

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County

Honorable J. Cordell Maddox, Circuit Court Judge

KAIRON BRENTON MALDONADO,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000893

APPENDIX

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State of South Carolina.,)
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 County of York.)

In the General Sessions
 Court of York

Case No.: 2012-GS-46-03888
 2012-GS-46-03889
 2012-GS-46-03890
 2012-GS-46-03890 (A)

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-)
)
 Kairon Brenton Maldonado.,)
)
 Defendant.)
)
)

Transcript of Record

March 18-20, 2013
 York, South Carolina

B E F O R E:

Honorable John C. Hayes, III., Judge, and a jury.

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1 (COURT IN SESSION IN THE MATTER OF STATE V. KAIRON
2 BRENTON MALDONADO, MONDAY, MARCH 18, 2013 AT 02:39 P.M..)

3 THE COURT: Thank you. You may take your seats.

4 SOLICITOR SPRINGS: May it please the court.

5 THE COURT: Yes, sir.

6 SOLICITOR SPRINGS: Your Honor, the next matter for
7 this Honorable Court is the trial of Kairon Brenton
8 Maldonado. I am holding three indictments True Billed by
9 the York County Grand Jury.

10 Your Honor, on the first one there are two counts.
11 The first count is attempted armed robbery; the number is
12 2012-GS-46-3890.

13 The second count is possession of a firearm during a
14 violent crime. I have dismissed, nolle prosequi, possession
15 of a firearm during a violent crime. On that indictment
16 you'll see my handwriting on the indictment. I am
17 dismissing just that, the possession of a firearm; we're
18 not proceeding to trial on that, we're proceeding to trial
19 on attempted armed robbery on that indictment.

20 We have a criminal conspiracy on 2012-GS-46-3889 and
21 we have attempted murder on 2012-GS-46-3888. Mr. Kairon
22 Maldonado is present here in the courtroom with his
23 appointed counsel, Mr. Michael Brown.

24 Mr. Brown, how does he plead to those charges, sir?

25 MR. BROWN: Not guilty.

1 SOLICITOR SPRINGS: Your Honor, we met in chambers; I
2 think we agreed we were gonna go ahead and pick the jury
3 and send them back to wait while we do the pretrial.

4 THE COURT: All right. Do we have any voir dire and
5 jury lists from either or both sides?

6 SOLICITOR SPRINGS: Yes, sir.

7 (PAPERWORK RECEIVED UP BY THE COURT.)

8 (SIDE BAR CONFERENCE OFF THE RECORD.)

9 THE COURT: Are you ready for the jury?

10 SOLICITOR SPRINGS: The State's ready.

11 Your Honor, on the attempted armed robbery indictment,
12 will the Court draw an X through possession of a firearm
13 charge just to make sure that none of us refer to it?

14 THE COURT: Okay.

15 (PAUSE.)

16 MR. BROWN: Clarification on the strikes.

17 SOLICITOR SPRINGS: Ten and Five.

18 THE COURT: Five for the State, ten for the defense.

19 (JURY ENTERS COURTROOM AT 02:50 P.M..)

20 THE COURT: Good afternoon. I'm John Hayes and along
21 with Judge Cothran I'm assigned to hold court here this
22 week. I'm a circuit court judge just like Judge Cothran.
23 I'm from here in York County, a Rock Hill native. We are
24 starting the first trial for the week; it is the case of
25 Kairon Maldonado.

1 MADAME COURT REPORTER: Judge, I'm sorry, Judge.

2 THE BAILIFF: We got one more, he's on his way up.

3 THE COURT: Okay.

4 (PAUSE.)

5 THE COURT: As I was saying, I'm John Hayes. I along
6 with Judge Cothran am holding court here this week. We're
7 starting the trial, the first case for trial in this
8 courtroom is the *State versus Kairon, K-a-I-r-o-n, Brenton*
9 *Maldonado*.

10 Mr. Maldonado if you could stand up and let the jury
11 see who you are, turn around and face them.

12 (MR. MALDONADO STOOD)

13 THE COURT: This is Mr. Maldonado, he is represented
14 by Michael Brown.

15 And do you want to introduce who else you have at your
16 table with you?

17 MR. BROWN: This is Sam Lovell my private investigator
18 from York County.

19 (ATTORNEY BROWN AND DEFENDANT SAT DOWN.)

20 THE COURT: All right. And the State is represented
21 by Mr. EB Springs and I'll ask him to introduce who he has
22 at his table with him.

23 SOLICITOR SPRINGS: This is Detective Allen Cantey and
24 every now and then my secretary Amy will sit right back
25 there and help me with this computer because I'm not too

1 good with computers.

2 (SOLICITOR AND HIS STAFF SAT DOWN.)

3 THE COURT: Mr. Maldonado is charged with several
4 offenses. One is attempted armed robbery; criminal
5 conspiracy and attempted murder. This is alleged to have
6 occurred on or about July 25th of 2012, at a discount store
7 at the intersection of West Main and Cherry Road across
8 from - catty cornered from York County Natural Gas is where
9 this allegedly occurred.

10 It's alleged that at that time Mr. Maldonado along
11 with Kadeem Sanders attempted to rob that store, and they
12 did conspire with each other to do so, and during the
13 attempted robbery or - the victim Vipul Patel was shot by a
14 rifle.

15 To this set of charges, Mr. Maldonado has entered
16 pleas of not guilty. His pleas of not guilty is placed on
17 the State the burden of proving his guilt beyond a
18 reasonable doubt.

19 I have some questions to ask you. If you need to
20 respond to them, as I go through them just please stand,
21 and we'll have a dialogue with you from up here.

22 First, are any of you related by blood or marriage, or
23 are you a close personal friend or acquaintance of any of
24 the five individuals to whom you've just been introduced;
25 if so, please stand?

1 All right. Yes, sir. Your name and number?

2 A. 78, Francis Fenker.

3 THE COURT: You know some of these, one of these
4 individuals?

5 MR. FENKER: Yes. Mr. Brown.

6 THE COURT: All right. Are you a client of his?

7 MR. FENKER: I work at a restaurant that he frequents.

8 THE COURT: All right. Would that affect your ability
9 to be fair and impartial?

10 MR. FENKER: I can't say that it wouldn't.

11 THE COURT: All right. Well I'll excuse you from
12 serving. If you will just have a seat, you will be excused
13 from this particular jury.

14 No one else stands.

15 Were any of you members of Grand Jury which passed on
16 these indictments at an earlier time; if so, please stand?

17 No one stands.

18 Have any of you heard about this case from any source
19 whatsoever? Read about it in the newspaper, heard about it
20 from the radio? Seen anything on the computer or anything
21 on television? Any of you know anything or heard anything
22 about this case; if so, please stand?

23 All right. Yes, ma'am. Your name and number?

24 A. Judy Rauppius, 189. I read about it in the paper.

25 THE COURT: All right. Could you set aside what you

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1 read in the paper and be fair and impartial and deliver a
2 verdict in this case solely on the law and the evidence
3 developed in the trial?

4 MS. RAUPPIUS: I don't think that - I think I have
5 some preconceived notions -

6 THE COURT: Okay. Well I'll excuse you too then
7 Thank you. You may be seated.

8 That's why we ask these questions.

9 No one else stands.

10 All right, any of you aware of any bias or prejudice
11 that you would have against the state of South Carolina or
12 Mr. Maldonado regarding the trial in this case, or have any
13 bias or prejudice involving for or against Mr. Patel ; if
14 so, please stand?

15 No one stands.

16 Are any of you or a member of your immediate family
17 involved in law enforcement at any level or in the
18 prosecution of criminal cases at any level? That is,
19 anything from a sheriff's officer, military policeman,
20 highway patrolman, prosecutor, U.S. attorney, district
21 attorney, anything like that. If you're related by blood
22 or marriage, please stand?

23 All right. We'll work our way across and ask each of
24 you just - first just give me your name and number and then
25 I'll ask you generally whether you can be fair and

1 impartial.)

2 Yes, sir, tell me why you're standing. You know,
3 Uncle Joe is a sheriff or whatever it is. Yes, sir.

4 A. Zachary Plyler, Number 179. My brother is training to
5 be a state trooper.

6 THE COURT: All right. Just remain standing.

7 Yes, sir.

8 A. Leo Bohland, Number 26. I do investigations for child
9 welfare as well as adult protective services in conjunction
10 with Charlotte Mecklenburg Police Department and all the
11 law enforcement agencies in Mecklenburg County.

12 THE COURT: Yes, sir.

13 A. I'm Travis Smith, Number 207. My brother-in-law is a
14 deputy sheriff for York County.

15 THE COURT: All right. This is a City case.

16 All right. Yes, ma'am.

17 A. Brittany Ledford, 123. My uncle is with the sheriff.

18 MR. BROWN: I'm sorry, Your Honor, I didn't hear that.

19 Her uncle?

20 MS. LEDFORD: Yeah, my uncle.

21 THE COURT: Yeah, her uncle is with the York County
22 Sheriff's Office.

23 All right. Yes, ma'am. Your name and number?

24 A. Tara Brawner, Number 34. My dad and my step brother
25 are police officers in -

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1 THE COURT: All right. Police officers in Maryland.
2 Yes, your name and number?

3 A. Number 98, Wanda Hemphill. I have a brother-in-law
4 that's a FBI agent.

5 THE COURT: All right. Now the six of you that are
6 standing, if any of you could not be fair and impartial
7 because of this relationship with someone in law
8 enforcement, that is, if you could not be impartial, please
9 raise your right hand?

10 Yes, sir. Your name and number again?

11 A. Leo Bohland, Number 26.

12 THE COURT: All right. You'll be excused. Don't
13 leave but you can have a seat.

14 The other five that did not raise their hand, you may
15 be seated.

16 Have any of you or a member of your immediate family,
17 and I know this is a somewhat delicate question, but if you
18 or a member of your immediate family been charged with, or
19 been a victim of what you would consider a crime of
20 violence, a violent crime; if so, please stand?

21 No one stands.

22 MADAME REPORTER: Judge.

23 THE COURT: All right. Yes, ma'am. Your name and
24 number?

25 A. Demetris McCullough, 146. My son has been - he has

1 been convicted of kidnapping.

2 THE COURT: All right. Just remain standing.

3 Yes, ma'am.

4 A. Evelyn Lundell, Number 134. Our house has been
5 robbed and vandalized numerous times and we have not been
6 able to -

7 THE COURT: All right. You've told me enough.

8 Would either of you with this past experience, if that
9 would prevent you from being and impartial in the trial of
10 Mr. Maldonado, please raise your right hand?

11 Neither one does.

12 You may be seated. Thank you.

13 Do any of you have any religious, psychological or
14 deeply rooted personal reasons why you would find it
15 difficult or impossible to make a fair and reasonable
16 decision based on the law and the evidence in this trial;
17 if so, please stand?

18 (NO ONE STANDS.)

19 THE COURT: Are any of you members of or contributors
20 to organizations such as Students Against Drunk Drivers,
21 Mothers Against Drunk Drivers, Citizens Against Violence,
22 Trooper's Association, Sheriff's Association or Fraternal
23 Order of Police; if so, please stand?

24 No one stands.

25 THE COURT: The following are possible witnesses in

-15-

1 this case. If you know any of these individuals and
2 particularly if you're related to them, but if you know
3 them or are related to them, please stand. I don't know
4 that all these witnesses will testify, but even if they
5 don't testify their names may pop up in the course of
6 testimony. Lori Van Walendorf, Detective Adam Canteo who
7 you just met. Mr. Vipul Patel, Detectives Tosha Smith and
8 Cedrick Stokes. Mr. Divyang Patel, Officers Eric Sizemore,
9 Larry Vandermolen and Ashley Doster. Kadeem also known as
10 "Buck" Sanders. Officers Will Rivera and Ryan Thomas.
11 Mr. Manish Patel, Officer Johathan Moreno, Mr. Romailo
12 Huey. Forensic officers George Weeks, Kevin Sullivan and
13 Tim Buchanan. Ms. Ashley Anderson and Officer Kevin
14 Tolson.

15 If any of you know any of those individuals, please
16 stand or related to them?

17 Yes, sir. Your name and number again? Not again, but
18 your name and number.

19 A. 21, Matthew Blackwell. I was Detective Smith's
20 supervisor at one time. We worked probation.

21 THE COURT: All right.

22 MR. BLACKWELL: And also Kevin Tolson.

23 THE COURT: Would that affect your ability to be fair
24 and impartial in the trial of this case?

25 MR. BLACKWELL: No, sir.

1 THE COURT: All right. You may be seated.

2 Yes, sir. Your name and number?

3 A. 207, Travis Smith. Me and - My daughter actually goes
4 to school with one of the officers on the -

5 THE COURT: Would that affect your ability to be fair
6 and impartial in the trial of this case?

7 MR. SMITH: No.

8 THE COURT: Okay. Thank you. You may be seated.
9 Anything further from the State?

10 SOLICITOR SPRINGS: No, sir.

11 THE COURT: Anything further from the defense?

12 MR. BROWN: No, sir.

13 THE COURT: Any of you know - Any of you on the jury
14 panel know of any reason why you could not or should not
15 serve as a fair and impartial juror on the trial of this
16 particular case; if so, please stand?

17 No one stands.

18 Now the way we draw juries in this type setting is
19 your name will be called, if you hear your name please come
20 forward. Stand by the bailiff and turn around and face the
21 table first where Mr. Springs is seated. He will either
22 say present the juror or excuse the juror. If he says
23 excuse the juror, return to your seat. If he says present
24 the juror, turn and face the table where Mr. Maldonado and
25 his counsel are seated.

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1 Mr. Brown will say either excuse the juror, which
2 again means you may return to your seat, or he will say
3 swear the juror. If you hear those words, swear the juror,
4 the bailiff will show you where to take a seat in the jury
5 box. Please bring with you your belongings when you come
6 forward so you will not have to go back and get them if you
7 are seated. The State can strike up five or excuse up five
8 individuals and the Defense up to ten.

9 Madame Clerk.

10 MADAME CLERK: Number 225, Lowell Thomas.

11 (WHITE MALE COMING FORWARD)

12 MADAME CLERK: What say you for the State?

13 SOLICITOR SPRINGS: Please present the juror.

14 MADAME CLERK: Defense?

15 MR. BROWN: Swear the juror.

16 MADAME CLERK: Please have a seat in the jury box.

17 Number 68, Thomas Dunn.

18 (WHITE MALE COMING FORWARD)

19 MADAME CLERK: What say you for the State?

20 SOLICITOR SPRINGS: Please present the juror.

21 MADAME CLERK: Defense?

22 MR. BROWN: Swear the juror.

23 MADAME CLERK: Please have a seat in the jury box.

24 Number 134, Evelyn Lundell.

25 (HISPANIC FEMALE COMING FORWARD)

1 MADAME CLERK: What say you for the State?
2 SOLICITOR SPRINGS: Please present the juror.
3 MADAME CLERK: Defense?
4 MR. BROWN: Excuse the juror in this particular case.
5 MADAME CLERK: You are excused in this case.
6 Number 146, Demetris McCullough.
7 (BLACK FEMALE COMING FORWARD)
8 MADAME CLERK: What say you for the State?
9 SOLICITOR SPRINGS: Please excuse the juror.
10 MADAME CLERK: You are excused from this case.
11 Number 21, Matthew Blackwell.
12 (WHITE MALE COMING FORWARD)
13 MADAME CLERK: What say you for the State?
14 SOLICITOR SPRINGS: Please present the juror.
15 MADAME CLERK: Defense?
16 MR. BROWN: Please excuse the juror.
17 MADAME CLERK: You are excused from this case.
18 Number 81, Anna Ferrone.
19 (WHITE FEMALE COMING FORWARD)
20 MADAME CLERK: What say you for the State?
21 SOLICITOR SPRINGS: Please present the juror.
22 MADAME CLERK: Defense?
23 MR. BROWN: Please swear the juror.
24 MADAME CLERK: Please have a seat in the jury box.
25 Number 15, Carey Bates.

1 (WHITE MALE COMING FORWARD)

2 MADAME CLERK: What say you for the State?

3 SOLICITOR SPRINGS: Please present the juror.

4 MADAME CLERK: Defense?

5 MR. BROWN: Please excuse the juror in this particular
6 case.

7 MADAME CLERK: You are excused from this case.

8 Number 236, Roy Weaver.

9 (WHITE MALE COMING FORWARD)

10 MADAME CLERK: What say you for the State?

11 SOLICITOR SPRINGS: Please present the juror.

12 MADAME CLERK: Defense?

13 MR. BROWN: Swear the juror.

14 MADAME CLERK: Please have a seat in the jury box.

15 Number 199, Timothy Setzer.

16 (WHITE MALE COMING FORWARD)

17 MADAME CLERK: What say you for the State?

18 SOLICITOR SPRINGS: Please present the juror.

19 MADAME CLERK: Defense?

20 MR. BROWN: Please excuse the juror in this particular
21 case.

22 MADAME CLERK: You are excused from this case.

23 Number 65, Jennifer Drovie.

24 (WHITE FEMALE COMING FORWARD)

25 MADAME CLERK: What say you for the State?

1 SOLICITOR SPRINGS: Please present the juror.

2 MADAME CLERK: Defense?

3 MR. BROWN: Swear the juror.

4 MADAME CLERK: Please have a seat in the jury box.

5 Number 17, David Bell.

6 (WHITE MALE COMING FORWARD)

7 MADAME CLERK: What say you for the State?

8 SOLICITOR SPRINGS: Please present the juror.

9 MADAME CLERK: Defense?

10 MR. BROWN: Please excuse the juror in this particular
11 case.

12 MADAME CLERK: You are excused from this case.

13 Number 92, Alan Hall.

14 (WHITE MALE COMING FORWARD)

15 MADAME CLERK: What say you for the State?

16 SOLICITOR SPRINGS: Please present the juror.

17 MADAME CLERK: Defense?

18 MR. BROWN: Swear the juror.

19 MADAME CLERK: Please have a seat in the jury box.

20 Number 201, James Shores.

21 (WHITE MALE COMING FORWARD)

22 MADAME CLERK: What say you for the State?

23 SOLICITOR SPRINGS: Please present the juror.

24 MADAME CLERK: Defense?

25 MR. BROWN: Please excuse the juror in this

1 particular case.

2 MADAME CLERK: You are excused from this case.

3 Number 98, Wanda Hemphill.

4 (WHITE FEMALE COMING FORWARD)

5 MADAME CLERK: What say you for the State?

6 SOLICITOR SPRINGS: Please present the juror.

7 MADAME CLERK: Defense?

8 MR. BROWN: Please excuse the juror in this particular
9 case.

10 MADAME CLERK: You are excused from this case.

11 Number 162, Ryan Neely.

12 (BLACK MALE COMING FORWARD)

13 MADAME CLERK: What say you for the State?

14 SOLICITOR SPRINGS: Please present the juror.

15 MADAME CLERK: Defense?

16 MR. BROWN: Please swear the juror.

17 MADAME CLERK: Please have a seat in the jury box.

18 Number 213, Jodi Steen.

19 (WHITE FEMALE COMING FORWARD)

20 MADAME CLERK: What say you for the State?

21 SOLICITOR SPRINGS: Please present the juror.

22 MADAME CLERK: Defense?

23 MR. BROWN: Swear the juror.

24 MADAME CLERK: Please have a seat in the jury box.

25 Number 179, Zachery Plyler.

1 (***** MALE COMING FORWARD)

2 MADAME CLERK: What say you for the State?

3 SOLICITOR SPRINGS: Please excuse the juror.

4 MADAME CLERK: You are excused from this case.

5 Number 34, Tara Brawner.

6 (WHITE FEMALE COMING FORWARD)

7 MADAME CLERK: What say you for the State?

8 SOLICITOR SPRINGS: Please present the juror.

9 MADAME CLERK: Defense?

10 MR. BROWN: Please excuse the juror in this case.

11 MADAME CLERK: You are excused from this case.

12 Number 194, Oscar Rodriquez.

13 (HISPANIC MALE COMING FORWARD)

14 MADAME CLERK: What say you for the State?

15 SOLICITOR SPRINGS: Please present the juror.

16 MADAME CLERK: Defense?

17 MR. BROWN: Swear the juror.

18 MADAME CLERK: Please have a seat in the jury box.

19 Number 231, Joseph Turck.

20 (WHITE MALE COMING FORWARD)

21 MADAME CLERK: What say you for the State?

22 SOLICITOR SPRINGS: Please present the juror.

23 MADAME CLERK: Defense?

24 MR. BROWN: Swear the juror.

25 MADAME CLERK: Please have a seat in the jury box.

1 Number 2-0-2, John Simpson.

2 (WHITE MALE COMING FORWARD)

3 MADAME CLERK: What say you for the State?

4 SOLICITOR SPRINGS: Please present the juror.

5 MADAME CLERK: Defense?

6 MR. BROWN: Swear the juror.

7 MADAME CLERK: Please have a seat in the jury box.

8 Number 123, Brittany Ledford.

9 (WHITE FEMALE COMING FORWARD)

10 MADAME CLERK: What say you for the State?

11 SOLICITOR SPRINGS: Please present the juror.

12 MADAME CLERK: Defense?

13 MR. BROWN: Swear the juror.

14 MADAME CLERK: Please have a seat in the jury box.

15 THE COURT: Strikes will be one and two on each
16 alternate.

17 MADAME CLERK: Number 100, Christopher Holloman.

18 (BLACK MALE COMING FORWARD)

19 MADAME CLERK: What say you for the State?

20 SOLICITOR SPRINGS: Please present the juror.

21 MADAME CLERK: Defense?

22 MR. BROWN: Swear the juror.

23 MADAME CLERK: Please have a seat in the jury box.

24 Number 1-0-9, Scott Jones.

25 (WHITE MALE COMING FORWARD)

1 MADAME CLERK: What say you for the State?

2 SOLICITOR SPRINGS: Please present the juror.

3 MADAME CLERK: Defense?

4 MR. BROWN: Please excuse the juror in this case.

5 MADAME CLERK: You are excused in this case.

6 Number 159, Melissa Murrell.

7 (WHITE FEMALE COMING FORWARD)

8 MADAME CLERK: What say you for the State?

9 SOLICITOR SPRINGS: Please present the juror.

10 MADAME CLERK: Defense?

11 MR. BROWN: Swear the juror.

12 MADAME CLERK: Please have a seat in the jury box.

13 THE COURT: Anything the State involving the striking
14 of the panel?

15 SOLICITOR SPRINGS: No, Judge Hayes.

16 THE COURT: Anything from the Defense?

17 MR. BROWN: No, sir.

18 THE COURT: Those of you who were not chosen, I'm
19 going to allow you to leave and I ask you to call back
20 tonight after seven. It is very important that you follow
21 whatever instructions you receive. It may be to report at
22 a certain time; it may be to call back at a certain time.
23 It is very important that you follow those instructions.
24 So have a pleasant evening and just make sure you call
25 after seven and follow those instructions and I may see

1 you more this week, I may not, so follow the instructions.

2 Be

3 quiet as you leave if you can because we've got to start
4 talking to this jury panel.

5 (JURY DISMISSED AT 02:35 P.M..)

6 THE COURT: For those of you who were chosen I'm not
7 going to swear you in at this time because we have some
8 legal matters to take up outside of your presence. So I'm
9 going to let you go to the jury room in just a moment, but
10 you are not to discuss the case among yourselves; do not
11 try to make up your own mind. Until I instruct you to
12 jointly deliberate and return a unanimous verdict, you
13 don't have the tools you need to make a fair and reasonable
14 decision so it would be improper for you to try to reach a
15 conclusion any time during the trial until you jointly
16 deliberate and return a unanimous verdict, and it would be
17 a violation of your oath to discuss the case among
18 yourselves.

19 When you are outside the courtroom over night or
20 during a lunch break, do not let anyone discuss this case
21 with you. Tell them you cannot as you are serving as a
22 juror and report back to me if anyone tries to discuss this
23 case with you. I will have to take action against someone
24 who tries to discuss a case with a seated juror.

25 Do not let yourself be exposed to any news coverage

1 if there is any. Don't read about anything, watch
2 anything, or listen to anything that could remotely deal
3 with this trial. You must base your verdict solely on the
4 law and the evidence as it's developed here in the
5 courtroom. So don't let yourself be exposed to anything
6 outside the courtroom involving this trial.

7 Do not use any electronic media to find out anything
8 about this case or about the law or about me or about the
9 attorneys. Again, you must base your verdict solely on the
10 law and the evidence, so do not go to Google or Yahoo or
11 any of those sites to try to find out information about
12 this case and like I say, rules of the court or anything.
13 And this may sound a little silly but it's not when you
14 think about it. Don't go on Facebook or any of these
15 social networks and say, I'm serving on a jury, because you
16 may receive some emails back or some Facebook messages back
17 that would cause us some concern so don't. Just confine
18 yourselves to learning about this case here in the
19 courtroom and not use any outside means to obtain
20 information or even let anybody know that you're serving on
21 the jury other than, of course, your family members that
22 may need to know why you are not at home.

23 Mr. Simpson, I'm going to ask you to serve as the
24 foreman of this jury. You will sit in this front seat.
25 The bailiff will show you when you come in. The two

1 alternates will sit in the two seats they are in now.
2 There is no other assigned seating.

3 I'm gong to let you go to the jury room while we
4 take up some legal matters and when you come back I'll have
5 a few more things to talk to you about and then I'll call
6 on the attorneys and let them make opening statements.

7 If you'll go to the jury room at this time.

8 (PETIT JURY EXITS COURTROOM AT 03:30 P.M..)

9 THE COURT: We have a Neal versus Biggers matters and
10 then --

11 SOLICITOR SPRINGS: Yes, I'm gonna do two short
12 Jackson v. Denno's and then I have two short pretrial
13 motions of my own.

14 THE COURT: Okay.

15 SOLICITOR SPRINGS: And, Mr. Vipul Patel, if you'll
16 come on up, sir.

17 MR. BROWN: Your Honor, at this time and through out
18 this trial, and through the motions, I move for
19 sequestration of the witnesses.

20 THE COURT: All right. Motion is granted. It will be
21 reciprocal; witnesses will be sequestered except for the
22 case agent and of course the victim.

23 SOLICITOR SPRINGS: So everybody else that's going to
24 be a witness, and that's everybody out, you need to wait
25 out in the hall; however, there are a couple of rooms out

VIPUL PATEL: BY SOLICITOR SPRINGS: IN CAMERA

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1 there.

2 Come on up here, Mr. Patel, and there is a Bible and
3 you can be sworn on the Bible or you can affirm to tell
4 the truth; whatever your choice.

5 MADAME CLERK: Raise your right hand, put your left
6 hand on the Bible.

7 (WHEREUPON: VIPUL PATEL,
8 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

9 MADAME CLERK: Please have a seat.

10 DIRECT EXAMINATION - IN CAMERA

11 VIPUL PATEL BY SOLICITOR SPRINGS:

12 Q. Mr. Patel, you have a soft voice. I'm going to ask
13 you to speak into the microphone. Tell everyone your name,
14 sir.

15 A. My name is Vipul Chhanalal Patel.

16 Q. And did you and your mother own a convenience store?

17 A. Yes, sir.

18 Q. What's the name of the convenience store?

19 A. Cherry Road Discount Food and Beverage.

20 Q. Okay. And how long have you owned the store?

21 A. It's been sixteen years.

22 Q. On July 25th, the night of July 25th last year, a
23 Wednesday night, did something bad happen to you?

24 A. Yes, sir.

25 Q. Did you got shot?

VIPUL PATEL: BY SOLICITOR SPRINGS: IN CAMERA

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1 A. I was shot.

2 Q. Okay. The sixteen years that you've had that store,
3 would you call it a neighborhood store?

4 A. Yeah.

5 Q. A lot of people?

6 A. The same customers I see a lot of times.

7 Q. Okay. And over the sixteen years have you seen young
8 people who are customers who come in and grow and become
9 teenagers or older?

10 A. Yeah they do. I've got a lot of teenagers.

11 Q. Okay. Let's talk about the night of July 25th last
12 year when you got shot. What time was the store going to
13 close that night?

14 A. We close the store at eleven o'clock.

15 Q. Okay. A little before eleven, ten, eight minutes
16 before eleven, did someone enter the store?

17 A. Yeah. Two young kids entered the store.

18 Q. Okay. And did they come in slowly or did they rush
19 in?

20 A. They rush in.

21 Q. Okay. And are you - When you say kids, do you mean
22 toddlers or teenagers?

23 A. No, the teenagers.

24 Q. Okay. And was it unusual for you to have teenagers
25 come into the store?

1 A. No.

2 Q. And have people run in excitedly into the store
3 before?

4 A. Yeah. I have a lot of young customers.

5 Q. So when these two, you say they are teenagers type
6 age?

7 A. Yeah, teenagers.

8 Q. When they came in quickly, did it frighten you or did
9 you think oh, it's just kids?

10 A. No. It's like a lot of kids come so I didn't think
11 about it.

12 Q. Okay. Tell us where - There were two, did they stay
13 right together or did they separate after they got through
14 the door?

15 A. No. One was near the front door and another came near
16 the counter door.

17 Q. Okay. And as you're standing behind your cash
18 register, the counter door that allows you to enter in
19 behind the cash register, is it to your right or to your
20 left?

21 A. To my left. The counter is on the right and the front
22 door is on the left.

23 Q. It's a swinging door?

24 A. Yeah, a swinging door.

25 Q. Did one come around to that door?

VIPUL PATEL: BY SOLICITOR SPRINGS: IN CAMERA

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1 A. Yeah. One came around to the counter door.

2 Q. Okay. And your attention, was your attention focused
3 primarily on the fellow that stayed by the front door
4 or the fellow that came around to your counter door?

5 A. Counter door.

6 Q. Okay. And what did he do when he got around there?

7 A. When he came to the counter door, he told me, "give me
8 the money".

9 Q. Okay. And did that bother you? Concern you?

10 A. Yeah. I thought he - Like I was sitting on the chair
11 and I stood up and told him to move out from the counter
12 door.

13 Q. Okay. Before he told you to give him the money, did
14 he try to come in before --

15 A. Yeah. He was trying to come in the counter door. I
16 thought he might come inside so I just stood up near the
17 counter door.

18 Q. Okay. How close was he to you? I'm going to walk
19 towards you and when I get the distance he was to you, when
20 he was first trying to come in, tell me to stop. Do you
21 understand?

22 A. Yeah.

23 Q. Okay.

24 A. Stop.

25 Q. Okay. Now, do you have good eye sight?

1 A. Yeah.

2 Q. And did you look at his face?

3 A. Yeah. I can see pretty - almost most of his face.

4 Q. And when you saw his face, did you recognize him?

5 A. Yeah. As a customer.

6 Q. Okay. Had you seen him just one time before or more
7 than one time before?

8 A. No. I've seen him several times.

9 Q. Okay. And his - How much of his face could you see?
10 All of it or half of it, how much?

11 A. Almost the whole face.

12 Q. Okay. All right.

13 A. Because he had a hoodie on at the time so I can see
14 almost that much.

15 Q. Okay. All right. So when he tried to get through the
16 swinging door the first time, did you motion him back or
17 tell him to move back?

18 A. Yeah. I told him to get out and move back and he
19 moved a little bit.

20 Q. Did he come back?

21 A. No. He moved back a little.

22 Q. All right. After he moved back did he come back
23 towards you?

24 A. Yeah. He was doing back and forth.

25 Q. Okay. And when did he say, give me the money?

VIPUL PATEL: BY SOLICITOR SPRINGS: IN CAMERA

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1 A. When I was sitting - When I stood up and he came on
2 the counter side. After a few seconds he told me, "give me
3 the money".

4 Q. Okay. Now did you know there was a man standing by
5 the door holding a rifle?

6 A. Mainly my eyes was on the counter side man because,
7 you know, he was trying to come in so I didn't pay
8 attention on the front side.

9 Q. You had not seen the rifle?

10 A. No. I didn't see no rifle.

11 Q. Do you have displays where you have gum and candy and
12 things up around the counter?

13 A. Yeah. It blocked the view too.

14 Q. Okay. All right. And later after, did you get shot?

15 A. Yes.

16 Q. After you got shot, a few days later, six days later,
17 did a detective come talk to you?

18 A. Yes, sir.

19 Q. Did he show you a photographic lineup?

20 A. Yeah.

21 Q. And before he showed you the lineup, did he tell you
22 he was going to show you absolutely no doubt a picture of
23 one of the robbers or did he not? Did he just say look at
24 the pictures?

25 A. He showed me the pictures.

1 Q. Okay. Did he tell you to pick somebody out?

2 A. No.

3 Q. Did you pick somebody out?

4 A. Yeah. I picked one person.

5 Q. Okay. Did you put your initials next to that picture?

6 A. Yeah I did that.

7 Q. And the guy you picked out, how did you recognize him?

8 What did he mean, what was --

9 A. Mainly he is a customer of the store so I knew him.

10 Q. Okay. Was he the guy that was trying to get behind
11 the counter ---

12 A. Yeah, behind the counter.

13 Q. --- that night? Do you see him in this courtroom?

14 A. Yeah.

15 Q. Point him out if you see him in the courtroom.

16 A. Yeah. Right there.

17 SOLICITOR SPRINGS: Let the record show he is pointing
18 to Kairon Maldonado.

19 (WITNESS INDICATED TO DEFENDANT AT DEFENSE TABLE.)

20 Q. Your store had security cameras that night?

21 A. Yes. We got camera system.

22 Q. And they have a number of cameras and they made movies
23 of this man trying to get behind the counter?

24 A. Yeah.

25 Q. And a movie showing you getting shot?

VIPUL PATEL: BY SOLICITOR SPRINGS: IN CAMERA

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1 A. Yes, sir.

2 Q. Okay. And have you seen the movie?

3 A. Yeah I've seen it.

4 Q. And I'm showing you a disk, a movie disk. Is that the
5 security camera video?

6 A. Yes, sir.

7 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE PREMARKED FOR
8 IDENTIFICATION.)

9 Q. Okay. Now, we have a sticker on it now. We're now
10 going to call this disk State's Exhibit One. You've seen
11 the movie. Is it accurate? Is it what was happening in
12 the store that night?

13 A. Yes. It was same one.

14 SOLICITOR SPRINGS: Is it ready to play?

15 Q. Can you see the screen, Mr. Patel?

16 A. Yes.

17 Q. This is the disk, State's Exhibit One. We're gonna
18 play some of the clips. You had numerous cameras in the
19 store; is that right?

20 A. Yes, sir.

21 SOLICITOR SPRINGS: Play the clip for us.

22 (STATE'S EXHIBIT ONE PUBLISHED TO THE JURY.)

23 Q. Is that you?

24 A. Yeah it's me.

25 Q. Is that the two men that came in?

VIPUL PATEL: BY SOLICITOR SPRINGS
BY MR. BROWN

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1 A. Yes, sir.

2 SOLICITOR SPRINGS: Stop that one and play two.

3 Q. Is that you behind the counter?

4 A. Yes, sir.

5 SOLICITOR SPRINGS: And pause it there.

6 Q. Now is that you trying to tell the man to back off?

7 A. Yeah. That's me.

8 Q. Okay. All right. So, Mr. Patel, you said you
9 recognized this man as a customer. Did you ever learn his
10 name or just knew him as a customer?

11 A. No I knew him as a customer.

12 Q. All right.

13 SOLICITOR SPRINGS: Thank you. The defense attorney
14 may want to ask you some questions at this point.

15 CROSS EXAMINATION - IN CAMERA

16 VIPUL PATEL BY MR. BROWN:

17 Q. To your recollection, Mr. Patel, was anybody else in
18 the store at the time they came in?

19 A. Excuse me?

20 Q. Was anyone else in the store at this time?

21 A. Yeah. My cousin was. There was one person. My
22 cousin, he was in the back room.

23 Q. Was there any other customers in the store?

24 A. No customer.

25 Q. No customers. Now this is July of 2012. Correct?

VIPUL PATEL: BY MR. BROWN - IN CAMERA

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1 A. July 25th, 2012.

2 Q. Was it hot then?

3 A. Yeah.

4 Q. As a matter of fact it's the heat dead of summer.

5 Correct?

6 A. Yeah. He shot me.

7 Q. Didn't you find it kind of unusual two guys come
8 running in with bandanas and hoodies on at that time of
9 year?

10 A. I thought I seen a customer coming - I seen customer
11 coming in the hot time doing that same thing.

12 Q. With hoodies and bandanas on?

13 A. I mean hoodies. You know, and all that.

14 Q. In July?

15 A. Mainly my - I didn't see another guy near the door.

16 My eyes was near the counter guy.

17 Q. I noticed in that - Let me ask you this. That whole
18 sequence of events is about five seconds long. Is it not?
19 From the time they came in until he ran out, wasn't it
20 about five seconds?

21 A. Yes. It might be long like five to nine seconds.

22 Q. Five to what?

23 A. Five to nine seconds when they came in and out.

24 MR. BROWN: Could you play back tape Number Three,
25 please.

1 A. Clip Three?

2 MR. BROWN: Please.

3 (STATE'S EXHIBIT ONE REPLAYED.)

4 MR. BROWN: Fine, thank you.

5 Q. Seven seconds.

6 A. I don't remember the seconds. What happened and what
7 I saw I told the officer.

8 Q. And you turned your head at one point and looked at
9 the guy with the gun, did you not?

10 A. I don't remember.

11 Q. You don't remember?

12 A. Because it was so fast.

13 Q. Yes, sir, it was, it did happen very fast didn't it?

14 A. Yeah.

15 Q. And when you saw the gun, did that get you scared?

16 A. I didn't see the gun. I was concentrating mainly on
17 the guy on the counter side.

18 Q. You don't turn your head while this is happening and
19 look at the guy with the gun and then go to hit the button?

20 A. I was trying to hit the safety button.

21 Q. After you turned your head and looked in the direction
22 of where the guy with the gun was, did you look in that
23 direction? Yes or no.

24 A. Yeah.

25 Q. Okay. Did you - Did he ever come behind the counter?

VIPUL PATEL: BY MR. BROWN - IN CAMERA

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1 A. Not behind the counter. He opened the door.

2 Q. Yes, sir. And as the video shows, he ran out.

3 Correct?

4 A. Yeah. I was shot so I --

5 Q. Yes, sir. Yes, sir. I understand. And this
6 gentleman here didn't have anything to do with shooting you
7 did he?

8 A. No. He came to rob -- they were together.

9 Q. You know that or you're guessing?

10 A. No. Then I saw the video after that.

11 Q. Okay. But he didn't shoot you did he?

12 A. No. He didn't shot me.

13 Q. The other individual shot you didn't he?

14 A. Yeah the other guy shot me.

15 Q. All right. Now, when the police come to your house on
16 July 25th with this lineup, did you see any other customers
17 in this lineup?

18 A. Can you repeat that please?

19 Q. Well they brought you six pictures didn't they?

20 A. Yeah.

21 Q. And you signed the one you thought was it. Right?

22 A. Uh-huh.

23 Q. Were there any of the other customers in there, in
24 that lineup?

25 A. I don't remember much.

VIPUL PATEL: BY MR. BROWN - IN CAMERA

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1 MR. BROWN: Well, you got a copy of it, EB?

2 SOLICITOR SPRINGS: This is the original so don't mess
3 it up.

4 MR. BROWN: I won't.

5 Q. I'm showing you - First I ask you if you can identify
6 this. Is that the lineup the officer brought to your house
7 in January - July 25th?

8 A. Yes, sir.

9 Q. Okay. And do you see any of the other customers in
10 that lineup?

11 A. I don't remember much.

12 Q. You don't know whether any of these other five are
13 your customers or not do you?

14 A. No. There are a lot of customer come in.

15 Q. That's my point.

16 A. Yeah, but I knew him because you know he did --

17 Q. I understand. But you don't recognize whether these
18 other five are customers or not do you?

19 A. I remember but you know it's not like I'm pretty sure
20 about it.

21 Q. Yeah, it's not like you and I sitting here having a
22 conversation in court; it happened so fast. It was a
23 stressful situation getting shot. Right?

24 A. Yeah.

25 Q. Okay. In the video as to his face, Mr. Maldonado's

VIPUL PATEL: BY MR. BROWN - IN CAMERA

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1 face, when he turns he's half covered up is it not?

2 A. Yeah, but he was looking at me too.

3 Q. Okay. For all like three or four seconds. Correct?

4 A. I don't remember. It's been --

5 Q. You don't remember. It's been a long time?

6 A. Yeah. It's been six months.

7 Q. Okay. And did you say or call him by name or
8 anything?

9 A. No.

10 Q. When did you first learn of his name?

11 A. When I saw it in the paper.

12 Q. Oh, you saw it in the paper?

13 A. My cousin had they told me about it. There was
14 another suspect.

15 Q. And the first article was August 3rd, 2012, was it
16 not, sir?

17 I'm going to show you that article and see if you
18 recognize it. Is this the article you saw in the paper,
19 the Herald?

20 A. Yeah.

21 Q. And that article is dated August 3rd, is it not, sir?

22 A. Yes, sir.

23 Q. Now did you do it online or did you actually buy the
24 paper like I do?

25 A. No. The customer told me like it was online too.

1 Q. Okay. So you looked at it online?

2 A. Yeah.

3 Q. And this is the picture you saw. Correct?

4 A. Yeah.

5 Q. Seven days later, did you go down to the police
6 station and meet with somebody from the Rock Hill Police
7 Department and give this statement? Take your time.

8 (WITNESS REVIEWING DOCUMENT.)

9 A. Yes.

10 Q. Okay. And you gave this statement a week after you
11 saw the picture in the newspaper. Correct?

12 A. Yeah.

13 Q. Okay. And in your statement you say, for the first
14 time, that he is a customer but I recognize him from coming
15 in the store; is that correct?

16 A. He was a customer.

17 Q. Yes, sir. But that's the first time you tell anybody
18 That's my point.

19 A. Yeah, but --

20 Q. Yes or no. Is that the first time you've told anybody
21 in law enforcement that he was a customer?

22 A. Yeah.

23 Q. So this happens on July 25th, they come to see you on
24 July 31st; it's in the paper August 3rd and finally on
25 August 10th you say it was a customer. Correct?

VIPUL PATEL: BY MR. BROWN - IN CAMERA

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1 A. Yeah.

2 Q. I'm not asking these questions to embarrass you. It's
3 part of my job but I need to ask you about some of your
4 background. Where were you born, sir?

5 A. India.

6 Q. Egypt?

7 A. India.

8 Q. India. And did you grow up there?

9 A. Yeah. I go - I went a couple times.

10 Q. Okay. When did you come to the United States of
11 America for good?

12 A. I was a kid. My parents - my father and brother, five
13 for him, and we came here when I was a kid. I went to
14 school and then I went to like one year in college.

15 Q. Okay. So you - Well how old were you when you came to
16 the United States for good?

17 A. Eight, nine, ten.

18 Q. I'm sorry.

19 A. I was nine or ten.

20 Q. Nine or ten. So you - Then you went to one year of
21 college here; is that correct?

22 A. I mean it's like I used to work and I used to go in
23 college so I didn't did too much college.

24 Q. And are there any Afro Americans in India? Or
25 Africans?

1 A. It's Indian people. That's what I know.

2 Q. Right. But there's no Africans there. Right?

3 A. No, sir.

4 Q. So your first exposure to African Americans was when
5 you came to the United States; is that correct?

6 A. Yes, sir.

7 Q. When was the first time you talked to the police about
8 this? And I know you got shot and it was a horrific
9 experience. Was it July 25th when they came to your house?

10 A. July 25th I was shot.

11 Q. I'm sorry. I apologize. July 31st when they came to
12 your house?

13 A. I don't remember but, you know, then I came from the
14 hospital ---

15 Q. Yes, sir.

16 A. --- after a couple days they came and talked to me.

17 Q. Would that be the 31st? That statement I read.

18 A. Yeah.

19 Q. I can't find anything else where you talked to them
20 before that so I'm asking you now if there is any --

21 A. Yeah because you know I was not in good condition.
22 It was a lot of pains and all that.

23 Q. Yes, sir. Certainly, certainly. And when they came
24 and talked to you, did they ask you how tall the people
25 were?

VIPUL PATEL: BY MR. BROWN - IN CAMERA

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1 A. I don't remember.

2 Q. Did they ask you to describe the clothing?

3 A. We spent - They told me like, you know, how we was and
4 I told him like, you know, he had a dark hoodie on him.

5 Q. How tall is he, the best of your guesstimate?

6 A. Round like 5, 5' 5" something.

7 Q. Okay. How much - Did the police ask you any of this
8 information?

9 A. I don't remember because, you know, I was in pain and,
10 you know, I tried my best to give whatever they asked but I
11 don't remember.

12 Q. How long did the police stay there that day?

13 A. They were there until they asked me everything but I
14 was taking so high dose medicine.

15 Q. Let's a talk about that for a second. Not to belittle
16 what happened to you, it was tragic. What kind of
17 medication did they have you on?

18 A. I don't remember the name of the medicine because they
19 gave me a lot of different, different ones.

20 Q. Make you sleep?

21 A. I tried to but I can't. My body didn't work with the
22 medicine so I didn't --

23 Q. Make you groggy?

24 A. Tried to make you groggy but it didn't work on my
25 body. None of the medicine.

1 Q. Well the reason I ask you, you say you were taking
2 medicine and your memory is not that good about what they
3 asked you.

4 A. Yeah, but you know I was scared too because what
5 happened to me it scared me like hell because I never seen
6 in my life like that.

7 Q. Yes, sir. You were stressed at that time.

8 A. Yeah.

9 Q. Okay. Scared?

10 A. Yeah.

11 Q. Affected by the medicine?

12 A. Not much.

13 Q. Well you just testified you couldn't remember because
14 you were on medication.

15 A. Yeah, I was on medication too. They were trying to
16 give me a lot of different ones.

17 Q. Well were you taking them like the doctor said to?

18 A. The doctor told me to take it but it didn't work.
19 That's why we went a couple of times to the hospital back.

20 Q. All right. When was the first time you saw the video?

21 A. Like a month, after a month.

22 Q. Okay.

23 A. Like when I was better feeling.

24 Q. Did the person you identified have glasses on that
25 night?

VIPUL PATEL: BY MR. BROWN - IN CAMERA

- 1 A. Excuse me?
- 2 Q. Did he have glasses on?
- 3 A. Who, me?
- 4 Q. No. The person you identified.
- 5 A. Yeah. He was wearing glasses.
- 6 Q. He was wearing glasses and that's in the video.
- 7 Right?
- 8 A. Yeah.
- 9 Q. Okay. And what color were his pants?
- 10 A. I didn't remember the pants.
- 11 Q. Okay. What color were his shoes?
- 12 A. I didn't watch all that. I was scared. I was
- 13 watching him, not the shoes and pants.
- 14 Q. Okay. And the first time you identify him is six days
- 15 afterwards. Correct?
- 16 A. Yeah.
- 17 Q. And you don't know what the police asked you other
- 18 than showing you a picture. Correct?
- 19 A. He showed me the picture, told me what happened and I
- 20 told him the story.
- 21 Q. And then seven days after his picture is in the paper,
- 22 you give a statement saying he was a customer. Correct?
- 23 A. No. I give - I told to the police officer what
- 24 happened when they came out to the house.
- 25 Q. Right.

1 A. And after that then I went to the police station to
2 make the statement.

3 Q. That's the first time the customer thing comes up.
4 Right?

5 A. No. I told to the officer too.

6 Q. You did?

7 A. I think so. I don't remember.

8 Q. You don't remember?

9 A. No, I don't remember.

10 Q. Now have you talked to anybody in the solicitor's
11 office or law enforcement about your testimony here today?
12 Did they prep you at it?

13 A. I went and saw the prosecutor on Friday.

14 Q. Okay. And did you all discuss about identifying Mr.
15 Maldonado?

16 A. No.

17 Q. It didn't come up at all?

18 A. He told me, you know, and if he is in the courtroom he
19 is going to ask me and I pointed.

20 Q. Of course nobody else was sitting there with me is it?

21 A. No. I knew the customer. I knew what happened. So
22 if it's fifty people, I can point him.

23 MR. BROWN: I have no further questions, Your Honor.

24 THE COURT: Redirect?

25 SOLICITOR SPRINGS: Now so much redirect, Your Honor,

VIPUL PATEL: BY SOLICITOR SPRINGS - IN CAMERA

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1 but I think the court needs to see the lineup. We can take
2 care of that matter.

3 (WHEREUPON: STATE'S EXHIBIT NUMBER TWO PREMARKED FOR
4 IDENTIFICATION.)

5 REDIRECT EXAMINATION - IN CAMERA

6 VIPUL PATEL BY SOLICITOR SPRINGS:

7 Q. Mr. Patel, I'm showing you what has been marked as
8 State's Exhibit Two.

9 A. Okay.

10 Q. Is that the lineup that the police showed you?

11 A. Yes, sir.

12 Q. Is that your initials next to Kairon Maldonado?

13 A. Yes, sir.

14 (WHEREUPON: STATE'S EXHIBIT NUMBER THREE, PREMARKED
15 FOR IDENTIFICATION.)

16 Q. This is a form with your signature on it. Its State's
17 Exhibit Three. It's a disclaimer form about lineups. Do
18 you see your signature there?

19 A. Yes, sir.

20 Q. It looks like that was done on July 31st. Now while
21 you were looking at pictures and so forth, did you talk to
22 the police about the crime?

23 A. Yeah. I told --

24 Q. When they came to see you and showed you the pictures,
25 did you chat with them?

DETECTIVE ALLEN CANTEY: BY SOLICITOR SPRINGS - IN CAMERA

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1 A. I don't remember.

2 Q. Okay. All right.

3 SOLICITOR SPRINGS: That's all, Your Honor, thank you.

4 THE COURT: Anything else, Mr. Brown?

5 MR. BROWN: Beg the court's indulgence on second, Your
6 Honor.

7 THE COURT: Okay.

8 (PAUSE.)

9 MR. BROWN: Not of this witness, Your Honor.

10 THE COURT: All right. You can step down and go back
11 out with the State's attorney.

12 (WITNESS LEAVING WITNESS STAND.)

13 SOLICITOR SPRINGS: Detective Cantey.

14 (WHEREUPON: LEWIS ALLEN CANTEY,
15 JUNIOR, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
16 FOLLOWS:)

17 MR. BROWN: I'm going to ask that sequestration remain
18 in effect.

19 SOLICITOR SPRINGS: He's the victim.

20 THE COURT: Mr. Patel's the victim, he can stay here
21 and the other witnesses --

22 MR. BROWN: Yes, sir. I just put it on the record.

23 DIRECT EXAMINATION - IN CAMERA

24 DETECTIVE ALLEN CANTEY BY SOLICITOR SPRINGS:

25 Q. Tell us your name, sir.

DETECTIVE ALLEN CANTEY: BY SOLICITOR SPRINGS - IN CAMERA

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1 A. Lewis Allen Cantey, Junior.

2 Q. You're a Rock Hill detective?

3 A. I am.

4 Q. And are you the detective that showed Mr. Patel the
5 photo lineup on July 31st, 2012?

6 A. I am.

7 Q. And did you chat with him and ask him about the crime
8 on July 31st, 2012?

9 A. Yes, I did.

10 Q. And did he tell you he recognized the person trying to
11 come around and get behind the counter then?

12 A. Yes, he did.

13 Q. How did he characterize it? How did he say he knew
14 this person, from what circumstances?

15 A. He said he was a customer. If I may read from my
16 summary.

17 Q. Sure.

18 A. "On July 31, 2012, Tuesday afternoon, Officer Cantey
19 met with Vipul Patel at his residence after he was released
20 from CMC. Patel advised that when the men first entered
21 his store, he felt that it was just neighborhood kids
22 playing. Patel stated that as the subject with the hoodie
23 came around the corner and attempted to go behind the
24 counter, he saw the subject's face and realized that he
25 knew him and that he was a frequent customer of Patel's.

DETECTIVE ALLEN CANTEY : BY SOLICITOR SPRINGS - IN CAMERA
BY MR. BROWN - IN CAMERA

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1 Patel stated that the subject was saying to give him the
2 money."

3 Q. All right. Let me stop you there. Thank you very
4 much. And when you showed Mr. Patel the lineup, did you
5 tell him who to pick out or prompt him in any way?

6 A. No, sir. When I showed him the lineup I told him
7 that the person may or may not be in there, and I also
8 asked him to think of what the person from the store that
9 night looked like, and to compare that image to each
10 individual image; not to compare the images on the page.

