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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Frank R. Addy, Circuit Court Judge

LEVITICUS DONYASKI YOUNG,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001120

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

KELLY OPPENHEIMER
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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	)	COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	2014-GS-23-8396; 8398
	)	
	)	
	)	
THE STATE OF SOUTH CAROLINA	)	
	)	
	)	ORIGINAL
	)	
PLAINTIFF)	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
LEVITICUS YOUNG	)	
	)	
DEFENDANT)	)	

January 11-12, 2017
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge; and a
jury.

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

MARK MOYER, ESQ.
Attorney for The State

LAUREN TAYLOR, ESQ.
Attorney for The Defendant

APRIL HERRON
Official Court Reporter

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1 January 11, 2017

2 THE COURT: Good morning, I hope everybody's
3 doing well today.

4 Okay, any matters we need to take up before we
5 bring the jury up?

6 MR. MOYER: Not from The State, Your Honor.

7 MS. TAYLOR: Your Honor, briefly, it's just been
8 brought to my attention by my client. I make a
9 motion in limine to exclude the video evidence in
10 this case. I'm sure the solicitor is going to have
11 an argument against that. It's very hard to identify
12 any parties in this video. You can't identify
13 anybody's face.

14 So, for that purpose, I would just like to put
15 that on the record that I'm objecting to the
16 admission of this video for identity purposes, as you
17 can't identify anybody.

18 THE COURT: Okay.

19 What's the position of The State?

20 MR. MOYER: Judge, I don't think that's a reason
21 to keep it out. I'll give you a real brief
22 description of what the video is --

23 THE COURT: Okay, while you're doing that--

24 Janine, would you call Judy and tell them we
25 will send a bailiff down there, to go ahead and get

1 the jury while we're talking through this.

2 Go ahead, I'm sorry.

3 MR. MOYER: This is a surveillance video that
4 shows the outside of the business where this incident
5 took place.

6 THE COURT: Yes, sir.

7 MR. MOYER: It shows the suspect victim drive
8 up. It shows two men get of the vehicle, go into the
9 business. A few minutes later, come back out running
10 into the vehicle. So, that is probative evidence
11 regardless of whether or not it can be identified.
12 That is probative evidence to show that a crime was
13 committed, to show the vehicle that was used, shows
14 the number to participants, shows the victim running
15 out chasing the suspects after the incident. So, for
16 those reasons, Your Honor, the evidence is very
17 probative.

18 THE COURT: Okay.

19 MS. TAYLOR: Your Honor, just briefly, the video
20 does not show any crime taking place whatsoever. In
21 my opinion, if you want to watch it, you can't even
22 determine whether this was the car in question. I
23 mean, you can tell it's a black Mercedes and you can
24 tell it's a silver Mustang kind of, but it's still so
25 grainy, I'm not sure that you would be able to even

1 identify that this was anything other than just
2 somebody pulling into a tire shop. It's not -- you
3 can't see anything happening on the video that is in
4 any way showing armed robbery or assault and battery.
5 My argument is that it's more prejudicial than
6 probative at this point. If you want to watch it.

7 THE COURT: At this point in time, I don't
8 necessarily want to watch it. I'll accept at face
9 value what each of you says about the video. I don't
10 know that there's any rule that says just because
11 it's not good evidence and it doesn't show precisely
12 what it already suggests that it shows means that it
13 should be inadmissible. The question is whether it's
14 relevant and whether it passes a 403 analysis.

15 Based on what you told me, I don't -- I think
16 the suggestion from the Defense, it doesn't show
17 anything, which would suggest it isn't prejudicial at
18 all. Your position is it just isn't probative of
19 anything.

20 Well, I grant some deference to each of the
21 litigants in any proceeding that comes before the
22 Court and give you the latitude to present that
23 evidence which you feel is probative and relevant to
24 the issues that are before the Court. Even if it has
25 very little value and very little merit, it may have

1 some merit. So, long as there's an assertion that it
2 is relevant and it shows -- in this instance, it
3 shows the crime scene and some activity on or about
4 the crime scene. At a threshold, I suspect that it's
5 relevant. I will not exclude it at that point.

6 I will tell you that that is -- that obviously
7 is not a final ruling with respect to the
8 admissibility of any piece of evidence, to include
9 the video. You're welcome to make a contemporaneous
10 objection. And if we need to take that issue back up
11 at some point, I'll be happy to entertain the motion.

12 MS. TAYLOR: Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 MS. TAYLOR: Just one other brief mentioning
15 from the solicitor that there was a phone call, a
16 jail tape, I guess, that took place yesterday. I am
17 in possession of previous jail phone calls, I just
18 don't have the one from yesterday. So, if he was
19 planning to admit that one, I would object.

20 MR. MOYER: I'm not.

21 THE COURT: Okay. Fair enough.

22 MS. TAYLOR: Nothing further, Your Honor.

23 THE COURT: Okay, good enough.

24 And I see your voir dire, Ms. Taylor. And in
25 substance, I'm going to ask all of those, not

1 precisely like that. I just tell you to pay
2 attention and if you think I've missed anything, then
3 I'll go back around, okay.

4 MS. TAYLOR: Okay.

5 THE COURT: Have both of you had the opportunity
6 to read the narratives on the indictments?

7 MR. MOYER: Yes, sir, Your Honor.

8 MS. TAYLOR: Yes.

9 THE COURT: Okay. I'm going to read the
10 narratives on the indictments and I just want to make
11 sure there's nothing objectionable on there that I
12 should avoid reading or redact.

13 MR. MOYER: The only thing I would note, Your
14 Honor, on the armed robbery indictment, we're not
15 going forward with count two of that indictment,
16 which is possession of a weapon during a violent
17 crime.

18 THE COURT: Okay.

19 MR. MOYER: Just count one.

20 THE COURT: Okay, fair enough. Thank you.
21 Thank you for telling me that. So, assault and
22 battery in the first degree and armed robbery?

23 MR. MOYER: Yes, Your Honor.

24 THE COURT: Good morning, ladies and gentlemen.
25 I hope y'all are doing well. I see some familiar

1 faces from jury selection yesterday. Those of you
2 who are back, welcome back. Those of you who are
3 here for the first time, welcome. We will go through
4 the process of selecting a jury for an additional
5 case this morning.

6 Now, those of you who sat through yesterday are
7 going to hear some of same things. And to the extent
8 that I'm repeating myself, I apologize, but I have to
9 go through the explanation for each and every
10 independent case.

11 Ladies and gentlemen, we are going to call to
12 bar today the case of The State vs. Leviticus
13 Donyaski Young. Now, ladies and gentlemen,
14 downstairs yesterday, you went through jury
15 qualification and you took an oath to tell the truth.
16 You remain under that oath this morning to tell the
17 truth. The process for selecting a jury for a case
18 is similar to qualification in that questions are
19 posed and you respond honestly to those questions
20 that are posed.

21 When I pose those question, please -- if the
22 response is in the affirmative, I would ask you to
23 stand up, state your name and your jury number,
24 again, state your name and jury number for the record
25 so the record will know who is addressing the Court.

1 And then give me any appropriate response to the
2 question.

3 Ladies and gentlemen, before we get started, I'm
4 going to read to you the allegations on the
5 indictment. Now, the indictment is the charging
6 document wherein The State initiates the prosecution
7 against the Defendant. Now, that contains the
8 allegations of The State. Now, I want to make sure
9 that all of you know that when I read to you the
10 allegations that The State is making in this case,
11 that is not -- that does not suggest that I'm telling
12 you the facts as I believe them to be. The State has
13 the burden of proving the Defendant guilty beyond a
14 reasonable doubt.

15 The Defendant in this trial, just like in any
16 trial in the United States of America, is presumed
17 innocent until such time as 12 deliberating jurors
18 determine that The State has met its burden of
19 proving each and every element of the offense beyond
20 a reasonable doubt. The jury, 12 deliberating jurors
21 will determine what the facts are. I always feel
22 that it's important for me to tell you that before I
23 read the indictment because I don't want to give you
24 the impression that I'm telling you what happened in
25 this case. I'm not. I have to give you some

1 threshold of information so that you can
2 intelligently answer the questions that are posed.

3 So, ladies and gentlemen, the first case that is
4 before the Court is The State vs. Leviticus Donyaski
5 Young. That is case number 2014-GS-23-8398, an
6 indictment for armed robbery. Ladies and gentlemen,
7 The State would allege that Mr. Young did in
8 Greenville County on or about June 6th, 2014, while
9 armed with a deadly weapon or while alleging either
10 by action or words that he was armed, while using a
11 representation of a deadly weapon or any object which
12 a person present during the commission of the robbery
13 would reasonably believe to be a deadly weapon, take
14 by means of force or intimidation goods or monies
15 described as currency from Juan Figueroa.

16 Ladies and gentlemen, the next indictment before
17 the Court is The State vs. Leviticus Donyaski Young,
18 and that is case number 2014-GS-23-8396 for assault
19 and battery in the first degree. The State would
20 allege that Mr. Young did in Greenville County on or
21 about June 6th 2014, unlawfully injure Juan Figueroa
22 and the act occurred during the commission of a
23 robbery, burglary, kidnapping or theft.

24 Ladies and gentlemen, I'll ask you, is there
25 anyone among you who has any prior knowledge, any

1 prior disposition or any prior opinion regarding the
2 facts and circumstances of this case?

3 (There was no response.)

4 THE COURT: Okay. Let the record reflect no
5 affirmative response.

6 Ladies and gentlemen, as I've indicated to
7 you before, the Defendant in this case is Mr. Leviticus
8 Donyaski Young. Is there anyone among you who has a
9 personal, professional or family relationship with
10 Mr. Young?

11 (There was no response.)

12 THE COURT: Ladies and gentlemen, Mr. Young is
13 represented by Ms. Lauren Taylor of the Greenville
14 County bar. Is there anyone among you who has a
15 personal, professional or family relationship with
16 Ms. Taylor?

17 (There was no response.)

18 THE COURT: Ladies and gentlemen, The State in
19 this case is being represented by Mark Moyer of the
20 13th Circuit Solicitor's Office. So, I ask you, is
21 there anyone among you has a personal, professional
22 relationship with Mr. Moyer or with any employee of
23 the 13th Circuit Solicitor's Office?

24 PROSPECTIVE JUROR: I've met Mr. Moyer. He was
25 a volunteer at a nonprofit function.

1 THE COURT: What's your name and juror number,
2 ma'am?

3 PROSPECTIVE JUROR: Oh, I'm sorry. I'm Lisa
4 Hall, Juror No. 71.

5 THE COURT: And do you think given that fact,
6 you can still be a fair and impartial juror in the
7 trial of this case?

8 PROSPECTIVE JUROR: Yes, sir.

9 THE COURT: Thank you, Ms. Hall, I appreciate
10 it.

11 Okay, ladies and gentlemen, I'm going to read
12 for you a list of potential witnesses in this case.
13 This may be an exhaustive list, that is all of these
14 witnesses may testify, or there may be additional
15 witnesses or there may be less. We simply have to
16 see when the case is called to bar and the evidence
17 begins to be developed. However, as I sit here,
18 these are the witnesses that I have been told are
19 perspective witnesses in this case. Juan Cabrera,
20 Mac McBryde, Robert Cullum, Karen Brown, Stephanie
21 Bishop, Steven Williams, Joey Smith with the
22 Greenville County Fire Department, Renee Beauford of
23 the Greenville County Department of Public Safety,
24 Dana Lewis of Greenville Public Safety, Dar Shaw of
25 Department of Public Safety, Jinny Moran of

1 Department of Public Safety, Tracy King of the
2 Greenville County Sheriff's Office, Justin Lanford of
3 the sheriff's office, Chris McAlmont of the sheriff's
4 office, Judson Belding of the sheriff's office, and
5 Mark Husk of the sheriff's office. Also, Officer
6 James Wilson, Robert Cullum and Stephanie Bishop.

7 Ladies and gentlemen, is there anyone among you
8 who has any personal, professional or family
9 relationship with any of those prospective witnesses?

10 Yes, sir.

11 PROSPECTIVE JUROR: Alan Avera, Juror No. 7. I
12 know a Stephanie Bishop. I don't know -- we used to
13 work together, but I don't know if that's the same
14 person.

15 THE COURT: Okay. If she were a witness in this
16 case and she testified, you think that would effect
17 your ability to be a fair and impartial juror in the
18 trial of this case?

19 PROSPECTIVE JUROR: No, sir.

20 THE COURT: Okay. Thank you, sir, I appreciate
21 you letting me know.

22 Anyone else?

23 (There was no response.)

24 THE COURT: All right. Ladies and gentlemen, is
25 there anyone among you who has ever been employed by

1 law enforcement or has an immediate family member who
2 is employed by law enforcement?

3 Yes, sir.

4 PROSPECTIVE JUROR: John Smart, Juror 184. I'm
5 retired under the South Carolina Police Officer's
6 Retirement System after having worked 25 years in the
7 South Carolina Department of Probation, Parole and
8 Pardon Services.

9 THE COURT: Okay. Do you think you can still be
10 fair and impartial in this case, sir?

11 PROSPECTIVE JUROR: I do.

12 THE COURT: Okay. Thank you, I appreciate it.

13 Yes, sir.

14 PROSPECTIVE JUROR: Juror 173, Mark Sanford. No
15 current police in the family, but my father was
16 before his death and my brother was before his
17 retirement, both in Kansas.

18 THE COURT: Do you think you could still be fair
19 and impartial in this case, sir?

20 PROSPECTIVE JUROR: Yes, Your Honor.

21 THE COURT: Okay, thank you. I appreciate it.

22 Yes, ma'am.

23 PROSPECTIVE JUROR: Kelly Premo, 152. I was a
24 police officer with the Athens County Police
25 Department in Athens, Georgia. I was also an

1 investigator with the Department of Social Services
2 for a few months in 2014.

3 THE COURT: Do you think that you can still be
4 fair and impartial in this case, ma'am?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Okay. Thank you for telling me, I
7 appreciate it.

8 Anyone else?

9 Yes, ma'am.

10 PROSPECTIVE JUROR: Lisa Hall, Juror 70, I have
11 a brother-in-law that's a Chaplin for the police
12 department.

13 THE COURT: Do you think you can still be fair
14 and impartial, ma'am?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Thank you very much.

17 Anyone else?

18 Ladies and gentlemen, is there anyone among you
19 who has ever been yourself personally or has an
20 immediate family member who has been the victim of
21 violent crime?

22 (There was no response.)

23 THE COURT: All right, ladies and gentlemen, is
24 there anyone among you who is a contributor to or a
25 member of an organization which advocates for

1 criminal prosecution or victim's rights? And by
2 example, I mean organizations like MADD, Mother's
3 Against Drunk Driving, SADD, or similar
4 organizations, again, that advocates for prosecution
5 or criminal rights -- or excuse me, victim's rights?

6 Yes, sir.

7 PROSPECTIVE JUROR: Stephen Decasas, Juror 43.
8 In California, I sat on a board of a nonprofit called
9 Crime Survivors. It had this advocacy group for
10 survivor's of violent crime and to make sure that the
11 prosecution was on target with everything we wanted
12 them to be.

13 THE COURT: Okay. And do you think you can
14 still be fair and impartial, sir?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Okay. Thank you for telling me, I
17 appreciate it.

18 Anyone else?

19 Yes, ma'am.

20 PROSPECTIVE JUROR: Kelly Premo, 152. I'm
21 employed as a victim advocate.

22 THE COURT: Can you still be fair and impartial,
23 ma'am?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Thank you, I appreciate it.

1 All right. Ladies and gentlemen, is there
2 anyone among you who feels like for whatever reason
3 you may not be able to be a fair and impartial juror
4 in the trial of this case?

5 (There was no response.)

6 THE COURT: Okay. All right. Counsel, any
7 additional voir dire?

8 MR. MOYER: One moment.

9 THE COURT: Yes, sir.

10 MR. MOYER: No, Your Honor.

11 MS. TAYLOR: Nothing from us, Your Honor.

12 THE COURT: All right, ladies and gentlemen,
13 we're going to go through jury selection now. And
14 those of you who were here yesterday knows how that
15 works. You may not have come up yet, I'll explain it
16 to you.

17 There has been a randomly generated strike list.
18 And all of your names appear on this list in random
19 order. The clerk of court will call your name in the
20 order in which your names appear on the strike list.
21 When your name is called, what I would appreciate you
22 doing is standing up exactly where you are. You
23 don't have to say or do anything. You just stand up
24 where you are.

25 At that point, the attorneys will exercise

1 peremptory challenges or strikes. The Defense is
2 given 10 strikes, The State gets five strikes. They
3 can exercise strikes for virtually any reason. And
4 it is largely discretionary with the attorneys and
5 with the parties how and if they will exercise
6 peremptory challenges.

7 So, when they interest their strikes, if you
8 hear from both sides, from both sides either please
9 swear the juror or please seat the juror, then I'd
10 ask you to just come forward and have a seat in the
11 jury box. If you hear from either side, either side
12 just once, please excuse the juror from the trial of
13 this case or please strike the juror, then you can
14 have a seat right where you are. You will have been
15 stricken from the jury in this case.

16 We're going to pick 12 main deliberating jurors,
17 then I'm going to pick one alternate. As I told a
18 lot of you yesterday, it's important that I have an
19 alternate because I've got to have 12 to go to
20 deliberations. And it's important that if someone,
21 for whatever reason, if they get sick or a child gets
22 sick and they have to leave, it's important that I
23 have somebody who can fill in. So, we'll get one
24 alternate --

25 Unless, Counsel, you think we need one or two?

1 What's your preference?

2 MR. MOYER: I'm fine with one, Judge.

3 MS. TAYLOR: I'm fine with one as well, Your
4 Honor.

5 THE COURT: Okay, we'll pick one.

6 Okay, having said that, Madam Clerk, you may
7 proceed.

8 THE CLERK: Juror No. 47, Peter Doulaveris.

9 (Peter Doulaveris, a white male, stood.)

10 THE CLERK: What says The State?

11 MR. MOYER: Please present Mr. Doulaveris.

12 THE CLERK: What says The Defendant?

13 MS. TAYLOR: Please present the juror.

14 THE CLERK: You may bring your things and have a
15 seat in the jury box.

16 Juror No. 28, John Cegledy.

17 (John Cegledy, a white male, stood.)

18 THE CLERK: What says The State?

19 MR. MOYER: Please present Mr. Cegledy.

20 THE CLERK: What says The Defendant?

21 MS. TAYLOR: Please excuse this juror.

22 THE CLERK: You may take your seat.

23 Juror No. 10, Gene Beckham.

24 (Gene Beckham, a white male, stood.)

25 THE CLERK: What says The State?

1 MR. MOYER: Please excuse the juror in this
2 case.

3 THE CLERK: You may take your seat.

4 Juror No. 62, Justin Gosnell.

5 (Justin Gosnell, a white male, stood.)

6 THE CLERK: What says The State?

7 MR. MOYER: Please present Mr. Gosnell.

8 THE CLERK: What say The Defendant?

9 MS. TAYLOR: Please seat this juror.

10 THE CLERK: You may bring your things and have a
11 seat in the jury box.

12 Juror No. 101, Ashley Kosel.

13 (Ashley Kosel, a white female, stood.)

14 THE CLERK: What says The State?

15 MR. MOYER: Please present Ms. Kosel.

16 THE CLERK: What says The Defendant?

17 MS. TAYLOR: Please seat this juror.

18 THE CLERK: You may bring your things and have a
19 seat in the jury box.

20 Jury No. 70, Lisa Hall.

21 (Lisa A. Hall, a white female, stood.)

22 THE CLERK: What says The State?

23 MR. MOYER: Please present Ms. Hall.

24 THE COURT: What says The Defendant?

25 MS. TAYLOR: Please excuse the juror.

1 THE CLERK: You may take your seat.

2 Juror No. 161, Amber Robbins.

3 (Amber Robbins, a white female, stood.)

4 THE CLERK: What says The State?

5 MR. MOYER: Please present Ms. Robbins.

6 THE COURT: What says The Defendant?

7 MS. TAYLOR: Please seat the juror.

8 THE CLERK: You may bring your things and have a
9 seat in the jury box.

10 Juror No. 71, Lisa Hall.

11 (Lisa L. Hall, a white female, stood.)

12 THE CLERK: What says The State?

13 MR. MOYER: Please present Ms. Hall.

14 THE CLERK: What says The Defendant?

15 MS. TAYLOR: Please excuse this juror.

16 THE CLERK: You may take your seat.

17 Juror No. 66, Kimberly Granville.

18 (Kimberly Granville, a white female, stood.)

19 THE CLERK: What says The State?

20 MR. MOYER: Please present Ms. Granville.

21 THE CLERK: What says The Defendant?

22 MS. TAYLOR: Please excuse this juror.

23 THE CLERK: You may take your seat.

24 Juror No. 158, Taylor Rawls.

25 (Taylor Rawls, a white female, stood.)

1 THE CLERK: What says The State?
2 MR. MOYER: Please present Ms. Rawls.
3 THE CLERK: What says the Defendant?
4 MS. TAYLOR: Please excuse this juror.
5 THE CLERK: You may take your seat.
6 Juror No. 6, Tyler Atkins.
7 (Tyler Atkins, a white male, stood.)
8 THE CLERK: What says The State?
9 MR. MOYER: Please excuse the juror.
10 THE CLERK: You may take your seat.
11 Juror No. 67, Chasity Green.
12 (Chasity Green, a white female, stood.)
13 THE CLERK: What says The State?
14 MR. MOYER: Please present Ms. Green.
15 THE CLERK: What says The Defendant?
16 MS. TAYLOR: Please seat this juror.
17 THE CLERK: You may bring your things and have a
18 seat in the jury box.
19 Juror No. 153, Ervin Prewette.
20 (Ervin Prewette, a white male, stood.)
21 THE CLERK: What says The State?
22 MR. MOYER: Please present Mr. Prewette.
23 THE CLERK: What says The Defendant?
24 MS. TAYLOR: Please excuse the juror.
25 THE CLERK: You may take your seat.

1 Juror No. 173, Mark Sanford.
2 (Mark Sanford, a white male, stood.)
3 THE CLERK: What says The State?
4 MR. MOYER: Please present Mr. Sanford.
5 THE CLERK: What says The Defendant?
6 MS. TAYLOR: Please excuse this juror.
7 THE CLERK: You may take your seat.
8 Juror No. 7, Alan Avera.
9 (Alan Avera, a white male, stood.)
10 THE CLERK: What says The State?
11 MR. MOYER: Please present Mr. Avera.
12 THE CLERK: What says The Defendant?
13 MS. TAYLOR: Please excuse this juror.
14 THE CLERK: You may take your seat.
15 Juror No. 119, James Mayes.
16 (James Mayes, a black male, stood.)
17 THE CLERK: What says The State?
18 MS. TAYLOR: I don't have anything for Juror
19 119.
20 THE COURT: Do you have anything, Mr. Moyer?
21 MR. MOYER: Yes, sir. He's on the addendum.
22 THE COURT: Will you show it to her?
23 MS. TAYLOR: I have a copy of the addendum.
24 THE COURT: You good?
25 MS. TAYLOR: Yes.

1 THE COURT: Okay.

2 MR. MOYER: Please present Mr. Mayes.

3 THE CLERK: I'm sorry, I didn't hear you.

4 MR. MOYER: Please present.

5 THE CLERK: What says The Defendant?

6 MS. TAYLOR: Please seat this juror.

7 THE CLERK: Please bring your things and have a
8 seat in the jury box.

9 Juror No. 214, John Williams.

10 (John Williams, a white male, stood.)

11 THE CLERK: What says The State?

12 MR. MOYER: Please present Mr. Williams.

13 THE CLERK: What says The Defendant?

14 MS. TAYLOR: Please excuse this juror.

15 THE CLERK: You may take your seat.

16 Juror No. 168, Jake Ross.

17 (Jake Ross, a white male, stood.)

18 THE CLERK: What says The State?

19 MR. MOYER: Please excuse the juror in this
20 case.

21 THE CLERK: You may take your seat.

22 Juror No. 143, Mae O'Neal-Miller.

23 (Mae O'Neal-Miller, a black female, stood.)

24 THE CLERK: What says The State?

25 MR. MOYER: Please present Ms. Miller.

1 THE CLERK: What says The Defendant?

2 MS. TAYLOR: Please seat this juror.

3 THE CLERK: You may take your things and have a
4 seat in the jury box.

5 Juror No. 55, Gary Freeman.

6 (Gary Freeman, a white male, stood.)

7 THE CLERK: What says The State?

8 MR. MOYER: Please present Mr. Freeman.

9 THE CLERK: What say the Defendant?

10 MS. TAYLOR: Please excuse this juror.

11 THE CLERK: You may take your seat.

12 THE COURT: Ms. Taylor, I believe you've
13 exhausted your strikes. Is that what your math tells
14 you?

15 MS. TAYLOR: My math tells me I have one more.

16 THE CLERK: I have 10 as well.

17 MS. TAYLOR: You have 10?

18 THE COURT: I'm just an English major from the
19 Citadel, but I think that's 10.

20 MS. TAYLOR: Okay.

21 THE CLERK: Juror No. 171, Brianna Sakony.

22 (Brianna Sakony, a white female, stood.)

23 THE CLERK: What says The State?

24 MR. MOYER: Please present Ms. Sakony.

25 THE CLERK: What says The Defendant?

1 MS. TAYLOR: Please seat this juror.

2 THE CLERK: You may bring your things and have a
3 seat in the jury box.

4 Jury No. 133, Jeanne Moore.

5 (Jeanne Moore, a white female, stood.)

6 THE CLERK: What says The state?

7 MR. MOYER: Please present Ms. Moore.

8 THE CLERK: What says The Defendant?

9 MS. TAYLOR: Please seat this juror.

10 THE CLERK: You may bring your things and have a
11 seat in the juror box.

12 Juror No. 131, Marco Mitchell.

13 (Marco Mitchell, a black male, stood.)

14 THE CLERK: What says The State?

15 MR. MOYER: Please excuse the juror in this
16 case.

17 THE CLERK: You may take your seat.

18 Juror No. 157, Kenneth Puckett.

19 (Kenneth Puckett, a white male, stood.)

20 THE CLERK: What says The State?

21 MR. MOYER: Please present Mr. Puckett.

22 THE CLERK: What says The Defendant?

23 MS. TAYLOR: Please seat this juror.

24 THE CLERK: You may bring your things and have a
25 seat in the juror box.

1 Juror No. 30, Ronald Childers.

2 (Ronald Childers, a white male, stood.)

3 THE CLERK: What says The State?

4 MR. MOYER: Please excuse the juror.

5 THE CLERK: You may take your seat.

6 Juror No. 206 --

7 THE COURT: I believe that's five for The State,

8 too. Am I right?

9 THE CLERK: Yes.

10 THE COURT: Go ahead.

11 THE CLERK: Jury No. 206, William Walters.

12 (William Walters, a white male, stood.)

13 THE CLERK: What says The State?

14 MR. MOYER: Please present Mr. Walters.

15 MS. TAYLOR: Please seat the juror.

16 THE CLERK: Please bring your things and have a
17 seat in the jury box.

18 Juror No. 213, Andrew Williams.

19 (Andrew Williams, a white male, stood.)

20 THE CLERK: What says The State?

21 MR. MOYER: Please present Mr. Williams.

22 THE CLERK: What says The Defendant?

23 MS. TAYLOR: Please seat Mr. Williams.

24 THE CLERK: Bring your things and have a seat in
25 the jury box.

1 THE COURT: All right, ladies and gentlemen,
2 that's 12. We'll pick one alternate. The strikes
3 are two for the Defense and one for The State.
4 Alternate strikes two for Defense, one for the state.

5 THE CLERK: Jury No. 34, Robert Clark.

6 (Robert Clark, a white male, stood.)

7 THE CLERK: What says The State?

8 MR. MOYER: Please present Mr. Clark.

9 THE CLERK: What says The Defendant?

10 MS. TAYLOR: Please excuse the juror.

11 THE CLERK: You may take your seat.

12 Juror No. 184, John Smart.

13 (John Smart, a white male, stood.)

14 THE CLERK: What says The State?

15 MR. MOYER: Please present Mr. Smart.

16 THE CLERK: What says The Defendant?

17 MS. TAYLOR: Please excuse the juror.

18 THE CLERK: You may take your seat.

19 Juror No. 109, Ken Little.

20 (Ken Little, a white male, stood.)

21 THE CLERK: What says The State?

22 MR. MOYER: Please present Mr. Little.

23 THE CLERK: What says The Defendant?

24 MS. TAYLOR: Please seat the juror.

25 THE CLERK: You may bring your things and have a

1 seat in the jury box.

2 THE COURT: All right, counsel, any issues or
3 matters of law to take up with respect to the
4 qualification or selection of this jury?

5 MR. MOYER: Not from The State, Your Honor.

6 MS. TAYLOR: None from the Defense, Your Honor.

7 THE COURT: All right, good.

8 Ladies and gentlemen, thank you for coming up
9 this morning. If you'll go back downstairs, I
10 believe Ms. Olson will give you additional
11 instructions. Hope you have a great day.

12 (WHEREUPON, the jury venire was excused at
13 approximately 10:45 a.m.)

14 THE COURT: All right, ladies and gentlemen, I
15 look forward to working with you on this case. Based
16 on what I know right now, I believe this case should
17 come to a conclusion tomorrow about midday. I don't
18 know precisely when because I don't know how many
19 witnesses will take the stand and I don't know how
20 long those witnesses will take.

21 I always find that it's helpful at the beginning
22 of a case for me to have a discussion with you about
23 the process and procedure that will follow so that
24 you will know what comes next and you'll know,
25 essentially, what the end game is. You won't be left

1 to wonder, okay, where do we go from here. I also
2 find that it's helpful for me to tell you what your
3 role is as jurors in the trial of a case so that when
4 you're listening to testimony, you'll understand what
5 you will be tasked to do, ultimately.

6 So, let's start there. Your role as jurors in
7 the trial of the case is to be the finders of the
8 facts. You will determine what the facts are in the
9 case based on the evidence that is presented at
10 trial. Now, you will decide what weight and value
11 all of the evidence has. You will decide what is
12 credible and what is not credible. And from that
13 evidence, you will determine what the facts are.

14 Now, evidence can come in a number of different
15 forms. Generally, evidence is the testimony of a
16 witness who takes the stand and takes an oath.
17 However, evidence can also be physical objects that
18 are placed into the record. It could be transcripts
19 of testimony. It could be documents. It could be
20 audio tapes. It could be videotapes. It can take
21 any number of forms. But that evidence, you will
22 receive and you will have the opportunity to consider
23 it all and determine what is important and determine
24 what the facts are in your sole and exclusive
25 authority.

1 Now, understand that no one can tell you what
2 the facts are. You'll determine what that is. The
3 parties to the case can't tell you what the facts
4 are. They're going to introduce evidence and they're
5 going to make arguments, but they're not going to be
6 able to tell you what the facts. And I won't be able
7 to tell you what the facts are. Under the law, I'm
8 precluded from having an opinion about the facts. I
9 can't tell you what the facts are. And at any point
10 in this trial, you think that I'm giving you some
11 suggestion or hint about what the facts or what your
12 decision may be, please disregard that. You have the
13 sole and exclusive authority to determine what the
14 facts are in the case.

15 Now, again, as distinguished from you, I'm not a
16 finder of fact. I'm precluded from being a finder of
17 fact. I am the finder of the law. And in layman's
18 terms, essentially, what that means is I'm the
19 umpire. I'm objectively calling balls and strikes,
20 making sure that we're following the law and the
21 rules of procedure in this case. So, I'll make sure
22 that we're proceeding in accordance with the rules of
23 evidence, the rules of court in accordance with the
24 law. It is my responsibility to give you a charge on
25 the law at the end of the case.

1 Now, I give you a charge on the law at the end
2 of the case because, right now, I'm in the same exact
3 posture that you are. That is, I haven't seen any of
4 the evidence that's going to be presented in this
5 case. I haven't heard from any of the witnesses.
6 And I don't know any more about this case other than
7 what I read on the indictment, which is precisely
8 what you have heard as well. So, I wait until the
9 end of trial because it's important that I know what
10 evidence has been presented so that I can tailor a
11 charge on the law to the evidence that has been
12 presented.

13 Also, know that during the conduct of the case,
14 I'm going to be making rulings on motions and
15 objections that are posed by the attorneys. First of
16 all, don't hold it against attorneys that they make
17 motions and objections during the conduct of the
18 case. That's their jobs. They're here to advocate
19 for their respective party. When they make an
20 objection or a motion, I'm going to rule on that
21 objection or that motion.

22 Understand when I do, when there are two
23 parties, I'm necessarily going to rule for somebody
24 and against somebody. Don't take from that that I
25 have any bias or preference one way or the other for

1 one side or the other. I truly don't. My only
2 interest in this case is to make sure that both
3 parties get a fair trial. And by extension, that you
4 get a fair trial because you'll invest some of your
5 very valuable and important time in this case as
6 well.

7 Ladies and gentlemen, the way that we will start
8 after I give you this brief opening instruction, is
9 the parties will have the opportunity to present
10 opening statements. Now, opening statements are not
11 evidence. Opening statements are the opportunity for
12 each of the parties to introduce themselves and their
13 theories of case. Generally speaking, they are very
14 short. And, again, just a mechanism for
15 introduction.

16 After both of the parties have had the
17 opportunity to make opening statements, then we'll
18 begin with the introduction of evidence. Now, The
19 State begins. That's because The State has the
20 burden of proof. As I told you in jury selection,
21 The State has the burden of proving the Defendant
22 guilty beyond a reasonable doubt.

23 Now, as we sit here now, the Defendant has a
24 presumption of innocence. He is presumed innocent
25 until such time as 12 deliberating jurors review the

1 evidence and determine whether, in fact, The State
2 has met its burden of proving each and every element
3 of the offenses beyond a reasonable doubt. Until
4 that time, the Defendant will retain his presumption
5 of innocence.

6 And you can think of it as a cloak. Just like
7 I'm wearing a robe, you can think of that cloak of
8 innocence being on his shoulders. And Mr. Young
9 continues to have that cloak on until you determine
10 at the end of the case whether it should be removed
11 or not.

12 So, The State will begin with its introduction
13 of evidence. Ordinarily, what will happen is The
14 State will call witnesses to the stand. A witness
15 will come to the stand and take the oath of the
16 witness and The State will examine that witness.
17 That is, ask that witness questions. Then the
18 Defense has the opportunity to cross-examine that
19 very same witness. After all the questions have been
20 asked, then The State will call another witness to
21 the stand. Again, examine that witness, introduce
22 any other evidence that may be relevant to that
23 witness's testimony. And then, the Defense will
24 cross-examine, then that witness will be allowed to
25 stand down.

1 After The State has exhausted all of the
2 evidence that it intends to put up in its case in
3 chief, then the Defense will have the opportunity,
4 but is not compelled to, they have the opportunity to
5 present evidence as well. If the Defense elects to
6 present evidence, then the mechanism will be the
7 same. And that is, the Defense will call witnesses
8 to the stand, examine those witnesses, The State will
9 cross-examine those witnesses. Then when the Defense
10 has exhausted all of the evidence and witnesses that
11 it intends to put into the record, then we'll proceed
12 to closing arguments.

13 Ladies and gentlemen, again, closing arguments
14 are not evidence. At that point, you will have heard
15 all of the evidence in this case. And closing
16 arguments is the opportunity for each party to
17 advocate for their respective positions and to
18 attempt to persuade you to their side. Again, that
19 won't be evidence, that is argument from attorneys.

20 Ladies and gentlemen, after you've heard closing
21 arguments from counsel, then I'll give you the
22 closing charge on the law. Again, I'll wait until
23 the end because I need to see the evidence before I
24 can give you a charge on the law.

25 After I give you a charge on the law, then I'll

1 send you back to your jury room to conduct
2 deliberations. Now, ladies and gentlemen, it's very
3 important that you not begin any deliberations or
4 discussions about this case until I give you very
5 specific instructions to do so at the end of the
6 trial.

7 Now, I know that in your own personal experience
8 and through your common sense, you know why that is,
9 but at the risk of insulting your intelligence, I'm
10 going to tell you anyway, okay. You know that in
11 your lifetime, you've never been able to make an
12 intelligent and informed decision about anything
13 unless and until you've heard everything that bears
14 upon the issue. So, you can't make a decision based
15 on just part of the evidence or half of the evidence.
16 You shouldn't start deliberating or considering the
17 case until you've heard all of the evidence.

18 It's just like sometime during your life, you've
19 had a brother or a sister, or a friend or a child who
20 has walked up to you and told you story. And you
21 heard it and you were convinced of his position, his
22 or her position and then you heard the other side.
23 And it just put things in a completely different
24 perspective. A trial is, essentially, the same way.
25 You have to listen to everything to get a full

1 picture so that you can make an intelligent decision.
2 So, please don't discuss the case.

3 Now, when I say that, what that means is when
4 you return to your jury room or when we take breaks,
5 don't discuss the witnesses, whether you thought they
6 were believable or not believable. Don't discuss the
7 facts as they're coming to light in the trial. Don't
8 discuss it, okay. Because, invariably, when you
9 begin discussing it, it leads to more decision and
10 deliberations and it won't be time yet.

11 Also, when we take breaks, for instance, for
12 lunch or tonight, don't disuse the case with any of
13 your significant others or friends. Because when you
14 discuss it with them, then you are, essentially,
15 conducting a deliberation with someone who is not on
16 the jury. It seems very innocent sometimes when your
17 wife or your husband or somebody ask you, so what
18 happened in the trial today? And you give them a
19 fairly innocuous and innocent answer, but that
20 prompts and promotes another question. And before
21 you know it, you're in a discussion. Well, just
22 avoid it. Whoever ask you a question, just tell them
23 hey, I can't discuss it now, but after it's over, we
24 can discuss it as much as you want to. And you'll be
25 free to discuss it as much as you want to. Just not

1 yet.

