventh Judicial Circuit

, South Carolina

DOCKET NO.

08-GS-42-1183

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

WITNESSES

County Sheriff's Office

Computer

ARD PULLED ☒INDEXED ☒CHECKED WARRANTS ☒CHECKED SIGNATURE ☒WARRANT NUMBER ☒

E CARD MADE

OFFIC VIOLATIONS COPY ☒

COURT OF GENERAL SESSIONS

FEB 25 2008

TERM

THE STATE
VS.

TION OF GRAND JURY

Bill

Grand Jury

22/08

VERDICT

MARC KITT

1-12831-8002

Petit Jury 3/10/09

Johnny Ray Wilkins

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

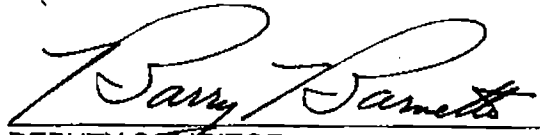
INDICTMENT

At a Court of General Sessions, convened on FEB 22 2008, the Grand Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

That the Defendant, Johnny Ray Wilkins, did in Spartanburg County, on or about January 13, 2008, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Jamie Mcabee and/or Lil Cricket located at 4884 Highway 221, Mayo, South Carolina, by means of force or intimidation goods or monies of Lil Cricket, described as follows: money, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Johnny Ray Wilkins

AKA:

Race: B Sex: M Age: 39

DOB: 1969 SS#

Address: SPARTANBURG, SC 29301

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

187

INDICTMENT/CASE#: 2008GS4201183

A/W#: M020029

Date of Offense: 1/14/2008

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly we

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☒ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Barnette, Barry
BARNETTE, BARRY

Defendant

Attorney for Defendant

70498
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 35.13 (Public Def/Prob) \$500 \$

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.45

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.15

TOTAL \$ 133.90

R. Robbitt

Clerk of Court/ Deputy Clerk

Court Reporter: L. Moffitt

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 9 1 9 1 5 1 3

Sentence Date: March 10, 2009

SCCA/217 (07/2008)

M-020029

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

THE STATE
against

Johnny Ray Wilkins

Address:
Spartanburg, SC 29301-

Phone:
Sex: M Race: B Height: 5 7 Weight: 175
DL State: DL #:
DOB: 1969 Agency ORI #: SC0420000

Prosecuting Agency: Spartanburg County Sheriff
Prosecuting Officer: Lorin Williams - 0773

Offense: Robbery / Armed Robbery, robbery while armed
or allegedly armed with a deadly weapon

Offense Code: 0139
Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:
RETURN

A copy of this arrest warrant was delivered to
defendant WILKINS, Johnny Ray
on 1-14-08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

☒ County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant Lorin Williams who
being duly sworn deposes and says that defendant Johnny Ray Wilkins
did within this county and state on or about 01/13/2008 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg)

In the following particulars:

DESCRIPTION OF OFFENSE Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That on January 13, 2008, in the city/county of Spartanburg, one Johnny Ray Wilkins did take money from the Lil Cricket with
intent to deprive while armed with a pistol, a deadly weapon.

JAN 17 2008

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address: 8045 Howard Street
Spartanburg, SC 29303-

Affiant's Telephone:
FILED
CLERK OF COURT
SPARTANBURG COUNTY
2008 JAN 16 AM 11:30
MARSHALL CHAMBERS

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/13/2008 defendant Johnny Ray Wilkins

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Spartanburg) as set forth below.

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 01/14/2008

James Freeman Ashmore (L.S.)
Signature of Issuing Judge
James Freeman Ashmore
Judge Code: 5740

Judge's Address: Spartanburg County Judicial Center
Spartanburg, SC 29306-2335

Judge's Telephone: (864) 596-3424

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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