11 Q. Very good. Thank you.

12 SOLICITOR SPRINGS: Nothing further.

13 THE COURT: Cross?

14 CROSS EXAMINATION - IN CAMERA

15 INVESTIGATOR ALLEN CANTEY BY MR. BROWN:

16 Q. How long were you there that day?

17 A. Probably about fifteen, twenty minutes.

18 Q. Not a very long interview?

19 A. Not very long. No, sir.

20 Q. Okay. Was Mr. Patel like he described in pain,
21 disoriented somewhat?

22 A. He was in pain.

23 Q. You don't know if he was disoriented or not?

24 A. He was not disoriented.

25 Q. Did you ask for a physical description of the alleged

DETECTIVE ALLEN CANTEY: BY MR. BROWN - IN CAMERA

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1 defendants?

2 A. I don't recall I did.

3 Q. Did anybody give you information, how tall, how much
4 they weighed, what color eyes they were, whether they wore
5 glasses or not? Was there any of that asked?

6 A. Not that day no, sir.

7 Q. Okay. So you just went over there with six pictures
8 and said pick one out?

9 A. I asked him would he pick out the person; if this was
10 anyone in there from the one from the shooting that night.

11 Q. Okay. Is it normal procedure that Rock Hill Police
12 Department doing an investigation of this nature, that you
13 ask for a physical description of the person?

14 A. Yes, sir. Usually on the scene that night.

15 Q. Huh?

16 A. Usually on the scene that night.

17 Q. Okay. Of course obviously you couldn't talk to him
18 that night, EMS was there?

19 A. Oh I tried.

20 Q. I understand that but he had been shot, you wanted to
21 get him to the hospital as soon as possible I would assume.

22 A. Yes, sir.

23 Q. Okay. So you never asked for a physical description
24 other than showing him these six pictures. Correct?

25 A. The purpose of me going over there was to show him the

1 lineup.

2 Q. Okay. But you never asked for a physical description
3 is my question.

4 A. No, sir, I did not.

5 Q. To your knowledge did anyone?

6 A. Not to my knowledge.

7 MR. BROWN: I don't have any further questions, Your
8 Honor.

9 SOLICITOR SPRINGS: Nothing further. Thank you.

10 THE COURT: You can step down.

11 INVESTIGATOR CANTEY: Thank you, sir.

12 (WITNESS LEAVING WITNESS STAND.)

13 SOLICITOR SPRINGS: Would you ask Detective Tosha
14 Smith to come in.

15 MR. BROWN: What's this on?

16 SOLICITOR SPRINGS: It's on this issue.

17 MR. BROWN: Okay.

18 SOLICITOR SPRINGS: And this would also take care of
19 one of my two Jackson v. Denno.

20 Detective Smith, step up and be sworn and then take
21 the stand please.

22 MADAME CLERK: Raise your right hand, place your left
23 hand on the Bible.

24 (WHEREUPON: TASHA SMITH, BEING
25 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

INVESTIGATOR TASHA SMITH: BY SOLICITOR SPRINGS - IN CAMERA

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DIRECT EXAMINATION - IN CAMERA

INVESTIGATOR TOSHA SMITH BY SOLICITOR SPRINGS:

Q. Tell us your name, ma'am.

A. Detective Tosha Smith.

Q. And you're a detective with the Rock Hill Police Department?

A. Yes.

Q. Did you have an interview on August the 2nd, 2012, with Kairon Maldonado when he was under arrest and in custody?

A. Yes, I did.

Q. And whereabouts did you have that interview?

A. At the Rock Hill Police Department.

Q. All right. And is that a copy of your notes of the interview?

A. Yes it is.

Q. Now, it was August the 2nd 2012. About what time of day or night was it you interviewed him?

A. The time indicated on *Miranda* is 9:25 p.m.

Q. Okay. 9:25 at night. He was in custody. Do you remember if he was handcuffed?

A. He was initially and I took the handcuffs off when I started the interview.

Q. And where did you talk to him? What location? What kind of a room was it?

1 A. It was in an interview room at the police department.

2 Q. Was he given a comfortable chair?

3 A. He was.

4 Q. And was anybody pointing any guns at him?

5 A. No.

6 Q. And the handcuffs were off before you really started
7 interacting?

8 A. Correct.

9 Q. Was anybody threatening him in any way, making a fist
10 at him or anything?

11 A. No.

12 Q. Was anybody making any promises to him?

13 A. No.

14 Q. Did he seem to be healthy and not hurt and fine
15 physically?

16 A. Yes.

17 Q. And did he seem reasonably intelligent?

18 A. Yes.

19 Q. Did he seem to speak the English language just fine?

20 A. Yes.

21 Q. Did he complain of any physical ailments? Want a
22 doctor for any reason?

23 A. No.

24 Q. And did you read him his *Miranda* rights?

25 A. I did.

INVESTIGATOR TASHA SMITH: BY SOLICITOR SPRINGS - IN CAMERA

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1 Q. Tell us the rights exactly word for word as you gave,
2 them to Kairon Maldonado.

3 A. "Before we ask you any questions you must understand
4 your rights. You have the right to remain silent.
5 Anything you say can be used against you in court. You
6 have the right to talk to an attorney for advise before we
7 ask you any questions and to have him or her present with
8 you during questioning. You have this right to the advise
9 and presence of an attorney even if you cannot afford to
10 hire one. We have no way of appointing you an attorney but
11 one will be appointed by the court if you wish: If you
12 wish, you may answer questions without the presence of an
13 attorney and you may stop answering at any time you desire
14 until an attorney is present."

15 That's the first portion of it and then I have a
16 second portion that I read. Would you like for me to read
17 that also?

18 Q. Let me ask you about that first part. You read it to
19 him just as you read it to us?

20 A. Correct.

21 Q. Did he seem to be listening to you?

22 A. He did.

23 Q. And did he indicate to you that he understood those
24 rights?

25 A. Yes.

1 Q. And did you ask him to sign anything?

2 A. Yes I did.

3 Q. So he signed indicating he understood his rights?

4 A. Yes.

5 Q. And was he willing to talk with you?

6 A. Yes he was.

7 SOLICITOR SPRINGS: And would you mark this as a
8 State's Exhibit for ID only.

9 (WHEREUPON: STATE'S EXHIBIT FOUR PREMARKED FOR
10 IDENTIFICATION.)

11 MADAME COURT REPORTER: State's Four, Mr. Springs.

12 SOLICITOR SPRINGS: Very good.

13 And I'm going to hand this up to the Court.

14 (DOCUMENT RECEIVED UP BY THE COURT.)

15 Q. You've got a copy there of his statement?

16 A. I do.

17 Q. Okay. So you read him his rights. He said he
18 understood his rights. He indicated he was willing to chat
19 with you and talk to you?

20 A. Yes he did.

21 Q. And did you ask him some things about the robbery and
22 shooting at the Discount Beverage on July 25th last year?

23 A. I did.

24 Q. And what I want to get at is, did you ask him if he
25 knew Mr. Patel and how he knew him?

INVESTIGATOR TASHA SMITH: BY SOLICITOR SPRINGS - IN CAMERA

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1 A. Yes, I did ask him.

2 Q. What did he say about that?

3 A. He said that he knows the clerk at Cherry Road
4 Discount Food and Beverage and he said he knows him well
5 because he shops there a lot and he lives in the
6 neighborhood.

7 Q. Okay. All right. Did you make him any promises to
8 get him to speak to you?

9 A. I did not.

10 Q. Did he seem to be speaking to you freely and
11 voluntarily and on his own?

12 A. Yes.

13 Q. And you didn't promise him anything?

14 A. No, sir.

15 Q. Thank you.

16 SOLICITOR SPRINGS: Just answer any questions the
17 defense attorney has.

18 MR. BROWN: No questions.

19 THE COURT: All right. You can step down. Appreciate
20 your time. Thank you.

21 INVESTIGATOR SMITH: Thank you, Your Honor.

22 (WITNESS LEAVING WITNESS STAND.)

23 SOLICITOR SPRINGS: That would be our showing on this
24 identification issue.

25 MR. BROWN: Mr. Brown, you want a couple a minutes to

1 make a statement or?

2 MR. BROWN: Very briefly, Your Honor.

3 You have some more Jackson v. Denno stuff?

4 SOLICITOR SPRINGS: I do have another witness.

5 THE COURT: This is just on the ID.

6 MR. BROWN: Yes, sir, just on the ID.

7 I beg the Court's indulgence one second.

8 (PAUSE.)

9 MR. BROWN: Your Honor, I move to suppress Mr. Patel's
10 identification from taking into fact the totality of the
11 circumstances as required by the United States Supreme
12 Court in *Neil v. Biggers* which was adopted by this state.
13 The five facts to be considered: One, the opportunity of
14 the witness to view the criminal the time of the crime.
15 That is a max of seven seconds, Your Honor, in a situation
16 where stress and violence has presented itself. A gun was
17 presented by somebody at the door. He's wearing a hood.

18 THE COURT: He says he didn't see the gun.

19 MR. BROWN: Yes, sir. I understand that but I think
20 it's clear from the video is he turns and looks at him and
21 I don't know how he missed it. His head clearly turns when
22 that gun comes out.

23 Two: The witness's degree of attention, seven seconds
24 in most situations, Your Honor.

25 Three: The accuracy of the witness described,

1 description of the criminal. The first time its mentioned
2 is after it comes out in the newspaper in any statement
3 I've been given, Your Honor. And I would assert that's
4 enhancement to his memory at this point in time, Your
5 Honor. Also, all the other factors that go into it, the
6 stress, the lack of clothing, the difference in weight and
7 time. The defendant is 5 foot 10 and not 5 foot 5; I will
8 submit to you it's led to a misidentification.

9 And the approbative value under the rules of evidence
10 in this case the prejudice is far exceeded by any
11 approbative value to this. The film speaks for itself and
12 the jury can decide from that and I would submit the
13 appropriate value is - I mean the prejudicial value is far
14 outweighed by the approbative value. And I also submit
15 it's not the best evidence rule. We have video on it.

16 THE COURT: I'm not sure that - Well let me just start
17 by saying, first, I find that the lineup that was shown to
18 Mr. Patel, looks like on 7-31, is not unduly suggestive.
19 In fact, I find it is not suggestive at all let alone
20 unduly. All these young men or African Americans, short
21 hair, they appear to be very, very similar and I find that
22 the lineup that he was shown was not suggestive at all let
23 alone unduly suggestive, and all of my findings are based
24 on what I consider or what are based on clear and
25 convincing evidence.

1 I find that the in court identification by Mr. Patel
2 of Mr. Maldonado is admissible. It is not the results of
3 the out of court identification procedure. I do not find
4 the out of court identification procedure created a very
5 substantial or any likelihood of irreparable
6 misidentification. I find under the totality of the
7 circumstances based on lighting, proximity of the witness
8 to the defendant; the witness's opportunity to view the
9 perpetrator, here the defendant at the time of the crime.
10 His degree of attention, he was like I said the proximity;
11 they were almost face to face. This was someone he already
12 knew.

13 I find that by - Again I find that by clear and
14 convincing evidence that the witness's identification was
15 reliable and will be allowed to testify before the jury.
16 And that's my finding as to the in court identification of
17 Mr. Maldonado by the victim. All right.

18 SOLICITOR SPRINGS: Thank you, Your Honor. Could I
19 move on to my other Jackson v. Denno?

20 THE COURT: Yes, sir.

21 SOLICITOR SPRINGS: Ask Detective Cedric Stokes to come
22 in please, sir.

23 Detective Stokes, please be sworn in and take the
24 stand.

25 (WHEREUPON: CEDRIC STOKES, BEING

INVESTIGATOR CEDRIC STOKES: BY SOLICITOR SPRINGS - IN CAMERA

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FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

DIRECT EXAMINATION - IN CAMERA

CEDRIC STOKES BY SOLICITOR SPRINGS:

Q. Tell us your name, Detective.

A. Cedric Stokes.

Q. And you're a Rock Hill City police officer detective?

A. Yes, sir, I am.

Q. Did you Rock Hill police officers have some suspicions on the night of or early morning of July 25th going into July 26th, 2012, that Kairon Maldonado may know something about an attempted armed robbery and shooting at the Discount Beverage on Cherry Road?

A. Yes, sir, we did.

Q. And so did you interview him on July 26th?

A. Yes, sir, I did.

Q. Had he been arrested when you interviewed him?

A. No, sir, he wasn't.

Q. In fact after the interview did you turn him loose?

A. Yes, sir, I did.

Q. But then he got arrested on when, August 2nd?

A. Yes, sir. I believe it was the 2nd.

Q. All right. Where did you interview him?

A. At the Rock Hill Police Department in our larger interview room.

Q. Okay. So he wasn't under arrest. Was he handcuffed

1 anyway?

2 A. No, sir, he was not.

3 (WHEREUPON: STATE'S EXHIBIT NUMBER FIVE, PREMARKED
4 FOR IDENTIFICATION.)

5 Q. Okay. This paper which has been marked as State's
6 Exhibit Five for identification, I'm going to lay it there
7 and ask you some questions about it.

8 Even though he wasn't under arrest, did you read Mr.
9 Maldonado's his rights according to *Miranda*?

10 A. Yes, sir, I did.

11 Q. Now, was he in good shape physically? Did he look
12 alright or was he complaining about pain or injury of some
13 kind?

14 A. No, sir, he wasn't. He looked perfectly fine.

15 Q. Okay. And did he seem to be reasonably intelligent?

16 A. Yes, sir, he was.

17 Q. Did he seem to speak the English language just fine?

18 A. Yes, sir, he did.

19 Q. Had anybody been mean to him or threatened him or
20 roughed him up in any way that you know of?

21 A. No, sir. No, sir, we didn't.

22 Q. Was anybody threatening him?

23 A. No, sir.

24 Q. Did anybody have a gun pulled out?

25 A. No, sir.

INVESTIGATOR CEDRIC STOKES: BY SOLICITOR SPRINGS - IN CAMERA

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1 Q. Whereabouts in the police station did you interview
2 him?

3 A. This side of our criminal investigations division in
4 the interview room.

5 Q. Did you give him a nice comfortable chair or did you
6 make him stand up?

7 A. Oh, he was sitting in a chair.

8 Q. Okay. And did he seem to be sober?

9 A. I'm sorry, sir?

10 Q. Did he seem to be sober and in his right mind?

11 A. Yes, sir.

12 Q. Okay. Tell us the *Miranda* rights exactly as you gave
13 them to Kairon Maldonado on July 26, 2012.

14 A. Yes, sir. This states "before we asked you any
15 questions you must understand your rights. You have the
16 right to remain silent. Anything you say can be used
17 against you in court. You have the right to talk to a
18 lawyer for advice before we ask you any questions and have
19 him with you during questioning. You have this right to
20 the advise and the presence of a lawyer even if you cannot
21 afford to hire one. We have no way of appointing you a
22 lawyer but one will be appointed by the court for you if
23 you wish. If you wish, you may answer questions without
24 the presence of a lawyer and you may stop answering at any
25 time you desire until a lawyer is present."

1 Q. Okay. Now did he indicate that he understood those
2 rights?

3 A. Yes, sir, he did.

4 Q. Did he sign his signature to the effect that he
5 understood those rights?

6 A. Yes, sir, he did.

7 Q. And was he willing at that point to have a
8 conversation with you?

9 A. Yes, sir. Yes, sir, he did.

10 Q. Did you then ask him to tell you about what he
11 knew about the shooting and an attempted robbery at the
12 Discount Beverage just hours before?

13 A. Yes, sir, I did.

14 Q. Tell us what he said.

15 A. Okay. Whenever we take a statement, we take it
16 verbatim on what exactly they say to us. At the time I
17 took the statement, it was Detective Smith and I inside of
18 the interview room and the statement read was,

19 "Tonight I was with my home boys Marcus and David at
20 Innsbrook in the play ground."

21 Q. Let me stop you. When you say Innsbrook, is that the
22 Innsbrook Common Apartments that's about a half mile from
23 Discount Beverage?

24 A. Yes, sir. It's about a half mile.

25 Q. He made that clear that's the apartments?

INVESTIGATOR CEDRIC STOKES: BY SOLICITOR SPRINGS - IN CAMERA

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1 A. Yes, sir. That's where he was located.

2 Q. I'm sorry I interrupted you.

3 A. No problem. "In the playground and they were smoking
4 a blunt. I think Marcus is sixteen and David is either
5 seventeen or eighteen and their house is somewhere in
6 Sunset Park." He stated "I heard two gun shots but thought
7 it was a firecracker. Me and my home boys was like, what
8 the hell, and they went back to smoking their blunt. Then
9 somebody called Marcus and said that the police were all at
10 Boyd Hill." Then he was like --

11 q. You can say it. Go ahead.

12 Q. "Oh shit, and he said alright and he called his mom
13 and she came and picked us up. They dropped me off and
14 kept going. That's when everybody was like, you know, what
15 happened. I heard a whole bunch of shit like there was a
16 shooting. Then I went to Denise's house and asked to use
17 the phone and called my momma to see what she was doing.

18 She said that they were in York at the new house.

19 Then I hung up with her and the neighbor called my mom to
20 let her know what was going on. I guess she was asking my
21 mom did I know something about it. Then when I called my
22 momma back, she was like, what did you do. She was like,
23 why are the police in Boyd Hill and stuff like that.

24 Then she was like, tell the truth. What happened?

25 I was like, I don't know, and I hung up with her.

1 Then I went back to my neighbor's house and I then sat
2 there and talked to her for a little bit. Then I called my
3 momma back and she called - and she said that the police
4 called her and said that they needed me for questioning.
5 Then as I was on the phone with her another number beeped
6 in and she answered it. She said that it was the police
7 again and they said that they were coming with dogs to find
8 me. Then I just walked over to the house and I went in and
9 gave my momma a hug and the police came."

10 Q. Okay. Now he make this statement freely and
11 voluntarily of his own, on his own?

12 A. Yes, sir, he did.

13 Q. Did anybody make any threats to get him to talk?

14 A. No, sir.

15 Q. Did you or anybody else promise him anything to get
16 him to talk?

17 A. No, sir.

18 Q. Now, a little bit of a side note. Marcus and David,
19 did you ever get a last name for Marcus and David?

20 A. No, sir.

21 Q. Did he ever give you an address for Marcus and David?

22 A. No, sir, he didn't.

23 Q. Did he ever give you a phone number for Marcus and
24 David?

25 A. No, sir.

INVESTIGATOR CEDRIC STOKES: BY SOLICITOR SPRINGS - IN CAMERA

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1 Q. Did you have any way of going out and finding Marcus
2 and David?

3 A. No, sir.

4 Q. All right. Thank you very much.

5 SOLICITOR SPRINGS: That's all, Detective.

6 MR. BROWN: I have no questions for this witness.

7 THE COURT: You can step down. Thank you.

8 (WITNESS LEAVING WITNESS STAND.)

9 THE COURT: Anything else from the State?

10 SOLICITOR SPRINGS: No, nothing.

11 MR. BROWN: I would have one objection, Your Honor.

12 Not on Jackson v. Denno though. I would just ask that this
13 July 26 statement, the one this officer just made reference
14 to, that the reference to smoking a blunt or anything
15 concerning drugs be left out as highly prejudicial.

16 THE COURT: As to - of course I haven't ruled but if
17 it's admissible that you redact the part about smoking a
18 blunt, although it wasn't him smoking the blunt, it was
19 someone else.

20 SOLICITOR SPRINGS: If I get to the point where I want
21 to introduce the statement, I will - I won't get into it
22 without stopping and having a little word of pray with
23 everybody.

24 THE COURT: Well, I find that both statements were
25 freely voluntarily knowingly and intelligently given by Mr.

1 Maldonado and after having been warned of his Fifth and
2 Sixth amendment rights as required by *Miranda*. I find this
3 by a preponderance of the evidence; of course the jury, if
4 these statements come in during the regular course of the
5 trial, will have the right to review the voluntariness of
6 the statements and they will of course have the higher
7 burden, or the State would have the higher burden to
8 convince the jury beyond a reasonable doubt.

9 I find that both times the law enforcement read to Mr.
10 Maldonado his Fifth and Sixth amendment rights that require
11 by *Miranda*, that he was told that he had the right to
12 remain silent by both officers and that if he made any
13 statements it could be used against him, this was told by
14 both officers. Both officers in giving the *Miranda* told
15 Mr. Maldonado that he could talk to an attorney before and
16 during any interrogation; that he could answer questions
17 and stop at any time and that he could have appointed
18 attorney if he so desired and could not afford one.

19 I find that these statements, both, were given freely
20 voluntarily and intelligently. There is no testimony as to
21 either that there was anything wrong physically or mentally
22 with Mr. Maldonado at the time. That Mr. Maldonado was
23 conversing in the English language, no threats, he was not
24 cuffed. Originally he was cuffed, Mr. Smith, but was
25 uncuffed during the interview, not cuffed at all by Mr.

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1 Stokes, Officer Stokes. That he was lucid and that he
2 freely and voluntarily knowingly and intelligently waived
3 his rights and gave these statements understanding Miranda
4 rights and he did freely voluntarily knowingly and
5 intelligently and they will be admitted into evidence.

6 Anything else before the jury comes in?

7 SOLICITOR SPRINGS: I have two quick motions. One is
8 that pursuant to Common Law the cases of *State versus*
9 *Monzel*, 563 S.E.2d 315, and *State versus Whitner*, 670
10 S.E.2d 655, that the defense not in opening or closing
11 statements, or questioning any of the State's witnesses,
12 elicit explicitly the fact of what sentence Mr. Maldonado
13 is facing because it's prejudicial to the State and
14 irrelevant to guilty or not guilty.

15 The co-defendant who is gonna testify, Your Honor, has
16 the exact same charge. I realize Mr. Brown can go all
17 through what he is facing and what his charges carry to
18 explore bias and impeach him. I just move that Mr. Brown
19 not explicitly say to anybody Maldonado is facing X number
20 of years or ask any witness isn't it true that he's facing
21 this many years for this crime and this many years for this
22 crime.

23 THE COURT: Mr. Brown, do you have any comments on
24 that?

25 MR. BROWN: No problem, Your Honor.

1 THE COURT: Okay. What's the second?

2 SOLICITOR SPRINGS: My other is, I would move to
3 preclude any self serving hearsay from Mr. Maldonado. He
4 has no hearsay exception for himself. If he wants to get
5 in his own words, he needs to testify like anybody else.

6 THE COURT: All right. Anything else?

7 SOLICITOR SPRINGS: Nothing from the State.

8 MR. BROWN: Just an administrative thing. How long do
9 you intend to --

10 THE COURT: Well, I've got Drug Court tonight so I
11 have to -- it's 4:30 now. What I would like to do is bring
12 the jury in and give them my instructions and either or
13 both of you would like to start with opening statements
14 tonight or let me give my opening parts and start back at
15 9:30 in the morning?

16 SOLICITOR SPRINGS: I would like to do -

17 THE COURT: Today?

18 SOLICITOR SPRINGS: Today yes, sir.

19 THE COURT: Okay.

20 MR. BROWN: I don't care.

21 THE COURT: Okay. Just remember my, let's take a real
22 short five minute break. My spill will take about ten
23 minutes and then that will leave about fifteen or twenty
24 for each of you because I do need to be through around
25 5:30. Drug Court isn't until six; I have to meet the

1 staff at five. We'll take a five minute break.

2 (COURT IN RECESS AT 04:30 P.M..)

3 (COURT BACK IN SESSION AT 04:38 P.M..)

4 THE COURT: Get Mr. Maldonado back in.

5 (DEFENDANT, KAIRON MALDONADO, BLACK MALE, REENTERING
6 COURTROOM.)

7 THE COURT: Is the State ready?

8 SOLICITOR SPRINGS: Yes, sir.

9 THE COURT: Is the Defense ready?

10 MR. BROWN: Yes, sir. I won't be more than ten
11 minutes max.

12 THE COURT: Bring in the jury.

13 (JURY REENTERS COURTROOM AT 04:41 P.M..)

14 THE COURT: Now that you all are comfortably seated
15 I'm going to ask you to stand and the Clerk will administer
16 the oath.

17 MADAME CLERK: Please raise your right hand.

18 (WHEREUPON: PETIT JURY SWORN
19 AT 04:42 P.M..)

20 MADAME CLERK: Thank you.

21 THE COURT: Be seated.

22 I'm going to chat with you just a minute and then I'm
23 going to allow the attorneys to make opening statements.
24 They don't have to but they have the right to become before
25 you and make what are called opening statements. That is,

1 they will give you an outline or a blue print of the trial.
2 They will not be trying to convince you of anything and
3 they are not witnesses so what they say is not testimony.
4 At the end of the trial, they will have the right to come
5 before you and argue and try to convince you as to what
6 your verdict should be based on the evidence that has been
7 presented and the law. That's not what they are doing at
8 this time.

9 Mr. Maldonado, I told you his charges, he to those
10 charges has entered pleas of not guilty and this places on
11 the State the burden to prove his guilt beyond a reasonable
12 doubt before you as the trial jury in this case could
13 convict him of any of these offenses.

14 I have several primary jobs in this case. I am the
15 logistics person. Make sure we take breaks, that people
16 are moving around the courtroom in the right way and that
17 you can see and hear. I also rule on questions of
18 evidence. If there is a question of whether or not certain
19 testimony or exhibits should be allowed to be brought into
20 the case and presented to you, it is up to me to decide,
21 based on our rules and our laws, whether or not that
22 evidence can be presented to you.

23 My third job is that I am the sole judge of the law
24 in this case. Your oath requires you to take, accept and
25 apply the law as I charge it. This is true even if you

1 think I charge the law in error, or even if you think the
2 law should be different. You are not to infer from
3 anything I say or do as being an opinion of my on the
4 facts. Our law does not allow a trial judge to formulate
5 or express to a jury any opinion on the facts. You, the
6 trial jury in this case, are the sole judges of the facts
7 in this case. It is solely up to you to examine the
8 evidence, give to the evidence the effect, the value, the
9 weight, and the truth you believe that evidence should
10 have.

11 Use your common sense, your sense of logic, your sense
12 of reason. Use your experiences in life as you analyze the
13 evidence. As judges of the facts you must necessarily
14 judge the credibility, the believability, of the witnesses
15 who testify. Use those things you find in your day to day
16 as being indicative of truthfulness in an individual. And
17 you can look at such things as a witness' demeanor, how
18 they act on the stand, are their responses to questions or
19 testimony consistent or inconsistent, given hesitantly or
20 directly. You can consider whether a witness has any
21 reason to help or hurt one side of the other, that is any
22 bias or prejudice. And you can examine the opportunity a
23 witness had to actually know those things about which they
24 testified. All these things you consider, determine the
25 true facts, apply the law to those facts, and your verdict

1 will speak the truth.

2 If you can't see, you can't hear; let me know. Cup
3 your ear or give me a voice raising gesture or a nudging
4 gesture if something is in your way. Please don't take
5 notes. You don't need to. If you need a break, let me
6 know. We try to go about an hour and a half. That seems
7 to have a good comfort level for most people but if at any
8 time any of you need a break, simply raise your right hand
9 and with no questions asked, we'll take a break. And I
10 extend that to counsel and Mr. Maldonado. We want to move
11 the case along but we're not in such a hurry that we won't
12 take a break if someone needs it.

13 We usually do try to stop around 5:30 in the afternoon
14 at the latest, depending on where we are with the witness,
15 so you can use that for your planning and we usually start
16 at 9:30, sometimes ten. In addition to trying cases, I am
17 the administrative judge and so I have certain things that
18 I have to do in the morning and I usually try to get in
19 early and get those done so we can start at 9:30 but
20 sometimes they run a little longer than I plan.

21 That's sort of the schedule we will have, 9:30 or ten.
22 An hour, hour and fifteen minutes for lunch, and try to go
23 no later than 5:30 depending on again where witnesses'
24 and their testimony are.

25 Counsel.

OPENING STATEMENT: BY SOLICITOR SPRINGS

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1 SOLICITOR SPRINGS: Thank you, Judge Hayes, may it
2 please the court.

3 Ladies and gentlemen of the jury, Mr. Foreman, my name
4 is Springs, I'm a prosecutor, I represent the entire York
5 County community. This case happened last July, July 2012.

6 This man, Kairon Maldonado, and his buddy, Kadeem
7 Sanders, who I'll call Sanders from now on, they decided
8 they were going to rob at gunpoint a convenient store.
9 They planned and decided and when you plan and decide in
10 advance of a crime, that's called a conspiracy. The law
11 has a fancy word for everything. When you get together
12 with your buddy and you plan to do something, you have
13 conspired and they conspired to commit an armed robbery
14 with a gun of the Cherry Road Discount Food and Beverage.
15 That's at the corner of South Cherry Road and West Main
16 Street. It's next to a little sort of a seed and feed
17 place over on the diagonal corner of the gas place.

18 The Cherry Road Discount Food and Beverage is owned by
19 that man right there, Mr. Patel.

20 (SOLICITOR INDICATED TO MR. PATEL.)

21 MR. SPRING: So Mr. Maldonado and his buddy Sanders
22 decided they were going to rob it. And the plan was to run
23 into the store and Sanders to wait by the door, by the
24 counter, by the cash register, with his rifle and cover the
25 clerk, Mr. Patel, while Maldonado ran around the counter

1 and came in around behind the counter through the little
2 swinging door that the clerk comes through to come in and
3 get behind the cash register. So Sanders was going to be
4 the gun man who covered the clerk; Maldonado was going to
5 be the money man who ran around the counter to get to the
6 cash register to get to the money.

7 The store closed, was going to close that night, it
8 was a Wednesday night, July 25th, 2012; it was going to
9 close at eleven. And just a few minutes before eleven Mr.
10 Patel was sitting in the store. A customer had just left.
11 He's thinking about closing up. He's sitting on his stool
12 the way you've seen many, many clerks in a convenience
13 store sitting behind the counter; he's thinking about
14 closing up. And these two young guys rush in. Mr. Patel
15 didn't think anything about it. It's a neighborhood store.
16 It's right there on the corner next to the Boyd Hill
17 neighborhood. Those people can use that store all the
18 time. He has had the store for sixteen years. He's
19 watched little kids coming in and buy up their stuff in the
20 store and watched them grow up.

21 And he had seen this guy, Maldonado, come in the
22 store. Seen him come in the store before to buy things.
23 So it's a little bit before eleven and Mr. Patel is sitting
24 on his stool out front. His cousin, Manish Patel, is in
25 the back; he's washing up. There's sinks in the back; he's

OPENING STATEMENT: BY SOLICITOR SPRINGS

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1 washing out his scrub brush. The Patel's are from India.
2 And a little bit before eleven according to the plan
3 Sanders and Maldonado they run in the door. Sanders stops
4 next to the door. He's got his rifle like this. Maldonado
5 comes around the corner. Mr. Patel, that's who he was
6 watching because he come around the corner, come around
7 over to his little swinging door and Mr. Patel didn't
8 notice the rifle.

9 He had all the displays up there with the candy and
10 the gum and the lottery tickets and he couldn't see the
11 rifle. He knew somebody was over there but he's concerned
12 with Maldonado because Maldonado came around and he's got a
13 camouflage type jacket and he has got the hood up. It's
14 July. Mr. Patel's wondering what, are they clowning
15 around; what's going on? And Maldonado is trying to get
16 through the little swinging door and Mr. Patel is going no,
17 no, no, no, no. Trying to get him to back off, telling
18 him, get back, get back, get back and he is paying
19 attention to the money man. Mr. Patel doesn't even know
20 there is somebody pointing a gun at him. And Maldonado
21 comes back, he's trying to get in and Maldonado goes, "give
22 me the money". That's when Mr. Patel knew this isn't
23 funny. This isn't kidding around. And there was an alarm
24 switch over behind the counter and Mr. Patel went from
25 trying to keep Maldonado out to turn and hit the switch.

1 And when he turned and hit the switch, Sanders pulled the
2 trigger three times. Once wasn't enough. Not when you
3 want to kill somebody you pull the trigger three times.
4 Somebody was looking after Mr. Patel that night when
5 Sanders pulled the trigger of the rifle. The cash register
6 was in front of him. He pulled the trigger three times.
7 Hit Mr. Patel in the right cheek. A bullet went through
8 his cheek and then into his shoulder. Hit Mr. Patel on the
9 left shoulder and the middle bullet stopped in the cash
10 register. Hit something hard in the cash register and it
11 stopped, the middle bullet.

12 So Mr. Patel goes down on the ground. He has been
13 shot and Maldonado and Sanders run. They run out. Sanders
14 has got a rifle. You will see it. It is a rifle and there
15 are two Rock Hill patrolmen sitting in a patrol car at the
16 light looking at the store and they see two guys come out
17 of the store at eleven o'clock and one's got a rifle. And
18 you know what, being trained law enforcement officers, they
19 thought something was mighty suspicious about that. Two
20 guys running out of a convenience store at eleven o'clock
21 and one's got a rifle. And then they radioed into
22 headquarters and said we think we may have a robbery going
23 on here; we're going to follow these guys and try to catch
24 them. so Maldonado and Sanders went in behind the
25 Discount Beverage. The police car comes up behind them.

OPENING STATEMENT: BY SOLICITOR SPRINGS

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1 They go into the neighborhood, the Boyd Hill neighborhood,
2 back there. The police then whip out, come back in
3 another street. They've separated but they see Sanders.
4 They see Sanders running. And the police catch Sanders and
5 they arrest him.

6 A canine unit comes out and starts tracking and K 9
7 dog found the rifle and he found Sander's shirt which he
8 had ripped off and thrown down. He found a red bandana
9 that he has got on. Then later the police are
10 investigating that night, Mr. Patel hasn't died and he's
11 been air lifted to Carolinas Medical Center, and the police
12 are trying to find out who knows something and they are
13 investigating and investigating and they're talking to
14 people and through their investigation they want to talk to
15 Mr. Maldonado. And they interviewed him that night and
16 they let him go. They didn't have enough evidence at that
17 time. They let him go that night.

18 Mr. Patel lived and he lived to tell his story and he
19 lived to tell the police, I don't know about the guy that
20 shot me, I didn't see him, but the guy that was trying -
21 the money man, the guy that was trying to come behind the
22 counter, the guy that was telling me, "give me the money",
23 I know him. He comes in the store. I've seen him come in
24 the store a lot. He's a customer. I recognized him. And
25 the person who has recognized is Kairon Maldonado.

1 This is an accessory case. These two guys planned
2 this and they're accessories to each other. We use the
3 term in South Carolina more than accessory. We call it
4 aiding and abetting. One is the money man and one is the
5 gunman. It's accomplice liability. You are accomplices.
6 He didn't pull the trigger but he's charged with attempted
7 murder. An attempted armed robbery and a conspiracy.

8 The easiest way to understand accomplice liability is
9 to think about a bank robbery. Everybody gets that. A car
10 pulls out in front of the bank. A guy stays behind the
11 wheel with the motor running waiting. And the buddy with
12 the pistol runs into the bank to rob a teller and he ends
13 up shooting and wounding the guard and runs out. He didn't
14 get any money but he shot a guard. Jumps in the car with
15 the wheel man and drives off. The wheel man doesn't get
16 charged with sitting in a car. He gets charged with the
17 attempted bank robbery and he gets charged with the
18 attempted murder that his buddy did. He is an accomplice.
19 They are accomplices to each other.

20 Everybody has their role to play but they are all
21 involved; again, in this case the attempted armed robbery
22 and attempted murder at the Cherry Road Discount.

23 At the end of this case you should not have any
24 problem deliberating, weighing the evidence, judging the
25 facts. That's what you are. You are judges of the facts.

OPENING STATEMENT: BY SOLICITOR SPRINGS
BY MR. BROWN

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1 There are two kinds of judges in this courtroom. You are
2 the judges of the facts, you judge people's behavior; what
3 did they do, what did they not do. You don't judge any
4 soles, you don't judge whether people do bad. You judge
5 facts.

6 And this is the judge of the law. You're not going to
7 have any trouble convicting Kairon Maldonado of attempted
8 murder and attempted armed robbery and conspiracy at the
9 end of this trial. I will ask this. If I do anything in
10 this trial to offend you with anything I say or do, or if
11 you don't like gray hair or if you do not like bow ties,
12 don't hold it against Mr. Patel. This is his - this is his
13 only chance at justice. This week is his.

14 Thank you.

15 THE COURT: Mr. Brown.

16 MR. BROWN: Mr. Foreman, ladies and gentleman of the
17 jury, we all know by now my name is Michael Brown. I am
18 court appointed to represent Mr. Maldonado over there.
19 What that means, is he is indigent, doesn't have enough
20 money and his family doesn't have enough money to hire a
21 lawyer and I'm on a list, in York County and I get court
22 appointed to these cases as much as seven or eight times a
23 year. Before I go into my opening statement, I want to
24 thank you for being on the jury duty.

25 Thirty some odd years ago when I was in law school

1 I read a treatise by Benjamin Franklin. And he wrote that
2 jury duty is the most important civic duty you can do for
3 your country outside of military service during time of
4 warfare. And he went on to elaborate and his core thesis
5 was simply that without juries, we don't have justice,
6 because in this trial as in any other trial you may or may
7 not have done jury duty in the past, there's four major
8 participants. Obviously my job is to defend Mr. Maldonado
9 to the best of my ability. Mr. Springs with the theatrics,
10 his job is to prosecute to the best of his ability. Judge
11 Hayes, he is the sole judge of the law. You may disagree
12 with what he tells you, but part of the oath you just took
13 is to uphold the law as he gives it to you.

14 And that brings the last major participant in this
15 trial, is you fourteen collectively. You as he pointed out
16 are the sole judges of the facts. It's almost like a
17 mathematical equation. You fourteen decide what the facts
18 are, apply it to the law and reach a verdict.

19 Now, I'm sure some of you all through mass media and
20 so forth have heard about various things concerning the law
21 but basically in this country it's really simple. We have
22 two forms of law and they are really quite simple.

23 One is civil and one is criminal. And not to belabor
24 the point but civil law occurs when someone sues someone
25 for economic gain be it a corporation, a person in a car

OPENING STATEMENT: BY MR. BROWN

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1 wreck, or whatever. In all civil cases both sides have to
2 present evidence and the jury in all civil cases decides by
3 what we call a preponderance of the evidence. And to break
4 that down in layman's terms, if you believe one side fifty-
5 one percent versus forty-nine percent, you vote that way.

6 Criminal law is completely different. Criminal law
7 occurs when someone makes an allegation that gives rise to
8 what we call criminal liability. And to put it in the
9 context of this case, Mr. Springs and the Rock Hill Police
10 Department have made the accusations against Mr. Maldonado
11 and have charged him with conspiracy, attempted armed
12 robbery and attempted murder. We have some cardinal
13 principles in criminal law that are applicable whether it
14 be in this courtroom all the way up to the US Supreme
15 Court. And I want you to please listen close when I go
16 through these with you because it is very important that
17 you understand these concepts as we go through the course
18 of this trial together.

19 The first one was anyone charged with a crime is
20 presumed innocent. Right now Mr. Maldonado is innocent.
21 What I say is not evidence as the judge told you. What Mr.
22 Springs says is not evidence. And I'm not going to go into
23 the evidence because I don't know what it's going to be
24 yet. And for me to sit up here and comment on that would
25 be misappropriating what I think it may or may not be and

1 that's for you to decide. But the presumption of innocence
2 stays with Mr. Maldonado throughout the course of his trial
3 until certain things happen. And the certain thing that
4 must happen is the State must carry what I call the burden
5 of proof. Unlike a civil case where both sides have to
6 present testimony, in a criminal case the State is required
7 to bring all the evidence in. And they must bring evidence
8 in and convince you to a certain standard. And I'm sure
9 it's a standard all of you have heard at some point in time
10 in your life.

11 It's called proof beyond a reasonable doubt. It's not
12 prove to but it's proof beyond a reasonable doubt. What
13 does that mean? Our Supreme Court has a succinct
14 definition of what reasonable doubt is. A reasonable doubt
15 is a kind of doubt that would cause a reasonable person to
16 hesitate to act. It the evidence that leaves you firmly
17 convinced of someone's guilt. The only thing I'm asking
18 you is as we go through the course of this trial, you have
19 three indictments to deal with, as you place all the
20 evidence that you hear in the frame work of this one
21 question. Has the State convinced me beyond a reasonable
22 doubt; i.e., any doubt that would cause me to hesitate to
23 act. Because if you have a doubt that would cause you to
24 hesitate to think twice about conviction, you must return a
25 verdict of not guilty. Likewise, if the evidence is clear

OPENING STATEMENT: BY MR. BROWN

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1 cut to you, it leaves you firmly convinced you have no
2 doubt which would make you think twice, you must return a
3 verdict of guilty.

4 And the only thing I ask is, you place all the
5 evidence in frame work of this one question as to these
6 three indictments. Has the State brought to me believable,
7 credible evidence to convince me beyond any doubt that
8 would cause me to hesitate to vote for a conviction. And
9 as you go through the course of this trial, and we go
10 through it together and you listen to the evidence, the
11 only thing I ask is that you place it in the frame work of
12 that one question. And whether your verdict be guilty or
13 not guilty, I will submit you will discharge your duties
14 to this court. Thank you.

15 THE COURT: All right. Members of the jury panel,
16 we'll stop for the day and start back at 9:30. I do know I
17 have something at 9:15 but I anticipate that I'll be
18 through with that by 9:30. It may run a little longer than
19 that but it's a very short hearing, so please be back in
20 the jury room. The bailiff will tell you how to get in and
21 out of the courthouse while you are serving as a juror and
22 we'll see you back at 9:30 in the morning. Have a pleasant
23 evening.

24 (JURY EXITS COURTROOM AT 05:03 P.M..)

25 THE COURT: Anything from the State before we stop

1 for the day?

2 SOLICITOR SPRINGS: No, sir.

3 THE COURT: Defense?

4 MR. BROWN: No, sir.

5 THE COURT: We'll see you back at 9:30 in the morning.

6 (COURT IN RECESS AT 05:05 P.M..)

7 (COURT BACK IN SESSION TUESDAY, MARCH 19, 2013 AT
8 09:42 A.M..)

9 THE COURT: Good morning. Take your seats.

10 SOLICITOR SPRINGS: Judge Hayes, can I let the court
11 know that we have a high school group, the York Preparatory
12 Academy. This is the mock trial team that I helped coach
13 this past year and they did very well. There is a teacher
14 over there, Ray Cobb.

15 THE COURT: Good. We're glad to have you. I
16 participate an awful lot in mock trials. I've done the
17 high school, the middle school and just last week, last
18 weekend, last Saturday, I did the regional finals for
19 college. I had UNC, Georgia, Kennesaw State and Florida
20 State students all appear before me and do mock trials. I
21 admire those of you who chose to do that and I enjoy it
22 very much. I think it's a very rewarding experience for
23 young individuals to do. And it is one of the programs
24 that I support wholeheartedly.

25 Now, what we're trying today is a case where this

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1 Now, what we're trying today is a case where this
2 young man, Mr. Maldonado, who is represented by Mr. Brown,
3 is charged with being involved in an attempted robbery at a
4 convenience store during which the operator of the store,
5 the actual owner or co-owner of the store, was shot. He is
6 alive. He is seated a few seats in front of you; you'll
7 perhaps hear his testimony. But that's what this is, an
8 attempted murder, attempted armed robbery, and a conspiracy
9 charge. I don't know what --

10 Is there any particular time you all have to leave?

11 MR. COBB: About three o'clock.

12 THE COURT: By three? Okay. We got plenty of time.
13 I was gonna say I'd like to be able to answer questions at
14 some point so we'll have plenty of time.

15 All right. Let's bring in the jury.

16 SOLICITOR SPRINGS: Your Honor, while they're coming
17 let me put on the record that I gave to Attorney Brown
18 criminal record checks on all our non-police officer
19 witnesses.

20 THE COURT: Okay.

21 (JURY ENTERS COURTROOM AT 09:45 A.M..)

22 THE COURT: Good morning. Members of the jury panel,
23 yesterday there was a young lady who was - of course she's
24 an attorney, my law clerk Collie Price, was seated up here
25 with me and she would be with me today but she had a flat

DELVING PATEL: BY SOLICITOR SPRINGS

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1 tire. So the reason I'm telling you that is I don't think
2 it would be too distracting but she may come in at some
3 point. She told me she didn't know how to change the tire
4 so she has got somebody coming to change it. Maybe I ought
5 to teach her that.

6 All right, Mr. Springs.

7 SOLICITOR SPRINGS: Thank you, sir.

8 Our first witness today will be Delving Patel.

9 Mr. Patel, come over here, sir. Come over here and
10 either be sworn on the Bible or affirm to tell the truth.
11 The Clerk will help you with that.

12 MADAME CLERK: Please raise your right hand, place
13 your left hand on the Bible.

14 (WHEREUPON: DELVING PATEL, BEING
15 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

16 MADAME CLERK: Thank you. You may have a seat right
17 up there.

18 DIRECT EXAMINATION

19 DELVING PATEL BY SOLICITOR SPRINGS:

20 Q. Mr. Patel, you have a soft voice so I'm going to ask
21 you to get pretty close to that microphone and first of
22 all, sir, tell us your name.

23 A. My name is Delving Patel.

24 Q. Do you go by Div Patel?

25 A. I usually go by Di.

DELVING PATEL: BY SOLICITOR SPRINGS

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1 Q. Di. Very good, sir. How are you related to Mr. Vipul
2 Patel, the owner of the Discount Food and Beverage?

3 A. He is my brother-in-law.

4 Q. Okay. All right. Have you helped him out with the
5 security camera system there at the store?

6 A. Yes.

7 Q. Are you very, very familiar with the security camera
8 system at the Discount Food and Beverage store?

9 A. Yes.

10 Q. And actually you're more knowledgeable about it than
11 the owner of the store, Mr. Vipul Patel?

12 A. Yeah.

13 Q. The night Mr. Patel, your relative got shot, Mr. Vipul
14 Patel got shot, did you come to the store and go into the
15 video recording system, the security camera system, to get
16 video for the police?

17 A. Yes.

18 Q. Now what were the night of July 25th about eleven
19 o'clock that night, this was last year 2012, was the video
20 system working properly?

21 A. Yes.

22 Q. And did it make a number of movies from various
23 cameras that were scattered around the store?

24 A. Yes.

25 Q. Did you see these movies yourself, sir?

1 A. Yes. I was the first one.

2 Q. Was everything about the video system operating
3 properly?

4 A. Yes.

5 Q. And did you pull those videos off and give them to the
6 police?

7 A. Yes.

8 Q. And I believe you said you saw them?

9 A. Yeah. What we did was we first saw what it was and
10 they wanted me to rewind back to see if they came earlier
11 or not and we sat and rewind and played the whole thing and
12 then they told me the segments that they wanted and I give
13 them the segments that they, the time frame that they
14 needed.

15 Q. Very good. And were the security camera, the various
16 cameras put on a video disk?

17 A. Yes.

18 (WHEREUPON: STATE'S EXHIBIT NUMBER SIX, PREMARKED FOR
19 IDENTIFICATION.)

20 Q. I'm showing you what is marked State's Exhibit Six.
21 I'm showing you this disk. Have you seen that disk before?

22 A. Yes.

23 Q. And does this contain footage from the security
24 camera video from the Discount Food and Beverage from a
25 little bit before eleven o'clock on the night of July

DELVING PATEL: / BY SOLICITOR SPRINGS

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1 25th last year?

2 A. Yes, sir.

3 Q. Is it true and accurate footage on this disk?

4 A. Yes.

5 SOLICITOR SPRINGS: Your Honor, we do offer into
6 evidence State's Exhibit Six.

7 MR. BROWN: Without objection.

8 THE COURT: In without objection.

9 (WHEREUPON: STATE'S EXHIBIT NUMBER SIX, IDENTIFIED
10 AND MARKED, RECEIVED INTO EVIDENCE.)

11 Q. Have you seen a few still pictures pulled out of this
12 movie?

13 A. Actually I was the one who gave it to them.

14 (WHEREUPON: STATE'S EXHIBIT NUMBER SEVEN, EIGHT, AND
15 NINE, PREMARKED FOR IDENTIFICATION.)

16 Q. Mr. Patel, I'm showing you what's now marked State's
17 Exhibit Seven, State's Exhibit Eight and State's Exhibit
18 Nine. Look at those photos, and do you recognize those
19 photos?

20 A. Yes.

21 Q. Are those true and accurate, still pictures pulled
22 from the security camera video?

23 A. Yes.

24 SOLICITOR SPRINGS: Your Honor, we do at this time
25 offer into evidence State's Exhibits Seven, Eight and Nine.

DELVING PATEL: BY MR. BROWN

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1 MR. BROWN: Without objection.

2 THE COURT: In without objection.

3 (WHEREUPON: STATE'S EXHIBIT NUMBER SEVEN, EIGHT AND
4 NINE IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

5 SOLICITOR SPRINGS: Mr. Patel, that's all I have for
6 you. The Defense attorney may want to ask you some
7 questions.

8 THE COURT: Mr. Brown.

9 CROSS EXAMINATION

10 DELVING PATEL BY MR. BROWN:

11 Q. Mr. Patel, you weren't there that night that this
12 occurred were you?

13 A. No, sir.

14 Q. You don't know anything - know the people in those
15 pictures do you, sir?

16 A. No, sir.

17 MR. BROWN: No further questions.

18 THE COURT: You can step down and be excused. We
19 appreciate your time. Thank you.

20 (WITNESS LEAVING WITNESS STAND.)

21 THE COURT: Call your next witness.

22 SOLICITOR SPRINGS: Thank you.

23 Would you ask Officer Vandermolen to come in please,
24 sir?

25 Officer Vandermolen, step up here to the clerk and

OFFICER LARRY VANDERMOLEN: BY SOLICITOR SPRINGS

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1 she will have you sworn in on the Holy Bible.

2 MADAME CLERK: Please raise your right hand and place
3 your left hand on the Bible.

4 (WHEREUPON: LARRY JASON
5 VANDERMOLEN, BEING FIRST CALLED AND DULY SWORN, TESTIFIED
6 AS FOLLOWS:)

7 DIRECT EXAMINATION

8 OFFICER LARRY VANDERMOLEN BY SOLICITOR SPRINGS:

9 Q. Officer, if you would keep your voice up nice and loud
10 and tell us your name, sir.

11 A. My name is Officer Larry Jason Vandermolen.

12 Q. Who do you work for?

13 A. City of Rock Hill Police Department.

14 Q. Are you a sworn police officer?

15 A. Yes, sir.

16 Q. Were you in uniform and on duty a little bit before
17 eleven o'clock at night on Wednesday night, July 25th of
18 2012?

19 A. Yes, sir, I was.

20 Q. And were you in a police car about eight minutes
21 before eleven o'clock?

22 A. Yes, sir.

23 Q. Who else was in the car with you?

24 A. Officer Eric Sizemore, my partner.

25 Q. And about eight minutes before eleven o'clock,

1 whereabouts in the city of Rock Hill was that police car
2 located?

3 A. We were at the intersection of West Main and South
4 Cherry Road, sir.

5 Q. Okay. And is there a convenience store on that
6 corner?

7 A. There is, sir. It's the Cherry Road Discount Liquor
8 store, sir.

9 (WHEREUPON: STATE'S EXHIBIT NUMBER TEN, PREMARKED,
10 FOR IDENTIFICATION.)

11 Q. I'm showing you what has been marked State's
12 Exhibit Ten. Is that a picture of the store?

13 A. Yes it is, sir.

14 Q. Is it a fair and accurate picture of the store?

15 A. A hundred percent, sir.

16 SOLICITOR SPRINGS: Your Honor, we do offer State's
17 Exhibit Ten into evidence.

18 MR. BROWN: Without objection.

19 THE COURT: In without objection.

20 (WHEREUPON: STATE'S EXHIBIT NUMBER TEN, IDENTIFIED
21 AND MARKED, RECEIVED INTO EVIDENCE.)

22 SOLICITOR SPRINGS: May we publish it to the jury,
23 sir?

24 THE COURT: Yes, sir.

25 (STATE'S EXHIBIT NUMBER TEN PUBLISHED TO THE JURY

OFFICER LARRY VANDERMOLLEN: BY SOLICITOR SPRINGS .

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1 AT 09:54 A.M..)

2 Q. Officer Vandermolen, that's State's Exhibit Ten that
3 we have on the projector. That's the Discount Store on
4 the corner of South Cherry Road and West Main Street?

5 A. Yes, sir.

6 Q. Is that store inside the city of Rock Hill and in York
7 County?

8 A. Yes, sir.

9 Q. Thank you very much.
10 You can bring the lights back up.

11 (COURTROOM LIGHTS TURNED UP.)