2 Also, when we take breaks, don't do any self
3 help, that is don't go on media outlets and see if
4 you can find out any information about this. Don't
5 go to the clerk of court's website to see if you can
6 find out any information. I don't suspect that you
7 could, frankly, but don't even try because the only
8 thing that will be relevant to your consideration in
9 this case is the evidence that will be presented
10 under oath in trial.

11 So, ladies and gentlemen, during the course of
12 the case, I anticipate that we will be taking fairly
13 regular breaks. I don't intend to hold y'all hostage
14 in that jury box. I like to take a break every hour
15 to hour and a half, depending on where we stand in
16 testimony. I find that's about the length of time
17 that people can actually pay attention and focus and
18 concentrate on what's being presented on the stand.
19 So, I'll take regular breaks. Obviously, we're also
20 going to take a lunch. And tonight, we'll probably
21 end at regular business time. That is, 5:00 or 5:30,
22 depending on where we stand in a specific witness's
23 testimony.

24 I will tell you, however, that if at any point
25 in time during this trial any single one of you needs

1 to take a break, just let me or the bailiff know,
2 just get our attention. Okay. Even if we've only
3 been back on the record five minutes after a break,
4 please let me know. I would rather you tell me and
5 take a break as opposed to you sitting there thinking
6 boy, I'm not getting any of this because I'm focused
7 on something else or I've got something else that I'm
8 thinking about. We'll just take a break, then we'll
9 come back in so that you can focus on what's being
10 presented in the trial.

11 It is my anticipation, again, ladies and
12 gentlemen, that we should be through with the
13 introduction of testimony and evidence either later
14 this afternoon or about mid-morning tomorrow.

15 When we finish with the introduction of
16 evidence, then we'll go to closing arguments and
17 charge. It's my anticipation that we should be done
18 about midday tomorrow. Now, don't hold me to that
19 because I haven't seen any of the witnesses and I
20 haven't heard them. Sometimes, a trial has a way of
21 taking on a life of its own. Sometimes it's much
22 longer than you anticipated, sometimes it's much
23 shorter than you anticipated. But right now, I think
24 that's about how long it will take.

25 As we go along in the trial, I'll keep you

1 updated. I'll tell you what I know so you aren't just
2 sitting there wondering where we go and how long is
3 this going to take. I think it's important for y'all
4 to have the information that I have in that regard.

5 All right, ladies and gentlemen, I'm going to
6 ask the clerk of court to swear you in. Now, you
7 took an oath yesterday to tell the truth. This is a
8 little bit different oath. It's an oath to truly and
9 verily try the case in accordance with the law and
10 the evidence. So, I'll turn it over to the clerk of
11 court for the administration of the oath.

12 THE CLERK: Would you please stand and raise
13 your right side. The correct response to the oath is
14 "I will".

15 (WHEREUPON, the jury was sworn.)

16 THE COURT: Mr. Young, it's Leviticus Donyaski
17 Young? Is that the way to pronounce it?

18 THE DEFENDANT: Yes, sir, Leviticus Donyaski.

19 THE COURT: Okay, I just wanted to make sure
20 we're all getting it right.

21 Okay. Mr. Moyer, your argument, sir.

22 OPENING STATEMENT

23 MR. MOYER: Thank you, Your Honor, may it please
24 the Court?

25 THE COURT: Yes, sir.

1 MR. MOYER: Good morning, ladies and gentlemen.
2 My name is Mark Moyer. I'm an assistant solicitor.
3 I work the 13th Circuit Solicitor's Office. The 13th
4 Circuit is comprised of two counties, that's
5 Greenville and Pickens County. The Solicitor is Walt
6 Wilkins. I am one of the assistant solicitors who
7 works for him. If you're new to South Carolina or,
8 perhaps, you're new to the criminal justice system
9 here, you may not know that we use in South Carolina
10 the term solicitor much as every other state calls it
11 DA, district attorney. I represent The State in
12 criminal prosecution.

13 In my brief opening comments to you here this
14 morning, ladies and gentlemen, I'm going to do three
15 things. First, I'm going to make a few brief remarks
16 about a few areas of the law that will be applicable
17 in this case. Then I'm going to give you a brief
18 summary of the facts that you're going to hear in
19 this case. Then I'm going to talk to you just real
20 briefly about what evidence is going to come forward
21 to establish those facts.

22 So, let's start off with the law. As you heard,
23 the Defendant is charged with assault and battery
24 first degree and armed robbery. These charges are
25 pretty easy to understand. An armed robbery is a

1 robbery that is done by somebody who is armed with a
2 deadly weapon. Robbery means taking goods or
3 property from the person or presence of another
4 person with force, violence or intimidation. And if
5 that robbery is done while the person either has some
6 sort of deadly weapon, it could be a knife, could a
7 pistol, then it's armed robbery. In fact, it can be
8 something that looks like a deadly weapon. If
9 someone uses a fake gun that looks real and that
10 person acts like it's real and the person on the
11 receiving end of that robbery believes it's real,
12 then it's still armed robbery, okay.

13 Now, assault and battery first degree, for our
14 purposes here in this trial is -- means this. It is
15 an assault and battery -- excuse me, just lost a
16 contact. It is an assault and battery, which is some
17 sort of causing injury to a person during the
18 commission of a crime, like a burglary or a robbery.
19 So, even if the person is not hurt very badly, if
20 that is committed -- if that assault is committed
21 while one of these other serious crimes are taking
22 place, that is assault and battery first degree.

23 The other area of law that I want to talk to you
24 about is called accomplice liability. What that
25 means, ladies and gentlemen, is that when two or more

1 people get together to commit a crime and each is
2 doing some various part of that crime, each person is
3 responsible for what the other person does. So, we
4 have a term for that. And that is the hand of one is
5 the hand of all.

6 So, give you a brief example to explain that,
7 let's use an example of, say, a burglary. Let's say
8 three people decide to break into a building. One
9 person is the get-away driver and stays out in the
10 car. Another person is the lookout man. He stands
11 on the street corner. The third person goes inside
12 that building, steals something, comes back out and
13 gets in the car and drive away. And let's say while
14 it's taking place, let's say maybe the owner of this
15 business comes back on scene and gets assaulted by
16 the lookout person. Well, each person is equally
17 responsible for breaking into the building and
18 committing the assault. Just because they were all
19 working together to do this burglary.

20 Okay, so that's a couple of areas of law that
21 are applicable in this case. Let me tell you a
22 little bit about what this case is about. This case
23 is about Juan Cabrera, this gentleman seated here in
24 the front row, who was assaulted by two men on
25 June the 6th, 2014, at his place of business. He was

1 assaulted by two men. One of whom had a pistol, the
2 other of whom had a stun gun. They robbed him of
3 money, cash money that he had on his person. Beat
4 him on the head with the pistol. Used the stun gun
5 against him. And then right after it happened, took
6 off in their vehicle. Mr. Cabrera, not wanting those
7 guys to get away with this, actually, jumps in his
8 own car, follows them and, actually, gets shot at
9 while he's chasing them down.

10 So, basically, what you're going to hear in this
11 case, ladies and gentlemen, is that Mr. Cabrera works
12 and still works at a place called Poinsett Tire.
13 Just down the road here on Poinsett Highway, near
14 Cherrydale. Works there by himself. It's a cash
15 only business.

16 Right around closing time on this date, June the
17 6th, 2014, a black Mercedes comes and pulls up and
18 stops right in front -- comes -- well, first off,
19 stops out in the road. Mr. Cabrera sees the vehicle
20 out there, wonders a little bit about it. It later
21 comes back and pulls in right in front of his
22 business. Two men get out of the vehicle. One, the
23 driver, has a black shirt. He has a pistol. The
24 other, the passenger, has a white shirt. He has a
25 stun gun. They come up to Mr. Cabrera, demand money

1 from him. Give me the f'ing money. Well, Mr.
2 Cabrera had about \$150 in his pocket. He pulls it
3 out and instead of handing it directly to them, sort
4 of flips it into the air.

5 Well, this prompts the man with the stun gun,
6 who the evidence will show is this Defendant in this
7 case, Leviticus Young, to go after Mr. Cabrera and
8 start assaulting him. The other man, the driver,
9 Steven Williams, goes for the money. And after he
10 picks up most of the money, he looks over and still
11 sees Leviticus Young grappling with Mr. Cabrera and
12 goes over and hits him on the head with the pistol.

13 Well, the men get away. They jump in their car
14 and they drive off at a high rate of speed.

15 Mr. Cabrera doesn't want them to get away. He runs
16 out, gets into his car and begins following them.
17 High rate of speed through a residential area. At
18 one point, Mr. Cabrera stops because he sees a woman
19 outside of her house. He stops, pulls over real
20 quickly, please help me, call 911. The woman does.

21 Mr. Cabrera follows back with the pursuit of
22 this case. They get on Old Buncombe Road. They turn
23 down the road. Mr. Cabrera, at this point, actually
24 comes and makes contact with that car. Hits it.

25 This prompts gun fire from the car, the car

1 Mr. Cabrera is chasing.

2 Well, this car, this black Mercedes attempts to
3 make a turn and going way too fast, hits a telephone
4 pole. Smashes into the pole. Mr. Cabrera stops
5 briefly, realizes these men are armed. He drives on.
6 He goes -- actually, runs into a couple of police
7 officers who happen to be handling another matter and
8 he tells them what happened.

9 Well, the police show up at the other scene
10 where this accident took place. Steven Williams, the
11 driver, stunned, stays with the vehicle. You'll hear
12 testimony that this Defendant gets out of the
13 passenger side and runs away and gets away. Steven
14 Williams is apprehended. He gives the name of this
15 Defendant as being the other person who was in the
16 car with him and that's what leads the police to
17 eventually arrest this Defendant.

18 Now, the evidence that you will hear in this
19 case, that is going to come forward to you in this
20 case is going to come from several different areas.
21 It's going to come from witnesses. You're going to
22 hear from Mr. Cabrera, obviously. You're going to
23 hear from the woman who called 911. You will hear
24 that 911 call. You will hear from a couple of people
25 who were at the area where this vehicle wrecks into

1 the telephone pole and sees a man running down the
2 street and getting away, holding a gun. You're going
3 to hear from some police officers who showed up --
4 the police officers who saw Mr. Cabrera when
5 Mr. Cabrera came up to them and said what had just
6 happened to him. You're going to hear from police
7 officers who went to the scene where the accident
8 was.

9 There is going to be evidence of weapons.
10 You're going to see a gun, a pistol that was still in
11 the car, this black Mercedes. You're also going to
12 see a stun gun that was found at Mr. Cabrera's place
13 of business. You're going to -- excuse me, I don't
14 have my contacts in. You're going to see evidence of
15 Mr. Cabrera's injuries. You're going to see
16 photographs of the blood that was coming -- that was
17 flowing down Mr. Cabrera's head from being struck
18 with the pistol.

19 You're going to see a video. There was a
20 surveillance camera at a neighboring business that
21 was pointed towards Mr. Cabrera's tire shop. It's
22 not going to show the actual robbery, but it's going
23 to show the vehicle pull up, sit there for a couple
24 of minutes, a man with a black shirt, a man with a
25 white shirt get out of the vehicle, pause for a

1 minute, walk out of the picture into the tire shop.
2 A couple minutes later, you're going to see them come
3 running out of that tire shop, get in the car and
4 peel out. You're going to see Mr. Cabrera come
5 running out after them, waving as if to get
6 attention, jumping in his car and taking off after
7 them.

8 You're going to see photographs. The
9 photographs will most likely be introduced at the
10 outset of this case. So keep in mind it won't all
11 make sense when you see all these photographs with
12 the second witness, but as we go through other
13 witnesses in the trial, you will see how they fit
14 into the big picture of this case. You will see
15 photographs both of Mr. Cabrera's Mustang. You'll
16 see photographs of the scene where there was the
17 accident. You'll see photographs of Mr. Cabrera's
18 business where some of the money that was not picked
19 up by the robbers still -- is on the floor where the
20 stun gun is. And you'll see pictures of
21 Mr. Cabrera's injuries.

22 So, ladies and gentlemen, that is the end of my
23 remarks to you. All I would ask you now is simply
24 this, just pay close attention to all the facts and
25 evidence that comes before you in this trial. Use

1 your common sense and your good judgment to weigh the
2 evidence. Then at the end of this case, do justice.
3 Do justice. Thank you.

4 OPENING STATEMENT

5 MS. TAYLOR: Thank you, Your Honor. May it
6 please the Court?

7 THE COURT: Yes, ma'am.

8 MS. TAYLOR: Good morning. Thank you for taking
9 time out of your day. I know we had a snow week, so
10 I'm thankful you guys are taking time off work to do
11 your civic duty. My name is Lauren Taylor. I'm a
12 member of the Greenville County bar and I represent
13 Mr. Leviticus Young in this action.

14 That was kind of confusing, wasn't it? I was
15 confused hearing Mr. Moyer give his opening.
16 Unfortunately, I think y'all are only going to get a
17 little bit more confused as this goes on. An example
18 that I've used for a while now to explain reasonable
19 doubt, which is kind of a difficult concept, even for
20 us lawyers to understand at times, is imagine that
21 you're looking out of a window. And on a clear day,
22 this window is perfectly clear. You can see cars
23 going by. You can see plants, flowers, children
24 playing. But then some dirt gets on that window one
25 day. And something else gets a little bit more dirt

1 the next day. And then pretty soon, that window is
2 so dirty, you can't see through it.

3 That's what's happening here, ladies and
4 gentlemen. You're going to see a lot of confusion.
5 This case is very, very confusing. Even for the
6 trained lawyers here how to break this up to you and
7 make it easy for you to understand and walk through
8 it. You're going to see confusion. You're going to
9 see a lot of improper police work. You're going to
10 see a lot of missing information, contradictory
11 witness statements. And you're going to see a lot of
12 things that just really don't make sense. What I
13 like to call questionable victim behavior. Such as
14 chasing somebody that has gun with a car immediately
15 after you've been beaten and bloody.

16 As you guys go through all this, you're going to
17 hear facts and statements. And maybe it's a little
18 unorthodox of me, but I would argue to you at this
19 point, the facts are more conducive with an assault
20 and battery in this case and not an armed robbery.
21 The State was overzealous. They got the wrong
22 charge. What I would argue is that Mr. Cabrera, in
23 fact, did know these co-defendants, Mr. Williams and
24 Mr. Young. That they had a prior altercation a week
25 or two before at the Polo Club Apartments over an

1 unnamed female, who we still have not figured out who
2 this individual is. And this incident was a followup
3 of this previous incident.

4 This was not a robbery. They did not go there
5 intending to rob them. You even heard the solicitor
6 state there was money left on the ground. What kind
7 of robbers go and do that and leave money behind?
8 This was an incident between people that knew each
9 other having an altercation. This was not an armed
10 robbery. And we believe the facts and the evidence
11 is going to show you that.

12 I just ask that you be patient, try as best as
13 you can to follow along. And I'm going to,
14 hopefully, tie this all in a pretty bow for you at
15 the end of the trial. Thank you so much for your
16 service. I look forward to working with you.
17 Thanks.

18 THE COURT: Okay. Ladies and gentlemen, we'll
19 begin with the presentation of evidence, but let's
20 take a quick break, just a short break. The bailiff
21 will show you where your jury room is and we'll come
22 back in and we'll begin with the introduction of our
23 first witness. Please don't discuss the case.

24 (WHEREUPON, the jury left open court at
25 approximately 11:15 a.m.)

RENEE BEAUFORD-DIRECT BY MR. MOYER

1 THE COURT: Okay. We'll take a short break.

2 We'll come back in about five, 10 minutes, okay.

3 (WHEREUPON, a short break was taken.)

4 THE COURT: All right. You can bring the jury
5 in.

6 (WHEREUPON, State's Exhibits Nos. 1, 2, 3, 12-19
7 were marked for identification only.)

8 (WHEREUPON, the jury came into open court at
9 approximately 11:35 a.m.)

10 (WHEREUPON, State's Exhibits Nos. 23-26 were
11 marked for identification only.)

12 THE COURT: All right, Mr. Moyer, you may call
13 your first witness, sir.

14 MR. MOYER: Thank you, Your Honor. May it
15 please the Court. The State calls Renee Beauford.

16 THE CLERK: Would you put your left hand on the
17 Bible and raise your right..

18 RENEE BEAUFORD, after being duly
19 sworn, testified as follows:

20 THE CLERK: Please have a seat. Will you state
21 your name for the record?

22 THE WITNESS: Rhonda Renee Beauford.

23 THE CLERK: Thank you.

24 DIRECT EXAMINATION

25 BY MR. MOYER:

RENEE BEAUFORD-DIRECT BY MR. MOYER

1 Q Where are you employed?

2 A Greenville County Sheriff's Office.

3 Q How long have you worked -- how long have you
4 been in law enforcement?

5 A I've been in law enforcement 31 years.

6 Q How much of that has been with the sheriff's
7 office?

8 A In Greenville County, 21 years.

9 Q Where did you work prior to that?

10 A Spartanburg County Sheriff's Office.

11 Q What do you do currently for the Greenville
12 County Sheriff's Office?

13 A I work as a research analyst and also training
14 coordinator officer.

15 Q Tell us about your duties in that role.

16 A As research analyst, what I do is, any
17 information that comes into our dispatch system is
18 available for our deputies or for the attorneys, or even
19 the public. So, I pull that information, whether it be
20 the recordings or whether it be documentation in written
21 format or audio recordings, I process all requests.

22 Q So, if someone needed a 911 call, you're the
23 person that would be contacted about that?

24 A Yes.

25 Q You're person who comes to court to bring that

RENEE BEAUFORD-DIRECT BY MR. MOYER

1 recording to court?

2 A Yes.

3 Q How long have you been in this role?

4 A I'm going on my fifth year.

5 Q Okay. So, you have testified in court before on
6 numerous occasions?

7 A Yes.

8 Q Okay. Well, let's start off by talking to you
9 about a 911 call. First off, tell the jury what the call
10 center is.

11 A The call center is, actually, called PSAP,
12 Public Safety Answer Point. We answer all 911 calls for
13 Greenville County, as well as non-emergency calls for the
14 sheriff's office.

15 Q Okay. And are the people who work in the call
16 center, are they called or referred to as dispatchers?

17 A Yes, they are.

18 Q Okay. What do dispatchers at the call center
19 do?

20 A They answer the incoming calls and process them
21 accordingly. Enter them into the system to be dispatched
22 out to our deputies or either disburse them out to other
23 entities, like EMS or fire or highway patrol.

24 Q Now, are all calls received by dispatcher at the
25 call center recorded?

RENEE BEAUFORD-DIRECT BY MR. MOYER

1 A Yes, they are.

2 Q How are they recorded?

3 A They're recorded on a digital system. They're
4 recorded digitally, automatically and simultaneously.

5 Q Who do you mean by that?

6 A The system, of course, is a digital-type
7 recording system. Automatically means that they're --
8 time that phone is answered, it is automatically recorded.
9 They don't have to hit any kind of prompt to tell it to
10 record that conversation. And then simultaneously,
11 meaning it's recorded in chronological order by the time
12 it comes in. You know, one after the other, they're
13 recording.

14 Q Now, can a recording be stopped during the
15 recording process?

16 A No.

17 Q At what point does a 911 call begin to be
18 recorded.

19 A The system at that time, a 911 call, when the
20 person would hit the 9-1 and second 1, it automatically
21 started recording on our system, even before our dispatch
22 picked up. As the public would call in, it recorded
23 starting at that point.

24 Q That's the way it was in June of 2014?

25 A That is correct?

RENEE BEAUFORD-DIRECT BY MR. MOYER

1 Q Is it still that way?

2 A No, it's not. We have a new phone system since
3 then.

4 Q Now, does anyone -- for example, the dispatcher
5 or anyone else who receives a call have any control over
6 how the call is recorded or what part of the call is
7 recorded as it's happening?

8 A No.

9 Q Okay. So, do the call records accurately
10 reflect the conversations that take place between a 911
11 caller and the dispatcher?

12 A Yes, they do.

13 Q Okay. You may have already answered this, but
14 how are those recordings then kept?

15 A They're recorded, of course, digitally, and then
16 we have a server and they're kept on the server for three
17 years.

18 Q Okay. They're kept in the ordinary course of
19 your operations there at the call center?

20 A Yes, they are.

21 Q And your duties include the responsibility for
22 maintaining those calls and recordings?

23 A That is correct, sir.

24 Q Okay. As you've already testified, it's also
25 your duty to come to court for the purpose of introducing

RENEE BEAUFORD-DIRECT BY MR. MOYER

1 them into a court of record?

2 A That is correct.

3 Q Okay. Let me draw your attention to June the
4 6th of 2014. Was the recording system working properly on
5 that date?

6 A Yes, it was.

7 Q On that date, was a 911 call received from
8 someone named Stephanie Bishop?

9 A Yes, it was.

10 Q Was that call recorded in the manner you just
11 described?

12 A Yes, it was.

13 Q Now, have you -- have you made a copy of that
14 recording?

15 A Yes, I did.

16 Q And you have brought it to court?

17 A I did.

18 Q Let me hand you State's Exhibit No. 1. Take a
19 look at that and see if you can identify what that is and
20 tell us how you can identify it.

21 A Yes. It's a recording that's got -- actually,
22 documented with Defendant's -- or last names of involved
23 parties. But right here is my initials and the date that
24 I reviewed and verified that it was an accurate and true
25 copy of the recording.

RENEE BEAUFORD-DIRECT BY MR. MOYER

1 Q So, you made an exact copy of that recording?

2 A Yes, I did.

3 Q You didn't make any changes, additions or
4 deletions of any kind?

5 A No, sir.

6 Q So, that's an exact duplicate of Stephanie
7 Bishop's call on June the 6th of 2014?

8 A That is correct.

9 Q And you've, actually, reviewed that recording?

10 A I have.

11 Q Now, can you tell us what time that call was
12 made?

13 A The call came in at 18:04 and 58 second. That
14 would be 6:00 p.m., 6:04 and 58 seconds.

15 Q Is it just right about 6:05 p.m.?

16 A That is correct. The actual documentation, the
17 entry of the call shows 6:05, a two-second difference.

18 Q Okay. Now, I want to ask you about a couple of
19 other time-related matters related to this case?

20 A Okay.

21 Q So, when a call -- like, when a particular 911
22 call has been made that instigates dispatch to officers,
23 do the times get recorded as officers do various things
24 throughout that matter?

25 A Yes.

RENEE BEAUFORD-DIRECT BY MR. MOYER

1 Q And does that -- is that put on a record?

2 A It is.

3 Q What is that record called?

4 A All of our calls are entered what they call --
5 we call CAD, Computer Aid Dispatch system. A call is
6 entered for service and then any updated comments, deputy
7 going in route, on scene or any movement of that deputy to
8 a different location would be documented, time stamped in
9 that call. And that is done automatically. As we make
10 that entry, it automatically time stamps it.

11 Q Okay. And those records are kept in the
12 ordinary course of business for the sheriff's office?

13 A Yes, it is.

14 Q That's a regular practice then to keep those
15 records?

16 A Yes.

17 Q You have access to that information as a
18 regular, normal function of your job?

19 A I do.

20 Q You've already told us that Stephanie Bishop's
21 911 call came in at 6:04:58. Let me ask you about a
22 couple other times. First off, can you tell us what time
23 Deputy Husk had interaction with a man associated with
24 this case?

25 A That was at 18:10:52.

RENEE BEAUFORD-DIRECT BY MR. MOYER

1 Q Okay.

2 A At recording-wise.

3 Q Okay.

4 A Time stamped 18:11.

5 Q What do you mean by that?

6 A The recording, as he calls it in, would be at
7 6:10 and 52 seconds. The documentation into the actual
8 CAD, dispatcher, it took her eight second for her
9 typing -- answer and typing, so that's why there was eight
10 seconds. But 18:11 was his time stamp of when he was
11 there.

12 Q What would be 6:11 p.m.?

13 A That's correct?

14 Q Do the records show who Deputy Husk had contact
15 with?

16 A It gave a description of a subject that he was
17 out with that had approached him, being a Hispanic male
18 wearing camouflage.

19 Q Okay. So -- okay. And can you tell us -- let
20 me ask you this, so the term is camo?

21 A Camo for camouflage, yeah. It was an
22 abbreviation.

23 Q Can you tell us what time Deputy McAlmont
24 arrived on this scene?

25 A Deputy McAlmont arrived at 1824.

RENEE BEAUFORD-CROSS BY MS. TAYLOR

1 Q That would be 6:24 p.m.?

2 A 6:24 p.m.

3 Q And that was the scene of the accident?

4 A That is correct.

5 Q Then, finally, can you tell us what time Deputy

6 Husk went back to that same intersection where the

7 accident was at Old Buncombe and Morris?

8 A Deputy Husk went over to that intersection at

9 6:37 p.m.

10 MR. MOYER: Okay. One moment, please. That's

11 all the questions I have for this witness.

12 Please answer any questions the Defense may

13 have.

14 MS. TAYLOR: Just briefly.

15 CROSS-EXAMINATION

16 BY MS. TAYLOR:

17 Q Thank you, Ms. Beauford. At the time the 911

18 call came in, was it for a hit and run or was it for an

19 armed robbery?

20 A At the time that -- you're referring to the

21 original 911 call --

22 Q Yes, ma'am.

23 A -- of Ms. Bishop? That was called in as -- it

24 was possibly -- well, the way it was put in was put in as

25 a disturbance, where one vehicle was chasing another

DAR SHAW-DIRECT BY MR. MOYER

1 vehicle. And as far as documentation into the actual CAD,
2 it doesn't say a wreck. But it just says that people are
3 having a disturbance with each other and one vehicle is
4 chasing another vehicle.

5 Q Okay. Did you ever get a 911 call about -- to
6 report an armed robbery on this incident, on this date?

7 A No.

8 Q Okay.

9 MS. TAYLOR: No further questions.

10 MR. MOYER: Nothing further.

11 THE COURT: Okay, good enough.

12 All right, thank you, ma'am. I appreciate you
13 being here. You may step down.

14 THE WITNESS: Thanks.

15 THE COURT: Yes, ma'am.

16 MR. MOYER: State calls Dar Shaw.

17 DAR SHAW, after being duly sworn,
18 testified as follows:

19 THE CLERK: Please have a seat. And will you
20 state your full name for the record?

21 THE WITNESS: Darwin Shaw, S-H-A-W.

22 DIRECT EXAMINATION

23 BY MR. MOYER:

24 Q Okay. Would tell us where you're employed, sir?

25 A I'm employed with the forensic division,

DAR SHAW-DIRECT BY MR. MOYER

1 Department of Public Safety in Greenville County.

2 Q How long have you been in law enforcement?

3 A July will be 40 years.

4 Q How much of that has been with the forensics
5 division?

6 A Eighteen years.

7 Q Where did you work prior to that?

8 A I was with a police department in Nebraska,
9 seven years as a road officer, 14 as a detective.

10 Q Okay. So, tell the jury a little bit about what
11 a forensics officer does.

12 A We respond to calls generated by agencies within
13 Greenville County to assist them with working their crime
14 scenes, which could include the collection of evidence,
15 photographic documentation, fingerprint processing.
16 Mainly, processing the scenes for that.

17 Q Okay. Now, were you called out in this
18 particular case that is before the Court?

19 A Yes, I was.

20 Q Okay. How many different locations did you
21 respond to?

22 A I went to three.

23 Q Would you tell us the addresses for those three
24 locations?

25 A The first address was [REDACTED] First Avenue in Poe

1 Mill. The second address I responded to was at Poinsett
2 Tire, 1301 Poinsett Highway. And the third was
3 intersection of Old Buncombe and Morris Street.

4 Q And you went in that order?

5 A Yes, sir.

6 Q Now, are all three of those locations in
7 Greenville County?

8 A Yes, they are.

9 Q What time were you called out?

10 A I got called about 6:30 p.m.

11 Q What time did you arrive at that first scene,
12 [REDACTED] First Avenue?

13 A About 6:50.

14 Q What time did you finish up at that final
15 location?

16 A About an hour later. From the total scene was
17 about 7:50.

18 Q So, let's start off with that first location,
19 [REDACTED] First Avenue. Was there an officer at that location
20 when you arrived?

21 A There was.

22 Q What evidence were you called out there to
23 observe?

24 A I was called to photograph a vehicle and, also,
25 to collect blood from the vehicle.

DAR SHAW-DIRECT BY MR. MOYER

1 Q Okay. Do you remember what kind of vehicle it
2 was?

3 A It was a Ford Mustang?

4 Q Was the victim there at that time?

5 A No, sir.

6 Q Did you photograph the vehicle?

7 A I did.

8 Q Did you notice anything about the vehicle that
9 appeared to have any relevance at all?

10 A Well, the only relevance was -- my understanding
11 from the deputy was that this vehicle was involved in
12 impacting with another vehicle. And so I looked at the
13 bumper on both sides looking for any possible transfer,
14 paint transfer, anything that might indicate some type of
15 contact was made. And I also observed a spot of blood on
16 the driver's door above the door lock and behind the door
17 handle.

18 Q Did you see any paint transfer?

19 A No, sir, I didn't.

20 Q But you said you did see some what appeared to
21 be blood?

22 A Yes, sir.

23 Q You took photographs of those?

24 A I did.

25 Q Okay. Okay. I'm going to show you State's

1 Exhibit Nos. 3, 12, 13 and 14. Would you take a look at
2 those and see if you can recognize what is in those
3 photographs?

4 A (The witness complies.) Yes, sir.

5 Q Okay. What is that?

6 A The first photograph was just an overall
7 photograph of the exterior of vehicle from the front
8 driver's side. The second is a photograph of an area of
9 blood on the driver's door. The third is an actual
10 close-up photograph of the blood on the door. And the
11 fourth is a photograph of the front bumper on the
12 passenger side.

13 Q Okay. And you're talking about the Mustang at
14 [REDACTED] First Avenue?

15 A That's correct.

16 Q And are they true and accurate representations
17 of the way the Mustang looked to you as you observed it on
18 the evening of June the 6th of 24014?

19 A Yes, it is.

20 MR. MOYER: Your Honor, at this time, I'd move
21 to have State's Exhibits 3, 12, 13 and 14 introduced
22 into evidence.

23 MS. TAYLOR: Without objection, Your Honor.

24 THE COURT: All right, without objection, the
25 same are moved into evidence.

DAR SHAW-DIRECT BY MR. MOYER

1 (WHEREUPON, State's Exhibits Nos. 3, 12-14 were
2 admitted into evidence.)

3 BY MR. MOYER:

4 Q We're going to start off with State's Exhibit
5 No. 3.

6 Would you turn the lights on one moment,
7 please. I think we can actually see it well enough
8 without the light.

9 Can you tell the jury what is shown in
10 State's Exhibit No. 3?

11 A This is just a single photograph taken of the
12 front of the vehicle as I arrived on the scene.

13 Q Okay. Show you State's Exhibit No. 12.

14 A It's a photograph of an area of blood behind the
15 door handle on the driver's door.

16 Q Okay. And you took a close-up picture of that?

17 A Yes, I did.

18 Q State's Exhibit No. 13, is that what's shown in
19 that photograph?

20 A Yes, it is.

21 Q Would it be this particular area right here that
22 I'm using the laser pointer on?

23 A Yes, sir.

24 Q And State's Exhibit No. 14, would you tell the
25 jury what's in that photograph?

1 A That's a photograph of the front bumper on the
2 passenger side after I looked at it to try to find any
3 paint transfer or anything that might have corroborated
4 the information that he had impacted another vehicle.

5 Q Okay. After photographing the Mustang at that
6 location, where did you go next?

7 A I went to the Poinsett Tire at 1301 Poinsett
8 Highway.

9 Q Were there deputies at that location when you
10 arrived?

11 A Yes, sir. There was a sergeant and Deputy
12 Hudson.

13 Q Were you shown the building in which the
14 incident was said to have taken place?

15 A I was.

16 Q Did you photograph it?

17 A I did.

18 Q Inside and out?

19 A Yes, sir.

20 Q Did you move anything or disturb any of the
21 evidence before taking photographs?

22 A No, sir, I didn't.

23 Q Did you end up collecting any evidence from that
24 location?

25 A Yes, I did.

DAR SHAW-DIRECT BY MR. MOYER

1 Q What was that?

2 A A stun gun.

3 Q Did you photograph the location of the stun gun
4 before collecting it?

5 A Yes, I did.

6 Q Now, do you know the difference between a taser
7 and a stun gun?

8 A A stun gun is a device that has two electric
9 probes that when you push a button, it has an arc that
10 shoots across. Some are 30,000 volts, some up to 100,000
11 volts. But it has to make contact with an object, like a
12 body or a person. When the button is pushed, it shoots an
13 arc and causes a shock to that particular area. A taser
14 has a probe -- two electric probes with filament line that
15 can be shot and impacted into a body. The probes -- the
16 impact and the shock gets applied at that point.

17 Q Now, can stun guns be bought and sold without
18 any legal controls or prohibitions?

19 A Yes, sir.

20 Q Okay. How about tasers?

21 A Not to my knowledge, no.

22 Q But stun guns can?

23 A Yes, sir.

24 (WHEREUPON, State's Exhibits Nos. 27-32 were
25 marked for identification only.)

1 BY MR. MOYER:

2 Q Okay. I want to start off by showing you
3 State's Exhibit Nos. 23, 24, 25, 26, 27, 28, 29, 30, 31
4 and 32. If you would, just take a look quickly at each of
5 those photographs.

6 A (The witness complies.)

7 Q Okay. Let me ask you -- have you had a chance
8 to review those?

9 A Yes, sir, I have.

10 Q Are those photographs that you took on June the
11 6th of 2014 at Poinsett Tire?

12 A Yes, they are.

13 Q Inside and out?

14 A Yes, sir.

15 Q Are they true and accurate representations of
16 the way those locations looked at the time you took those
17 photographs?

18 A They are.

19 MR. MOYER: Your Honor, at this time, I would
20 move State's Exhibits 23 through 32 into evidence.

21 MS. TAYLOR: Without objection, Your Honor.

22 THE COURT: All right, without objection, the
23 same is moved into evidence.

24 (WHEREUPON, State's Exhibits Nos. 23-32 were
25 admitted into evidence.)

DAR SHAW-DIRECT BY MR. MOYER

1 BY MR. MOYER:

2 Q Start off by showing you State's Exhibit 23.
3 Can you tell the jury what is shown -- is that -- let me
4 ask you this, is that Poinsett Tire on Poinsett Highway,
5 the location you responded to?

6 A Yes, it is.

7 Q Okay. Is that outside of that particular
8 building where you were told the incident was said to have
9 taken place?

10 A That's correct.

11 Q This is Exhibit 24, is that a closer-up
12 photograph of that location?

13 A Yes, sir.

14 Q State's Exhibit 25, what is shown in that
15 photograph?

16 A That's just an overall photograph of the
17 interior of the building standing outside of the building.

18 Q That's standing right around the entrance to
19 that building?

20 A That's correct.

21 Q State Exhibit 26.

22 A That is just another photograph as I progressed
23 inside the building to get additional photographs of the
24 interior.

25 Q Just to gain perspective, these tables that we

1 see in this photograph, are they the same tables that we
2 see towards the back of the building in State's Exhibit
3 No. 25?

4 A Yes, they are.

5 Q Okay. State's Exhibit No. 27, tell the jury
6 what we see in that photograph.

7 A In that photograph, there was a shoe, an
8 athletic shoe. And I asked the deputy if that shoe was
9 related to this incident. And he checked and got back to
10 me and said no, it was not, the shoe was there prior to.
11 But because it was in a scene, looked out of place, it was
12 photographed.

13 Q And that's the same picnic table that we saw in
14 the other photographs?

15 A It is.

16 Q State's Exhibit No. 28, is that a photograph
17 taken of that same area?

18 A It is.

19 Q In fact, that shoe that we see at the top, is
20 that the shoe that we see in the other photograph?

21 A Yes, it is. There was a boot closer towards the
22 entrance.

23 Q What else is shown in that?

24 A There's a stun gun, which was what I later
25 collected as evidence.

DAR SHAW-DIRECT BY MR. MOYER

1 Q All right. I'll use the laser pointer. Is that
2 the stun gun right there?

3 A Yes, it is.

4 Q Okay. State Exhibit No. 29.

5 A That is a photograph -- it's kind of a distance
6 photograph. There was some cash laying on top of the --
7 behind the fan. There were some dollar bills on top of
8 that little shelf and also on the floor behind the fan.
9 And the photographs were taken of that money that was
10 laying loose.

11 Q You took closer-up photographs of those?

12 A Yes, I did.

13 Q Is State's Exhibit 30 one of those closer
14 photographs?

15 A It is.

16 Q And using the laser pointer, is that some of the
17 money you just referred to?

18 A Yes, sir.

19 Q State's Exhibit 31, is that a closer picture of
20 that money?

21 A Yes, the money that was on the floor.

22 Q By the fan, correct?

23 A Yes, sir.

24 Q Then you took photographs of money -- you
25 mentioned money on the floor. Does State's Exhibit No. 32

1 show the money that was on the floor?

2 A Correct. There were bills on the shelf as well
3 as on the floor behind the fan.

4 Q Is that what we see in this photograph?

5 A Yes, it is.

6 Q Where I'm pointing with the laser. Now, did you
7 meet with Mr. Cabrera at Poinsett Tire?

8 A I did.

9 Q What was the purpose of meeting with him there?

10 A I was advised that he had injuries that had been
11 sustained. And I was to photograph the injuries that he
12 had to his person.