12 Q. As you sat at the light, were you facing the store or
13 some other direction?

14 A. We were facing the direction of the store, sir, down
15 West Main.

16 Q. So about eight minutes before eleven did something
17 catch your attention at the store?

18 A. Yes, sir. My partner, Eric Sizemore, and I were
19 facing West Main and I happened to be looking at the front
20 of the Discount Store and see two black males frantically
21 running out the front entrance.

22 Q. They ran out?

23 A. Yes, sir.

24 Q. Was either one of them carrying anything that caught
25 your attention?

1 A. One of them, sir, was carrying what appeared to be a
2 long rifle. Unable to match the caliber at that time but
3 you could tell it was a long rifle, sir.

4 Q. All right. And as these two men ran out of the store,
5 one carrying a rifle, did that person continue to hold the
6 rifle the whole time he was in your sight or did the other
7 man take possession of it at some point?

8 A. When they ran out of the store, sir, one subject had
9 possession of the rifle. When they ran around the corner,
10 that's when they handed it off to another person, sir.

11 Q. So the two men run out?

12 A. Yes, sir.

13 Q. One has a rifle?

14 A. Uh-huh.

15 Q. And as they cut around the corner of the store, he
16 hands the rifle to his buddy?

17 A. Yes, sir.

18 Q. Okay. What did you think when you saw two men run out
19 of a convenient store at eleven o'clock at night and one is
20 carrying a rifle?

21 A. Based on the hour, sir, and the way that they were
22 leaving that store, it was pretty much a dead sprint that
23 we assumed that it had just got robbed, sir.

24 Q. Okay. So what did you and Sizemore do?

25 A. Officer Sizemore and I activated out light and siren

OFFICER LARRY VANDERMOLEN: BY SOLICITOR SPRINGS

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1 and proceeded through the intersection and gave chase to
2 the subjects as they ran down Pursley Street behind the
3 liquor store, sir.

4 Q. Okay. And is that the Boyd Hill neighborhood?

5 A. Yes, sir.

6 Q. And did these men stay together or did they separate?

7 A. They ran together down Pursley Street North and they
8 ended up cutting between a house and splitting up, sir.

9 Q. Okay. And did you and Officer Sizemore continue to
10 try to find them?

11 A. We did, sir. Once they cut in between the house, we
12 lost visual of them so we began to circulate Boyd Hill to
13 try and locate one of them.

14 Q. Okay. And did you spot either one of these two men?

15 A. We did, sir.

16 Q. Okay. Whereabouts were you when you spotted that
17 person?

18 A. We were cutting the block from Castle Street to Berry
19 Street, sir, coming up behind the Discount Store, and
20 observed a black male subject running from east to west, my
21 left to right, as we were coming down the street sprint
22 across the street and that's when we sped up, stopped
23 behind him and gave chase on foot, sir.

24 Q. Okay. Did you catch up with him?

25 A. Yes, sir.

OFFICER LARRY VANDERMOLLEN: BY SOLICITOR SPRINGS

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1 Q. Do you remember what street you caught him on?

2 A. We caught him on Berry Street, sir.

3 (WHEREUPON: STATE'S EXHIBIT NUMBER ELEVEN, PREMARKED
4 FOR IDENTIFICATION.)

5 Q. Officer Vandermolen, I'm showing you what has been
6 marked State's Exhibit Eleven. Take a look at that for a
7 minute and tell us if that is an accurate aerial photo of
8 that Boyd Hill neighborhood area.

9 A. Yes, sir, it is.

10 Q. And does it show the area where you caught the fleeing
11 man?

12 A. Yes, sir, it does. It's indicated by a gold star.

13 Q. All right. Let me get you to step down and bring that
14 photo with you and we're going to put it on this easel
15 so everybody on the jury can see it.

16 (WITNESS LEFT WITNESS STAND.)

17 Q. Now first of all, let's start with the convenience
18 store, the Discount Food and Beverage. Would you point
19 that out for the jury.

20 A. It's right down here, sir.

21 (WITNESS INDICATED ON STATE'S EXHIBIT ELEVEN.)

22 Q. Okay. And trace the path that you took in the patrol
23 car and then after getting out of the patrol car and on
24 foot. Could you do that?

25 A. Yes, sir. We were sitting right down here at the

OFFICER LARRY VANDERMOLLEN: BY SOLICITOR SPRINGS

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1 intersection off picture a little bit. When they ran out
2 of the store and they ended up cutting through this open
3 lot going down Pursley right down here that runs behind the
4 convenience store. Office Eric Sizemore and I proceeded
5 through the intersection to this open lot. I ended up
6 going north on Pursley.

7 At about the 300 block, 328 is where they cut in the
8 housing area. We lost sight of them so we ended up coming
9 down Pursley, coming all the way down into Boyd Hill,
10 cutting the block down Castle which is up here, down Berry
11 and basically just trolling five, ten miles an hour to see
12 if we can see anybody or hear anything and that's when we
13 observed a black male subject running from this open field
14 right here from our left to right coming across Berry
15 Street, sir.

16 Q. Okay. And where did you finally catch up with him?

17 A. We caught up with him right here at 328. As soon as
18 he came across the road, that's when Officer Eric Sizemore
19 and I pulled up and stopped and I bailed out of the vehicle
20 and gave chase on foot. And he ended up running right into
21 the backyard of this house, over a fence, and the fence
22 ended up catching him after he fell to the ground and
23 that's how I was able to catch him.

24 Q. Okay. Thank you. Go ahead and retake your seat.

25 A. Yes, sir.

1 (WITNESS RETURNED TO WITNESS STAND.)

2 SOLICITOR SPRINGS: Have I offered this into evidence?

3 MADAME COURT REPORTER: No, sir.

4 SOLICITOR SPRINGS: Your Honor, we offer State's
5 Exhibit Eleven into evidence.

6 MR. BROWN: Without objection.

7 THE COURT: In without objection.

8 (WHEREUPON: STATE'S EXHIBIT NUMBER ELEVEN IDENTIFIED
9 AND MARKED, RECEIVED INTO EVIDENCE.)

10 Q. The man you caught, when you caught him, ---

11 A. Yes, sir.

12 Q. --- what kind of shirt was he wearing?

13 A. He wasn't wearing a shirt at that time, sir.

14 Q. He was bare chested?

15 A. Yes, sir.

16 Q. What was the name of the man you caught?

17 A. It was Mr. Kadeem Sanders.

18 Q. Did you read his *Miranda* rights to him?

19 A. Yes, sir, I did. Twice.

20 Q. Did he have anything at all to say to you?

21 A. Excuse me, sir?

22 Q. Did he have anything at all to say to you after you
23 read his *Miranda* rights to him?

24 MR. BROWN: Objection, hearsay.

25 SOLICITOR SPRINGS: I just want to know if he talked

OFFICER LARRY VANDERMOLEN: BY SOLICITOR SPRINGS

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1 to him.

2 THE COURT: Don't tell us what - The question is, did
3 he say anything; not what did he say.

4 A. Yes. He did reply to us some, sir.

5 Q. Okay. All right. Did you take him to jail?

6 A. Yes, sir.

7 (WHEREUPON: STATE'S EXHIBIT NUMBER TWELVE PREMARKED
8 FOR IDENTIFICATION.)

9 Q. I'm showing you what has been marked State's Exhibit
10 Twelve, Officer. What is that a picture of?

11 A. It's the house on Berry Street, sir, that we ended up
12 catching Kadeem Sanders at.

13 Q. Okay. And it had a fence at some place, some part
14 there?

15 A. Yes, sir.

16 Q. Before you show it to everybody let's do this. Is it
17 a fair and accurate picture?

18 A. Yes, sir.

19 Q. All right.

20 SOLICITOR SPRINGS: Your Honor, we do offer into
21 evidence State's Exhibit Twelve.

22 MR. BROWN: Without objection.

23 THE COURT: In without objection.

24 (WHEREUPON: STATE'S EXHIBIT NUMBER TWELVE, IDENTIFIED
25 AND MARKED, RECEIVED INTO EVIDENCE.)

OFFICER LARRY VANDERMOLEN: BY SOLICITOR SPRINGS
BY MR. BROWN

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1 Q. Now, point out whereabouts the fence was and where you
2 caught him.

3 A. Right above this green trash can right here is; where
4 the chicken wire fence is, sir.

5 Q. Okay. All right. Thank you. If you would answer any
6 questions the defense attorney has for you.

7 A. Yes, sir.

8 CROSS EXAMINATION

9 OFFICER LARRY VANDERMOLEN BY MR. BROWN:

10 Q. You were coming North on Cherry Road. Is that what I
11 understand you to say?

12 A. We were going west down Main Street, sir. We were
13 just leaving the police department.

14 Q. Okay. So you were going towards York?

15 A. Yes, sir.

16 Q. So you were at the intersection and looked straight
17 across at the convenience store. Correct?

18 A. Yes, sir.

19 Q. All right. When you made this pursuit of Mr. Sanders,
20 did you do it by foot or by car?

21 A. It first started by car, sir.

22 Q. All right. So tell me how far you went by car.

23 A. Maybe about estimated half a mile, sir.

24 Q. Show me the route you took on this.

25 (WITNESS VIEWING STATE'S EXHIBIT.)

OFFICER LARRY VANDERMOLLEN: BY MR. BROWN

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1 A. Yes, sir. Right here is the intersection that we were
2 sitting at.

3 Q. All right. You were sitting right here where you
4 were kind of cut off where you would be sitting. Right?

5 A. Yeah. We were facing this way.

6 Q. All right.

7 A. Right there is the Discount store.

8 Q. Right.

9 A. We started right here and once we seen the subjects
10 run out through this open lot, we proceeded through the
11 intersection basically where this eighteen wheeler is,
12 straight across there. Once we seen them round on Pursley,
13 we drove down Pursley, sir.

14 Q. Okay.

15 A. Okay. Once we drove down Pursley and we lost sight of
16 them and they ran in between the houses, right here
17 indicated by the star, we could no longer visually see them
18 so we began what is called a troll. We began to troll the
19 area slow to see if we can see or hear anything. Ended up
20 coming down, sir, coming down Pursley, coming back up off
21 map and basically circulating side streets coming down
22 Berry is when we seen him run out of this open field right
23 here, sir.

24 Q. You saw one run out of the open field. Correct?

25 A. Yes, sir.

OFFICER LARRY VANDERMOLEN: BY MR. BROWN

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1 Q. Just Mr. Sanders?

2 A. Yes, sir.

3 Q. Okay. Did you recover some items of clothing that
4 allegedly dropped off? Or did the other officer do that?

5 A. Say that again, sir.

6 Q. Did you recover some clothing?

7 A. I personally did not no, sir.

8 Q. Did you recover the gun or anything?

9 A. Me personally, no, sir.

10 Q. Okay. So you weren't involved in this; is that
11 correct?

12 A. No, sir. Just the apprehension of Mr. Sanders.

13 Q. You didn't have any interaction with Mr. Maldonado
14 that night did you?

15 A. No, sir. Just Mr. Sanders.

16 MR. BROWN: No further questions.

17 THE COURT: Redirect?

18 SOLICITOR SPRINGS: Nothing further.

19 THE COURT: You can step down and be excused. We
20 appreciate your time.

21 (WITNESS LEAVING WITNESS STAND.)

22 THE COURT: Call your next witness.

23 SOLICITOR SPRINGS: Would you ask Officer Ashley
24 Doster to come in, sir.

25 Officer Doster, step up to the Clerk; she'll swear you

OFFICER ASHLEY DOSTER: BY SOLICITOR SPRINGS:

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1 in.

2 (WHEREUPON: ASHLEY DOSTER,
3 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

4 MADAME CLERK: Thank you. You can have a seat.

5 SOLICITOR SPRINGS: I beg the court's indulgence one
6 second.

7 (PAUSE.)

8 SOLICITOR SPRINGS: May we approach, Your Honor.

9 THE COURT: Yes, sir. Mr. Brown.

10 SOLICITOR SPRINGS: Mr. Brown.

11 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
12 OF THE JURY AT 10:06 A.M..)

13 SOLICITOR SPRINGS: Your Honor, a little while ago
14 with witness Delving Patel, I entered into evidence a disk
15 as State's Exhibit Six. There are two disks in this case
16 and I got it mixed up with another one that is marked
17 State's Exhibit One. That was my error. My apologies to
18 the court. I would at this time like to go ahead and have
19 a State's Exhibit Six sticker put on the right video, the
20 security camera video.

21 THE COURT: Can you keep up with that, Ms. Nelson.

22 MADAME COURT REPORTER: I got it.

23 THE COURT: Any objection? Mr. Brown, any objection?

24 MR. BROWN: No, sir.

25 MADAME COURT REPORTER: You want One marked as Six?

OFFICER ASHLEY DOSTER: BY SOLICITOR SPRINGS:

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1 SOLICITOR SPRINGS: I want One marked as Six.

2 And what I incorrectly marked as Six I'm going to pull
3 that off and we're going to start fresh with it.

4 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE, REMARKED AS
5 STATE'S EXHIBIT NUMBER SIX, RECEIVED INTO EVIDENCE.)

6 DIRECT EXAMINATION

7 OFFICER ASHLEY DOSTER BY SOLICITOR SPRINGS:

8 Q. Officer, tell us your name, please.

9 A. Ashley Doster.

10 Q. And where do you work?

11 A. Rock Hill Police Department.

12 Q. And you are a sworn law enforcement officer?

13 A. Yes.

14 Q. Were you in uniform and on duty the night of July 25th
15 of last year?

16 A. Yes.

17 Q. About five minutes before eleven o'clock that night,
18 did you hear something on your police radio that caused you
19 to go somewhere in a hurry?

20 A. Yes.

21 Q. And because of what you heard on the police radio,
22 where did you go that night a little bit before eleven?

23 A. I went to Cherry Road Discount Store.

24 Q. And did you go quickly?

25 A. Yes.

OFFICER ASHLEY DOSTER: BY SOLICITOR SPRINGS:

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1 Q. All right. And what were you told - Just to explain
2 why you went quickly to the store, what were you told over
3 the radio?

4 A. Well, I heard Officer Vandermolen and Sizemore say
5 they saw a gentleman running with a firearm away from that
6 store.

7 Q. Okay. And how many years experience have you got,
8 Officer Doster?

9 A. Thirteen.

10 Q. With thirteen years experience, were you concerned
11 that something bad was going on when somebody runs out of a
12 convenience store carrying a rifle?

13 A. Yes.

14 Q. All right. So did you go to the store?

15 A. Yes.

16 Q. When you got to the store and walked in the parking
17 lot, who did you see at the front of the store, if anybody?

18 A. I saw a black male that had stepped in the store and
19 he looked back out and he was waiving me in.

20 Q. Okay. And did you get out of your police car and go
21 into the store?

22 A. I did.

23 Q. Had you been alone in your police car that night?

24 A. Yes.

25 Q. When you stepped inside of the store, what did you

OFFICER ASHLEY DOSTER: BY SOLICITOR SPRINGS:

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1 see?

2 A. I saw a male lying on the floor in a pool of blood.

3 Q. Was he alive?

4 A. Yes.

5 Q. Was he badly hurt?

6 A. Yes.

7 Q. Officer Doster, in your years of experience, your
8 thirteen years as a police officer, have you ever come up
9 on somebody before who had been gunshot?

10 A. Yes.

11 Q. And when you saw this man lying on the floor of the
12 Discount Beverage in a pool of blood, what did you think
13 had happened to that man?

14 A. That he had been shot.

15 Q. Did you call an ambulance?

16 A. Yes.

17 Q. And when you got into the store and saw the man lying
18 in a pool of blood, was there anybody else around in the
19 store?

20 A. The two males that had walked in and a gentleman
21 behind the counter aside from the one lying on the floor.

22 Q. The two men that had walked in, one or both of them
23 had waved you in?

24 A. Yes.

25 Q. What did they seem to be, would be customers or store

OFFICER ASHLEY DOSTER: BY SOLICITOR SPRINGS:

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1 employees?

2 A. Patrons. Customers.

3 MR. BROWN: I'm going to object unless she knows.

4 THE COURT: I sustain the objection.

5 SOLICITOR SPRINGS: Okay.

6 Q. The other man, what was he doing?

7 A. Which one out of the three, the one --

8 Q. Not the two you had --

9 A. The one behind the counter?

10 Q. Correct.

11 A. He looked frantic.

12 Q. Okay.

13 A. Like he wasn't sure what to do.

14 Q. Did you try to comfort the man who you knew had been
15 shot?

16 A. Yes.

17 Q. And did an ambulance come and take him away?

18 A. Yes.

19 Q. Was your patrol car equipped with one of the movie
20 cameras we hear about these days?

21 A. Yes.

22 Q. And when you turn on the blue lights in your patrol
23 car, does that turn on the movie camera?

24 A. Yes.

25 Q. Did you have your blue lights on?

OFFICER ASHLEY DOSTER: BY SOLICITOR SPRINGS:

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1 A. Yes.

2 Q. And was a movie made by that camera in your patrol
3 car?

4 A. Yes.

5 Q. Where's the camera mounted? Where does it face out to
6 take this movie?

7 A. From the front windshield.

8 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTEEN PREMARKED
9 FOR IDENTIFICATION.)

10 Q. Now, your in-car video, it made a movie that night?

11 A. Yes.

12 Q. Have you seen the movie?

13 A. Yes.

14 Q. Is it on a disk?

15 A. Yes

16 Q. I'm showing you what has been marked State's
17 Exhibit Thirteen for identification. Is that the disk?

18 A. Yes.

19 Q. And the movie on State's Exhibit Thirteen, is it a
20 fair and accurate representation of what was actually going
21 on that night?

22 A. Yes.

23 Q. Nothing phony about it?

24 A. No.

25 SOLICITOR SPRINGS: Your Honor, we do offer State's

OFFICER JONATHAN MORENO: BY SOLICITOR SPRINGS

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1 Exhibit Thirteen into evidence.

2 MR. BROWN: Without objection.

3 THE COURT: In without objection.

4 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTEEN,
5 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

6 SOLICITOR SPRINGS: We'd ask to publish it.

7 THE COURT: You may.

8 SOLICITOR SPRINGS: Could you dim the lights when the
9 movie comes up?

10 (COURTROOM LIGHTS DIMMED.)

11 SOLICITOR SPRINGS: We are now playing State's Exhibit
12 Thirteen.

13 (STATE'S EXHIBIT NUMBER THIRTEEN PUBLISHED TO THE JURY
14 AT 10:12 A.M../STOPPED AT 10:16 A.M..)

15 SOLICITOR SPRINGS: That's all. Bring the lights up.

16 (COURTROOM LIGHTS TURNED BACK UP.)

17 SOLICITOR SPRINGS: Officer Doster, answer any
18 questions the defense attorney has.

19 MR. BROWN: I have no questions, Your Honor.

20 THE COURT: You can step down and be excused. We
21 appreciate your time.

22 (WITNESS LEAVING WITNESS STAND.)

23 THE COURT: Call your next witness.

24 SOLICITOR SPRINGS: Would you ask Officer Moreno to
25 come in.

OFFICER JONATHAN MORENO: BY SOLICITOR SPRINGS

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1 (WHEREUPON: JOHATHAN MORENO,
2 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

3 DIRECT EXAMINATION

4 OFFICER JONATHAN MORENO BY SOLICITOR SPRINGS:

5 Q. Officer Moreno, I'm going to ask you to speak over
6 towards that microphone there on the stalk and let's start
7 out with your name. What is your name, sir?

8 A. My name is Officer Johathan Moreno.

9 Q. And what do you do for a living?

10 A. I'm a law enforcement officer at Rock Hill Police
11 Department.

12 Q. Are you what's called a K 9 officer?

13 A. Yes. I'm also a canine handler.

14 Q. Okay. And have you been qualified in a court of
15 record such as this as an expert tracking dog handler?

16 A. Yes, I have.

17 Q. And you have some experience and training in tracking
18 with a canine?

19 A. Yes, I do.

20 SOLICITOR SPRINGS: Your Honor, we would offer Officer
21 Moreno as an expert in - an expert tracking dog handler.

22 THE COURT: Any voir dire?

23 MR. BROWN: May we approach.

24 THE COURT: Yes.

25 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING

OFFICER JONATHAN MORENO: BY SOLICITOR SPRINGS

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1 OF THE JURY.)

2 THE COURT: You may continue.

3 BY SOLICITOR SPRINGS:

4 Q. And tell us about the training you have had in
5 handling a tracking dog, a canine. Just summarize
6 that training if you would, sir.

7 A. Well I started in 2011. They sent me to handler's
8 school which is a week long in Kings Mountain. We trained
9 with a variety of agencies across the east coast. I also
10 train with my canine sixteen hours a month, which is four
11 hours a week. We also get call outs such as this one in
12 regards to a major incident where we use our canine to
13 apprehend the suspect that is fleeing on foot, but my
14 canine is basically man tracking only.

15 Q. All right. And have you -- I assume you have done a
16 number of training exercises with your dog; is that right?

17 A. Yes. Numerous hours a month throughout the year.

18 Q. Okay. Have you done any real life, real crime,
19 tracks with your dog?

20 A. Yes, I have.

21 Q. And were you successful in some cases tracking down a
22 suspect?

23 A. Yes, I was.

24 Q. And in some cases do you find things, items,
25 possessions that suspects discard as they are running away?

OFFICER JONATHAN MORENO: BY SOLICITOR SPRINGS

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1 A. Yes.

2 SOLICITOR SPRINGS: Your Honor, we offer him as an
3 expert tracking dog handler.

4 THE COURT: Any voir dire?

5 MR. BROWN: May I voir dire?

6 THE COURT: Yes.

7 CROSS EXAMINATION

8 OFFICER JONATHAN MORENO BY MR. BROWN:

9 Q. This happened July 2012, the incident we're in court
10 today. Right?

11 A. Yes, sir.

12 Q. At that point in time, how many suspects had you run
13 down prior to that date?

14 A. Two.

15 Q. Two.

16 MR. BROWN: Your Honor, I submit he is not qualified.

17 THE COURT: I find he is. I find he is qualified as a
18 canine handler.

19 SOLICITOR SPRINGS: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 OFFICER JOHATHAN MORENO BY SOLICITOR SPRINGS

22 Q. What's your dog's name?

23 A. Canine Molly.

24 Q. Now has Molly had some training?

25 A. Yes.

OFFICER JONATHAN MORENO: BY SOLICITOR SPRINGS

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1 Q. A lot of training?

2 A. A lot more than I have.

3 Q. Tell us about Molly's training.

4 A. Molly was picked up as a puppy when she was two months
5 old. She started out with my Lieutenant and she's
6 currently going to be five years old in July.

7 Q. Okay. Tell us about the kind of training she has been
8 through.

9 A. During the beginning stages of the puppy stage, she is
10 taught just the interest of tracking someone. Playing hide
11 and go seek, making them very playful, basic fundamentals.
12 Once they show that interest, whoever is training her at
13 the time will be continuing the training to make it a
14 little more difficult from fifty yards of hide and go seek
15 to a hundred yards of hide and go seek.

16 As they show more and more ability as they get older
17 closer to that eight month year period, that's when we
18 start training such as in King's Mountain; other training
19 that are on the east coast, and we put them on live
20 scenarios and see how they do from there. If they continue
21 to show that interest, that motivation and that ability to
22 track, then we put them in more difficult scenarios as the
23 training gets more intense. So she's had a few years of
24 training like that and furthered her ability.

25 Q. Has Molly been put through a number of training

OFFICER JONATHAN MORENO: BY SOLICITOR SPRINGS

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1 exercises to see if she is accurate, if she is good, if she
2 can actually track and successfully find a suspect? Has
3 she been through training for that?

4 A. Yes, sir. She goes through that training on a
5 constant basis. That's the scenarios we place her in
6 weekly, monthly, throughout the year, and especially while
7 she is at the canine school.

8 Q. And has she found to be - Has she found to be
9 reliable, in fact extremely reliable?

10 MR. BROWN: Objection, Your Honor.

11 THE COURT: I don't know what extremely reliable means
12 so let's --

13 SOLICITOR SPRINGS: I'll rephrase.

14 Q. Tell us about her reliability.

15 A. Her reliability and accuracy is very well in training.
16 She is not going to be a perfect dog, but she is very
17 reliable in the sense of the scenarios we put her in, a
18 start and end point, and properly identifying a suspect or
19 items found along that track.

20 Q. Okay. All right. Did you bring a picture of Molly?

21 A. Yes I did.

22 Q. May we see it?

23 (PHOTO REVIEWED BY ATTORNEY BROWN.)

24 MR. BROWN: Without objection, Your Honor.

25 THE COURT: In without objection.

OFFICER JONATHAN MORENO: BY SOLICITOR SPRINGS

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1 (WHEREUPON: STATE'S EXHIBIT NUMBER FOURTEEN PREMARKED
2 FOR IDENTIFICATION.)

3 Q. State's Exhibit Fourteen, is that Molly?

4 A. Yes, sir, it is.

5 Q. True and accurate picture of Molly?

6 A. Yes.

7 SOLICITOR SPRINGS: Your Honor, we offer State's
8 Exhibit Fourteen into evidence.

9 THE COURT: In without objection.

10 (WHEREUPON: STATE'S EXHIBIT NUMBER FOURTEEN,
11 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

12 SOLICITOR SPRINGS: Would you let the jury pass this
13 around juror to juror until it comes all the way back
14 around to you.

15 May we publish it?

16 THE COURT: Yes, you may.

17 (STATE'S EXHIBIT NUMBER FOURTEEN, PUBLISHED TO THE
18 JURY.)

19 Q. Now, Officer Moreno, about eleven o'clock at night on
20 July 25th of last year, were you and Molly called out?

21 A. Yes, sir, we were.

22 Q. And whereabouts were you sent? Where were you
23 supposed to go with Molly?

24 A. We responded to 348 South Cherry Road.

25 Q. By the time - What was your understanding of what had

OFFICER JONATHAN MORENO: BY SOLICITOR SPRINGS

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1 happened at -

2 MR. BROWN: Objection, Your Honor. Left out what he
3 did.

4 THE COURT: I sustain the objection.

5 BY SOLICITOR SPRINGS:

6 Q. When you got there, you were called out obviously to
7 track somebody, what was your understanding of what you
8 tracking?

9 A. Two suspects fleeing on foot.

10 Q. Okay. And whereabouts were you to start the track?

11 A. Right behind the discount auto store which is located
12 on Main Street and Cherry Road.

13 Q. Discount Beverage Store?

14 A. Yes, sir.

15 Q. And did Molly pick up a scent?

16 A. She did. Before she picked up the scent, what we do
17 is meet with the officers or the victim. Unfortunately at
18 the time we couldn't speak to the victim so we spoke to the
19 officers that were first on scene. I met with Officer
20 Sizemore and Officer Vandermolen which stated they saw two
21 unknown suspects wearing dark clothing, black males,
22 fleeing on foot on Pursley Street heading towards Stadium
23 Street.

24 Q. And you said Molly picked up a track?

25 A. Yes. She picked up a track right behind Pursley

OFFICER JONATHAN MORENO: BY SOLICITOR SPRINGS

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1 Street that led us to [REDACTED]

2 Q. This aerial photo is in evidence as State's Exhibit
3 Eleven, and point out to the jury [REDACTED]

4 A. The star right over here.

5 (WITNESS INDICATED ON EXHIBIT.)

6 Q. Okay. And the significance of that is what? What
7 happened there?

8 A. This is where we began the track and we made a left
9 turn into [REDACTED] When we reached the backyard
10 of the residence, that's where we located a rifle which was
11 brown and black.

12 Q. Let me stop you there. Let's talk a little bit about
13 that rifle.

14 (WHEREUPON: STATE'S EXHIBIT FIFTEEN PREMARKED FOR
15 IDENTIFICATION.)

16 Q. State's Exhibit Fifteen, what does that show?

17 A. The rifle.

18 Q. It looks like there are some bushes there. Were there
19 some bushes around?

20 A. Yes. It was underneath the bushes behind a vehicle
21 that was abandoned in the backyard.

22 Q. Okay. All right. Is State's Exhibit Fifteen a true
23 and accurate photo of the rifle you and Molly found?

24 A. Yes.

25 SOLICITOR SPRINGS: Your Honor, we do offer State's

1 Exhibit Fifteen into evidence.

2 MR. BROWN: Without objection.

3 THE COURT: In without objection.

4 (WHEREUPON: STATE'S EXHIBIT NUMBER FIFTEEN IDENTIFIED
5 AND MARKED, RECEIVED INTO EVIDENCE.)

6 Q. So you saw the rifle. You got up close and personal
7 with the rifle?

8 A. Yes.

9 THE COURT: Has the gun been safety --

10 SOLICITOR SPRINGS: Yes. That's what I've been told.

11 THE COURT: Well I'm not gonna ask you to verify. Who
12 told you?

13 SOLICITOR SPRINGS: Detective Cantey. If you want to
14 take a short break I wouldn't mind it and I'll --

15 THE COURT: Let's take a short break. We have certain
16 protocol when weapons are - Just set it down right now and
17 don't point it at anybody and we'll make sure that it's
18 been properly cleared and the required safety equipment on
19 it so we'll take a break at this time.

20 (JURY EXITS COURTROOM AT 10:28 A.M..)

21 THE COURT: We'll go ahead and take about a ten minute
22 break.

23 (COURT IN RECESS AT 10:29 A.M..)

24 (COURT BACK IN SESSION AT 10:42 A.M..)

25 THE COURT: Take your seats.

OFFICER JONATHAN MORENO: BY SOLICITOR SPRINGS

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1 Is the State ready to proceed?

2 SOLICITOR SPRINGS: We are.

3 THE COURT: Get Mr. Maldonado in.

4 (DEFENDANT REENTERS COURTROOM.)

5 THE COURT: For the record, the gun was found secure?

6 SOLICITOR SPRINGS: Yes, Your Honor. I had out chief
7 of security, Lieutenant Tim Hager, verify the gun was
8 unloaded and he disabled it with a security device.

9 THE COURT: Bring in the jury.

10 Thank you.

11 (JURY REENTERS COURTROOM AT 10:47 A.M..)

12 THE COURT: You may proceed.

13 The gun has been properly secured as required by the
14 Chief Justice.

15 (WHEREUPON: STATE'S EXHIBIT NUMBER SIXTEEN, PREMARKED
16 FOR IDENTIFICATION.)

17 DIRECT EXAMINATION - CON'T

18 OFFICER JONATHAN MORENO BY SOLICITOR SPRINGS:

19 Q. Officer Moreno, I'm showing you what has been marked
20 State's Exhibit Sixteen for identification. Take a look at
21 it-and tell us if it's the same rifle that you and Molly
22 found under the bushes that's pictured in State's Exhibit
23 Fifteen.

24 A. Yes it is.

25 Q. Okay.

1 SOLICITOR SPRINGS: Your Honor, we do offer State's
2 Exhibit Sixteen into evidence.

3 MR. BROWN: Without objection.

4 THE COURT: In without objection.

5 WHEREUPON: STATE'S EXHIBIT NUMBER SIXTEEN,
6 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

7 SOLICITOR SPRINGS: And it's unloaded and in the bag
8 it came out of.

9 Q. Is a container that has what in it?

10 A. It has ten live rounds.

11 Q. Okay.

12 SOLICITOR SPRINGS: And that's not going into
13 evidence.

14 MR. BROWN: That's what?

15 THE COURT: Ten live rounds.

16 SOLICITOR SPRINGS: Ten live bullets. Live rounds.

17 Q. Now, after you found the rifle did you and Molly
18 continue to track?

19 A. What we did, we waited for forensics to arrive. Once
20 they have the gun secured, then we continued to track.

21 Q. Okay. And did you recover a couple of articles of
22 clothing?

23 A. Yes we did.

24 SOLICITOR SPRINGS: I beg the court's indulgence, Your
25 Honor.

OFFICER JONATHAN MORENO: BY SOLICITOR SPRINGS

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1 (SOLICITOR SPRINGS AND ATTORNEY BROWN IN SIDEBAR
2 CONFERENCE OFF THE RECORD.)

3 (WHEREUPON: STATE'S EXHIBIT NUMBER SEVENTEEN,
4 EIGHTEEN, AND NINETEEN, PREMARKED FOR IDENTIFICATION.)

5 Q. Now, I'm showing you what's been marked State's
6 Exhibit Nineteen for identification, Officer Moreno. Let
7 me open the bag and I'm going to ask you if you've ever
8 seen that. State's Exhibit Nineteen I'm showing you now,
9 look at the contents in the bag and tell us if you have
10 seen that before.

11 A. Yes I have.

12 Q. And where did you see that before?

13 A. This was going to be on Berry Street, we located a
14 black, long-sleeved t-shirt.

15 Q. Okay. And in our aerial photo marked State's Exhibit
16 Eleven, do you remember whereabouts on Berry Street you
17 found it?

18 A. Right here.

19 (WITNESS INDICATED ON STATE'S EXHIBIT ELEVEN.)

20 A. [REDACTED]

21 Q. Okay.

22 SOLICITOR SPRINGS: Your Honor, we do offer State's
23 Exhibit Nineteen into evidence.

24 MR. BROWN: Without objection.

25 THE COURT: In without objection.

1 (WHEREUPON: STATE'S EXHIBIT NUMBER NINETEEN
2 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

3 Q. I'm showing you a photograph, State's Exhibit
4 Seventeen. Do you recognize what's in that picture?

5 A. Yes, sir.

6 Q. And what is it?

7 A. It's the t-shirt that's in the bag.

8 Q. Okay. Is that a true and accurate picture of the t-
9 shirt as you and Molly found it?

10 A. Yes, sir. It was found on the steps at the rear of
11 the residence.

12 Q. Okay.

13 SOLICITOR SPRINGS: Your Honor, we do offer State's
14 Exhibit Seventeen into evidence.

15 MR. BROWN: Without objection.

16 THE COURT: In without objection.

17 (WHEREUPON: STATE'S EXHIBIT NUMBER SEVENTEEN,
18 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

19 Q. Did you find any other articles of clothing?

20 A. We were also able to find a red bandana inside one of
21 the trash cans on Bynum Avenue.

22 Q. Okay. I'm showing you what has been marked State's
23 Exhibit Eighteen. And go ahead and look inside that bag.
24 Tell us if you recognize what's in there.

25 A. It's the red bandana.

OFFICER JONATHAN MORENO: BY SOLICITOR SPRINGS
BY MR. BROWN

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1 Q. - Okay.

2 SOLICITOR SPRINGS: And Your Honor, we do offer
3 State's Exhibit Eighteen into evidence.

4 MR. BROWN: Without objection.

5 THE COURT: In without evidence.

6 (WHEREUPON: STATE'S EXHIBIT NUMBER EIGHTEEN,
7 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

8 Q. And you found the red bandana about where?

9 A. At [REDACTED]

10 Q. Okay.

11 MR. BROWN: I'm sorry. Can you spell that again?

12 A. [REDACTED]

13 BY SOLICITOR SPRINGS:

14 Q. So you found the bandana first that day?

15 A. No, sir. We found the rifle, then the bandana, then
16 the t-shirt.

17 Q. Gotcha. Did you and Molly locate the other suspect
18 that night, the one you were chasing?

19 A. No we did not.

20 Q. Thank you, sir.

21 SOLICITOR SPRINGS: If you would answer any questions
22 the defense attorney has for you.

23 CROSS EXAMINATION

24 OFFICER JOHATHAN MORENO BY MR. BROWN:

25 Q. You recovered these items of property did you not,

1 Officer?

2 A. Sir?

3 Q. You recovered the gun, the shirt and the bandana.

4 Correct?

5 A. Yes.

6 Q. And it would be standard procedure to take
7 fingerprints off the gun?

8 A. No. We didn't touch the items.

9 Q. Did you turn them over to somebody in forensics to do
10 that?

11 A. Yes, sir. We waited for forensics to arrive and they
12 secured the items.

13 Q. All right. And let me ask you this. Were you there
14 when Mr. Sanders was arrested?

15 A. No I was not.

16 Q. Okay. Did you see him that night?

17 A. No I did not.

18 Q. Okay. You didn't see Mr. Maldonado that night did
19 you?

20 A. I didn't see either one.

21 Q. Okay. Has Molly ever missed before?

22 A. On a training scenario or on a call out scenario?

23 Q. On an actual case.

24 A. No, she has not.

25 Q. So she is a hundred percent accurate when she pursues

OFFICER JONATHAN MORENO: BY MR. BROWN

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1 somebody. Correct?

2 A. Not a hundred percent accurate in the sense of call
3 outs, it is a hundred percent in the sense of training. We
4 try to correct her when she does make a mistake and in
5 training she does make mistakes.

6 Q. But she has been a hundred percent accurate every time
7 she has been called out is your testimony. Correct?

8 A. Fortunately enough while I've been with her.

9 MR. BROWN: I have no further questions.

10 SOLICITOR SPRINGS: Nothing further.

11 THE COURT: You may step down and be excused. We
12 appreciate your time.

13 (WITNESS LEAVING WITNESS STAND.)

14 SOLICITOR SPRINGS: Mr. Bailiff, would you look in
15 that left hand room and ask Mr. Huey to come in please.

16 MR. BROWN: Your Honor, before this witness testifies,
17 I have a matter of law we need to take up.

18 THE COURT: Let the jury go to the jury room.
19 Just take the jury to the jury room for a minute.

20 (JURY EXITS COURTROOM AT 10:58 A.M..)

21 THE COURT: All right.

22 MR. BROWN: Your Honor, this potential witness in his
23 statement made several hearsay statements that could put
24 culpability on my client. I'm asking that he be instructed
25 beforehand so there's no misunderstanding that he doesn't

1 blurt out on somebody else told him when he saw my client.
2 Out of the abundance of caution I don't want a mistrial.

3 THE COURT: He's just saying have this witness stay
4 away from hearsay.

5 SOLICITOR SPRINGS: Your Honor, he is going to say
6 what he heard Mr. Maldonado and his co-conspirator Mr.
7 Sanders say during the course of the conspiracy which
8 would be admissible.

9 THE COURT: If it was in furtherance of a conspiracy
10 it would be admissible even if technically, otherwise it
11 would be hearsay. He is charged with conspiracy and the
12 coconspirator is Kadeem Sanders.

13 MR. BROWN: Specifically the one statement I don't
14 want him to get into was what Liz told him on the phone.

15 SOLICITOR SPRINGS: No I won't do that.

16 MR. BROWN: And what Victoria said.

17 SOLICITOR SPRINGS: Won't do that.

18 THE COURT: Liz and Victoria are out.

19 Bring in the jury.

20 (JURY REENTERS COURTROOM AT 11:01 A.M..)

21 THE COURT: Call your next witness.

22 SOLICITOR SPRINGS: We call Romailo Huey.

23 Come up, Mr. Huey, and if you would put your left
24 hand on the Bible and raise your right to God and she'll
25 swear you in.

ROMAILO HUEY: BY SOLICITOR SPRINGS

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1 (WHEREUPON: ROMAILO HUEY,
2 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

3 MADAME CLERK: Thank you. You can have a seat right
4 up there.

5 DIRECT EXAMINATION

6 ROMAILO HUEY BY SOLICITOR SPRINGS:

7 Q. Mr. Huey, you have a very soft voice, I'm going to ask
8 you to sort of lean over a little bit towards that
9 microphone. Tell the jury your name, sir.

10 A. My name is Ramailo Huey.

11 Q. Huey, H-u-e-y?

12 A. Uh-huh.

13 Q. Okay. And you live over in the Boyd Hill area of Rock
14 Hill?

15 A. Yes, sir.

16 Q. And do you know Kairon Maldonado?

17 A. Yes, sir.

18 Q. Look around the room and if you see him point him out,
19 would you please.

20 WITNESS INDICATED TOWARD DEFENSE TABLE.)

21 SOLICITOR SPRINGS: Let the record show he's pointed
22 to the defendant here, Kairon Maldonado.

23 Q. Do you also know a fellow named Kadeem Sanders who
24 sometimes goes by the nickname Buck Sanders?

25 A. I do.

1 Q. Now when you were growing up in that Boyd Hill area,
2 when you were a little boy, did you ever go in the Discount
3 Food and Beverage there on the corner of Cherry Road and
4 Main Street?

5 A. Yes, sir.

6 Q. Have you been going in that store for some years?

7 A. All my life.

8 Q. Have you bought a lot of stuff there over the years?

9 A. Yes, sir.

10 Q. And do you know if Kadeem Sanders or Kairon Maldonado
11 had been going in the store or not over the years?

12 A. Well, yes because we went in the store plenty of times
13 together.

14 Q. Okay. Now, do you remember the night of July 25th of
15 last year when the store clerk for the Discount Beverage
16 got shot?

17 A. Yes, sir.

18 Q. Did you go up to the store when the police and the
19 ambulance and all the commotion was going on?

20 A. Yes, sir. When I got back from Applebee's.

21 Q. Okay. And so the police were there at the store?

22 A. Yes, sir.

23 Q. Did you talk to two detectives, a black lady detective
24 and a black man detective?

25 A. Yes, sir.

ROMAULO HUEY: BY SOLICITOR SPRINGS

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1 Q. The night before, you were at the store, when the
2 clerk got shot and all the police and the ambulance and all
3 the other that was going on, the night before, that would
4 have been the night of July 24th, did you spend some time
5 with Kairon Maldonado and Kadeem Sanders?

6 A. It was like we was all into pranks the night before
7 and we had went to my house.

8 Q. You were where the night before?

9 A. It was like - yeah, we was all together the night
10 before.

11 Q. And were Kairon Maldonado and Kadeem Sanders talking
12 about some plans they had?

13 A. Yes, sir.

14 Q. What were they planning on doing?

15 A. They were planning on like robbing the store. I tried
16 to talk them out of it but I thought they were going to
17 listen to me. I guess the next day it happened.

18 Q. Which store were they planning and talking about
19 robbing?

20 A. Well, they didn't like really like say a store but
21 they like when I heard it, when I heard that they robbed
22 the store I --

23 MR. BROWN: Objection, Your Honor, to what he heard.

24 THE COURT: Don't go into what you've heard as far as
25 after it happened, what happened. As far as what you heard

ROMAULO HUEY: BY SOLICITOR SPRINGS
BY MR. BROWN

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1 about who - about the events of the night of September I
2 mean --

3 July 25th?

4 SOLICITOR SPRINGS: Yes July 25th.

5 MR. BROWN: I would also ask the jury be instructed
6 to disregard that statement.

7 THE COURT: Yes, disregard what he may have heard
8 after the event, alleged event.

9 BY SOLICITOR SPRINGS:

10 Q. But the night before they were planning a robbery?

11 A. Yes, sir.

12 Q. Thank you, Mr. Huey.

13 SOLICITOR SPRINGS: The defense attorney may have some
14 questions for you.

15 A. Yes.

16 CROSS EXAMINATION

17 ROMAULO HUEY BY MR. BROWN:

18 Q. Sixteen years old and you were convicted of receiving
19 stolen goods weren't you?

20 A. Yes, sir.

21 Q. And you stole something. Right?

22 A. Well, with the receiving stolen goods, it wasn't on
23 me. I didn't take the bike.

24 Q. How did you get it?

25 SOLICITOR SPRINGS: Objection. He has done his

ROMAULO HUEY: BY MR. BROWN

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1 impeachment. He got his --

2 THE COURT: Once he has admitted it, pled guilty or
3 was found guilty then the inquiry ends.

4 Q. Now, you didn't go down to the store that night. You
5 met the police at Teague's Pawn Shop didn't you?

6 A. Well, like when I --

7 Q. Yes or no. You can explain your answer.

8 A. Yes.

9 Q. So you met them at Teague's Pawn Shop. It wasn't at
10 the store like you testified earlier. Correct?

11 A. No, sir.

12 Q. As a matter of fact, you were dressed just like Kadeem
13 Sanders was that night. You didn't have a shirt on when
14 the police got to you.

15 A. I had a shirt. I had a blue shirt with me.

16 Q. You didn't have it on though did you?

17 A. No, sir. But I had it with me.

18 Q. You were dressed just like Kadeem Sanders was when the
19 cops found him weren't you?

20 A. No, sir.

21 Q. He didn't have a shirt on; you didn't have a shirt on.

22 A. I had it like around my neck.

23 Q. Did you go into Applebee's without a shirt on?

24 A. No, sir. I had the shirt with me.

25 Q. How did you get to Applebee's?

ROMAULO HUEY: BY MR. BROWN

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1 A. My momma.

2 Q. And she brought you back down to Teague's Pawn Shop?

3 A. No. Like we was - like where Chicken King is at then
4 I seen like the cars and stuff so I got out the car and I
5 had - I was walking over towards to their stuff then that's
6 when the police was like I can't come on the premises so I
7 walked down towards Teague's Pawn Shop. That's when the
8 police came down the street. He turned around. So I'm
9 walking stead me and my sister. He stopped me and put me
10 in handcuffs had me detained waiting on the dogs to get my
11 scent. They ain't get my scent --

12 MR. BROWN: Objection, Your Honor. I didn't ask him
13 about the dogs.

14 Q. They placed you at detention. Right?

15 A. Yes, sir.

16 Q. Placed you under arrest. And you didn't have a shirt
17 on either. Right?

18 A. I had a shirt on.

19 Q. Okay. Now I'm a little confused. This is like your
20 home store. Right?

21 A. Yes, sir.

22 Q. You like going there. Right?

23 A. Yes, sir.

24 Q. You like the people that run it. Right?

25 A. It's the closet store.

ROMAULO HUEY: BY MR. BROWN

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1 Q. Why didn't you call somebody if this big robbery was
2 being planned? Why didn't you call the police or call Mr.
3 Patel and say, look be careful, these guys may come in here
4 and shoot you.

5 A. Because at that time like at that time I thought they
6 was gonna listen to me, that they weren't gonna go up
7 there. I ain't knowed that they was still going to go
8 because I left --

9 Q. Well you knew about it. You testified you knew about
10 it, didn't you?

11 SOLICITOR SPRINGS: Objection. He's cutting the
12 witness off.

13 THE COURT: Let him finish his answer before you ask
14 the next question.

15 Q. Did you tell anybody prior to this that might have
16 saved that man's life?

17 A. No, sir.

18 Q. Why?

19 A. I told the police the day that it happened when they
20 had me, Officer Smith, and that's who I had talked to.

21 Q. Before this happened, before Kadeem Sanders went and
22 shot Mr. Patel, did you call Mr. Patel or anybody at that
23 store or anybody at the Rock Hill Police Department or
24 anybody and say be careful, Kameen Sanders may come in and
25 shoot you tonight?

ROMAULO HUEY: BY MR. BROWN

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1 SOLICITOR SPRINGS: Objection. It's been asked and
2 answered and he is harassing the witness now.

3 THE COURT: Well this is cross.

4 Let's move on once you get the answer.

5 BY MR. BROWN:

6 Q. Yes or no?

7 A. Can you repeat yourself?

8 Q. Did you call Mr. Patel ---

9 A. No, sir.

10 Q. --- or anybody at the Rock Hill Police Department and
11 say, hey, Kadeem Sanders is going to come in with a .22
12 rifle and shoot you tonight? Did you forewarn anybody of
13 that?

14 A. No, sir.

15 Q. You've got two cousins named Marcus and David?

16 A. Marcus?

17 Q. And David.

18 A. I got a cousin named David.

19 Q. Have you got a brother named Marcus too?

20 A. Huh-huh.

21 Q. You don't? You got a friend named Marcus?

22 A. Yes.

23 MR. BROWN: I have no further questions.

24 SOLICITOR SPRINGS: Nothing further.

ROMAULO HUEY: BY MR. BROWN

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1 THE COURT: You can step down and be excused. We
2 appreciate your time. Thank you.

3 SOLICITOR SPRINGS: Thank you, Mr. Huey. Come on
4 down. You can go.

5 MR. BROWN: Your Honor, let me retract that. I've got
6 one more question for Mr. Huey.

7 THE COURT: Come on back up and have a seat.

8 (WITNESS RETURNED TO WITNESS STAND.)

9 CROSS EXAMINATION - CON'T

10 CROSS EXAMINATION BY MR. BROWN

11 Q. After you gave your initial statement, did you later
12 tell Mr. Springs that Kadeem Sanders was the one that was
13 pushing doing the robbery?

14 A. No, sir.

15 MR. BROWN: We've got a matter we've got to take up
16 outside the presence of the jury, Your Honor.

17 SOLICITOR SPRINGS: May I ask him a follow up
18 question?

19 THE COURT: Let me let the jury go back to the jury
20 room and let's see where we are on this.

21 THE WITNESS: I ain't hear what he said. What did he
22 say?

23 (JURY EXITS COURTROOM AT 11:10 A.M..)

24 THE COURT: What's the question again?

25 MR. BROWN: In discovery on March 11, 2013, Your

1 Honor, I received a fax from Mr. Springs to include I
2 assume somebody in your office, I don't know who, had
3 talked to Mr. ---

4 Was that you?

5 -- but basically told him that, and I quote "in his
6 opinion Kadeem Sanders was the one who was pushing doing
7 the robbery."

8 THE COURT: What's your objection?

9 SOLICITOR SPRINGS: No, no, I don't object. I was
10 just gonna follow up and say do you remember when we
11 talked on the phone.

12 THE COURT: All right.

13 MR. BROWN: We can just stipulate he told you. I
14 don't care.

15 SOLICITOR SPRINGS: Either way. Whatever you want to
16 do.

17 THE COURT: Bring the jury back in.

18 (JURY REENTERS COURTROOM AT 11:12 A.M..)

19 SOLICITOR SPRINGS: Your Honor, we stipulate that I
20 spoke on the phone with Mr. Huey a couple of weeks ago. He
21 said in his opinion, Kadeem Sanders was the instigator of
22 this two person to him.

23 THE COURT: That's a stipulation; that is, the parties
24 agree that that is a fact. When you are going through and
25 trying to determine the facts in this case, you can take

VIPUL PATEL: BY SOLICITOR SPRINGS

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1 that as a fact without having to analyze it, that is, for
2 the purposes of this case that is in fact a fact.

3 All right. You can step down. We appreciate your
4 time. Thank you.

5 (WITNESS LEAVING WITNESS STAND.)

6 SOLICITOR SPRINGS: We at this time call Mr. Vipul
7 Patel.

8 THE COURT: Please come up.

9 SOLICITOR SPRINGS: If you'll be sworn in again or
10 affirm; either way.

11 (WHEREUPON: VIPUL PATEL,
12 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 MADAME CLERK: Thank you. You can have a seat right
14 up there.

15 DIRECT EXAMINATION

16 VIPUL PATEL BY SOLICITOR SPRINGS:

17 Q. Mr. Patel, you have a soft voice so I'm going to ask
18 you to sort of lean towards that microphone or speak up
19 nice and loud. Tell us your name, sir.

20 A. Vipul Chhanalal Patel.

21 Q. And are you originally from the country of India?

22 A. Yes, sir.

23 Q. Do you own the Cherry Road Discount Beverage store?

24 A. Yes, sir.

25 Q. And how long have you been running the Discount, I'm

1 going to call it the Discount Beverage store, how long have
2 you been running that store?

3 A. Sixteen years.

4 Q. Would you characterize it as a neighborhood store? Do
5 you get a lot of neighborhood customers?

6 A. Yeah.

7 Q. Did something bad happen to you the night of July 25th
8 of last year?

9 A. Yeah. I was robbed. They came to rob me and shoot me.

10 Q. So were you working in your store, the Discount
11 Beverage, when you got shot?

12 A. Yeah. I was behind the cash register.

13 Q. How many times did you get shot? How many bullets hit
14 you?

15 A. Two times.

16 Q. Would you point out on your body where the bullets hit
17 you?

18 A. One right here near the neck and one on the left
19 shoulder.

20 (WITNESS INDICATED.)

21 Q. Okay. The one on the right side - you touched your
22 face. Did it hit your face before it hit your shoulder?

23 A. Yeah. It hit my face and went through right from my
24 neck right here.

25 (WITNESS INDICATED.)

VIPUL PATEL: BY SOLICITOR SPRINGS

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1 Q. Okay. And the other one was on the other shoulder?

2 A. Yeah. One was on the left hand.

3 Q. After you were shot, were you taken to the hospital?

4 A. Yeah. They took me to the hospital.

5 Q. And did you go to the hospital in an ambulance or a
6 helicopter or both?

7 A. Both.

8 Q. Did you go to the hospital in Rock Hill or in
9 Charlotte?

10 A. Charlotte CMC.

11 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY, PREMARKED
12 FOR IDENTIFICATION.)

13 Q. I'm showing you a picture marked State's Exhibit
14 Twenty. What is that a picture of?

15 A. The front counter.

16 Q. Of your store, the Discount Beverage?

17 A. Yes, sir.

18 Q. Is it a fair and accurate picture of what the front
19 counter looked like back on July 25th last year?

20 A. Yes, sir.

21 SOLICITOR SPRINGS: Your Honor, we offer State's
22 Exhibit Twenty into evidence.

23 THE COURT: Any objection?

24 MR. BROWN: Without objection, Your Honor.

25 THE COURT: In without objection.

1 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY, IDENTIFIED
2 AND MARKED, RECEIVED INTO EVIDENCE.)

3 Q. You say you got shot twice?

4 A. Yes, sir.

5 Q. Does it hurt to get shot?

6 A. Yeah. It's painful.

7 Q. When they took you away in the ambulance and in the
8 helicopter, did they give you something for the pain? Did
9 they treat you?

10 A. Yeah, they treat me.

11 Q. And when you got to the hospital did the doctors take
12 the two bullets out of your body?

13 A. No. They're still in my body.

14 Q. Are those two bullets in your body right now?

15 A. Yes, sir.

16 Q. So the night you got shot, you said it was July 25th
17 of last year, were you working at the check out of your
18 store?

19 A. Yes, sir.

20 Q. What time was the store suppose to close that night?

21 A. Around eleven p.m.

22 Q. Okay. And how many other people were working in the
23 store that night?

24 A. One more. My cousin Manish.

25 Q. Okay. Is he also from India?

VIPUL PATEL: BY SOLICITOR SPRINGS

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1 A. Yeah.

2 Q. He is a Patel as well?

3 A. Yeah. His name is Patel.

4 Q. All right. And I want to ask you what happened right
5 before eleven, maybe about eight minutes before eleven.

6 Were you out in the front part of the store?

7 A. Yeah, I was behind the cash register.

8 Q. And where was your cousin Manish?

9 A. He was in the back room cleaning the bucket.

10 Q. Okay. All right. And about eight minutes 'till
11 eleven, before you got shot, had the last customer left?

12 Was there anybody in the store up front besides you?

13 A. No. It was just me.

14 Q. And by the way, I want to go back and ask, your
15 cousin Manish, does he speak fluent English?

16 A. No. He doesn't speak good English.

17 Q. So about eight minutes 'till eleven you are out front
18 and there is no one else out front; is that correct?

19 A. Yes, sir.

20 Q. Your cousin Manish is in the back running water, or
21 washing a bucket did you say?

22 A. Yeah. Washing the bucket and we go a ice maker back
23 side too.

24 Q. Okay. When you got shot, how many people had entered
25 the store? How many people had entered the store?

1 A. When I was shot?

2 Q. Yes, sir.

3 A. It was me and the two robbers.

4 Q. Okay. Two people came in?

5 A. Yeah. Two people came.

6 Q. Okay. And was it two men or two women or what?

7 A. Two youngster.

8 Q. Men or women?

9 A. Men.

10 Q. Okay. And did they come in quickly or did they come
11 in slowly?

12 A. Quickly.

13 Q. And had you had - You called them youngsters, had you
14 had youngsters run in the store before? Did you get scared
15 if somebody ran in the store?

16 A. No. I've got a lot of young customers so it was
17 nothing different.

18 Q. Okay. The front counter of your store, does it have
19 displays for candy and things to sit on?

20 A. Yeah. I've got displays for the lottery, candy and
21 chips and all that.

22 Q. Okay. I'm going to put State's Exhibit Twenty on this
23 projector.

24 (STATE'S EXHIBIT TWENTY PUBLISHED TO JURY.)

25 Q. And you say that's the front counter of your store?

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1 A. Yes, sir.

2 Q. Is this the cash register?

3 A. Yes, sir. /

4 Q. Okay. And so you have stuff up here in the front?

5 A. Yes, sir.

6 Q. Okay. And is this the front door over here?

7 A. A little bit further.

8 Q. This way or this way?

9 A. Yeah. Right there.

10 Q. That's the door to the store?

11 A. Yes, sir.

12 Q. So the two men, you said they were youngsters. Are
13 you talking about little toddler youngsters or run type
14 people?

15 A. No. Around like youngster like from fourteen to
16 eighteen years old.

17 Q. Okay. But they came in the front door here and they
18 came in quickly?

19 A. Yes, sir.

20 Q. Okay. And when they got in the store, once they got
21 through the door, did they stay right together or did they
22 separate?

23 A. No, they separated.

24 Q. Okay. And where did one guy stay and where did one
25 guy go? Tell me about that.

1 A. One guy stood near the front door and another guy came
2 near the swinging door where you can lead to the counter.

3 Q. Okay. So one guy stayed here near the front door?

4 A. Yes, sir.

5 Q. And you said there is a swing door here?

6 A. Yeah. That's a swinging door.

7 Q. Is that how you get behind the counter to work the
8 cash register?

9 A. Yes, sir.

10 Q. And one guy came around to the swing door?

11 A. Yes, sir.

12 Q. Now, which guy got more of your attention? The guy
13 that stopped and stayed here at the door, front door, or
14 the guy that came around here to where you come in to get
15 behind the cash register?

16 A. Near the cash register. Behind the cash register.

17 Q. This guy?

18 A. Yeah. The swing door.

19 Q. He had your attention much more than the other guy;
20 is that what you're saying?

21 A. Yeah because he was trying to come in so, you know, I
22 stood from the chair and stood in front of him.

23 Q. Okay. I'm going to show you what is already in
24 evidence. This is State's Exhibit Eight and we're going to
25 put it on the big projector up there.

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1 (STATE'S EXHIBIT EIGHT PUBLISHED TO THE JURY.)

2 Q. Do you recognize that scene?

3 A. Yes, sir.

4 Q. Okay. And, Mr. Patel, can you come on up here with me
5 for just a second.

6 (WITNESS LEFT WITNESS STAND.)

7 Q. Do you recognize the people in that picture?

8 A. Yeah I see the two youngsters.

9 Q. Okay. I'm going to ask you to take this pen of mine
10 and point out down there where you are in the picture.

11 A. Right here.

12 (WITNESS INDICATED.)

13 Q. That's you. And point out the two guys that had come
14 in the store.

15 A. One is right here.

16 Q. Okay.

17 A. And one is right here.

18 (WITNESS INDICATED.)

19 Q. Okay. And the one that got your attention that you
20 were really watching the most, where is he?

21 A. He's right here.

22 (WITNESS INDICATED.)

23 Q. Okay. And show us where the swinging door where you
24 come to get behind the cash register is.

25 A. Right there.

1 (WITNESS INDICATED.)

2 Q. So you were watching the guy coming around to the door
3 that comes behind the cash register?

4 A. Yes, sir.

5 Q. I'll get my pen and you go ahead and take your seat.

6 Thank you, Madame Clerk.

7 (WITNESS RETURNED TO WITNESS STAND.)

8 Q. I notice the man you pointed out that was coming
9 behind the cash register, he has a hood up. Did he have a
10 hood up?

11 A. Yes, sir.

12 Q. Okay. Could you see his face?

13 A. Yeah, pretty much.

14 Q. Okay. Did he get all the way to that swinging door?

15 A. Yeah. He tried to open and tried to come in.

16 Q. And what did you think. What did you think, what was
17 in your mind when he first tried to come in and move the
18 swing door to come in?

19 A. I stood up from the chair and ran in front and told
20 him to move back.

21 Q. Okay. Did he move back a little bit or not?

22 A. Yeah. He moved back a little bit.

23 Q. Then what did he do?

24 A. He tried to come back in and then I told him to move
25 out from the store with my hand.

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1 Q. Okay. And did he say anything to you?

2 A. He told me, "give me the money."

3 Q. And when he said, "give me the money" then what was
4 your frame of mind? What were you thinking or feeling at
5 that point?

6 A. I thought - We got a security switch near the
7 counter. I tried to push the switch.

8 Q. Okay. At that point as you go to push the switch -
9 and what does the security switch do? What does it do?

10 A. Mainly what it does if anything is like an emergency
11 in the store like where you cannot call 9-1-1, you can just
12 hit that and police - people know like something is really
13 bad at the store they'd be there right away.

14 Q. Does it notify the police?

15 A. Yeah. It notifies the police right away.

16 Q. So after the man said "give me the money" you reached
17 for the switch. Did you get to touch it? Did you get to
18 it?

19 A. Yeah. I was like you know I was scared. I pushed the
20 switch and when I was trying to push it, the other guy
21 started to shoot me.

22 Q. When the other guy shoots you up, until you were
23 getting hit with two bullets, did you know the other guy
24 had a gun? Had you seen it?

25 A. No. Mainly my eyes were on the counter guy because,

VIPUL PATEL: BY SOLICITOR SPRINGS

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1 you know, he was coming inside which I warn him to be so I
2 was mainly concerned on the counter guy.

3 Q. Okay. All right. So until the bullets hit you, you
4 didn't even know there was a gun?

5 A. No. Mainly I was like, you know, somebody come near
6 you on the counter you get like, you know, why he is
7 trying to come in. I was mainly concerned on him.

8 Q. Now the guy that was trying to get behind the counter,
9 the guy that said "give me the money" --

10 MR. BROWN: Your Honor, I'm gonna object to counsel
11 raising his voice. The witness didn't testify to that.

12 THE COURT: Yeah. Let's keep your voice down.

13 SOLICITOR SPRINGS: Okay.

14 Q. I want to know how close he got to you. I'm going to
15 walk towards and when I get to the point where he was
16 closest to you, would you tell me to stop?

17 A. Which one?

18 Q. The guy that was trying to get behind the counter.

19 A. Okay.

20 (SOLICITOR WALKS TOWARD WITNESS STAND.)

21 A. That's where I told him to stop. He tried to put his
22 hand on the counter.

23 Q. Okay.

24 A. On the door.

25 Q. Okay. So he got this close?

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1 A. Yes, sir.

2 Q. And did you look right into his face?

3 A. Yes, sir.

4 Q. And did you recognize him?

5 A. Yes, sir.

6 Q. How did you recognize him? Where had you seen him
7 before?

8 A. He had been coming in the store.

9 Q. Had you seen him in the store more than once?

10 A. Yes, sir.

11 Q. Did you know his name or just knew him as somebody
12 that came into the store?

13 A. No. I knew him just like him been coming in the
14 store.

15 Q. Okay. All right. And after you got shot, did you go
16 down to the ground, to the floor?

17 A. Yes, sir.

18 Q. And the two men that had come in, what did they do
19 when you got shot and you went down to the floor?

20 A. They left the store.

21 Q. Okay. As you went down to the floor, did the man you
22 recognized, the man trying to get behind the cash register,
23 did he do anything at all to try to help you?

24 A. No. He ran right away.

25 Q. The bullets that hit you, did they hit anything before

1 they hit your body?

2 A. Yeah. They hit in the cash register then they hit in
3 my body.

4 Q. Did both bullets hit the cash register first?

5 A. Yes, sir.

6 Q. When you ended up on the floor - So the two guys ran
7 out, did they get any money?

8 A. No, sir.

9 Q. And neither one of them actually got into the cash
10 register?

11 A. No, sir.

12 Q. Did one attempt to get into the cash register?

13 A. No. When they shot me, they just left the store.

14 Q. Okay. Now, after you got shot and you ended up on the
15 floor, tell me about your cousin Manish.

16 A. Yeah. I called, I shouted for help. I told Manish
17 come in front. I called him two, three times. Then he
18 heard me and he ran. I told him to call 9-1-1.

19 Q. Since he doesn't speak English, did you have help him
20 call 9-1-1?

21 A. Yeah. When he saw me like with the blood he was
22 scared so he came with the phone but he was - so I dialed
23 the number and you know the police, he told them my brother
24 shot.

25 Q. Okay. When you were shot lying on the floor before

VIPUL PATEL: BY SOLICITOR SPRINGS

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1 the police got there, did any customers come in?

2 A. Yeah. There were one customer came in.

3 Q. Okay. All right. And when he saw you lying on the
4 floor, what did that customer do?

5 A. He was shocked and he tried to call somebody.

6 Q. Okay. And did the police come?

7 A. Yes, sir.

8 Q. Were you able to talk to the police there in the store
9 while you were - before the ambulance took you away or were
10 you not able?

11 A. No. Mainly I was having trouble breathing so you
12 know, I had to from my mouth I was so - so I cannot talk
13 too much.

14 Q. Okay.

15 A. I tried to tell my name in there but that's it.

16 Q. So the ambulance came and they took you to the
17 hospital; is that right?

18 A. No. The ambulance came. They took me to near the
19 stadium and the helicopter flew me to the CMC.

20 Q. Okay. And some days later on July 31st, I guess
21 that would be six days later, did a police detective come
22 talk with you?

23 A. Yes, sir.

24 Q. And did you tell the police detective - At that point
25 when you were able to talk and did you tell them what

1 had happened?

2 A. Yeah. I told them what happened.

3 Q. Okay. And did you tell them that you knew the person
4 that was trying to get behind the counter, one of the
5 robbers?

6 A. I knew him so I told him like, you know, I knew the
7 guy.

8 Q. Okay. And that was on July 31st?

9 A. Yes, sir.

10 Q. Okay. Did the detective show you a photo lineup of
11 some people?

12 A. Yes, sir.

13 Q. And did you look at the photo lineup and recognize one
14 of the people in the photo lineup?

15 A. Yes, sir.

16 Q. Okay. The guy you recognized in the photo lineup --

17 MR. BROWN: Same objection previously made, Your
18 Honor.

19 THE COURT: Overruled.

20 BY SOLICITOR SPRINGS:

21 Q. Did the detective tell you to pick anybody out of the
22 photo lineup?

23 A. No. I picked my own.

24 Q. Okay. And the guy you picked out of the photo lineup,
25 the guy you recognized in the photos, who was he? What

VIPUL PATEL: BY SOLICITOR SPRINGS

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1 was he to you? What was important about him?

2 A. Mainly like you know when he came at the store that
3 night, I remember his face.

4 Q. Okay. Which one of the guys was it?

5 A. Right there.

6 Q. Okay. You pointed to the defendant, Kairon Maldonado.
7 Was he the guy that stood by the front door?

8 A. No. He came near the counter door.

9 Q. I see. Mr. Patel, I'm showing you what's been marked
10 as State's Exhibit Two and State's Exhibit Three.

11 Let's talk about State's Exhibit Two first. Do you
12 recognize those pictures?

13 A. Yes, sir. The detective showed me.

14 Q. Is that the photo lineup that you were shown by the
15 detective on July 31st last year?

16 A. Yes, sir.

17 Q. The guy you recognized and picked out is the guy that
18 was trying to come around the counter and get in, the guy
19 that told you to give him the money. Did you put your
20 initials next to the guy you recognized?

21 A. Yes, sir.

22 Q. Those are your initials next to number four?

23 A. Yes, sir.

24 Q. Okay.

25 SOLICITOR SPRINGS: Your Honor, we do offer State's

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1 Exhibit Two into evidence.

2 MR. BROWN: Subject to my previous --

3 THE COURT: Subject to my earlier ruling entered ---

4 MR. BROWN: Yes, sir.

5 THE COURT: --- into evidence.

6 (WHEREUPON: STATE'S EXHIBIT NUMBER TWO, IDENTIFIED
7 AND MARKED, RECEIVED INTO EVIDENCE.)

8 BY SOLICITOR SPRINGS:

9 Q. State's Exhibit Three appears to have your signature
10 on it. Does it?

11 A. Yes, sir.

12 Q. And it talks about - It's a form saying you're being
13 shown a photographic lineup; is that correct?

14 A. Yes, sir.

15 Q. And it's also dated July 31st, 2012; is that correct?

16 A. Yes, sir.

17 Q. Okay. So you saw this form and signed it at the same
18 time when you made the identification of the photo lineup?

19 A. Yes, sir.

20 SOLICITOR SPRINGS: Your Honor, we do offer State's
21 Exhibit Three into evidence.

22 MR. BROWN: Subject to my previous objection.

23 THE COURT: In over objection.

24 (WHEREUPON: STATE'S EXHIBIT NUMBER THREE, IDENTIFIED
25 AND MARKED, RECEIVED INTO EVIDENCE.)

VIPUL PATEL: BY SOLICITOR SPRINGS

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1 Q. And, Mr. Patel, we're going to look at State's Exhibit
2 Two, the photo lineup on the over head projector real
3 quick.

4 And while we wait for that to warm up, did another
5 detective come back in August to talk to you some more?

6 Did another police detective come back and talk to
7 you on August 7th? I'm sorry. August 10th.

8 A. Yeah. I went to the police station to make the
9 statement.

10 Q. Oh, okay. You went to the police station. Okay. And
11 I see your initials here by Number Four; is that right?

12 A. Yes, sir.

13 Q. And the guy in picture Number Four, the guy that tried
14 to come behind the counter that night, the guy that asked
15 you, told you to give him the money, do you see him in the
16 courtroom?

17 A. Yes, sir.

18 Q. Point him out one more time, please.

19 A. Right there.

20 SOLICITOR SPRINGS: And let the record show he has
21 pointed to the defendant in this case, Kairon Maldonado.

22 (WITNESS INDICATED TO DEFENDANT.)

23 Q. Did you and - Did you, assisted by some family
24 members, take some pictures of your wounds?

25 (ATTORNEY BROWN REVIEWING PHOTOS.)

1 MR. BROWN: Without objection.

2 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-ONE,
3 TWENTY-TWO, PREMARKED FOR IDENTIFICATION.)

4 Q. I'm showing what's been marked State's Exhibit
5 Twenty-one and Twenty-two for identification. Let's talk
6 about State's Exhibit Twenty-one first.

7 Do you recognize who's in that picture?

8 A. Yeah. It's me.

9 Q. And what are these things on your body? What are
10 those?

11 A. These are the scars where I got - I was shot the
12 bullet went through from here in my body.

13 Q. And is this a true and accurate picture of where one
14 of the bullets hit your body?

15 A. Yes, sir.

16 SOLICITOR SPRINGS: Your Honor, we do offer State's
17 Exhibit Twenty-one into evidence.

18 THE COURT: Any objection?

19 MR. BROWN: Without objection, Your Honor.

20 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-ONE
21 IDENTIFIED AND MARKED, RECEIVED INTO THE RECORD.)

22 Q. State's Exhibit Twenty-two, what does that show, sir?

23 A. That is where I have been shot. That's the bullet.

24 Q. On the other side of your face?

25 A. Yeah. On the left hand.

VIPUL PATEL: BY SOLICITOR SPRINGS

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1 Q. Okay. Is that a true and accurate picture of the
2 wound to the left side of your body?

3 A. Yes, sir.

4 SOLICITOR SPRINGS: Your Honor, we do offer State's
5 Exhibit Twenty-two into evidence.

6 MR. BROWN: Without objection.

7 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-TWO
8 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

9 Q. Let's look at these on the projector, Mr. Patel.

10 (STATE'S EXHIBIT NUMBER TWENTY-ONE PUBLISHED TO THE
11 JURY.)

12 Q. And we'll look at State's Exhibit Twenty-one first.
13 I think you said earlier the right hand bullet went through
14 your cheek before it hit your shoulder?

15 A. Yes, sir.

16 Q. Is this where it entered your cheek and came out of
17 your cheek before it hit your shoulder?

18 A. Yes, sir.

19 (STATE'S EXHIBIT NUMBER TWENTY-TWO PUBLISHED TO THE
20 JURY.)

21 Q. And State's Exhibit Twenty-two, is that black mark
22 where the bullet hit your left shoulder?

23 A. Yes, sir.

24 Q. And that bullet is still in your body?

25 A. Yes, sir.

1 Q. Your store I believe has security cameras; is that
2 right?

3 A. Yes, sir.

4 Q. Were they working that night?

5 A. Oh, yeah.

6 Q. Did you see the movies that were made by the security
7 cameras?

8 A. Yes, sir.

9 Q. And the movies you saw, were they true and accurate;
10 nothing phony about them?

11 A. Yes, sir.

12 Q. I'm showing you what is in evidence. It's State's
13 Exhibit Six. Is that the disc that has the movies made by
14 the security camera?

15 A. Yes, sir.

16 Q. All right. We're going to go ahead and take a look at
17 those now. Can you see the screen alright from where you
18 are?

19 A. Yeah.

20 Q. Let me ask you before we start. Is there any sound?
21 These are silent. There is no audio sound is there?

22 A. No. No audio.

23 Q. Okay. Just the movie?

24 A. Just the movie.

25 SOLICITOR SPRINGS: Would you play Clip Five.

VIPUL PATEL: BY SOLICITOR SPRINGS

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1 Dim the lights.

2 (STATE'S EXHIBIT NUMBER SIX PUBLISHED TO THE JURY AT
3 11:40 A.M..)

4 Q. Who's that behind the counter there?

5 A. Yeah, that's me.

6 Q. That fellow out front there, was he a customer?

7 A. Yeah. He came before the robbers came.

8 Q. Are those the two guys that came in your store to rob
9 you?

10 A. Yes, sir.

11 SOLICITOR SPRINGS: Pause again please.

12 Q. Now, you seem to be reaching for something there.
13 What are you reaching for?

14 A. I was just trying to scare them.

15 Q. As you - I see the rifle held by the man by the door.
16 Had you seen the rifle?

17 A. No. Mainly I was concentrating on the counter door.

18 Q. Did some of those displays and the cash register
19 itself block some of your view?

20 A. Yeah. It blocks the view in the front because, you
21 know, if I stand there it blocks the front view.

22 Q. Okay.

23 SOLICITOR SPRINGS: Go ahead and play it.

24 Q. Is that when he shot you?

25 A. Yes, sir.

1 SOLICITOR SPRINGS: If you would please play Clip
2 Eight.

3 Q. Is that the front of your store?

4 A. Yeah.

5 Q. Is that them? Is that the robbers?

6 A. Yeah. There were two.

7 SOLICITOR SPRINGS: Go ahead and play that until it
8 ends by itself if you would. Let's go back and play Eight
9 again.

10 Would you now play Clip Three?

11 Q. And is that you behind the counter before you got
12 shot?

13 A. Yes, sir.

14 SOLICITOR SPRINGS: Go ahead and stop that and play
15 Clip Two.

16 Stop that and play Clip Fifteen please, ma'am.

17 (STATE'S EXHIBIT SIX CONTINUED TO BE PUBLISHED.)

18 Q. Is this after the bullets hit you?

19 A. Yeah, that's me.

20 Q. Is that Manish?

21 A. Yeah. I called him.

22 SOLICITOR SPRINGS: You can go ahead and stop it.
23 Please play Clip Seventeen.

24 (STATE'S EXHIBIT SIX CONTINUED TO BE PUBLISHED.)

25 SOLICITOR SPRINGS: You can stop there.

VIPUL PATEL: BY SOLICITOR SPRINGS

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1 Play Clip Sixteen.

2 (STATE'S EXHIBIT SIX CONTINUED TO BE PUBLISHED.)

3 Q. Now, who is that there in that utility type room?

4 A. My cousin, Manish Patel.

5 Q. And he's running for what reason?

6 A. Yeah, when I shout for help --

7 MR. BROWN: Objection, Your Honor.

8 THE COURT: I sustain the objection.

9 Just disregard that answer.

10 SOLICITOR SPRINGS: You can stop right there.

11 Please play Clip Ten.

12 (STATE'S EXHIBIT SIX CONTINUED TO BE PUBLISHED.)

13 Q. Is that person that just walked in, is that a customer
14 you mentioned?

15 A. Yeah, it's a customer.

16 Q. Is that the lady police officer that just walked in?

17 A. Yeah, that was her.

18 SOLICITOR SPRINGS: You can stop it.

19 Thank you, Mr. Patel. If you would answer any
20 questions the defense attorney may have.

21 MR. BROWN: I need two minutes to step outside with
22 the Court's permission.

23 (PAUSE/ATTORNEY BROWN LEFT COURTROOM.)

24 (ATTORNEY BROWN RETURNED TO COURTROOM.)

25 CROSS EXAMINATION

VIPUL PATEL: BY MR. BROWN

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1 VIPUL PATEL BY MR. BROWN:

2 Q. Mr. Patel, you testified previously, I believe it was
3 yesterday, about what you saw. Did you did not tell me
4 yesterday when I asked you that the individual that was
5 trying to come through the counter had glasses on?

6 A. Yeah.

7 Q. Okay. And you told me he did not have a bandana on
8 his face. Correct?

9 A. No. He didn't have a bandana.

10 Q. And you told me he was about five foot five. Correct?

11 A. Yeah. Because you know my counter is a little bit
12 high ---

13 Q. Yes, sir.

14 A. --- so that's what I guessing because I'm not going to
15 look at the size when somebody come in the store.

16 Q. I'm showing you State's Exhibit Number Nine. Is that
17 the individual that walked over toward where the cash
18 register was?

19 A. Yeah. One here and one there.

20 Q. And doesn't he have a bandana around his face in that
21 picture?

22 A. I cannot see it.

23 Q. Isn't his face covered up down here with the bandana?

24 A. I think it is a hoodie in the front.

25 Q. Do you see that part right there?

VIPUL PATEL: BY MR. BROWN

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1 A. Yeah but I see the - because the checked is two color,
2 white and blue ---

3 Q. Yeah.

4 A. --- so it's a hoodie in the front.

5 Q. And what is that right there, if you remember?

6 A. I don't remember.

7 Q. Okay. You saw this individual for about five to six
8 seconds did you not, sir?

9 A. Yes, sir.

10 Q. Okay. And it was under less than ideal circumstances.
11 Correct?

12 A. Yeah. I seen him before so I recognize him at that
13 time.

14 MR. BROWN: Please key up Number Three.

15 (STATE'S EXHIBIT SIX, CLIP THREE PUBLISHED.)

16 THE COURT: Mr. Brown, I don't think some of the
17 jurors can see if you stand there.

18 MR. BROWN: Stop it right there.

19 Q. Mr. Patel, what are you looking at with that gun
20 pointed --

21 A. I was looking at the two guys.

22 Q. Okay. You didn't see that gun right before --

23 A. No. Not really.

24 Q. How close does that look to you, sir?

25 A. Round like from here to there.

VIPUL PATEL: BY MR. BROWN

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1 Q. Okay. And the gun is being pointed at you. You can
2 see that. Correct, sir?

3 A. I cannot see. I was looking at them.

4 Q. Okay. Which way is your head pointed in that picture?

5 A. Yeah. I was looking in the front because at that time
6 there were two guy came in the front.

7 Q. Okay. Sir, I realize it was a traumatic experience
8 for you. Could you have forgotten about this? Could your
9 memory have faded because the experience of what happened
10 to you, sir?

11 A. See because I don't - At that time I was looking at
12 the --

13 Q. Yes, sir. But your face is clearly looking at the man
14 with the gun.

15 A. Yeah because there were two people in the front when
16 they came in, I just - When anybody come in the store, you
17 just look in the front.

18 Q. My question to you is, sir, because of how traumatic
19 this was, could you have blocked some of this out of your
20 memory?

21 A. Yeah it could block memory.

22 Q. Okay. Thank you, sir.

23 The police, first come to you, sir, on July 25th; is
24 that right?

25 A. Yeah. When I was shot?

VIPUL PATEL: BY MR. BROWN

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1 Q. Yes, sir.

2 A. Yeah.

3 Q. And this happened on July the --

4 A. July the 25th on Wednesday 2012.

5 Q. 25th. It was July 31st is when they came to your
6 house; is that right?

7 A. Yes, sir.

8 Q. Okay. And they didn't come and ask you for a
9 description or anything did they?

10 A. No. They came in and asked me what happened. I told
11 him and they showed me the photo line pictures.

12 Q. Okay. And let me ask you this, sir. Do you see any
13 other customers in this lineup that have been in the store
14 before?

15 A. I don't remember.

16 Q. Okay. Do you recognize one, two, three, or five or
17 six, as any customers ever?

18 A. I don't remember.

19 Q. But you knew four was a customer?

20 A. Yeah because you know, he was there at that time.

21 That was in my mind.

22 Q. You gave your statement on August 10th identifying him
23 as a customer. Correct?

24 A. Yes, sir.

25 Q. But the paper ran an article on August 3rd which you

VIPUL PATEL: BY MR. BROWN

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1 admitted to me yesterday that you read identifying my
2 client.

3 A. No. Once I saw him like when they came on 31st I told
4 them what happened and I identify him on the picture and
5 then I saw in the paper.

6 Q. But the first thing I have in discovery saying you
7 identified him as a customer is seven days after it was in
8 the paper.

9 A. I told the officer I knew him.

10 Q. I believe you testified yesterday that you were on
11 medication when you made this identification.

12 A. Yeah. The doctor tried to give me the high -
13 different medication.

14 Q. And this medication were pain killers and so forth.
15 Right?

16 A. Yes, sir.

17 Q. And I believe you testified that you were groggy when
18 they came. Correct?

19 A. They gave me all different ones because it didn't work
20 for my body and still it's not working, no medicine.

21 Q. So you were under medication at the time?

22 A. Yeah, they gave me medication.

23 MR. BROWN: I beg the court's indulgence one moment.

24 (PAUSE.)

25 MR. BROWN: I don't think I have any further

1 questions.

2 SOLICITOR SPRINGS: Nothing further.

3 Thank you, Mr. Patel.

4 (WITNESS LEAVING WITNESS STAND.)

5 SOLICITOR SPRINGS: May we approach?

6 THE COURT: Yes, sir.

7 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
8 THE JURY AT 12:00 P.M..)

9 THE COURT: All right. We'll break for lunch until
10 1:30. Have a pleasant lunch and we'll see you back at
11 1:30.

12 (JURY EXISTS COURTROOM AT 12:00 P.M..)

13 THE COURT: Wanda, this doesn't have to be on the
14 record.

15 (COURT IN LUNCH RECESS AT 12:01 P.M..)

16 (COURT BACK IN SESSION AT 01:36 P.M..)

17 (DEFENDANT REENTERS COURTROOM.)

18 THE COURT: Is the State ready?

19 SOLICITOR SPRINGS: The State is ready.

20 THE COURT: Defense ready?

21 MR. BROWN: Yes, sir.

22 THE COURT: Bring in the jury.

23 (JURY REENTERS COURTROOM AT 01:37 P.M..)

24 THE COURT: Call your next witness.

25 SOLICITOR SPRINGS: Thank you, Judge Hayes.

OFFICER KEVIN SULLIVAN: BY SOLICITOR SPRINGS

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1 Mr. Bailiff, out in the hall is a forensics officer
2 named Kevin Sullivan. Please ask him to come in.

3 Mr. Sullivan, step up to the Clerk and she will swear
4 you in, sir.

5 (WHEREUPON: KEVIN SULLIVAN, BEING
6 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

7 DIRECT EXAMINATION

8 OFFICER KEVIN SULLIVAN BY SOLICITOR SPRINGS:

9 Q. Officer Sullivan, keep your voice up nice and loud.

10 Tell us your name, sir.

11 A. Kevin Sullivan.

12 Q. What do you do for a living? -

13 A. I'm a police officer for the Rock Hill Police
14 Department.

15 Q. And how long have you been a police officer? Tell me
16 the number of years in any department and any where.

17 A. Going on seventeen years.

18 Q. Okay. Are you what's called a forensics officer?

19 A. I am.

20 Q. What are some of the things forensics officers do?

21 A. Forensics officers are crime scene investigators. We
22 respond to crime scenes and basically document a crime
23 scene. Process a crime scene for evidence such as
24 fingerprints, trace evidence, swab taking, DNA swabs sent
25 off an analysis. Basically we're just documenting the

OFFICER KEVIN SULLIVAN: BY SOLICITOR SPRINGS

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1 scenes.

2 Q. Okay. And you also take pictures did you say?

3 A. I do.

4 Q. Okay. Are forensics officers at night on call?

5 A. Yes, they are.

6 Q. The night of July 25th of last year, that was a
7 Wednesday night, were you on call?

8 A. I happen to be working that night, yes.

9 Q. Okay. Were you called to the store at the corner of
10 West Main and South Cherry Road, the Discount Food and
11 Beverage?

12 A. Yes, sir.

13 Q. And when you got there, was it your understanding that
14 somebody had been shot in the store?

15 A. Yes, sir, that is what I was advised.

16 Q. When you got there was the wounded person still on the
17 scene or had they been taken away in the ambulance already?

18 A. When I arrived, EMS was inside the store assisting the
19 wounded individual on the floor of the store.

20 Q. Okay. All right. Was a rifle recovered that night?

21 A. There was yes. A ways - a distance from the scene.

22 Q. Okay. Did you work on the rifle? Did you check it
23 for fingerprints?

24 A. I don't recall.

25 Q. Do you know what the result of a check for

1 fingerprints on the rifle was?

2 A. That I don't know.

3 Q. Okay. Did some shell casings get recovered from the
4 store that night?

5 A. Yes there were.

6 Q. Do you recall how many?

7 A. Three.

8 Q. Do you recall the caliber?

9 A. .22 caliber.

10 SOLICITOR SPRINGS: Madame Clerk, do you have some
11 scissors?

12 MADAME COURT REPORTER: I do.

13 Q. So you say three .22 caliber shells were found on the
14 floor of the store?

15 A. That's correct.

16 (WHEREUPON: STATE'S EXHIBITS TWENTY-THREE, TWENTY-
17 FOUR AND TWENTY-FIVE, PREMARKED FOR IDENTIFICATION.)

18 Q. Officer, I'm showing you what has been marked State's
19 Exhibit Twenty-five, Twenty-three, Twenty-four. Take a
20 look at those and tell me if each one of those envelopes
21 contains each one of the shells.

22 A. That's correct. They do.

23 Q. One .22 shell per envelope?

24 A. Yes.

25 Q. And these were found on the floor?

OFFICER KEVIN SULLIVAN: BY SOLICITOR SPRINGS

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1 A. Yes.

2 SOLICITOR SPRINGS: Your Honor, we do offer into
3 evidence State's Exhibit Twenty-three, Twenty-four and
4 Twenty-five.

5 MR. BROWN: Without objection.

6 THE COURT: In without objection.

7 (WHEREUPON: STATE'S EXHIBITS TWENTY-THREE, TWENTY-
8 FOUR AND TWENTY-FIVE, IDENTIFIED AND MARKED, RECEIVED INTO
9 EVIDENCE.)

10 Q. And pursuant to your examination of the crime scene,
11 Officer Sullivan, did you determine that bullets had gone
12 through some object in the store?

13 A. Yes. After searching the scene and finding how many
14 shell casings we discovered, we were looking to see if the
15 rounds had struck something prior to striking the victim
16 and I happened to glance at the cash register and saw that
17 the cash register had been struck.

18 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-SIX,
19 TWENTY-SEVEN AND TWENTY-EIGHT PREMARKED FOR
20 IDENTIFICATION.)

21 Q. Officer Sullivan, let's first of all look at what had
22 been marked State's Exhibit Twenty-eight for
23 identification. Do you recognize what that thing is in
24 that picture?

25 A. Yes, sir. It's a picture of the cash register in the

1 store that night.

2 Q. Okay. The way it looked when you got there on the
3 scene?

4 A. That's correct.

5 Q. Is it a true and accurate picture of the cash
6 register?

7 A. Yes, it is.

8 SOLICITOR SPRINGS: Your Honor, we do at this time
9 offer into evidence State's Exhibit Twenty-eight.

10 MR. BROWN: Without objection.

11 THE COURT: In without objection.

12 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-EIGHT,
13 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

14 BY SOLICITOR SPRINGS:

15 Q. The two holes in the cash register, do you know what
16 made those?

17 A. I believe they were caused by a projectile fired from
18 a firearm.

19 Q. Okay. And were dowels, rods, put through the cash
20 register to show visually how the bullets traveled?

21 A. Yes, they were.

22 Q. State's Exhibit Twenty-six and Twenty-seven, what do
23 those photos show, sir?

24 A. Twenty-six shows the front of the register with the
25 dowel rods struck through the register to show trajectory

OFFICER KEVIN SULLIVAN: BY SOLICITOR SPRINGS

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1 Twenty-seven shows - is another angle showing the
2 trajectory from the front of the store behind the counter.

3 Q. And these State's Exhibit Twenty-six and Twenty-seven
4 are true and accurate pictures of the cash register with
5 dowel rods put in to show the trajectory of the bullets?

6 A. Yes, sir, they are.

7 SOLICITOR SPRINGS: Your Honor, we offer into
8 evidence Twenty-six and Twenty-seven.

9 MR. BROWN: Without objection.

10 THE COURT: In without objection.

11 (WHEREUPON: STATE'S EXHIBITS NUMBER TWENTY-SIX AND
12 TWENTY-SEVEN, IDENTIFIED AND MARKED, RECEIVED INTO
13 EVIDENCE.)

14 (WHEREUPON: STATE'S EXHIBIT NUMBERS TWENTY-NINE,
15 THIRTY AND THIRTY-ONE, PREMARKED FOR IDENTIFICATION.)

16 Q. State's Exhibit Twenty-nine, what is in that picture?

17 A. This shows the front of the - would be the front of
18 the register as you are facing it to pay the clerk.

19 Q. The customer's side?

20 A. The customer's side of the register. This is showing
21 two projectile holes in the front of the register.

22 Q. All right. Is it a true and accurate photograph of
23 the entrance hole so to speak in the cash register?

24 A. Yes, sir.

25 Q. All right.

1 SOLICITOR SPRINGS: Your Honor, we do offer into
2 evidence State's Exhibit Twenty-nine.

3 THE COURT: Any objection?

4 MR. BROWN: Without objection.

5 THE COURT: In without objection.

6 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-NINE,
7 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

8 Q. Looking at State's Exhibit Twenty-nine, Officer
9 Sullivan.

10 Could you dim the lights?

11 (COURTROOM LIGHTS DIMMED.)

12 (STATE'S EXHIBIT TWENTY-NINE PUBLISHED TO THE JURY.)

13 Q. Officer Sullivan, this is Twenty-nine. Is this where
14 the holes, the bullet holes you're talking about?

15 A. Yes, sir.

16 Q. And this is on the customer's side of the register?

17 A. It is, yes.

18 Q. I'm showing you State's Exhibit Twenty-eight.

19 (STATE'S EXHIBIT NUMBER TWENTY-EIGHT PUBLISHED TO THE
20 JURY.)

21 Q. Would this be the clerk's side of the register?

22 A. It would be yes, sir.

23 Q. And these holes, are they bullet holes?

24 A. Yes, sir, they are.

25 Q. And you say dowel rods were put through the register

OFFICER KEVIN SULLIVAN: BY SOLICITOR SPRINGS

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1 to show the trajectory of the bullets?

2 A. Yes, sir.

3 Q. I'm showing you State's Exhibit Twenty-seven.

4 (STATE'S EXHIBIT NUMBER TWENTY-SEVEN PUBLISHED TO THE
5 JURY.)

6 Q. So the dowel rods are red I take it; is that right?

7 A. Actually they are like a neon orange to show up better
8 in photographs.

9 Q. And State's Exhibit Twenty-six.

10 (STATE'S EXHIBIT NUMBER TWENTY-SIX PUBLISHED TO THE
11 JURY.)

12 Q. The same dowel rods just from a different angle?

13 A. Yes, sir, they are.

14 Q. Now I see two rods here coming out, and I see three on
15 the customer's side, so there were three bullets going in
16 but only two coming out?

17 A. Yes, sir. That's what the holes suggested.

18 SOLICITOR SPRINGS: Would you bring the lights back up
19 for just a second.

20 (COURTROOM LIGHTS TURNED UP.)

21 Q. And do you recall if you took a picture of what the
22 scene looked like when you arrived?

23 A. I did.

24 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
25 OF THE JURY AT 01:52 P.M..)

OFFICER KEVIN SULLIVAN: BY SOLICITOR SPRINGS

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1 Q. I don't think I asked you what State's Exhibit Thirty
2 and Thirty-one show.

3 A. They show the cartridge casings that were found on the
4 floor.

5 Q. A couple of them?

6 A. Yes, sir.

7 Q. So each one shows a shell casing in Thirty and Thirty-
8 one?

9 A. That's correct.

10 Q. Are they true and accurate ---

11 A. Yes, they are.

12 Q. --- photos of the shell casings on the floor?

13 A. Yes, sir, they are.

14 SOLICITOR SPRINGS: Your Honor, we do offer State's
15 Exhibit Thirty and Thirty-one into evidence.

16 THE COURT: Any objection.

17 MR. BROWN: Just the shells. No objection

18 THE COURT: In without objection.

19 (WHEREUPON: STATE'S EXHIBIT NUMBERS THIRTY AND
20 THIRTY-ONE, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

21 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-TWO,
22 PREMARKED FOR IDENTIFICATION.)

23 Q. And you said you took some pictures of what the scene
24 looked like when you arrived. I'm showing you what's been
25 marked State's Exhibit Thirty-two.

OFFICER KEVIN SULLIVAN: BY SOLICITOR SPRINGS

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1 Do you recognize what is depicted in that picture?

2 A. Yes, sir, I do.

3 Q. And what does it show?

4 A. It shows blood on the floor and bloody clothing were I
5 observed EMS working on the victim.

6 Q. Okay. And then they took him away after they cut his
7 clothes off?

8 A. Yes, sir, that's correct.

9 Q. Is it a true and accurate photo of what things looked
10 like when you arrived on the scene ---

11 A. Yes, sir.

12 Q. --- inside the Discount Food and Beverage store that
13 night?

14 A. Yes, sir, it is.

15 SOLICITOR SPRINGS: Your Honor, we do offer into
16 evidence State's Exhibit Thirty-two.

17 THE COURT: Over objection it's allowed in.

18 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-TWO,
19 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

20 SOLICITOR SPRINGS: Can you dim the lights?

21 (COURTROOM LIGHTS TURNED DOWN.)

22 Q. We're showing State's Exhibit Thirty-two on the
23 overhead projector. And, Officer Sullivan, that's
24 basically what you saw when you arrived on the scene?

25 A. Yes, sir.

OFFICER KEVIN SULLIVAN: BY MR. BROWN

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1 Q. Okay.

2 SOLICITOR SPRINGS: Thank you, sir.

3 I have no further questions.

4 CROSS EXAMINATION

5 OFFICER KEVIN SULLIVAN BY MR. BROWN:

6 Q. Officer Sullivan, you were the forensics officer in
7 this case. Is that correct, sir?

8 A. Yes, sir.

9 Q. So all the forensics came to you in this matter?

10 A. Correct.

11 Q. All right. And as a matter of fact, you took a swab
12 or somebody took a swab of Mr. Maldonado's mouth for DNA
13 purposes; is that correct?

14 A. The police department did yes, sir.

15 Q. All right. When you say forensics, briefly explain to
16 the jury what that means. Does that include fingerprints?

17 A. It includes fingerprints, DNA evidence; collecting,
18 preserving those items.

19 Q. That's all scientific evidence like we see on TV.

20 Right?

21 A. Yes, sir.

22 Q. And in this case, do we have any forensic evidence on
23 Mr. Maldonado linking him to this crime?

24 A. I haven't been advised of anything.

25 MR. BROWN: No further questions.

OFFICER KEVIN SULLIVAN: BY SOLICITOR SPRINGS

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1 THE COURT: All right. Redirect?

2 REDIRECT EXAMINATION

3 OFFICER KEVIN SULLIVAN BY SOLICITOR SPRINGS:

4 Q. Forensic evidence meaning fingerprints, DNA, et
5 cetera; is that right?

6 A. Yes, sir.

7 Q. And DNA was never sent off given the facts of this
8 case; is that right?

9 A. I don't believe so, no.

10 MR. BROWN: Objection, if he knows or he doesn't know.

11 THE COURT: He said he didn't know.

12 A. I didn't send any -

13 THE COURT: You didn't know whether or not any DNA -

14 A. I didn't send any off, Your Honor.

15 THE COURT: You didn't send any off. Okay.

16 So he doesn't know if any was sent off.

17 All right. You can step down and be excused.

18 (WITNESS LEAVING WITNESS STAND.)

19 THE COURT: Call your next witness.

20 SOLICITOR SPRINGS: May I step to the rear of the
21 courtroom one moment, Your Honor.

22 (PAUSE.)

23 SOLICITOR SPRINGS: Thank you.

24 Would you bring out Kadeem Sanders.

25 THE COURT: Are they checking on him?

1 THE BAILIFF: He's not up here yet.

2 THE COURT: Not up here yet.

3 SOLICITOR SPRINGS: Can we take a short break?

4 THE COURT: We'll take a short break while we're
5 waiting on this witness.

6 (JURY EXITS COURTROOM AT 01:57 P.M..)

7 THE COURT: All right. For the record, Mr. Brown on
8 behalf of Mr. Maldonado objected to the photograph of the
9 scene. I don't remember the number, it might have been
10 Thirty-one.

11 SOLICITOR SPRINGS: I think it's Thirty-two.

12 THE COURT: Thirty-two, where it shows the scene and
13 quite a bit of blood on the floor. The objection is
14 quite a bit of blood on the floor. The objection is it's
15 articulated to me at the bench was that it was quote, too
16 gory, end quote.

17 Anything else you want to say on that?

18 MR. BROWN: Your Honor, just that the prejudicial
19 effect far outweighs any approbative value under the Rule.

20 THE COURT: I allowed it in but, Mr. Springs, do you
21 want to say anything about it?

22 SOLICITOR SPRINGS: I think it's relevant and
23 corroborative to show the scene that was created by these
24 guys.

25 THE COURT: I agree. I think it does have some

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1 THE COURT: I agree. I think it does have some
2 prejudicial value but it's approbative value showing the
3 scene. If this were a case involving an actual murder,
4 more than likely a judge including myself would allow a
5 picture of the deceased at the place where they were found
6 and had the photographer had the time to take a picture of
7 Mr. Patel after the shooting. I don't have any questions
8 most judges would allow that in, so I find that the showing
9 of the scene even though it does show an awful lot of blood
10 I believe the prejudicial value is outweighed by the
11 approbative value and will allow it in.

12 MR. BROWN: Yes, sir.

13 SOLICITOR SPRINGS: Thank you, sir.

14 THE COURT: We've got five more minutes so we'll be
15 at break and let me know as soon as Mr. Sanders --

16 MR. BROWN: They got a note from the jury?

17 (JURY NOTE RECEIVED UP BY THE COURT.)

18 THE COURT: They want a smoke break. I'm not gonna
19 let them go this time. We're gonna get started as soon as
20 Mr. Sanders gets up here and utilize his services and get
21 him back.

22 MR. BROWN: We are taking - I'm sorry.

23 THE COURT: We are gonna take a break until Mr.
24 Sanders comes up.

25 SOLICITOR SPRINGS: Let me say on the record now

1 before he comes out, Mr. Kadeem Sanders is the next
2 witness. He is represented by Ms. Ashley Anderson and she
3 is sitting here in the courtroom. She'll be present when
4 he testifies.

5 THE COURT: All right. Let me know as soon as soon as
6 he's here.

7 (WHEREUPON: COURT'S EXHIBIT NUMBERS ONE AND TWO,
8 MARKED AND RECEIVED INTO EVIDENCE.)

9 (COURT IN RECESS AT 02:00 P.M..)

10 (COURT BACK IN SESSION AT 02:14 P.M..)

11 THE COURT: Thank you. Take your seats.

12 Is the State ready?

13 SOLICITOR SPRINGS: The State is ready.

14 THE COURT: Defense ready?

15 MR. BROWN: Defense is ready.

16 THE COURT: Bring in the jury.

17 (JURY REENTERS COURTROOM AT 02:15 P.M..)

18 THE COURT: All right, call your next witness.

19 SOLICITOR SPRINGS: All right, Mr. Sheriff, now will
20 you can bring in Kadeem Sanders.

21 (WITNESS/BLACK MALE/ ENTERS COURTROOM FROM HOLDING
22 CELL.)

23 SOLICITOR SPRINGS: Mr. Sanders, come right up here
24 and put your left hand on the Bible and raise your right as
25 best you can and she'll give you the oath.

KADEEM SANDERS: BY SOLICITOR SPRINGS

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1 (WHEREUPON: KADEEM SANDERS,
2 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

3 THE BAILIFF: Watch your step going up.

4 DIRECT EXAMINATION

5 KADEEM SANDERS BY SOLICITOR SPRINGS:

6 Q. Mr. Sanders, will you tell the jury your name, sir?

7 A. Kadeem Sanders.

8 Q. And you know Kairon Maldonado?

9 A. Yes, sir.

10 Q. Please point him out for the jury.

11 (WITNESS INDICATED TOWARD DEFENSE TABLE.)

12 SOLICITOR SPRINGS: Let the record show he is pointing
13 to the defendant, Kairon Maldonado.

14 Q. I want to ask you about the night of July 25th of last
15 year, 2012. Did you get arrested that night a little bit
16 after eleven o'clock?

17 A. Yes, sir.

18 Q. And before you got arrested a little bit before eleven
19 o'clock that night, had you been inside the Discount Food
20 and Beverage store on West Main Street at the corner of
21 Cherry Road?

22 A. Yes, sir.

23 Q. And who went into the Discount Food and Beverage store
24 with you that night a little bit before eleven o'clock?

25 A. Kairon.

KADEEM SANDERS: BY SOLICITOR SPRINGS

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1 Q. Who was it?

2 A. Kairon Maldonado.

3 Q. Kairon Maldonado?

4 A. Yes, sir.

5 Q. Okay. Did you shoot the clerk with the rifle while
6 you were in the store?

7 A. Yes, sir.

8 MR. BROWN: Your Honor, I'm gonna ask that he speak
9 closer to the microphone. I'm having a hard time hearing
10 him.

11 A. Yes, sir.

12 MR. BROWN: Thank you.

13 BY SOLICITOR SPRINGS:

14 Q. I'm showing you what has been marked State's Exhibit
15 Sixteen. Is that your rifle that you shot the clerk with?

16 A. Yes, sir.

17 Q. So that night did you and Kairon Maldonado go into the
18 store planning and agreeing before you ever went in that
19 you were going to try to rob the store?

20 A. Yes, sir.

21 Q. You say no, you didn't?

22 A. Huh?

23 Q. Did you say no?

24 A. Yes, sir.

25 THE COURT: Answer the question again. I'm not sure

KADEEM SANDERS: BY SOLICITOR SPRINGS

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1 what the answer is.

2 Q. Let me rephrase it. On the night of July 25th 2012,

3 ---

4 A. Yes.

5 Q. --- the night you got arrested, did you and Kairon
6 Maldonado agree that you two were going -

7 A. Yes, sir.

8 Q. --- to go into the store, the Discount Beverage store,
9 to rob the cash register of money?

10 A. Yes, sir.

11 Q. You did agree that with Maldonado that's what you were
12 gonna do before you ever went in?

13 A. Yes, sir.

14 Q. So did you and Kairon Maldonado actually enter the
15 Discount Beverage store that night to rob it?

16 A. Yes, sir.

17 Q. And you meant to rob it before you entered the store?

18 A. Yes, sir.

19 Q. After the store clerk, Mr. Patel, --

20 Stand up, Mr. Patel, let him see you.

21 (VICTIM, VIPUL PATEL, STOOD.)

22 Q. After the store clerk was shot by you, did you run out
23 of the store, you and Kairon Maldonado together?

24 A. Yes, sir.

25 THE COURT: You can sit back down.

1 SOLICITOR SPRINGS: Oh yeah, please sit back down.

2 (VICTIM, VIPUL PATEL, RESEATED HIMSELF.)

3 Q. In a minute the defense attorney is going to ask you
4 some questions. He's gonna ask you about what you pled
5 guilty because you have pled guilty to some things haven't
6 you?

7 A. Yes, sir.

8 Q. You've pled guilty to attempted armed robbery; is that
9 right?

10 A. Yes, sir.

11 Q. Okay. And you could have gotten twenty years for
12 that. Do you know that?

13 A. Yes, sir.

14 Q. You pled guilty to attempted murder. You could have
15 gotten thirty years for that; is that right?

16 A. Yes, sir.

17 Q. And you pled guilty to possessing this firearm, this
18 rifle, when you committed those violent crime and you could
19 have gotten another five for that; is that right?

20 A. Yes, sir.

21 Q. And you pled guilty to planning in advance, conspiring
22 with Mr. Maldonado to do this crime, and you could have
23 gotten five years for that; is that right?