13 Q Did you make observations about his injuries as
14 you took the photographs?

15 A I did.

16 Q What observations of any possible injury did you
17 see to Mr. Cabrera?

18 A Visually, without going in and checking under
19 clothing, I saw that he had an area, like an abrasion on
20 the left side of his neck, looked like there was some
21 blood that had developed. He also had on the left side of
22 his forehead, kind of a knot with an abrasion there. And
23 then on the top of his head, there was an area of blood
24 where he said he had been struck. So, I photographed
25 those injuries. I asked if there were any more. He said

DAR SHAW-DIRECT BY MR. MOYER

1 he had some on his back, so he lifted his jacket up. And
2 he had abrasions along his lower back on both right and
3 left side.

4 Q To his arm as well?

5 A Yes, the back of his right arm above the elbow.

6 Q Okay. I'm going to show you State's Exhibit
7 Nos. 15 through 19. Just take a quick look at those and
8 see if they are the photographs that you took of
9 Ms. Cabrera on June the 6th of 2014?

10 A Yes, they are.

11 Q And they're true and accurate representations of
12 the way Mr. Cabrera looked on that date when you took the
13 photographs?

14 A They are.

15 MR. MOYER: Your Honor, at this time, I would
16 move to have State's Exhibits 15 through 19 entered
17 into evidence.

18 THE COURT: Objections?

19 MS. TAYLOR: No objection, Your Honor.

20 THE COURT: All right, without objection, the
21 same are admitted into evidence.

22 (WHEREUPON, State's Exhibits Nos. 15-19 were
23 admitted into evidence.)

24 BY MR. MOYER:

25 Q I'm going to ask you, if you can see well enough

1 from there, to use the laser pointer to point out what
2 you've just described to the jury. If you can't see from
3 there, I'd ask you to step outside. So, first off, this
4 is State's Exhibit 15. Can you tell the jury what is
5 shown in that photograph?

6 A All right. Typically, when taking photographs
7 of victims, I want to take an overall photograph at a
8 distance just to show their facial features. Then I get
9 into taking closer photos of the injuries.

10 On the left side of his neck and towards
11 the front, it looked like there was some dried blood along
12 this area and an abrasion along the bottom that ran around
13 the side of his neck about five or six inches in length.

14 Q What do you mean by abrasion?

15 A Some type of contact has been made where it has
16 abraded the skin and caused it to be red. And if it's
17 deep enough, can cause it to bleed.

18 Q State's Exhibit No. 16.

19 A This is a close-up photograph of an abrasion,
20 again, to the left part of the forehead. It was slightly
21 swollen. And you can see the redness of the skin had come
22 up due to being scrapped with some object.

23 Q State's Exhibit 17.

24 A That, again, is just another close-up photograph
25 of the injury to the neck. And, again, the abrasion ran

DAR SHAW-DIRECT BY MR. MOYER

1 along the bottom. The redness came back to about halfway
2 on his neck.

3 Q And State's Exhibit 18.

4 A This is -- I had him pull his shirt up and on
5 the lower part of his back around the beltline, there was
6 almost like a rug burn or some type of abrasion along the
7 lower part of his right back, and also on the left side of
8 his lower back.

9 Q And State's Exhibit 19.

10 A I had him tilt his head forward and he showed
11 me -- there was actually wet blood at the top of his head.
12 Of course, because of the hair, it's difficult to
13 photograph this specific injury, but there was blood
14 present.

15 Q Now, going back to the taser that you said you
16 observed -- I'm sorry, the stun gun that you said you
17 observed on the floor and took photographs of, you did
18 collect that?

19 A Yes, sir, I did.

20 Q And you took it to the evidence room?

21 A It was later placed in property and evidence,
22 yes.

23 Q Okay. Let me show you State's Exhibit No. 37.

24 And if you would, take a look at the packaging and open it
25 up and look at it and see if you can identify what that

1 exhibit is.

2 A (The witness complies.) Yes, sir. This is a
3 paper bag that I had placed the stun gun in. I had made a
4 bar code identifying this item as a Zan stun gun, serial
5 number AZ998BK. It was labeled as DS-2, which are my
6 initials, and the two, that was the second piece of
7 evidence that I collected. And my initials are on the
8 back of the evidence tape when I sealed it before it went
9 into property and evidence.

10 Q So, is that the stun gun then that you collected
11 at Poinsett Tire on June the 6th of 2014?

12 A It is. The serial number on this is the same
13 that I had put on the bar code when it was put into
14 property and evidence.

15 Q And it's in substantially the same condition now
16 as it was when you collected it and saw it on June the 6th
17 of 2014?

18 A It appears to be, yes.

19 MR. MOYER: Your Honor, at this time, I move to
20 have State's Exhibit No. 37 entered into evidence.

21 MS. TAYLOR: Without objection, Your Honor.

22 THE COURT: All right, without objection, the
23 same is admitted.

24 (WHEREUPON, State's Exhibit No. 37 was marked
25 for identification and received into evidence.)

DAR SHAW-DIRECT BY MR. MOYER

1 BY MR. MOYER:

2 Q Now, if you were to try to activate that at this
3 point, would it make a loud noise?

4 A It would.

5 MR. MOYER: With the Court's permission, I would
6 ask --

7 Q Let me ask you this, would it put anyone in
8 danger?

9 A No.

10 Q Okay.

11 A The probes have to be in contact before it would
12 be of any danger to anybody.

13 MR. MOYER: With the Court's permission, I would
14 ask that the officer be allowed to activate the stun
15 gun.

16 THE COURT: Sure. Do you want to demonstrate
17 its effect?

18 MR. MOYER: No, Your Honor.

19 THE COURT: Yes, sir, you may do so.

20 THE WITNESS: I'd kind of like to see that,
21 Mr. Moyer. As I said, what it does is it shoots
22 electrodes between the two probes. These two metal
23 contacts have to have contact with the body. And
24 then when it's activated, it sets off the shock and
25 that's what causes either a burn or could leave marks

DAR SHAW-DIRECT BY MR. MOYER

1 on the skin that are comparable in size to the two
2 probes.

3 BY MR. MOYER:

4 Q Have you turned it off?

5 A Yes, sir.

6 Q Thank you. Okay. Now, upon taking these
7 photographs and collecting evidence that you just told us
8 about, where did you go then?

9 A I then went to Old Buncombe and Morris Street.

10 Q Now, were there deputies at that scene when you
11 arrived?

12 A There were.

13 Q What did you do at that particular location?

14 A My purpose there was to document, photograph the
15 vehicle. It was a vehicle that had impacted a power pole.
16 There was significant damage to the front of the vehicle.
17 So, I did an overall photograph of the exterior of the
18 vehicle as well as the interior. And then I looked at,
19 like, the rear bumper of that vehicle to see if I could
20 identify any marks that might be consistent with being
21 impacted by another vehicle as far as paint transfer.

22 Q Did you see any?

23 A I didn't. There was scratches and scuffs, but
24 nothing that I could identify as coming from a particular
25 vehicle.

DAR SHAW-DIRECT BY MR. MOYER

1 Q Okay. Were any suspects at that location when
2 you arrived?

3 A No, sir.

4 Q They had been -- or if any had been there, they
5 had been taken away from the scene?

6 A Yeah, I was not told that there were any there.

7 Q Now, were you told about any firearm or
8 firearms?

9 A I was told that a weapon had been found in the
10 vehicle and had been collected by a deputy before I had
11 gotten there.

12 Q So, that was -- the firearm then was no longer
13 at the location when you arrived?

14 A I didn't see a firearm, no.

15 Q Okay. Did you make any photograph of the area
16 where it had been said to have been found? Inside the
17 vehicle?

18 A Just from outside, I took photographs of the
19 inside. There was some type of compartment under the
20 driver's seat with a door that comes down. And I believe
21 that was where the weapon had been at.

22 Q Okay.

23 (WHEREUPON, State's Exhibits Nos. 8 and 10 were
24 marked for identification only.)

25 MS. TAYLOR: Your Honor, if I may, I think we

DAR SHAW-DIRECT BY MR. MOYER

1 have a matter we might need to take up outside the
2 presence of the jury.

3 THE COURT: Come up and tell me what it is.

4 (WHEREUPON, an off-the-record bench conference
5 was held in the presence of the jury but out of
6 the hearing of the jury.)

7 (WHEREUPON, State's Exhibits Nos. 7, 20-22, 35
8 and 36 were marked for identification only.)

9 BY MR. MOYER:

10 Q Okay. Just to be clear on one particular point,
11 if there are any pictures of the firearm in the car, those
12 pictures would not have been taken by you, is that
13 correct?

14 A (There was no response.)

15 Q In other words, if there's a picture of a pistol
16 at that location, you wouldn't have taken that picture,
17 someone else would have taken it?

18 A That's correct.

19 Q Because there was not a firearm there when you
20 arrived?

21 A That's right. I was told it had already been
22 collected.

23 Q Okay. I am now going to hand you State's
24 Exhibits 4 through 7, 20, 21, 22, 8 and 10. And I would
25 just like you to take a look at these picture and tell us

DAR SHAW-DIRECT BY MR. MOYER

1 if these were the photographs that you took at the
2 intersection of Old Buncombe and Morris Street. And if
3 they are true and accurate representations of the vehicle
4 and those parts of the vehicle that you saw on that day?

5 A (The witness complies.) Yes, sir. These are
6 photographs that I took and they are an accurate
7 representation of the scene as I found it.

8 MR. MOYER: Your Honor, at this time, I move to
9 have State's Exhibits 4, 5, 6, 7, 20, 21, 22, 8 and
10 entered evidence.

11 MS. TAYLOR: Without objection, Your Honor.

12 THE COURT: Okay, without objection, the same is
13 admitted into evidence.

14 (WHEREUPON, State's Exhibits Nos. 4-8, 10 and
15 20-22 were admitted into evidence.)

16 BY MR. MOYER:

17 Q Do you still have the laser pointer?

18 A Yes, sir.

19 Q Let's start off with State's Exhibit 4. Tell
20 the jury what is depicted in that photograph.

21 A This was a photograph taken from Morris Street
22 to -- and Old Buncombe is running this direction. It's
23 just an overall photograph showing the impact that the
24 vehicle made with the power pole.

25 Q Okay. And let me show you State's Exhibit No.

1 5.

2 A It's the same photograph. It's just from a
3 different location, just from a different direction. I
4 was further towards the building when the first photograph
5 was taken. I just moved around in a semi-circle to get a
6 different view of the vehicle.

7 Q State's Exhibit 6.

8 A Photograph taken directly behind the vehicle
9 showing the driver's door was standing open.

10 Q What kind of vehicle was that?

11 A Mercedes.

12 Q It's black?

13 A Yes, sir.

14 Q State's Exhibit 7?

15 A That was just a photograph of the interior of
16 the vehicle from the open driver's door showing that both
17 airbags had deployed. It was just anything that the
18 photographs might pick up looking inside the vehicle.

19 Q Okay. Can you point -- looking down to right
20 below the seat, can you tell us what, if anything, was
21 that area right there and if you took any closer pictures
22 of it?

23 A I did. This area here is the compartment --
24 it's a compartment that is under the driver's seat that
25 pulls out from under the driver's seat.

DAR SHAW-DIRECT BY MR. MOYER

1 Q State's Exhibit 8.

2 A That is just another photograph of the
3 compartment. That is the door that flips open with the
4 compartment. It's actually enclosed under the seat.

5 Q That was open when you saw it?

6 A Yes, it was.

7 Q You didn't open it?

8 A No, sir.

9 Q State's Exhibit 10.

10 A Again, that's just a different view showing the
11 door that's open as well as the compartment under the
12 seat.

13 Q State's Exhibit 20.

14 A This was a photograph of the rear end of the
15 vehicle. This would be the rear passenger side showing
16 any discoloration or any possible impact areas.
17 Basically, it was just photographed -- I photographed both
18 passenger and driver's side just to document any damage
19 that might be there.

20 Q State's Exhibit 22.

21 A This is a title or registration -- or title to
22 this vehicle.

23 Q Okay. And then State's Exhibit 21.

24 A It's -- again, this is a bill of sale for this
25 specific vehicle. And it showed that the buyer was a

1 Steven Williams. And the purchase date, I think, April of
2 2014.

3 Q Zoom in on that. Are you able to see it from
4 there? The date?

5 A Yeah, it shows the purchase date here
6 April 14th, 2014.

7 Q And Steven Williams as the purchaser?

8 A Right. It shows on there as the buyer, yes.

9 Q That was for the black Mercedes?

10 A It was.

11 Q Okay.

12 MR. MOYER: Please answer any questions that the
13 Defense may have.

14 THE COURT: Yes, ma'am.

15 MS. TAYLOR: Thank you, Your Honor. May it
16 please the Court.

17 CROSS-EXAMINATION

18 BY MS. TAYLOR:

19 Q Mr. Shaw, so you were the primary forensic
20 officer on this case, is that correct?

21 A That's correct.

22 Q So, all of the evidence in regards to this case
23 was handled in one way or another by you, is that correct?

24 A Anything that I collected would have been by me.
25 There may have been potentially other evidence that I

DAR SHAW-CROSS BY MS. TAYLOR

1 would have no control over.

2 Q Okay. But even so, you put it in a bag and
3 you're over it when it gets brought to property and
4 evidence?

5 A That's correct.

6 Q Okay. All right. Let me ask you some questions
7 about this stuff that you say you gathered from the scene.
8 Just briefly, when the solicitor was putting up all those
9 pictures. We talked about the things we found. The
10 shoes. The shoes didn't belong to anybody but the victim,
11 is that correct?

12 A My understanding is they were there prior to
13 the -- prior to the incident, so there was no reason to
14 collect those.

15 Q And that's both pairs of shoes, like the boots
16 and any other pair of running shoes we saw?

17 A That's correct.

18 Q Now, you found this stun gun. That thing was
19 really scary. It made loud noises. What happens when it
20 hits you?

21 A Again, depending upon the voltage, the two metal
22 probes at the end, when you make contact, it sends a shock
23 to that particular part of the body. Depending upon where
24 it is actually impacted, it could immobilize you if it
25 were in the neck or somewhere. Of course, if it goes

1 through the clothing, the impact may not be as much.

2 Q That would absorb it?

3 A Somewhat, it would, but you'd still get some
4 type of effect. Again, depending upon where you were
5 shocked would determine where it would happen. Again,
6 once I was told that a stun gun was used, I looked and
7 didn't see any marks on him where any -- where I would
8 identify those as being from the stun gun.

9 Q So, you're not a medical professional, but in
10 your opinion of forensics, you didn't find any place on
11 the victim that appeared to be residual effects from a
12 stun gun; is that correct?

13 A From the areas that I looked, which included his
14 back, the stomach, on those areas not covered by the
15 shirt.

16 Q And the neck?

17 A The neck, I did not, that's correct.

18 Q Would these injuries in your opinion be more
19 consistent with, like, two adult males that got in a
20 brawl?

21 A I couldn't speculate. Some type of -- there
22 were abrasions that happened somehow. But how they got
23 there, I wouldn't know.

24 Q Did you fingerprint the stun gun?

25 A No, I didn't.

DAR SHAW-CROSS BY MS. TAYLOR

1 Q Okay. So, we don't know who had it in their
2 hand?

3 A That's correct.

4 Q Okay. Did you take any DNA evidence off the
5 stun gun?

6 A I did.

7 Q Did that match anybody?

8 A I have no idea.

9 Q Okay.

10 A I processed it for DNA swabs. That evidence
11 gets put into property and evidence. It's up to the
12 agency to have it submitted, either having buccal swabs
13 from the victim or defendants. They would need to have a
14 standard to compare that to.

15 Q So, you did your job, but -- you put it for
16 testing, but you don't know what happened after you
17 submitted it?

18 A I collected the evidence, but it's not up to me
19 to have it submitted, correct.

20 Q Okay. Let's talk about the money really
21 quickly. If I could go back to, I believe, State's
22 Exhibit -- the money. Right here. This is what you
23 photographed?

24 A That is part of what I photographed, yes.

25 Q Okay. So, this is two sets. It looks like

1 there's multiple bills in that set, is that correct?

2 A It does.

3 Q Okay. And that is behind the fan, right?

4 A It's on a shelf that's, I guess, off to the side
5 of the fan.

6 Q To the fan. Okay. And now one, which has been
7 premarked as State's Exhibit 32, this is the money below
8 the fan?

9 A That's correct.

10 Q Where it fell down, okay. And it's kind of like
11 folded into itself, isn't it?

12 A It is.

13 Q So, if somebody was to throw money into the air,
14 wouldn't it kind of disburse and go different places?

15 MR. MOYER: That calls for speculation. I
16 object.

17 MS. TAYLOR: Withdrawn, Your Honor.

18 THE COURT: Okay.

19 MS. TAYLOR: Okay. Give me one second.

20 BY MS. TAYLOR:

21 Q Okay. When you got to the scene, where was the
22 victim when you were taking photos of the vehicles?

23 A Which scene?

24 Q The first one where you got to where you
25 photographed the Mustang?

DAR SHAW-CROSS BY MS. TAYLOR

1 A There was nobody there other than the deputy.

2 Q Okay. There was nobody there. Were you told
3 what happened to the victim?

4 A There was.

5 Q What was told to you?

6 A I was told that there was an armed robbery, that
7 the victim had been driving the Mustang. After he was
8 robbed, the suspects left in a BMW -- or in a Mercedes and
9 the victim chased them in the Mustang. Impacted their
10 vehicle at some point, touched them at Old Buncombe and
11 Morris. Then drove to [REDACTED] First Avenue and his vehicle
12 was left there and he had gone with somebody else.

13 Q Okay. And that's where you first photographed
14 it?

15 A That's correct.

16 Q And the blood that was on that door, did you do
17 any DNA test on that?

18 A No, ma'am. It was collected. Again, I just
19 collected it. It's not my job to test it.

20 Q So, as of right now, we don't know who that
21 blood belongs to?

22 A I don't have an answer for that.

23 Q Okay. As far as these photos, were you ever
24 called out -- you said you were called out to an armed
25 robbery. Was there any report made of a hit and run?

MAC MCBRYDE-DIRECT BY MR. MOYER

1 A I don't know how those -- as far as it
2 progresses, as I'm given information on a scene, I just go
3 from one scene to the other. But the original information
4 that was given to me by the deputy was it was involving an
5 armed robbery.

6 Q What deputy was that, do you remember?

7 A McAlmont.

8 Q Thank you.

9 MS. TAYLOR: No further questions.

10 MR. MOYER: Nothing further, Your Honor.

11 THE COURT: Thank you, sir. You may step down,
12 I appreciate it.

13 Mr. Moyer, how long do you anticipate your next
14 witness will be?

15 MR. MOYER: My next witness will be pretty
16 short.

17 THE COURT: Let's go ahead and do one more
18 witness and then we'll take a lunch break.

19 MR. MOYER: The State would call Mac McBryde.

20 MAC MCBRYDE, after being duly sworn,
21 testified as follows:

22 THE CLERK: Please have a seat. Will you state
23 your full name for the record?

24 THE WITNESS: Mac McBryde.

25 DIRECT EXAMINATION

MAC MCBRYDE-DIRECT BY MR. MOYER

1 BY MR. MOYER:

2 Q Mr. McBryde, would you spell your last name for
3 the court reporter?

4 A M-C-B-R-Y-D-E.

5 Q Okay. Thank you. How old are you, sir?

6 A Sir?

7 Q How old are you?

8 A Fifty-four.

9 Q You married? Have children?

10 A No.

11 Q Where do you -- are you working?

12 A No.

13 Q Let me ask you to lean forward a little bit into
14 the microphone so we can make sure we hear you.

15 A No, sir. Retired.

16 Q You're retired. Do you have a son who has any
17 particular businesses in Greenville?

18 A I do. I have a son that has a commercial
19 landscape business and we also have a mulch yard at 1301
20 Poinsett Highway.

21 Q Do you help out with him? Or have you ever
22 helped out with your son?

23 A Yes, I have.

24 Q Okay. How would you help him out? What would
25 you do?

MAC MCBRYDE-DIRECT BY MR. MOYER

1 A Basically, I took over doing the books, invoices
2 and payroll, things such as that to where he could focus
3 more on his company.

4 Q So, would you spend time over there at the mulch
5 business?

6 A I did.

7 Q Are you familiar with Poinsett Tire?

8 A Yes, I am.

9 Q Is that in close proximity to where your son --

10 A It's on the same property as the mulch yard.

11 Q Okay. In fact, who actually owns that property?

12 A We do.

13 Q So, that's rented out to Poinsett Tire, then,
14 that building?

15 A Yes.

16 Q Okay. Now, do you know Juan Cabrera?

17 A I do.

18 Q This gentleman seated right in the back row with
19 the blue shirt?

20 A Yes, sir.

21 Q How do you know him?

22 A Just through business, doing business, going
23 over and chatting. He does tires sometimes on our company
24 trucks, trailers. Plus, basically, collect the rent.

25 Q So, he actually pays the rent?

MAC MCBRYDE-DIRECT BY MR. MOYER

1 A Yes.

2 Q Does he own the place, Poinsett Tire?

3 A No. It's my understanding that another man
4 does.

5 Q But he works there?

6 A Yes.

7 Q Is he generally there by himself or with other
8 people?

9 A Usually, by himself.

10 Q Okay. So, Mr. Cabrera pays the rent on time,
11 generally?

12 A Every time.

13 Q What kind of services does that tire shop
14 provide?

15 A Basically, puts tires on vehicles for personal
16 use, individuals, you know, if you need a tire for their
17 car.

18 Q Do you know what kind of payment they receive
19 for their services?

20 A I know that we get tires from them sometimes.
21 Depends on the size of the tire, the size of the tire to
22 the quality of the tire ranging anywhere from 20 to 30
23 bucks per tire.

24 Q How do you pay?

25 A Cash.

1 Q With credit card?

2 A Cash.

3 Q Does that tire shop stay pretty business?

4 A Yes, sir.

5 Q And you say you get along with Mr. Cabrera
6 pretty well?

7 A Yes, sir.

8 Q Let me ask you this, do you have a security
9 there at the mulch business?

10 A We do. We purchased a Simply Safe system with
11 four cameras, which have the -- I don't know exactly what
12 it's called, but outside in the dark, it can still be
13 seen, things can be seen. Motion detectors, things like
14 that for --

15 Q So. There's four different cameras?

16 A Yes, sir, two in the front, two in the back.

17 Q Was that system there June the 6th of 2014?

18 A Yes, it was.

19 Q It was working?

20 A Oh, yeah.

21 Q Did you work that day?

22 A I was there that day, yes.

23 Q Do you remember what time you left?

24 A I left about 5:30. We all left our office that
25 day about 5:30 that evening.

MAC MCBRYDE-DIRECT BY MR. MOYER

1 Q What time do you generally shut down and leave?

2 A It varies, just depending on what business is
3 doing at that point, the mulch yard. The mulch store was
4 doing individual sales to people who were wanting to do
5 some landscaping at home. You know, doing some work
6 around the house, things such as that, but that was then.

7 Q And the recording system keeps recording after
8 you leave?

9 A Yes, sir. It runs -- it's a digital system on a
10 DVR and it runs -- I think that one runs on a 30-day loop.

11 Q Okay. I'm going to show you State's Exhibit No.
12 35. Take a look at that photograph. Do you recognize
13 what that is, what that shows?

14 A Yes, this is the tire store, our old dump truck.
15 This is the old dump truck. This is one of the work
16 trucks out front here. This would be the tire store.

17 Q Does it show your business, the mulch business,
18 the office?

19 A That would be the office.

20 Q Okay. Does it show where the security cameras
21 are? I'm not going to ask you to give up where they are,
22 but does it show -- does it show where they are?

23 A Well, it's hard to see on that photograph, but
24 they're on the corner of the office.

25 Q Okay. Now, is that a true and accurate

1 representation of the layout of the buildings, the
2 Poinsett Tire and your office and so forth as they looked
3 in June of 2014?

4 A Yes, it's close.

5 MR. MOYER: Your Honor, at this time, I move to
6 have State's Exhibit 35 entered into evidence.

7 MS. TAYLOR: Without objection, Your Honor.

8 THE COURT: All right, without objection, it's
9 admitted.

10 (WHEREUPON, State's Exhibit No. 35 was admitted
11 into evidence.)

12 BY MR. MOYER:

13 Q Okay. I think our easel is not working
14 correctly, so I'll hold this for you. Okay. I think I
15 can just hold this. I'm going to ask you if you would to
16 step around here. If you get the laser pointer, if you
17 can just stand over here out of the way of the jury. And
18 if you could -- first off, can you point out to the jury
19 where your mulch business is and where your office is?

20 A Our mulch business is here. As you can see,
21 there's piles of mulch here. This a small mobile home
22 style trailer office. This is our older dump truck. And
23 this would be the tire store.

24 Q Okay. So, that's the building that we just saw
25 the pictures of?

MAC MCBRYDE-DIRECT BY MR. MOYER

1 A Correct.

2 Q Okay. Now, you told us you had some security
3 cameras. Would just point out -- are any of them pointed
4 over toward Poinsett Tire?

5 A There's two cameras on this corner of the
6 trailer that pan this direction and this direction. Then
7 there's two more that pan the easement across the back of
8 the driveway that goes across the back. We used to park
9 trucks and trailers back there. So, along about in this
10 area, there's two cameras that point this direction and
11 one that points this direction.

12 Q So, one of the cameras then points over in the
13 direction of that?

14 A Basically, shows anything that's happening in
15 this area here.

16 Q What is that road that we can see in the far
17 right-hand side?

18 A That's Poinsett Highway.

19 Q That's Poinsett Highway. Which direction is
20 going away from Greenville, towards like Cherrydale?

21 A Going up --

22 Q Going up --

23 A Cherrydale is up on the right, be on the right
24 side of Poinsett.

25 Q And if you go down, you're going back --

1 A Back toward Greenville.

2 Q Okay. All right. I think that's all I have for
3 you right now. You can have a seat again. I have a few
4 more questions.

5 A Sure.

6 Q Okay. Now, was the -- that camera that you
7 pointed out to the jury, did that record the activity on
8 June the 6th of 2014 after you left?

9 A It did.

10 Q Did police officers ever come by and get a copy
11 of that?

12 A Yes, the detectives came by and brought a thumb
13 drive. And I was there when they downloaded the video
14 onto the thumb drive.

15 Q So, you watched them actually make that
16 recording?

17 A Yes.

18 Q Okay. Were there any changes made or any
19 additions or deletions made to that video while they were
20 doing it?

21 A No, sir.

22 Q Did you view the video yourself?

23 A Yes.

24 Q Is it a true and accurate recollection, as far
25 as you know, about the activities of that night?

MAC MCBRYDE-DIRECT BY MR. MOYER

1 A It's accurate.

2 Q Okay. Let me show you State's Exhibit No. 2.

3 Are you able to recognize what that is?

4 A Yes, this is the CD with the video -- or DVR,
5 DVD with the video that I viewed when I met with you guys
6 to make sure that it was accurate. And these are my
7 initials.

8 Q So, you actually initialed it?

9 A Yes.

10 Q And by saying so, you're saying it's a true and
11 accurate copy that was made from your system?

12 A Exactly.

13 MR. MOYER: Okay. I don't have any further
14 questions for this witness.

15 THE COURT: Okay. Cross-examination?

16 MS. TAYLOR: No questions, Your Honor.

17 THE COURT: Okay. Thank you, sir. I appreciate
18 you being here.

19 THE WITNESS: Yes, sir.

20 THE COURT: You have another witness who is as
21 short as that you intend to call?

22 MR. MOYER: Your Honor, the next witness I can't
23 say is that short, maybe a bit longer.

24 THE COURT: All right. Let's go ahead and break
25 for lunch.

1 Ladies and gentlemen, if you will be back at the
2 courthouse at quarter till 2:00, that gives you a
3 little bit more than a hour. So, be back at quarter
4 till 2:00 and we'll start as promptly as we can.
5 Thank you. Have a good lunch and please don't
6 discuss the case.

7 (WHEREUPON, the jury left open court at
8 approximately 12:36 p.m.)

9 THE COURT: Okay. Ladies and gentlemen, we're
10 adjourned for lunch. We'll come back at quarter till
11 2:00. Have a good lunch.

12 (WHEREUPON, a lunch break was taken.)

13 THE COURT: All right, welcome back, ladies and
14 gentlemen.

15 Mr. Moyer, you may call your next witness, sir.

16 MR. MOYER: The State calls Robert Cullum.

17 THE CLERK: Please stop at the end of the bench
18 and put your left hand on the Bible and raise your
19 right.

20 ROBERT CULLUM, after being duly sworn,
21 testified as follows:

22 THE CLERK: Thank you. Will you state your full
23 name for the record?

24 THE WITNESS: Robert Cullum, C-U-L-L-U-M.

25 DIRECT EXAMINATION

ROBERT CULLUM-DIRECT BY MR. MOYER

1 BY MR. MOYER:

2 Q Okay, Mr. Cullum, how old are you?

3 A I am now 40.

4 Q Okay. Are you married, do you have children?

5 A I'm actually going through a divorce,
6 unfortunately. I have children staying with me.

7 Q I'm sorry?

8 A I have custody of my children, yes.

9 Q How many children do you have?

10 A I have one staying with me. I have a total of
11 four.

12 Q Are you employed right now?

13 A No, I just left my job.

14 Q Okay. Now, let me go back to June the 6th of
15 2014. Where did you live at that time?

16 A I lived at [REDACTED] Morris Street.

17 Q Where is that in conjunction with Old Buncombe?

18 A It's right there on the corner of Old Buncombe.

19 Q So, you live right at the intersection of where
20 Old Buncombe --

21 A Well, maybe 500 feet from the intersection.

22 Q Going down Morris?

23 A Going down Morris.

24 Q So, the intersection that we're talking about,
25 is that the intersection that was shown in those pictures

ROBERT CULLUM-DIRECT BY MR. MOYER

1 earlier --

2 A That is correct.

3 Q -- where the car was wrecked?

4 A That is correct.

5 Q Okay. Who else lived at that place, residence
6 when you lived there?

7 A My wife, my son, my mom, my dad.

8 Q What's your mom's name?

9 A Karen Brown.

10 Q The lady --

11 A Behind her in the blue jacket.

12 Q Well, let's go back to the day, around the
13 evening of this day. Did something happen that day out in
14 front of the house that caught your attention?

15 A Well, I was out in the backyard grilling
16 barbecue chicken. And I was up on my deck, which is about
17 four feet off the ground. In that neighborhood, you hear
18 gunshots all the time. So, I didn't bother paying
19 attention to gunshots. That didn't even phase me when I
20 heard the gunshots.

21 Q Let me stop you right there a minute before you
22 go further. So, around what time of day was it?

23 A I want to say around 6:15, 6:20, around there.
24 I could be a little off. Like I said, I was grilling, was
25 getting ready for dinner time.

ROBERT CULLUM-DIRECT BY MR. MOYER

1 Q So, somewhere around --

2 A Somewhere that timeframe.

3 Q So, this is June then, so --

4 A Right, it's still daylight.

5 Q It was still daylight?

6 A Right.

7 Q So, you didn't have any trouble seeing or
8 anything like that?

9 A No. You could see actually -- from my back
10 deck, you could see Old Buncombe Road from my backyard.
11 Like I said, I was on the deck. I could see the road.
12 Then you have a building, which used to be Childer's here,
13 and then you got the shop across at the intersection.

14 Q Okay. Now, you made mention of gunshots?

15 A Right.

16 Q Is that what caught your attention?

17 A No. Like I said, in my neighborhood, you hear
18 gunshots all the time. That didn't phase me.

19 Q But you heard gunshots?

20 A I heard gunshots.

21 Q What did you do when you heard gunshots?

22 A I just looked up, you know, kind of curious.

23 Q Okay.

24 A Then I saw the two vehicles.

25 Q All right. Now, what kind of vehicles were

1 they?

2 A One was a Ford Mustang and the other was a
3 Mercedes, black.

4 Q You were in here when we saw the picture of the
5 Mercedes crashed into the pole?

6 A Right.

7 Q Is that the Mercedes you saw?

8 A That is exactly the Mercedes I saw.

9 Q Now, was it crashed when you saw it?

10 A No, I saw the crash. That's what caught my main
11 attention, is I saw the accident before it happened.

12 Q Okay. Before we get to that.

13 A Okay.

14 Q So, the gunshots are what made you look up?

15 A Made me look up.

16 Q Then you saw the vehicles?

17 A I saw two vehicles.

18 Q You remember if you heard one gunshot or more
19 than one, do you know?

20 A I want to say I heard three. You're talking
21 years ago, so, I mean -- but I could have sworn I heard
22 three.

23 Q Okay. Could you tell where these gunshots had
24 come from or went to?

25 A I knew they were coming from Old Buncombe Road

ROBERT CULLUM-DIRECT BY MR. MOYER

1 down a little ways.

2 Q In that direction?

3 A In the direction.

4 Q Did they sound close enough to be right out
5 there on Old Buncombe Road?

6 A Yes. That's what I'm saying, down a little ways
7 down Old Buncombe Road. They were close enough to hear
8 where you could tell it was coming from Old Buncombe Road,
9 down that way a little bit, but you can't really tell for
10 sure what area of it did it come from.

11 Q All right. So, looked up and you saw these two
12 vehicles. You mentioned the black Mercedes was the one
13 that hit the pole?

14 A Right.

15 Q And the other car, did you see the pictures that
16 were shown of the other car?

17 A I did see the pictures of the other car.

18 Q Did that look like that Mustang?

19 A It did look like that same Mustang.

20 Q Tell us what you saw those two cars doing.

21 A Well, when I saw them -- when I first saw them
22 out my backyard, they were side by side, okay. The
23 Mercedes might be up a little more than the Mustang, but
24 they were joined together.

25 Q Okay.

1 A Then I couldn't see them anymore because, like I
2 just told you, there's a building right there called
3 Childer's Automotive. I couldn't see what happened there.
4 By the time I could see the two cars again, the Mustang
5 was behind the Mercedes. The Mustang hit the Mercedes and
6 put the Mercedes in a pole. That's when I went running.

7 Q Okay. So, let me make sure I understand. You
8 said when you looked up, you first saw the two vehicles
9 off to the left a little bit?

10 A Correct.

11 Q Then you lost sight of them when they went
12 behind the building?

13 A Right.

14 Q Then you saw the Mustang hit the Mercedes and
15 then the Mercedes hit the pole?

16 A Right.

17 Q Okay. Now, when the Mercedes hit the pole, what
18 did you do?

19 A I came from -- I cam -- instead of a running all
20 the way around my house, I came running through my house,
21 told my mom and dad to call 911, there's been an accident.

22 Q So, you went into the house?

23 A I ran right through the house to outside. I ran
24 right through the house. I used to be a volunteer
25 fireman, paramedic. So, my first thing was I need to make

ROBERT CULLUM-DIRECT BY MR. MOYER

1 sure everybody is okay.

2 Q So, when you came out of the house, did you come
3 out on Morris?

4 A Yes.

5 Q On the side street?

6 A Yes, I came --

7 Q Not Old Buncombe?

8 A Right, because I live off of old Morris -- like
9 I said, I live on Morris Street. I came out of the house
10 on Morris Street.

11 Q What did you see when you got out of your house
12 on Morris Street?

13 A When I got out of the house on Morris Street, I
14 saw the Mercedes in the pole and I saw the passenger
15 starting to run down Morris Street.

16 Q Okay. Now, tell us what you remember about how
17 this passenger looked. What he was wearing. What he was
18 --

19 A He had a white t-shirt, sweaty, I could tell he
20 was sweaty, and he had on, I want to say, shorts, blue
21 shorts. I can't be for sure, but if I remember right,
22 blue shorts. I remember the white t-shirt. And like I
23 said, he was running and he had -- I want to say, I
24 believe I saw a brown bag in his hand. That's about it.

25 Q So, did he run right past you?

1 A Yeah, he ran past me.

2 Q Did he run fast or slow?

3 A He was running pretty fast because, actually, I
4 went running after him.

5 Q Did you say anything to him?

6 A I yelled at him three times to stop.

7 Q Did he say anything back to you?

8 A No, he just turned around and looked back at me.

9 Then if you go down Morris Street, you'll see this other
10 house over here, it's got a ditch. He cleared the ditch.
11 I mean, he just jumped it. I'm done. I couldn't -- so I
12 just went -- I couldn't chase him anymore. I just went
13 back up to the car to make sure the driver was okay.

14 Q Before you get to that, let me ask you one more
15 question. How close were you to the passenger? Use me as
16 a reference. You want me to walk closer or farther away?

17 A You can walk a little closer, a little more,
18 little more. I would say stop right there.

19 Q Would you guess that's 10 feet maybe?

20 A It was about 10 to 15 feet.

21 Q Ten to 15 feet?

22 A Yeah.

23 Q Is that when you first saw him?

24 A Yeah, that would be about when I first saw him.

25 Q And then when you were following him, you said

ROBERT CULLUM-DIRECT BY MR. MOYER

1 he turned around and looked back at you. How close were
2 you to him when you were chasing him? Farther than I am
3 to you now or --

4 A Yeah.

5 Q -- closer?

6 A It was a little further back.

7 Q Further back?

8 A Yeah, a little further back now.

9 Q Okay. Now, from these observations of him, did
10 you get a good enough look at him to be able to identify
11 him?

12 A I'm the one that had to call the 911 call. My
13 parents did not call it in, I had to call it in. Like I
14 told them, there's been an accident. I believe I told the
15 officer that I was talking to on the phone that it was a
16 hit and run and that the fact that the -- the gentleman
17 that got out of the -- the heavyset gentleman that got out
18 of the passenger side of the car, he is running from it.
19 He was little heavyset, but not as big as the driver.
20 That's what I told him, not as big as the driver, but he
21 still is bigger than me.