24 A. Yes, sir.

25 Q. So theoretically you could have gotten sixty years if

KADEEM SANDERS: BY SOLICITOR SPRINGS

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1 you add them all up, and believe me I did that math and
2 that's right; is that right?

3 A. Yes, sir.

4 Q. But you and I made a deal did we not?

5 A. Yes, sir.

6 Q. Do you want to tell the jury what the deal is?

7 A. By me getting up here and being truthful.

8 Q. Okay. You have to testify truthful. Are you being
9 truthful?

10 A. Yes, sir.

11 Q. And if you testify truthfully and you plead guilty,
12 and you have pled guilty, what's your sentence going to end
13 up being?

14 A. Fourteen to seventeen.

15 Q. Between fourteen and seventeen years?

16 A. Yes, sir.

17 Q. That's no parole years?

18 A. Yes, sir.

19 Q. Have you been truthful?

20 A. Yes, sir.

21 Q. Thank you.

22 SOLICITOR SPRINGS: That's all I have.

23 THE COURT: Mr. Brown.

24 CROSS EXAMINATION

25 KADEEM SANDERS BY MR. BROWN:

KADEEM SANDERS: BY MR. BROWN

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1 Q. The night before you did this, you shot Mr. Patel, did
2 you talk to anybody about what you were gonna do?

3 A. I don't remember. We was high.

4 Q. Who?

5 A. I said I truly don't remember. I was high.

6 Q. You were high. So you don't remember talking to
7 anybody about what you intended to do?

8 A. I probably did.

9 Q. You don't remember or you don't know?

10 A. No.

11 Q. And then the night it happened, what did you have on
12 when you went to the store?

13 A. Black jeans, black shirt.

14 Q. I'm going to ask you to speak in that so --

15 A. Black jeans and black shirt and red flag.

16 Q. Did you have a bandana around your face like this?

17 (ATTORNEY BROWN DEMONSTRATED.)

18 A. Yes, sir.

19 Q. Did the other guy that went in there with you have one
20 around his face like that?

21 A. No, sir.

22 Q. You sure about that?

23 A. No.

24 Q. Okay. And when you went in there, you shot him?

25 A. Yes, sir.

KADEEM SANDERS: BY MR. BROWN

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1 Q. Okay. And within ten minutes you got caught. Right?

2 A. I don't know.

3 Q. Well, did the police catch you laying down in
4 somebody's backyard within ten minutes after this?

5 A. Yes, sir. I just don't know how long it was.

6 Q. When the police told you that the guy was shot and he
7 may die, isn't it true that you ask the cop for a
8 cigarette?

9 A. I don't know.

10 Q. You don't know?

11 A. I don't know.

12 Q. And when the cops asked you to tell them what
13 happened, you told them you didn't know anything about it
14 then didn't you?

15 A. Yes, sir. Probably. I don't --

16 Q. Okay. So the first time you had interaction with law
17 enforcement, you lied?

18 A. Yes, sir.

19 Q. Okay. And that's the first story you told about this
20 incident. Correct?

21 A. Yes, sir.

22 Q. "I don't know what happened. I didn't do the
23 shooting. Can I have a cigarette."

24 A. Uh.

25 Q. After they arrested you, the police came and talked to

KADEEM SANDERS: BY MR. BROWN

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1 you again didn't they?

2 A. Yes, sir.

3 Q. And again you told them you didn't have anything to do
4 with it and didn't know anything about it. Correct?

5 A. No, sir. That ain't what I said.

6 Q. What did you tell them this time then?

7 A. You really want the truth?

8 Q. No I want you to lie. Of course I want the truth.

9 A. I told one, I said you a alien and I told the other
10 one he was a dog and I started making noises and they sent
11 me out.

12 Q. You said what now?

13 A. I told one of the police officers that he was a dog
14 and I told the other one was an alien and made noises and
15 they sent me out.

16 Q. What's that got to do with what happened in the
17 store?

18 A. That's what happened. You said did I say --

19 Q. A dog made noises?

20 A. That's what I had told them. They sent me out.

21 Q. The dog made noises - help me out here. The dog made
22 noises, so what happened at the store?

23 A. It ain't had nothing to do with the store. They ain't
24 never asked me about the store.

25 Q. Okay. But you tell them you weren't there. Right?

KADEEM SANDERS: BY MR. BROWN

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1 The second time they interviewed you in jail.

2 A. No. The first time.

3 Q. The first time? I'm talking about when you were on
4 the ground behind somebody's house. I'm talking about the
5 first time in jail. The second time you talked to them
6 about this.

7 A. I just told you what I said the second time.

8 Q. That the dogs smelled you out?

9 A. No. I told them - When they brought me in the room I
10 didn't say nothing to them. I told one of them he was a
11 dog. I told the girl she was a alien, man, so they send me
12 out.

13 Q. Okay.

14 A. But the never ask me --

15 Q. But you didn't tell them what happened did you?

16 A. They didn't never ask me.

17 Q. They didn't ask you what happened at the store?

18 A. No, sir. They just got mad and sent me off.

19 Q. Okay. And then the third time, at least I have on
20 record that you talked about this, is when you entered the
21 plea agreement; is that correct?

22 A. Yes, sir.

23 Q. You were the trigger man. No question about that.

24 Right?

25 A. Yes, sir.

KADEEM SANDERS: BY MR. BROWN

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1 Q. That's you on tape shooting Mr. Patel. Correct?

2 A. Yes, sir.

3 Q. And they cut a deal with you for fourteen to seventeen
4 years after you nearly killed somebody; is that correct?

5 A. Yes, sir.

6 Q. Okay. And then when you come up, and you get a deal
7 where you don't have to spend sixty years without parole
8 in jail, you get fourteen to seventeen so you can come out
9 and have a life again; you come up with this story, your
10 third story. And question four, after you entered the
11 store Kairon Maldonado attempted to get to the cash
12 register next to the store clerk and you say I don't know.

13 A. I don't.

14 Q. Okay. That's your third story. Correct? That's your
15 third time you talked to people about this. Correct?

16 A. No. That's the second time.

17 Q. Well, I'm counting it as the third for this purpose.
18 And then last Thursday, March 14th, 2013, you had a meeting
19 with Mr. Springs, your lawyer, Ms. Dawson there. Correct?

20 A. Yes, sir.

21 Q. And when they called you up to ask you what happened
22 this time, didn't you tell them you went there to discuss
23 some problems you were having with Mr. Patel; that you
24 didn't go in there to rob him and Mr. Maldonado didn't go
25 in there to rob him?

KADEEM SANDERS: BY MR. BROWN

1 A. Yes, sir.

2 Q. That's your fourth story. Right?

3 A. Yes, sir.

4 Q. You thought about those sixty years when you changed
5 your story back again didn't you?

6 A. No, I was just going through some things.

7 Q. You were what?

8 A. I was going through some things.

9 Q. Going through some things? What kind of things were
10 you going through?

11 A. Family problems.

12 Q. Hum. Okay. Did family problems cause you to lie?

13 You admit that's a lie. Correct?

14 A. What's a lie?

15 Q. Three of them has got to be a lie.

16 A. You talking about what, the third or fourth one?

17 Q. Excuse me?

18 A. You talking about the fourth one? Look man, I ain't -
19 The fourth time, I mean when I said yeah I was going
20 through some things but when they told me that he was going
21 to trial, I didn't want to see my little dude go down. I
22 ain't gonna lie.

23 Q. You don't care about anybody else. You're up here to
24 save your own butt. Tell the truth for once.

25 A. If that's how you feel --

KADEEM SANDERS: BY MR. BROWN

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1 Q. For once tell the truth.

2 THE COURT: When you ask him a question give him a
3 chance to answer.

4 A. If that's how you feel about it , that's how you feel,
5 dude.

6 Q. How would you feel about it if somebody told you three
7 different stories about what happened?

8 A. I can't -

9 SOLICITOR SPRINGS: Objection. That's argumentative.
10 Wait a minute.

11 MR. BROWN: I withdraw the question.

12 Q. You admit you told three different stories. Correct?
13 As of last Thursday -

14 SOLICITOR SPRINGS: Objection. He won't let him
15 answer.

16 Let him answer.

17 THE COURT: Yeah, let him answer the question.

18 A. The first time I did not tell no story.

19 Q. The first time you said you weren't involved with it.
20 The night the police got you --

21 A. I'm talking about with the police.

22 Q. Okay. And the second time you didn't tell them
23 anything that involved you did you?

24 A. Say what?

25 Q. The second time when they interviewed you in jail, you

KADEEM SANDERS: BY MR. BROWN

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1 didn't tell them anything about what happened, did you,
2 like you are telling today?

3 A. You talking about with the police?

4 Q. Yes, sir.

5 A. The police didn't ask me no questions.

6 Q. Okay. Clarify that later. The third time you come in
7 this court and tell the story about you went in there and
8 shot him and robbed him and you cut a deal to save
9 yourself.

10 A. No. I cut a deal because they was offering both of us
11 fourteen to twenty-one so if I give myself up they had to
12 drop his charges down because he truly didn't believe - he
13 didn't believe to me in my eye he didn't really do nothing.

14 Q. Oh. You were doing it to help him?

15 A. I just told you this happened in front of me, man.

16 Q. Okay. And then last Thursday you told a completely
17 different story. You went and told those people that you
18 went in there to clarify a problem with Mr. Patel. That
19 you didn't go in there to rob him and you thought he was
20 reaching for a gun and that's why you shot him. Isn't that
21 what you told these people?

22 A. I truly did thought he was reaching for a gun.

23 Q. Because you had family problems?

24 A. I told you. Look at it how you want to.

25 Q. You were not on any hallucinogenic drugs that day

KADEEM SANDERS: BY MR. BROWN

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1 were you?

2 A. No, sir.

3 Q. And while you were in jail?

4 A. No. I thought you was talking about --

5 Q. I'm talking about last Thursday when you went up and
6 told a completely different story than you're telling these
7 fourteen jurors today.

8 A. No.

9 Q. How old are you?

10 A. Twenty-one.

11 Q. How far did you go in school?

12 A. Tenth.

13 Q. I'm sorry?

14 A. Tenth.

15 Q. Tenth grade?

16 A. Yeah.

17 Q. Okay. And you've been getting in trouble since you
18 quit school haven't you?

19 SOLICITOR SPRINGS: Objection. That's argumentative.

20 A. No.

21 SOLICITOR SPRINGS: Objection.

22 THE COURT: Be a little more precise. I sustain --

23 BY MR. BROWN:

24 Q. It's not your first brush --

25 THE COURT: Wait, wait.

KADEEM SANDERS: BY MR. BROWN

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1 MR. BROWN: Sorry.

2 THE COURT: I sustain the objection to that question.

3 MR. BROWN: Yes, sir.

4 Q. This is not your first brush with the law is it? Were
5 you not convicted of threatening the life of a public or
6 family official back on December 14th, 2011?

7 A. Yeah, but that don't mean I been getting in trouble
8 since I got out of school. I was in DSS. What you talking
9 about?

10 Q. I'm sorry. Will you slow down and repeat that.

11 A. I said, yes, but that's not mean I was getting in
12 trouble since I got out of school. I was in DSS.

13 Q. That was what?

14 A. I was in DSS. I wasn't getting in no trouble with no
15 law.

16 Q. You were in DSS?

17 A. Yeah. I don't hold down jobs and all. I don't get in
18 no trouble. I don't play like a husband.

19 Q. This was your idea wasn't it?

20 A. Yes, sir.

21 Q. Where did you get the gun from?

22 A. The streets.

23 Q. Did you find it laying in the street?

24 A. No.

25 Q. Well, where did you get it?

KADEEM SANDERS: BY MR. BROWN

1 A. I bought it.

2 Q. Excuse me?

3 A. I bought it.

4 Q. From who?

5 A. Somebody.

6 Q. Somebody got a name?

7 A. I don't know his name.

8 Q. You don't know his name. You just walked up and said,
9 "hey, let me buy this .22 you got."

10 SOLICITOR SPRINGS: I'm going to object. It's
11 becoming irrelevant now, Your Honor.

12 THE COURT: Well, I'll let him go a little while but
13 let's don't go too far down that road.

14 A. I don't see what that's got to do with the story.

15 SOLICITOR SPRINGS: May we approach one second?

16 THE COURT: Yes.

17 MR. BROWN: You can put it on the record later.

18 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
19 OF THE JURY AT 02:33 P.M..)

20 THE COURT: I'll give some leeway in that line of
21 questioning.

22 BY MR. BROWN:

23 Q. When did you get the gun?

24 A. I don't remember.

25 Q. You don't remember. A month ago? A month before

KADEEM SANDERS: BY MR. BROWN

1 this?

2 A. I don't know.

3 Q. A week?

4 A. I told you I don't remember.

5 Q. Who did you buy it from?

6 A. That's somebody from the street.

7 Q. That's what?

8 A. Somebody from the street.

9 Q. Well how did this conversation take place and
10 transaction take place from the streets?

11 A. Dude had a gun and we get it.

12 Q. How did you know he had a gun?

13 A. Because he was selling it.

14 Q. The guy's name was Kevin wasn't it?

15 A. Don't know no Kevin.

16 Q. You don't know no Kevin. Are you sure about that?

17 A. I'm sure.

18 Q. All right. So on the streets some guy you don't know.
19 How did the conversation start? Did he come up and say you
20 want to buy a gun or what?

21 SOLICITOR SPRINGS: I object. This is becoming very
22 irrelevant.

23 MR. BROWN: Your Honor.

24 THE COURT: I'll allow him to go a little further. I
25 told him I'd give him some leeway.

1 But go ahead.

2 A. Yes, sir. If his name is Kevin I don't know him. I
3 don't know Kevin. Like I said I bought it from somebody in
4 the street.

5 Q. How much did you pay for it?

6 A. Wasn't but thirty.

7 Q. How much?

8 A. Thirty.

9 Q. Thirty dollars?

10 A. Yeah.

11 Q. And you don't remember when this was? You're friends
12 with a guy name Kevin aren't you?

13 A. No.

14 MR. BROWN: Beg the court's indulgence one second.

15 (PAUSE.)

16 Q. Do you know a guy named Kendal?

17 A. Yeah.

18 Q. Did he and Kevin sell you that gun together?

19 A. Say what?

20 Q. Did Kendal sell you the gun?

21 A. If you say that.

22 Q. I'm asking you, sir.

23 A. Yeah.

24 Q. And you all are buddies. Right?

25 A. No.

KADEEM SANDERS: BY MR. BROWN

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1 Q. Did you write some letters while you were in jail?

2 A. Yeah.

3 Q. Did you write this?

4 A. Yeah.

5 Q. Tell me if I'm reading this right.

6 SOLICITOR SPRINGS: I'm going to object. If he's gonna
7 published this I'd ask that he put it into evidence, Your
8 Honor.

9 THE COURT: It needs to be put into evidence.

10 MR. BROWN: I move to admit.

11 SOLICITOR SPRINGS: No objection. After she -

12 MR. BROWN: You've got it, don't you?

13 I beg the court's indulgence one second.

14 (SOLICITOR SPRINGS REVIEWING DOCUMENT.)

15 SOLICITOR SPRINGS: I've never seen this but no
16 objection.

17 THE COURT: All right. In without objection.

18 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER ONE IDENTIFIED
19 AND MARKED, RECEIVED INTO EVIDENCE.)

20 MR. BROWN: I'm referring to Defendant's Exhibit One.

21 Q. Did you write to Mr. Maldonado, "hey bro, take it how
22 you want but they told me they was going to drop your shit
23 if I gave myself up so I told them I made you go in the
24 store and got you high and drunk on four locals and coke so
25 you should be good." Is that correct?

KADEEM SANDERS: BY MR. BROWN

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1 A. Yeah.

2 Q. That's the fifth version of this story you've told is
3 it not?

4 A. No.

5 (PAUSE.)

6 Q. You shot Mr. Patel didn't you?

7 A. Yes, sir.

8 MR. BROWN: I have no further questions, Your Honor.

9 THE COURT: Redirect?

10 SOLICITOR SPRINGS: None.

11 THE COURT: You can be taken back in the holding cell.

12 (WITNESS ESCORTED OUT OF COURTROOM TO HOLDING CELL.)

13 THE COURT: Call your next witness.

14 SOLICITOR SPRINGS: Mr. Sheriff, ask them to keep him
15 up here.

16 Your Honor, we do rest our case.

17 THE COURT: All right. Members of the jury panel, the
18 State is telling us they have presented their evidence so
19 we have to take up some matters of law outside your
20 presence at this time, even though we just took a break.
21 Once we take care of some legal matters, I'll send for you
22 and we'll do whatever comes next.

23 (JURY EXITS COURTROOM AT 02:40 P.M..)

24 THE COURT: Anything from the State?

25 SOLICITOR SPRINGS: I just want to say I'd like to

1 sentence Mr. Sanders in a little while if that's possible.

2 THE COURT: We'll see.

3 SOLICITOR SPRINGS: Nothing else.

4 THE COURT: Anything from the defense?

5 MR. BROWN: Your Honor, at this time I move for a
6 directed verdict. Considering the evidence in the light
7 most favorable to the State; minds cannot differ and
8 he's entitled to a directed verdict on all three charges.

9 THE COURT: I deny the motion. I think there is
10 ample evidence from which a jury can reach a conclusion
11 that Mr. Maldonado was involved in this to the extent
12 alleged by the State, so that motion is denied.

13 Mr. Maldonado, can you hear me?

14 MR. MALDONADO: Yes, sir.

15 THE COURT: We've reach a point in the trial where you
16 have a right to present a defense if you wish. You don't
17 have to present a defense because you are presumed innocent
18 of this charge, this set of charges, and of course I have
19 already told the jury that and I will tell them that again
20 when I charge them the law at the end of the trial. But
21 you have an absolute right to testify if you wish and
22 present witnesses if you wish. You have the right to
23 remain silent also.

24 Does he have any impeachable offenses?

25 SOLICITOR SPRINGS: He has no impeachable offense.

1 THE COURT: If you testify you would be under oath and
2 the State will ask you questions concerning the
3 allegations. If you chose to exercise your constitutional
4 right to remain silent I will tell the jury that that's
5 what you had done. That you have exercised your right to
6 remain silent, that the jury cannot use that against you in
7 any way. They cannot factor that into their decision. That
8 they cannot even in their own minds use it to determine
9 whether or not the State has proven your guilt beyond a
10 reasonable doubt. I will tell them that you are presumed
11 innocent and that the State has to prove your guilt beyond
12 a reasonable doubt, that you don't have to prove your
13 innocence. Do you understand all that?

14 MR. MALDONADO: Yes, Your Honor.

15 THE COURT: Do you have any questions about that?

16 MR. MALDONADO: No, Your Honor..

17 THE COURT: Did you explain that to him, Mr. Brown?

18 MR. BROWN: Yes, sir, Your Honor.

19 THE COURT: The decision, Mr. Maldonado, is your's;
20 it's not your attorney's or anyone else's. It is your
21 decision as to whether to testify or not. Have you made a
22 decision as to whether you intend to take the stand or are
23 you going to exercise your right to remain silent?

24 MR. MALDONADO: I am going to remain silent, Your
25 Honor.

1 THE COURT: All right. You may be seated.

2 MR. BROWN: I would add for the record, Your Honor, he
3 has maintained that position even though I told him at some
4 point in time I may need him to. I do concur in his
5 decision at this time.

6 THE COURT: All right. Does the defense have any
7 witnesses?

8 MR. BROWN: Yes, sir.

9 THE COURT: All right. Are you ready to proceed?

10 MR. BROWN: Can I have about a five minutes break?

11 THE COURT: We'll take a five minute refresher break
12 and while you're doing that, I think the class has to leave
13 around three?

14 (COLLOQUY BETWEEN THE COURT AND MR. COBB FROM YORK
15 PREPARATORY SCHOOL OFF THE RECORD.)

16 (COURT IN RECESS AT 02:45 P.M..)

17 (COURT BACK IN SESSION AT 03:00 P.M..)

18 THE COURT: Thank you. You may take your seats.

19 Is the State ready?

20 SOLICITOR SPRINGS: The State is ready.

21 MR. BROWN: Defense is ready, Your Honor.

22 THE COURT: All right. Bring in the jury.

23 We'll do - It's three, so it will probably be close
24 to four when we're through. We won't do arguments and
25 charge today.

OFFICER ALLEN CANTEY: BY MR. BROWN

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1 MR. BROWN: I think it would even be probably a little
2 past four, Your Honor.

3 THE COURT: All right.

4 MR. BROWN: And I don't know how much he's got for
5 my witnesses.

6 How much cross you got?

7 SOLICITOR SPRINGS: Probably none.

8 THE COURT: You hadn't heard the direct yet.

9 He might be satisfied. He might say there's no need
10 to ask any questions.

11 SOLICITOR SPRINGS: I've done it before.

12 (JURY REENTERS COURTROOM AT 03:02 P.M..)

13 THE COURT: As I told you the State has rested and the
14 defense now can present witnesses as they desire.

15 MR. BROWN: We call to the stand Officer Allen Cantey.

16 THE COURT: Mr. Cantey, please come up and be sworn.

17 (WHEREUPON: LEWIS ALLEN CANTEY,
18 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:

19 MADAME CLERK: Thank you. You can have a seat.

20 DIRECT EXAMINATION

21 ALLEN CANTEY BY MR. BROWN

22 Q. State your name and rank, please, sir.

23 A. Lewis Allen Cantey, Junior.

24 Q. And you work for the Rock Hill Police Department, sir?

25 A. I do.

OFFICER ALLEN CANTEY: BY MR. BROWN

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1 Q. And what's your rank or title there?

2 A. I'm a detective with the Rock Hill Police Department.

3 Q. And the case, you heard testimony about it, you're
4 the lead investigator in charge of the whole shooting match
5 on this case. Correct?

6 A. That's correct.

7 Q. And you got it that night these events occurred.
8 Correct?

9 A. That's correct.

10 Q. Would it not be standard operating procedure when the
11 call first went off to try to seal off -

12 SOLICITOR SPRINGS: I'm going to object to leading.

13 BY MR. BROWN:

14 Q. Let me ask you this. When a call, two suspects in a
15 certain area, what do you do?

16 A. Well the patrol division at that time tried to set up
17 a perimeter to call a K 9 for it.

18 Q. Okay. And when you say perimeter, do you mean try to
19 seal off the area?

20 A. As best as possible. Yes, sir.

21 Q. Okay. And was that done this night?

22 A. I believe it was.

23 Q. To the best of your knowledge?

24 A. To the best of my knowledge it was.

25 Q. The only other person in the perimeter that night that

OFFICER ALLEN CANTEY: BY MR. BROWN

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1 didn't have a shirt on was Huey; is that correct?

2 SOLICITOR SPRINGS: I'm going to object to the
3 leading, Your Honor.

4 THE COURT: Yeah. Just rephrase your question.

5 MR. BROWN: Okay.

6 Q. Who was the only other person without a shirt on that
7 night that the police found?

8 A. I cannot even advise is Huey had a shirt on or not.

9 Q. Okay.

10 A. I stayed on the scene the whole time.

11 Q. If he didn't have one on, would that be - Do you know
12 of any others that didn't have shirts on the police found?

13 A. None were brought to my attention.

14 Q. Okay. You talked to Mr. Maldonado a short time after
15 this did you not?

16 A. No. I talked to him a few days after his - I believe
17 it was the day after his arrest.

18 Q. August 2nd or 3rd?

19 A. I believe it was. Yes, sir.

20 Q. And subsequent of the news he's maintained the same
21 story --

22 SOLICITOR SPRINGS: Objection. That's hearsay, Your
23 Honor.

24 MR. BROWN: It's an admission by the defendant.

25 THE COURT: Let me let the jury go to the jury room

OFFICER ALLEN CANTEY: BY MR. BROWN

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1 just a minute.

2 (JURY EXITS COURTROOM AT 03:04 P.M..)

3 THE COURT: Why is that not a admission by the party
4 opponent? He is certainly a part of your defense.

5 SOLICITOR SPRINGS: I believe he said Mr. Maldonado
6 didn't he. I thought that's what you said.

7 MR. BROWN: Yeah.

8 SOLICITOR SPRINGS: Mr. Maldonado is. He's not his
9 party opponent. He's himself. I can get what he said in
10 because he's my party opponent. He can't be his own part
11 opponent.

12 THE COURT: I follow you.

13 MR. BROWN: There is no case that I've researched or
14 there is no rule out there that prohibits me from asking
15 him about admission by a party of opponent. The key words
16 being party or opponent. He is a party to this action. It
17 doesn't say party and opponent. It says party opponent
18 slash. There is not a case out there that I'm aware of,
19 Your Honor, that prohibits me from asking about his
20 admissions to this officer.

21 SOLICITOR SPRINGS: I'll be glad to go get some case
22 law on self serving hearsay by the defendant. He can't do
23 that.

24 THE COURT: Maldonado stated against the interest, it
25 doesn't sound like - You can make a proffer but it sounds

OFFICER ALLEN CANTEY: BY MR. BROWN - IN CAMERA

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1 like you want to get in - It won't be a statement against
2 interest. Why don't you go ahead and make a proffer and
3 then we'll go from there.

4 MR. BROWN: I'm sorry, Your Honor. Make a proffer?

5 THE COURT: Yeah.

6 MR. BROWN: Yes, sir.

7 DIRECT EXAMINATION - IN CAMERA

8 OFFICER ALLEN CANTEY BY MR. BROWN

9 Q. He told you he wasn't there that night. Correct, sir?

10 A. I'm sorry. I misunderstood you.

11 MR. BROWN: I'm gonna lead for the purposes of this
12 hearing, if that's okay?

13 SOLICITOR SPRINGS: Yeah, you can make a proffer.

14 A. He told me what?

15 Q. When you interviewed Mr. Maldonado shortly after this
16 occurred, he told you he was not there. Correct? At the
17 store.

18 A. I interviewed Mr. Maldonado after his arrest and he
19 told me that he was not there the night of the shooting.

20 Q. Okay. He told you he was in the Innsbrook Apartments.
21 Correct?

22 A. In the playground there. Yes, sir.

23 Q. Yes, sir. And told you he were there with two guys
24 named Marcus and --

25 A. I think it was David.

OFFICER ALLEN CANTEY: BY MR. BROWN - IN CAMERA

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1 Q. Marcus and David?

2 A. Yes, sir.

3 Q. Okay. And as a matter of fact he firmly maintained
4 that story with a subsequent interview with another
5 detective. Correct?

6 A. Yes, sir.

7 Q. Okay.

8 MR. BROWN: That's my proffer, Your Honor.

9 THE COURT: All right. We'll take a short break and
10 look up the law.

11 SOLICITOR SPRINGS: I'm gonna go get a couple of cases
12 because I am looking at 801(d)(2). It's party opponent;
13 it's -

14 MR. BROWN: What page you on?

15 SOLICITOR SPRINGS: Nine. It's offered against -

16 THE COURT: This is offered against Mr. Maldonado.
17 It's being offered for.

18 SOLICITOR SPRINGS: Right.

19 THE COURT: So it doesn't fall under 801(d)(2).

20 SOLICITOR SPRINGS: He has no hearsay exception that
21 allows him to get his own self serving hearsay in and his
22 own alibi in through somebody else. Let me go pull a
23 couple of cases. I'll be right back.

24 (SOLICITOR SPRINGS LEFT THE COURTROOM.)

25 (COURT AT EASE AT 03:09 P.M..)

1 (SOLICITOR SPRINGS REENTERED THE COURTROOM.)

2 (COURT BACK IN SESSION AT 03:12 P.M..)

3 THE COURT: Let her get back on the record.

4 SOLICITOR SPRINGS: I passed up some citation of law
5 to the court and copied it to Attorney Brown, State v
6 Terry, which is a South Carolina Supreme Court case, says
7 "a defendant seeking to testify and making exculpatory
8 statements must testify and face cross examination."
9 That's a basic rule of our adversary system. To hold
10 otherwise would permit the criminally accused to set out
11 all the facts which fall in his favor without laying
12 himself open to cross examination. And I believe I have a
13 copy of the Terry case here somewhere.

14 THE COURT: The statement from *State versus Atchison*
15 seemed to be pertinent also.

16 SOLICITOR SPRINGS: Yes, sir.

17 THE COURT: He wishes to introduce in his defense his
18 own statement made to others.

19 SOLICITOR SPRINGS: I pass up to the Court Terry and
20 *Atchison*. Terry is at 529 S.E.2d 274 and *Atchison* is at
21 235 S.E.2d 294 and I believe I can lay my hands on a set
22 for Mr. Brown.

23 MR. BROWN: Your Honor, I would call and I don't have
24 a copy of it but it's in the book, Courts attention to
25 *State v. Sims*. Mr. Springs has chosen to go forward on the

OFFICER ALLEN CANTEY: BY MR. BROWN - IN CAMERA

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1 conspiracy charge and it will be an indicted and unindicted
2 potentially co-conspirators in this matter. The statement
3 made by a co-conspirator to or over heard by a third party
4 who is not a member of the conspiracy may be admissible
5 under co-conspirator hearsay exception provided the
6 statements made during the course of in furtherance of the
7 conspiracy.

8 THE COURT: Well that would be a co-conspirator to
9 him. Not him himself. He can't say I'm a co-conspirator;
10 he's the co-conspirator in the broader sense of the word,
11 but I think that case deals with someone other than the
12 person in a trial as being a co-conspirator. You can go
13 pull the case if you want to but --

14 MR. BROWN: I understand.

15 THE COURT: Okay.

16 SOLICITOR SPRINGS: I've given Mr. Brown a copy of
17 *Terry and Atchison*.

18 (PAUSE.)

19 THE COURT: I'm going to sustain the objection. *Terry*
20 is not exactly on point but *State versus Atchison* appears
21 to be more on point. Any further proffer you want to make,
22 Mr. Brown, you can do that while the jury is out otherwise
23 we'll get the jury in and proceed but I sustain the
24 objection.

25 MR. BROWN: I'm sorry, Your Honor.

1 THE COURT: I sustain the objection. I said is there
2 anything else you want from this witness before the jury
3 comes back in?

4 MR. BROWN: Yes, sir. Can I ask the witness has he -

5 THE COURT: This is proffer. He's not here, you can
6 ask him anything you want and make sure you preserve the
7 record.

8 MR. BROWN: Yes, sir. I understand but the Court
9 tells me I can't ask this question I'm not gonna do it
10 obviously. I would like to ask him has his statements been
11 consistent that he has given to the police department.

12 THE COURT: You can ask him.

13 A. I thought you were asking the Judge.

14 MR. BROWN: I'm asking the judge if I can ask him
15 in front of the jury I guess is what I'm asking.

16 THE COURT: Oh, you can ask him in front of the jury.
17 Well ask him and see what he says now.

18 MR. BROWN: Okay.

19 Q. Have his statements been consistent?

20 A. To the best of my knowledge.

21 Q. Okay.

22 MR. BROWN: Can I ask that without going into the
23 substance of it?

24 SOLICITOR SPRINGS: I object.

25 THE COURT: Yeah. If we don't know what his

OFFICER ALLEN CANTEY: BY MR. BROWN - IN CAMERA

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1 statements are whether they're consistent or inconsistent
2 you've got to have something to compare it to. It's not
3 apples and oranges. It's just an apple.

4 MR. BROWN: Yes, sir.

5 THE COURT: You're not even comparing it to anything.

6 SOLICITOR SPRINGS: At least object to it's awfully
7 confusing to the jury.

8 THE COURT: That's his job.

9 MR. BROWN: Thank you, sir.

10 I think in this particular case, Your Honor, I want to
11 put this on the record. We have a situation where the
12 co-conspirator or co-defendant has given - depending on
13 what the jury believes, my assumption would be or my
14 proposition would be given five different versions of what
15 happened that night. He is the main eye witness against my
16 client. My client has been consistent in his stories to
17 the police the whole time.

18 THE COURT: What has that story been? You're still
19 trying to get in at least the back door because you say
20 it's consistent obviously you want the jury to believe they
21 are consistently exculpatory.

22 MR. BROWN: I submit it would go to the credibility of
23 the co-conspirator in this matter.

24 THE COURT: We still don't know what the statement
25 is though.

OFFICER ALLEN CANTEY: BY MR. BROWN - IN CAMERA

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1 MR. BROWN: Yes, sir. I'm just asking him if both of
2 them was consistent. You tell me now and I'll understand.

3 THE COURT: Do you object?

4 SOLICITOR SPRINGS: I still --

5 THE COURT: Well do you object?

6 SOLICITOR SPRINGS: I objection.

7 THE COURT: I sustain the objection.

8 SOLICITOR SPRINGS: Thank you.

9 THE COURT: All right. Bring in the jury.

10 MR. BROWN: I'm gonna ask one more thing on proffer,
11 Judge, before they come back in.

12 DIRECT EXAMINATION - IN CAMERA

13 OFFICER ALLEN CANTEY BY MR. BROWN:

14 Q. Where did Mr. Maldonado say he was that night?

15 A. In the playground of Innsbrook Commons.

16 Q. I ask that already.

17 THE COURT: You did?

18 MR. BROWN: Yeah. I thought I did.

19 SOLICITOR SPRINGS: I'm sorry, I missed it.

20 MR. BROWN: You're getting older or I might be senile
21 here.

22 SOLICITOR SPRINGS: I'm getting older alright.

23 MADAME COURT REPORTER: I'm probably older than both
24 of you and I'm not.

25 MR. BROWN: I don't know. Allen Bundy could be

OFFICER ALLEN CANTEY: BY MR. BROWN

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1 sitting here as far as I'm concerned. You can put that on
2 the record.

3 (JURY REENTERS COURTROOM AT 03:22 P.M..)

4 THE COURT: Mr. Brown, you may proceed.

5 DIRECT EXAMINATION - CON'T

6 OFFICER ALLEN CANTEY BY MR. BROWN:

7 Q. As Officer Sullivan testified to, you were the lead
8 investigator. There's not one forensics piece of evidence
9 tying Mr. Maldonado to this crime is it, sir?

10 A. That's correct.

11 Q. Okay.

12 MR. BROWN: I have no further questions.

13 SOLICITOR SPRINGS: Nothing.

14 Thank you, sir.

15 THE COURT: You can step down. Appreciate your time.

16 You can be excused.

17 (WITNESS LEAVING WITNESS STAND.)

18 THE COURT: Call your next witness.

19 MR. BROWN: I'd like to call to the stand Doctor Van
20 Wallendorf.

21 THE COURT: Doctor Van Wallendorf, please come
22 forward.

23 (WHEREUPON: LORI VAN

24 WALLENDORF BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
25 FOLLOWS:)

1 MADAME CLERK: Thank you. You can have a seat right
2 up there.

3 DIRECT EXAMINATION

4 DOCTOR LORI VAN WALLENDORF BY MR. BROWN

5 Q. State your full name for the record, please?

6 A. Lori Van Wallendorf.

7 Q. Where are you employed, ma'am?

8 A. At the University of North Carolina at Charlotte.

9 Q. And in your capacity what do you do there?

10 A. I'm an associate professor of psychology.

11 Q. And how long have you held that position?

12 A. About twenty-six years now.

13 Q. What formal education do you have post high school?

14 A. I have a Bachelor's degree in psychology and English
15 from McMurray College in Central Illinois. And a Master's
16 and a Ph.D., in experimental psychology from Northwestern
17 University.

18 Q. Do you have many specific areas of study in psychology
19 when you obtained the masters and doctorate degrees?

20 A. Yes. My master and doctorate are in what we call
21 cognitive psychology which has to do with thinking and
22 memory. And my work as a graduate student had to do with
23 human decision making and human memory.

24 Q. Could you explain to the jury what that field is
25 briefly.

DOCTOR LORI WALLENDORF: BY MR. BROWN

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1 A. Sure. Basically we do research usually laboratory
2 experiments involving the kinds of factors that make it
3 easier or harder for people to remember things; so as an
4 instructor I may look at what kinds of presentation in a
5 classroom are easier to remember. And then as a more
6 applied researcher I also tend to look at what factors make
7 things memorable in real world situations like an eye
8 witness situation.

9 Q. Have you received any honors or awards in your work?

10 A. I have been a finalist for UNC Charlotte teaching
11 award a few years back. As a graduate student I had
12 graduate fellowships that basically allowed me to conduct
13 my education and my research.

14 Q. And what studies or tests have you done in memory
15 cognition recognition?

16 A. I have done experiments on different types of
17 lineups and how they effect recognition accuracy. I've
18 done research on cross racial facial recognition. I've
19 done research on people's certainty in their
20 identifications and also worked on voice recognition.

21 Q. Have you ever been certified as an expert to testify
22 in any court in North or South Carolina, or what is your
23 experience in testifying and certifications as an expert in
24 eye witness identification?

25 A. I have been certified as an eye witness expert in

1 North and South Carolina, West Virginia, Georgia, Kentucky
2 and Texas.

3 Q. About how many times approximately have you testified
4 in court to the best of your knowledge?

5 A. Approximately twenty.

6 Q. And these all involved eye witness identifications in
7 criminal cases. Correct?

8 A. Yes.

9 Q. And that also involved lineup identifications?

10 A. Yes.

11 MR. BROWN: Your Honor, I move to certify Doctor Van
12 Wallendorf as an expert.

13 SOLICITOR SPRINGS: A brief voir dire?

14 THE COURT: Yeah, I'm gonna let you do that but let's-
15 What's her expertise?

16 MR. BROWN: Eye witness identification.

17 THE COURT: All right. Voir dire?

18 CROSS EXAMINATION

19 DOCTOR LORI VAN WALLENDORF BY SOLICITOR SPRINGS:

20 Q. Now the studies you conducted, did you conduct those
21 yourself?

22 A. Yes.

23 Q. And how old are your studies?

24 A. My studies published probably in the realm of the last
25 ten years or so. Most recently, probably, I think the

DOCTOR LORI WALLENDORF: BY SOLICITOR SPRINGS

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1 last publication was maybe two years ago.

2 Q. Did you enter all studies with an open mind as to the
3 outcome?

4 A. Yes.

5 Q. And you said you'd testified as an expert in eye
6 witness identification about twenty times?

7 A. Yes.

8 Q. Were they all for criminal defendants? Have you done
9 any for the State?

10 A. No. They have all been for a defense.

11 SOLICITOR SPRINGS: Your Honor, I concede she knows
12 more than the average person about memory and such things
13 so she's fine.

14 THE COURT: I find Doctor Van Wallendorf is qualified
15 in the area of eye witness identification.

16 Members of the jury panel, usually an individual can
17 testify to something they have seen or heard or smelled or
18 tasted or touched. However were certain individuals have
19 skills, training, knowledge, education and experience in a
20 particular area, that person can take facts and from those
21 facts render opinions. We call them expert witnesses.
22 Those opinions are allowed into evidence to assist you;
23 they are not binding on you. And if you look at the
24 testimony of the expert witness - You might not recall but
25 yesterday I told you the things to look for such as

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1 credibility and believability in a witness. You look at
2 those things. And also when you examine the testimony of
3 an expert, you look at and even though I have found and
4 both sides submits she is qualified as an expert in eye
5 witness identification, it is ultimately up to you as the
6 jury to determine, based on her qualifications, what weight
7 to give her testimony. And also you can look at the reason
8 she gives for the opinions that she reaches. So this is an
9 expert witness who can go beyond just testifying on the
10 facts, give opinions, and they are given to assist you,
11 they are not binding on you.

12 You may proceed.

13 MR. BROWN: Thank you, Your Honor.

14 DIRECT EXAMINATION - CON'T

15 DOCTOR LORI WALLENDORF BY MR. BROWN:

16 Q. Have you had an opportunity - let me back up a second.

17 You were in court today and watching the evidence all
18 day; were you not?

19 A. Yes.

20 Q. You saw all the tapes Mr. Springs played; did you not?

21 A. Yes.

22 Q. And prior to that did you have an opportunity to
23 review those tapes and the other line up thing that I gave
24 you?

25 A. Yes.

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1 Q. Okay. I'm showing you State's Exhibit Number Two.

2 I'm gonna ask you if you've seen that document before?

3 A. Yes, I have.

4 Q. Okay. And you've heard the testimony from Mr. Patel
5 that he pick Mr. Maldonado out of a lineup.

6 THE COURT: You probably ought to let the jury see
7 what you're talking about.

8 Q. Come on down here. It's the easiest way.

9 (WITNESS LEFT WITNESS STAND.)

10 Q. You studied this document before and that's the one
11 Mr. Patel testified he picked out. Correct?

12 A. Yes.

13 Q. And you are familiar with the background of this case
14 and how it came to being. Correct?

15 A. Yes.

16 Q. If you would, tell the jury why this is a flawed
17 lineup.

18 A. When you look at a lineup you're looking basically to
19 see if there is anything about this suspect that stands out
20 from the other five people in the lineup. When you just
21 look at this without any knowledge of who went into it, it
22 looks pretty good. You have five faces that fairly
23 resemble the defendant. They are all on the same
24 background. They fill kind of the same amount of space on
25 the page. But what doesn't show to the naked eye is the

1 fact that one person in the lineup was familiar to the
2 victim as someone who had been in the store before and the
3 other five were not and that's kind of putting one colored
4 photo in the middle of a bunch of black and white photos.
5 Or you know only one black versus in a lineup or only one
6 person of the right age.

7 If there's any reason why one person will stand out
8 as different from the others to the witness' point of view,
9 then you have what we would call a flawed or an invalid
10 lineup.

11 Q. And in this case you heard Mr. Patel testify he didn't
12 recognize any other customers from that lineup or anybody
13 he knew didn't you?

14 A. Correct.

15 Q. And tell the jury again what effect that has from a
16 person's memory and cognition.

17 A. Basically a lineup is a decision and you are trying to
18 make a decision as to whether one of these people is
19 familiar enough to you that you are confident that they are
20 actually the person who perpetrated an offense against you.
21 And if your memory is not very clear or you didn't have a
22 good opportunity to view someone, then part of this becomes
23 a little bit of sort of what you go through when you take a
24 multiple choice test in school and you're trying to rule
25 out the wrong answers and go through that little bit of

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1 gamesmanship and examineship that you know about to try to
2 pick the right multiple choice answer.

3 This is the situation where it's pretty clear to the
4 witness who the suspect is and so it just becomes a matter
5 of clearly I told them that this was someone who has been
6 in my store before. There is only one person here that I
7 recognize from my store before. That must be the suspect
8 that they expect me to pick.

9 Q. Would it play in any way in his decision that the fact
10 that he was coming off a hard injury, he had been shot, and
11 was under medication as he testified to?

12 A. Sure.

13 Q. And what effect would that have, ma'am?

14 A. If you're mentally fuzzy and you know we all know
15 what its like being on pain medication, cold medication,
16 whatever, that's going to make your decision that much more
17 prone to a biasing effect of something that seems to draw
18 you to a particular individual.

19 MR. BROWN: If you will have a seat back...

20 (WITNESS RETURNED TO WITNESS BOX.)

21 (STATE'S EXHIBIT PUBLISHED TO THE JURY.)

22 Q. I ask you to review State's Exhibit video of the
23 actual eye witness identification that night.

24 Stop right there.

25 What are you noticing in that, that goes to this

1 identification of Mr. Patel's head?

2 A. He seems to be looking at the person who is directly
3 across by the cash register.

4 Q. Would that be divided attention?

5 A. Yes.

6 Q. Explain to the jury what that means as far as eye
7 witness identification goes.

8 A. Any time you have more than one person involved in a
9 scene, more than one perpetrator in a crime let's say, your
10 attention is divided. And we know that in spite of what
11 our teenage children say, that dividing your attention or
12 multitasking doesn't work. That when you have to try to
13 divide your attention to two or more tasks, each one
14 suffers.

15 So in a situation like this, he has got - When I first
16 saw the video I tried to sort of time it out, and it look
17 like maybe eight seconds or so from the time that the two
18 robbers came into the store to the time of the shooting.
19 And that's a really short time to begin with but when
20 you've got two people and you're literally looking back and
21 forth from one to the other, you don't even have a seconds
22 of contact, you have, you know, four or five. But you
23 know, with attention being drawn from one to the other,
24 there's a chance of confusion of details and there's just
25 less opportunity to focus on any one individual that's

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1 involved.

2 Q. So the short duration is another red flag to you on
3 this identification is it not, ma'am?

4 SOLICITOR SPRINGS: I objection to the leading?

5 THE COURT: I sustain the objection.

6 MR. BROWN: Okay.

7 Q. Would the short duration come into play as to the
8 identification?

9 A. Sure. If you want to try and remember something,
10 obviously the longer you study it the better your chances
11 are.

12 Q. In that picture you can see a weapon involved. Does a
13 weapon come into play in an identification and tell the
14 jury how if it does?

15 A. Yes. Those of us who study eyewitness memory talk
16 about what we call a weapon focus effect. And we see this
17 in experiments when we stage incidents where viewers have
18 to watch a crime that either unfolds with an obvious
19 weapon, usually a gun in sight, or the exact same situation
20 without the gun. And what we always see is that when there
21 is a gun involved, people tend to focus on it. That's
22 something that draws their attention and that draws their
23 attention away from the perpetrator so when you have a
24 scene with a gun, typically people don't do as good a job
25 with a lineup identification.

1 They also don't remember things quite accurately about
2 things like what was said so it's just not just a visual
3 thing. It's not just that your eyes are trained on the
4 gun. They may or may not be, but it's the mind that's
5 focused on the gun and that keeps you from seeing, hearing
6 and processing other things.

7 Q. Would it also be applicable with the presence
8 perceived or potential violence to the person making the
9 identification?

10 A. Yes. Absolutely. If you are under the threat of
11 violence or if you are seeing violence happening to someone
12 else, that basically triggers a basic kind of stress
13 response in people and when you are under stress your body
14 is gearing up to either fight or run away. The resources
15 that you have in your body and your brain are not focused
16 on remembering. They're focused on survival. So that's
17 why much research tends to show that when people are under
18 stress they are less able to remember that if they were
19 just in a more normal waking situation.

20 Q. And obviously this would be a stressful situation to
21 anyone would it not?

22 SOLICITOR SPRINGS: Objection to the leading.

23 THE COURT: I sustain the objection.

24 MR. BROWN: I withdraw the question.

25 Q. Tell the jury the concept or what the concept cross

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1 racial identification means and how it would apply here.

2 A. Cross racial identification refers to the difference
3 that we see in people's identification accuracy when they
4 are trying to remember and identify a face of their own
5 race versus someone else's race. And what typically
6 happens is that people are much better identifying people
7 within their own racial group so I would be much better at
8 identify another Caucasian than I would be at trying to
9 identify someone who was African American or Asian. And
10 it's not - doesn't have anything to do with prejudice. It
11 doesn't really even have a lot to do with who you tend to
12 hang out with and work with right now.

13 We think that it really goes back to the time when you
14 were a baby and you first learned to recognize faces
15 because we know that even two, three day old infants learn
16 to recognize their parents and other important people's
17 faces and probably at that time what they are learning is
18 what differentiates one face from another, so when I was a
19 baby, I quickly learned that for me and for my race and for
20 my parents, I could recognize my parents by things like
21 their eye color, their hair color, their hair style. I
22 have gone through life focusing on those kinds of details.
23 But people in other races, eye color may not vary that
24 much. Hair color may not vary that much. Other things are
25 more important. Shape of the lips. Shape of the nose. So

1 we learn to focus on features that might not be very good
2 in differentiating somebody of another race.

3 I had a really interesting experience a couple of
4 weeks ago. I was giving a talk to a group of lawyers and I
5 was talking to them about an instance of a mistaken
6 identification and I put a slide up on the screen of two
7 African American males, one of whom had been mistaken for
8 the other and I said something in my presentation about now
9 they do look a lot alike. And I immediately saw a couple
10 of African American people in the audience kind of looking
11 at each other and mumbling to each other and they came up
12 to me afterwards and they said we saw the white people
13 around nodding at your example but we didn't think they
14 looked anything like each other. And they were just
15 focusing on much different features than I had focused and
16 that I think the other white members of the audience
17 focused on.

18 Q. And would that also include an accuracy versus
19 confidence correlation in your studies?

20 A. Yes. One of my studies recently has focused on not
21 just the difference in identifying people of different
22 races and people of our own races, but also the confidence
23 that we show in those kinds of identifications. And one of
24 the problems specifically with cross racial identifications
25 is that we do tend to be very over confident in them

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1 relative to our actual accuracy.

2 And in general, confidence and accuracy don't tend to
3 associate very well with each other. People can be highly
4 confident and be wrong. People can be very correct and yet
5 be less than certain in their identification. They're
6 really - The things that effect accuracy are different from
7 the things that effect confidence and the things that
8 effect confidence are different from what actually makes
9 you accurate.

10 Q. What are the difference in those two as it relates to
11 eye witness identification?

12 A. Well, as we've been talking about, your accuracy can
13 be related to how good of a look you got at something,
14 whether you were under stress, whether the person you are
15 looking at is your own race. Confidence on the other hand
16 tends to be effected by things like, you know, just your
17 personality. Some people just come across as more
18 confident. They also - It also gets affected a lot by
19 feedback and that's why people tend to get more and more
20 confident over time in an identification because when they
21 first make the identification, you know, usually they are
22 - they are suppose to not get feedback from officers and
23 other people about, you know, did you do it right? Did you
24 pick the guy we wanted you to or not? But the fact remains
25 that there is no way we can keep them from getting feedback

1 in the sense that newspapers may publish pictures of the
2 person that you believe --

3 Q. Let me stop you right there one second. Would the
4 fact that Mr. Patel saw a newspaper picture of this
5 defendant erroneously identifying him as the shooter which
6 we all know is not true now.

7 SOLICITOR SPRINGS: Objection. There is absolutely
8 no evidence to that, Your Honor. I object to that.

9 MR. BROWN: We done ask Mr. Patel that. If I didn't
10 I'm mistaken. I will withdraw it.

11 Q. Would that effect your view of the eyewitness
12 identification?

13 SOLICITOR SPRINGS: I object. Objection.

14 THE COURT: Start over.

15 SOLICITOR SPRINGS: Yeah.

16 BY MR. BROWN:

17 Q. Would the fact there was a newspaper picture
18 identifying the defendant as being charged for this crime
19 effect this eye witness identification subsequently?

20 A. Yes. It would make him more confident when he got on
21 the stand in the courtroom. And the simple fact of having
22 a courtroom trial makes the witness more confident because
23 obviously this is the kind of corroboration that the police
24 think, I picked the right person.

25 Q. Have you seen this picture before or today in the

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1 courtroom?

2 A. Yes, I have.

3 THE COURT: Mr. Brown, keep in mind that the jury
4 can't see and hear.

5 MR. BROWN: Sorry, Your Honor. I'll get out of the
6 way over here.

7 Q. As to the identification in this case, what strikes
8 you about this picture?

9 A. What strikes me is that there appears to be a fairly
10 small portion of the face that was actually visible. You
11 can see a hoodie pulled down probably over the top portion
12 of the face and it's very hard to tell from the photo and
13 from the video that it looks like something, you know,
14 whether it was part of the hoodie or the jacket or a
15 collar, I'm not sure, but something seems to be covering up
16 a good portion of the facial outline.

17 Q. What does that leave out in eye witness identification
18 by specifically the face?

19 A. It's to my mind one of the more surprising facts about
20 eye witness identification that we really do identify faces
21 as wholes and when you cover up any portion of the face,
22 even something that seems kind of insignificant, you wind
23 up affecting people's ability to remember. My colleague,
24 Doctor Bryan Cutler, has done some studies where he simply
25 put a baseball cap on a suspect and compared people's

1 ability to recognize them and all that really covers up is
2 the hairline but the hairline turns out to be very
3 important.

4 There's a study from the 1970's by a researcher name
5 Ellis who was trying to figure out what were the most
6 important parts of the face. He was pretty much expecting
7 that the eyes are critically important and the rest of the
8 face not so much and so he created a situation where he had
9 famous people's faces, famous enough that most people would
10 recognize them if they saw the whole face and then he just
11 blanked out parts of it. He would blank out the outline of
12 the face, the exterior portion, the ears, the hairline, the
13 chin, or he would blank out the internal details like the
14 eyes and the nose.

15 And what he found surprisingly was that any portion of
16 the face, if you didn't get to see it, your ability to
17 identify even a fairly well known person was really, really
18 deteriorated so somebody that may be eighty percent of his
19 participants could recognize if they saw the whole face
20 when you blocked out the hairline and the ears and the
21 chin, that percentage went down to like fifty percent, so
22 it really was important for people to see the overall shape
23 and outline of the face.

24 Q. And clearly from this picture, the vast majority of
25 the face is blocked is it not?

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1 A. It appears to be from this photo yes.

2 Q. And with that situation being exasperated by the time,
3 the violence factor, the gun factor.

4 A. Sure. All of those things basically add up. Each of
5 them is a factor that is harmful to your memory.

6 Q. By your opinion here today, you're not suggesting Mr.
7 Patel is lying are you?

8 A. Oh, no, absolutely not.

9 Q. If you would explain to the jury the difference
10 between that and misidentification, please.

11 A. Yeah. All of the research on misidentification and
12 this includes laboratory studies, and real life stories of
13 people who made real identifications in real crimes, all
14 that we know suggests that this is just the way human
15 memory works. Memory is very changeable. Memory is
16 fickle, and we are all prone to honest errors. And people
17 who have made misidentifications in court in other cases,
18 they are sincere, they are absolutely sure that they're
19 correct. They are trying their very best that they can to
20 do an accurate job. There's nothing about lying. It's it
21 - It's just the memory is not as good as we wish it was and
22 that's true for all of us.

23 Q. Answer any questions the Solicitor may have.

24 A. Certainly.

25

CROSS EXAMINATION

1 DOCTOR LORI VAN WALLENDORF BY SOLICITOR SPRINGS:

2 Q. Good afternoon, Doctor.

3 A. Good afternoon.

4 Q. So this would make twenty-one times you've testified
5 as an expert in court?

6 A. Roughly. Twenty was kind of a ballpark figure. It
7 might be a couple more or less than that.

8 Q. But they were all for criminal defendants. No
9 prosecutors ever hired you?

10 A. No prosecutor has asked me.

11 Q. When you did all those studies, and you're a college
12 professor, I assume the subjects you used were fellow
13 students?

14 A. Most of my studies, yes.

15 Q. Did you tell the college students what you expected to
16 find in advance?

17 A. Oh, no.

18 Q. And when you used the college students, did you know
19 what percentage of them were intoxicated on any kind of
20 intoxicating substance?

21 A. I would presume in my laboratory studies that
22 hopefully none of them were. They were typically coming
23 right out of their classrooms.

24 Q. But you have no idea if any of them were drunk or
25 drugged up would you?

DOCTOR LORI WALLENDORF: BY SOLICITOR SPRINGS

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1 A. No.

2 Q. You said the lineup was unfair because only one person
3 stands out; is that right?

4 A. Would have stood out to the witness.

5 Q. But if that was the guy, he would stand out wouldn't
6 he?

7 A. If he was, certainly.

8 Q. It seems sort of double talk to say well you ID'd
9 him so he stood out and that's unfair. If it's unfair to
10 ID the person that did it, no one would ever ID anyone
11 would they?

12 A. It's not unfair to ID the person who did it. It's
13 unfair to ID someone who is familiar or stands out for
14 another reason than having done it.

15 Q. Okay. And was that the reason in this case?

16 A. Because this person was a customer in the store.

17 Q. So it's unfair because Mr. Maldonado was the only
18 customer in the lineup?

19 A. Right.

20 Q. Let's talk a hypothetical. Let's talk about a rape
21 case.

22 A. Okay.

23 Q. And the person, the victim, the lady victim picked
24 out was the only person in the group that raped her. Would
25 that be unfair because other people that had raped her

1 weren't in there? It makes about as much sense doesn't it?

2 A. No. I don't think it makes sense at all.

3 Q. I don't think this is funny. Do you think this is
4 funny? Somebody got shot in this case.

5 MR. BROWN: Objection, Your Honor.

6 THE COURT: Well just disregard that last comment by
7 the Solicitor.

8 Just stick to the facts.

9 Q. Now, you talked about divided attention because there
10 were two people. The two men here separated. Wouldn't it
11 be human nature to put more attention into the person that
12 was physically closer to you?

13 A. Probably, yes.

14 Q. And Mr. Brown, the defense attorney, was talking
15 about Mr. Patel, the man who got shot, and his head being
16 pointed somewhere when the man coming around the corner is
17 here, can someone hold their head here and look over to the
18 side with their eyeballs without turning their head?

19 A. Sure.

20 Q. Then there was a lot of talk about the weapon focus and
21 the fear of the gun. If Mr. Patel had never seen the gun,
22 would he have any weapon focus?

23 A. Obviously not.

24 Q. Would he have any fear of a gun he couldn't see and
25 never saw?

DOCTOR LORI WALLENDORF: BY SOLICITOR SPRINGS

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1 A. If he had not seen it, then no it would not affect
2 him.

3 Q. So if the gun was hidden from his view by the cash
4 register and the display, you wouldn't be fearing the gun
5 because he wouldn't know a gun was there; is that right?

6 A. Certainly you cannot fear what is hidden from view.

7 Q. And then there was some talk about racial problems
8 with ID. What race is Mr. Maldonado?

9 A. I would say African American.

10 Q. What race would you say Mr. Patel is?

11 A. Indian.

12 Q. Now we have another witness in this case, Mr. Sanders.
13 He was dressed in an orange jumpsuit. Were you in the
14 room when he testified?

15 A. Yes, I was.

16 Q. What race was he?

17 A. African American.

18 Q. Do you think he was having any trouble identifying
19 his buddy Mr. Maldonado?

20 A. I would imagine not.

21 Q. Now, Mr. Brown also asked you about newspaper pictures
22 and newspaper pictures affecting - you said they might
23 affect the confidence of the identifications; is that
24 right?

25 A. Yes.

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BY MR. BROWN

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1 Q. But if the person saw the newspaper picture in August
2 after they had made the identification in July, it couldn't
3 have any effect on the identification in July because the
4 newspaper came later. Would that not be --

5 A. No. It could only have an effect on subsequent
6 identifications like in court identifications.

7 Q. Okay. Doctor, how much are you charging for your
8 testimony today?

9 A. I'm making a fee of Two Hundred Dollars an hour for
10 actual testimony time. Waiting in court and so forth is
11 half of that.

12 Q. Now your fee in getting paid wouldn't influence the
13 way you testify would it?

14 A. No. Absolutely not.

15 Q. All right. Thank you.

16 SOLICITOR SPRINGS: That's all I have.

17 THE COURT: Redirect?

18 REDIRECT EXAMINATION

19 DOCTOR LORI VAN WALLENDORF BY MR. BROWN:

20 Q. Doctor, did I not call you and ask you to look at this
21 with an objective mine and tell me what your results were?

22 A. Yes.

23 Q. And did you do that?

24 A. Yes, I did.

25 Q. And this is based on peer study and peer data and

DOCTOR LORI WALLENDORF: BY MR. BROWN
BY SOLICITOR SPRINGS

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1 read over years. Correct?

2 A. Correct.

3 Q. And the research shows this to be a flawed
4 investigation in eye witness identification does it not?

5 SOLICITOR SPRINGS: I'm going to object ---

6 THE COURT: Yeah, I sustain the objection.

7 SOLICITOR SPRINGS: --- to the constant leading.

8 THE COURT: Well I sustain the objection.

9 BY MR. BROWN:

10 Q. Were you in court earlier when Mr. Sanders testified
11 a dog and an alien did this?

12 A. Yes.

13 MR. BROWN: No further questions.

14 SOLICITOR SPRINGS: Can I ask one more?

15 THE COURT: Yes.

16 RE CROSS EXAMINATION

17 DOCTOR LORI VAN WALLENDORF BY SOLICITOR SPRINGS:

18 Q. We're finished now. If we stop right now, what are
19 are you gonna bill? What's your bill gonna be?

20 A. I'm not exactly sure. I'd have to figure it out.

21 Let's see, probably - I'm guessing about a Thousand
22 Dollars.

23 Q. And a Thousand Dollars doesn't effect the way you're
24 testifying today?

25 A. No, not at all.

1 SOLICITOR SPRINGS: That's all.

2 THE COURT: You can step down and be excused. We
3 appreciate your time. Thank you.

4 (WITNESS LEAVING WITNESS STAND.)

5 THE COURT: Call your next witness.

6 MR. BROWN: Beg the court's indulgence one minute.

7 (PAUSE.)

8 MR. BROWN: That's the case for the defense, Your
9 Honor.

10 THE COURT: All right. Anything in reply?

11 SOLICITOR SPRINGS: No, sir.

12 THE COURT: Members of the jury panel, now you've
13 received all the evidence, the exhibits and heard all of
14 the testimony. It's four o'clock and we have some matters
15 to take up outside your presence so we are not going to do
16 arguments and charge today. We'll start them in the
17 morning. I have something scheduled. I think I told you
18 yesterday I'm the administrative judge so I have something
19 that's scheduled that will take me to about eleven. So I'm
20 going to ask you to be back at eleven in the morning and
21 once you return you will hear the attorneys give their
22 closing arguments and I will give you the charge on the law
23 and we'll send you out to deliberate.

24 It'll be lunch time so we'll provide lunch. So keep
25 in mind you're not yet in a position to make up your mind.

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1 You're not yet in a position to discuss the case. Remember
2 what I told you about not being exposed to any news
3 coverage or going on line to do any research. So have a
4 pleasant evening and we'll see you back at eleven in the
5 morning.

6 (JURY EXITS COURTROOM AT 04:01 P.M..)

7 THE COURT: Anything from the State?

8 SOLICITOR SPRINGS: No, sir.

9 THE COURT: Defense?

10 MR. BROWN: I renew my previous motions at the close
11 of the evidence, Your Honor, based on all my previous
12 objections and my previous grounds.

13 THE COURT: Same ruling, I found that there is
14 sufficient evidence for the case to go to the jury. There
15 is sufficient evidence from which the jury could find
16 beyond a reasonable doubt that Mr. Maldonado was a
17 participant in this attempted robbery and shooting. So I
18 deny the motion.

19 MR. BROWN: Yes, sir. A house keeping matter. Can I
20 get an order to get my expert paid?

21 THE COURT: Yes. Yes we already discussed that.

22 She'll submit a bill and you just - We will go from
23 there.

24 MR. BROWN: Yes, sir.

25 You got the number before I did.

1 THE COURT: All right. Then we'll be at ease until
2 eleven. If the attorneys after taking a short break will
3 meet with me and we'll go over the charge, have a
4 conference in chambers. If any of you have any request to
5 charge bring them when you come. So take about five
6 minutes and then we'll get together.

7 MR. BROWN: What time do you want us here, Judge?
8 About five minutes 'till eleven?

9 THE COURT: No. Five minutes 'till now. Five minutes
10 from now.

11 MR. BROWN: Oh, okay.

12 THE COURT: Yeah let's go ahead and get it done today
13 because I've - What I have in the morning I have to push to
14 be through by eleven quite frankly having past experience
15 with that litigation and the lawyers involved. But I've
16 given them a two hour cap.

17 All right, we'll see you in chambers in just a few
18 minutes.

19 (COURT IN RECESS AT 04:05 P.M..)

20 (COURT BACK IN SESSION WEDNESDAY, MARCH 20, 2013 AT
21 11:23 A.M..)

22 THE COURT: You may be seated.

23 Anything from the State involving the charge? We
24 had a charge conference yesterday and I think we pretty
25 much ironed out what the Court intends to charge.

1 Anything at this time, Mr. Springs?

2 SOLICITOR SPRINGS: I would just like to confirm that
3 we have no lesser included on the armed robbery?

4 THE COURT: I have no lesser included on armed
5 robbery. We talked about whether strong armed robbery
6 would be a lesser included but the facts have determined
7 that would not be a lesser included.

8 MR. BROWN: Just for the record, Your Honor, I request
9 that you charge strong armed robbery.

10 THE COURT: All right. Anything, any other requests?

11 SOLICITOR SPRINGS: No, sir. And there will be no
12 withdrawal from the conspiracy charge?

13 THE COURT: No. I don't plan on any withdrawal from
14 conspiracy. I don't think again under the facts that there
15 is any fact that either party; if there was a conspiracy,
16 that either party withdrew from it. They did not complete
17 the overt act but there certainly was an overt act by two
18 individuals.

19 (PAUSE.)

20 THE COURT: All right. The State waive open?

21 SOLICITOR SPRINGS: The State does waive opening.

22 MR. BROWN: Your Honor, just for the record, I
23 requested, I think, withdrawal yesterday afternoon too. I
24 think.

25 THE COURT: Withdrawal?

1 MR. BROWN: Yes, sir, Your Honor. I understand your
2 ruling.

3 THE COURT: We did discuss that and I determined that
4 again, no charge involving a withdrawal by the co-
5 conspirator from a conspiracy that would apply in this
6 case. Again in this particular case the allegations are
7 they conspired to commit a armed robbery and certainly it
8 was an overt act by as I said many of our participants
9 aren't successful to commit the same so I'm not charging
10 that.

11 SOLICITOR SPRINGS: And can we put on the record there
12 is no lesser included of the attempted murder?

13 THE COURT: And there is no lesser included of
14 attempted murder.

15 MR. BROWN: Yes, sir.

16 THE COURT: All right. Bring in the jury.

17 MR. BROWN: Your Honor, can I have a couple of minutes
18 just to get my stuff?

19 THE COURT: Yeah.

20 (PAUSE.)

21 THE COURT: While you're doing that,

22 Mr. Springs, let me toss out, the Indictments you need
23 to redact the possession of a firearm. I put an X through
24 it but I don't know that the Defense wants the Indictment
25 to go back.

1 SOLICITOR SPRINGS: I would propose we do a verdict
2 form.

3 THE COURT: I've got a verdict form so I don't I don't
4 send the Indictment back.

5 MR. BROWN: That's fine.

6 SOLICITOR SPRINGS: That's what I would propose.

7 THE COURT: Okay. Well we do have verdict forms so
8 we're good.

9 SOLICITOR SPRINGS: Yes, sir.

10 THE COURT: While we're waiting one other thing on the
11 charge. No recent change in the law regarding malice being
12 overt and the use of a deadly weapon.

13 SOLICITOR SPRINGS: Yes, sir.

14 THE COURT: In this case I think that would be
15 warranted because I don't believe and I'll hear from
16 counsel any evidence of anything that would mitigate
17 against that.

18 SOLICITOR SPRINGS: I had completely forgotten that
19 and I agree, I think we're entitled to malice can be
20 inferred from the use of a deadly weapon charge.

21 THE COURT: That's still a good charge unless there
22 are facts which would mitigate the conduct of the defendant
23 and I don't see anything in this case.

24 SOLICITOR SPRINGS: Yes, sir.

25 MR. BROWN: Your Honor, I want to put on the record

1 that I think there are mitigating circumstances from this
2 particular matter. If this was Mr. Sanders' trial I would
3 not be making that argument. However, Mr. Maldonado did
4 not have a weapon, did not fire any shots, and had no
5 control over a weapon.

6 THE COURT: You're on the record.

7 MR. BROWN: Yes, sir.

8 THE COURT: I find accomplice liability, malice..

9 SOLICITOR SPRINGS: I will mention this, Mr. Sanders
10 on the stand very briefly said I thought he was reaching
11 for a gun. Do you think that creates any problem?

12 THE COURT: I will look at that. I think out of the
13 abundance of caution -

14 MR. BROWN: No, he did testify to that. You're
15 correct.

16 THE COURT: You're right.

17 MR. BROWN: The statement was made on -

18 THE COURT: I'll leave that out.

19 MR. BROWN: Okay.

20 THE COURT: Thank you.

21 MR. BROWN: That was from the statement he made in
22 your office I guess.

23 SOLICITOR SPRINGS: He said it from the stand though.

24 MR. BROWN: That's what I'm saying. He made this
25 statement in your office.

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1 THE COURT: It's in the record.

2 Are you ready now? Are we ready now?

3 All right, bring in the jury.

4 (JURY REENTERS COURTROOM AT 11:35 A.M..)

5 THE COURT: Members of the jury panel, I know you've
6 been in there for a while and actually we got through about
7 the time I had planned and then we had a glitch with the
8 computer that the lawyer wanted to use, put some projection
9 things on the screen. So I apologize for holding you up.
10 It was one of those events beyond our control.

11 All right, Counselor.

12 MR. BROWN: May it please the court, Your Honor.

13 Mr. Foreman, ladies and gentlemen of the jury, we are
14 at the point in the time of the trial where you've heard
15 all the evidence that's gonna be introduced in this case,
16 closing arguments and the judge will charge you on the law.
17 Procedurally I have to go first, so may I have your
18 attention. I'll try to be brief as I'm sure you are tired
19 of hearing from lawyers. But I'll try to be brief if
20 you'll give me fifteen to twenty minutes of your undivided
21 attention. Hopefully what I tell you will assist you in
22 reaching a verdict in this case.

23 As I told you in my opening statement I am Michael
24 Brown, court appointed to represent Mr. Maldonado who is
25 seated next to me. And that happens to me about six or

CLOSING ARGUMENT: BY MR. BROWN

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1 seven times a year I'm court appointed. In that case it
2 makes it of no lesser importance to me than any case that
3 comes in and pays me a massive amount of money. It is my
4 job to defend him to the best of my ability. As I told you
5 in my opening statement there are four major participants
6 in this trial. I am one of them. My job is to defend to
7 the best of my ability. Mr. Springs' job is to prosecute
8 to the best of his ability. The Judge, he is the sole
9 judge of the law. And when I sit down and Mr. Springs sits
10 down, he is fixing to give you the law, and it is very
11 important that you understand the concept as he is going to
12 give you.

13 And if I could, I would like to refer back to my
14 opening statement where we discussed the law briefly.
15 There's two forms of law in this country and they are
16 really quite simple and sync when you break them down.

17 One is civil law and we talked about that very
18 briefly. In civil cases, both sides have a duty to present
19 evidence. And whichever side you believe slightly more
20 than the other, say fifty-one percent versus forty-nine
21 percent, you vote that way. Criminal law is completely
22 different, and please listen closely when Judge Hayes
23 charges you with the criminal law in this case because it
24 becomes your job to decide what the facts are. And once
25 you fourteen decide what the facts are, you take the facts

CLOSING ARGUMENT: BY MR. BROWN

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1 as you find them to be and apply the law and reach a
2 verdict.

3 What is the law in this case? I believe His Honor is
4 going to charge you that all defendants who are charged
5 with a crime are presumed innocent. Right now Mr.
6 Maldonado is innocent and he stays innocent until such time
7 as you have been convinced, not by any window or
8 allegation, but by believable, credible evidence to
9 convince you to a certain standard.

10 It's my second major tenant of law but I really would
11 appreciate it if you would listen closely when Judge Hayes
12 has charged you on that. It's not proof to; it's not
13 preponderance of the evidence, but it's proof beyond a
14 reasonable doubt.

15 What is a reasonable doubt? As I told you in my
16 opening statement and as I do believe Judge Hayes will
17 charge you, our Supreme Court has a sync and separate
18 definition. A reasonable doubt is the kind of doubt that
19 causes a reasonable person to hesitate to act. To hesitate
20 to act. To think twice. It's evidence that leaves you
21 firmly convinced of someone's guilt. And if you have a
22 doubt which would cause you to hesitate or think twice
23 about Mr. Maldonado's guilt on all these charges, you
24 should do your obligation to a verdict of not guilty.
25 Likewise, if there is no doubt in your mind, you are firmly,

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1 convinced that he did this, then you must return a verdict
2 of guilty.

3 What's the specific charge in this case? There are
4 three indictments. One is attempted murder. I'm going to
5 discuss that. Attempted murder is an attempt to kill
6 somebody with malice, evilness, wickedness, depravity.
7 You can find malice through a number of ways. It can be
8 inferred or implied but there are also mitigated
9 circumstances. In this case we all know, even the State
10 doesn't contend, Mr. Maldonado never ever had a gun. Mr.
11 Maldonado did not shoot anybody. There's no question, Mr.
12 Sanders shot him. It's on tape. He admitted it on the
13 stand.

14 Now, the Solicitor is going to argue what's called
15 accomplice liability, the hand of one is the hand of the
16 other. Before he gets there though, he has to prove to you
17 beyond a reasonable that Mr. Maldonado was there. This is
18 what we call identification law. And the issue in this
19 case, now I'm going to read you what the charge is, an
20 issue in this case is the identification of the defendant
21 as the person who committed the crime as charged. The
22 State has the burden of proving the identity beyond a
23 reasonable doubt, beyond any doubt that would cause you to
24 hesitate to act. You must be satisfied beyond a
25 reasonable doubt of the accuracy of the identification

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1 before you can convict the defendant.

2 Identification testimony is an expression or belief or
3 impression by a witness. You must determine the accuracy
4 of the identification of the defendant. You must determine
5 the believability of each identification witness in the
6 same way as any other witness. You may consider whether
7 the witness had adequate opportunity to observe the
8 defendant at the time of the offense and this will be
9 effected by things like how long or short a time the
10 observation period was; the lighting, the conditions, and
11 whether he knew the person in the past.

12 The burden of proof on the State extends to every
13 element of the crime charged and this specifically includes
14 the burden of proving beyond a reasonable doubt, beyond any
15 doubt that would cause you to hesitate to act. The
16 identity of the defendant as the person who committed the
17 crime. If after examining the testimony you have a
18 reasonable doubt as to the accuracy of the identification,
19 you must find the defendant not guilty.

20 Now I know that's a truck load I just threw at you.
21 Please listen closely when his Honor charges you that
22 because that's what this case determines on. This is an ID
23 case. And what is the evidence in this case? Scientific
24 evidence. We don't even have fingerprints. Of all the
25 lists law enforcement gave me, I think he called three, the

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1 dog that never missed. What evidence do we have there?
2 The dog never hit on his clothes. The dog never hit on
3 anything he had on. The dog didn't find him and the dog
4 never missed. He started to hit on Mr. Sander's clothes
5 and Mr. Sander's gun.

6 DNA: They took a DNA swab. If you believe he was
7 there, and you saw where he grabbed stuff and so forth,
8 they could have that and come in here and say look, we have
9 DNA proof conclusively shows that he grabbed and came
10 behind the register, that he grabbed the door. It doesn't
11 exist. You know why? I assure you if they had it they
12 would bring it forward.

13 Reasonable doubt comes from the evidence or lack of
14 evidence they give you in this case. And there is a reason
15 you don't have DNA evidence here. And there's a reason you
16 don't have fingerprints. Because if they had it we
17 wouldn't be standing here.

18 We're down to identification, ladies and gentlemen of
19 the jury. Three people, three witnesses are crucial in
20 this case and the rest is just side on side. Mr. Huey, the
21 first witness, and I want to point out something. He comes
22 in and testifies and they find him at the scene and the
23 place is corned off with cops blocking all exit points.
24 He's within the crime area without a shirt on. Takes him
25 into custody. And he testifies, oh well, I heard them

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1 talking about that last night. Yeah, they said they were
2 gonna over yonder to a shooting. If you believe that I
3 have some land east Myrtle Beach I want to sell you.

4 When you come on jury duty, you don't throw away your
5 very good common sense. Mr. Huey comes up here to court
6 trying to sell you something and says this is the last
7 revel, would you buy it from me? It is your job, your
8 duty, to adjudicate the witness. And to convict Mr.
9 Maldonado you have to believe Mr. Huey beyond a reasonable
10 doubt, beyond any doubt that would cause you to hesitate to
11 act. The man is convicted thief, and you know what he
12 never said? He never said that Mr. Maldonado was involved
13 in the conversation. Remember the last question? And
14 again if I misstate any testimony you fourteen take it as
15 you remember it, fourteen memories are better than mine.
16 But if I recall, the last question I asked him was, didn't
17 you tell the Solicitor that this was Mr. Sanders' idea?
18 No, sir. When you all went out and we came back on the
19 record and we entered into a stipulation that he did say
20 that and that he did tell the Solicitor that the robbery
21 that Mr. Sanders was the instigator of the robbery. What
22 he never testified to was that Mr. Maldonado said I'll go
23 along with this. I'll do this. Not one time out of his
24 mouth did he ever say Mr. Maldonado agreed. And that's why
25 we have a stipulation. When you are on jury duty, and the

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1 judge will charge you what a stipulation, that's the
2 strongest most powerful evidence. That means both sides
3 agree that's what was said.

4 Lastly and this troubles me. Oh, I was at Applebee's.
5 There's no proof he was at Applebee's. He didn't bring his
6 mother in here. He didn't bring his girlfriend in here.
7 He didn't bring anybody or a receipt or anything to show
8 that he was at Applebee's. And he was the one with the
9 shirt off just like Mr. Sanders was as he was taken into
10 custody that night. And he wanted to come back to him and
11 say, okay, maybe he was there, maybe he was involved.
12 That's for you to decide. What I'm telling you now though
13 is what he says and you can put no credence in because I
14 believe he would stay anything to stay out of this mess.

15 SOLICITOR SPRINGS: I'm going to object to Mr. Brown
16 believes.

17 THE COURT: Disregard Mr. - It's not up to what - You
18 consider what you determine to rely on, not what the
19 defense, Mr. Brown.

20 MR. BROWN: You can what you want from that statement.
21 But I ask you as a reasonable person would you believe him
22 beyond a reasonable doubt, would you believe him beyond any
23 doubt that would cause you to hesitate to act?

24 The second witness involved in this is Mr. Sanders.
25 Somewhat of a border line sociopath who very candidly

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1 admits he just went in there and shot the guy for basically
2 no reason and this troubles me.

3 SOLICITOR SPRINGS: I'm gonna object to what troubles
4 Mr. Brown.

5 THE COURT: I agree.

6 MR. BROWN: Your Honor, if I can draw the inferences
7 from the evidence.

8 THE COURT: Well I think the concern, I think you can
9 point to the jury what you think concerns them but not what
10 concerns you.

11 MR. BROWN: Okay.

12 This should concern you all because they go cut a deal
13 for fourteen to seventeen years for the trigger man;
14 clearly the guy who did the worse damage here. And poor
15 Mr. Patel gets shots and he gets the deal. What do you
16 think he is going to say? I don't want to go to jail for
17 sixty years. Attempted murder, thirty years without
18 parole. Attempted armed robbery, twenty years without
19 parole. Possession of a firearm during a crime of violence
20 for five years. Conspiracy, five years. He's looking at
21 sixty years without parole. This is a guy who was talked
22 to on five different occasions by the authorities in this
23 case, gave five different stories.

24 The first night when they stop him, I didn't know
25 anything about it, it wasn't me. The second time in the

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1 jail, I don't know anything about it, it wasn't me. Third
2 time in court, oh yeah, me and Mr. Maldonado did that. I
3 was the shooter. I'm gonna take my fourteen to seventeen
4 years. Five days before he testifies, no we didn't go in
5 there to rob him, we didn't do that. I went there to talk
6 to Mr. Patel about some problems I was having with him.
7 Asked him why did he lie. And he admitted, he is a
8 professed liar on the stand, said I was having family
9 problems.

10 Again, ladies and gentlemen of the jury, reasonable
11 doubt. Do you believe this character beyond a reasonable
12 doubt? The man is a convicted thief. He is a convicted
13 murderer; attempted murder and attempted armed robbery.
14 You know, you don't buy a 2014 blue form Dom Perigon
15 bottle. And when you come on jury duty you don't throw
16 away your common sense. You don't believe him in your
17 every day lives beyond a reasonable doubt. You wouldn't
18 believe a word that comes out of Mr. Sanders' mouth. That
19 man would say and do anything to save his own hide. And
20 that's what he did in this case and the deal he got,
21 fourteen to seventeen years, and but for that cash register
22 this probably is a murder case. It should trouble you, it
23 should trouble you.

24 Mr. Patel. I told you then during the course of this
25 trial and I'll tell you I feel great empathy and sympathy

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1 for him because he is the victim here. There is no doubt
2 about that. He did not, did not deserve what happened to
3 him that night. And the person that did that should be
4 punished and should be punished accordingly and that's Mr.
5 Sanders.

6 I want to emphasize a couple of things to you. And
7 when he testified earlier and I'm not saying it's a chance
8 and I would never suggested that and I never thought that,
9 but I do think he made a misidentification. He said
10 initially under oath that the five foot five, the guy with
11 the glasses and no bandana.

12 (STATE'S EXHIBIT PUBLISHED TO THE JURY.)

13 MR. BROWN: That's what he saw that night, ladies and
14 gentlemen of the jury. And that's how much allegedly of
15 the defendant's face he saw. That's not five foot five and
16 that man doesn't have glasses on and he does have a
17 bandanna on. The picture speaks for itself. You draw your
18 own inference from it.

19 Do I think he's intentionally misleading you? No I
20 don't. I think that's what he thought. I think it was
21 reaffirmed when he saw the newspaper and it think it was
22 after the week after that he gives his statement to the
23 police. Which brings us to Doctor Wallendorf.

24 The judge is going to instruct you and you've heard
25 testimony from the expert witness. She wasn't there. You

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1 all know that. She is an expert certified with a Ph.D. in
2 identification or misidentification. All the factors to
3 believe that misidentification is present in this case. We
4 have the weapon. Mr. Patel told you he never took his
5 focus off and he never saw the weapon. I submit to you
6 it's been scared from his memory. The video speaks for
7 itself.

8 (STATE'S EXHIBIT PUBLISHED TO THE JURY.)

9 MR. BROWN: Now, what is he looking at? There is
10 nobody on this side yet. The gun is sitting right there.
11 And you know what, it's a shocking event. It's a shocking
12 event. And that's why I called an expert in to testify
13 because I honestly think he made a misidentification in
14 this case. You know how you can prove that?

15 SOLICITOR SPRINGS: I'm gonna object to Mr. Brown --

16 THE COURT: Again, Mr. Brown whether he honestly
17 believes something, what his belief is, is not binding on
18 you and it's not important. So disregard his statement as
19 to what he believes. Go with what you believe.

20 MR. BROWN: I submit to you he did make a
21 misidentification and I'm gonna give you confirmation of
22 that. Do you know where that confirmation lies? Back to
23 the first thing I said in my opening, there is not one
24 stitch of DNA which they took a swab of, there's not one
25 fingerprint tying Mr. Maldonado to this case. That's your

CLOSING ARGUMENT: BY MR. BROWN
BY SOLICITOR SPRINGS

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1 corroboration of the misidentification.

2 I told you I would be brief and I did my best. You
3 have a great duty here today. You have to go back and
4 decide whether I believe beyond a reasonable doubt, beyond
5 any doubt that would cause me to hesitate to act; that Mr.
6 Maldonado is properly identified, has the State proven to
7 me beyond a reasonable doubt. And I submit to you when you
8 look at all the evidence, not the innuendos and the
9 allegations that people with their butt in a sling who are
10 looking to cut a deal or stay out of jail, but a
11 believable, credible evidence, or lack of it in this case.
12 And there is no scientific evidence tying Mr. Maldonado to
13 this crime and that is confirmed by the testimony of Ms.
14 Wallendorf. And I submit to you he is entitled to a
15 verdict of not guilty. Thank you.

16 SOLICITOR SPRINGS: May it please the Court.

17 THE COURT: Yes, sir.

18 SOLICITOR SPRINGS: Ladies and gentlemen of the jury,
19 Mr. Foreman, in big factories there is something called a
20 quality control person. The quality control person makes
21 sure that the product and the end result is correct. And
22 I have a quality control person. It's the defense
23 attorney.

24 MR. BROWN: Objection. Your Honor, I'm not a quality
25 control person; I don't know what this is about. I'm

1 I'm court appointed.

2 THE COURT: I sustain the objection. Let's don't
3 refer to him as a quality control person.

4 SOLICITOR SPRINGS: What are the chances that this guy
5 Kairon Maldonado wasn't there and didn't do this when a
6 friend of his, someone with no reason to lie for him, lie
7 about him, Romailo Huey, comes in here and testifies he was
8 with Maldonado and Sanders the night before. And I asked
9 him what were they planning on doing and he said they were
10 planning on robbing the store, an armed robbery. He had no
11 reason to lie. These were his friends. They grew up
12 together. They used to go to the same store which was Mr.
13 Patel's store. What are the chances Maldonado wasn't there
14 and didn't do this and Mr. Patel has seen him in the store
15 as a customer repeatedly before this and recognized him,
16 and recognized him. We all pass people every day that we
17 know and we see around and we don't know their names but we
18 know who they are. That bunch of guys in uniform down by
19 the front door down there I don't know their names. I see
20 them all the time. I pass by, hey, how you doing? We come
21 around the corner and I see one go, hey, how you doing and
22 I don't need twenty minutes to figure out yeah, that's that
23 guy. He recognized me. You know who they are. They are
24 acquaintances.

25 And this was an acquaintance of Mr. Patel's. He

CLOSING ARGUMENT: BY SOLICITOR SPRINGS

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1 saw him in the store, he's a regular customer. Mr. Huey
2 said they grew up together. They go to the store. It's
3 the neighborhood store. That's why Mr. Huey tried to talk
4 them out of it. This is the neighborhood store that Mr.
5 Patel has run for sixteen years.

6 And what are the chances that Maldonado wasn't there
7 and didn't do this when his buddy, Mr. Sanders, who tried
8 everything he could to help him; Mr. Sanders who talked so
9 fondly of him, his little buddy, his friend, brother, and
10 who tried so hard to help him out.

11 MR. BROWN: I'm going to object to that
12 characterization, Your Honor. I don't believe he helped
13 him out at all.

14 THE COURT: I overrule the objection.

15 Go ahead.

16 SOLICITOR SPRINGS: Who tried so hard to help him out
17 that he and his lawyer come to my office last week and
18 jeopardizes them to try to help this guy. Would Sanders
19 Maldonado's buddy lie about him? No. He's doing
20 everything he can to help him. Everything he can to help
21 him. There is a letter that the defense attorney put into
22 evidence from Sanders to Maldonado. It's almost like a
23 love letter. What are the chances Maldonado wasn't there
24 and didn't do this when his friend Huey says Maldonado and
25 Sanders planned it the night before. When Mr. Patel

1 recognizes him. He didn't have a mask on. He didn't have
2 a bandana on. Sanders told you that. He had no bandana.
3 He had no flag.

4 And Mr. Patel recognizes him. Mr. Patel lives, thank
5 God, to come in and say that's the guy, that is the guy.
6 Three people pointed over here and said that's him.
7 Sanders, Mr. Patel and Huey.

8 Now, why would somebody who's been going to this store
9 for years go in without a mask to rob the clerk? It makes
10 me think about my little baby sister when she was about
11 three or four years old. She'd want to play hide and seek
12 with us older kids. But when everybody would go to hid,
13 she would just stand there. "You can't see me." Mr.
14 Maldonado reminds me of my baby sister when she was three
15 or four years old. "You can't see me." And that's giving
16 him the benefit of the doubt because we will never know, we
17 will never know, if Sanders and Maldonado planned to shoot
18 and kill Mr. Patel from the very beginning so there are no
19 witnesses.

20 We will never know. Why would he run in without a
21 mask? Run into a store where he has been going for years.
22 He is either a lot like my baby sister at three or four or
23 they intended to shoot Mr. Patel from the very beginning
24 and kill him.

25 Sanders pulled the trigger three times. Once would

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1 have been enough. He pulled it three times. He wanted to
2 be sure he killed Mr. Patel. They went into the store
3 together. Maldonado went into the store with his buddy
4 carrying the rifle. You're going in to rob somebody at gun
5 point, an armed robbery, and he tells Mr. Patel to give him
6 the money. When you go in and you point a gun at somebody
7 when you do an armed robbery, the idea is "give me the
8 money or I'll kill you" it's an armed robbery. He goes in
9 knowing that's the way they are going in. Armed with a gun
10 and Mr. Patel is going to give him the money or he is going
11 to die.

12 Mr. Patel has worked there for sixteen years, run that
13 store, a neighborhood store with kids running in and out of
14 it, and they didn't care if they snuffed that out for a few
15 bucks, for a few bucks. What are the chances, what are the
16 chances it wasn't him when those three people say it was
17 him. This isn't a forensics case. This is three eye
18 witnesses. Him, it's him, it's him. We could have put one
19 single witness up there and proved this case beyond a
20 reasonable doubt. Just Mr. Patel. Just Mr. Patel to get
21 up there and say these two guys came in and one came
22 quickly here to where you entered behind the counter and my
23 attention was on him. I wasn't paying much attention to
24 the other guy, the guy that held his rifle down here like
25 this, held his rifle to where the cash register and the

1 displays were blocking Mr. Patel's vision, who was
2 following him anyway. He is trying to get behind the
3 counter. He says give me the money. That's when I knew it
4 wasn't foolishness it was getting serious. That's when I
5 reached for the switch and that's when Sanders shoots me
6 down, shoots me three times because once wasn't enough to
7 kill somebody; three times. Just him. One witness. One
8 witness.

9 And you can go back to that deliberation room with
10 absolutely no problem to go, yeah, he knew him. The guy he
11 knew wore a mask, and they shot down Mr. Patel. One
12 witness. But we got two more. We've got two more. And
13 you know in your hearts this guy was there. This guy went
14 in with Sanders. And now figuratively speaking he's
15 standing in front of you going "you can't see me".

16 You represent all of York County and you have a duty
17 when we have proven this case beyond a reasonable doubt, we
18 proved it beyond all doubt, you have a duty to find this
19 man guilty of conspiracy for planning this robbery with
20 Sanders, guilty of attempted armed robbery and guilty of
21 attempted murder.

22 Attempted murder because while he didn't pull the
23 trigger, he went in there with a guy with a loaded gun
24 knowing very well that could happen and he's responsible
25 for his accomplice. Just like the guy that waits in the

CLOSING ARGUMENT: BY SOLICITOR SPRINGS

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1 car outside the bank when his buddy runs in the bank, the
2 driver of the car never touches a gun and never touches
3 money and didn't shoot the guard, but he is responsible for
4 everything that his buddy does and he is responsible for
5 Mr. Patel being shot down.

6 You are the judges of the facts. You're like a good
7 umpire. You just judge acts, bad behavior, what he did.
8 You're not judging his soul. You are not even judging
9 whether he is a good or bad person. You're judging the
10 facts. You don't have any bias. You're not going to favor
11 one person over another. You're not going to be
12 sympathetic to Mr. Patel or sympathetic to Mr. Maldonado.
13 You're going to be an umpire. An umpire doesn't go out
14 there at the game to go this player has been having a bad
15 season, I'm gonna call him safe even though he's really
16 out. That's offensive. We play by the rules.

17 The rules here are the law, that's what keeps this
18 society safe. You represent all of York County. This is
19 the most important thing some of you will ever do. When
20 this guy has be proven way over a reasonable doubt with no
21 doubt to have done this, if you try to turn him loose it
22 would be like telling the bad guy to do whatever you want.
23 Go to it, rob a store, shoot people. You're not gonna do
24 that because you know in your heart what the truth is here.

25 This is Mr. Patel's day for justice. He counts on

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1 you; I count on you. And all the people in this community
2 count on you to do the right thing, to find Kairon
3 Maldonado guilty of these charges.

4 THE COURT: You got the Indictments?

5 MR. BROWN: Yes, sir.

6 THE COURT: Members of the jury panel, I appreciate
7 the attention you have given all of us, the witnesses, the
8 attorneys and myself during this trial. I am now going to
9 charge you the law that you are to apply to the facts as
10 you determine them to be in this case.

11 There are three charges: attempted murder, attempted
12 armed robbery and criminal conspiracy.

13 This case is processed by way of an individual who is
14 thought to have committed an offense being arrested,
15 charged, indicted and brought to trial. The fact that this
16 has occurred with Mr. Maldonado is not evidence that he
17 committed this offense. This is just the way our system
18 works. When someone is thought to have committed a crime,
19 like I say, they are arrested, charged, indicted and come
20 to trial. He is presumed innocent and I'll talk to you
21 more about that in a moment.

1 You will not have these indictments with you in the
2 jury room. You will have some - what I call verdict forms
3 and I'll tell you, Mr. Foreman, more about that later, but
4 the indictments do charge Mr. Maldonado with an armed

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1 robbery and attempted murder and conspiracy, all of these
2 occurring on July 25th 2012 when he allegedly conspired
3 with Kadeem Sanders for the purposes of committing an armed
4 robbery, and that he did attempt to take personal property
5 from the Cherry Road Discount Food and Beverage, and Mr.
6 Patel an employee thereof, with Mr. Sanders by means of
7 putting Mr. Patel in fear of and attempted to take goods
8 and monies from him and that they were armed at the time.

9 It's alleged that the two individuals, Mr. Sanders and
10 Mr. Maldonado, conspired to do this. I'll explain the
11 elements these offenses to you in a moment.

12 The attempted murder alleges that on that same date
13 with amounts of forethought, either express or implied, Mr.
14 Maldonado acting in concert with Mr. Sanders did attempt to
15 kill Mr. Patel by means of shooting at him multiple times
16 with a rifle and hitting him twice with bullets from the
17 rifle. These charges do not create any presumption of
18 guilt. Mr. - As I said, it is presumed innocent and the
19 State is charged with proving his guilt beyond a reasonable
20 doubt.

21 Now there are three charges and the three charges
22 stand alone. That is, you are to look at the elements of
23 each and determine whether or not as to each of the three
24 charges the State, as to a particular charge, has proven
25 that charge beyond a reasonable doubt. The fact that there

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1 are three charges is no moment. That is, that's does not
2 give any greater weight to the State's case than the fact
3 there were just one. It just happens that as a result of
4 this the State has charged Mr. Maldonado with three
5 offenses but you are to determine each individually on the
6 merits of that case, based on the law as I charge it, and
7 the facts as you determine them to be.

8 I a couple of times have during the trial said
9 strike or disregard some testimony and under your oath you
10 must disregard any testimony I have said for you to
11 disregard or strike. I am the sole judge of the law in
12 this case and whether you agree with what I charge you or
13 whether you think the law should be different or whether
14 you think the law - think I charge you the law in error,
15 your oath requires you to take, accept and apply the law as
16 I charge it.

17 You are not to infer from anything I have said or done
18 at any time during this trial as indicating an opinion of
19 mine as to the facts on this charge. Our law does not
20 allowed a trial judge to formulate or express to a jury any
21 opinion on the facts. That is solely your job. It is
22 solely up to you to determine the facts in this case.

23 Mr. Maldonado has pled not guilty to these indictments
24 and his plea of not guilty places on the State the burden
25 of proving his guilt as to each charge, and as to the

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1 elements of each charge, beyond a reasonable doubt. No one
2 charged with a criminal offense in our state is required to
3 prove themselves innocent. This presumption of innocence
4 is a substantial rule. It is not a mere legal theory or a
5 mere legal phrase. The presumption of innocence in Mr.
6 Maldonado's favor attached to him at the time of his
7 arrest; has remained with him as his case has processed
8 through our court system. The presumption of innocence in
9 Mr. Maldonado favor remains with him at this time and
10 remains with him as you deliberate. The presumption of
11 innocence in his favor is removed if and when, and only if
12 and when, you unanimously decide the State has proven his
13 guilt beyond a reasonable doubt.

14 Now, the State is not required to prove his guilt
15 beyond all or beyond every doubt. We all know that it is
16 impossible to always - impossible to prove things beyond
17 any doubt, and the law does not require that. Reasonable
18 doubt has been defined by our courts as the kind of doubt
19 that would cause a reasonable person to hesitate to act.
20 Proof beyond a reasonable doubt is proof that leaves you
21 firmly convinced of an individual's guilt. If based on
22 your consideration of the evidence you are firmly convinced
23 that Mr. Maldonado is guilty of one or more of these
24 offenses, you would find him guilty. If on the other hand
25 you think there is a real possibility that he is not guilty

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1 as to one or more of these offenses, you would give him the
2 benefit of that doubt and find him not guilty. He is
3 entitled to the benefit of any reasonable doubt you have as
4 to any issue in this case.

5 I emphasize to you the fact that Mr. Maldonado
6 exercised his constitutional right to not testify is not a
7 fact to be considered by you in any way whatsoever. A
8 defendant has that right, a constitutional right to remain
9 silent and the assertion of that right cannot be considered
10 by you in your deliberations. You cannot discuss it. You
11 can not factor it into your own consideration. The burden
12 is on the State to prove his guilt beyond a reasonable
13 doubt. He is presumed innocent of the charge as I have
14 repeatedly said and the fact that he chose to exercise that
15 right to remain silent cannot be used against him in any
16 way whatsoever.

17 I told you I am the sole judge of the law; you are the
18 sole judges of the facts. It is up to you to determine the
19 true facts and apply the law and return a verdict that
20 speaks the truth. In looking at the evidence you can
21 believe one witness as opposed to several; several
22 witnesses as opposed to one. You may believe all, part, or
23 none of a witness' testimony. In analyzing the evidence
24 use your common sense, your sense of reason, your
25 experiences in life. As judges of the facts, you

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1 necessarily must judge the credibility, that is, the
2 believability of the witnesses who have testified. In
3 assessing believability, use the things I've just talked
4 about. Use the things that you find in your day to day
5 life as being indicative to truthfulness and you can use
6 certain valuations. Whether or not a witness has a criminal
7 record. Consider the opportunity a witness had to know
8 those things about which the witness testified. Consider
9 whether a witness has any bias or prejudice. That is,
10 whether a witness has any reason to help or hurt one side
11 or the other. Look at consistencies or inconsistencies in
12 the witness' statements given at any time prior to trial,
13 and consistencies or inconsistencies, if any, during the
14 testimony at the trial.

15 You also can consider the demeanor of the witness.
16 That is, the way they act on the stand and whether or not
17 they have any reason to help or hurt one side or the other.

18 As I told you earlier, our rules of evidence usually
19 do not allow - ordinarily do not allow an individual to
20 reach an opinion on the facts. However we do allow certain
21 witnesses to give what we call opinion or expert testimony.
22 These witnesses are allowed to do that based on their
23 education, experience, and they may take facts and from
24 those facts render an opinion. You look at those witnesses
25 just like you look at and weigh the testimony of any

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1 witness under the guidelines I've already given you. And
2 you also look at the testimony of an expert witness and
3 determine whether or not you believe that witness was
4 qualified. Even though I found them qualified to testify,
5 you determine whether you believe they were qualified to
6 render the opinion they rendered. And you may also look at
7 and consider what factors they used to reach the opinion
8 they reached.

9 As I told you their testimony is allowed, testimony of
10 experts, into evidence to assist you. Their testimony is
11 not binding on you. You may accept it in whole or in part,
12 or you may reject it in whole or in part.

13 Now, an issue in this case is the identification of
14 Mr. Maldonado as the person who committed the charges for
15 the crimes for which he is charged.

16 The State has the burden of proving identity beyond a
17 reasonable doubt. You must be satisfied beyond a
18 reasonable doubt of the accuracy of the identification of
19 Mr. Maldonado before you may convict him. Identification
20 testimony is an expression of a belief or an impression by
21 a witness. You must determine the accuracy of the
22 identification of Mr. Maldonado. You must consider the
23 believability of the identification witness in the same way
24 as you look at the testimony as other witnesses. Use those
25 same factors I've already talked about. You may consider

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1 whether in looking at what value, weight, truth to give to
2 an eye witness' testimony. You may consider whether the
3 witness had an adequate opportunity to observe the offender
4 at the time of the offense. This can be effected by things
5 like how long or short the time was that which was
6 available. How far or close the witness and the
7 perpetrator were to each other. Lighting conditions that
8 existed at the time. Whether the witness had reason to see
9 or know the person prior to the alleged offense. All these
10 things you consider in determining what value to give the
11 eye witness testimony.

12 I instruct you that the burden of the proof is on the
13 State and it extends to every element of the crime with
14 which Mr. Maldonado is charged. This specifically includes
15 the burden of proving beyond a reasonable doubt that Mr.
16 Maldonado was the person who committed this offense. If
17 after examining the testimony of the eye witness you have a
18 reasonable doubt as to its accuracy, you must find him, Mr.
19 Maldonado, not guilty.

20 There are two types of evidence which are generally
21 presented in a trial such as this; that is direct and
22 circumstantial evidence.

23 Direct evidence is testimony of someone who has actual
24 knowledge of a fact. It is generally an eye witness or
25 someone who has heard something. Direct evidence is

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1 evidence which immediately establishes the main facts
2 sought to be proven.

3 Circumstantial evidence is proof of a chain of facts
4 and circumstances which indicate the existence of a fact.
5 Circumstantial evidence is evidence which immediately
6 establishes collateral facts from which the main fact may
7 be inferred. Circumstantial evidence is based on inference
8 and not on personal knowledge or observation. Our law
9 makes absolutely no distinction between the weight or value
10 to be given either direct or circumstantial evidence. Nor
11 does our law require a great degree of certainty of
12 circumstantial evidence as opposed to direct evidence.

13 What you should do is weigh all of the evidence. After
14 weighing all the evidence if you are not convinced of Mr.
15 Maldonado's guilt, you would find him - beyond a reasonable
16 doubt you would find him not guilty.

17 Our law has a provision or a theory or a concept
18 called the hand of one is a hand of all, accomplice
19 liability. If a crime is committed by two or more people
20 who are acting together in committing the crime, the act of
21 one is the act of both. A person who joins with another to
22 commit an unlawful act is criminally responsible for
23 everything done by the other person which happens as a
24 probable and natural consequence of the acts done in
25 carrying out the common plan on purpose.

1 If two or more people are together, acting together,
2 assisting each other in committing an offense, the act of
3 one is the act of all. This is sometimes said the hand of
4 one is the hand of all.

5 Prior knowledge that a crime is going to be committed
6 without or is alone is not sufficient to make a person
7 guilty of the crime. The mere knowledge that another
8 person is going to commit a crime, even if the defendant is
9 present when it is committed, is not sufficient to convict
10 an individual as a principal. Guilt as a principal, that
11 is guilt as an accomplice, is shown by actual or
12 constructive presence at the scene as a result of prior
13 arrangement. Therefore a finding of a prior arranged plan
14 or common scheme is necessary for a finding of guilt as an
15 accomplice. The State must prove beyond a reasonable
16 doubt by competent evidence the theory, this theory of the
17 hand of one is the hand of all.

18 A principal in a crime is one who either actually
19 commits the crime or one who is present, aiding, abetting
20 or assisting in the commission of the crime. When a person
21 does an act in the presence of and with the assistance of
22 another, the act is done by both. Where two or more are
23 acting with a common plan, or intent, or present at the
24 commission of a crime, it does not matter who actually
25 committed the crime. Both are guilty. The hand of one is

1 the hand of all.

2 Being present at the crime means being sufficiently
3 near to aid and abet to assist in the commission of the
4 crime. The State must prove beyond a reasonable doubt more
5 than the mere presence of the alleged accomplice at the
6 scene of the crime in order for you to convict Mr.
7 Maldonado as a principal under the theory of aiding and
8 abetting.

9 Intent is also a necessary element but there must have
10 been a common design or intent to commit the crime and the
11 crime must have been committed pursuant thereto with the
12 person aiding and abetting by some overt act. Intent means
13 intending results which actually occurs. Intention is
14 something that is not accidental or involuntary. Intent
15 may be shown by one's actions and other circumstances from
16 which you may naturally and reasonably refer as someone's
17 intent. The State must prove the elements of the hand of
18 one is the hand of all beyond a reasonable doubt.

19 Mr. Maldonado is charged with the three offenses. The
20 first I want to talk about is conspiracy. This is a
21 statutory offense, an offense which has been enacted by our
22 legislature. Here the State must prove beyond a reasonable
23 doubt that Mr. Maldonado combined with one or more persons
24 for the purpose of committing an unlawful act. In order
25 for the State to offer you to convict Mr. Maldonado of

1 conspiracy, you must find that there was a mutual
2 understanding, agreement, or common intention and plan.
3 The mere passage, knowledge or consent to criminal conduct
4 of another is not enough to make a person a conspirator.
5 It must be guilty knowledge and participation. Similarly
6 the mere fact that the defendant may have associated with
7 another person, or met with another person, and discussed
8 the common aims and interests does not necessarily
9 establish proof of the existence of a conspiracy, or that a
10 defendant or a person was involved in a conspiracy.

11 On the other hand, it is not necessary that the
12 agreement be a formal one, there is no requirement that any
13 agreement be in writing, no requirement that the
14 individuals hold a meeting or express and state the terms
15 of their common plan. The agreement of a criminal
16 conspiracy may come into being through an implied, mutual
17 understanding, the willful intentional and knowingly
18 adoption by two or more persons of a common plan is
19 sufficient to constitute a conspiracy.

20 No overt acts need to be shown to establish
21 conspiracy. A conspiracy may be shown by circumstantial
22 evidence and the conduct of the parties.

23 In order to convict Mr. Maldonado of a conspiracy, the
24 State must prove beyond a reasonable doubt not only that he
25 knew of the unlawful conduct, but that he agreed to combine

1 with the other person for purposes of accomplishing the
2 unlawful conduct.