22 Q Now, do you see that person here in this
23 courtroom?

24 A I do.

25 Q Would you point him out to the jury?

1 A (The witness complies.)

2 Q And you pointed to Leviticus Young?

3 A Yes, sir.

4 Q You're sure that's the man you saw?

5 A Yes, sir, that's the man I saw.

6 Q Okay. So, you lost track of him down at the end
7 of that --

8 A I didn't lose track of him. I just couldn't --
9 there was no way I could catch him. There was just no
10 way. And I don't even know what I was going to do if I
11 did catch him. I just wanted to make sure he was okay.
12 That was my main thing. I mean, the car hit the pole with
13 hardly any brakes. It didn't stop. So, I mean, I'm
14 thinking injuries.

15 Q Sure.

16 A Mind you, I didn't know there was a crime
17 involved.

18 Q You didn't know --

19 A I didn't know anything about anything prior.
20 So, this is not my business on that. I'm just stating
21 what I saw with the accident.

22 Q Exactly.

23 A So, I'm thinking two people hit a pole, they're
24 hurting, he's running. He's probably freaking out. He
25 may be hurt, he's running. I got to stop him.

ROBERT CULLUM-DIRECT BY MR. MOYER

1 Q Okay. So, after you stop chasing him, then you
2 went back up to the car?

3 A I went back up to car, to the driver.

4 Q Okay. What did you see when you got back to the
5 car?

6 A When I got back to the car, I helped with the
7 driver door to get it opened, because it was a little hard
8 to open it. And I just stood there -- I sat there with
9 the driver until the paramedics and fire department got
10 there.

11 Q And the driver, did you know the driver?

12 A I didn't know him. I don't know either one of
13 them.

14 Q Have you since come to know who that driver was?

15 A No.

16 Q Did you identify him in a previous court
17 proceeding?

18 A I did. I had to, yes.

19 Q So, that was the man who was the driver?

20 A Yes, sir.

21 Q Steven Williams?

22 A Yes, sir.

23 Q Now, how was Steven Williams -- do you remember
24 the airbags being deployed?

25 A I do.

1 Q How was he acting?

2 A All he kept saying was I got hit. I got hit. I
3 was like, Okay, are you hurting anywhere? You know, I
4 kept asking him questions. Are you hurting anywhere? He
5 sound kind of out of it, like he didn't even remember
6 what's going on, okay. I asked him if he was okay. I
7 kept letting him know, though, that the paramedics are on
8 the way.

9 Q You kept telling him that?

10 A I kept telling him that. Fire department and
11 paramedics are on their way and they'll be able to take
12 care of you.

13 Q Now, did -- so you said he seemed a little bit
14 out of it, seemed a little dazed?

15 A He seemed kind of hazed.

16 Q And you stayed there with him until the
17 paramedics --

18 A Until the paramedics and the police department
19 all got there.

20 Q Okay. One moment, please.

21 MR. MOYER: I have no further questions. Thank
22 you.

23 MS. TAYLOR: May it please the Court, Your
24 Honor?

25 THE COURT: Yes, ma'am.

ROBERT CULLUM-CROSS BY MS. TAYLOR

CROSS-EXAMINATION

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BY MS. TAYLOR:

Q Good afternoon, Mr. Cullum.

A Good afternoon.

Q Thank you for being here. I appreciate it. I just have some brief questions for you. First, I'm going to show you a document.

I'm not introducing this as evidence.

If you could just take a look at this and read it and let me know what it is.

A (The witness complies.) This is the affidavit that I filled out at the accident report.

Q Okay. And is that your signature on the bottom?

A It is my signature.

Q So, that is, in a sense, your words, correct?

A Yes, ma'am.

Q Okay. Did you say at any point in your initial statement to the police, anything about sitting with the driver or making initial 911 call?

A Did I say anything to the police about that? No, I did not. I just assumed that they would know since I was the first one on the scene.

Q So, when you made the 911 call, you called it in as a hit and run?

A I believe so, yes, ma'am.

1 Q Were you ever given a copy of that report or
2 anything?

3 A No, ma'am, I was not.

4 Q Were you interviewed by the police any more in
5 depth as far as the hit and run that you witnessed?

6 A You mean after the incident?

7 Q Yes.

8 A Yes, ma'am. I had quite a few officers come out
9 to the house and talk with me, yes, ma'am.

10 Q In addition to -- from that time?

11 A Yes, ma'am.

12 Q So, they asked you more questions when they
13 spoke to you subsequently?

14 A Yes, they asked me more questions. They came
15 out to my backyard and wanted to see the deck and wanted
16 to see how I saw the thing. So, I had to show them
17 everything from how I ran through my house. Yeah, they
18 came out and did a complete investigation of my yard.

19 Q So, you stated when you first saw this, you ran
20 through the house and you screamed at your mom on the way
21 in, Call 911. But she didn't call 911?

22 A No.

23 Q So, when did you call 911?

24 A I called 911 when I went back up to the car on
25 my cell phone.

ROBERT CULLUM-CROSS BY MS. TAYLOR

1 Q So, after you had chased --

2 A After I chased --

3 Q -- the passenger --

4 A -- the passenger, I went back to the car and
5 that's when I dialed 911.

6 Q Did you put the driver on the phone with the
7 highway patrol at that point?

8 A No, I did not.

9 Q When you were there, did the driver speak with
10 the highway patrolman at any point?

11 A Not until they got there.

12 Q But once they got there, he was cooperative?

13 A Yes.

14 Q Okay. Let me ask you, you mentioned that in
15 your neighborhood you hear gunshots all the time?

16 A Yes, you do.

17 Q Okay. How often would you say you hear
18 gunshots?

19 A Oh, my God. At least, once a day, if not twice
20 or three times a day. I mean, I'm not going to lie, it's
21 a bad area. I'm not going to lie to you. I mean, it's
22 not a good area.

23 Q Okay. No worries.

24 A That's why I left.

25 Q I understand. But how were you able to

1 obtain -- from what the solicitor questioned you about,
2 you gave some indication that these three shots came from
3 the same area. How were you able to identify that?

4 A Because it all sounded the same. Every
5 gunshot -- you know, different calibers and different guns
6 sound different.

7 Q Okay.

8 A I been around guns, I'm not going to lie. I
9 don't own any, but I have been around them to where I know
10 what kind of guns sound like what. It's the same gun, it
11 makes the same sound.

12 Q Okay.

13 A Different guns make different sounds.

14 Q So, it's your testimony that the three gunshots
15 you heard in your opinion came from the same gun?

16 A Exactly.

17 Q Okay. All right. Let me ask you now, when you
18 initially saw this car high speed chase, how fast would
19 you say they were both going?

20 A I would say they were going about 50, 55 in a
21 35-mile zone.

22 Q In a 35-mile-an-hour zone.

23 A On a very narrow, two-lane road.

24 Q Is this a pedestrians area? Are there people
25 that are walking around the sidewalks?

ROBERT CULLUM-CROSS BY MS. TAYLOR

1 A There's a lot of people walking around
2 sidewalks. You have -- again, I tell you this is a bad
3 area. You have ladies that walk the sidewalks, all that,
4 okay. So, there's constantly movement on that road.

5 Q Were you afraid when you initially saw it that
6 somebody might get hurt as far as veering off the road,
7 hitting somebody, hitting another car? Did it appear to
8 be a dangerous situation?

9 A No, it didn't appear a dangerous situation until
10 the car hit the pole.

11 Q Until the car hit the pole. What did you see
12 after you saw the Mercedes hit the pole? What did the
13 Mustang do?

14 A Drove off.

15 Q Okay.

16 A Just took off.

17 Q Just took off. Did you tell the police that?

18 A Yes, I did.

19 Q What was their explanation for not interviewing
20 him?

21 MR. MOYER: Your Honor, I object.

22 THE WITNESS: I have no idea --

23 THE COURT: Hold on, hold on.

24 What's your objection, sir?

25 MR. MOYER: I object to hearsay, what the

1 officer said.

2 THE COURT: Okay.

3 Did you ask him directly what the officer said?

4 MS. TAYLOR: No, I said, What was their
5 explanation?

6 THE COURT: Okay.

7 MS. TAYLOR: I'll rephrase.

8 BY MS. TAYLOR:

9 Q Were you given any explanation as to why he
10 wasn't questioned?

11 MR. MOYER: Again, that's hearsay, Your Honor.
12 Objection.

13 THE COURT: You can answer yes or no. You can't
14 actually testify as to what anyone said, though.

15 BY MS. TAYLOR:

16 Q Were you given any explanation?

17 A For what now? I'm sorry.

18 Q You said that the Mustang driver fled the scene?

19 A Yes, ma'am.

20 Q Then you were there when the cops showed up?

21 A Yes, ma'am.

22 Q And you told the police that the driver fled the
23 scene.

24 A Yes, ma'am.

25 Q Were you given any explanation about that?

ROBERT CULLUM-CROSS BY MS. TAYLOR

1 Where he was? Why he left? Anything at all?

2 A No, I didn't even ask -- they didn't ask me
3 about it and I didn't ask them anything about it.

4 Q You didn't think to inquire about that somebody
5 you saw hit a car and cause them to go in a telephone pole
6 and then they ran from the scene of the crime?

7 A I do know when I was on the phone with the
8 police department -- and this is when I left the car. I
9 left the driver. I left him again. I got in my Honda and
10 I went to chase the Mustang.

11 Q So, you --

12 A I know, I know it doesn't sound right, but
13 that's exactly what happened. When I chased the Mustang
14 and I caught the Mustang, I knew which way he went, I kept
15 following him, he ended up by a house, by the store by Poe
16 Mill. And I saw a whole bunch of police cars there and I
17 just turned my van around. I was like okay, they got him
18 under control. There's plenty of cops there. I turned my
19 car around and I went back to the scene where the Mercedes
20 was.

21 Q So, why didn't you say in your statement that
22 you followed -- got in your car --

23 A Because I figured I might get in trouble for
24 saying that, ma'am. I'm not a cop, I'm not a police
25 officer, am I really allowed to do this? No. Why was I

1 going after it? Why was I chasing this -- you know, I'm
2 not a police officer.

3 Q So, why did you chase the passenger that fled?

4 A Exactly. Because it's just not right. You just
5 don't run from a scene.

6 Q And the driver doesn't just leave from a scene?

7 A Right.

8 Q But you didn't include that in your statement
9 because you were afraid that you might get in trouble?

10 A Yes, ma'am.

11 Q Is there anything else that you didn't include
12 in your statement because you're afraid you're going to
13 get in trouble?

14 A The only thing I left out was the fact I got in
15 my car, my van. But I did let -- I did tell somebody that
16 I did get in my car, but I just didn't put it in this. I
17 did let the officer know.

18 Q At any point, did you have any contact with the
19 victim?

20 A No.

21 Q Do you know the victim? Have you ever seen him
22 before?

23 A No.

24 Q Have you ever visited his tire shop?

25 A No.

ROBERT CULLUM-CROSS BY MS. TAYLOR

1 Q You've never been to Poinsett Tire?

2 A I used to work for Poinsett tire, but that was a
3 long time ago.

4 Q When did you work for Poinsett Tire?

5 A When I first arrived in Greenville, which is in
6 2001.

7 Q Do you know who owns this business?

8 A No.

9 Q So, who did you work for?

10 A I don't even remember his name. I was only
11 there for a week.

12 Q You were there for a week?

13 A That was it.

14 Q Why were you fired?

15 A I had a tooth problem and I had a toothache and
16 he fired me because he said my abilities of working was
17 not ethical. So, he let me go after a week.

18 Q Okay. So, you used to work at the tire shop on
19 Poinsett -- or the tire shop at Poinsett Highway, but
20 you've never seen -- you'd never met prior to this date
21 the victim, Juan Cabrera?

22 A No.

23 Q You'd never met Leviticus Young? You've never
24 met Steven Williams?

25 A No, I never met any of them. Like I said, I

1 thought it was just a routine accident and I felt that
2 people were in danger because of the accident.

3 Q Also, you testified when the solicitor
4 questioned you on direct that when you saw the passenger
5 leave the car and flee that he had a brown bag or
6 something in his hand?

7 A It looked like he had a brown bag in his hand.

8 Q Why didn't you put that in your statement to the
9 police officers either?

10 A My adrenaline was going, everything was just --
11 I might have just left that out. Like I said, when you go
12 to an accident like that -- I haven't been a firefighter
13 or a paramedic in a long time. I haven't had the training
14 anymore. So, now it's just -- you know, you worry about
15 the people and that's it. And that's what happened.

16 Q But you understand that, like, the -- because
17 this case happened two years ago. So, the purpose of
18 these statements is that you're probably not going to
19 remember everything as accurately as you did then. So, we
20 have to rely on your memory at the time --

21 A Right.

22 Q -- so that it's truth?

23 A I understand.

24 Q So, that's something pretty big, that you saw
25 him carrying a brown bag, but you never saw what he did

ROBERT CULLUM-CROSS BY MS. TAYLOR

1 with it, you never told any officer about it. Did you
2 tell any police officer about it?

3 A Again, I don't remember on that either.

4 Q Okay. Did this just come into your brain today?

5 A No.

6 Q So, you remember this from 2014?

7 A Right.

8 Q You just didn't include it in any of your --

9 A I just didn't include in because, like I said,
10 at the time of this day, everything was just boom, boom,
11 boom. And you don't have time -- you know, your brain
12 doesn't have time to just take everything in and soak it
13 up. You know what I mean?

14 Q I understand, but you were interviewed
15 subsequently, you said, several times. The police came
16 out and took pictures and they interviewed you again. And
17 at no point did you mention what you saw that you said
18 today?

19 A I believe I did. I believe when they did
20 question me again, I believe I did say something. When
21 they came out to the house and questioned me, I believe I
22 did mention the brown bag.

23 Q You just said that you had never given a
24 statement of anything like that --

25 A No, I said I didn't have it down here.

1 Q And I said you gave multiple statements to law
2 enforcement afterwards, did you tell anybody about it and
3 you just answered no?

4 A I'm sorry. Like I said, I might have.

5 Q So, you're not sure?

6 A I'm not sure, right.

7 Q You're not sure. So, just to go over really
8 quickly, you heard three shots?

9 A Yes.

10 Q You're pretty sure they all came from the same
11 gun?

12 A Yes, ma'am.

13 Q The same area?

14 A Yes, ma'am.

15 Q You saw two cars right up next to each other
16 going 55 miles an hour in a 35-mile-an-hour zone?

17 A Right.

18 Q On a two-lane highway?

19 A Yes.

20 Q So, saw the Mustang hit the Mercedes and cause
21 it to go into a telephone pole?

22 A Yes.

23 Q You saw the Mustang drive off?

24 A Yes.

25 Q You saw the passenger get out?

KAREN BROWN-DIRECT BY MR. MOYER

1 A Yes.

2 Q You followed him, correct?

3 A Correct.

4 Q Then you got back in your car?

5 A Yes.

6 Q Followed the Mustang?

7 A Yes.

8 Q Then went back to the scene of the crime?

9 A Yes.

10 Q And stayed until the highway patrol got there?

11 A Right.

12 MS. TAYLOR: Thank you. No further questions.

13 THE COURT: Redirect?

14 MR. MOYER: No, Your Honor.

15 THE COURT: All right, thank you, sir. I

16 appreciate you being here. Thank you very much.

17 MR. MOYER: The State calls Karen Brown.

18 KAREN BROWN, after being duly sworn,

19 testified as follows:

20 THE CLERK: Please have a seat. And will you

21 state your full name for the record?

22 THE WITNESS: My name is Karen Gail Brown.

23 DIRECT EXAMINATION

24 BY MR. MOYER:

25 Q Okay, Ms. Brown, are you related to Robert

1 Cullum?

2 A Yes, I'm his mother.

3 Q The man who just testified, you're his mom. And
4 you lived at that residence --

5 A [REDACTED] Morris Street, yes.

6 Q Right at the intersection of Old Buncombe?

7 A And Morris. Okay, here's Childer's, I am the
8 first house on the left.

9 Q Okay. Now, were you home around 6:00 p.m. or a
10 little after 6:00 p.m. on the evening of June the 6th of
11 2014?

12 A Yes, my husband, my grandson, my daughter-in-law
13 and my son and I were all home. My husband was watching
14 TV. My daughter-in-law, I don't know where she was at.
15 My grandson was in the backyard. I'm in between making
16 potato salad and checking on my son with the grill.

17 Q Okay. While you were doing this, did you hear
18 anything that caught your attention?

19 A Yes, I heard some gunshots. I said, Well, I
20 think it's time to bring my grandson in the house. And
21 the next thing I know, I turn around and crash. I'm like,
22 what the. . . I ran -- left the potato salad and ran out
23 my front door and another car hit the pole. I'm like, Oh,
24 my word.

25 Q So, you saw the car hit the telephone pole?

KAREN BROWN-DIRECT BY MR. MOYER

1 A No, I heard it.

2 Q You heard it?

3 A I heard it. That's when I went running.

4 Because that pole has been hit, at least, a billion times.

5 Q Okay. So, it's been hit a number of times?

6 A Yes.

7 Q Now, you mentioned -- do you know if it was one
8 gunshot or more than one gunshot?

9 A I told --

10 Q Ms. Brown, just one second. We've got to make
11 sure we don't talk over one another.

12 A I'm sorry.

13 Q Because the court reporter has to take all this
14 down.

15 A I'm sorry.

16 Q I've almost finished the question. But I just
17 want to know whether you're sure you know if it was one
18 gunshot or more than one gunshot or what can you say about
19 that?

20 A It was more than one.

21 Q Okay.

22 A I know I heard two, for sure.

23 Q Okay. So, you heard the gunshot, then you ran
24 outside. Do you remember if you ran -- was that the same
25 door that your son, Robert, ran out?

KAREN BROWN-DIRECT BY MR. MOYER

1 A I ran out the front door, the same door he did,
2 yes.

3 Q Did he run out first?

4 A Oh, he was already outside. He was gone. Yeah,
5 he was already outside. I was right behind him, about
6 give me two or three seconds later. Because we all heard
7 the car crash and next thing I know, I see the car.
8 Didn't see car hit the pole, I saw the car into the pole.

9 Q When you got outside, what did you observe?

10 A Well, I observed one gentleman jumping out of
11 the car. He had a white t-shirt on and he had blood all
12 over the left side of him. I was really concerned about
13 his safety, was he all right, was he in shock.

14 Q What do you remember about anything he may have
15 been holding or not holding?

16 A Well, he was holding a brown bag.

17 Q And that was in one hand?

18 A That was in one hand.

19 MS. TAYLOR: Objection, Your Honor, leading.

20 THE COURT: Okay. I overrule.

21 You can continue.

22 BY MR. MOYER:

23 Q Could you tell if he had anything in his other
24 hand?

25 A Yes, he did, but I'm not sure what it was.

KAREN BROWN-DIRECT BY MR. MOYER

1 Q What did you tell the police that it was?

2 A I told them that it might have looked like a
3 gun.

4 Q Okay. Is that what you thought it was when you
5 saw it?

6 A Yes. Yes.

7 Q Now, how close were you to him when you got
8 outside and saw him?

9 A Come closer.

10 Q Okay.

11 A About as close as you were to my son. My front
12 porch to the edge of the road is around 14 feet.

13 Q So, about where I am now?

14 A Yeah.

15 Q About 14 feet?

16 A That's it.

17 Q And you saw him get out of the car?

18 A Yes, sir.

19 Q Which door in the car?

20 A Passenger side front.

21 Q What did he do when he got out of the car?

22 MS. TAYLOR: Objection, Your Honor. I think we
23 may have an issue we might need to take up at the
24 bench.

25 THE COURT: Okay. Y'all come up.

1 (WHEREUPON, an off-the-record bench conference
2 was held in the presence of the jury but out of
3 the hearing of the jury.)

4 BY MR. MOYER:

5 Q Okay. So, back to our questions. When -- you
6 said -- you told us you were 14, 15 feet away from him
7 when you saw him running?

8 A Yes.

9 Q Okay. What did you -- did you -- were you able
10 to see his face?

11 A I just saw the side of his face. I did not see
12 the front.

13 Q And from seeing the side of his face, are you
14 able to identify or see the person you saw running by here
15 in this courtroom?

16 A That gentleman right there.

17 Q You're pointing to the Defendant, Leviticus
18 Young?

19 A Yes, Mr. Young.

20 Q So, that was the person?

21 A Yes.

22 Q Now, what did you see him do?

23 A I saw him get out of the car. I saw him running
24 down the street and he had blood on his shirt. I was
25 concerned about the blood on his -- on his left-hand side.

KAREN BROWN-DIRECT BY MR. MOYER

1 Q Okay.

2 A He just kept running. He wouldn't stop. He
3 didn't stop for anything. And like I said, there was
4 something in his other hand. And I told the officers I'm
5 not sure if it's a gun, I'm not sure if it's a cell phone,
6 I'm not sure what it was. And that was what I said, I do
7 not know what he had in his other hand.

8 Q Okay. Was he running fast?

9 A Very quickly, very, very quickly. For somebody
10 that's just been in a car accident, yeah. Yeah.

11 Q Did you lose sight of him?

12 A Yes, I did.

13 Q Okay. Where did you lose sight of him?

14 A The minute he jumped the ditch.

15 Q What did you do, did you remain standing at the
16 house or did you go anywhere?

17 A I went up to check on the car accident, make
18 sure everybody was all right. I didn't know if there was
19 kids involved. I didn't know what it was. We just
20 thought it was a normal car accident.

21 Q What did you see when you got up to the car?

22 A I saw a gentleman sitting there and he was in
23 shock. And I saw a gun on the front seat, which I said --

24 MS. TAYLOR: Objection, Your Honor.

25 THE WITNESS: What? I'm sorry that's just my

1 normal --

2 MS. TAYLOR: I need her to back up like -- my
3 objection was actually like one statement before
4 that.

5 THE COURT: Okay.

6 MS. TAYLOR: I believe it was her testifying to
7 him being in shock. She's not a medical -- she's not
8 trained to determine that.

9 THE COURT: I understand that.

10 MR. MOYER: I'll rephrase the question.

11 BY MR. MOYER:

12 Q Just tell us what you observed about his
13 physical appearance or what he was doing.

14 A Okay. Physical appearance, he was sitting
15 there. His eyes were really huge and he was just like
16 that.

17 Q Staring straight ahead?

18 A Yeah. And all he kept saying is I've been hit,
19 I've been hit, I've been hit.

20 Q Now, did you know him?

21 A No. I know neither one of them.

22 Q The man who was still in the car, he was in the
23 driver's seat?

24 A Yes.

25 Q Did you identify him at a later time?

KAREN BROWN-CROSS BY MS. TAYLOR

1 A Yes, I did. He was -- yeah, I've already.

2 Q In the other court proceeding?

3 A Yes.

4 Q Okay. And that was Steven Williams?

5 A Yes, sir.

6 Q Okay. Did you then -- did you stay there at the
7 car or did you go back in your house?

8 A I went back to my house.

9 Q All right. Did you later talk to any officers?

10 A Well, I pointed to two officers that he went
11 that away. Because they were driving by and, you know,
12 trying to figure out where everything was at, I guess.
13 And I did point down our road, Morris Street.

14 Q Okay.

15 A And then they took it from there.

16 Q But no officer took a written statement from
17 you, is that right?

18 A No. No.

19 MR. MOYER: Please answer any questions the
20 Defense may have.

21 MS. TAYLOR: May it please the Court just
22 quickly.

23 THE COURT: Yes, ma'am.

24 CROSS-EXAMINATION

25

1 BY MS. TAYLOR:

2 Q You were in the courtroom when your son
3 testified, weren't you?

4 A The last time?

5 Q No, no, today?

6 A Yes.

7 Q Just briefly a minute ago. And you heard him
8 say that he screamed call 911 when he ran through the
9 house. And then he said later on that he ended up calling
10 911 because you didn't.

11 A No, I didn't.

12 Q Why didn't you call 911?

13 A One, I've got -- at the time, I had a -- let's
14 see, **Minor** was eight, maybe seven, maybe seven. I can't
15 remember how old he was. 2014 June, coming up with a
16 birthday. He was a little bit rambunctious. He's hungry.
17 He wants to eat dinner. Dinner is already being detained.
18 No, I just didn't do it. I just stayed in the kitchen
19 trying to finish up what I had to do to make sure I fed my
20 grandson. So no, I didn't --

21 Q So, that was more important than calling 911 for
22 a crash you just heard that you said you were worried
23 about children being in there?

24 A I already seen the children were not even in
25 there.

KAREN BROWN-CROSS BY MS. TAYLOR

1 Q How, though, you hadn't been out the house?

2 A Because when I saw the guy running down, he
3 opened up the front door. Wait a minute. Can I take a
4 break, please?

5 THE COURT: Sure.

6 MS. TAYLOR: Just let me know when you're ready,
7 Karen.

8 THE WITNESS: I'm ready.

9 BY MS. TAYLOR:

10 Q You're ready? You're sure? Okay. Let me pick
11 back up. So, you did not call 911 for whatever reason?

12 A No, I did not call 911.

13 Q You have glasses on today?

14 A Yes.

15 Q Are those prescription glasses?

16 A I wear them all the time.

17 Q All the time?

18 A All the time.

19 Q So, you had them on the day of the accident?

20 A Yes. I have to wear them all the time.

21 Q You made a statement earlier in your direct
22 examination that you saw the passenger of the Mercedes get
23 out of the car and had blood all over the left side of
24 him, is what you said; right?

25 A The passenger, yes.

1 Q Okay. He had blood all over the left side of
2 him --

3 A Yes.

4 Q -- and had something in each hand?

5 A Yes.

6 Q A brown bag in one hand and maybe a gun, maybe
7 something else in another hand?

8 A Right.

9 Q But your son didn't make any statement about
10 seeing any part of blood on him. And he was wearing a
11 white shirt, so blood would be pretty obvious, right?

12 MR. MOYER: Your Honor, I would object to
13 pitting witnesses.

14 MS. TAYLOR: To pitting?

15 THE COURT: Yeah, I sustain that.

16 MS. TAYLOR: Okay.

17 THE COURT: You can argue about that, but you
18 can't ask her about that specifically.

19 MS. TAYLOR: Certainly, okay. All right.

20 BY MS. TAYLOR:

21 Q So, you said that you saw blood on his shirt.
22 Were you ever interviewed by any police officer?

23 A No, I was not because I did not see everything
24 directly. All I saw was bits and pieces. That's all I
25 can saw. You know, yes, I seen the car into the pole.

KAREN BROWN-CROSS BY MS. TAYLOR

1 Yes, I heard two gunshots. Yes, I saw the gentleman get
2 out of the car, run down the road with a bag in his hand,
3 white t-shirt, something else in the other hand with blood
4 on the left side.

5 Q Okay.

6 A That's, basically, all I saw. I walked up to
7 the car, I saw the gentleman there, Mr. Williams. I don't
8 remember names very well, but Mr. Williams. And I saw the
9 gun and yes, I did report that. And after that, that's
10 pretty much --

11 Q I'm sorry, you said you did report that you saw
12 the gun?

13 A Yes, I did.

14 Q Who did you tell that to?

15 A I think I told it to solicitor's office.

16 Q To the solicitor's office?

17 A Yes.

18 Q So, that would be Mark Moyer?

19 A Yes.

20 Q Did he make any kind of statement or written --

21 A Yes, I think they did. I mean, I don't know.

22 Everybody's got a job and I don't tell people how to do
23 their job. I try not to.

24 Q Especially when your job has someone's life on
25 the line, that's important. Did you sign any statement?

1 After you give your version of the facts --

2 A I don't remember.

3 Q You don't remember?

4 A I do not remember. That's the honest truth, I
5 do not remember.

6 Q All right. But you did give a statement to Mark
7 Moyer at the solicitor's office and he wrote down the
8 statement?

9 A I'm sure he did.

10 Q Well, you were there, was he writing it down?

11 A He was taking notes. I'm sure he was writing
12 something.

13 Q Okay.

14 A I'm not going to say he was writing it down. He
15 was taking notes.

16 MS. TAYLOR: Thank you. No further questions.

17 MR. MOYER: Just a couple quick questions.

18 REDIRECT EXAMINATION

19 BY MR. MOYER:

20 Q You remember there was another solicitor guy
21 with a beard, Walker Miller, who talked to you? Do you
22 remember that? Didn't he come out to your house and --

23 A Yes, he did. Yes.

24 Q And he talked to you?

25 A Yes.

STEPHANIE BISHOP-DIRECT BY MR. MOYER

1 Q And he just took some notes?

2 A Yes.

3 Q While you were talking to him?

4 A Yes.

5 Q Okay.

6 MR. MOYER: Thank you. That's all.

7 THE COURT: Any recross?

8 MS. TAYLOR: No further questions, Your Honor.

9 THE COURT: All right. Thank you, ma'am, you
10 may step down.

11 THE WITNESS: I'm sorry, I did it before you
12 said it. I'm sorry. I'm sorry.

13 THE COURT: You're fine. You're fine.
14 You may call your next witness, sir.

15 MR. MOYER: The State calls Stephanie Bishop.

16 STEPHANIE BISHOP, after being duly
17 sworn, testified as follows:

18 THE CLERK: Have a seat. Will you please state
19 your full name for the record?

20 THE WITNESS: Stephanie Bishop.

21 DIRECT EXAMINATION

22 BY MR. MOYER:

23 Q Okay, Ms. Bishop, let me start off by asking you
24 to -- so, is your full name Stephanie Bishop?

25 A Yes.

STEPHANIE BISHOP-DIRECT BY MR. MOYER

1 Q Do you have a middle name?

2 A Elaine.

3 Q How old are you?

4 A Forty-four.

5 Q Forty-four. And you have two children; is that
6 right?

7 A Three.

8 Q You have three, okay. And you're a lifetime
9 resident of Greenville County; is that right?

10 A Yes.

11 Q Graduated from Wade Hampton?

12 A No.

13 Q You went to Wade Hampton?

14 A No.

15 Q No, you didn't, I'm sorry. Let me take you back
16 to June the 6th of 2014. Where did you live at that time?

17 A On Fair Street.

18 Q On Fair Street?

19 A Uh-huh.

20 Q Who did you live with at that time?

21 A My mother and my grandmother.

22 Q Did you make a 911 call on that day?

23 A Yes.

24 Q What led you to make that call?

25 A Two cars came speeding down our road and the

STEPHANIE BISHOP-DIRECT BY MR. MOYER

1 second one stopped and asked me to call 911.

2 Q Okay. Let's talk about those two cars. So, the
3 first car that came, what do you remember about how that
4 car looked?

5 A It was beautiful. It was a black Mercedes, two
6 occupants.

7 Q Okay.

8 A It had come through earlier is the only reason I
9 noticed it coming back through. I mean, just not the kind
10 of neighborhood for a Mercedes, really.

11 Q Which direction was it going the first time you
12 saw it?

13 A Towards Poinsett.

14 Q And then when you saw it the second time, it was
15 going the other way?

16 A Yes.

17 Q When you saw it the second time, was it going
18 the speed limit? Was it going slow? Was it going fast?

19 A No, it was going too fast for that neighborhood.
20 I would say maybe 45, 50.

21 Q Okay. What is the speed limit there?

22 A Thirty-five.

23 Q All right. And you could see how many occupants
24 were in that Mercedes?

25 A Two.

1 Q Were they both in the front seat?

2 A Yes.

3 Q Do you remember anything about them, what they
4 were doing? What they looked like?

5 A The driver, I couldn't really see. And the
6 passenger, I couldn't really see his face. He had on a
7 white shirt, but he was kind of hanging out the window,
8 almost as if he was looking to see if someone was behind
9 him.

10 Q Was his body out of the vehicle?

11 A Uh-huh.

12 Q Was his back towards you or was his front
13 towards you?

14 A Well, he looked as if he were turned, so kind of
15 like at waist, turning around out of the window.

16 Q Looking back?

17 A Yes.

18 Q Okay. Could you tell if they were white men or
19 black men?

20 A I could tell they were black, but I couldn't --
21 I couldn't pick them out. I mean, they were going too
22 quickly for me to be seeing that much detail.

23 Q Okay. Now, were you in here earlier when we
24 showed the pictures of the black Mercedes that crashed
25 into the pole?

STEPHANIE BISHOP-DIRECT BY MR. MOYER

1 A Yes.

2 Q Did it look like that vehicle?

3 A Yes.

4 Q All right. Now, what about the second car you
5 saw, tell us about that.

6 A The Mustang?

7 Q Yes. Well, let me ask you this first, did you
8 see the pictures of the Mustang when we showed it?

9 A Yes.

10 Q Did that look like the Mustang that you saw?

11 A Yes.

12 Q And that Mustang, was it close to the Mercedes?

13 A It was pretty close. I would say a car length
14 or two ahead.

15 Q Okay. Now, did the black Mercedes slow down or
16 stop near you?

17 A No.

18 Q Were you out by the road?

19 A I was in my yard.

20 Q Okay. Is that --

21 A Yeah, it's on the road.

22 Q Okay.

23 A We don't have a sidewalk or anything.

24 Q All right. So, you were pretty close to the
25 road?

1 A Yes.

2 Q And what did the -- what did the Mustang do when
3 it stopped?

4 A Well, he came up pretty quick and he stopped
5 abruptly. He said, Please help me and call 911.

6 Q Okay. Now, did you know this person?

7 A No.

8 Q Do you know him now?

9 A Yes.

10 Q Is he here in the courtroom?

11 A Yes.

12 Q Would you point him out?

13 A He's the back in the blue shirt.

14 Q Mr. Cabrera, Juan Cabrera?

15 A Uh-huh.

16 Q And you've gotten to know him just because of
17 this case?

18 A Yes.

19 Q As far as you know, had you ever seen him before
20 that day?

21 A No.

22 Q So, after he said this to you, what -- well, let
23 me ask you, how was he acting?

24 A He was desperate.

25 Q Okay. Then after he said that to you, what did

STEPHANIE BISHOP-DIRECT BY MR. MOYER

1 he do?

2 A He stopped abruptly. He made his comment -- you
3 know, he asked me to help, then, immediately, took off
4 again.

5 Q Did you call 911?

6 A Yes.

7 Q Okay, now, before we get to that, let me -- do
8 you remember taking a look at a map on previous days and
9 picking out where your house was on that map?

10 A Yes.

11 Q Would you be able to do that again?

12 A Yes.

13 (WHEREUPON, State's Exhibit No. 34 was marked
14 for identification only.)

15 BY MR. MOYER:

16 Q Okay. Now, take a look if you would at State's
17 Exhibit No. 34. Is that the map you've had a chance to
18 look at several times in the past?

19 A Yes.

20 Q Does that give a true and accurate
21 representation of the layout of the areas that we've been
22 talking about in this case?

23 A Yes.

24 Q Does it show your house? I mean, does it show
25 the location where your house is?

STEPHANIE BISHOP-DIRECT BY MR. MOYER

1 A Yes.

2 Q Okay.

3 MR. MOYER: Your Honor, at this time, we'd move
4 State's Exhibit 34 entered into evidence.

5 MS. TAYLOR: Without objection, Your Honor.

6 THE COURT: All right. Without objection, so
7 admitted.

8 (WHEREUPON, State's Exhibit No. 34 was admitted
9 into evidence.)

10 BY MR. MOYER:

11 Q I'm going to ask you, if you would, just to step
12 down. Can you point out, first of all, Poinsett Highway?

13 A Okay, here's Poinsett.

14 Q Okay. And --

15 A That leads to Fair Street. And we sat right
16 here on the corner of Fair Street and Ballenger.

17 Q Are you up here in the top part of it?

18 A No, we sit right here.

19 Q You sit over there on this side?

20 A Uh-huh.

21 Q Can you show us where those cars were coming
22 when you saw them?

23 A When they came, they came right down through
24 here. And from there, I'm not sure. But he passed my
25 house right here.

STEPHANIE BISHOP-DIRECT BY MR. MOYER

1 Q And they kept going that way?

2 A Yes.

3 Q Are you familiar with Poinsett Tire, that tire
4 shop where Mr. Cabrera worked?

5 A Uh-huh.

6 Q Is this green dot, is that where Poinsett Tire
7 is up on --

8 A Yes.

9 Q How far would you say -- guess how far that
10 Poinsett Tire is from your house? Is it over a mile,
11 would you say?

12 A No, I wouldn't say over a mile.

13 Q Not over half a mile?

14 A Maybe a little, yeah. It's not far at all. I
15 wouldn't even say a mile.

16 Q Somewhere between a half a mile and a mile?

17 A Uh-huh.

18 Q Okay, please have a seat.

19 A (The witness complies.)

20 Q Now, have you had a chance to go back and listen
21 to the 911 call that you made?

22 A Yes.

23 Q And when you listened to that call, is that a
24 true and accurate representation of the phone call that
25 you had with the dispatcher when you called it in?

1 A Yes.

2 Q Were there any changes or additions or deletions
3 made at all to that tape?

4 A No.

5 Q Let me show you State's Exhibit No. 1, are you
6 able to recognize that?

7 A Yes.

8 Q Okay. What is that?

9 A This is a copy of the call and my signature
10 verifying that that's what it is.

11 Q Okay. So, that's the call that you have
12 listened to?

13 A Yes.

14 Q And you've testified before in the past about
15 this call being the call that you made, correct?

16 A Yes.

17 MR. MOYER: Your Honor, at this time, we'd move
18 to have State's Exhibit 1 entered into evidence and
19 published to the jury?

20 MS. TAYLOR: Without objection, Your Honor.

21 THE COURT: All right, so admitted.

22 You may publish it, sir.

23 MR. MOYER: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 (WHEREUPON, State's Exhibit No. 1 was admitted

STEPHANIE BISHOP-CROSS BY MS. TAYLOR

1 into evidence.)