3 The other two charges are attempted armed robbery and
4 attempted murder.

5 An attempt is a effort to accomplish a crime which
6 does not succeeded. An attempt includes a specific intent
7 to do a particular criminal act along with an act falling
8 short of the act intended. The State must show more than
9 mere the preparation and intent. There must be some overt
10 act committed in the effort to commit the crime. This
11 definition applies to both attempted armed robbery and
12 attempted murder.

13 Intent means intending the result which actually
14 occurs. An intention is something that is not accidental
15 or involuntary. As I told you just a moment ago, intent
16 may be shown by acts and conducts of an individual and
17 other circumstances from which you may naturally and
18 reasonably infer intent.

19 As to attempted armed robbery, the State must first
20 prove beyond a reasonable doubt Mr. Maldonado attempted to
21 take personal property from the person or presence of
22 another person. Property is in the presence of a person if
23 it is in within that person's reach, inspection,
24 observation, or control, so that that person could if not
25 overcome with violence, or prevented by fear, retain

1 possession of the property. The State must also prove
2 beyond a reasonable doubt that the defendant, Mr.
3 Maldonado, attempted to carry the property away and to
4 permanently deprive the owner of the property and to keep
5 the property for his own use. The slightest removal of the
6 property or the complete possession of the property, even
7 for an instant, is sufficient to show a taking and carrying
8 away.

9 The attempted taking and carrying away of the property
10 must have been done with violence or by putting the owner
11 of the property in fear of violence.

12 Finally, as to attempted armed robbery, the State must
13 prove beyond a reasonable doubt that a defendant, or his
14 accomplice, was armed with a deadly weapon during the
15 robbery. A deadly weapon is any article, instrument or
16 substance, which is likely to cause death or great bodily
17 harm. Whether the instrument has used as a deadly weapon
18 depends on the facts and circumstances of each case. A
19 rifle is considered a deadly weapon. The State must prove
20 those elements beyond a reasonable doubt before you can
21 convict Mr. Maldonado of attempted armed robbery.

22 He, Mr. Maldonado, is also charged with attempted
23 murder. The State here must prove that Mr. Maldonado
24 attempted to kill another person with malice aforethought,
25 either expressed or implied, or was an accomplice in such.

Malice is defined as hatred, ill will, or hostility towards another person. Malice is the intentional doing of a wrongful act without just cause or excuse, and with the intent to inflict injury or under circumstances that our law would infer to be an evil intent. Malice aforethought does not require that the malice exists for any particular time before the act is committed. But malice must exist in the mind of the defendant just before and at the time the act is committed. Therefore, there must be a combination of a previous evil intent and the act. Malice aforethought may be expressed or inferred. These terms do not mean different kinds of malice, merely the manner in which malice may be shown to exist. That it's either by direct evidence or by inference of the facts and circumstances which are proven. Expressed malice is shown when a person speaks words which express hatred or ill will for another, or when a person prepared beforehand to do the acts which are later accomplished. Malice may be inferred from conduct showing a total disregard for human life. If facts are proven beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference is simply an evidentiary fact to be taken into consideration by you, along with the other evidence in the case, and be given such weight, if any, you decide it should receive.

1 A specific attempt to kill is not an element of
2 attempted murder. But there must be a general intent to
3 commit serious bodily injury.

4 The State as I told you earlier must prove beyond a
5 reasonable doubt, based on the charge that I've gone over,
6 that Mr. Maldonado committed or was involved in the
7 attempted murder of Mr. Patel. In considering intent in
8 that regard, I charge you that intent may be shown by acts
9 and conducts of a defendant and other circumstances from
10 which you may naturally and reasonably infer intent.
11 Evidence of the character of the act, the character of the
12 instrument used, the manner in which any instrument was
13 used, the purpose to be accomplished and resulting wounds
14 or injuries may be considered in determining the intent
15 with which said act was committed. Intent may also be
16 inferred when it is demonstrated that one voluntarily and
17 willfully committed an act the natural tendency of which
18 is to destroy another one's life.

19 Now your verdict in this case must be unanimous. All
20 twelve jurors must agree.

21 Once all twelve jurors have agreed, Mr. Foreman, you
22 will enroll and sign the verdict forms I will go over with
23 you in just a moment. Your verdict cannot be based on
24 passion, sympathy, prejudice, public opinion or matters
25 outside the record. In South Carolina we do not send a

1 written charge in with you but during your deliberations if
2 you wish me to go over any part or all of my charge on the
3 law, let me know and I will bring you out and here in the
4 court recharge in any part or all of the law.

5 If you have any questions, please write them down, Mr.
6 Foreman, send them out by the bailiff. I will confer with
7 the attorneys. It may be I will be able to write an answer
8 to the note on the note itself and send it back. If I do
9 that, keep that and turn it in with the evidence because it
10 has to be part of the record. It may be that I will have
11 to bring you back here in open court and answer whatever
12 your question may be.

13 We can have testimony replayed and I can recharge you
14 as I have already told you. Again, your verdicts must be
15 unanimous. When you go out in just a moment, do not start
16 deliberating yet because I have to go over my charge with
17 the attorneys. If I have made an error in my charge, I
18 will have to bring you back in and correct it. If not, I
19 will send in to you the verdict forms, and the exhibits,
20 and the bailiff will tell you to start deliberating.

21 When you have reached a verdict, knock on the door and
22 tell the bailiff. We are supposed to start another trial
23 in a little while but I will stop as promptly as I can and
24 send for you, once you send out word, Mr. Foreman, that you
25 have reached a verdict.

1 Mr. Holloman and Ms. Murrell, you will remain in here
2 as the alternates. You all will not participate any
3 further, and just when the jury goes out let them go out
4 and then retake your seats and I'll talk to you in just a
5 moment.

6 There are three verdict forms, one for attempted
7 murder, one for attempted robbery and one for criminal
8 conspiracy. They are all basically set up the same way and
9 the order in which I have set the possible verdicts; there
10 are two possible verdicts as to each. The order from which
11 they stand on the verdict forms is of no importance. I
12 always put them in this order. They have to be in some
13 order but one has to be before the other and I always put
14 them in this order.

15 If you find Mr. Maldonado guilty of one or more of
16 these offenses, then as to that offense you would put a
17 check or X in front of the line which appears in front of
18 the first sentence on the verdict form. They read, "We
19 find the defendant guilty of attempted murder. We find the
20 defendant guilty of attempted robbery. We find the
21 defendant guilty of criminal conspiracy." If you find as
22 to one or more of the charges that Mr. Maldonado has not
23 been proven beyond a reasonable doubt guilty of that
24 charge, you would use the second line and put a check or an
25 X, and it says "we find the defendant not guilty of

1 attempted murder, attempted armed robbery, and not guilty
2 of criminal conspiracy."

3 Now I'm going to let you go to the jury room at this
4 time and don't start deliberating. I'm going to ask the
5 two alternates to wait just a minute and don't start
6 deliberating until you hear from me. We do have lunch
7 coming around one o'clock.

8 (JURY EXITS COURTROOM AT 12:33 P.M..)

9 THE COURT: I will be with the alternates in just a
10 minute.

11 Anything from the State?

12 SOLICITOR SPRINGS: Nothing, sir.

13 THE COURT: Defense?

14 MR. BROWN: Your Honor, did you charge reasonable
15 doubt? State v. Manning, doubt that would cause a person
16 to hesitate to act?

17 THE COURT: Yes, I did.

18 MR. BROWN: Okay.

19 THE COURT: I'm sure I did.

20 SOLICITOR SPRINGS: You did.

21 THE COURT: Okay. I thought I did.

22 MR. BROWN: I must have missed it.

23 SOLICITOR SPRINGS: Let's see, one time you referred
24 to the charge for attempted armed robbery you said
25 attempted - attempted robbery and another time you called

1 it an attempted armed robbery but everything on the verdict
2 form and all says attempted armed robbery.

3 THE COURT: Anything else?

4 MR. BROWN: No, sir.

5 THE COURT: All right.

6 SOLICITOR SPRINGS: When the bailiff takes the
7 evidence back could he make them aware that they are not
8 gonna get these disc because we have no means of playing
9 them back there. They have to come back in here if they
10 want to see the movies.

11 THE COURT: All right. Is that -

12 MR. BROWN: I don't have any, Judge.

13 THE COURT: Okay. They're not going to get the rifle
14 either. You don't need the rifle to go back do you?

15 SOLICITOR SPRINGS: I'd like it to go back.

16 THE COURT: All right. Take the rifle back too. It's
17 secured, it's secured.

18 SOLICITOR SPRINGS: Its secured. There are no
19 bullets unless they brought bullets with them.

20 MR. BROWN: Unless they don't want it back there.

21 THE COURT: They can put it aside.

22 All right, take the evidence back and we'll send the
23 verdict forms in after I make one correction on the verdict
24 form. So go ahead and take the exhibits and tell the
25 Foreman if they want to have any of the videos to let us

1 know what they want to see and we'll bring them back here
2 and do it here in open court.

3 And the alternates you are through. I'm gonna let you
4 go. We're gonna start another case this afternoon but I'm
5 not gonna require you to be around for that. I'm gonna let
6 you go for the rest of the week. If you want to stay
7 around for lunch that's fine but you don't have to. So we
8 appreciate your help and you feel free to leave.

9 (ALTERNATES DISMISSED AT 12:35 P.M..)

10 (COURT IN RECESS AT 12:35 P.M..)

11 (COURT BACK IN SESSION AT 02:15 P.M..)

12 (WHEREUPON: COURT'S EXHIBIT NUMBER THREE MARKED AND
13 RECEIVED INTO EVIDENCE.)

14 THE COURT: Please take your seats.

15 We received from the jury a request that they be
16 recharged on accomplice liability and on attempted armed
17 robbery.

18 Is that what it say?

19 MADAME COURT REPORTER: I'm sorry.

20 THE COURT: Is that what it says?

21 MADAME COURT REPORTER: Recharge on the attempted
22 murder charge; on how the hand of one the hand of all. And
23 the theory that applies to this.

24 THE COURT: What was the last one?

25 MADAME COURT REPORTER: The theory that applies to

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1 this. T-h-e-o-r-y.

2 THE COURT: I gotcha. All right.

3 I am going to recharge on those two parts of my
4 charge; attempted armed robbery and accomplice liability.

5 Anything from the State before the jury comes in?

6 SOLICITOR SPRINGS: She said attempted murder?

7 MADAME COURT REPORTER: Yes, sir, on the attempted
8 murder charge.

9 THE COURT: Attempted murder. All right, we
10 straightened that out, attempted murder.

11 MADAME COURT REPORTER: Hand that to the Judge.

12 (JURY NOTE RECEIVED UP BY THE COURT.)

13 THE COURT: And accomplice liability.

14 MR. BROWN: So it's not attempted armed robbery. It's
15 attempted murder. Correct?

16 THE COURT: No. Attempted murder and one hand the
17 hand of all. You can come read it.

18 MR. BROWN: No, sir. I guess I'm just sitting here
19 thinking. Are you going to go back through the malice
20 thing?

21 THE COURT: I'm gonna charge whatever I had. I had
22 attempted which has malice. And also I'm charging out of
23 my attempted armed robbery my definition of intent.

24 All right, bring in the jury.

25 (JURY REENTERS COURTROOM AT 02:18 P.M..)

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1 THE COURT: All right. You have asked that I recharge
2 on the attempted murder charge and the, what is called
3 accomplice liability, sometimes called the hand of one is
4 the hand of all.

5 First as to the attempted murder. Of course Mr.
6 Maldonado is charged with this offense. An attempt is an
7 effort to accomplish a crime which does not succeed. An
8 attempt includes a specific intent to do a particular
9 criminal act along with an act falling short of the act
10 intended. The State must show more than mere preparation
11 and intent that must be some overt act committed in the
12 effort to commit the crime. Intent means intending the
13 results which actually occurs. Something intentional is
14 something that is not accidental or involuntary.

15 Intent may be shown by acts and conduct of a defendant
16 and other circumstances from which you may naturally and
17 reasonably infer intent. The State here must prove Mr.
18 Maldonado attempted to kill another person with malice
19 aforethought either expressed or implied. Malice is
20 hatred, or ill will, or hostility towards another person.
21 Malice is the intentional doing of a wrongful act without
22 just cause or excuse and with intent to inflict an injury,
23 or, under circumstances that the law would infer an evil
24 intent. Malice aforethought does not require that malice
25 exist any particular time before the act is committed. But

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1 malice must exist in the mind of a defendant just before
2 and at the time the act is committed. Therefore there must
3 be a combination of a previous intent and the act itself.

4 Malice aforethought may be expressed or inferred.
5 These terms do not mean different kinds of malice but
6 merely the manner in which they may be shown to exist.
7 That is either by direct evidence or by inference from the
8 facts and circumstances which are proven. Expressed malice
9 is shown when a person speaks words in which express hatred
10 or ill will for another, or, when a person prepared
11 beforehand to do the act which was later accomplished.
12 Malice may be inferred from conduct showing a total
13 disregard for human life.

14 If facts proven beyond a reasonable doubt are
15 sufficient to raise an inference of malice to your
16 satisfaction, this inference of malice is simply an
17 evidentiary fact to be taken into consideration by you,
18 along with the other evidence in the case, and given such
19 weight as you decide it should receive. A specific intent
20 to kill is not an element of attempted murder but there
21 must be a general intent to commit serious bodily injury.

22 I told you intent means intending the results which
23 occurs. Intention is something that is not accidental and
24 involuntary. Intent may be shown by acts and conducts of a
25 defendant and other circumstances from which you may

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1 naturally and reasonably infer intent. Evidence of the
2 character or the act, character of the instrument used, the
3 manner in which it was used, the purpose to be accomplished
4 and any resulting wounds or injuries may be considered in
5 determining the intent with which the act was committed.

6 Intent may also be inferred when it is demonstrated
7 that a defendant voluntarily and willfully commits an act a
8 natural tendency of which is to destroy another's life.
9 The State must prove those elements beyond a reasonable
10 doubt before you could convict Mr. Maldonado of attempted
11 murder.

12 I charge you the theory of the hand of one is the hand
13 of all. If a crime is committed by two or more individuals
14 who are acting together to commit the crime, the act of one
15 is the act of all, or the act of both. A person who joins
16 with another to commit an unlawful act is criminally
17 responsible for everything done by the other person which
18 happens as a probable or natural consequence of the acts
19 done in carrying out the common plan and purpose. Two or
20 more people are together, acting together, assisting each
21 other in committing the offense, the act of one is the act
22 of both, or, as it is sometimes called the hand of one is
23 the hand of all. Prior knowledge that a crime is going to
24 be committed without more is not sufficient to make a
25 person guilty of that crime. The mere knowledge that

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1 another person is going to commit a crime even if a
2 defendant is present when the crime is committed is not
3 sufficient to convict the defendant as a principal. Guilt
4 as a principal, that is as - guilt as a principal is shown
5 by actual or constructive presence at the scene as the
6 result of prior arrangement. Therefore a finding of a
7 prior arrangement, plan or common scheme is necessary in
8 finding one guilty as a principal under the concept of the
9 hand of one is the hand of all.

10 The State must prove beyond a reasonable doubt by
11 competent evidence this theory of the hand of one is the
12 hand of all. A principle in a crime is one who either
13 actually commits the crime, or, one who is present, aiding,
14 abetting or assisting in committing the crime. When a
15 person does an act in the presence of and with the
16 assistance of another, the act is done by the both. Where
17 are two or more are acting with a common plan, or intent,
18 or present at the commission of a crime, it does not matter
19 who actually commits the crime, both are guilty. The hand
20 of one is the hand of all. Present at the commission of a
21 crime means to be sufficiently near to aid and abet and
22 assist in the commission of the crime. The State must
23 prove more than the mere presence at the scene for you to
24 convict one as a principal on this theory, that is the
25 theory of aiding and abetting, accomplice liability, the

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1 hand of one being the hand of all.

2 Intent is also a necessary element where there must
3 have been a common design or an intent to commit a crime,
4 and the crime must have been committed pursuant with the
5 person aiding and abetting by some overt act. Intent as I
6 stated means intending results. Intention is something
7 that is not accidental or involuntary. Intent may be shown
8 by acts and conducts of an individual and other
9 circumstances from which you may naturally and reasonably
10 infer intent. The State must prove this theory beyond a
11 reasonable doubt.

12 Does that help?

13 All right. I'll let you go back to continue
14 deliberations.

15 (JURY EXITS COURTROOM AT 02:25 P.M..)

16 THE COURT: Anything from the State?

17 SOLICITOR SPRINGS: Yes, sir. When you gave them the
18 original charge I thought, my memory is not real good, but
19 I thought you said to convict Mr. Maldonado of attempted
20 murder, the State has to prove beyond a reasonable doubt
21 that he did attempt murder, or he was acting as an
22 accomplice with somebody who did attempt to murder. You
23 didn't add that. Or acting with an accomplice. I would
24 ask that you add that this time.

25 THE COURT: Actually in my written charge I do not

1 have or accomplice. I added that off the top of my head
2 since this is an accomplice liability case.

3 SOLICITOR SPRINGS: Yes, sir.

4 THE COURT: To a degree. I'm not saying it's a
5 completely accomplice liability but I did charge on
6 accomplice liability so I'm not going to go back and
7 recharge on that.

8 Anything else?

9 MR. BROWN: Nothing.

10 THE COURT: If I could see counsel on the Massey case
11 in chambers a minute and find out what we have got going on
12 we'll get cranked up.

13 (COURT IN RECESS IN THE MATTER OF STATE VERSUS KAIRON
14 MALDONADO AT 02:27 P.M..)

15 (COURT BACK IN SESSION IN THE MATTER OF STATE VERSUS
16 CLAYTON MASSEY AT 02:35 P.M..)

17 (COURT BACK IN SESSION IN THE MATTER OF STATE VERSUS
18 KAIRON MALDONADO AT 04:05 P.M..)

19 THE COURT: All right, if you'll just sit back, we got
20 a verdict in the other case.

21 Let's come to order please. I understand we have a
22 verdict in Mr. Maldonado's case.

23 Is the State ready?

24 SOLICITOR SPRINGS: Yes, sir.

25 THE COURT: Is the Defense ready?

VERDICT

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1 MR. BROWN: Yes, sir.

2 THE COURT: All right. Bring in the jury.

3 (JURY REENTERS COURTROOM AT 04:09 P.M..)

4 THE COURT: Mr. Foreman, I understand the jury has
5 reached verdicts.

6 MR. FOREMAN: Yes, sir.

7 THE COURT: If you'll hand them to the bailiff he'll
8 hand them up to me.

9 (VERDICTS RECEIVED UP BY THE COURT.)

10 THE COURT: Madame Clerk.

11 MADAME CLERK: Indictment 2012-GS-46-3890 the State
12 versus Kairon Maldonado, we find the defendant guilty of
13 attempted armed robbery. Signed by the foreperson dated
14 today's date.

15 Indictment 2012-GS-46-3888 the State of State versus
16 Kairon Maldonado, we find the defendant not guilty of
17 attempted murder. Signed by the foreperson dated today's
18 date.

19 Indictment 2012-GS-46-3889 the State versus Kairon
20 Maldonado, we find the defendant guilty of criminal
21 conspiracy. Signed by the foreperson dated today's date.

22 Ladies and gentlemen of the jury, if that be your
23 verdict so say you all by raising your right hand.

24 Let the record show all jurors affirmed this verdict.

25 (ALL JURORS AFFIRMED.)

1 THE COURT: Anything from the State before the jury is
2 dismissed?

3 SOLICITOR SPRINGS: No, sir.

4 THE COURT: Anything from the Defense?

5 MR. BROWN: No, sir.

6 THE COURT: All right. Members of the jury panel, we
7 appreciate your help.

8 Mr. Foreman, the Clerk's gonna get you to sign the
9 verdicts also on the original indictments. You can just
10 step across, she'll help you do that.

11 And the rest of you, I'm going to allow you to leave
12 for the week. Thank you for your help. You can - I don't
13 require juries to stay during the sentencing process which
14 is the next stage of this, but if any of you want to see
15 what happens next, if you'll go around the back they will
16 clear out the back a couple of rows and you can sit on the
17 back a couple of rows and see what next transpires. And
18 I'll give you a few minutes to do that if you want to but
19 I'm not going to require you to stay. And I'm not going to
20 require you to call back tonight. A good three days of
21 work and we've already started another trial and I think
22 that will take us to the end of the week. So thank you.

23 You will be mailed a check and we'll get the foreman
24 to sign these and you may leave. Thank you.

25 (JURY DISMISSED AT 04:12 P.M..)

SENTENCING

-302-

1 THE COURT: Anything from the State? In a moment I'll
2 be glad to hear about sentencing.

3 SOLICITOR SPRINGS: I have nothing. I was gonna ask
4 the Clerk if I could borrow some white out.

5 Nothing until sentencing.

6 THE COURT: All right. Anything on behalf of the
7 Defendant?

8 MR. BROWN: Your Honor, if we could have a five minute
9 delay in sentencing, his mother is on her way back here
10 right now. I think she would like to address the court.

11 May I step outside, Your Honor?

12 MADAME CLERK: Wait a minute, Judge. I can't hear
13 him.

14 (JURY FOREMAN DISMISSED.)

15 THE COURT: Thank you.

16 MR. BROWN: She's in the parking lot, Your Honor.

17 Can we go ahead and start?

18 THE COURT: Yeah. Let me hear - I will not sentence
19 until she is here. She was in the parking lot, I will wait
20 an amount of time but while we're waiting on her I'll hear
21 from the State in regard to Mr. Maldonado.

22 Mr. Maldonado, if you'll come up for sentencing.

23 (DEFENDANT AND ATTORNEY BROWN APPROACHES THE BENCH.)

24 THE COURT: And I'll hear first from the State as to
25 their position on sentencing and including that of course

SENTENCING

-303-

1 if there is any prior record.

2 SOLICITOR SPRINGS: Yes, sir.

3 THE COURT: Mr. Maldonado, do you know how many days
4 you've already been in jail?

5 MR. MALDONADO: Your Honor, I been here since August
6 5th. If I recall correctly.

7 MR. BROWN: Since August 2nd, 2012.

8 THE COURT: Also whenever you're ready, Mr. Springs,
9 I'll be glad to hear from you and also from Mr. Patel if he
10 has anything he wishes to say.

11 SOLICITOR SPRINGS: Mr. Patel is not going to speak.

12 THE COURT: I notice some of the jurors are here so
13 you might speak up so they can hear. I told them they
14 could come in and see what we do.

15 SOLICITOR SPRINGS: As far as Mr. Maldonado's prior
16 record, he's been convicted of disorderly conduct. He's
17 been arrested as a juvenile but that was arbitrated so I
18 don't think I should speak about that. That's his prior
19 record. As far as sentencing, Your Honor, this was a
20 horrible, horrible senseless situation. As I said they
21 jeopardized and almost killed somebody over a few dollars.
22 His co-defendant was offered a deal and as the court knows
23 we get several thousand defendant's through here every year
24 and we have to offer plea bargains which are less than
25 justice. We have to hold our nose and offer less than

SENTENCING

-304-

1 justice to plea bargain ninety-six percent of these cases
2 through here otherwise the whole system would come to a
3 stop.

4 So his co-defendant, Mr. Sanders, got better than he
5 deserved. Mr. Maldonado was offered a deal which he turned
6 down. His deal was better than he deserved and at this
7 point, Your Honor, I think he deserves twenty-five years.

8 THE COURT: Mr. Brown.

9 MR. BROWN: Your Honor, I certainly understand and
10 respect what Mr. Springs said. However, I would like to
11 add that his previous counsel in my humble opinion did not
12 properly evaluate this case and give him proper advice. I
13 would have gladly pled him to these two charges if it had
14 been offered and I certainly understand where he's coming
15 from and the deal was off the table by the time I got the
16 case and I just got it six weeks ago, Your Honor.

17 Your Honor, as Mr. Springs said he was seventeen years
18 old when this happened, and it is a stupid horrendous
19 crime. But the simple facts are, I might oralate to the
20 court again, he didn't pull the trigger. I know he went in
21 there and I know this jury has spoken that he was part of a
22 conspiracy to go in there and arm rob the store. I just
23 think to give him the same thing the co-defendant is
24 getting would not be justice and I would ask the Court to
25 take these factors into consideration when sentencing Mr.

SENTENCING

-305-

1 Maldonado.

2 His mother and step-father I assume is here and I
3 think they would like to speak to the court.

4 THE COURT: Certainly.

5 MR. BROWN: One at a time.

6 THE COURT: Yes, ma'am.

7 A. I'm Carolyn Elizabeth Maldonado.

8 Good afternoon, Your Honor.

9 THE COURT: Good afternoon.

10 MS. MALDONADO: I just want to apologize first that
11 we're meeting under these circumstances. Secondly, this is
12 my only child. My only child. I've tried, you know, he's
13 my miracle child. When I got pregnant with him I went into
14 kidney failure. They told me that I would loose my baby
15 and or myself. They got - He ended up making it. I got
16 into kidney dialysis because of that birth, you know,
17 carrying him. He also has kidney disease. He's sick right
18 now but, you know, I'm really concerned that he gets the
19 proper medical attention that he needs with his kidney
20 disease because I started dialysis when I was about twenty
21 years old, that was with my kidney failure. I actually had
22 a transplant and got back on dialysis so this is really a
23 serious condition my son has so I'm asking for the mercy of
24 the court to give him the lightest sentence possible, you
25 know, because I don't know how long I'm gonna live.

SENTENCING

-306-

1 I would just like to see my son be productive in his
2 life time. And you know given the chance to become
3 productive. I don't know honestly if my son really did
4 this act even though the jury has found him guilty of the
5 acts. And I apologize if he did do the act. You know, I
6 really don't know what to say so I ask for the court's
7 mercy because he's my only child.

8 THE COURT: Thank you, ma'am.

9 A. Good afternoon, Your Honor. My name is William
10 Russell and I'm Kairon Maldonado's father. Other people
11 may consider it a step father but I consider him as my son.
12 Kairon is very very respectful and we did everything we
13 possibly could to bring him in this world and be
14 productive. And I'm so sorry that this issue here has
15 transpired and I'm so sorry for what took place with the
16 person who has got shot in this case, whatever, and this
17 whole ordeal that took place.

18 I know that they have rendered the verdict. I wasn't
19 here to hear about that but I just was told about it and I
20 hop you see to it that you do whatever it takes for him to
21 be productive in this world and allow him to, you know, get
22 a second chance. He's never been in trouble until this.
23 He's never had issues as far as being a troubled kid until
24 this point. So I ask you please to show some mercy on him.

25 THE COURT: Thank you.

SENTENCING

-307-

1 MR. BROWN: One last thing, Your Honor, and I know the
2 court heard this but I think it's clear Mr. Sanders would
3 not mitigate that he did, but Mr. Sanders was the
4 instigator of this horrific act.

5 THE COURT: I'm not sure I know that he was the
6 instigator or not. He was the one that was armed.

7 Did Mr. Maldonado finish high school? Did he finish
8 high school?

9 MR. MALDONADO: I was still enrolled when I got --

10 MR. BROWN: He was seventeen when this happened.

11 THE COURT: All right. Mr. Maldonado, I'll be glad to
12 hear from you. Anything you want to say?

13 MR. MALDONADO: No, sir.

14 THE COURT: Well you and your friend did - Mr. Patel
15 was simply trying to make a living; trying to serve the
16 community that needs to have various sundries available in
17 the neighborhood and doing nothing more than trying to make
18 a living ends up being shot in an attempted robbery. It
19 doesn't get much more horrendous than that.

20 Sentence on the attempted armed robbery is twenty
21 years. Five years on the conspiracy. They are to run
22 concurrent. I'll give you credit for August 12th 2012.

23 Thank you. All right. We'll be at ease for about
24 five minutes while we get the other lawyers back up in the
25 other trial.

1 The jurors, thank you again.

2 (COURT ADJOURNED IN THE MATTER OF STATE VERSUS KAIRON

3 MALDONADO AT 04:24 P.M..)

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CERTIFICATE OF REPORTER

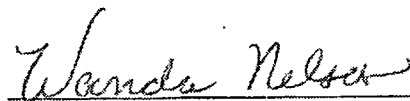
State of South Carolina)

)

County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for 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 General Sessions for York County, South Carolina, on the 18th, 19th and 20th days of March, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: June 29, 2016

County: York
 Date: March 18-20, 2013

VOIR DIRE/BATSON SHEET

Case No.: 2012 - GS - 46 - 03888:03889 Judge: John C. Hayes, III
 Pl./State: State of South Carolina Pl.State Atty's.: Assistant Solicitor E.B. Springs
 Defendant: Kairon Brenton Maldonado Defense Atty: Mr. Michael L. Brown
 Court Reporter: Wanda Nelson, CVR-M

Juror No.	Name	Sex	Race	STRIKES			
				*Court	Plaintiff	Defense	Accept
225	Lowel K. Thomas	M	W				X
68	Thomas F. Dunn, Jr.	M	W				X
134	Evelyn J. Lundell	F	H			X	
146	Demetris McCullough	F	B		X		
21	Matthew R. Blackwell	M	W			X	
189	Judith Rauppius	F	W	X			
81	Anna M. Ferrone	F	W				X
78	Francis M. Fenker	M	W	X			
15	Carey O. Bates	M	W			X	
236	Roy R. Weaver	M	W				X
199	C. Timothy Setzer	M	W			X	
65	Jennifer A. Drovie	F	W				X
17	David A. Bell	M	W			X	
92	Alan L. Hall	M	W				X
201	James R. Shores	M	W			X	
98	Wanda Hemphill	F	W			X	
162	Ryan Neely	M	B				X
213	Jodi A. Steen	F	W				X
179	Zachary M. Plyler	M	N	X			
34	Tara M. Brawner	F	W			X	
194	Oscar Rodriguez II	M	H				X
231	Joseph A. Turck	M	W				X
202 **	John A. Simpson	M	W				X
123	Brittany L. Ledford	F	W				X
100	Christopher Holloman	M	B				X
109	Scott A. Jones	M	W			X	
159	Melissa Murrell	F	W				X

*For the Court column, indicate who made the motion to strike the jurors for cause.
 C-Court, P-Plaintiff, D-Defense

** Foreperson

York Circuit Court RANDOM STRIKE SHEET

- 311 - 311

JUDGE NAME : Hayes, III, John C.

TRIAL TYPE : Criminal

PANEL ID : 3-18 CRT1 2013

COURTROOM CRT1

DESCRIPTION : 3-18 CRT1

Sorted by: Random Nbr

Trial

State - v - Honor Maldonado

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Thomas, Lowel K	225	W	M	()	()	()	Seated -1
2 Dunn, Thomas F Jr.	68	W	M	()	()	()	Seated -2
3 Lundell, Evelyn J	134	H	F	()	(X)-1	()	excused
4 Mccullough, Demetris D	146	B	F	(X)-1	()	()	excused
5 Blackwell, Matthew R	21	W	M	()	(X)-2	()	excused
6 Rauppius, Judith A	189	W	F	()	()	(X)	Court
7 Ferrone, Anna M	81	W	F	()	()	()	Seated -3
8 Fenker, Francis M	78	W	M	()	()	(X)	Court
9 Bates, Carey O	15	W	M	()	(X)-3	()	excused
10 Weaver, Roy R	236	W	M	()	()	()	Seated -4
11 Setzer, C Timothy	199	W	M	()	(X)-4	()	excused
12 Drovie, Jennifer A	65	W	F	()	()	()	Seated -5
13 Bell, David A	17	W	M	()	(X)-5	()	excused
14 Hall, Alan L	92	W	M	()	()	()	Seated -6
15 Shores, James R	201	W	M	()	(X)-6	()	excused
16 Hemphill, Wanda W	98	W	F	()	(X)-7	()	excused
17 Neely, Ryan	162	B	M	()	()	()	Seated -7
18 Steen, Jodi A	213	W	F	()	()	()	Seated -8
19 Plyler, Zachary M	179	N	M	(X)-2	()	()	excused
20 Brawner, Tara M	34	W	F	()	(X)-8	()	excused
21 Rodriquez, Oscar A II	194	H	M	()	()	()	Seated -9
22 Turck, Joseph A	231	W	M	()	()	()	Seated -10
23 Simpson, John A <i>5013</i>	202	W	M	()	()	()	Seated -11
24 Ledford, Brittany L	123	W	F	()	()	()	Seated -12

York Circuit Court RANDOM STRIKE SHEET

- 312 -

JUDGE NAME : Hayes, III, John C.

Sorted by: Random Nbr

TRIAL TYPE : Criminal

ANAL ID : 3-18 CRT1

DESCRIPTION : 3-18 CRT1

Trial

COURTROOM CRT1

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Holloman, Christopher M	100	B	M	()	()	()	Deated -13
26 Jones, Scott A	109	W	M	()	(x) 1	()	Deated
27 Murrell, Melissa P	159	W	F	()	()	()	Deated -14
28 Love, James Q	131	B	M	()	()	()	
29 Blevins, Gregg M	23	W	M	()	()	()	
30 Smith, Travis S	207	W	M	()	()	()	
31 Bohland, Leo J	26	W	M	()	()	()	
32 Ratcliffe, Lori B	188	W	F	()	()	()	
33 Alexander, John C	7	W	M	()	()	()	
34 Burford, Susan K	41	W	F	()	()	()	
35 Lyles, Caitlin V	135	W	F	()	()	()	
36 Brown, Noelle E	36	W	F	()	()	()	
37 Love, Roger L	133	B	M	()	()	()	
38 Buck, Stephen W	39	W	M	()	()	()	
39 Jarrett, Charles H	108	W	M	()	()	()	
40 Gold, Benjamin M Jr.	88	W	M	()	()	()	
41 Manning, Jordan K	138	W	M	()	()	()	
42 Darmochwal, Stanley E Jr.	60	W	M	()	()	()	
43 Tercero, Eliana Z	223	H	F	()	()	()	
44 Tran, Lam T	230	A	M	()	()	()	
45 Donnahoo, Chrystal D	64	W	F	()	()	()	

Total Number of Jurors:

45

** END OF REPORT **

FORM 5

STATE OF SOUTH CAROLINA)

County of York)

IN THE COURT OF COMMON PLEAS

2016CPAG00761

KAIRON B. MALDONADO)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEFFILED
RECEIVED
2016 MAR 27 PM 2:09
CLERK OF COURT
YORK COUNTY, SC**INSTRUCTIONS B 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 LEE CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence YORK COUNTY COURT OF GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) Kadeem Sanders
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2012-GS-46-3888 (ATTEMPTED MURDER)

- (b) 2012-GS-46-3890 (Attempted Armed Robbery)
 (c) 2012-GS-46-3889 (CRIMINAL CONSPIRACY)
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) 3/20/13 - Not guilty
 (b) 3/20/13 - 20 YEARS
 (c) 3/20/13 - 5 YEARS
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 Ayes@ to (7), list:
 (a) the name of each Court to which you appealed:
 i. S.C. COURT OF APPEALS
 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. March 11, 2015
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. _____
 ii. _____
 iii. _____
9. If you answered Ano@ 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:
- (a) Applicant alleges that he was wrongfully
~~was~~ convicted by the jury by using inconsistent
~~of~~ statements and sham evidence
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) inconsistent statements from co-defendants
~~(b)~~ and misidentification
~~(c)~~ _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

YES

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. SAME AS STATED ABOVE

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. DIRECT APPEAL

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? ☒ _____
 (b) your trial, if any? ☒ _____
 (c) your sentencing? ☒ _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ☒ _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? ☒ _____

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Michael Brown Rockhill, Sc
 ii. Rebecca K. Lindahl, Esq ; 550 South
Tryon Street, Suite 2900 ; Charlotte, NC 28202
 iii. Robert M. Dudek, Esq ; P.O. Box 11589 ;
Columbia, S.C. 29211

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

- i. Trial
 ii. Direct Appeal
 iii. Direct Appeal

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

REVERSE AND REMAND

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of York)

I, KAIRON B. MALDONADO, 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.

Kairon Maldonado

SWORN to and subscribed before me this 14th
day of JANUARY, 2014.

Larry D. Lohmeyer (L.S.)
Notary Public

My Commission Expires: 12-10-2023

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, KAIRON B. MAIDONADO, 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.

Kairon Maldonado
Applicant

SWORN or affirmed to and subscribed before me this

14th day of JANUARY, 2016.

Lacey D. Coker Jr.
Notary Public

My Commission Expires: 12-10-2023

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Kairon Maldonado,)
Applicant,)
vs.)
State of South Carolina,)
Defendant.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

File Book No.: 2016-CP-46-0721

AMENDED PCR PETITION

FILED-RECEIVED
2017 NOV -2 AM 11:55
DAVID HAMILTON
C.C.D. S.C.
YORK COUNTY, SC

NOW COMES the applicant, by and through his undersigned attorney, and amends his
PCR petition as follows:

INEFFECTIVE ASSISTANCE OF COUNSEL- MR. BURNS

Applicant contends that his attorney, Tyler Burns, was ineffective in his representation of applicant. Mr. Burns was the first attorney on this case and had the case until about six weeks before the case was tried. In that time, counsel met with applicant only a few times. The first time that counsel met with applicant, applicant made him aware of two alibi witnesses. Counsel made no effort to locate the alibi witnesses. This is critical because applicant was incarcerated the entire time he awaiting trial. Applicant had no way to procure these witnesses himself and they were necessary to his defense that he was not present at the scene. Counsel hired no investigator to work the case and attempt to locate the alibi witnesses. As a result, applicant was not able to present an alibi defense at trial despite giving the names of the alibi witnesses in a statement to law enforcement.

Applicant also contends that trial counsel was ineffective for failing to discuss the nature of the charges against him with applicant. The only thing counsel ever wanted to discuss with applicant was his plea offers. While counsel has a duty to relay all offers to applicant, he also

has a duty to discuss the facts with applicant. Counsel repeatedly told applicant he would get life at trial and spent the entire length of their few conversations talking about the plea and why applicant should plead guilty. As a result, significant time passed with no attorney spending anytime actually preparing the case for trial. This passage of time where nothing was being done ended up severely limiting applicant's ability to present a defense. Ultimately, counsel did next to nothing in representing the applicant in this case from the time he was appointed to the time he was relieved.

INEFFECTIVE ASSISTANCE OF COUNSEL-MR. BROWN

Applicant contends that his trial attorney, Michael Brown, was also ineffective in his representation of applicant. Mr. Brown was appointed to this case about six weeks prior to the case being called for trial. He had very little time to prepare the case and was appointed almost six months after the alleged crime occurred. Applicant immediately informed Mr. Brown of his alibi and although Mr. Brown had an investigator assist him in the case, he did not have his investigator pursue the alibi witnesses. Counsel did attempt to admit a statement made by applicant in his case-in-chief, but the statement was excluded due to being self-serving hearsay. This statement discussed the alibi that applicant gave to law enforcement. Ultimately, no alibi was given and alibi was not charged to the jury. This also impacted applicant's right to testify. Applicant gave a statement to law enforcement, which would have been used in cross-examination. That statement contained an alibi. Without the corroborating witnesses to support the alibi, the testimony would have been useless. As a result, applicant was not able to testify in his own defense.

Applicant further contends that counsel was ineffective for not asking for a mistrial during the solicitor's closing argument. Solicitor referred to counsel as a quality control person

at the beginning of his argument. While the trial court sustained the objection, counsel failed to move for a mistrial based on this improper statement to the jury. No curative instruction was given to the jury by the trial judge. Statements like the one made in this case imply that defense counsel is only there to make sure defendant has a fair trial. Minimizing defense counsel's role in a trial is grounds for a mistrial or at least a curative instruction. Counsel was ineffective in failing to object to these improper statements.

Applicant also contends that counsel was ineffective for failing to cross-examine Romelio Huey effectively. Mr. Huey testified for the State and implicated applicant in the crime. Counsel conducted an inadequate cross-examination of this witness. First, the cross-examination was very disjointed and confusing. Second, the cross-examination asks questions about the two alibi witnesses that applicant offered, but there is no connection between the testimony and the alibi itself. The jury is left with the names of two random individuals and the dots are not connected later in the case.

Finally, applicant contends that trial counsel was ineffective for failing to properly advise him of his right to testify. Applicant asserts that trial counsel told him it would be a bad idea to testify in this case. However, trial counsel knew of the alibi that applicant was trying to assert and elicited testimony of the names of the alibi witnesses from a previous witness. Applicant was never able to connect that testimony with his own version of events and alibi. As a result, applicant was convicted of attempted armed robbery and found not guilty of attempted murder. This was always an accomplice liability case and the inconsistent verdict shows that the jury did not believe that he intended to hurt the victim, but was guilty of the attempted armed robbery under the hand of one theory. Because the jury convicted applicant under the theory of

accomplice liability, the failure to allow defendant to present the alibi testimony in his own words was ineffective.

Respectfully Submitted.



Nathan J. Sheldon
Attorney for Applicant
331 E. Main St., Suite 200
Rock Hill, SC 29730
803-909-9343

November 1, 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Kairon B. Maldonado,)
 S.C.D.C. No. 354792,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 OF THE SIXTEENTH JUDICIAL CIRCUIT

2016-CP-46-721

RETURN

FILED-RECEIVED
 2016 AUG -8 PM 2:09
 DAVID HAMILTON
 C.D.C. CLERK
 YORK COUNTY, SC

Respondent, making its Return to the application for post-conviction relief (PCR) filed March 7, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the November 2012 term of the York County Grand Jury for Attempted Murder (2012-GS-46-3888), Attempted Armed Robbery (2012-GS-46-3890), and Criminal Conspiracy (2012-GS-46-3889). Applicant was represented by Michael Brown, Esquire. Applicant proceeded to a jury trial before the Honorable John C. Hayes, III. On March 20, 2013, he was found guilty of attempted armed robbery and criminal conspiracy and found not guilty of attempted murder. Applicant was sentenced Applicant to five years imprisonment for criminal conspiracy and twenty years imprisonment for attempted armed robbery.

Applicant timely filed a notice of appeal and an appeal was perfected by Appellate Defender Robert M. Pachak and Rebecca Lindhal, Esquire. The South Carolina Court of Appeals

affirmed the convictions and sentences on March 11, 2015. State v. Maldonado, Op. No. 2013-UP-684 (Ct. App. filed March 11, 2015). The Remittitur was issued March 30, 2015.

II.

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

1. "Applicant alleges that he was wrongful convicted by the jury by using inconsistent statements and sham Evidence. Inconsistent statements from co-defendants and misidentification."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

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

III.

Respondent interprets Applicant's allegation to allege ineffective assistance of counsel. Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. In a post-conviction relief proceeding, 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 ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon

as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Id. 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. 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, 104 S. Ct. 2052. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT

P.O. Box 11549
Columbia, S.C. 29211

August 4, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

2016-CP-46-0721

KAIRON MALDONADO, #354792,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

FILED
2016 AUG -8 PM 2:09
DAVID HAMILTON
C.L.E. & S.
YORK COUNTY, SC

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:

Nathan J. Sheldon, Esquire
The Law Office of Nathan J. Sheldon, LLC
PO Box 36682
Rock Hill, SC 29732-0510

DATED this 4th day of August, 2016.


Jocelyn Baker, Legal Assistant
For Respondent



ALAN WILSON
ATTORNEY GENERAL

August 4, 2016

The Honorable David Hamilton
Clerk of Court, York County
PO Box 649
York, SC 29745

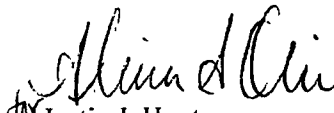
FILED-RT-1976
2016 AUG -8 PM 2:09
DAVID HAMILTON
C. CLERK OF COURT
YORK COUNTY, SC

Re: Kairon Maldonado, #354792 v. State of South Carolina
2016-CP-46-0721

Dear Mr. Hamilton:

Enclosed is the original **Return** of the Respondent, in the above-captioned case, for filing in your office. If you have any questions, feel free to contact me at (803) 734-3737.

Sincerely,


Justin J. Hunter
Assistant Attorney General

JJH/jyb

Enclosure

cc: Nathan J. Sheldon, Esquire

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-46-0721

KAIRON MALDONADO)
vs.) TRANSCRIPT OF RECORD
STATE OF SOUTH CAROLINA)

NOVEMBER 8, 2017
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE J. CORDELL MADDOX

APPEARANCES:

NATHAN SHELDON, ESQUIRE
ROCK HILL, SOUTH CAROLINA

ATTORNEY FOR THE APPLICANT

JUSTIN HUNTER, ASSISTANT ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
Kairon Maldonado				
By Mr. Sheldon	5			
By Mr. Hunter		18		
James Tyler Burns				
By Mr. Sheldon	20	24		
By Mr. Hunter				
Michael L. Brown, Jr.				
By Mr. Sheldon	25			
By Mr. Hunter		33		
By Mr. Sheldon			36	

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
(NO EXHIBITS)			

1 THE COURT - All right, yes, sir.

2 MR. HUNTER - May it please the Court, Your Honor.

3 THE COURT - Yes, sir.

4 MR. HUNTER - The first case today is Kairon
5 Maldonado vs. State of South Carolina, 2016-CP-46-721. He
6 was indicted in November, 2012 for attempted murder,
7 criminal conspiracy and attempted armed robbery. He was
8 initially represented by Mr. Tyler Burns but, ultimately,
9 represented by Mr. Michael Brown at trial. The jury trial
10 began March 18th, 2013 before Judge John C. Hayes. He was
11 found guilty of attempted armed robbery and criminal
12 conspiracy but not guilty on attempted murder, sentenced to
13 20 years for attempted armed robbery and five years for
14 criminal conspiracy. He filed a notice of appeal which
15 was, ultimately, unsuccessful. He filed this current
16 action March 7th, 2016. He's present today represented by
17 Mr. Nathan Sheldon.

18 THE COURT - Okay. Yes, sir?

19 MR. SHELDON - Thank you, Your Honor. May it
20 please the Court. Just to note that we also filed an
21 amended PCR petition and served that on the attorney
22 general's office kind of clarifying what the issues that
23 we'll be arguing today.

24 THE COURT - Okay.

1 MR. SHELDON - Your Honor, we're ready to proceed,
2 and we would call Mr. Maldonado to the stand.

3 THE COURT - All right, yes, sir, come on up.

4 KAIRON MALDONADO, AFTER BEING FIRST DULY SWORN,
5 TESTIFIES AS FOLLOWS -

6 DEPUTY CLERK - Thank you. Have a seat there and
7 watch your step up.

8 THE COURT - Come on around here.

9 MR. SHELDON - Thank you, Your Honor. May it
10 please the Court.

11 THE COURT - Yes, sir.

12 DIRECT EXAMINATION

13 BY MR. SHELDON -

14 Q Mr. Maldonado, please state your name for the record.

15 A Kairon Brenton Maldonado.

16 Q And where are you currently incarcerated at?

17 A Lieber Correctional Institution.

18 Q You're doing 20 years on attempted armed robbery and
19 five years on conspiracy concurrent. Is that correct?

20 A Yes, sir.

21 Q And do you remember when you were sentenced?

22 A To my knowledge that I remember, I think it was March
23 20th.

24 Q Of 2013?

25 A Yes, sir.

KAIRON MALDONADO - DIRECT BY MR. SHELDON

6

1 Q Okay. The relief you're seeking from the Court today
2 is to vacate that -- the convictions and set this case for
3 trial?

4 A Yes, sir.

5 Q Okay. I want to start -- as you heard the attorney
6 general say, you were, actually, represented by two
7 different attorneys in this matter. Right?

8 A Yes, sir.

9 Q Let's start with Mr. Burns. When were you arrested
10 originally?

11 A Um, that was August 2nd that I remember. August 2nd.

12 Q Of 2012?

13 A Yes, sir.

14 Q Okay. And how quickly after the beginning of August
15 did you -- were you -- was Mr. Burns appointed or retained?

16 A He was appointed to me.

17 Q How quickly after he was -- after you were arrested
18 did he get appointed to you?

19 A I'd say probably estimate about a month or so, maybe,
20 approximately.

21 Q So you were arrested in August and end up going to
22 trial in March of the next year. Is that right?

23 A Yes, sir.

24 Q So about seven months in there?

25 A Yes, sir.

1 Q Okay, so he was appointed about a month later you
2 think?

3 A (Indicating yes)

4 Q What was your relationship like with Mr. Burns?

5 A I mean he spoke with me very briefly, but it was just
6 on plea agreements.

7 Q Okay. What -- during your first conversation with
8 him, did you -- did you raise any concerns?

9 A I told him where my alibi at and I told him who I was
10 with that night, and I just let him know that I ain't had
11 nothing to do with the case, basically.

12 Q Okay. So when you first met with him, did you give
13 him an alibi?

14 A Yes, sir.

15 Q And what was that alibi?

16 A That I was at Innsbrook Commons apartment smoking a
17 blunt with two of my home boys and that my home boy
18 received a phone call and was notified what was going on in
19 the neighborhood, and we got a ride back from his mother
20 and when I got back to the neighborhood, I was notified
21 that I was wanting to be spoken to about the situation,
22 basically, you know what I'm saying.

23 Q Okay. So who -- who did you tell him you were with?

24 A My lawyer?

25 Q Yes.

KAIRON MALDONADO - DIRECT BY MR. SHELDON

8

1 A You talking Burns?

2 Q Yeah.

3 A Marcus and David.

4 Q Okay. And did you also give a statement to law
5 enforcement in this case?

6 A Yes, the same thing.

7 Q And what did you tell law enforcement?

8 A I told them the same thing.

9 Q That ---

10 A That I was at Innsbrook Commons apartment on the night
11 of the incident.

12 Q With Marcus and David.

13 A Yes, sir.

14 Q Okay. And did -- did you ask Mr. Burns to follow-up
15 on that alibi?

16 A Yes, sir, I did.

17 Q What -- what did you tell him to do?

18 A I gave him -- to the best of my knowledge I told him
19 that somewhere around the Sunset Park that's where he could
20 probably find them at, you know what I'm saying. I told
21 him that I wasn't from down here, so I'm not really too
22 familiar with everybody like that, but I gave him the names
23 and the approximate ages and he said they was going to look
24 into it. I never got an update on that.

1 Q Okay. What did you and Mr. Burns discuss? Did he
2 provide you with the discovery in this case?

3 A I did get a motion, I think it's a Rule 5? Yes, sir,
4 I did get one ---

5 Q So you provided you with that? What else did y'all
6 discuss? Did you discuss trial strategy, anything like
7 that?

8 A Nothing.

9 Q What -- what about plea offers?

10 A The only thing was he said it was a plea for 14 to 21
11 years. That was my first plea offer and the second one was
12 ten to 14.

13 Q So there are two plea offers made that you're aware of
14 in this -- when Mr. Burns was representing you.

15 A Yes, sir. ~

16 Q Fourteen to 21 years and then again, ten to 14 years.

17 A Yes, sir.

18 Q What did he explain to you about the law in the case
19 and things like that, about the evidence against you?

20 A Well, he, basically, just told me like -- he was like,
21 basically, in so many words he was, basically, saying the
22 hand of one is the hand of all. That's all he, basically,
23 told me, like whether or not I did it or not, if it came
24 out that somebody's saying that I did it, which they had a
25 person which was Huey (phonetic) saying that I had had

KAIRON MALDONADO - DIRECT BY MR. SHELDON

10

1 something to do with this, he was like that was enough that
2 could, basically, get me convicted.