2 BY MR. MOYER:

3 Q Okay. So, that was the phone call that you
4 made?

5 A Yes.

6 Q To 911?

7 A Yes.

8 Q Okay.

9 MR. MOYER: Please answer any questions the
10 Defense may have.

11 MS. TAYLOR: Thank you, Ms. Bishop.

12 May it please the Court just very briefly.

13 THE COURT: Yes, ma'am.

14 CROSS-EXAMINATION

15 BY MS. TAYLOR:

16 Q Do you remember the name of the officer that
17 came out and spoke with you?

18 A No.

19 Q Would it be Officer Wilson? Does that ring a
20 bell?

21 A I don't remember.

22 Q You don't remember. Okay. Let me ask you, when
23 you said you saw the cars coming by and the passenger was
24 hanging out the window. You didn't see a gun, you didn't
25 hear any gunshots, right?

1 A No.

2 Q Are gunshots common in that area?

3 A Well, now, the area I'm in and the area that the
4 other folks are in --

5 Q The previous witnesses --

6 A I mean, we're close, but there's a little
7 difference. But honestly, if I heard a gunshot, I
8 really -- I mean, I'm going to go look. I'm going to
9 bring my dogs in. But, you know, it's really not a lot to
10 think about. There's a lot of bad things over there, the
11 people.

12 Q Let me ask you, you saw the passenger, you said,
13 and he had on a white shirt?

14 A Yeah.

15 Q Okay. Did you see any blood or anything on the
16 shirt?

17 A No, I didn't. You know, they were -- if they
18 had been going 25, 35 miles an hour, I may have been able
19 to --

20 Q Get a better look.

21 A -- give you more detail. But, no.

22 Q That's fine. Just what you remember, that's
23 all. And let me ask you, did you give any other
24 statements to any police officers? Did they follow up
25 with any other interviews?

STEPHANIE BISHOP-CROSS BY MS. TAYLOR

1 A I spoke with a few people that day, but it was
2 mostly phone calls.

3 Q And so you never gave a written statement?

4 A I don't believe so. I think all my statements
5 were given to Mark.

6 Q To Mark. Okay. And let me just ask you, what
7 is your current relationship with Juan Cabrera today?

8 A Today.

9 Q Uh-huh?

10 A It's purely this.

11 Q You don't have a romantic relationship with him?

12 A No. I didn't even know his name this morning.

13 Q Oh, I thought you said you had known him?

14 A No, I've known him through the process of this
15 911 call and these proceedings.

16 Q Okay.

17 MS. TAYLOR: Thank you. No further questions.

18 THE COURT: Redirect, sir?

19 MR. MOYER: No, Your Honor.

20 THE COURT: Thank you, ma'am, I appreciate you
21 being here. You may step down.

22 Anybody need a break? Anybody? You're good?

23 Okay.

24 Mr. Moyer, you may call your next witness, sir.

25 MR. MOYER: State calls Deputy Husk.

MARK HUSK-DIRECT BY MR. MOYER

1 MARK HUSK, after being duly sworn,
2 testified as follows:

3 THE CLERK: Thank you. Have a seat. And will
4 you state your full name for the record?

5 THE WITNESS: Yes. Harry Mark Husk.

6 DIRECT EXAMINATION

7 BY MR. MOYER:

8 Q All right. Let me ask you first where you are
9 employed?

10 A I'm employed with Greenville County Sheriff's
11 Office.

12 Q How long have you been in law enforcement?

13 A I've been in law enforcement 22 years.

14 Q How long have you been with the sheriff's
15 office?

16 A A little over three years.

17 Q What is your position with the sheriff's office?

18 A I'm a uniform patrol deputy assigned the Echo
19 Platoon.

20 Q And what do uniform patrol deputies do?

21 A We answer calls of service. Any time an
22 incident call comes in to 911, we are the first
23 responders.

24 Q So, when 911 calls in, y'all are usually the
25 first ones to go to a scene?

MARK HUSK-DIRECT BY MR. MOYER

1 A Yes.

2 Q And see what's going on?

3 A Yes.

4 Q Let me take you back to June the 6th of 2014.

5 Were you working on that date?

6 A Yes, sir.

7 Q Okay. Now, did you have occasion on that date

8 to come into contact with the victim in this case, Juan

9 Cabrera?

10 A Yes, sir.

11 Q Where were you and what were you doing when this

12 happened?

13 A I was on [REDACTED] A Street responding to a civil

14 matter when I came across Juan Cabrera.

15 Q Was there any other deputies with you?

16 A Yes. Deputy George Dedmont was also present.

17 Q Does he still work at the sheriff's office?

18 A He is no longer employed at the sheriff's

19 office.

20 Q So, you and Deputy Dedmont were at this location

21 [REDACTED] A Street, you said?

22 A Yes, sir.

23 Q And it was something totally unrelated to this

24 matter that we're talking about today?

25 A Yes, sir.

1 Q Okay. And what were you doing and what do you
2 recall happening when you encountered Mr. Cabrera?

3 A Okay. At that time, we had just finished the
4 prior incident call. And we had noticed Juan Cabrera
5 driving up A Street in a silver Mustang, and got out of
6 the car very excited, very upset. He had blood about his
7 face, neck. An Hispanic male, broken English, it was a
8 little hard to understand him at first. Once we got him
9 calmed down, we understood that he had been robbed at his
10 tire shop.

11 Q Is that what he told you had happened?

12 A Yes, sir.

13 Q Up until this point, had you been following the
14 radio transmission about any accident or anything like
15 that?

16 A No, sir.

17 Q So, you were aware of any other incidents that
18 may have happened with regard to this?

19 A No, sir.

20 Q Okay. So, were you -- were you on the lookout
21 for a black Mercedes or silver Mustang or anything like
22 that?

23 A No, sir.

24 Q Did you wave down the Mustang or did it stop on
25 its own accord?

MARK HUSK-DIRECT BY MR. MOYER

1 A He stopped on his own.

2 Q Okay. So, when he stopped, did he stop pretty
3 close to y'all?

4 A Yeah, fairly close. He had exited the vehicle.
5 Like I said, he was very excited. He finally got calmed
6 down. We are not able to understand his English. He said
7 that he was robbed at his tire shop and that he was
8 chasing the subjects down.

9 Q Did he tell you about the wreck that had just
10 happened?

11 A Yes, he advised us that while he was chasing
12 them that he had ran into the back of them and he had
13 wrecked up on Old Buncombe Street.

14 Q And y'all were in uniform?

15 A Yes.

16 Q Were you in marked cars?

17 A Yes.

18 Q Do you remember if your blue lights were active
19 or not?

20 A Not at that time, no, they were not. At that
21 time, we put out on the radio what had taken place. And I
22 believe during that time frame, the 911 calls had come in
23 about the car accident.

24 Q Okay. And you mentioned some blood?

25 A Yes.

1 Q Did you see the photographs that were shown --

2 A Yes.

3 Q -- earlier of Ms. Cabrera? Is that consistent
4 with the way he appeared to you --

5 A Yes.

6 Q -- when you saw him? Okay. Now, when he gave
7 you this information about being robbed, did he tell you
8 how many people had robbed him?

9 A Yes.

10 Q How many did he --

11 A He told me there were two black males.

12 Q Did you call in the report that he made to
13 y'all?

14 A I believe so, yes, sir.

15 Q Okay. Now, did you become aware that other
16 officers arrived at the intersection -- the location where
17 Old Buncombe Road was?

18 A Yes.

19 Q Where this accident was. Now, did you then take
20 Mr. Cabrera over to that location?

21 A Yes, sir. I transported him from A Street to
22 the intersection of Old Buncombe and Morris.

23 Q And that was before the forensics officer showed
24 up to take photographs?

25 A That is correct.

MARK HUSK-DIRECT BY MR. MOYER

1 Q What was the purpose of driving Mr. Cabrera over
2 there?

3 A To identify the suspects.

4 Q That was the driver of car, who was still in the
5 car?

6 A Yes, sir.

7 Q So, where was Mr. Cabrera when y'all drove over
8 there?

9 A Mr. Cabrera was in the back seat, right rear
10 seat of the patrol unit. And I drove him up to the
11 intersection of Old Buncombe and Morris Street.

12 Q And this was to make an identification of Steven
13 Williams, the man who had been the driver?

14 A Yes, sir.

15 Q And when you got over there, were police
16 officers with Steven Williams?

17 A Yes, sir.

18 Q Did they have him stand up so Mr. Cabrera could
19 see of him?

20 A Yes, sir.

21 Q Did Mr. Cabrera identify him at that time?

22 A Yes, he did.

23 Q How far would you say -- this location where
24 you -- Mr. Cabrera came up at [REDACTED] First Street, how close
25 is that location to where that wreck was?

1 A It's probably about a half mile, approximately.

2 Q Okay. All right. So, just took a minute or two
3 to drive over there?

4 A Yes, sir.

5 Q All right. Now, after you took him over to
6 identify the driver, what did you and Mr. Cabrera do?

7 A After the -- after Mr. Cabrera identified the
8 driver, I transported him back to the original location of
9 the incident at 1301 Poinsett Highway.

10 Q Okay, back to his job?

11 A Yes, sir.

12 Q Did he drive his car over there?

13 A No, he did not.

14 Q He left the car back for forensics?

15 A Yes.

16 Q Then what did y'all do when you got over there
17 to --

18 A Once we got back there, was also met by a
19 supervisor and Juan had explained to us what had taken
20 place. I got a written statement from him as to the
21 altercation. Getting back to your photos there, which
22 shoed the exact location of the altercation, and the
23 evidence that was shown in those photos, the stun gun, the
24 money was all in those exact locations when we arrived.

25 Q Okay. So, you walked through there with

MARK HUSK-CROSS BY MS. TAYLOR

1 Mr. Cabrera and you saw the money that was out on the
2 floor?

3 A Yes, sir.

4 Q And behind the fan?

5 A Yes, sir.

6 Q And stun gun, you saw?

7 A Yes, sir.

8 Q And you remember the forensics officer taking
9 photographs of them there?

10 A Yes, I do.

11 MR. MOYER: Okay, one moment, please. Okay, I
12 have no further questions at this time.

13 MS. TAYLOR: May it please the Court?

14 THE COURT: Yes, ma'am.

15 CROSS-EXAMINATION

16 BY MS. TAYLOR:

17 Q Is it Deputy Husk?

18 A Okay.

19 Q Okay. I just want to be correct in announcing
20 you. Deputy Husk, if you could briefly give me just a
21 little bit of information about what happens in your job
22 when you have an incident like this. Like, what's the
23 first thing you do?

24 A Obviously, the first thing is safety of those
25 involved and officers. In this particular situation, we

1 made sure that Mr. Cabrera was medically safe at that
2 point.

3 Q Did he need to go to the doctor? Did he need
4 any medical treatment?

5 A No.

6 Q Did paramedics come?

7 A I believe the paramedics did come and check him
8 out, but he refused to go to the hospital for medical
9 treatment.

10 Q Okay. Continue. So, what would be the next
11 thing you do after securing everyone's safety?

12 A First of all, we went back to the scene, okay.
13 Just like I spoke to the solicitor. I identified the
14 subject, took him back to the original incident location,
15 and went through his statement from start to finish.
16 Documented his statement. Forensic was involved.
17 Forensic did their work. At that point, the report was
18 written.

19 Q Would you say that taking witness statements is
20 one of the most important parts of your job?

21 A No.

22 Q You wouldn't say that taking down --

23 A I wouldn't say it's the most important, it's
24 important, yes.

25 Q I didn't say most, I said important part of your

MARK HUSK-CROSS BY MS. TAYLOR

1 job?

2 A Yes.

3 Q So, if there's a witness that tells you
4 something, like, they saw a gun, you as a police officer
5 would make a note of that and write that down so that two
6 years later when we're in trial you have a record of it;
7 right?

8 A Are we talking this case?

9 Q Is it practice, common practice?

10 A If I have a witness that says they seen a gun,
11 yes.

12 Q You would write down that witness' statement,
13 get her to sign it. And then you would turn it over to
14 the solicitor so it could be used as evidence at trial,
15 correct?

16 A Yes.

17 Q Is there any reason that you could think of that
18 you would not take a witness's statement?

19 A No.

20 Q Okay. I want to talk to you just a little bit
21 about what Mr. Cabrera told you in his statement. And
22 just -- I think you probably have a copy of this, but I'm
23 going to show this to you just in case you need any help
24 refreshing your memory. Just look at that and let me know
25 the validity of that and what it is.

1 A Okay. This is a supplemental report which I
2 did.

3 Q So, you drafted that?

4 A Yes.

5 Q And you signed off on it at the bottom?

6 A Yes.

7 Q All right. So, what I want to direct your
8 attention to is in kind of the second photograph when
9 Mr. Cabrera is describing what happened in the actual
10 incident, can you tell me how he described this
11 confrontation taking place?

12 A He stated that --

13 MR. MOYER: Your Honor, I would object to this
14 as hearsay. I can understand -- there's no
15 foundation laid for it to fit under any of the
16 exceptions to hearsay. Mr. Cabrera has not testified
17 yet. So, at this point, I would argue it's hearsay.

18 MS. TAYLOR: He needs to be able to testify as
19 to what happened at the actual scene of the crime,
20 Your Honor. I mean, he took the statement.

21 THE COURT: He can testify as to the
22 circumstances and details of the incident as they
23 relate to him. He can't testify as to anything that
24 proves the fact of the matter asserted. That is
25 hearsay. But I'll let him note his understanding of

MARK HUSK-CROSS BY MS. TAYLOR

1 how the accident happened as conveyed to him by
2 persons on the scene, including Mr. Cabrera.

3 BY MS. TAYLOR:

4 Q I'm specifically asking about the robbery. Can
5 you detail how that was explained to you?

6 MR. MOYER: Once again, Your Honor, same
7 objection. That's hearsay.

8 MS. TAYLOR: I mean, he used it to put in a
9 report. He put it in his report exactly the way he's
10 going to testify to it now.

11 THE COURT: He can recount his understanding of
12 how it happened, but he can't -- he, obviously, can't
13 reference the hearsay, but he can --

14 BY MS. TAYLOR:

15 Q So, you can't say so and so told me this, but
16 you can tell me what your understanding of the incident
17 was.

18 A Sure. Juan stated that he was at the tire shop
19 working in the back when a black four-door Mercedes pulled
20 in the parking lot. Two black males wearing black shirts
21 and black shorts exited the vehicle and walked into the
22 shop. One that was clean shaven, the other had a little
23 facial hair.

24 One said, Give me your fucking money or I
25 will shoot you.

1 Then the same one pulled out a black
2 revolver from his waistband. Then the second one began
3 shoving him to the rear of tire shop.

4 Juan said to him, I don't want any trouble.

5 And Juan reached into his front pocket and
6 threw up in the air approximately \$150 in cash stuck in
7 his front pocket.

8 The one that presented the revolver began
9 picking up the money. As the one shoved me to the back, I
10 was shocked with the stun gun.

11 Q Okay. I'm going to stop you there. Were you in
12 the courtroom when the forensics officer testified?

13 A Yes.

14 Q So, you heard him say that from his forensics
15 and his experience that the victim was not stunned with
16 the stun gun?

17 MR. MOYER: Your Honor, I --

18 A I don't believe he said that.

19 MR. MOYER: For one thing, I would say that's
20 mischaracterizing, but also I'd say it's pitting
21 witnesses, it's not relevant and it's outside of his
22 sphere of testimony.

23 THE COURT: Yeah. I don't know if it's pitting
24 or not because I don't know exactly the question.

25 Rephrase the question if you will, please, being

MARK HUSK-CROSS BY MS. TAYLOR

1 careful not to pit one witness against the other.

2 MS. TAYLOR: My questions was that he was in the
3 courtroom when the forensics investigator testified
4 that under his opinion, he had not been shot with a
5 stun gun.

6 MR. MOYER: Once again, that's -- first off,
7 that's not what the officer said. And secondly,
8 there's no --

9 MS. TAYLOR: It absolutely is what the officer
10 said. We can pull the transcript.

11 MR. MOYER: There's no relevance.

12 THE COURT: Ladies and gentlemen, remember I
13 told you at the very beginning of this case, the
14 attorney's arguments and their questions are not
15 evidence. I don't know what was said and I don't
16 have an opinion about the facts or what was read into
17 the record, what any particular witness may have
18 said, that's up to you.

19 If either of these attorneys are misrepresenting
20 what a witness said, then you know that. The 12 of
21 you together when you go into your deliberations and
22 you analyze the evidence can determine whether the
23 representations that are made by attorneys are right
24 or whether they're wrong. Neither of them can tell
25 you what a witness said or what a witness did not

1 say. Again, the attorneys questions are not
2 evidence. The witnesses responses are the evidence.

3 Okay. Now, it sounds like there's a
4 disagreement between you and this witness and The
5 State about what the characterization of that
6 evidence was, I ask you to move on.

7 MS. TAYLOR: Okay.

8 BY MS. TAYLOR:

9 Q Just briefly, did Juan at any point tell you
10 that he had another \$250 in his back pocket?

11 A I do not know.

12 Q You don't remember, okay. He said that he was
13 shot with a stun gun. And then he said he began fighting
14 several times, correct? So, he engaged with these two?

15 A Yes. Well, I don't know if it was both at the
16 same time. I guess one of them hit him multiple times,
17 the head and the body. The second one struck him in the
18 back of the head with the gun.

19 Q With a gun. Then he tells you that they ran out
20 of the tire shop --

21 MR. MOYER: Once again, I object to this --

22 THE COURT: I sustain.

23 MR. MOYER: -- hearsay, this entire line of
24 questioning.

25 THE COURT: I sustain.

MARK HUSK-CROSS BY MS. TAYLOR

1 You're going to have to ask him those questions,
2 okay?

3 MS. TAYLOR: All right.

4 BY MS. TAYLOR:

5 Q Okay. What I'm going to ask you, Deputy Husk,
6 did you find any money at the scene other than what was
7 photographed, previously shown, the one dollar bills?

8 A The money that was at the scene was in the
9 photographs.

10 Q So, you don't find any other than that?

11 A I was not looking for any other money.

12 Q Was there any money that was found on either
13 Steven Williams or Leviticus Young?

14 A I did not make the arrest.

15 Q Okay. Mr. -- did Juan admit that he struck the
16 car? Did he tell you that, that he hit the car
17 intentionally?

18 A Yes.

19 Q Okay. Did you question him at all about a hit
20 and run?

21 A No, I was investigating a robbery.

22 Q So, when it was initially called in, do you know
23 if it was called in as a hit and run or as an armed
24 robbery?

25 A That, I do not know.

1 Q Okay.

2 A My initial was a robbery. That was my initial
3 call with Juan.

4 Q Do you know if anybody from any investigative
5 unit did anything about him fleeing the scene of an
6 accident?

7 A I can't speak for others.

8 Q But you didn't?

9 A I was just investigating a robbery.

10 Q Okay. When you were interviewing Mr. Cabrera,
11 did he make any comments about a gun or gunshots being
12 fired?

13 A Yes.

14 Q What did he say about that?

15 MR. MOYER: Excuse me, Your Honor. I object to
16 the hearsay.

17 THE COURT: That's sustained.

18 You can ask him that question.

19 BY MS. TAYLOR:

20 Q So, he did say that there were gunshots fired?

21 A Yes.

22 MR. MOYER: Objection.

23 MS. TAYLOR: Thank you, Your Honor. No further
24 questions.

25 THE COURT: Sustained.

MARK HUSK-CROSS BY MS. TAYLOR

1 Go ahead.

2 Any redirect, sir?

3 MR. MOYER: No, Your Honor.

4 THE COURT: Okay. Thank you, Officer, I
5 appreciate you being here, sir. You may step down.

6 How many additional witnesses do you intend to
7 call, Mr. Moyer?

8 MR. MOYER: Five to seven.

9 THE COURT: Okay. You still think you're on
10 pace to finish by 5:00 or 5:30 this afternoon.

11 MR. MOYER: We may have to call witnesses
12 through tomorrow, Your Honor.

13 THE COURT: Okay. Fair enough. Fair enough.

14 Ladies and gentlemen, let's take a short break.
15 We'll come back in and we'll resume the testimony in
16 this case.

17 (WHEREUPON, the jury left open court at
18 approximately 3:10 p.m.)

19 THE COURT: Okay. We'll be in recess about 10
20 minutes. We'll come back in and resume testimony.

21 (WHEREUPON, a short break was taken.)

22 MR. MOYER: Your Honor, I have an Order to keep
23 Steven Williams, who is the co-defendant in this
24 case -- he was transported from the Department of
25 Corrections. Just in the chance we're not able to

JUAN CABRERA-DIRECT BY MR. MOYER

1 reach him today, we have an Order to have him kept
2 overnight.

3 THE COURT: Yeah, that's fine.

4 MR. MOYER: May it please the Court?

5 THE COURT: I don't think we had to go on the
6 record for that.

7 Okay. Y'all ready for the jury now?

8 MR. MOYER: Yes, Your Honor.

9 MS. TAYLOR: Yes, Your Honor.

10 (WHEREUPON, the jury came into open court at
11 approximately 3:30 p.m.)

12 THE COURT: All right, ladies and gentlemen,
13 welcome back.

14 You may call your next witness.

15 MR. MOYER: State calls Juan Cabrera.

16 JUAN CABRERA, after being duly sworn,
17 testified as follows:

18 THE CLERK: Please have a seat. Will you state
19 your full name for the record?

20 THE WITNESS: Okay.

21 DIRECT EXAMINATION

22 BY MR. MOYER:

23 Q Mr. Cabrera, tell us your full name.

24 A Juan Ivan Cabrera.

25 Q How do you spell your last name?

JUAN CABRERA-DIRECT BY MR. MOYER

- 1 A Cabrera is C-A-B-R-E-R-A.
- 2 Q And your middle name is Ivan?
- 3 A Ivan.
- 4 Q I-V-A-N?
- 5 A Yes.
- 6 Q Okay. How old are you, Mr. Cabrera?
- 7 A I'm 25.
- 8 Q Are you married or single?
- 9 A Single.
- 10 Q Where were you born?
- 11 A In Mexico.
- 12 Q When did you come to the United States?
- 13 A When I was 14.
- 14 Q Did you come here on any kind of visa or
- 15 something like that?
- 16 A Not really. I mean, I don't remember, but just
- 17 my parents, they pay for somebody to bring me here.
- 18 Q Okay.
- 19 A That's all I know.
- 20 Q And you've been here since you were 14?
- 21 A Yeah, yeah, when I was 14.
- 22 Q You live here in Greenville.
- 23 A Yes.
- 24 Q All right. Are you working anywhere right now?
- 25 A Well, I have one week no work. But I used to

1 work at the tire shop. I worked there for almost five
2 years.

3 Q When did you start working?

4 A I start there in October 30 of 2012.

5 Q 2012? So, you don't -- you still work there?

6 A No, not no more.

7 Q When did you stop working there?

8 A I stopped working last week, Monday last week.

9 Q Do you have a new job now?

10 A Not yet. I'm looking for one right now.

11 Q Now, what did you -- let's talk a little bit
12 about the tire shop. You were in here when we saw the map
13 of the tire shop?

14 A Yeah.

15 Q The big aerial map, does that show where your
16 tire shop was located?

17 A Yes.

18 Q We're going to look at a couple of photographs.
19 I want you to tell us a little bit about your shop. Let's
20 start with State's Exhibit No. 24. Is that a picture of
21 Poinsett Tire where you worked?

22 A Yes, sir.

23 Q Were you working there in June of 2014?

24 A Yes.

25 Q All right. And tell us a little bit about that

JUAN CABRERA-DIRECT BY MR. MOYER

1 business. What all type of work is done at Poinsett Tire?

2 A Well, I used to change tires, used tires,
3 sometimes use tires. But it's, you know, just changing
4 used tires. Selling used tires to people, yeah.

5 Q How would you get paid?

6 A I get paid by cash. The customers have to pay
7 cash because we don't accept like credit cards, checks,
8 nothing like that.

9 Q Did you own the business?

10 A No, sir. I worked for some -- I used to work
11 for somebody else.

12 Q You worked for the owner of the business then?

13 A Yes.

14 Q It was, basically, a cash only business?

15 A Cash only.

16 Q Didn't have credit cards?

17 A Yeah.

18 Q So, where would you -- let me show you State's
19 Exhibit No. 25. Does this show kind of where you would do
20 the work, changing the tires?

21 A Yes.

22 Q Would you do the work inside this area right in
23 here?

24 A Yes. Inside -- well, outside, we take the tires
25 off from the cars, you know, we use the jacks and take the

1 tire off. We take the tires inside to change it with a
2 tire machine, yeah.

3 Q Okay. All right. Now, what kind of hours did
4 you used to work?

5 A I used to work from 9:00 a.m. to 6:00 p.m.

6 Q What days of the week?

7 A Monday through Friday, 9:00 to 6:00. Saturday
8 from 9:00 to 2:00.

9 Q Okay. And you said you did it for about five
10 years.

11 A Almost five years, yeah.

12 Q So, back when this incident --

13 A Four years -- I would say.

14 Q Well, that's close enough.

15 A It's like a little bit over four years.

16 Q Did you -- were your customers come from all
17 over Greenville or did most of them come from that area?

18 A They come from everywhere. Some came from
19 Taylor, Spartanburg, Easley, you know.

20 Q How much did you charge to change a tire?

21 A For a used tire, the cheap ones, 20, \$25,
22 sometimes \$15. But, you know, between 20, 25.

23 Q Now, as you would get paid, what would you do
24 with the money?

25 A I keep it in my pocket with me.

JUAN CABRERA-DIRECT BY MR. MOYER

1 Q You keep it all day long in your pocket?

2 A Yeah.

3 Q Then at the end of the day, what would you do
4 with the money?

5 A Sometimes, they want to call me and say I meet
6 you, or sometimes, I keep it till the end of the week and
7 I give it to him, yeah.

8 Q Okay. Now, were working on June the 6th of
9 2014?

10 A Yes.

11 Q Do you remember it being a Friday?

12 A Yes.

13 Q All right. Were you working by yourself?

14 A Yes. Most of the time, yeah.

15 Q Were you the only person working there?

16 A Yes.

17 Q All right. Now, during that day, did you ever
18 work on that black Mercedes at any time that day?

19 A No.

20 Q Didn't come in for any work?

21 A No. They pull up into the tire shop. And, you
22 know, they acted like they wanted to buy tires. I have to
23 --

24 Q Let me just stop you right there, not get ahead
25 of myself. But that car has never come into the shop for

1 work as far as you know?

2 A I see the car before they pulled into the tire
3 shop. They passed front -- well, they passed -- they
4 passed the tire shop, but they stop in the middle in the
5 road, in the yellow lines for maybe one minute and they
6 left. Then they come back again.

7 Q So, when you first saw the black Mercedes, was
8 it out in the road?

9 A Yeah.

10 Q On Poinsett Highway?

11 A On Poinsett Highway, yes.

12 Q Did it stop?

13 A Yes, they stopped, like I said, for one minute.
14 They watching the shop. They see me, but they left.

15 Q They left?

16 A Yeah.

17 Q Okay. Did it then come back later?

18 A They come back later, maybe after 10 minutes
19 later.

20 Q Okay. And at this time, around what time was
21 it?

22 A Well, the first time when I see them was like
23 maybe 5:40, something like that. And they pulled in,
24 like, maybe 5:55 or almost 6:00, something like that.

25 Q It was close to 6:00 o'clock?

JUAN CABRERA-DIRECT BY MR. MOYER

1 A Close to 6:00, yeah.

2 Q Okay. Were you getting ready to shut down for
3 the day?

4 A Yeah, because I already -- well, we have two
5 bays, one here, one here. I already closed this one and
6 left this one open because somebody called me and I take
7 the call and take me time. And I close this gate, so they
8 pull into the tire shop, they go inside, yeah.

9 Q So, just make sure I understand you. So, when
10 the black Mercedes pulled in, it pulled inside the gate?

11 A Uh-huh.

12 Q Did it pull up close to the shop?

13 A Yeah, it pulled up, like, from -- like -- well,
14 they pulled into the tire shop. Because we got things
15 around, they pulled up into the fence. But yeah, they
16 was, like, maybe -- maybe 15 or 20 feet from the front
17 door, from the building.

18 Q Okay.

19 A Yeah.

20 Q So, just make sure I understand what you're
21 talking about, when you say they pulled into the fence,
22 you're referring to this fence right here?

23 A Yes.

24 Q So, the gate was opened and they were able to
25 pull in?

1 A Yeah, that gate was opened.

2 Q This gate right here was opened?

3 A Yes.

4 Q And the car pulled in, okay. What were you
5 doing when the black Mercedes pulled in?

6 A Well, I put my phone down and I was ready to ask
7 them, like, what can I help you with? Can I help you with
8 something, so they get out from the car, they come to me.

9 Q Were they out of the car when you first saw them
10 or were they still --

11 A Yeah -- well, when I put my phone down, they got
12 out from the car.

13 Q Okay.

14 A Is when they come to me. I ask them, Can I help
15 you with something?

16 And that's when the guy was on the left, he
17 asked me for the money. The guy on right, he got the stun
18 gun.

19 And he asked me, Give me the fucking money.

20 Q Which one said, Give me the --

21 A Steven Williams. He was on the left side.

22 Q Do you remember how they were dressed?

23 A Yeah, he was dressed up like this shirt with
24 shorts. The other guy was white t-shirt with shorts.

25 Q So, the one in the black t-shirt, that's the one

JUAN CABRERA-DIRECT BY MR. MOYER

1 you identified as Steven Williams?

2 A Steven Williams, yes.

3 Q Is he the one who ended up you seeing being the
4 driver of that car?

5 A Yeah, he -- he was the driver.

6 Q Okay. Now, the man in the white t-shirt?

7 A He was the passenger.

8 Q He was the passenger?

9 A Yes, sir.

10 Q Now, is that person here in this courtroom
11 today?

12 A Yes, sir.

13 Q Would you identify him for the jury?

14 A It's him right there.

15 Q It's Leviticus Young?

16 A Yes.

17 Q The Defendant in this case?

18 A Yes.

19 Q And what was he holding?

20 A He was holding a stun gun in the right hand.

21 Q Now, I'm going to show you State's Exhibit No.

22 37. Do you remember seeing a stun gun in your shop later
23 that date when you came back?

24 A Yes.

25 Q Is this -- does this look like the stun gun that

1 you saw?

2 A Yes, sir.

3 Q Leviticus Young holding?

4 A Yes, sir.

5 Q Then someone said, Give me the F'ing money, you
6 say?

7 A Yes.

8 Q What did you do when you heard them say that?

9 A I tell him, like, This is a joke or what?

10 He said, No, give me the fucking money.

11 They push me to the back, you know, like
12 that. And that's when he put the gun, revolver, in my
13 face and said, Give me the fucking money.

14 Q Which one had a --

15 A Steven Williams.

16 Q Steven Williams, the man who was the driver, had
17 the black revolver?

18 A Yeah.

19 Q Okay. Hold on a second.

20 A Okay.

21 Q Mr. Williams [sic], at this time, I'm going to
22 show you State's Exhibit No. 36. It's not in evidence
23 yet, so I don't want you to hold it up and show it to
24 anybody, but I want you to take a look inside there. And
25 I want to ask you, does that look like the revolver that

JUAN CABRERA-DIRECT BY MR. MOYER

1 you saw Steven Williams holding?

2 A Yes. That is the same.

3 Q That's what it looked like?

4 A Yeah.

5 Q Okay. Okay. So, were you inside the shop at
6 this time?

7 A Yeah.

8 Q Okay. What were you doing?

9 A Well, when he put the gun in my face, I decide
10 give him the money. But the good thing that day, I have
11 in my pocket \$150 cash. The rest of the money was in my
12 wallet.

13 Q Let me stop you right there. You said you had
14 \$150 cash?

15 A Cash, yeah.

16 Q Which pocket was that in?

17 A Well, on the left. I think it was on the left.
18 Yeah, it was on the left.

19 Q But it was one of the front pockets?

20 A Yeah, front pockets.

21 Q And you say you actually had some more money?

22 A I had more money, yes, in my wallet.

23 Q In your wallet?

24 A Yeah.

25 Q So, did you ever get out the money out of your

1 wallet?

2 A No, no.

3 Q So, you took out the --

4 A I take the 150 cash I got in my front pocket.

5 Q Okay.

6 A Yeah.

7 Q What did you do when you took the money out of
8 your pocket?

9 A When he asked me for the money and he put the
10 black revolver in my face, I think, well, it's not worth
11 it for \$150.

12 I say, Look, you want my money? I pulled
13 my money out of my pocket. I said, You want it, take it.

14 And I threw it through the air because I
15 don't want to give my money to somebody come up and take
16 it. It's not right.

17 Q Let me stop you for one second. I was going to
18 ask you why did you throw it as opposed to just handing it
19 to him?

20 A Because I think it's not right -- the first
21 thing, it's not right because I work too hard for that
22 money. And it's not right somebody come and take that
23 money away from you. I think it's not right because that
24 money come to me to make it. Plus, it's not my money, it
25 was the owner money. And it's my responsibility to, you

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1 know, take care of that money. Because if something is
2 missing, it's on me.

3 Q Okay. So, what happened after you --

4 A Okay, when I threw the money to the air, he
5 started picking up the money --

6 Q Which one started picking up the money?

7 A Steven Williams.

8 Q Okay.

9 A And the other guy, Leviticus Young, he pushed
10 me, so he start hit me with his hands and we start
11 fighting. He put me on the ground first and he start
12 fighting with me. So, I just cover my face and
13 everything. And I tried to hurl and, I don't know, I
14 flipped him over and I start hit him back. And maybe a
15 few seconds later, I feel like somebody was -- somebody
16 hit me from the back in my head. And I just cover my head
17 like this and I just, you know, just hold. And when
18 Steven Williams -- I mean, when Leviticus Young, he get up
19 from the ground, he start hitting me with the other guy.

20 Q So, they were both hitting you then?

21 A Uh-huh.

22 Q Is that how you got the injuries to your body
23 and to your head?

24 A Yes, sir.

25 Q Okay. Did you ever see what had hit you on your

1 head?

2 A He hit me with a black revolver in my head.

3 Q He hit you with a revolver? Was a taser ever
4 used?

5 A Well, yeah. Yeah, when -- it's important to
6 tell you this. Before he put the gun in my face is when
7 Leviticus Young, he tried to hit me, but I jump back, so
8 maybe he hit me just a little bit, but I don't feel too
9 much because I have got a shirt on. And I feel a little
10 pain, but not too much. I just jump back.

11 Q But it was over the top of your clothes?

12 A Yeah.

13 Q Okay. And so, after you got hit with the gun in
14 the head, they both started hitting you, you said?

15 A Yes.

16 Q What happened then?

17 A Well, after they hit me, I mean, Steven
18 Williams, he left the scene. He got back to the car.
19 Leviticus Young, he tried to, you know, leave, but he
20 tried to walking like normal. I take a piece of metal
21 from the table that was on the side and hit him from the
22 back. He had started taking tire and I -- and taking the
23 tires and throw it, throw it through the air just to make
24 me like don't go to outside. He tried to, you know, block
25 me there, just my time. So, he decide to go back to the

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1 car and they left.

2 Q They left in the black Mercedes?

3 A In the black Mercedes, yeah. Yeah, in that
4 time, I say -- well, I have to call the cops, but I can't
5 find my cell phone in that time. Well, if I try to find
6 my cell phone and call the cops maybe they gone. I
7 decide --

8 Q Let me stop you. You said -- so, you didn't
9 know where your cell phone was?

10 A No, because it's on the -- beside the tire
11 machine, but I trying to look for my phone, but I can't
12 see it, you know, with all this, you know, I feel like I
13 have to do something.

14 Q Okay.

15 A And I decide take my car and chase them down
16 because --

17 Q You were afraid if you looked for your phone,
18 they would be gone?

19 A Yeah, yeah. Because well, I have to find my
20 phone, then I have to call the cops, but they -- well, you
21 know, they little bit more of 10 minutes to get here. And
22 that time is good for them to escape. So, I decide to
23 take my car -- my key and the car, I take my car and I
24 chase them down. And finally, I mean --

25 Q We'll get to that in a minute. Did you see

1 which road they went on when they left your business?

2 A Yeah, they turn right on Currence -- can you
3 show me the map?

4 Q Yeah, we'll like at that in just a minute. But
5 did they take that first right?

6 A They take the first right. Then I stopped, like
7 --

8 Q Okay. Well, once again, don't get ahead of me.
9 I just want to make sure they -- so they turn down
10 Poinsett and then took that first right?

11 A Yeah, on Poinsett, they take a right on Currence
12 Avenue.

13 Q And you followed them?

14 A Yes.

15 Q Okay. Now, let me ask you, you're aware there
16 was surveillance video camera from next door that shows
17 some of this?

18 A Yeah, security camera next door, you know. They
19 have security cameras. Plus, before they left, I tried to
20 call my friend across the street -- well, she's a lady.
21 She used to work for the storage building and I tried to
22 get her attention with my hands, but she don't see me. I
23 said, well, let's do something.

24 Q So, that's why you were waving your hands?

25 A Yes.

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1 Q We can see all that in the video?

2 A Yes.

3 Q And you watched the video?

4 A I watched the video.

5 Q Is that a true and accurate -- what is shown is
6 a true and accurate reflection of what happened that day?

7 A Yes, sir.

8 MR. MOYER: Your Honor, at this time, I move to
9 have State's Exhibit No. 2 entered into evidence and
10 published to the jury?

11 THE COURT: Objection?

12 MS. TAYLOR: Just renewing my previous
13 objection, Your Honor.

14 THE COURT: All right. So noted for the record.
15 I overrule that objection. So admitted.

16 (WHEREUPON, State's Exhibit No. 2 was admitted
17 into evidence.)

18 BY MR. MOYER:

19 Q Okay. Before I start playing it, Mr. Cabrera,
20 does this show that area right in front of Poinsett Tire,
21 right in front of the shop?