3 Q So how long did Mr. Burns represent you?

4 A Up to about six to eight weeks before my trial until I
5 was appointed a new lawyer.

6 Q Did you ask for him to be relieved?

7 A Yes, I did.

8 Q Why did you ask for him to be relieved?

9 A Because I felt like he had came at -- at me in a
10 homosexual manner.

11 Q When -- and so that was six to eight weeks prior to
12 trial?

13 A I had -- I had filed for a new lawyer. I went up
14 there on November 29th of 2012, because that was the same
15 day I received the, um, guilty plea of my co-defendant, the
16 same ---

17 Q Did you and Mr. Burns discuss trial strategy and
18 things like that?

19 A No, sir, we didn't.

20 Q Did you ever indicate to him that you wanted to plead
21 guilty?

22 COURT REPORTER - He needs to answer ---

23 MR. SHELDON - You need to answer out loud ---

24 COURT REPORTER - --- verbally.

25 A No.

1 MR. SHELDON - --- so that she can take down what
2 you're saying.

3 A No, ma'am.

4 Q So did you tell him that you wanted a trial?

5 A I told -- I told him like -- when I spoke to him, my -
6 - my whole thing to him was, I asked him, I said, sir, with
7 all due respect, I said I have nothing to do with this case
8 and this and that and a third, I said what I need you to do
9 is, I need you to do this for this alibi, and he was,
10 basically, trying to get me with this plea agreement, and I
11 told him, why would I plead guilty to a crime that I know I
12 didn't commit, you know what I'm saying, so ---

13 Q Did -- at any point in time did you speak with an
14 investigator that he had hired or anything like that?

15 A I don't recall, no.

16 Q I'm -- try to solely talk about Mr. Burns at this
17 point.

18 A I don't recall that, no.

19 Q Okay. So the Court ends up relieving him. Is that
20 right?

21 A Yes, sir.

22 Q Approximately, you said six to eight weeks before
23 trial?

24 A Approximately.

25 Q And then Mr. Brown was appointed at that point.

KAIRON MALDONADO - DIRECT BY MR. SHELDON

12

1 A (Indicating yes)

2 COURT REPORTER - He needs to answer ---

3 Q When he got the case ---

4 COURT REPORTER - --- verbally.

5 THE COURT - Yeah, hold -- slow down just a little
6 bit. Make sure he finishes his question and let him answer
7 and then speak up.

8 MR. MALDONADO - Yes, sir.

9 Q When Mr. Brown got the case, did you meet with him?

10 A Yes, sir.

11 Q And at that point were there any plea offers to be
12 had?

13 A The plea offer -- the ten to 14 had already been
14 taken (sic) off the table.

15 Q So that there was, essentially, no offer on the table.

16 A (Indicating no)

17 COURT REPORTER - He needs to answer verbally.

18 THE COURT - Hold on a minute.

19 A No, sir.

20 MR. SHELDON - And answer yes or no.

21 THE COURT - You got ---

22 A No, sir. No, sir, I'm sorry. No, sir.

23 THE COURT - --- yeah. Y'all slow down. All
24 right, go ahead.

25 Q When -- and just ---

1 MR. SHELDON - And, Your Honor, just so you know,
2 he was also originally charged with an attempted murder in
3 this case and was found not guilty, so ---

4 THE COURT - Okay.

5 MR. SHELDON - --- so we're kind of talking about
6 the whole case as a whole ---

7 THE COURT - Sure.

8 MR. SHELDON - --- but there is a not guilty on an
9 attempted murder.

10 Q Did -- when you met with Mr. Brown, did you and him
11 have any discussions about alibis and things like that?

12 A Yes, I spoke with him about the alibi.

13 Q What did you tell him?

14 A I told him the same thing as I told Tyler Burns about
15 the Innsbrook Commons Apartments and the whole thing like
16 that with the blunt and all of that there.

17 Q And at that point, how much time had passed between
18 your arrest and -- and when you're meeting with Mr. Brown?
19 About six months? Does that sound about right?

20 A Yeah, approximately, yes, sir.

21 Q So this is about six months away.

22 A Yes, sir.

23 Q And did Mr. Brown have an investigator on this case?

24 A Yeah, he did.

1 Q Was -- did -- was he able to find the alibi witness as
2 you were talking about?

3 A Not that I was aware of. I'm not sure he located
4 them.

5 Q Okay. What kinds of trial strategy did you and Mr.
6 Brown talk about?

7 A I don't -- I don't really recall exactly a strategy
8 that we came up with that we, actually, sat down and talked
9 about.

10 Q You -- what did you guys talk about before trial about
11 the case?

12 A Just the alibi and that he was going to try to talk to
13 the solicitor about the plea agreement and that Huey
14 wouldn't -- wouldn't be able to testify because his
15 statement wasn't corroborated and, um ---

16 Q And let me -- let me stop you right there before you
17 go any further. When you say Huey, you're talking about
18 Mr. Ramalo (phonetic) Huey?

19 A Yes, sir.

20 Q Is that right? And does Mr. Huey end up testifying?

21 A Yes, sir.

22 Q And what was the gist of his testimony at trial?

23 A That we conspired at this house.

24 Q You and the co-defendant -- and the non-testifying co-
25 defendant. Is that right?

1 A Yes, sir.

2 Q And the co-defendant, actually, ends up testifying
3 against you as well. Right?

4 A Yes, sir.

5 Q Okay. So when you get to trial, what are some of the
6 concerns you had from what happened at trial with Mr.
7 Brown?

8 A Okay, well, first and foremost, the testimony of Huey,
9 that was my first one, because he was called to the stand
10 as a witness against me when his statement was never
11 corroborated by anybody. It was never verified by nobody
12 other than himself.

13 MR. SHELDON - And, Judge, just for the record,
14 we're talking about -- Mr. Huey would've testified on page
15 131 to 140 of the trial transcript.

16 THE COURT - All right, thanks.

17 A That was one of them. Um, ---

18 Q Did you have any concerns with Mr. Brown's cross
19 examination of Huey?

20 A Yes, yes, sir. I felt as though he could've properly
21 -- he could have done better with the questioning as far as
22 putting the reasonable doubt in the situation, because the
23 testimony of Huey was taken as facts in the Court of law,
24 but it -- he wasn't there at the scene or anything. He was

1 at Applebee's, but his word was taken in the Court as
2 though he was there and knew exactly what was going on.

3 Q What about your -- did you have any conversations with
4 your attorney about testifying at trial?

5 A Yeah, he told -- he told me -- he was like, if I get
6 up there, I'll be cross examined about my alibi, but being
7 as though he couldn't get my alibi verified, my testimony
8 would be no use.

9 Q Did you give -- but you -- and you gave the statement
10 to law enforcement about the alibi. Is that right?

11 A Yes, sir.

12 Q So, ultimately, was he able to advise you as to
13 whether or not you should testify or not?

14 A He -- that's what he told me right there.

15 Q Did you end up testifying?

16 A No, sir, I didn't due to that advice right there.

17 Q What -- and just tell the Court, what was your basis
18 for not testifying?

19 A Because he said that my alibi wouldn't be verified, so
20 like my statement meant nothing, because he couldn't have
21 my alibi verified, which is what I would be testifying to.

22 Q What other concerns did you have with Mr. Brown at
23 trial?

24 A Being as though he didn't object to the attempted
25 armed robbery indictment when the count two was dismissed,

1 which is the possession of a firearm during the commission
2 of a violent crime, and that was ---

3 Q Okay. Any other concerns?

4 A That was another one. Yes, he didn't object to the
5 firearm being throughout my whole trial and admitted into
6 evidence for the jury to deliberate with, and being as
7 though the possession of a firearm charge was dismissed
8 against me, that prejudiced me.

9 Q Any other concerns?

10 A I can't -- not that I can think of right at this
11 second, no, sir.

12 Q Okay, and just to be clear, you informed both Mr.
13 Burns and Mr. Brown that you had an alibi that needed to be
14 investigated. Is that right?

15 A Yes, sir, I did.

16 Q And that statement was also made to law enforcement.

17 A Yes, sir.

18 Q And to the best of your knowledge, did either one of
19 your lawyers or anyone associated with that investigators
20 (sic) or otherwise, actually, investigate that -- that
21 alibi?

22 A Um, Brown investigated and said he had found a Marcus
23 and David, but it was never looked into further passed
24 that.

KAIRON MALDONADO - CROSS BY MR. HUNTER

18

1 Q Okay. And by the time that he had gotten the case, it
2 was six months after the arrest.

3 A (Indicating yes)

4 THE COURT - You got to speak up.

5 A Yes, sir.

6 MR. SHELDON - Thank you, Your Honor. I don't
7 have anymore questions.

8 THE COURT - Okay. Yes, sir?

9 MR. HUNTER - Couple things.

10 CROSS EXAMINATION

11 BY MR. HUNTER -

12 Q So you told both Mr. Burns and Mr. Brown about Marcus
13 and David. What information did you give them?

14 A That, approximately, their ages was -- Marcus was 16
15 and David was, approximately, 17, 18 that I could remember,
16 because it's been a while.

17 Q Did you have last names for him?

18 A No, I didn't.

19 Q And any -- did you tell him like where they might find
20 them, like what was their location?

21 A Yes, I did, Sunset Park.

22 Q You said Sunset Park?

23 A Yes, sir.

24 Q Those are apartments?

25 A It's just like a area, ---

1 Q Area?

2 A --- neighborhood, yes, sir.

3 Q Okay. And, again, as far as Mr. Brown was concerned,
4 you gave those, I guess, names and ages and his
5 investigator did go look for them?

6 A Yes, that's what I was told.

7 Q Okay. And he ---

8 A That some type of investigation was done, somewhat.

9 Q And he -- he told you that they couldn't find them?

10 A He didn't say that they couldn't find them,
11 specifically, he just -- I guess trial came too fast. He
12 wasn't properly prepared to build a actual defense, because
13 he only had the case six weeks.

14 Q So other than the finding the alibi, what do you think
15 he needed more time to do?

16 A Well, that and, you know, and other things that he
17 didn't object to during the trial, issues that, basically,
18 prejudiced me in my trial.

19 Q Right. And just to go through another allegation
20 about your right to testify, you did discuss with Mr. Brown
21 that you had the right to testify. Correct?

22 A When we was sitting there, he explained, he said you
23 can get on the stand and testify. He said, but if you get
24 on the stand and testify, it's no use because I can't have
25 your alibi verified, so I didn't get on the stand.

TYLER BURNS - DIRECT BY MR. SHELDON

20

1 Q So you chose not to testify.

2 A Due to his advice, yes, sir.

3 Q Okay. I understand.

4 MR. HUNTER - That's all I have of this witness.

5 THE COURT - Okay, anything on re-direct?

6 MR. SHELDON - No, Your Honor.

7 THE COURT - Okay, thank you, sir. You can step
8 down.

9 MR. SHELDON - Your Honor, I'll just go ahead --
10 we'll call Tyler Burns to the stand.

11 THE COURT - Okay.

12 TYLER BURNS, AFTER BEING FIRST DULY SWORN,

13 TESTIFIES AS FOLLOWS -

14 MR. SHELDON - Thank you, Your Honor. May it
15 please the Court.

16 THE COURT - Yes, sir.

17 DIRECT EXAMINATION

18 BY MR. SHELDON -

19 Q Mr. Burns, please state your name for the record.

20 A Tyler Burns.

21 Q And where -- you're currently employed at South
22 Carolina Department of Social Services. Is that right?

23 A That's right.

24 Q But at this time were you with -- were you at Robert
25 Reeves' office here in York County?

1 A Yes.

2 Q Okay. You were initially -- is it right? -- appointed
3 to represent Mr. Maldonado in this case?

4 A Yeah, I believe -- yes.

5 Q And he said, I believe the arrest was in August, the
6 appointment was in September. Would that be about -- and
7 you may not remember, specifically, but would that be
8 standard around here?

9 A I truly don't recall much about this one at all. I
10 don't -- I don't know.

11 Q Okay. But you do -- you did represent Mr. Maldonado
12 originally. Is that right?

13 A Yes.

14 Q Ultimately, you were relieved, I believe, it sounds
15 like at the request of Mr. Maldonado.

16 A Yeah, actually, he -- he filed a grievance with ODC
17 against me saying that in the middle of a crowded lockup
18 room surrounded by cameras I made some sort of homosexual
19 advance toward him with a promise that I could get his
20 sentence reduced. At that point I took it to John Hayes,
21 thought it'd be best if we parted ways.

22 Q So -- okay, so, based on his allegations, you were
23 relieved, whether it was at his request or your own
24 request.

25 A Yes.

TYLER BURNS - DIRECT BY MR. SHELDON

22

1 Q Do you remember -- what do you remember about the
2 conversations that you had with him during the course of
3 your representation?

4 A I truly don't remember any of them. I don't remember
5 -- I didn't remember I ever represented him until this was
6 brought up recently.

7 Q What about -- do you -- do you have any recollection
8 of alibi or anything like that being discussed?

9 A The only thing I remember about it is the complaint to
10 ODC.

11 Q Okay. Would it -- would it be -- if you were
12 representing a defendant -- and, obviously, I think we can
13 agree that attempted murder and attempted armed robbery are
14 relatively serious charges. Would you agree with that?

15 A Oh, yeah.

16 Q Would it be your standard in a appointed case to hire
17 any sort of investigator or anything like that to look into
18 alibis or things like that?

19 A Yeah, I did on just about every other one I had that
20 was like that.

21 Q Do you remember doing it on this case?

22 A I truly -- I truly don't remember.

23 Q Okay. Is there -- you've heard what Mr. Maldonado has
24 said about, essentially, about y'all's discussions. Is
25 there anything that -- really that you can add either way

1 on what -- what your conversations were like, other than,
2 obviously, the allegations made that ended up getting you
3 removed from the case?

4 A As to alibi, the same thing I told every single client
5 I've ever had that brought up an alibi, was I told them
6 about Philip Watts and that little anecdote about an alibi
7 defense. Probable told him that.

8 Q Would you -- would it be your standard practice to
9 investigate that?

10 A Oh, yeah.

11 Q But there's nothing -- is there -- is there -- do you
12 have a copy of his file somewhere? Does some office have a
13 copy of his file?

14 A Yeah, it's probably at the law firm that I worked for
15 with -- during that time.

16 Q And that wasn't reviewed prior to coming to Court
17 today?

18 A It was all electronic. I haven't been in private -- I
19 haven't even done criminal defense -- what was this, five
20 years ago?

21 Q Yeah. Well, yeah, about four and a half years ago.

22 A I don't have access to the electronic file, and I --
23 after finishing my response to ODC, I handed the file to
24 Mike and didn't look back on it.

25 Q To Michael Brown, Mr. Brown.

TYLER BURNS - CROSS BY MR. HUNTER

24

1 A Right.

2 MR. SHELDON - Okay. Thank you, Your Honor. I
3 don't have anymore questions.

4 THE COURT - Okay. Yes, sir?

5 MR. HUNTER - Just a couple.

6 CROSS EXAMINATION

7 BY MR. HUNTER -

8 Q So your usual practice when dealing with criminal, I
9 guess, defense, and serious charges, you would hire an
10 investigator? Your firm had access to an investigator? Is
11 that correct?

12 A Yeah, even still there might've even been something in
13 the file where we had gotten the ex parte order for funds.
14 I don't know if it's in there or not, but it's generally
15 the practice to do it if it was.

16 Q And is it your usual practice to, I guess, when you're
17 doing criminal defense, to go over the charges against
18 them?

19 A Yeah, it's pretty much the first thing I would do.

20 Q Okay. And discovery?

21 A Yeah, I think -- if I'm not mistaken, here in York
22 they had some sort of weird rule about handing off
23 discovery to clients and you had to mail it in, I believe.

24 MR. HUNTER - Okay. That's all I have. Thank
25 you.

1 THE COURT - Anything on re-direct?

2 MR. SHELDON - No, sir, Your Honor.

3 THE COURT - Okay, you can step down.

4 MR. BURNS - Thank you.

5 MR. HUNTER - Your Honor, we ask that this witness
6 be excused.

7 THE COURT - Sure. Any objection?

8 MR. SHELDON - I -- I'm sorry, Your Honor?

9 THE COURT - Any objection to him being released?

10 MR. SHELDON - No, sir, Your Honor.

11 THE COURT - Okay, thank you.

12 MR. SHELDON - Your Honor, we'd call Michael Brown
13 to the stand.

14 THE COURT - All right.

15 MICHAEL L. BROWN, JR., AFTER BEING FIRST DULY

16 SWORN, TESTIFIES AS FOLLOWS -

17 MR. BROWN - Grab my stuff just in case.

18 DIRECT EXAMINATION

19 BY MR. SHELDON -

20 Q Mr. Brown, please state your name for the record.

21 A Michael Langford Brown, Jr.

22 Q You were -- ended up being trial counsel for Mr.
23 Maldonado. Is that correct?

24 A That's correct.

1 Q Okay. And you ended up getting a not guilty on the
2 attempted murder but guilty on the attempted armed robbery.

3 A That's correct.

4 Q And would you agree that there is no question in this
5 case that Mr. Maldonado was not the shooter?

6 A I can't say that to a hundred percent certainty.
7 There was a video from the store. The victim, alleged
8 victim, who said these two guys came in there everyday so
9 that's how he recognized them, said the other guy was the
10 shooter. I have no reason to question his testimony.

11 Q And I believe the other guy even testifies that he was
12 shooter, doesn't he?

13 A I believe Mr. Sanders did, but Mr. Sanders also spoke
14 about seeing aliens and that he was having family problems
15 when all this happened.

16 Q So it's a reasonable assumption that Mr. Maldonado was
17 convicted under the concept of accomplice liability, under
18 the act of one is the act of all.

19 A I don't know. I really think my 34 years experience
20 with countless murder cases, three death penalty case,
21 nobody's on death row, in my humble opinion, I think it was
22 a split verdict. I think it was hung to start with, or
23 that was the indication I got later from a juror I met out
24 socially, that it was a split verdict, so what they,
25 basically, did was cut him lose on the attempted murder and

1 found him guilty of the attempted armed robbery, so I
2 really can't say that, because technically under the law
3 they should've convicted him of both if they believed that
4 he was there.

5 Q Let's go back to when you first -- well, you heard the
6 testimony of Mr. Burns and he said ---

7 A Mr. ---

8 Q Of Mr. Burns.

9 A Okay.

10 Q He says he gives you the file. Is that right?

11 A I don't remember that.

12 Q Is there -- is there anything you saw ---

13 A I'm not saying he didn't. I just don't remember it.

14 Q Is there anything you saw in your file that indicated
15 at all that he had hired any experts or investigators to
16 assist ---

17 A No. No. And my gripe with previous representation
18 without adjudicating anyone's standards is that I -- you
19 have the non-shooter in a court-appointed case. That's the
20 one that you should cut the deal with. Okay? So by the
21 time I got the case from Mr. Springs, which I don't know
22 how long it was before trial -- you have the dates ---

23 Q And just for the record, Mr. -- I'm sorry to cut you
24 off -- Mr. Springs was the assistant solicitor.

1 A Mr. Springs was the prosecutor in this case. He goes
2 and cuts a deal with the other co-defendant who was the
3 shooter. That's highly unusual in any criminal practice
4 throughout this State. Without getting into too much
5 hearsay, it was my understand there was a lack of
6 communication between Mr. Burns and Mr. Springs, but
7 clearly, clearly, if you're going to cut a deal with one of
8 the co-defendants, he was the less culpable. He didn't do
9 the shooting; he was not the shooter.

10 Q Do you recall what the co-defendant ended up with in
11 this case?

12 A Was it 14 or 16 years? I can't remember.

13 Q And so ---

14 A It was less than what Mr. Maldonado got, which if you
15 look at it from a purely non-legal viewpoint, he kind of
16 got screwed, Mr. Maldonado.

17 Q So the actual shooter ends up with 14 to 16; Mr.
18 Maldonado ends up with 20.

19 A I -- I -- that's correct. And I've always had a
20 problem with that as soon as I got the case.

21 Q There's been some talk about an alibi, and you have an
22 investigator.

23 A (Witness laughing)

24 Q Is that right?

1 A Go ahead. The alibi? You want -- uh, let me cut --
2 put this to shreds. The two people -- I had a full-time
3 private investigator, Sam Ludlam, who was licensed with the
4 State at the time, go out and check everybody out.
5 According to Sam, the alibi was to a five year old and a
6 seven year old who's mother said those kids would not have
7 been out that time of night anyway and denied him access to
8 talk to the five and seven year old. I'm paraphrasing what
9 he told me. They could've been a little bit older, but
10 they definitely under -- under double digits in age.

11 Q And is -- for the alibi ---

12 A The alibi was, in my 34 four years of experience in my
13 opinion, the alibi was a waste of time, even though we ran
14 it down, I sent Mr. Ludlam all through that neighborhood
15 trying to find these kids. He finally, after two or three
16 days, found their mothers. The mothers discounted the
17 whole story.

18 Q What about -- but at trial you raised the --
19 essentially -- I don't want to say you raised an alibi, but
20 you questioned Mr. Huey about these individuals. Is that
21 right?

22 A That's correct.

23 Q And -- but without -- so when you're cross examining
24 Mr. Huey about these two individuals -- and he indicates
25 that he does know them.

MICHAEL L. BROWN, JR. - DIRECT BY MR. SHELDON

30

1 A Who -- refresh my memory. Who is Mr. Huey?

2 Q The -- essentially the one that says they conspired at
3 my house the night before.

4 A Okay. Oh, yes, okay, go ahead.

5 Q So ---

6 A They were Mr. Huey's cousins or some relation to Mr.
7 Huey, Mr. Sanders, I can't remember.

8 Q Right, and so -- but Mr. Huey indicates that he does
9 know these two individuals.

10 A Yeah, I think so.

11 Q There's also -- and I believe it's in between when --
12 in between when -- when the prosecution rests and you --
13 and you call your case, there is a conversation between you
14 and the Judge and the assistant solicitor regarding Mr.
15 Maldonado's statement. Is that right?

16 A I don't -- refresh my memory. I don't remember ---

17 Q Essentially, you were trying to get in Mr. Maldonado's
18 statement regarding ---

19 A Trying to backdoor it?

20 Q Yes.

21 A Okay. I probably was trying to do that.

22 Q Of course, it was -- of course, it wasn't allowed,
23 because it was self-serving hearsay.

24 A Okay. Don't try. Don't ask. Can't get a answer.

1 Q No, I understand. And so -- but there -- so there's a
2 conversation about trying to get in this statement
3 regarding an alibi, cross examination of Mr. Huey re --
4 with fodder about these two names without saying it's an
5 alibi, so is it fair to say based on what Mr. Maldonado
6 said that you didn't believe he could testify, because he
7 would be cross examined on his alibi?

8 A I didn't believe he could testify because of the
9 video. I think the video killed him. I think also that
10 Mr. Patel's testimony killed him, because he came in there
11 everyday or every other day and easily recognized him. His
12 alibi was not corroborated. You know, five and a seven
13 year old? I don't even know if they're going to get past
14 the threshold to testify.

15 Q At the point that you got the case, it had been six
16 months since he was arrest -- how soon before trial did you
17 get the case?

18 A It was -- it was pretty short. I'm not saying I
19 didn't have enough time. I had an investigator on this
20 thing full-time also. I also hired an eyewitness expert
21 from the University of North Carolina Charlotte to come
22 down and testify, which I thought she was very effective,
23 Megan Sakin 30 years in SCDC. But what aggravated me about
24 getting the case so late, I -- I just believe in court-
25 appointed cases. I believe it's something you owe back.

MICHAEL L. BROWN, JR. - DIRECT BY MR. SHELDON

32

1 That case could've -- his case could've been negotiated
2 down instead of the other co-defendant getting the deal, if
3 somebody would've just got off their ass and go and talk
4 with Mr. Springs.

5 Q Was there anything in the file that you were handed
6 that suggests that Mr. Burns had done that?

7 A I -- the impression I got -- and I don't want to put
8 words in anybody else's mouth -- when I got the case, Mr.
9 Springs, who is a very blunt prosecutor, for those of us
10 who remember him up here before he retired, Michael, there
11 will be no plea deals, I've talked with Tyler, that
12 wouldn't go anywhere, I've cut the deal with the co-
13 defendant, we're going to trial the next day. That was the
14 end. There was no further discussion about any plea
15 negotiations whatsoever.

16 Q Was that -- and did you let any time lapse before you
17 went and talked to Mr. Springs about trying to work
18 something out?

19 A I don't remember, probably not, because I -- I want to
20 say I was the third attorney. Is that correct? I can't --
21 -

22 Q I think it's the second attorney.

23 A --- remember.

24 Q So would it have been your practice to immediately go
25 to the prosecutor and say, what can you do here?

1 A Yeah, what's going on here, blah, blah, blah, you
2 know, fill me in.

3 MR. SHELDON - Beg the Court's indulgence for one
4 second.

5 THE COURT - Sure.

6 MR. SHELDON - Your Honor, I don't think I have
7 anymore questions for Mr. Brown. Thank you.

8 MR. HUNTER - Just a few things.

9 CROSS EXAMINATION

10 BY MR. HUNTER -

11 Q So when you took over the case, did Mr. Maldonado tell
12 you that he had rejected plea offers?

13 A I don't remember that. He may have. I just don't
14 remember that. The thing that stands out in my mind about
15 this case over the years is that as soon as I got it, Mr.
16 Springs, there will be no plea bargain, we going to trial,
17 I've already cut the deal with the co-defendant, which I
18 found kind of obtuse because the co-defendant was the
19 trigger man.

20 Q So how many weeks did you say you thought you had this
21 case before it went to trial?

22 A I don't know. I mean I'm assuming Mr. Sheldon's
23 right. Whatever the dates of my appointment are to the
24 date of trial.

25 Q Okay. Not more than a couple of months. Right?

MICHAEL L. BROWN, JR. - CROSS BY MR. HUNTER

34

1 A I don't remember to be honest with you.

2 Q Okay. Well, as far as your preparation in this case
3 goes, was there anything you were unable to do in that
4 amount of time?

5 A No, no. I mean we had -- we -- I had Mr. Ludlam out
6 there on the street running down every lead possible. I
7 contacted the professor at the University of North Carolina
8 Charlotte who's testified previously in eyewitness
9 identification which I thought would be crucial in this
10 case. It was kind of hard to overcome the fact that the
11 victim testifies these kids come in there every day or
12 every other day, and he immediately recognized them, so,
13 you know, I kind of had my work cut out for me on this one.

14 Q Right.

15 A And I considered it a victory that he was found not
16 guilty of attempted murder.

17 Q Okay. And, again, did you -- did you relay your, I
18 guess, your findings about the alibi to him, to Mr.
19 Maldonado?

20 A I'm sure I did or Mr. Ludlam may have. I can't speak
21 to whether I did or Mr. Ludlam did, but he and I were
22 working hand-and-glove on this and the weekend before trial
23 we spent the whole weekend -- last -- you know, still
24 trying to run this stuff down, and finally I think I pulled

1 the plug on that Saturday, because we couldn't -- we're
2 getting nowhere with the alibi.

3 Q Okay. So just if you could just explain, what was
4 your trial strategy in this case?

5 A What was -- I'm sorry?

6 Q Your trial strategy?

7 A That he wasn't there, that the co-defendant's a liar
8 for a deal and I thought the co-defendant made a horrible
9 witness talking about aliens and the reason he told three
10 different stories was he had family problems. I thought --
11 even the jury from the -- not that I'm some kind of mind
12 reader, but they were looking at him with looks of clear
13 disbelief, so I felt pretty good about when we were going
14 through the trial that he had a shot to be found not guilty
15 of both of them.

16 Q Okay. Did you explain to him, I guess, about his
17 right to testify?

18 A I did.

19 Q And did you explain to him, you know, that he would, I
20 guess, be subject to cross examination, what all that
21 entails?

22 A I did.

23 Q And did he ever -- did he ever say he wanted to
24 testify?

25 A To the best of my recollection, no.

MICHAEL L. BROWN, JR. - RE-DIRECT BY MR. SHELDON

36

1 Q Okay.

2 A And I believe Judge Hayes went into great detail about
3 his right to testify also.

4 MR. HUNTER - Beg the Court's indulgence one
5 second.

6 THE COURT - Okay.

7 MR. HUNTER - No further questions. Thank you,
8 sir.

9 THE COURT - Okay. Anything?

10 MR. SHELDON - Just briefly on re-direct, Your
11 Honor.

12 RE-DIRECT EXAMINATION

13 BY MR. SHELDON -

14 Q So the co-defendant gave multiple statements, is that
15 right, in this case?

16 A I -- it's in the transcript, two or three or four, and
17 was talking about he thought some woman was an alien and
18 that he had family matters, problems, that's why he told me
19 these different stories. I mean just almost borderline
20 elucid testimony.

21 Q Did -- what --

22 A Or non-elucid.

23 Q -- prior -- he switches story from Mr. Maldonado not
24 being involved and Mr. Maldonado being involved, things
25 like that. Right?

1 A Correct.

2 Q And was cross examined on that. Right?

3 A Correct.

4 Q Was there any objection that could be made to him
5 testifying at all? Did you have any concerns with --
6 especially when you're dealing with aliens and things like
7 that as to competency or any -- I mean were there ---

8 A Looking back reading it in black and white, yes, your
9 point's well taken, maybe I could've said, let's stop this
10 trial, let's have him evaluated for mental competency to
11 testify. I just thought he was coming across so horrible
12 in front of the jury that he gave Mr. Maldonado a better
13 chance. Actually, in a strange way, I thought he was our
14 best witness, because I didn't think he came across
15 credible at all outside the eyewitness expert professor
16 from University of North Carolina Charlotte.

17 Q And just going back to Mr. Maldonado's testifying, you
18 agree he gave a statement to law enforcement.

19 A To best of my memory, yes. I hadn't reviewed that
20 before I came in here today.

21 Q And you were trying to put that statement in without
22 him being able to -- without him testifying.

23 A Yeah, of course.

1 Q So but with that statement coming in, wouldn't --
2 let's say that statement did come in, how does that benefit
3 him without -- with not testifying?

4 A Because his first statement says he wasn't there and
5 these guys can confirm it, law enforcement has not followed
6 up on that statement, whereas, the other co-defendant's
7 first statement says he wasn't there either. I mean if I
8 can get that in backdoor, he maybe -- we may not be sitting
9 here today.

10 Q But wouldn't -- wouldn't he have been able -- so
11 you're -- you're -- you think with that statement -- but if
12 he's cross examined on that statement, that the outcome
13 then switches in favor of the prosecution, because if he
14 testifies live, I mean don't we have the same argument?

15 A I don't think it would near as effective, especially
16 with that video there and gets cross examined him (sic) by
17 going in that store every day. Uh, he told me he'd been in
18 that store several times before. I don't need that coming
19 in evidence to bolster the eyewitness identification, and I
20 think that was crucial -- one of the reasons I suggested he
21 not testify, because if he does testify and he testified
22 truthfully, he had to say he went in that store about every
23 other day for a period of months, which bolsters Mr.
24 Patel's testimony that was the guy and kills my expert
25 witness.

1 MR. SHELDON - Thank you, Your Honor. No more
2 questions.

3 THE COURT - Okay. Thank you. You can step down.
4 Can he be released? Any objection?

5 MR. HUNTER - No objection.

6 MR. SHELDON - No objection, Your Honor.

7 THE COURT - Okay. Thank you. Be safe.

8 MR. BROWN - You too, Judge.

9 MR. SHELDON - Judge, that is -- that's
10 petitioner's case.

11 THE COURT - Okay.

12 All right, obviously, like I said, on these, I
13 need to -- before you go, make sure I got the right one.
14 I'm going to take these with me, and I'll review the
15 transcripts and take it under advisement and let you
16 know. Okay?

17 MR. HUNTER - Thank you.

18 THE COURT - Thank you, man. Be safe.

19 (END OF TRANSCRIPT)
20
21
22
23
24
25

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 39 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Kairon Maldonado vs. State of South Carolina, as taken by me in Court of Common Pleas for the Sixteenth Judicial Circuit on November 8th, 2017, and provided by me this the 2nd day of July, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Kairon B. Maldonado,)
S.C.D.C. No. 354792,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

2016-CP-46-721

ORDER OF DISMISSAL

FILED-RECEIVED
2018 APR -4 AM 11:20
DAVID HANSTON
C.C.P. & S.
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed March 7, 2016. Respondent made its Return on or about August 8, 2016. An evidentiary hearing into the matter was convened on November 8, 2017, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Nathan Sheldon, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Michael Brown, Esquire, and J. Tyler Burns, Esquire, testified. This Court had before it a copy of Applicant's records from the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application and amendment, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the November 2012 term of the York County Grand Jury for Attempted Murder (2012-GS-46-3888), Attempted Armed Robbery (2012-GS-46-3890), and Criminal Conspiracy (2012-GS-46-3889).

Applicant was represented by Michael Brown, Esquire. Applicant proceeded to a jury trial before the Honorable John C. Hayes, III. On March 20, 2013, he was found guilty of attempted armed robbery and criminal conspiracy and found not guilty of attempted murder. Applicant was sentenced to five years' imprisonment for criminal conspiracy and twenty years' imprisonment for attempted armed robbery.

Applicant timely filed a notice of appeal and an appeal was perfected by Appellate Defender Robert M. Pachak and Rebecca Lindhal, Esquire. The South Carolina Court of Appeals affirmed the convictions and sentences on March 11, 2015. State v. Maldonado, Op. No. 2013-UP-684 (Ct. App. filed March 11, 2015). The Remittitur was issued March 30, 2015.

Allegations

In his application for post-conviction relief and the Amendment filed thereto, Applicant alleges he is being held unlawfully for the following reasons:

1. "Applicant alleges that he was wrongful convicted by the jury by using inconsistent statements and sham Evidence. Inconsistent statements from co-defendants and misidentification."
2. Ineffective Assistance of Counsel as to Tyler Burns
 - a. Failure to locate alibi witnesses
 - b. Failure to discuss the nature of the charges against Applicant
3. Ineffective Assistance of Counsel as to Michael Brown
 - a. Failure to have investigator pursue alibi witnesses
 - b. Failure to ask for a mistrial during the Solicitor's closing argument
 - c. Failure to effectively cross-examine Romalio Huey
 - d. Failure to properly advise Applicant of his right to testify

III. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 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. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

II. SUMMARY OF THE TESTIMONY

Applicant's Testimony

Applicant testified he was arrested August 2, 2012 and Mr. Burns was appointed to represent him about one month later. He testified Mr. Burns spoke with him briefly about plea agreements. Applicant testified he told Mr. Burns of his alibi, that he was smoking with "Marcus" and "David" at Innisbrook Commons Apartments on the night of the robbery. He testified he told law enforcement about his alibi. He testified he told Mr. Burns to find "Marcus" and "David," and gave Mr. Burns their names and ages. Applicant testified he received discovery but did not discuss trial strategy with Mr. Burns. Applicant testified Mr. Burns relayed a plea offer of fourteen to twenty-one years' imprisonment and second plea offer of ten to fourteen

years' imprisonment. Applicant further testified he relieved Mr. Burns as counsel about six to eight weeks prior to trial.

Applicant testified Mr. Brown ultimately represented him after Mr. Burns was relieved. He testified all plea offers were off the table at this time. He testified he spoke with Mr. Brown about his alibi defense that he had been with "Marcus" and "David" at Innisbrook Apartments during the robbery. Applicant testified he provided Mr. Brown with the age and location but was unable to provide their last names. He testified Mr. Brown's investigator was not able to find the witnesses.

Applicant testified he was not sure what Mr. Brown's trial strategy was, but they did discuss his alibi and whether or not Romelio Huey would testify. He testified Mr. Huey ultimately did testify at trial and said he and Applicant conspired at his house prior to the robbery. Applicant testified Mr. Brown could have done better on cross examining Mr. Huey because his testimony was not corroborated. Applicant testified he discussed with Mr. Brown about his ability to testify at trial and that he would be cross-examined about his alibi if he took the stand.

Tyler Burns' Testimony

Mr. Burns testified he was appointed to represent Applicant. He testified Applicant filed a grievance against him, alleging that Mr. Burns made homosexual advances toward Applicant in a crowded lock-up room with cameras. Mr. Burns testified he took the grievance to circuit court and asked to be relieved. Mr. Burns testified he had no recollection of this case. He testified it was his usual practice to get discovery and to hire an investigator. He testified he informed Applicant of the alibi defense. He testified he gave his whole file to Mr. Brown after being relieved.

Mr. Brown's Testimony

Mr. Brown testified when he represented Applicant, no plea offers were extended, although the codefendant was allowed to plead guilty and received less time than Applicant. Mr. Brown testified the victim said he saw Applicant and his codefendant every day, and knew the codefendant was the shooter. Mr. Brown testified his defense strategy was that Applicant was not at the scene of the robbery and the codefendant was a bad witness on the stand. He testified he thought his strategy was successful in combating the State's evidence and the codefendant. He testified the codefendant was the best witness for the defense because he looked so bad on the witness stand that it helped Applicant's case.

Mr. Brown testified he had his full-time private investigator investigate the alibi witnesses. He testified the alibi witnesses came back to a five year old child and seven year old child whose mother said they were not where Applicant was that night. He testified searching for alibi witnesses became a waste of time because his investigator searched all throughout the neighborhood to no avail. Mr. Brown testified he questioned Mr. Huey about Marcus and David.

Mr. Brown testified he discussed Applicant's statement with him, but they were unsuccessful in entering it at trial because the statement was self-serving hearsay. Mr. Brown testified they discussed Applicant's right to testify. He testified the surveillance video and victim's testimony hurt his case and Applicant's alibi could not be corroborated. He testified Applicant ultimately did not want to testify at trial.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject

convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and amendment, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel as to Tyler Burns

Failure to locate alibi witnesses.

Applicant alleged Mr. Burns was ineffective for failing to locate the alibi witnesses provided to him by Applicant. Applicant alleged Mr. Burns made no effort to locate the alibi witnesses, and this was critical because Applicant was incarcerated the entire time he awaiting trial. Applicant alleged Mr. Burns did not hire an investigator to locate the alibi witnesses and Applicant was unable to present an alibi defense at trial.

This Court finds Applicant has not met his burden of proving Mr. Burns was ineffective for failing to locate the alibi witnesses. Although Mr. Burns testified he did not remember anything about this case, he testified it was his usual practice to hire an investigator. This Court finds Applicant cannot show that he was prejudiced by Mr. Burns' actions because Mr. Burns was ultimately relieved as counsel as a result of Applicant's grievance and Applicant's subsequent counsel did thoroughly investigate the alibi witnesses prior to trial but was unsuccessful in finding anyone based off of the information given to him from Applicant. Applicant cannot show that the result of his trial would have been different had Mr. Burns investigated the alibi witnesses as well. Accordingly, this allegation must be dismissed.

Failure to discuss the nature of the charges

Applicant alleged Mr. Burns was ineffective for failing to discuss the nature of the charges with him. He alleged Mr. Burns only discussed the plea offers and Mr. Burns did not spend any time preparing the case for trial.

This Court finds Applicant has not met his burden of proving Mr. Burns was ineffective for failing to discuss the nature of the charges. Although Mr. Burns testified he had no recollection of the case, he testified it was his usual practice to obtain discovery and he did remember discussing Applicant's alibi defense with him. Applicant testified Mr. Burns discussed plea offers with him but provided no testimony as to what Mr. Burns did or did not discuss regarding his criminal charges. Furthermore, he has failed to show how Mr. Burns' advice or lack of advice concerning his charges affected the outcome of his trial. Accordingly, this allegation must be dismissed.

Ineffective Assistance of Counsel as to Michael Brown

Failure to have investigator pursue alibi witnesses

Applicant alleged Mr. Brown was ineffective for failing to investigate alibi witnesses. Applicant alleged he immediately informed Mr. Brown of his alibi and although Mr. Brown had an investigator assist him in the case, he did not have his investigator pursue the alibi witnesses. Applicant alleged Mr. Brown's failure to find these witnesses impacted his right to testify because Applicant's alibi statement to law enforcement could not be corroborated without these two alibi witnesses.

This Court finds Applicant has failed to meet his burden of proving Mr. Brown was ineffective. This Court finds Mr. Brown provided credible testimony that he sent his full time investigator to investigate "Marcus" and "David" and Applicant acknowledged Mr. Brown's investigator searched for them. Mr. Brown's investigator used the information given from Applicant and searched throughout the neighborhood in question, however the alibi witnesses in question came back to two children whose mother said were not near Applicant the night of the incident. This Court finds Mr. Brown acted reasonably and diligently in pursuing the alibi claim

by having his investigator thoroughly search for the witnesses and his actions were not deficient in this regard.

Even if Applicant was able to prove Mr. Brown's actions were deficient, he has failed to prove resulting prejudice as he has failed to show that the outcome of his trial would have been different. Applicant has not been able to identify exactly who these two witnesses are, and without their presence at the PCR hearing this Court will not speculate as to the exact nature of their potential testimony. Accordingly, this allegation must be dismissed.

Failure to move for a mistrial during the solicitor's closing

Applicant alleged Mr. Brown was ineffective for failing to move for a mistrial during the State's closing where following took place:

SOLICITOR: Ladies and gentlemen of the jury, Mr. Foreman, in big factories there is something called a quality control person. The quality control person makes sure that the product and the end result is correct. And I have a quality control person. It's the defense attorney.

MR. BROWN: Objection. Your Honor, I'm not a quality control person; I don't know what this is about. I'm court appointed.

THE COURT: I sustain the objection. Let's don't refer to him as a quality control person.

Trial Transcript p. 265, l. 18 – 266, l. 3.

Applicant contends these statements are improper and Mr. Brown should have moved for a mistrial. This Court finds this allegation is without merit. A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury. Brown v. State, 383 S.C. 506, 515, 680 S.E.2d 909, 914 (2009) (internal citations omitted). A solicitor's "argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it." State v. Webb, 389 S.C. 174, 178-79, 697 S.E.2d 662, 664 (Ct. App. 2010) (citing State v. Rudd, 355 S.C. 543, 549, 586 S.E.2d 153, 156

(Ct.App.2003)). The appropriateness of a solicitor's...argument is a matter left to the trial court's sound discretion. Id. (internal citations omitted). "Improper comments do not require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." Id. (citing Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004)). "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Smith v. State, 375 S.C. 507, 522, 654 S.E.2d 523, 531 (2007).

This Court finds Applicant has failed to show that Mr. Brown was ineffective for failing to ask for a mistrial. This Court finds Mr. Brown's actions were not deficient as he made an objection, the judge sustained the objection, and the solicitor moved on with his argument. This Court finds Applicant was not prejudiced by Mr. Brown's failure to move for a mistrial as it is unlikely that a mistrial would have been granted. The brief comment referring to Mr. Brown as a "quality control person" does not rise to the level of impropriety as to warrant a new trial. This comment did not infect the trial with unfairness as to cast doubt on the reliability of the conviction. As Applicant has failed to show that the outcome of his trial would have been different, this allegation must be dismissed.

Failure to effectively cross-examine Romalio Huey

Applicant alleged Mr. Brown was ineffective for failing to effectively cross-examine the State's witness Romalio Huey. He alleged Mr. Huey implicated Applicant in the crime and Mr. Brown's cross-examination was disjointed and confusing. Applicant further pointed out Mr. Brown asked Mr. Huey questions about the two alibi witnesses but there was no other connection between the testimony and the alibi itself.

This Court finds Applicant has failed to prove Mr. Brown was ineffective in his cross-

examination of Romalio Huey. This Court finds, and the record reflects, that Mr. Brown attacked the victim's credibility with his prior convictions, inconsistencies with his version of events, and the fact that he did not report the robbery even though he was present while it was being planned. Trial Transcript pp. 134-135, 137. Cross-examination is a matter of trial strategy, and as such, this Court must presume that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689. There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance and the "[applicant] must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." Id.

This Court finds Mr. Brown's cross-examination was not unreasonable and was not deficient where he was able to attack the witness's credibility and his version of events. This Court will not speculate whether a "better" cross examination would have helped Applicant. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997). Furthermore, this Court finds Mr. Brown's questioning of Mr. Huey about Marcus and David was not deficient. Mr. Brown elicited testimony through Mr. Huey that he had a cousin named David and a friend named Marcus. Applicant asserts this questioning was deficient because there was no other connection between the testimony and Applicant's alibi. This Court finds such questioning was not unreasonable as Mr. Brown attempted to elicit supporting testimony from Officer Allen Cantey during the defense's case in chief. See Trial Transcript pp. 212-220. The State objected and Mr. Brown

elicited testimony from Officer Canteley *in camera* that Applicant gave a statement the night of the incident that he had been at the Innisbrook Apartments with Marcus and David during the robbery. After lengthy argument, the trial judge sustained the objection ruling the statement was self-serving hearsay. This Court finds it was not unreasonable for Mr. Brown to question Mr. Huey about Marcus and David, as he could not be clairvoyant in predicting the judge would later keep out the supporting testimony from Officer Canteley.

Furthermore, Applicant has failed to show that the outcome of the trial would have been different had Mr. Brown cross-examined Mr. Huey differently. As Applicant has failed to show how the outcome would have been different, he has failed to show that he was prejudiced by Mr. Brown actions. Accordingly, this allegation must be dismissed.

Failure to properly advise Applicant of his right to testify

Applicant alleged Mr. Brown was ineffective for failing to properly advise him of his right to testify. Applicant alleged he was prevented from asserting his alibi defense without testifying.

This Court finds Applicant has failed to meet his burden of proving Mr. Brown was ineffective for failing to properly advise Applicant of his right to testify. Mr. Brown testified he did discuss with Applicant his right to testify and his statement. He further testified Applicant ultimately made the decision not to testify. Furthermore, Applicant testified he discussed with Mr. Brown about his ability to testify at trial and that he would be cross-examined about his alibi if he took the stand. This Court finds Applicant has failed to provide testimony or evidence showing how Mr. Brown's advice was improper. Applicant has also failed to show the outcome of his trial would have been different had Mr. Brown given different advice. Accordingly, this allegation must be dismissed.

V. CONCLUSION

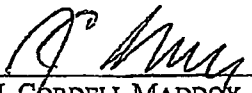
Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that either counsels' performances were unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

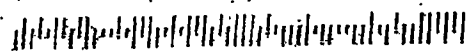
IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 30 day of March, 2018.


 J. CORDELL MADDOX, JR.
 Presiding Judge
 Sixteenth Judicial Circuit

Anderson, South Carolina



CHANDLER PEOP. INC. 202
FRI 11 MAY 2018 PM

The Law Office of Nathan Sheldon
331 E. Main St., Suite 200
Rock Hill, SC 29730

Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

WITNESSES

RHPD / Smith

ARREST WARRANT NUMBER

COUNT ONE: 2012A4620300185

COUNT TWO: 2012A4620300140

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 11/15/12

VERDICT

Guilty

Foreperson of Petit Jury

Date: 3-20-13

DOCKET NO. 2012-GS-46-03890
2012-GS-46-03890A

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

November 15, Term 2012

THE STATE

vs.

KAIRON BRENTON MALDONADO

Indictment for

COUNT ONE: ATTEMPTED ARMED ROBBERY

SC Code, 16-11-330(B)

CDR Code: 0026

COUNT TWO: POSSESSION OF A FIREARM
DURING A VIOLENT CRIME

SC Code, 16-23-490

CDR Code: 549

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

The State enters
Not Proper of Possession
of Firearm charge.
EBS/ang
3-18-13

STATE OF SOUTH CAROLINA) CERTIFIED TRUE COPY INDICTMENT
)
 COUNTY OF YORK) 2016 MAR -8 AM 9:00

At a Court of General Sessions, convened on November 15, 2012, the Grand Jurors of York County present upon their oath.

COUNT ONE: ATTEMPTED ARMED ROBBERY

The Defendant, Kairon Brenton Maldonado, while acting in concert with Kadeem Sanders, did in York County, South Carolina, on or about July 25, 2012, while armed with a deadly weapon, to wit: a rifle, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously attempted to take and carry away personal property belonging to Cherry Road Discount Food and Beverage, attempting to take it from the person of or in the presence of Vipul Patel, an employee of Cherry Road Discount Food and Beverage. The Defendant, acting in concert with Kadeem Sanders, did by means of force or intimidation put Vipul Patel in fear and attempted to take goods or monies belonging to Cherry Road Discount Food and Beverage from Mr. Patel. All in violation of §16-11-330(B), Code of Laws of South Carolina, (1976, as amended).

**COUNT TWO: POSSESSION OF A FIREARM DURING THE COMMISSION OF A
 VIOLENT CRIME**

The Defendant, Kairon Brenton Maldonado, while acting in concert with and while aiding and abetting Kadeem Sanders, did in York County on or about July 25, 2012, while committing the crime of Attempted Armed Robbery, a violent crime, have in his possession a firearm or visibly displays what appears to be a firearm, to wit: a rifle, all in violation of Section 16-23-490, 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.

913 Sprague
 ASSISTANT SOLICITOR

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

385

OF

York

VS.

Kairon B Maldonado

INDICTMENT/CASE#: 2012GS4603890

A/W#: 2012A4620300185

Date of Offense: 7/25/2012

S.C. Code §: 16-11-0330(B)

CDR Code #: 0026

ORIGINAL

SENTENCE SHEET

☒ CONVICTED OF or PLEADS

Race: BLACK Sex: M Age: 18

DOB: 1994 SS#: 2016 MAR -8 AM 8:59

Address: Drake Court

City, State, Zip: Rock Hill, SC 29730

DL#: SID#: CLERK OF COURT

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ HYDROLYD COUNTY, SCIn disposition of the said indictment comes now the Defendant who was
TO: Attempted Armed Robberyin violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTORNEY: Springer 13568 SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
☐ Set by SCDPPPS Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 120

 days/hours Public Service EmploymentObtain 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 FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge Judge Code: 2049Sentence Date: 3.20.13Clerk of Court/ Deputy Clerk David HamiltonCourt Reporter: Wanda Nelson

SCCA/217 (03/2011)

WITNESSES

RHPD / Smith

adm

ARREST WARRANT NUMBER

2012A4620300184

ACTION OF GRAND JURY**TRUE BILL**Foreperson of Grand Jury
Date: 11/15/12**VERDICT**

Guilty

Foreperson of Petit Jury
Date: 3-20-13

DOCKET NO. 2012-GS-46- 03889

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

November 15, Term 2012

THE STATE

vs.

KAIRON BRENTON MALDONADO**Indictment for
CRIMINAL CONSPIRACY**SC Code: 16-17-410
CDR Code: 049After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA) CERTIFIED TRUE INDICTMENT
)
 COUNTY OF YORK) 2016 MAR -8 AM 8:59

DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

At a Court of General Sessions, convened on November 15, 2012, the Grand Jurors of York County present upon their oath:

CRIMINAL CONSPIRACY

The Defendant, Kairon Brenton Maldonado, did in York County, South Carolina, on or about July 25, 2012, willfully, knowingly, and feloniously unite, combine, conspire, confederate, agree or have tacit understanding with Kadeem Sanders, for the purpose of committing the crime of Armed Robbery. All in violation of Section 16-17-410, 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.

E B Sprague
 ASSISTANT SOLICITOR

388

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

OF

York

VS.

Kairon B Maldonado

INDICTMENT/CASE#: 2012GS4603889

A/W#: 2012A4620300184

Date of Offense: 7/25/2012

S.C. Code §: 16-17-0410

CDR Code #: 0049

AKA:

Race: BLACK

Sex: M

Age:

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED] Drake Court

City, State, Zip: Rock Hill, SC 29730

DL#:

SID#: SC02041519

*CDL Yes ☐ No ☐CMV Yes ☐ No ☐Hazardous ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Criminal Conspiracy

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-17-0410

of the S.C. Code of Laws, bearing CDR Code #

0049

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation,Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

Springs, E.B.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 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. From August 12, 2012☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$100

\$

\$12

\$

\$25

\$

\$500

\$

\$25

\$

\$150

\$

\$50

\$

\$40/ea

\$

\$5

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\$

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\$

\$

days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

David Hamilton

Wanda Nelson

2049

3-20-13

ORIGINAL

DOCKET NO. 2012-GS 46-03888

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury

WITNESSES

RHPD / Smith

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

November 15, Term 2012

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

ARREST WARRANT NUMBER

2012A4620300183

THE STATE

Defendant

vs.

Witness:

ACTION OF GRAND JURY

KAIRON BRENTON MALDONADO

C.C.C. PLS. AND G.S.

TRUE BILL

Foreperson of Grand Jury

Date: 11/15/12

VERDICT

Not Guilty

Indictment for

ATTEMPTED MURDER

Foreperson of Petit Jury

Date: 3-20-13

SC Code: 16-3-29
CDR Code: 3410

STATE OF SOUTH CAROLINA CERTIFIED TRUE COPY INDICTMENT

COUNTY OF YORK

2016 MAR -8 AM 8:59

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on November 15, 2012, the Grand Jurors of York County present upon their oath:

ATTEMPTED MURDER

The Defendant, Kairon Brenton Maldonado, while acting in concert with Kadeem Sanders, did in York County, South Carolina on or about July 25, 2012, with malice aforethought, either express or implied, attempt to the kill the victim, Vipul C. Patel, by shooting at Mr. Patel multiple times with a rifle and hitting Mr. Patel twice with bullets, all with the intent to kill said victim. All in violation of Section 16-3-29 of the Code of Laws of South Carolina, (1976, 2010 as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

E B Springs IV
ASSISTANT SOLICITOR