22 A Yes, sir.

23 Q Is this Poinsett Highway right out here?

24 A Yes.

25 Q Okay. So, is the -- so, when I start playing

1 it, when we can see the black Mercedes in view, I want you
2 to stop us and let us know.

3 A Okay.

4 (WHEREUPON, State's Exhibit No. 2 was published
5 to the jury.)

6 THE WITNESS: There is the car.

7 BY MR. MOYER:

8 Q Is that it right there?

9 A Yes, sir.

10 Q Tell us when we can see it again.

11 A It's right there.

12 Q Right here?

13 A Yeah.

14 Q Okay. Can you see this movement right here?

15 A Yes.

16 Q Are these the two men that came into the shop?

17 A Yes, sir.

18 Q Okay. Is this the two men?

19 A Yes.

20 Q Is that you right there?

21 A Yes, sir.

22 Q Is that your car?

23 A Yes, sir.

24 Q All right. Okay. So, were you able to catch up
25 to the black Mercedes?

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1 A Yes.

2 Q Okay. And did you stop and talk to anybody
3 while you were following them?

4 A Yes, I stopped -- well, they left the shop, like
5 I say, they make a right on Currence Avenue. Maybe --
6 let's say, I guess, maybe stop and I talk to this lady and
7 I asked her for help.

8 Q Was it this lady who testified earlier?

9 A Yes.

10 Q Did you know her?

11 A No.

12 Q Okay. You had never met her before as far as
13 you know?

14 A Not before. But I know her because the last
15 couple times, she was here. We have talked, that's it.

16 Q Now, after you told her this, did you chase the
17 Mercedes again?

18 A Yes.

19 Q Okay. Now, let me ask you if you would step
20 down and can you just show us where you went as you were
21 following the Mercedes on this big map. Okay. This is
22 State's Exhibit No. 24. So, let me ask you, first off --
23 let me make sure we don't block any of the view of the
24 jurors. First off, point where Poinsett Tire is?

25 A Poinsett Tire is right here.

1 Q Okay.

2 A Poinsett Highway is right here. That's the --

3 THE COUR REPORTER: Judge, I can't hear him.

4 BY MR. MOYER:

5 Q Make sure you speak up. So, let me stop you one
6 second. So, what you're saying is, it was Fair Street?

7 A Yes.

8 Q Is that correct, that comes off Poinsett?

9 A Yes.

10 Q So, show us where you drove on Fair Street?

11 A Okay. I was here, here's the tire shop. And
12 when the two guys left the tire shop, they make a right on
13 Fair Street and I make a right, too. I stop right here.

14 Q Ballenger --

15 A Ballenger Street. I talk to the lady and I ask
16 her for help. I ask her if she can call 911. After that,
17 I keep following right here. And I make a right, again,
18 on Currence.

19 Q Now, you're on Currence?

20 A On Currence. Then I stop right there because
21 they take right or left and somebody pass by.

22 This person, I say, Do you see a black
23 Mercedes? They say, Yeah, they just went to the right.
24 So, that's why I make a right.

25 Q Maybe step on this side right here.

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1 A I make a right right here. And I see them, they
2 was here waiting on Old Buncombe Road.

3 Q What is that? That's Old Buncombe?

4 A That Old Buncombe Road, yeah.

5 Q Okay.

6 A Between Old Buncombe and Currence Avenue, they
7 was here waiting to make a left. They make a left, I make
8 a left, too. And here's when they see me and he start
9 driving fast. And I start driving fast and I hit him from
10 the back with my car. Okay, he control the car and
11 everything, but after that, the guy who was in the
12 passenger, he shoot me with the gun and I skid like.

13 Q Swerved?

14 A Yeah. And after that, the driver from the black
15 Mercedes, he start driving more fast. And when he get to
16 Morris Street, he try to make a right and he hit the
17 telephone pole. When that happened --

18 Q Let's actually have a seat again and we'll talk
19 about that. So, why did you run into the back of the car?

20 A Well, because I know it was not the best move,
21 but after they hit me and take my money and after he hit
22 me with the gun in my head, I take that very offensive,
23 like, that pissed me off because I think you do that to
24 somebody and think it's all right. That pissed me off. I
25 said, well, they have to pay because if I don't do

1 nothing, they escape and maybe the police don't catch
2 them. And I decide, you know, to just do something,
3 whatever to stop them.

4 Q You don't have a phone on you?

5 A I didn't have my phone. My phone was in the
6 shop somewhere.

7 Q Could you tell which -- you said somebody shot
8 at you?

9 A Yeah.

10 Q Do you remember which person shot at you?

11 A Yeah, the person was on the front passenger.
12 Leviticus Young, he was on front passenger.

13 Q Did the bullet hit your car or hit --

14 A No, sir. Because I -- you know, I just start to
15 move to the other side to skip the bullet.

16 Q Okay. When the car hit the telephone pole, what
17 did you do?

18 A I stopped right there for maybe 10 seconds.

19 Q When you stopped, were you close to the car?

20 A Maybe 20 feet.

21 Q What happened in that car? What did the people
22 do in that car?

23 A Well, the driver, he stay there. And I see the
24 passenger, he get out of the car and he walk fast, like
25 try to leave the scene fast.

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1 Q Okay. When you saw him moving fast, what did
2 you do?

3 A I decide, like, well, do something else to stop
4 him or just, you know, go find help or find somebody to
5 call the cops. And I decide, you know, leave the area
6 real quick and stop and stay there maybe --

7 Q Okay. Let me stop you. So, you were thinking
8 whether to stay or whether to go. Why did you decide to
9 leave?

10 A I decide to leave because I see the passenger
11 running from the scene.

12 Q Uh-huh.

13 A And I decide, you know, let's do something,
14 let's call the cops. Because if nobody call the cops, the
15 other one, he's going to escape.

16 Q Did you have a phone?

17 A Excuse me, sir?

18 Q Did you have a telephone with you?

19 A No, not at the time.

20 Q So, you drove away. Where did you go?

21 A I go to a shopping center that's maybe a quarter
22 mile from the -- from the incident. I stop right there in
23 the parking lot. Finally, I find a friend, a friend of
24 mine. I ask him to please, can you help me? Can you call
25 the police because I got robbed and I chase the bad guys

1 and they just crashed and I want to report this accident.
2 He called the cops. Then I left the shopping center and I
3 tried to go back to the shop, but in the street, I see two
4 police officers talking to somebody else. I decided to
5 just stop there and I have to tell them what happened and
6 report the accident.

7 Q Was one of those officers that man who testified
8 earlier?

9 A Yes.

10 Q You got out the car and you went up and you told
11 them what happened?

12 A Yes, sir.

13 Q How were you feeling? Did your head hurt?

14 A Yes, a lot. Yes, I have a lot of pain at that
15 time. Something was wrong with me, but I decided, you
16 know, just keep going because I have to, you know, go back
17 to the scene and tell them who is the bad guys.

18 Q Okay.

19 A Yes.

20 Q Okay. So, you told the officer what happened?

21 A I told him what happened, yes.

22 Q Then a little bit later, did he drive you back
23 there in his police car?

24 A Yes.

25 Q Did you see either of the men who had done this

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1 to you?

2 A Yes, I see the guy who was on the driver's side,
3 Steven Williams, yes.

4 Q Did you tell the officers that was one of the
5 men who did this?

6 A Yes, sir.

7 Q You were sure it was him?

8 A Yes.

9 Q Okay. Now, had you ever met either one of those
10 guys before?

11 A No, sir, not before.

12 Q Never at any apartments or any other -- any
13 place, as far as you know, had you ever seen those guys
14 before?

15 A No, sir.

16 Q Either one of them?

17 A No.

18 Q So Leviticus Young, you just identified him a
19 little while ago as the man who had the stun gun?

20 A Stun gun, yes.

21 Q So, I just want to make sure how confident you
22 are about this. So when he came to -- and struck you, how
23 close was he to your face?

24 A He was very close.

25 Q Like within a few feet? I mean --

1 A Yeah, maybe five, four feet.

2 Q Okay. Then he actually got on top of you and
3 was hitting you?

4 A Yeah.

5 Q Then later, you said while you were fighting,
6 you got on top of him?

7 A Yeah.

8 Q And were you looking down at his face?

9 A Yeah, yeah. And -- well, after Steven
10 Williams -- well, after -- like, okay, when he go back to
11 the car again, I see his face. So, it's something I can't
12 forget. If you see somebody and somebody hurt you, you
13 never want to forgot that because, you know.

14 Q So, are you sure Leviticus Young is the man who
15 did this?

16 A He's the man, yes.

17 Q All right. We're going to take a look at a
18 couple of photographs now. Let me start off by showing
19 you State's Exhibit No. 30. Do you see that money up
20 there on the ledge behind the fan?

21 A Yes.

22 Q Okay. Is that around the area where it was that
23 you threw the money up in the air?

24 A Yes.

25 Q Do you remember what kind of bills you had in

JUAN CABRERA-DIRECT BY MR. MOYER

1 your pocket?

2 A I got ones, fives, 10s and a couple 20s.

3 Q Okay. So, are these some of the bills you had
4 taken out of your pocket?

5 A Yes.

6 Q So, when you threw them up, did they kind of go
7 around a little bit?

8 A Yeah, because the fan is there was on, so it was
9 working as well. The money blows there.

10 Q What about State's Exhibit 32. This money down
11 here, is that some of the money that you took out?

12 A Yes, that's part of the money.

13 Q Okay. State's Exhibit 28, is that the taser
14 that was used?

15 A Yeah. It's a stun gun.

16 Q Stun gun, I'm sorry. Right, stun gun.

17 A The stun gun, yeah.

18 Q Was it -- that was the gun that Leviticus Young
19 had when he came up and started hitting you?

20 A Yeah.

21 Q Do you remember -- do you know how the blood got
22 on the driver's door of your --

23 A Car.

24 Q Of your car?

25 A Yeah. Well, because my blood came from -- back

1 from my head to here and my arm. And I opened my car like
2 this, with the left hand.

3 Q Okay. So, the blood on your hands are from your
4 head?

5 A Yes.

6 Q So, that's your blood that was on the car?

7 A Yes. It's my blood, yes.

8 Q Okay.

9 MR. MOYER: Okay. I don't have any further
10 questions for you at this time.

11 THE COURT: Yes, ma'am.

12 MS. TAYLOR: Thank you, Your Honor. May it
13 please the Court?

14 THE COURT: Yes, ma'am.

15 CROSS-EXAMINATION

16 BY MS. TAYLOR:

17 Q Mr. Cabrera, good afternoon. I'm going to
18 follow up, hopefully, briefly on what Solicitor Moyer kind
19 of got started on here. Why did you stop working at the
20 tire shop?

21 A I stopped working there because I got sick two
22 weeks ago and I get late, like, two times. And Monday,
23 after New Year, I close early and my boss he get mad
24 because I got two days late and because I close early.
25 But I tell him I was very sick and I don't feel good. You

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1 know, he started talking about having somebody who want to
2 work there all the time, no matter if you sick or not.
3 And I just said okay, look, I don't feel good to work and
4 look, you -- because he told me I can find somebody else.
5 I said, okay, go find somebody else. No problem. I give
6 you your keys back and it's fine. Because I have to take
7 care of my health, you know. That was the reason I don't
8 work there because I take some days off.

9 Q Who owns the tire shop?

10 A His name is Sam Tutt.

11 Q Sam Tutt?

12 A Yeah, he's the owner, yeah.

13 Q And you're saying he, basically, let you go
14 because you were late a couple of days and you were sick?

15 A Yeah, you know, basically, was -- that was the
16 like, you know, the thing.

17 Q Yeah, I got you. We saw in some of those
18 photos, and I can pull them back up if you have a
19 question, that there was a beware of dog sign on the gate.
20 Do you have dog there?

21 A I have a dog. It was a long time ago.

22 Q Dog food was in one of the other backgrounds.
23 Was the dog there on this day?

24 A No. The dog, he escaped like a year and a half
25 ago.

1 Q Are you sure? Because I think we can see him on
2 the video?

3 A Yeah, in 2014, I had the dog. But the dog --

4 Q Was he there on June 6th, 2014?

5 A Yeah, on June 6th of 2014, yeah.

6 Q He was there that day?

7 A He was there, yeah.

8 Q Okay. Why do you have so many shoes in there?

9 A Well, you know, this job, you have -- well,
10 because I got two pairs of boots. When one pair get wet,
11 I have to change it. After work, I like to put my other
12 normal shoes.

13 Q So, how many pairs do you keep there?

14 A I used to keep one pair of shoes and the other
15 pair was boots.

16 Q Boots, okay.

17 A Boots, yeah, for work.

18 Q All right. You said your cell phone. Where did
19 your cell phone go amongst this?

20 A Well, it was beside the tire machine. We have
21 like a little table like this.

22 Q Picnic table?

23 A No, no, beside the machine, like a small table
24 like this. I used to put my cell phone, my notebook and
25 my receipt books.

JUAN CABRERA-CROSS BY MS. TAYLOR

1 Q Okay. And it wasn't there when you went to grab
2 it?

3 A Yeah -- well, I think it was there, but, you
4 know, when all this happened, I can't see the phone.

5 Q So, you left your cell phone there?

6 A Yeah.

7 Q Okay. In your original statement, you said that
8 both Defendants were wearing all black. Is that just
9 something you remember differently?

10 A Yeah, because, you know, it happened fast.

11 Q Okay. All right. You mentioned that the \$150
12 that was in your back pocket -- or your front pocket, I'm
13 sorry --

14 A It was in my front pocket.

15 Q Yeah, front pocket. That, technically, was
16 money that belonged to your boss because that was your
17 earnings from the day, right?

18 A No, that was the money of the boss, but, you
19 know, when I make four, \$500 a day, I like to keep maybe a
20 hundred dollars or 150 in change, fives, 10s and 20s, and
21 the rest, put it somewhere else or just keep it in my
22 wallet, yeah.

23 Q All right. So -- but you mentioned quite
24 frequently that this was a very disgraceful act and you
25 felt that you wouldn't hand the money over, you were going

1 to throw it at them, right?

2 A Yeah.

3 Q Okay. But this wasn't even your money, this was
4 your boss's money. Your money was in your back pocket and
5 you didn't give that to them, did you?

6 A No, no --

7 Q Just answer the question yes or no. Did you
8 give them the money in your back pocket?

9 A No.

10 Q So, you were been robbed, possibly tased, pistol
11 whipped and you held onto to \$250 in your back pocket and
12 only gave them the 150 that was in your front pocket?

13 A Yes.

14 Q Okay. All right. So, you were willing to
15 get -- hold on, let's pause a second. So, this brawl
16 ensued, you admitted that you were fighting back for, at
17 least, some period of time when you got on top of
18 Mr. Young, correct?

19 A Yes.

20 Q So, they fled, got in their car. Now, you're
21 hurt. You said that you were really confused, it took you
22 a few minutes. You had blood coming all down from the
23 side of you. Why would you get in your car and chase
24 after somebody that has a gun?

25 A Okay, I can explain you that.

JUAN CABRERA-CROSS BY MS. TAYLOR

1 Q Please do.

2 A Maybe you don't live at things I live before and
3 it hasn't happened to you before, but -- and I hope it
4 doesn't happen to you because that's something you can't
5 forget ever. When somebody hit you with a gun on your
6 head, you can't forget that.

7 Q I understand that.

8 A That will piss you off. I decide to do
9 something. Because, look, they come to my work. I don't
10 go to their homes or jobs. They come to my place where I
11 work and they get my money and they hit me and I just
12 defend myself, that's it.

13 Q But the act of danger had left because they
14 fled. You followed the danger?

15 A I got --

16 Q You got in your car and you chased them down?

17 A Yes.

18 Q Okay. So, I'm just trying to make sense that
19 you were scared, you were disoriented and you knew they
20 had a gun?

21 A Yeah.

22 Q Did you have a gun?

23 A No.

24 Q So, why would you chase after somebody who has a
25 gun? They can shoot you.

1 A I know that, but first time, I was scared and
2 everything, but after he hit me with the gun in my head,
3 that pissed me off. That makes me feel like I have to do
4 something.

5 Q So, you were willing to risk your life over
6 \$150?

7 A Yeah, because -- yeah, because I say well --

8 Q Okay. Stop right there.

9 MR. MOYER: Hold on. I ask that he be allowed
10 to answer fully.

11 THE COURT: Yeah, he can explain his answer if
12 he'd like to.

13 THE WITNESS: Okay. After they hit me with the
14 gun in my head and they take all my money --

15 BY MS. TAYLOR:

16 Q They didn't take all your money because you
17 still had \$250.

18 A I had \$250, but when that happened, that makes
19 me feel angry. Okay, they take everything -- not
20 everything, they take the money, they come to my job, they
21 hit me. Well, I have to do something because they come to
22 me.

23 Q Okay.

24 A And I have to defend myself. And I decided to
25 do something to stop it.

JUAN CABRERA-CROSS BY MS. TAYLOR

1 Q Okay, got you on that point. Okay. Let's say
2 when you saw Ms. Bishop and you said stop, help, 911. You
3 had already seen their license plate, why didn't you just
4 write down the license plate and give that to the police?
5 They could have stopped and apprehended them.

6 A Okay. Because when that happened so fast, you
7 can -- I mean, I know that's a good idea, but when it
8 happened --

9 Q Well, you stopped twice. You stopped with Ms.
10 Bishop and then you stopped --

11 MR. MOYER: Your Honor, she keeps cutting him
12 off.

13 MS. TAYLOR: He answered. He said he's
14 confused. It happened fast. He answered. He's
15 given lots of stories.

16 THE COURT: Y'all be gracious of one another.
17 Ask the question, let him answer and then you ask
18 another question.

19 MS. TAYLOR: Okay.

20 THE WITNESS: Okay. I don't think that because,
21 like I say, everything passed fast, you know.

22 BY MS. TAYLOR:

23 Q Okay.

24 A And I decide to chase them, do something to stop
25 them because, look, if I get the license plate, it's going

1 to take more days, like, to catch them. Why? Because,
2 first, this person right here, he's one of --

3 MS. TAYLOR: Okay. He's not answering the
4 question anymore. He's just talking.

5 BY MS. TAYLOR:

6 Q I asked why you didn't take the license plate
7 down. You answered it and now you're talking?

8 A My response is --

9 Q You've answered it.

10 A -- because I don't think of that because I was
11 thinking, like, the best idea is just to stop them, that's
12 it. Stop them, that's it.

13 Q Okay. I'm going to ask another question now.
14 So stop.

15 A Okay.

16 Q Okay. So, you were trying to stop them, that's
17 what your testimony was?

18 A Uh-huh.

19 Q So, when you ran your car into their car,
20 causing them to hit a telephone pole, why wouldn't you
21 stop then? Why would you flee the scene then if you were
22 trying to catch them?

23 A Because I don't have my cell phone with me.
24 Because the first one -- the second one, I had to go find
25 somebody to help me to call the police, right. And

JUAN CABRERA-CROSS BY MS. TAYLOR

1 finally, I find somebody. My friend called the cops. I
2 go back to the shop, but at the same time, when I was on
3 the way back to the shop, I see two police officers and --
4 I forgot the name of the street, but I stop there and I
5 tell them what happened. I tell them I got robbed. I
6 chased the two bad guys and they crashed. And I tell them
7 the incident.

8 Q Okay. Did you know that you were possibly
9 endangering other people by driving at such a high rate of
10 speed?

11 A I know, but these -- well, I know that. But at
12 the same time, these people, they are already hurt
13 somebody. So, I guess I just --

14 Q So, you can hurt somebody else because they hurt
15 you?

16 A I don't think I want to hurt somebody else.
17 There was no people on the street. And plus, you know,
18 they hurt me --

19 Q So, you were retaliating?

20 A (The witness nods.)

21 Q Okay. All right. How many shots did they shoot
22 at you?

23 A Well, I hear like one or two.

24 Q Was it one or two?

25 A Just one or two. I can't remember what I hear.

1 The first one, I just move to the other side.

2 Q So, that was in the car, not in the tire shop?

3 A Was in the car, yeah.

4 Q And it was the driver that fired the shot?

5 A It was the passenger.

6 Q You testified earlier it was the driver that
7 fired the shot and that's what you gave in your statement
8 to Deputy Husk. Would you like me to refresh your memory?

9 A I know, yeah.

10 Q So, you're saying here that you lied in your
11 statement?

12 A No, no, look, because I see the guy on the
13 passenger, he try to -- you know, he pulled his arm to the
14 outside with the gun. That's why I turned to the right.

15 Q Okay. I'm going to show you a copy of your
16 statement and you can just review this. In fact, I made
17 it easier for you. If you want to read the highlighted
18 portion right there, you can just review it and tell me
19 what it is.

20 A (The witness complies.)

21 Q Is that the statement that you gave to Deputy
22 Husk?

23 A Yes.

24 Q So, you gave that statement?

25 A Yeah.

JUAN CABRERA-CROSS BY MS. TAYLOR

1 Q So, now that you've had an opportunity to
2 review, I'm going to ask you again, did you tell Deputy
3 Husk that it was the driver who shot at you?

4 A Yeah. At that time, yeah. At that time.
5 Because like I say, everything passed fast and when they
6 asked me, I mean, I try to remember everything, but you
7 know, it's hard to remember everything. But now, I
8 remember, you know, a more few things.

9 Q So, today, you remember --

10 A No, no, from before, yeah.

11 Q So, you remember -- even though you testified
12 earlier today that it was the driver that shot at you and
13 you put it in your statement to Deputy Husk that it was
14 the driver that shot at you, now, you're saying it's the
15 passenger that shot at you?

16 A Well, this may be because that day was kind
17 of -- you know, I can't speak real good with the police
18 officer.

19 Q You remember who shot at you, though?

20 A Yeah, yeah, yeah. But when -- well, that day
21 was a little --

22 Q Wouldn't your recollection be better on that day
23 than it is today, two years later?

24 A No, look, I know what he asked me, all these, I
25 tell him what happened, but after that, I think again.

1 Q So, is that a lie?

2 A It's not a lie. Because I see the other guy,
3 too, but the passenger, he's the one he moves first.
4 That's why I move fast. But I'm sure it was the
5 passenger.

6 Q You're sure. So, you were mistaken when you
7 gave that statement to Deputy Husk and when you testified
8 earlier today that it was the driver?

9 MR. MOYER: Your Honor, once again, I object.
10 He did not testify earlier.

11 MS. TAYLOR: You asked him and he said it was
12 the driver.

13 THE COURT: Again, ladies and gentlemen, lawyers
14 may or may not mischaracterize or rightly
15 characterize testimony. It's up to you to decide
16 what they say. If either of these attorneys
17 mischaracterize it, then you know if they are or not.

18 Go ahead.

19 BY MS. TAYLOR:

20 Q Okay. I'm going to grab that back from you.
21 So, how many times were you interviewed by law enforcement
22 in this incident?

23 A A couple times, to be honest with you.

24 Q Were you ever interviewed for fleeing the scene
25 of an accident?

JUAN CABRERA-CROSS BY MS. TAYLOR

1 A Yeah.

2 Q You were? Who interviewed you for that?

3 A What you mean? Can you, like, explain it better
4 to understand you?

5 Q Did someone interview you for leaving, fleeing
6 the scene of an accident? Were you questioned about that?

7 A Well, when I stop -- like I said, when I left
8 the scene, the police officer want to tell him what
9 happened. He's the one that asked me more questions.

10 Q But were you ever charged with fleeing the scene
11 of an accident?

12 A No, ma'am.

13 Q Okay. Do you remember any officer that asked
14 you about it or asked you why you left?

15 A Yeah, he was either earlier, but I don't know
16 his name.

17 Q He testified earlier?

18 A Yeah.

19 Q Okay. All right, Juan, so you never met any of
20 these Defendants a week prior at the Polo Club Apartments?

21 A Uh-huh.

22 Q You didn't get in a fight with them over a girl?

23 A I never seen them before.

24 Q You'd never seen them before?

25 A I never see them before.

1 Q So, just to kind of summarize this, you are
2 having some trouble remembering who was the shooter, some
3 discrepancies from before versus today, and you gave \$150
4 out of your pocket that was your work money, but you kept
5 250 in your back pocket, even though you were being
6 robbed?

7 MR. MOYER: Your Honor, I object. This is not
8 questioning.

9 THE COURT: I sustain.

10 Ask him a question.

11 MS. TAYLOR: Sure.

12 THE COURT: You'll have an opportunity to argue
13 to the jury.

14 BY MS. TAYLOR:

15 Q You kept \$250 in your back pocket even though
16 you were being robbed, right?

17 A Yes.

18 Q Okay. Then when they left the scene, you
19 followed them, right?

20 A Yeah.

21 Q Okay. Then when they shot at you, you continued
22 to follow them, correct?

23 A Yeah.

24 Q Then you used your car as a deadly weapon to hit
25 their car and cause them to crash into a telephone pole,

JUAN CABRERA-REDIRECT BY MR. MOYER

1 correct?

2 A Well, they use their guns, right? They --

3 Q Just answer my question. Just answer my
4 question. You used your car, hit them and caused them to
5 hit into a telephone pole, correct?

6 A Yes.

7 Q And then you fled the scene of an accident,
8 correct?

9 A Yes.

10 MS. TAYLOR: Thank you. No further questions.

11 THE COURT: Any follow up, sir?

12 MR. MOYER: Just a couple follow-up questions.

13 REDIRECT EXAMINATION

14 BY MR. MOYER:

15 Q Mr. Cabrera, so you had \$150 in your front
16 pocket?

17 A Yeah.

18 Q And the money that was in your wallet, was that
19 your money or --

20 A No, was the owner money.

21 Q Okay.

22 A Yeah. All the money was for my boss.

23 Q All the money was for your boss?

24 A Yeah.

25 Q So, as I understand it, you keep about 100, \$150

1 in your pocket just so you could make change for your
2 customers?

3 A Yes. I have to use the change, you know,
4 because you got 50s or 100s. Better keep it on the side
5 and just have a few change.

6 Q Then as you get money, you start transferring it
7 into your back pocket?

8 A Yes.

9 Q And there's no question when you initially gave
10 your statement to the officers, you thought it was the --
11 or you told them the driver was the shooter, is that
12 right?

13 A Yes.

14 Q Now, let me ask you this, had you just been hit
15 in the head?

16 A Yeah.

17 Q And your testimony is that later as you started
18 thinking about it, you decided it was really the
19 passenger?

20 A Yeah. Like I said, everything passed fast,
21 like.

22 Q Okay. All right. You've testified in the trial
23 for Steven Williams, too, didn't you?

24 A Yes.

25 Q And in that trial, you testified that which one

JUAN CABRERA-RECROSS BY MS. TAYLOR

1 was the shooter?

2 A Yes.

3 Q That it was the passenger?

4 A The passenger, yeah.

5 Q And you testified earlier when I was questioning
6 you that it was the passenger who shot, too, didn't you?

7 A Yeah.

8 Q Okay.

9 MR. MOYER: One second. Okay. Nothing further.

10 THE COURT: Any follow up? Any recross?

11 MS. TAYLOR: Briefly, Your Honor.

12 RECROSS-EXAMINATION

13 BY MS. TAYLOR:

14 Q Were you in here when Stephanie Bishop
15 testified?

16 A Yes.

17 Q Do you recall her testimony about what she
18 witnessed?

19 MR. MOYER: Your Honor, I object. It's not
20 responsive. It's also heading towards pitting
21 witnesses again.

22 THE COURT: Well, maybe, maybe not. We don't
23 know that yet. The question is, is it within the
24 scope of his redirect examination?

25 MS. TAYLOR: It is going to be within the scope

1 of what he sought.

2 THE COURT: Okay. I'll allow you some latitude.

3 Go ahead.

4 BY MS. TAYLOR:

5 Q Okay. Are you aware that Ms. Bishop says she
6 saw the passenger leaning Out the window, but there was no
7 gun?

8 MR. MOYER: Your Honor, once again, I object.
9 That's not responsive to the questions I just asked
10 him.

11 THE COURT: I sustain.

12 You can argue that to the jury.

13 MS. TAYLOR: Okay. Thank you, Your Honor.

14 THE COURT: Yes, ma'am.

15 You may step down, sir. Thank you, I appreciate
16 you being here.

17 Okay. Mr. Moyer, you may call your next
18 witness.

19 MR. MOYER: The State call Chris McAlmont.

20 CHRIS MCALMONT, after being duly
21 sworn, testified as follows:

22 THE CLERK: Please have a seat. And will you
23 please state your full name for the record?

24 THE WITNESS: Christopher John McAlmont.

25 DIRECT EXAMINATION

CHRIS MCALMONT-DIRECT BY MR. MOYER

1 BY MR. MOYER:

2 Q Where are you employed?

3 A I work for the Greenville County Sheriff's
4 Office.

5 Q Okay. How long have you been in law
6 enforcement?

7 A This will be my 12th year.

8 Q Has it all been with the sheriff's office?

9 A It has been.

10 Q What is your position now?

11 A I'm an investigator with the violent crimes
12 unit.

13 Q Okay. How long have you been in that capacity?

14 A Estimate, a year and a half.

15 Q Okay. What were you doing in June of 2014?

16 A I would have been assigned to the uniform patrol
17 division.

18 Q What did you do in that capacity?

19 A Part of my responsibilities there were training
20 new hired deputies after they graduated the South Carolina
21 Criminal Justice Academy. Then, also, responding to
22 emergency and non-emergency calls for service as well as
23 proactively patrolling my beat during slower times.

24 Q So, you were in uniform at that time?

25 A I was in a marked car as well.

1 Q In a marked car. Okay. Let me take you back to
2 June the 6th of 2014. Do you remember were you working on
3 that date, particularly in the late afternoon, early
4 evening?

5 A Yes, I was.

6 Q Do you remember what shift you were on, when you
7 would have gotten off?

8 A I would have gotten off at 7:00 o'clock p.m.

9 Q Do you remember what area you were working at
10 that time?

11 A I was assigned to our beat area eight, which, I
12 guess, generally, would be considered the Berea area.

13 Q Now, did you get any word about any possible
14 crimes that may have been committed at that time prior to
15 arriving at any scene on that day?

16 A Yes.

17 Q Tell us about that.

18 A I heard Deputy Dedmont get on the radio and say
19 that he had been flagged down by somebody who said they
20 had been robbed.

21 Q Okay. So, did that come out before any reports
22 --

23 MS. TAYLOR: Objection, Your Honor, hearsay.

24 MR. MOYER: This is to explain the officer's
25 reaction.

CHRIS MCALMONT-DIRECT BY MR. MOYER

1 THE COURT: I haven't heard the response yet.

2 You can ask the question, then we'll see if it
3 calls for hearsay. Because I didn't hear the whole
4 thing.

5 BY MR. MOYER:

6 Q So, this report that came out about the report
7 of the armed robbery, did that come out prior or after any
8 report about any accidents that may have taken place?

9 A They came out over the police radio before
10 anything about any accidents.

11 Q Okay. So, that was from Deputy Dedmont?

12 A Correct.

13 Q And he was the officer who was with Deputy Husk,
14 who just testified a little while ago?

15 A Yes, sir, to my knowledge.

16 Q At that time, what did you begin doing?

17 A So, that they were in what we would consider B
18 area nine, which is adjacent to eight, so very close. In
19 fact, I would typically answer calls in area nine it's so
20 close to eight during the shift working in that other
21 area. So, I headed over there to try to look for this car
22 that he broadcast over the police radio, the description
23 of the suspect car.

24 Q What particular kind of car were you looking
25 for?

1 A A black Mercedes.

2 Q Okay. All right. Then at some point -- so you
3 were just driving around looking for it at first?

4 A Correct.

5 Q At some point, did you get sent to any
6 particular location?

7 A I heard dispatch announce information over the
8 radio that a black Mercedes had been in an accident at Old
9 Buncombe and Morris.

10 Q So, you were already on the lookout for a black
11 Mercedes?

12 A That's correct.

13 Q So, did that raise any alarm bells?

14 A Yes.

15 Q Okay. So, where did you then respond?

16 A Old Buncombe and Morris.

17 Q Is that the location where we saw the pictures
18 of the Mercedes crashed into the telephone pole?

19 A Yes, sir, that's correct.

20 Q Were you the first officer to arrive?

21 A I was.

22 Q And we heard testimony earlier that 6:24 was
23 about the time of your arrival?

24 A I believe so, yes, sir.

25 Q Was anyone else at that location at the time

CHRIS MCALMONT-DIRECT BY MR. MOYER

1 that you arrived?

2 A There was somebody sitting in the black Mercedes
3 and the Parker Fire Department was there.

4 Q What recollection, if any --

5 A I'm sorry, there were some other bystanders
6 around as well.

7 Q What about any Parker firefighters? What
8 recollection, if any, do you have what they may have been
9 doing?

10 A I think at that point, they were just kind of
11 standing around.

12 Q Okay. So, what do you recall about the
13 automobile?

14 A It had been wrecked into, I know, a telephone
15 pole, I think, and it might have run over a street sign,
16 too, I think.

17 Q Okay. Did you see anyone in or around the
18 vehicle?

19 A There was somebody sitting in the driver's seat.

20 Q Who did that person end up -- did you determine
21 was?

22 A Steven Williams, I believe is his name.

23 Q He's the man who you testified against in the
24 earlier trial?

25 A Yes, sir, that's correct.

1 Q What was he doing?

2 A Sitting in the driver's seat, but kind of turned
3 90 degrees from normal. When I say that, his butt was in
4 the seat, but his feet were outside the car and on the
5 ground?

6 Q Okay. Did you park in close proximity to him?

7 A I was reasonably close. I would have been in --
8 so, if he was headed towards -- what it looked like to me
9 when I pulled up, that car had originally probably been
10 going towards Highway 183. And I want to say when I
11 approached it, I had been coming from 183. So, if I
12 recall correctly, my car would have been facing the
13 opposite direction from what that car was and I just
14 parked in the road.

15 Q Okay. And you were in a marked car?

16 A I was.

17 Q And you were in uniform?

18 A Yes, sir.

19 Q Did this person make any acknowledgment towards
20 you when you pull up and stopped?

21 A None.

22 Q What did you do?

23 A I got out of my car and called out to him and
24 asked him to come over to me.

25 Q Is there a reason you called out to him as

CHRIS MCALMONT-DIRECT BY MR. MOYER

1 oppose to approaching him?

2 A Clearly, I'm under the impression that this
3 guy -- I'm looking for a black Mercedes with two black
4 males in it and I show up to this black Mercedes with one
5 black male in it. So, I'm -- my intensions are to
6 approach the situation like he's one of the robbers. And
7 I wanted to get him separated from that car.

8 Q When you call out to him to come over, what
9 reaction, if any, did he have?

10 A None.

11 Q What did you in response to that?

12 A Yelled at him. I recall saying something like,
13 hey -- yelling at him, hey, get out of car. And I drew my
14 pistol.

15 Q Okay. Did you point it him, or what did you do
16 with it?

17 A No, I -- so I kept it at what we would call the
18 low ready position.

19 Q What does that mean?

20 A Kind of keep it pointed maybe below where he's
21 at, toward the ground just below him so I can see over the
22 top of the gun as opposed to not looking -- not aiming the
23 gun at the sight center, but more to the top of the gun.

24 Q What did he then do?

25 A He complied and got out of the car.

1 Q So, he followed your commands at that time?

2 A He did.

3 Q What commands did you make of him?

4 A I believe I told him to walk backwards over
5 towards me and I had a trainee in the car with me at the
6 time.

7 Q Okay. Did you have him detained when he got to
8 you?

9 A Yeah. Once I felt comfortable with the distance
10 he was away from the car, I think we probably made a
11 little bit of an advancement towards him. Then the deputy
12 in training that was with me handcuffed him.

13 Q Okay. Now, did you then look inside of the car?

14 A Eventually, we did, yes.

15 Q Did you see anything in the car that ended up
16 been seized in this case?

17 A Yes. And I guess I should elaborate, when we
18 looked into the car, that's what it was, we looked into
19 the car from outside, not through the car. We looked into
20 the car from outside of it.

21 Q Okay. What did you see when you looked into the
22 car?

23 A I saw what I recognized to be a revolver.

24 Q Where was it?

25 A There was a compartment underneath the driver's

CHRIS MCALMONT-DIRECT BY MR. MOYER

1 seat. The compartment was opened and the revolver was
2 visible, kind of -- I guess the best way to describe it is
3 kind of like half in the compartment, half out. But it
4 could be seen from outside the car.

5 Q Okay. I'm going to show you Exhibits Nos. 9 and
6 10. Let me start off by showing you State's Exhibit No.
7 9. Can you recognize what is in that photograph?

8 A Yes, sir, I do.

9 Q What does that show?

10 A That's the revolver that I saw in its place
11 underneath the seat -- or sticking out from underneath the
12 seat.

13 Q Is that how it looked when you first saw it in
14 the vehicle?

15 A Yes.

16 Q That's the position it was in?

17 A Correct.

18 Q It hadn't been moved or anything at that time?

19 A No, sir.

20 Q Okay. Then State's Exhibit No. 11. Can you
21 recognize what is in that photograph?

22 A That is the revolver after it's been pulled out
23 from underneath that compartment and is sitting on top of
24 the seat, like on the part now.

25 Q Okay. So, are you familiar with the forensics

1 officer had not been there at this time, is that true?

2 A No, sir, he had not.

3 Q Okay. So, different officers take pictures of
4 those?

5 A That's correct.

6 Q Take those pictures. Can you testify those are
7 true and accurate representations of the way the pistol
8 looked when you looked into the car and saw it?

9 A Yes, sir.

10 MR. MOYER: Your Honor, at this time, I would
11 move State's Exhibit Nos. 9 and 11 entered into
12 evidence.

13 THE COURT: Any objections?

14 MS. TAYLOR: Your Honor, I would renew my
15 previous objection without the foundation as to who
16 took the photographs.

17 THE COURT: All right, I'll overrule the
18 objection.

19 (WHEREUPON, State's Exhibits Nos. 9 & 11 were
20 marked for identification and received into
21 evidence.)

22 BY MR. MOYER:

23 Q Let's look first at State's Exhibit No. 9. I'll
24 give you this laser pointer and if you could, just kind of
25 use that to orient the jury what we see in that

CHRIS MCALMONT-DIRECT BY MR. MOYER

1 photograph.

2 A Well, it was a lot more visible to me when I
3 looked at it up here. But there's -- I don't know --
4 there's a revolver sitting right there. I don't know how
5 well you can see it from your angle, but.

6 Q It may be a little bit better.

7 A Yeah, the tip of the barrel is right about
8 there. The -- what we call the cylinder of the revolver
9 is here. And then on back, and then the handle comes
10 down.

11 Q What is that just to the right of that, that
12 fabric?

13 A This right here?

14 Q Yes.

15 A The driver's seat where you would sit at.

16 Q Okay. What would this area up here be?

17 A That's the compartment door that would fold up
18 and, I guess, just kind of latch somewhere up here. Then
19 this area that's behind that would be the floorboard of
20 the car, the driver's floorboard.

21 Q Okay. So, that compartment was opened when you
22 saw it?

23 A Yes, sir, it was.

24 Q I show you State's Exhibit No. 8. Does that
25 show that compartment?

1 A Yeah, it's just a different angle. That's the
2 compartment, the driver's seat, the compartment and then
3 the driver's floorboard.

4 Q Let me show you State's Exhibit No. 11. Would
5 you tell jury what that is?

6 A Yes, sir, that's the revolver after it been
7 pulled out from underneath the compartment there and it's
8 sitting on the seat.

9 Q Let me now show you State's Exhibit No. 36,
10 which is not in evidence at this time. I just want to ask
11 you to take a look inside of this box and see if that
12 looks to you like the pistol that you saw there underneath
13 the seat?

14 A Without manipulating it, it appears to be the
15 same, yes.

16 Q All right. Now, did you -- what did you do
17 with the pistol after seeing it?

18 A It was left with Master Deputy Emily and Deputy
19 Belding, who were riding in a separate car together.

20 Q Okay. And you mentioned your shift ended at
21 7:00?

22 A Yes, sir.

23 Q So, is that why it ended up being left with
24 them?

25 A Yes, sir. My shift ends at 7:00 and theirs

CHRIS MCALMONT-DIRECT BY MR. MOYER

1 would be done at about 6:45, where they would have went to
2 the law enforcement center for what we call role call and
3 then they would have been out on the road to answer calls
4 at 7:00 o'clock when it's my time to go home.

5 Q So, you can say then that that pistol that you
6 saw was left in the presence of Deputy Belding and the
7 other deputy who was working with him?

8 A Absolutely.

9 Q Now, was highway patrol -- did highway parole
10 respond to this location?

11 A No, they were -- they were initially called, but
12 I told our dispatch to tell them they could cancel, they
13 didn't need to respond.

14 Q Does highway patrol usually handle accidents
15 that happen in the county.

16 A Accidental collisions, they do.

17 Q So, what was your reason then for calling off
18 highway patrol to come out?

19 A It was my understanding in this particular
20 incident that this collision was caused intentionally,
21 which makes it out of the scope of highway patrol. That's
22 something that the sheriff's office would investigate.

23 Q So, all the investigation having to do with that
24 wreck was sort of wrapped up into this armed robbery
25 investigation?

1 A Yes, sir.

2 Q Okay.

3 MR. MOYER: Okay. Please answer any questions
4 Defense may have.

5 MS. TAYLOR: Just briefly.

6 CROSS-EXAMINATION

7 BY MS. TAYLOR:

8 Q It is investigator, right?

9 A Yes, ma'am.

10 Q Just quickly, I want to ask you a couple
11 questions about general -- your practice, general
12 practice. When you're interviewing a witness, do you take
13 down a statement?

14 A If there's -- if they have direct information
15 about what happened, generally speaking, either written or
16 sometimes audio taped or sometimes video and audio taped.

17 Q But you make a record of it, right?

18 A Yes.

19 Q What's the purpose of making a record of it?

20 A Exactly that, to have a record of it.

21 Q So, that you can remember two years later
22 because you might not remember what you did two years ago?

23 A In some cases, I would say yeah, we would
24 reflect back to that.

25 Q Okay. I want to ask you a question. You said

CHRIS MCALMONT-CROSS BY MS. TAYLOR

1 that the gun that we just saw, that you stumbled upon in
2 plain sight and it was under the driver's side of the car,
3 right?

4 A Yeah. And I know I used the term under. I use
5 that loosely. It was partially under, partially not
6 under.

7 Q Well, you could see it?

8 A Yes, but under the driver's seat, that's
9 correct.

10 Q So, it's the driver's seat, not the passenger
11 seat?

12 A Correct.

13 Q Now, let me ask you, what type of revolver was
14 that? How many bullets does it hold? Do you need to look
15 at it?

16 A I could look at it and tell you, yes. This
17 particular firearm holds in the cylinder five.

18 Q And just because I'm kind of a gun novice, and
19 I'm sure some of you aren't, but those of you that are,
20 can you tell me what happens when you fire a revolver
21 versus a regular gun to the bullet casing?

22 A So, in a revolver, when you pull the trigger,
23 that cylinder is going to rotate and somewhat lock into
24 place, at which point, that's considered the hammer is
25 going to fall down and strike the primer on the bullet

1 itself. Which when that primer is struck causes a spark
2 inside of the metal, which makes the gunpowder explode and
3 the bullet fly out.

4 Q And what happens to the shell casing?

5 A Stays there until you pull the trigger again and
6 then it rotates to another one. Until you physically pull
7 it out, it stays in there.

8 Q Now, just a question or two about the accident
9 itself. I know that you said once it was intentional,
10 that put it directly into your jurisdiction. So, I
11 totally understand you need to call the highway patrol
12 with that. Did you at any point -- you knew it was
13 intentional, did you investigate it as a hit and run or
14 charge the victim or the possible defendant in that case
15 with fleeing the scene at all?

16 A I don't think he's violated any laws.

17 Q But you knew it was an intentional hit?

18 A Yes, ma'am.

19 Q And you don't believe that he was in violation
20 of any laws?

21 A I think he was well within the South Carolina
22 State Statute for citizens arrest to detain up to and
23 including deadly force.

24 Q To use a car to hit somebody?

25 A The state law allows that, yes, ma'am.

CHRIS MCALMONT-CROSS BY MS. TAYLOR

1 Q Okay. We'll come back to that in closing
2 arguments. Okay. You stated that you didn't pull the
3 revolver out of the compartment. It was kind of opened
4 when you got there, right?

5 A When I first saw it, yes, it was like it was
6 pictured.

7 Q Who took it and put it on the seat and took a
8 picture of it on the seat?

9 A That would have been myself and Master Deputy
10 Emily.

11 Q Then it was Master Deputy Emily and Belding
12 that took possession of the weapon after you left, is that
13 correct?

14 A Correct.

15 Q Who took the pictures that you saw -- you said
16 you weren't in the car, you said you were just looking
17 through the car, who took those photos?

18 A Master Deputy Emily.

19 Q Master Deputy Emily, okay.

20 MS. TAYLOR: Thank you. No further questions.

21 MR. MOYER: Nothing further for this witness.

22 THE COURT: All right. You can step down.

23 Thank you for being here, I appreciate it.

24 MR. MOYER: May we approach and talk about
25 scheduling?

JUDSON BELDING-DIRECT BY MR. MOYER

1 THE COURT: Well, you can talk about it here if
2 you want to unless there's something you don't want
3 it -- it's particular sensitive.

4 MS. TAYLOR: It might be. It might be.

5 THE COURT: Okay.

6 (WHEREUPON, an off-the-record bench conference
7 was held in the presence of the jury but out of
8 the hearing of the jury.)

9 MR. MOYER: The State calls Deputy Belding to
10 the stand.

11 JUDSON BELDING, after being duly
12 sworn, testified as follows:

13 THE CLERK: Please have a seat. Will you state
14 your full name for the record?

15 THE WITNESS: Judson Benjamin Belding.

16 DIRECT EXAMINATION

17 BY MR. MOYER:

18 Q You're employed with the Greenville County
19 Sheriff's Office?

20 A That's correct.

21 Q How long have you worked with the sheriff's
22 office?

23 A Three years.

24 Q Did you have any law enforcement prior to that?

25 A No, sir.

JUDSON BELDING-DIRECT BY MR. MOYER

1 Q So, you were fairly new then back in June of
2 2014?

3 A That's correct.

4 Q And you were actually working with another
5 training officer?

6 A Correct.

7 Q I'm sorry, you were being trained by another --

8 A That's correct.

9 Q -- deputy at that time? And that was Deputy
10 Emily?

11 A That's correct.

12 Q Now, did you respond to the intersection of
13 Morris and Old Buncombe Road on June the 6th of 2014?

14 A Yes, sir, I did. To relieve the deputies who
15 were already on scene that were supposed to be going home.

16 Q So, you were taking over the shift that starts
17 at 7:00?

18 A Yeah, I would have worked from 7:00 that night
19 until 7:00 the following morning.

20 Q So, the other shift, like Deputy -- well,
21 Investigator McAlmont was getting off at 7:00, so you went
22 out there to relieve him?

23 A That's correct.

24 Q Now, when you arrived on scene, was Deputy
25 McAlmont still there?

1 A Yes.

2 Q Were you left -- and you and Deputy Emily were
3 left in possession of the firearm that had been seized and
4 collected?

5 A That's correct.

6 Q Okay. Did you end up putting that firearm into
7 property and evidence?

8 A I did.

9 Q Okay. Let me start by showing you State's
10 Exhibit No. 11. If you would take a look at that
11 photograph. Is that the firearm that you collected and
12 ended up putting into property and evidence?

13 A It is. I, also, put the knife in, too.

14 Q Okay. And you put it into evidence on that
15 date, June the 6th of 2014?

16 A Correct.

17 Q Did you note whether or not there were any
18 bullets, either live or fired, inside the cylinder?

19 A Yes. There were -- like Investigator McAlmont
20 mentioned, there's five rounds that the gun can hold.

21 Q Okay.

22 A When taking those -- when emptying the gun to
23 put it into evidence, it had one casing where the round
24 had been fired, then it had four rounds that were still
25 live, that still had the bullet attached to them.

JUDSON BELDING-DIRECT BY MR. MOYER

1 Q Let me show you State's Exhibit No. 36. Would
2 you just take a look at the contents of that box and see
3 if you can recognize what it is?

4 A (The Witness complies.) Yes, it's the revolver,
5 the empty casing and four bullets.

6 Q And you put that into property and evidence?

7 A Correct.

8 Q Okay. How are you able to say that that is the
9 firearm that you collected from the scene and put into
10 property and evidence?

11 A The firearm -- every firearm has a serial number
12 assigned to it. It also has the make on the gun. And
13 both in my report and on the property and evidence sheet,
14 I have the same serial number and the same make.

15 Q Okay. So, the same serial number and make on
16 that firearm that is before you, State's Exhibit 36,
17 matches the serial number that you recorded when you
18 collected the gun?

19 A Correct.

20 Q And put it in property and evidence? So, is
21 this in substantially the same condition now as it was
22 when you collected it?

23 A With the exception of the box, yes.

24 Q Okay.

25 MR. MOYER: At this time, move to have State's

1 Exhibit No. 36 entered into evidence.

2 MS. TAYLOR: Without objection, Your Honor.

3 THE COURT: All right, without objection, so
4 admitted.

5 (WHEREUPON, State's Exhibit No. 36 was admitted
6 into evidence.)

7 MR. MOYER: I have no further questions for this
8 witness.

9 MS. TAYLOR: Just briefly.

10 CROSS-EXAMINATION

11 BY MS. TAYLOR:

12 Q Okay. So, obviously, I don't want to be blonde
13 here, but from that box with holding five bullets, there's
14 four live ones, it only fired one, right?

15 A There was one shell casing.

16 Q So, one bullet from that gun with fired?

17 A Yes.

18 Q And you said that you also took into property
19 and evidence a knife. Do you remember where you found
20 that?

21 A Yeah, the same knife that was in the picture.

22 Q There was a knife in the picture?

23 A It's right above the gun.

24 Q It was above the gun, okay. Was there any
25 fingerprints on that knife?

JUDSON BELDING-CROSS BY MS. TAYLOR

1 A I have no clue.

2 Q You didn't test it?

3 A I don't do fingerprints.

4 Q Who does?

5 A Forensics.

6 Q Forensics does, okay. And they testified
7 earlier, but I don't think you were here for that. Okay.
8 So, you came to the scene of the accident, that's the
9 first time you got involved, right?

10 A The Old Buncombe and Morris?

11 Q Right, where the car hit the telephone pole.

12 Did you have any questions for Juan Cabrera about hitting
13 and running or leaving the scene of an accident?

14 A I didn't ask any questions. I just relieved the
15 deputies.

16 Q Did you find any money to put into property and
17 evidence?

18 A No money was put in property and evidence, but
19 Steven Williams, I believe, he did have money on him put
20 into his property.

21 Q Are you sure about that?

22 A I am.

23 Q You are positive about that. Wouldn't you have
24 delineated that in your property and evidence report?

25 A I didn't know about the money being taken until

1 after the incident, so.

2 Q How do you know about it now?

3 A After reading the rest of the reports.

4 Q But isn't it your job to have a full and
5 complete -- who put it in property and evidence?

6 A There is no money in property and evidence. It
7 was put in his property at the detention.

8 Q It was put in his property at the detention
9 center. So, you wouldn't write that down or make any
10 note -- because you weren't the one who was talking to
11 him, it was Investigator McAlmont that was speaking to
12 him, saying, Get out the car?

13 A Yeah, I wasn't there for that.

14 Q You hadn't arrived at that point?

15 A No, ma'am.

16 Q But -- so, you didn't take anything down about
17 any cash and there wasn't any you could in the vehicle
18 when you were there?

19 A I didn't look in the vehicle, but no.

20 Q You didn't look in the vehicle?

21 A No.

22 Q How did you gather the information to take it to
23 property and evidence?

24 A It's property. I didn't look through the
25 vehicle.

JUDSON BELDING-CROSS BY MS. TAYLOR

1 Q No, no, I'm saying when you were gathering the
2 stuff, the evidence out of the car, did you see any money?

3 A No.

4 Q Okay. The gun, when you put it in property and
5 evidence, you took it from the driver's side, right?

6 A The seat, yes, ma'am.

7 Q Okay.

8 MS. TAYLOR: Thank you. No further questions.

9 THE COURT: Any redirect?

10 MR. MOYER: No, your Honor.

11 THE COURT: All right. Thank you, Officer, for
12 being here, I appreciate it.

13 Okay. All right, ladies and gentlemen, when the
14 attorneys approached, we were just talking about
15 scheduling. And Mr. Moyer indicates he's going to
16 have --

17 You said three additional witnesses?

18 MR. MOYER: Either one or two.

19 THE COURT: So one, he anticipates is going to
20 be fairly short, one of them may be a little bit more
21 lengthy. And the Defense may or may not put evidence
22 into the record. They have the luxury of waiting
23 until The State rests to make that decision. So, I
24 think we're at about the same point where I thought
25 we would be -- about where I thought we were going to

1 be when I talked to you this morning.

2 I anticipate we'll get here tomorrow morning and
3 we'll put evidence into the record, all the remaining
4 evidence into the record during the morning.

5 Depending on when we finish doing that, we'll either
6 break for lunch and come back and argue and charge or
7 we'll go straight to argue and charge, depending on
8 the timing, of course. That may change and alter a
9 little bit depending on the length of the witnesses
10 who take the stand, but that's my expectation right
11 now.

12 So, we're going to break for the day. I'll ask
13 you to be back here tomorrow morning at 9:15 and
14 we'll try to start at 9:30 promptly. Please be on
15 time, not out of respect for me or the attorneys, but
16 out of respect for each other. Because if one of you
17 isn't here, then the remaining 12 will be waiting for
18 the 13th. And you don't want to be the 13th walking
19 into a nasty glare of 12 other jurors. So, please be
20 on time out of respect for each other.

21 Also, please, don't discuss the case. As I told
22 you, your spouse, significant other, your friend may
23 invite you to discuss it. Just tell them keep your
24 powder dry for now, we'll talk about it after it's
25 over.

1 Y'all have a great evening and I'll see you
2 tomorrow morning.

3 (WHEREUPON, the jury left open court at
4 approximately 5:00 p.m.)

5 THE COURT: All right, anything to put on the
6 record before we adjourn for the evening?

7 MR. MOYER: Not from The State, Your Honor.

8 MS. TAYLOR: I don't believe so, Your Honor.

9 THE COURT: All right. Then, we'll start at
10 9:30 tomorrow morning. If you need me before then,
11 let me know. I'll be here significantly before then,
12 so just let me know. What I'd like to do is if
13 there's any matters to take up, I want to take them
14 up before 9:30 so that the jury isn't left waiting.
15 Okay. All right. Thank you.

16 (WHEREUPON, the proceedings were concluded for
17 the day to be reconvened on Thursday, January
18 12, 2017.

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January 12, 2017

THE COURT: So, we ready for the jury?

MS. TAYLOR: Your Honor, I think we have a brief evidentiary issue.

THE COURT: Okay.

MS. TAYLOR: I believe Mr. Moyer is going to attempt to enter into evidence Steven Williams' property inmate record. I would object to that being it's res judicata. He's already been tried. This is not his trial. As well as the prejudicial value is so outweighing the probative value. Again, this is not my client's inmate property record. It's the co-defendant. That trial has already taken place. He will not be testifying as far as I know. I'm not calling him. So, I object to this being admitted as evidence.

THE COURT: Okay, Mr. Moyer, if you could articulate, please, on the record the relevance of that evidence.

MR. MOYER: The evidence shows that when Steven Williams, who was the other person in this vehicle, was booked into the law enforcement center, that he had a large amount of cash on his person that corresponds and shows -- corresponds to the amount of cash that was taken from the victim. So, for that

1 reason, we would argue there's certainly probative
2 value.

3 THE COURT: All right. I find that it's
4 relevant, so we have to do a 403 analysis. I also
5 find that it's probative, but I need for you,
6 Ms. Taylor, to articulate how it is prejudicial. I
7 understand that it may not adhere to your client's
8 benefit, but I need to know how it's more prejudicial
9 than probative.

10 MS. TAYLOR: Your Honor, I would argue that the
11 amount of money in particular is \$130.79. The amount
12 of money that the victim says was stolen from him was
13 150 minus some of the dollar bills we saw laying
14 around. I think that this -- they're obviously going
15 to admit this to show that somebody that's not in the
16 courtroom today and is not here to testify to any
17 validity of this other than the officer that took it
18 in that they committed -- it's almost like the fact
19 is proven that this robbery took place just because
20 this individual happened to have \$130 on his person,
21 which is not an absolutely large amount of cash. I
22 think you or I could probably any day have \$130 on
23 us.

24 THE COURT: I've got a wife and three children,
25 so the chance of me having that much money in cash

1 are very, very low.

2 MS. TAYLOR: Your Honor, I just think the jury
3 is not going to be able to see past that. It's going
4 to blind them to see what was on another defendant.
5 And what was found and proven in his trial is now
6 going to be too prejudicial against my guy. He
7 didn't have any money, he didn't take any money, so
8 why is it relevant? I mean, I understand you're
9 saying it is relevant. I'm just saying it's too
10 prejudicial. It's going to wipe their minds of what
11 this is, especially from the amount. But that's my
12 argument.

13 THE COURT: All right. I'll respectfully deny
14 your motion. You know, I don't look at the weight
15 and the value of evidence, that's up to the jury.
16 All I determine is whether, first of all, it's
17 relevant. I think The State has articulated its
18 relevance in this case. And under a 403 analysis, I
19 don't think that it's unduly prejudicial.

20 Now, obviously, that presupposes, of course,
21 that it will be appropriately authenticated and that
22 the appropriate witnesses will take the stand and
23 testify so that it will be authenticated properly,
24 okay.

25 Are y'all ready for the jury?

1 MS. TAYLOR: Yes, sir.

2 MR. MOYER: Yes, Your Honor.

3 THE COURT: Would you bring them in, please,
4 sir?

5 (WHEREUPON, the jury came into open court at
6 approximately 9:41 a.m.)

7 THE COURT: All right. Good morning, ladies and
8 gentlemen. I hope y'all are doing well. I hope
9 y'all had a good evening. We're ready to start this
10 morning.

11 So, Mr. Moyer, you may call your next witness,
12 sir.

13 MR. MOYER: Thank you, Your Honor, may it please
14 the Court. The State calls Dana Lewis to the stand.

15 THE CLERK: Place your left hand on the Bible,
16 raise your right hand.

17 DANA LEWIS, after being duly sworn,
18 testified as follows:

19 THE CLERK: Thank you. Please have a seat.
20 Will you state your full name for the record?

21 THE WITNESS: Dana Armstrong Lewis.

22 DIRECT EXAMINATION

23 BY MR. MOYER:

24 Q Okay. Where are you employed?

25 A Greenville County Detention Center.

1 Q And just so -- the jury may be wondering about
2 your appearance today. You were in a car accident?

3 A Yes, sir.

4 Q A couple weeks ago?

5 A Yes, sir.

6 Q That's the reason you have the neck brace on?

7 A Correct.

8 Q Okay. So, you work for the Greenville County
9 Detention Center. In what capacity?

10 A I'm the population manager over the inmate
11 records and the inmates. I'm like a liaison to make sure
12 everybody's paperwork is correct and gets handled
13 correctly.

14 Q How long have you been in that position?

15 A In that position, 19 years.

16 Q How long have you been with the detention
17 center?

18 A Twenty-three years.

19 Q Okay. That's the detention center here in
20 Greenville County?

21 A Yes, sir.

22 Q What is your rank?

23 A Sergeant.

24 Q How long you been a sergeant?

25 A Nineteen years.

DANA LEWIS-DIRECT BY MR. MOYER

1 Q Okay. Now, let me ask you this, were you given
2 a summons to appear in court today to testify about a
3 particular inmate record?

4 A Yes, sir.

5 Q What type of record?

6 A It's the inmate property record.

7 Q What's an inmate property record? What's the
8 purpose? Why do they have that?

9 A Well, when we receive inmates into the jail, we
10 have to record all of their property, personal property,
11 clothing, anything they have in their pockets. Everything
12 has to be recorded. So, we record all that on that
13 property form. That way, when they get released, we can
14 give all their property back to them.

15 Q How is that taken? How is that done?

16 A Well, some of it's done during the chain of
17 custody. When the arresting officer brings the inmate,
18 some of that's accounted for there. The money gets
19 accounted for there. Jewelry, things of that nature, they
20 kind of check it off to make sure everything is correct.
21 Then when they bring them on inside booking, they go
22 through and finish out the process of recording everything
23 they have and the colors and things of that nature.

24 Q Okay. So, when all that property is recorded,
25 what is done with the property?

1 A It's placed in a -- anything that's personal
2 property, things like in their pockets and stuff, it's
3 placed in a zippered bag that can be locked with a tag.
4 And then the money gets placed in the safe after it's
5 booked. When everybody counts the money and makes sure
6 it's all right, then they put that in a safe. The
7 property bag with their personal property that's in their
8 pockets and things of that nature goes back into the
9 property room and gets stored in there with their
10 clothing.

11 Q Does an inmate have access to any of that
12 property while the inmate is there?

13 A No.

14 Q What about money?

15 A No. The money goes into a safe, actually, so.

16 Q Okay. Now -- so -- now, that record then is
17 kept by the Greenville County Detention Center?

18 A Yes, sir.

19 Q Again, how is it kept and preserved?

20 A The original copy goes in there -- on the front
21 of the property bag itself. Then when the inmates get
22 released, it gets put in their file to be put into the
23 record. That gets taken out and put in their file and
24 then it goes to records to be archived.

25 Q How long is that record kept?

DANA LEWIS-DIRECT BY MR. MOYER

1 A I believe -- I believe it's a 20-year record,
2 but I can't say that for positive, but they're kept for a
3 very, very long time.

4 Q And they're kept in the course of regular
5 conducted business activity at the jail?

6 A Yes, sir.

7 Q Okay. And it's a regular practice of the
8 Greenville County Detention Center to make and keep those
9 records?

10 A Yes.

11 Q And you have access to those records as a
12 regular and normal function of your job?

13 A Yes.

14 Q I want to hand you State's Exhibit No. 38. And
15 can you take a look at that and see if you can recognize
16 what that is?

17 A Yes, it's an inmate property record.

18 Q Of what person?

19 A Steven Williams.

20 Q Okay. And is that an exact and accurate copy?

21 A Yes.

22 Q Okay. It's actually a certified copy, is that
23 right?

24 A Yes, sir.

25 Q Did you get that copy -- I'm sorry, did you get

1 that record?

2 A Yes.

3 Q And you got that for a previous court hearing
4 that has already taken place?

5 A That's correct, yes.

6 Q And you brought it to court in that previous
7 hearing?

8 A Yes, sir.

9 Q Okay. And you initialed it where it says it's
10 an exact copy?

11 A Yes.

12 MR. MOYER: Your Honor, at this time, I would
13 move to have State's Exhibit No. 38 entered into
14 evidence.

15 THE COURT: Okay.

16 MS. TAYLOR: Your Honor, renewing my objection.

17 THE COURT: Okay. The same is respectfully
18 overruled. The same is admitted as Plaintiff's
19 Exhibit -- excuse me, State's Exhibit.

20 (WHEREUPON, State's Exhibit No. 38 was marked
21 for identification and received into evidence.)

22 BY MR. MOYER:

23 Q I want to ask you about a few details about that
24 particular record. First off, that's the inmate property
25 for Steven Williams, is that correct?

DANA LEWIS-DIRECT BY MR. MOYER

1 A That's correct.

2 Q And that, just like what you just described to
3 us, shows the property of Steven Williams, that was
4 recorded when he was booked into the detention center?

5 A Yes.

6 Q What date was he booked into the detention
7 officer?

8 A 6/6/2014.

9 Q Did he sign the form?

10 A Yes.

11 Q And is there any particular reason for that
12 being done?

13 A They're signing that they agree that's all the
14 stuff he had, nothing was left off and it's correct.

15 Q Did he date it when he signed it?

16 A Yes.

17 Q And that date is?

18 A 6/6. He didn't put 14 -- the inmate didn't
19 write 14 on it, but it's 6/6 and then at the top it states
20 6/6/14.

21 Q For when he was booked in?

22 A Yes, sir.

23 Q So, let me ask you about property that was taken
24 from him and stored. First off, what kind of clothing was
25 taken?

1 A It says he had black and white shoes, he had one
2 black shirt, one black pair of pants, one belt, a gray
3 pair of shorts, is his clothing that he had.

4 Q So, the shorts, that could be like boxers or
5 underwear.

6 A Yeah. Sometimes, they'll have another pair of
7 shorts under their pants.

8 Q Was there any property?

9 A Says he had cigarettes, a cell phone/beeper, one
10 of the two, and a lighter.

11 Q Was there any cash?

12 A Yes.

13 Q How much cash?

14 A \$130.79.

15 Q Did he have a wallet?

16 A No.

17 MR. MOYER: Okay. I have no further questions.
18 Thank you.

19 THE COURT: Yes, ma'am.

20 MS. TAYLOR: Just briefly.

21 CROSS-EXAMINATION

22 BY MS. TAYLOR:

23 Q You testified that the document you're holding
24 that is State's Exhibit 38, that is Steven Williams'
25 property report, correct?

DANA LEWIS-CROSS BY MS. TAYLOR

1 A Yes.

2 Q So, it's not Leviticus Young property report?

3 A Correct.

4 Q Was there a property report taken for Leviticus
5 Young?

6 A Yes.

7 Q Was there any cash found on him?

8 A I have no idea because I wasn't told to bring it
9 or anything. I don't know what his property was.

10 Q Just quickly, at the bottom of that document, it
11 has a space for receiving officer. Who was the receiving
12 officer?

13 A The receiving officer is Officer Seas, S-E-A-S.

14 Q S-E-A-S. So, that protocol is that he would
15 take it in and then you, being a supervisor, have access
16 to bring it to court?

17 A Right. He would have been the search officer
18 that searched him and did the chain of custody. He was
19 the one that recorded this information and counted the
20 money and made sure it was all correct and had
21 Mr. Williams sign it.

22 Q He wouldn't have necessarily brought him from
23 the scene and arrested him. He was just at the law
24 enforcement center when he was brought in?

25 A That's correct.

DANA LEWIS-REDIRECT BY MR. MOYER

1 MS. TAYLOR: Okay. Thank you. No further
2 questions.

3 THE COURT: Redirect?

4 MR. MOYER: Ust real briefly in reply.

5 REDIRECT EXAMINATION

6 BY MR. MOYER:

7 Q Are you aware that Leviticus Young wasn't
8 arrested until over a month later?

9 A No.

10 Q Okay.

11 MR. MOYER: Nothing further.

12 THE COURT: Any recross?

13 MS. TAYLOR: No recross, Your Honor.

14 THE COURT: Okay. Thank you. I hope you feel
15 better. You can be excused.

16 THE WITNESS: Thank you.

17 THE COURT: All right. You may call your next
18 witness, sir.

19 MR. MOYER: Your Honor, at this time, The State
20 rests.

21 THE COURT: All right, ladies and gentlemen,
22 when The State rests, that means I must necessarily
23 take up matters of law with the parties to the case.
24 There may be motions to be made and we'll have to
25 determine where we stand. When we come back, we may

1 hear evidence presented by the Defense or we may go
2 to argue and charge.

3 However, it's going to take me a little bit of
4 time. Not a whole lot of time, maybe as much as half
5 an hour, hopefully less. So, I'm going to give you a
6 little bit of homework when you go into your jury
7 room this time. There has to be someone who acts as
8 a foreperson of the jury.

9 Now, the foreperson of the jury's role is to
10 ensure that when you begin your deliberations,
11 everyone has a voice and everyone has the opportunity
12 to offer an opinion. When 12 people who -- 12 people
13 get together who may have never met each other
14 before, you're going to have some people who are
15 louder than others and more opinionated than others
16 and you'll have some that are more quieter and more
17 reserved. It's the foreman's role to make sure that
18 everyone has the opportunity to be heard and everyone
19 has a voice in deliberations.

20 The foreperson will also submit or pose any
21 questions that the jury may have as they arise. I
22 hope that after I've given you a charge on the law,
23 you won't have any questions, but from time to time,
24 the jury does. As the jury comes up with the
25 questions, the foreman will simply write it down and

1 give it to the foreman and the foreman will deliver
2 it to me to be answered. Sometimes, I can't answer
3 questions. If you're asking me questions about
4 evidence, like, what does evidence mean or can we get
5 more evidence, I'm not going to be able to give you
6 an affirmative response on that. I'm going to just
7 send a note back that says you have all the evidence.
8 If you ask me other questions about bearing upon
9 facts, I can't give you those answers, too. So,
10 sometimes I get questions that I can't answer. So,
11 if you get kind of a brusque response from, it's not
12 because I'm being short with you, it's because I just
13 can't answer those questions. Those are questions
14 that you'll have to answer in your capacity as the
15 triers of fact.

16 So, ladies and gentlemen, while we're out here
17 working, I'll ask you to go back and elect a
18 foreperson for your jury. So, please, go back to
19 your room. Don't discuss the case, just elect a
20 foreperson.

21 (WHEREUPON, the jury left open court at
22 approximately 9:50 a.m.)

23 THE COURT: All right. Motions?

24 MS. TAYLOR: At this time, I make a motion for
25 directed verdict. I don't believe The State has

1 proven the armed robbery case at this point. I think
2 there's substantial evidence that more likely than
3 not an assault and battery took place, but as far as
4 my client being involved in the armed robbery, he had
5 no money found on him, no gun. That's my motion for
6 directed verdict.

7 THE COURT: Okay. All right. I respectfully
8 deny the same. Again, I don't weigh the evidence or
9 look at the sufficiency of the same. All I do is
10 determine if there's any evidence in the record which
11 would support The State's case and upon which a jury
12 could find that The State has met its burden of
13 proof. In this stance, you've got two people who
14 identify the Defendant as being involved. One of
15 whom was the victim himself. Therefore, I think
16 there is evidence. So, I respectfully deny the
17 motion on that basis.

18 Anything else?

19 MS. TAYLOR: Nothing further from me, Your
20 Honor.

21 THE COURT: Ms. Taylor, do you intend to call
22 witnesses to the stand?

23 MS. TAYLOR: I do not.

24 THE COURT: Okay. So, we're going to go to
25 argument and charge, is that correct?

1 MS. TAYLOR: That's correct.

2 THE COURT: All right. Then what we'll do is
3 take about a five-minute break. Then I want y'all to
4 come to my office and we're going to talk through the
5 charge just to make sure we're all on the same sheet
6 of music going forward and there's -- and you know
7 what I'm charging as far as reasonable doubt and all
8 the various other points of law.

9 So, I suspect from that, Mr. Young, you're not
10 going to testify, is that correct?

11 MR. YOUNG: That's correct, sir.

12 THE COURT: If you'll stand up, please raise
13 your right hand.

14 LEVITICUS YOUNG, after being duly
15 sworn, testified as follows:

16 THE COURT: You can have a seat, sir.

17 EXAMINATION

18 BY THE COURT:

19 Q Mr. Young, I know you've had the opportunity to
20 discuss this with your attorney, but I need to go through
21 it with you one more time to make sure you appreciate and
22 understand your right to testify in this trial. You have
23 under the Constitution a right to remain silent,
24 characterized as a right against self-incrimination, which
25 means you don't have to say or do or prove anything to the

LEVITICUS YOUNG-EXAMINATION BY THE COURT

1 jury. The State has the burden of proof. And you've
2 already heard me tell the jury any number of times, The
3 State has the burden of proving each and every element of
4 the offense beyond a reasonable doubt and I'll charge them
5 that again.

6 I'm going to also charge them, if you elect
7 not to testify, that it is your right not to testify. And
8 they can't hold it against you that you have chosen to
9 avail yourself of a Constitutional right. They can't even
10 discuss it in their jury room. And I'll advise them of
11 that.

12 However, do understand that you have a
13 right to testify if you want to. Just like you have a
14 right to remain silent, you can take the stand and
15 testify. If you were to take the stand and testify, you
16 could tell the jury your side of the story. You could
17 articulate your position to them, but you assume risks if
18 you do that. Because The State would have the opportunity
19 to impeach your testimony. And ordinarily, the way to try
20 to do that is ask you questions about any prior record
21 that you may have or point out discrepancies in your story
22 and your testimony. Now, I don't know if you have any
23 prior records because I haven't been advised of that yet.
24 I just tell you they could if you have a prior record.

25 You also assume a risk, of course, if you

1 elect not to testify because then, you don't have the
2 opportunity to tell the jury your side of the story. So,
3 you assume risks either way.

4 I know you've had discussions with
5 Ms. Taylor, who is a fine and experienced lawyer, and you
6 should take her advice. However, understand, that,
7 ultimately, it is your decision and your decision alone,
8 as to whether you will testify or whether you won't
9 testify. And do you understand all that, sir?

10 A Yes, sir, I do understand that it's my choice to
11 testify. However, for me to testify today -- and you
12 mentioned something about my Constitutional right.

13 Q Yes, sir.

14 A At the same time, my Constitutional right was
15 deprived as a United States citizen off the top because
16 Solicitor Mark Moyer, Detective Adam Kin, they never gave
17 me the equal protection under the law off the top. They
18 told me -- they didn't never come to me, so for me to come
19 in here and testify today, why would I when I was deprived
20 of my Constitutional rights as a United States citizen for
21 equal protection under the law? I was never equally
22 protected under the law.

23 Q Well, I can't say that I understand because I
24 don't know that I do and I'm not so sure how one
25 correlates with the other. As a matter of fact, I don't

LEVITICUS YOUNG-EXAMINATION BY THE COURT

1 think they have any connection. But you've indicated to
2 me that you understand your right to testify or not
3 testify. And are you comfortable, sir, or have you made
4 up your mind as to whether you will testify or not?

5 A Yes, sir, I'm comfortable.

6 Q And you're not going to testify?

7 A (The witness shook his head.)

8 THE COURT: Thank you, Mr. Young, I appreciate
9 it.

10 Okay. So again, we'll take a break. Y'all come
11 see me in about fives and we'll go over the charge.

12 (WHEREUPON, a short break was taken.)

13 THE COURT: Okay. Ready for the jury?
14 Bring the jury in.

15 (WHEREUPON, the jury came into open court at
16 approximately 10:33 a.m.)

17 THE COURT: All right, ladies and gentlemen, I
18 see that you've elected a foreperson.

19 Ms. Kosel, is that how I pronounce that?

20 THE FOREPERSON: Yes.

21 THE COURT: Congratulations. You can put that
22 on your resume, that you were the foreperson of the
23 jury. I'm sure it bodes well for your future
24 accomplishments. Congratulations.

25 All right, ladies and gentlemen, we're going to

1 move to closing arguments now. As I told you at the
2 very beginning of the case, both opening statements
3 and closing arguments are not evidence to be received
4 by you. You have received all of the evidence in
5 this case during the trial. The closing arguments
6 are simply the attorneys advocating their respective
7 sides in an attempt to persuade you to their
8 position. There will be commenting on the evidence,
9 but not introducing any additional evidence.

10 After you've heard from both attorneys, then I
11 will give you the closing charge on the law. The
12 State will begin and argue, then the Defense will
13 have the opportunity to argue last.

14 With that having been said, Mr. Moyer, I'll turn
15 it over to you, sir.

16 CLOSING STATEMENT

17 MR. MOYER: Thank you, Your Honor. May it
18 please the Court?

19 THE COURT: Yes, sir.

20 MR. MOYER: All right. Before I get into going
21 over, summarizing what the evidence was in this case
22 and how it points conclusively to the guilt of this
23 Defendant, let me make just a couple of opening
24 remarks.

25 First off, just to reiterate something the Judge

1 said, that we have finished the evidentiary phase of
2 this case. You've gotten all of the evidence that
3 you're going to have, all of these exhibits over
4 here. You've heard all of the witnesses that you're
5 going to hear in this case. We sometimes have jurors
6 who come back and say well, we would love to see this
7 police report or this witness statement. Except in
8 rare situations, rules of court do not allow things
9 like that to be entered into evidence. So, you have
10 got all you're going to receive in this case and
11 you're to make your decision based on all that.

12 Second thing I want to mention very briefly is
13 something else the Judge said earlier in this case
14 and that's what the attorneys say in this case isn't
15 evidence either. So, we are here to argue to you
16 what this evidence points to. We can't give you
17 evidence. So, if something was said in opening
18 statements about what you may hear in this case and
19 it didn't come out in this case, you know, you would
20 not be able to consider that in your deliberations.

21 If there is some point that the different
22 attorneys tell you that is different, for example,
23 something a witness may have said and one attorney
24 says the witness said X and the other attorney says
25 the witness said Y, well, you would be the -- you

1 would make the decision as to what that witness
2 actually said. And if it's a really big point and
3 there's a dispute among yourselves, you, of course,
4 could listen to the record that was recorded in the
5 case. First of all, if there is something like that,
6 I'm not say that it is.

7 Third thing I want to mention to you before I
8 get into the evidence is just a few brief comments
9 about reasonable doubt. As you have heard from His
10 Honor, the Defendant comes into this courtroom
11 presumed innocent. He comes in with this cloak of
12 innocence and it's The State's duty to remove that by
13 presenting evidence to you that proves his guilt
14 beyond a reasonable doubt. Now, that's a fundamental
15 concept of American law. We do not stray from that
16 at all. In fact, especially in this case, The State
17 gladly accepts that burden. I want you to consider,
18 though, and remember what that burden of proof is.
19 It is beyond a reasonable doubt, okay.

20 Another way of understanding that concept is at
21 the end of this case, after you've considered all the
22 evidence, are you firmly convinced the Defendant is
23 guilty? If you are, then you find him guilty. If
24 you're not, then you find him not guilty.

25 Now, that is true in every case, in every

1 jurisdiction that the criminal case goes before a
2 jury, even in the most seemingly insignificant case.
3 In South Carolina, you can have a jury trial for a
4 traffic ticket. In order to be found of that traffic
5 ticket, that jury of six, instead of 12, would have
6 to decide that you ran a red light or speeding or
7 whatever beyond a reasonable doubt. That's also true
8 for the most seemingly significant case, like a
9 capital murder case, death penalty case. It's the
10 same. In every situation somebody is found guilty, a
11 jury just like you all has to determine that person
12 is guilty beyond a reasonable doubt.

13 Now, I want to take a couple -- move on to how I
14 think a jury, such as you all, in a case like this,
15 generally, would approach a case like this. Usually,
16 it's kind of a two-prong approach. One, was a crime
17 committed? Number two, is the person on trial the
18 person who committed the crime?

19 Let me start off with the second factor in this
20 case. Was -- and that would be the statute of
21 identity. Is this -- assuming a crime was committed,
22 is the person the one who did it? I think we can
23 dispatch with that second question first and then
24 move on to the first question rather quickly. We've
25 had three people identify this Defendant as the

1 person involved. You heard from Juan. In fact, Juan
2 told you, he said when something like this happens,
3 you don't forget it. And Juan looked at the
4 Defendant and pointed him out and said, That's the
5 man who did it.

6 Now, Juan was face-to-face with this man for a
7 period -- and you can tell how long it took place by
8 looking at that video, 45 minutes. As they were
9 standing out in front of the car, as they came in, as
10 the Defendant attacked him, had the stun gun, as he
11 grappled with him, as Juan finally got on top of him
12 and was looking down on him, that whole period of
13 time. Juan had a good look at him, a long look at
14 him and Juan identified him.

15 We when heard from two other people. We heard
16 from those two witnesses, Robert Cullum and his
17 mother, both of whom have no stake in the outcome of
18 this case. They don't know anyone involved. But
19 they came into court and said yes, they were very
20 close to him. They saw the person who went running
21 down the road. I think they both had me walk up and
22 determine about how far that distance was, and they
23 both said somewhere around 15 feet or so. Got a good
24 look at his face. And this Defendant they are sure
25 is the person who did it.

1 So, I would argue to you we can dispatch of the
2 question of identity quickly. So, he was identified.
3 So, things like well, shouldn't they have done some
4 DNA? Should they have tried to check on DNA from
5 that taser? Well, ladies and gentlemen, DNA is done
6 when you don't know who the person is. In this case,
7 they did. This wasn't a case where they had blood or
8 semen, you know, you have a good chance of getting
9 DNA. So, clogging up the backlog of testing that's
10 done at the lab hoping to possibly find some sort of
11 touch DNA on some implement would not have provided
12 you with any useful information in this case because
13 we know who it was. Assuming it was something found
14 on it, well, there's a million explanations that
15 could be given to try to explain that away. So, I
16 would argue to you that we know that identity.

17 So, now let's move on to the question of was a
18 crime committed? Was an armed robbery committed?
19 So, I talked to you a little bit about the law in my
20 opening. Let me just rehash that quickly. His Honor
21 is going to instruct you fully on the law after the
22 attorneys -- after Ms. Taylor and I finish talking to
23 you.

24 To reiterate this, I would like -- because I
25 brought it out in my opening, I want to reiterate

with you again now. That is, first off, accomplice liability. Remember, that's when we're talking about the hand of one is the hand of all. When you have multiple people working together to commit a crime, you don't have to think about well, who had the gun, who got the money? It doesn't matter. The fact that Steven Williams is the one that we know had the pistol when he entered, when the two of them entered into the shop doesn't matter. This Defendant is equally responsible for that weapon. The fact that Steven Williams is the one who picked up the money and had the money when he was booked into the jail later that day doesn't matter either. They were working together to commit a crime.

Now, what are the crimes? Armed robbery means taking goods or property from another person by force or intimidation while armed with a deadly weapon. Well, we know force and intimidation was used. Juan was beat up. You can look at the pictures of where he was struck in the head with a gun. Was a gun used? You have the gun right there before you. The gun that was found in that car when that car crashed into that telephone pole. That's armed robbery.

Now, assault and battery. In order for you to find it to be assault and battery first degree, which

1 is the charge that is before you, well, you would
2 have to determine that a robbery was taking place.
3 Because assault and battery first degree means
4 there's either an assault or an attempted assault
5 committed during like a burglary or a robbery. So,
6 if you believe that Juan was assaulted, as the
7 pictures show you, and you believe that this was done
8 during a robbery, then you can find him guilty of
9 that charge of assault and battery first degree.

10 So now, were these offenses committed? Let's
11 start off that analysis by talking about what we
12 know. What evidence do we have in this case that's
13 really just uncontradicted? We have that video.
14 What do we know from it? Well, we know that black
15 Mercedes pulled up in front of Juan's shop. We know
16 that two men sitting in the car for a minute or two.
17 We know that they then get out and look into the
18 shop. We know they then go out of view for a couple
19 of minutes. Come back, running to that car. The
20 Mercedes drives off quickly. We then know Juan comes
21 running out, waiving his arms, then jumping in his
22 car and going off after them.

23 What else do we know that's an uncontradicted
24 fact in this case? We know the Defendants drove away
25 fast. They flew away from that shop. They sped

1 away. Stephanie Bishop, the woman who called 911,
2 said they were going about 55 miles an hour through
3 this residential area where it's a 35-mile-an-hour
4 speed limit. We know that the passenger was hanging
5 out of the car looking back towards Juan, who was
6 driving up with the Mustang. That's what she said.
7 She said they were going so quickly. She can't give
8 you a whole lot of detail about what they looked like
9 or anything like that, but she knows he was hanging
10 out and he was looking backwards toward that Mustang.

11 What else do we know? We know that shots were
12 fired. We know -- Mr. Cullum and his mother both
13 testified they heard somewhere -- either one to three
14 shots. They heard gunshots. Now, they can't say for
15 sure it was coming from that Mercedes, but they said
16 it was coming from that direction.

17 We know, also, that the bump or the hit that
18 Juan gave to the Mercedes was not hard enough to
19 leave paint transfer or, perhaps, even a mark. You
20 can't see any marks on Juan's car. If you look
21 closely at the Mercedes, you can see some scuff marks
22 on the back of the Mercedes. We don't know if it's
23 from Juan or not. But we know it wasn't paint
24 transfer and we know there wasn't damage.

25 We know that after the wreck, after the Mercedes

1 crashed into the telephone pole, Steven Williams
2 stayed there with the car in his stunned condition
3 and he was still there when the police showed up. We
4 know that the passenger, who has been identified as
5 Leviticus Young, this Defendant, ran from the scene.
6 He ran away from that car.

7 We know that a pistol is found in plain view
8 under the driver's seat. You have it before. You've
9 seen the pictures. This compartment under the seat
10 was opened. The pistol was in plain view. It was
11 there. We know it had a fired round in it. We know
12 one round had been shot.

13 We know a stun gun was found at Juan's shop. We
14 know that money was found at Juan's shop. We know
15 that Juan is bruised and bloody. In addition, to the
16 abrasions and bruises, he has a cut on his head. He
17 was struck by a blunt object.

18 We also know that Juan immediately sought help
19 from law enforcement. As soon as he saw a person
20 when he was chasing after these men in the black
21 Mercedes, he stopped and what did he stay? Call 911.
22 From the very beginning of this incident, he wanted
23 police involved. He then followed the Defendants
24 again. And when they crashed, he went and what did
25 he do? He immediately drove away and he found

1 someone he knew, a friend and said, Call 911. That's
2 the authorities. He then started driving away and he
3 sees a couple of police officers who are
4 investigating some unrelated matter. He immediately
5 goes up to them, says, I was robbed. I want your
6 help, let me tell you what happened. So, both before
7 and after that Mercedes crashed into the pole, Juan
8 wanted law enforcement involved. Those are
9 uncontradicted facts.

10 So, what else could be the explanation for what
11 happened? I would say to you, ladies and gentlemen,
12 any other explanation would be speculation. Would be
13 speculation. Here's what I argue to you is all of
14 this evidence points to conclusively beyond any
15 reasonable doubt. Juan is working late on Friday
16 afternoon. He's about to get off. It's close to
17 6:00 o'clock. It's a Friday. What is Friday to a
18 cash-only business? You have a lot of cash. And
19 it's a Friday, so maybe you have a week's worth of
20 cash.

21 Juan is the perfect victim. He works alone. As
22 I said, it's a cash-only business. Not only has he
23 told you, but it's advertised. Probably not very
24 smartly, but if you look at the side of his building,
25 you can see it's stenciled, cash only. He lives --

1 this business is on this road. It's right down on
2 Poinsett Highway. But there's a road that goes back
3 into what has been described as not a very good
4 neighborhood where one could get away very quickly.
5 Easy access to this rough neighborhood.

6 So, what happens? Shortly before 6:00 o'clock
7 and Juan closes, Juan notices this Mercedes that
8 stops on Poinsett right in front of his business.
9 What are they doing? They're checking it out? Is
10 Juan by himself? Does he have a customer? They may
11 have noticed some other time that this building says
12 cash only. It's now, as I said, close to
13 6:00 o'clock. The people at that mulch business,
14 they leave at 5:30, so they're gone. Juan is there
15 by himself. A short while later, they come back.
16 Juan, again, is still alone. They pull up, as you
17 can see in the video, right close to the tire shop.
18 They sit in there for a minute. What are they doing?
19 Juan says he was on the phone. He noticed them out
20 there. It's when he hung up the phone is when they
21 got out. It also gives them time to get the gun and
22 get the stun gun ready.

23 They step out of the car, stand for a few
24 moments and then they go out of sight. Juan says
25 they came up to him immediately, surely, expecting a

1 quick and easy lick. These are big guys. They have
2 a gun and they have a stun gun. There are two of
3 them and Juan is there by himself.

4 So, Juan starts backing up. Because when they
5 approach him, they say, Give me -- and I'll use the
6 words that were used.

7 Give me the fucking money.

8 Juan starts backing up farther into his shop.
9 Then Steven Williams pulls the gun out in his face.
10 And Juan makes the decision well, I'm not going to
11 die over \$150. He's got \$150 in his front pocket.
12 As he testified, he had been putting the bigger bills
13 and other money back into his wallet. He has that
14 back there. Give them the \$150 and hope they get out
15 of here. Pulls out the cash, what does he do? He
16 doesn't just hand it to them. He's going to give
17 them the money, but it's going to be on his terms.
18 He shows some contempt and disrespect to them, just
19 throws it up to them. He told you the fan was
20 blowing, so the money gets blown around a little bit.

21 So, what happens then? The Defendant -- as
22 Steven Williams goes to pick up the money, this
23 Defendant, Leviticus Young, decides he's going to
24 teach him a lesson. You show disrespect to us, we'll
25 teach you a lesson. Also, someone who does something

1 like this, well, what else is he going to do, showing
2 that kind of contempt. So, Leviticus Young goes
3 after him while Steven Williams starts picking up the
4 money. You heard the testimony about how he used
5 that stun gun on him. Juan said it was through his
6 clothes, didn't hit him very hard, but he did feel
7 it.

8 And then this fight ensued. They grapple, they
9 struggle. Juan actually starts to get the better of
10 him and gets around on top of him. So, Juan is
11 actually on top of him. And that is when Steven
12 Williams realizes what's happening, so he comes to
13 the aid of Leviticus with the gun and strikes him on
14 the head with the gun. This explains how blood is on
15 the Defendant's shirt when he's running away.
16 Because remember, Karen Brown testified when she
17 stepped out of the house and saw Leviticus Young
18 running down the road, she could see blood on his
19 shirt. While Juan is on top of him, he's been struck
20 on the head and blood is flowing down on him. As he
21 grabbles to get away, certainly, other opportunities
22 for more blood to transfer. He gets away from him.
23 The men run out. They go to their car. They run
24 quickly.

25 What does Juan do? Juan is mad. And he's

1 dazed. He's been hit, he's been robbed. And as he
2 told you, he used the word he probably shouldn't have
3 used in court, but he was mad. Understandably. Juan
4 is a hardworking guy. He works six days a week. And
5 even Saturdays, he working until 2:00. Doing
6 heavy -- doing manual labor, physical labor lugging
7 tires around. He's working hard for his money. And
8 he's working hard for the money for his boss. And
9 here come these two guys who come in there and not
10 only take that money from him, but they beat him up.
11 He doesn't want them to get away. So, he runs out
12 after them, maybe he can catch them before they get
13 to the car.

14 Well, he gets out there. What happens? They
15 get in the car and they start to drive away. You can
16 see on the video, Juan jumps up. And he told you he
17 was hoping to get the attention of this woman who's
18 off across the road. They drive away. Juan knows by
19 the time he runs back into his shop, finds his phone,
20 calls 911, gets with the dispatcher, officers come
21 out there, who knows how long that's going to take,
22 those guys are going to be gone. They're never going
23 to be caught. Never. Juan doesn't want that to
24 happen. He wants them to be caught. He wants them
25 to be held responsible and he goes after them.

1 And there's nothing wrong with that. In fact, I
2 would argue it's a service to the community that he
3 did because two people who commit armed robbery could
4 have gotten away. You might not have done. You
5 might have thought well, that sounds a little scary.
6 You got Juan, a 23-year-old guy, a single guy. You
7 heard testimony about this area of Greenville is kind
8 of rough. And he's the kind of guy who wants to stop
9 them. He does not want them to get away, so he goes
10 off after them. He speeds up, he catches them on
11 Fair Street, close -- somewhere between a mile -- I'm
12 sorry, half a mile and mile Ms. Bishop testified.
13 That's when he sees Ms. Bishop there.

14 Now, Ms. Bishop doesn't know anybody. She
15 doesn't know anybody involved in this case. She
16 doesn't know what's going on. All she knows is she's
17 standing out by the road, all of a sudden, here comes
18 this Mercedes flying by with a guy hanging out the
19 window and then here comes this Mustang. The
20 Mercedes keeps going. The Mustang screeches to a
21 stop. Juan looks at her and says, Call 911, call
22 911. And he takes off after them again. Well, she
23 does so, thankfully.

24 Juan keeps going hoping to catch them, catch up
25 with them. You heard him testify how he got to one

1 intersection and he saw somebody and said, which way
2 did they go, and he went that way. So, he gets up
3 there and just as -- he sees the car just as it's
4 about to turn left on Old Buncombe. He gets up to
5 it, speeds up to. There's that car he doesn't want
6 to get away and hits the back of it. He testifies at
7 that point, the passenger reaches out and takes, at
8 least, one shot at him. He swerves. The car keeps
9 going, tried to make that turn and rams into the
10 pole.

11 What does Juan do? Juan stops. He told you he
12 thought for a minute about what should I do. At this
13 point, thankfully, he used some common sense and he
14 decided to leave. Here are these guys, they have, at
15 least, one gun. These guys have crashed. The driver
16 is staying in the car. Here are these guys with --
17 who are armed, who've already shot at him, who have
18 robbed him, so he decides well, it's time -- well, we
19 know where the car is, he knows where that one guy
20 is, now is the time to go get law enforcement. So,
21 he drives off, finds somebody, tells them to call
22 911, then drives off and gets the officer -- and
23 finds the officer.

24 Now, the Defense has made a rather big deal
25 throughout the trial asking almost every witness

1 trying to point this to some kind of hit and run.
2 Let me just one -- a couple of short remarks to you
3 about that issue. Of course, it doesn't matter. It
4 does not matter about whether those guys robbed him,
5 whether or not Juan had a right to stay or leave
6 after that car wrecked into the pole. It doesn't
7 matter at all. This is a red herring to get your
8 attention away from the facts of this case.

9 But I can also tell you it's not leaving the
10 scene of an accident to leave where there's a couple
11 of guys -- you don't have to stay at the scene of an
12 accident with two guys who just robbed you and who
13 have a gun. Okay, that's not leaving the scene of an
14 crime.

15 He went and found police. He had already been
16 trying to get the police involved. He immediately
17 left and went and tried again to get police involved
18 and did get the police involved. What did he do? He
19 went right up to them and he told them I've been
20 robbed, I've been robbed. Here's what happened.

21 Robert Cullum and his mother, Karen Brown, see
22 this Defendant run down the street, running away from
23 the scene. Why do you run away from the scene?
24 Flight shows guilty knowledge. Flight shows guilty
25 knowledge. Steven Williams stayed there because he

1 was stunned. They heard a shot or two or three.

2 Now, let's think about that for a minute. One
3 thing we know is there was only one fired round in
4 that pistol. So, what does that mean? First off,
5 there -- there's several possibilities. First off,
6 there could have been only one shot fired. That
7 first bang that they heard could have been Juan
8 banging into the car and then the shot was fired.
9 They could have thought that first bang was one of
10 the shots. I don't know. Could have been mistaken.
11 Could have been just one shot and in all of the
12 hubbub and all of the commotion that was going on
13 didn't quite remember how many shots it was.

14 It's possible they both had guns. Karen said --
15 Karen Brown said when she saw Leviticus Young running
16 away, he had something in his hand. She said it
17 could have been a gun, I don't know. They could have
18 both shot. Leviticus Young could have been the one
19 who shot and then put the gun under the seat before
20 he ran away, which would account for why that gun is
21 out in the open under that seat. That's another
22 possibility.

23 Juan said in court yesterday that it was the
24 passenger who shot him. Now, Juan very openly told
25 you when he gave his statement, he said it was the

1 driver. You know, if Juan was the kind of person who
2 is going to come in and lie about this whole story,
3 he could have very easily kept up that pretence
4 throughout this whole trial. But what did he say?

5 He said, I thought about it later, when I gave
6 that statement, I had just been hit in the head and I
7 was trying to think through it, said it was the
8 driver. A little bit later, I started thinking about
9 it, I was like, you know what, it was the passenger.
10 So, he said I wanted to be accurate to y'all. You
11 know, let the chips fall where they may. That's what
12 I remember as I thought about it, it was the
13 passenger who shot me.

14 Juan did everything one would expect from a
15 victim. He wanted the people who did this to be
16 caught. He immediately sought law enforcement
17 involvement. If this was some other speculative
18 incident, why in the world would he want to get
19 police involved in this situation if he had done
20 something wrong? Again, that's just pure
21 speculation. Why would he want -- if this was some
22 personal matter, why would he want law enforcement
23 involved? If he had known these guys before -- first
24 off, he testified he had never seen them before. Why
25 is he chasing them? If he wanted to get even with

1 them, he could have got even with them later. He
2 chased them because he didn't know who they were and
3 he wanted to make sure they didn't get away.

4 Then when he initially went to the police, what
5 did he tell them? He told them facts that would
6 later be corroborated. He said they had a pistol and
7 that -- and that he had been shot at. Well, how was
8 he going to know that back there at that accident
9 scene, while he's telling these other officers what
10 had happened, they're going to find a pistol under
11 his seat and there's going to be a fired round in it?

12 He said immediately to Officer Husk, There was a
13 stun gun.

14 How does he know there's going to be a stun gun
15 found back at his shop? He told them immediately it
16 was about \$150 that was stolen. How does he know
17 that when Steven Williams is booked into the jail,
18 he's going to have \$130 cash on him? You take that
19 \$130 and you think about those bills that were left
20 that Steven Williams did not pick up, we're right at
21 about \$150. Right at about \$150, which is exactly
22 what Juan said was taken from him.

23 These guys, the Defendant and Steven Williams,
24 did everything that you would expect from robbers.
25 They fled from the scene. In fact, this Defendant

1 fled from two scenes. He fled from Juan's shop.
2 Then when the accident happened, he fled from there.
3 They're armed. We have the pistol, we have a stun
4 gun, and they have the money that Juan says was
5 stolen. Steven Williams has that \$130 in his pocket.

6 At the beginning of this case, I asked you,
7 ladies and gentlemen, to do three things through this
8 trial, listen closely, y'all have done that, and we
9 appreciate that very much, to use your good judgment
10 and common sense to weigh the evidence and testimony.
11 Well, I ask you to continue to do that as you go back
12 into the jury room to do your deliberations. Then to
13 do justice. Ladies and gentlemen, justice demands
14 holding people responsible from their actions.
15 Justice demands that people who commit armed
16 robberies, who assault innocent people during armed
17 robberies be held responsible for what they have
18 done.

19 So, ladies and gentlemen, I ask you to return
20 two guilty verdicts. First, on assault and battery
21 first degree of guilty and armed robbery. Thank you.

22 THE COURT: Ms. Taylor.

23 CLOSING STATEMENT

24 MS. TAYLOR: Thank you. May it please the
25 Court.

1 Good morning. Thank you for being here again
2 today. Hopefully, this will be a little bit quicker.
3 When I spoke to y'all yesterday in the opening, I
4 asked you to keep several things in mind. I gave you
5 an example of what reasonable doubt is through the
6 window example and how, as the case goes along, dirt
7 gets on the window, things get muddier and gets
8 harder and harder to see through, okay. I want you
9 to keep that example in your mind as we go through
10 this, all right.

11 The second thing I talked to you about was
12 unusual victim behavior. And that is exactly what
13 you guys saw here today, okay -- or yesterday, I
14 apologize. But.

15 The third thing I talked to you about was
16 improper police work, okay. We all want criminals to
17 be caught and brought to justice. That's what keeps
18 our society safe and that's what keeps us protected
19 and allows us to function, okay. However, in order
20 to do that, the police have to do their job. They
21 have to take statements. They have to make a record.
22 Because two years later when the case gets tried and
23 nobody remembers because nobody wrote it down, guess
24 what, that's reasonable doubt. That's a cloudy
25 window. That is their job. That's their only job,

1 to do their job, make a record of what they found in
2 the course of their investigation, make a record of
3 what witnesses tell them, especially when the
4 witnesses say things like he had gun. He was covered
5 in blood. He was running from the scene.

6 These are very important things that anybody
7 that's a police officer should know you write down
8 and you make a record of. In fact, you heard those
9 officers admit that that is standard practice and
10 that's what they would do. But that didn't happen
11 here, okay. I need you keep that in mind when we're
12 looking at this window.

13 So, just to make it easy because this has been a
14 really confusing case. I know you guys are thinking
15 this, I certainly am. Let's start from the
16 beginning. The first witness you heard from was the
17 911 operator, okay. I'm not going to get into too
18 many things, I'm just going to tell you what was
19 important. She told you there was never a 911 call
20 for an armed robbery. The first call that came in
21 was for a hit and run. She told you that, okay.

22 The second witness you heard from was Mr. Shaw.
23 He's the forensic specialist in this case, okay. He
24 told you he didn't see any injuries on the victim
25 that was consistent with a stun gun, not at all. He

1 told you what happens when you get shot with a stun
2 gun. And he did say if it goes through your clothes
3 that the wattage or voltage would be diminished a
4 little bit. But he could find no mark on this victim
5 that corroborated that statement, okay.

6 He tells you he actually did do his job. He
7 took fingerprints, he took DNA evidence. Ooh, but,
8 unfortunately, the next person's job, he was to turn
9 it over so that it could actually be tested to find
10 out whose DNA it was and whose fingerprints it was,
11 yeah, that person didn't bother to do their job. So,
12 we don't know the answer to that question, okay.

13 Now, let's talk about Mr. Cullum, okay, the
14 witness that was standing outside grilling. He said
15 he heard three shots. He said they came from the
16 same direction. And he said he thought they came
17 from the same gun, okay. Well, you heard the
18 solicitor just tell you that the gun they found was a
19 revolver that holds five bullets, one was shot. This
20 is the jack in the beanstalk gun, okay. If there
21 were more bullets fired, where are they? Where's the
22 other gun? They never found it, there's no record of
23 it.

24 I would argue, possibly, Mr. Cabrera had a gun.
25 He was working at an all-cash business in an

1 admittedly bad part of town. He knows that people
2 are going to come in and mess with him. Why wouldn't
3 he have a gun to protect himself from a cash-only
4 business in a bad part of town? Maybe that's where
5 the other two bullets went. Maybe that's where
6 Mr. Cabrera went when he felt the scene of an
7 accident and ran away. Maybe he went to get rid of
8 the gun. Or maybe the stun gun was his. Maybe it
9 was in there because he needs some form of protection
10 to protect himself against -- it's a shed. You guys
11 saw it. There's not even a door, okay. So, if he's
12 got this money, he's a sitting egg for anybody and
13 everybody in this horrible neighborhood to come rob.
14 Wouldn't you take some measure to defend yourself as
15 a business owner or a worker? That seems reasonable,
16 right? Okay. So, maybe that's where the other shots
17 came from, but they didn't come from that gun and we
18 don't have a gun that The State showed you that they
19 did come from. So again, we don't know. The window
20 is getting dirtier fast, getting dirtier, okay.

21 Now, let's go to Karen Rogers [sic], the next
22 witness. That was the mother of Robert Cullum, okay.
23 She had a lot to say, didn't she? Too bad nobody
24 interviewed her and nobody took it down as a
25 statement. Do any of you remember what you had for

1 breakfast last week? You might remember if you like
2 bagels or if you eat the same thing every day. I
3 can't tell you what I did last week or where I was,
4 much less two years later when nobody wrote it down
5 for me. I can't refresh my memory. A lot of things
6 happen in two years. But she is certain and, even
7 better, she says that she talked to the prosecutor,
8 gave him a statement. But he didn't write it down,
9 he didn't provide it to the Defense. I had no
10 opportunity to see what was right and wrong about her
11 statement.

12 Also, what she says about the blood on the shirt
13 was not corroborated by any other witness. Not by
14 Stephanie Bishop, who saw the alleged Defendant
15 leaning out of the window in a white shirt. No blood
16 on his shirt then. Didn't see any of that. She
17 didn't see a gun either. She didn't say anything
18 about seeing a gun.

19 Now, let's talk about Officer Husk, okay. That
20 was the officer that was the first one in contact
21 with Juan Cabrera, okay. He told you he was aware
22 that the accident was intentional. Why was he aware
23 of that? Because Juan Cabrera told him, I
24 intentionally hit that car causing them to go into
25 that pole to stop them. He didn't do any

1 investigation on the accident. He heard what Juan
2 Cabrera said and he just took it for what it was
3 worth. He didn't bother to say hey, maybe this was
4 dangerous having two cars in a high speed chase down
5 a pedestrian street. Maybe somebody -- if there were
6 gunshots actually being fired, somebody walking their
7 dog could have gotten shot by crossfire. He didn't
8 bother to ask any of these questions or even ask why
9 he left the scene.

10 As Mr. Moyer just said, running indicates guilt.
11 Well, if you're going to apply that to a defendant in
12 a case, you probably should apply it to a victim as
13 well. He fled the scene of an accident. He's the
14 one in the right. Why wouldn't he get a license
15 plate number, write it down? Why would he engage
16 danger even more and follow the guys with the gun
17 when he doesn't have a gun? Or maybe he does. Maybe
18 that's why he got in his car and followed them
19 because he knew he had to protect himself. These are
20 things we don't know because they didn't do their
21 job. They didn't tell you.

22 The window is so foggy right now, you can't tell
23 me what happened. I can give you two explanations
24 that make just as much sense as what The State has
25 put on for you today. The first one is that maybe

1 the other two shots came from an unknown gun that was
2 in the possession of Mr. Cabrera. Maybe that's what
3 gave him this brazenness that he said he was angry
4 after this and he was going to chase them down.
5 Maybe he did that because he knew he had a weapon. I
6 got a gun, they got a gun, I'm going to go solve it.
7 Okay, that's one possibility.

8 The second, the stun gun was found in his shop.
9 Maybe he had the stun gun there to protect himself.
10 All cash business, bad neighborhood. Again, there's
11 all kind of different things that make sense. Just
12 as much sense as what the solicitor is trying to tell
13 you, okay.

14 But back to Mr. Husk's statement, okay, he says
15 that when the victim calls him, that's when he gets
16 into 911 and calls in the armed robbery. At no point
17 did anybody make a 911 call reporting an armed
18 robbery, okay. It was for a hit and run, that's what
19 people saw. I ask him would it be crucial to take a
20 statement of Ms. Karen Rogers?

21 He said, Yes. It wasn't my job. I didn't do
22 that.

23 Again, not my job.

24 Then you heard from the victim in this case,
25 Mr. Cabrera. All right, let's start with him, okay.

1 He's changed his story so many times, it's confusing
2 to me to even try to combat what I can tell you is
3 true and what's not true. I think he has shown
4 himself, and you guys are the determiners of this,
5 whether or not he's a credible witness. I'm just
6 going to point out that nothing about what he says
7 makes any sense, okay. You saw on the video, which
8 was really hard to see. You couldn't tell who was
9 who, just a car was there and these were some
10 individuals, okay. He admitted that he lied to
11 police the first time when he gave that statement.
12 He says it was the driver that shot him.

13 The solicitor wants you to think that that's not
14 important. It's very important who has a gun and who
15 is shooting at you. Very important to know who is
16 the person who is committing this crime, okay. He is
17 saying I was very injured, I was frazzled. Well, if
18 you were that frazzled, you weren't frazzled enough
19 to take 15 seconds to run in your car and chase down
20 a guy that has a gun. You weren't that frazzled,
21 okay. Again, the point of a statement is because
22 people change our mind, our recollection fades, we're
23 human. We cannot remember the exact from a day where
24 two years passes.

25 So, if his story did change, let's say that

1 that's reasonable. Maybe a day later or two days
2 later, he gets his memory back and he says, you know
3 what, it was the driver. Shouldn't he have called
4 the investigators and said wait, wait, wait, I was
5 wrong. It was the passenger. I told you it was the
6 driver, but it was the passenger. I was wrong. You
7 don't wait two years and never correct an
8 inconsistency in your statement and then get on this
9 stand and expect you guys to believe that. That's
10 not how it works. Not when you're the victim of a
11 crime, okay.

12 Next, let's talk about what else doesn't make
13 sense. Okay, he's got \$150 in his front pocket. He
14 tells you as the day goes on, he starts using that
15 pocket to make change, that the bigger bills go to
16 the back, right? That was admitted by Mr. Cabrera
17 himself. A person comes in -- now, this is where you
18 guys have to use your own personal experience and
19 knowledge, okay. You were robbed at gun point. You
20 were being demanded to give your money to these
21 assailants. You're stunned, pistol whipped,
22 terrified. Are you going to be combative and toss it
23 at them? Why wouldn't you give them all the money
24 you had? If you were really terrified, why would you
25 hide another 250 bucks in your back pocket? If

1 they're there to rob you, they're going to go through
2 your pocket. They're going to find it. Why would
3 you hide it? That doesn't make sense. It doesn't
4 make sense that he would only give them the money in
5 the front pocket and not the money in the back
6 pocket.

7 It doesn't make sense that he chased them down.
8 Again, he had to have had a weapon or some sort of
9 certainty that he wasn't going to get shot at.
10 Because I'm not going chasing down somebody who just
11 hit me with a gun, not unless I've got something I
12 can defend myself with equally.

13 He admits that he hits them. Y'all, he tells
14 you that he ran them into a pole. He admitted that.
15 And then he says he left the scene. He had all the
16 time in the world, he could have written down the
17 license plate, he could have called the police. He
18 never did any of that, never. Never did any of that,
19 okay.

20 Also, the Defendant is not charged with any gun
21 crimes here today, okay. The only thing that's put
22 in front of you is an armed robbery charge and an
23 assault and battery charge. They don't have any
24 possession of weapons charges here. They don't have
25 any of that. If they thought that the gun was in my

1 client's possession, trust me, that would be on the
2 docket and they would be arguing about it right now.

3 Let's stop with Juan for a second. I'll come
4 back, but I want to talk to you about Investigator
5 McAlmont, okay. He was actually really honest and he
6 was the one that told you he saw the gun. He saw it
7 in the driver's side, took the pictures of it. He
8 explained to us how -- or me, I guess, how the
9 revolver works and how the bullets are going to stay
10 in it and how you've got to take out the spent shell
11 casing. He also told you how important it was to
12 make a record, and that he does that. When a witness
13 has important information in a case, he always writes
14 it down. That's what he told you.

15 Now, he also told you something else, that
16 Mr. Cabrera was justified in pursuing these
17 Defendants in a high speed chase for a citizens
18 arrest. The Judge will instruct you on the matters
19 that are relevant in the law in this case, but I find
20 it it's my prerogative to inform you that that is
21 absolutely a hundred percent not true. Imagine if we
22 were all vigilantes and using our cars as deadly
23 weapons and chasing down criminals, okay. You cannot
24 use deadly force once the force has left -- or the
25 danger has left the situation. So, just in case any

1 of you do become victims of a crime and decide to
2 retaliate, you cannot use deadly force, okay. That
3 is not going to get you into a citizens arrest
4 category.

5 Now, let's go to Officer Belding. He's the one
6 that actually took the evidence downtown. He's the
7 one that shows us how many spent casings we've got,
8 all of that. I asked him about the DNA, the
9 fingerprints. Not my job, I didn't do any of that.
10 I just took his word, wrote it down. Didn't
11 investigate anything about a hit and run. Didn't do
12 anything about fleeing the scene of an accident.

13 Like I said, all of this, the victim's behavior,
14 the bad police work, the uncertainty of what really
15 happened. This was an assault and battery. This was
16 guys that was roughing him up. Two guys that got
17 into a fight and he wanted to continue the fight
18 because he was mad. He told you he was mad. He
19 wanted to continue to fight. This is an assault and
20 battery. Check that box. Make them do their job.
21 The window is too dirty to say armed robbery. It's
22 just too dirty. You and I are citizens, we have to
23 hold them accountable and make them do their job.
24 Thank you.

25 JURY CHARGE

1 THE COURT: All right, ladies and gentlemen,
2 it's time for me to give you the charge on the law in
3 this case. When we started this case, I advised you
4 that you had a certain function and a certain role
5 and that I have a certain role as well. Your role,
6 obviously, is finders of fact. My role is the finder
7 and the judge of the law. Now -- just moving this
8 back because I don't want to be right up in y'all's
9 face, okay.

10 If you come into this courtroom with any
11 preconceived notion of what the law is or what the
12 law should be, I tell you now to disregard that.
13 Under the oath that you took at the beginning of this
14 trial, you swore to accept the law as I give it to
15 you and make a decision based on that law and that
16 law only and the evidence that was presented in this
17 case. So, disregard any of your previous positions
18 about the law and accept the law as I give it to you
19 in this case.

20 Now, you, of course, are the judges of the
21 facts. And you'll determine what the facts are in
22 this case by reviewing the evidence that was
23 presented in this case. Now, you'll make a
24 determination as to whether The State has met its
25 burden of proving each and every element of the

1 offense beyond a reasonable doubt. As I told you
2 previously, the Defendant is presumed innocent. And
3 the Defendant retains that presumption of innocence
4 until 12 deliberating jurors determine that The State
5 has met its burden of proving each and every element
6 beyond a reasonable doubt.

7 Now, ladies and gentlemen, you've got two
8 charges to consider in this case. Those two charges
9 are assault and battery in the first degree and armed
10 robbery. I'll define those for you, but before I do,
11 I want to make sure you understand that those are two
12 separate and distinct charges. And you must consider
13 them independently of one another. That is, you're
14 going to look at assault and battery in the first
15 degree and you're going to determine whether The
16 State has met its burden of proof with respect to
17 assault and battery first degree. And then, you're
18 going to look at the armed robbery and determine
19 whether The State has met its burden of proof with
20 regard to armed robbery. Now, you don't have to go
21 in that order, but my point is, you need to consider
22 then separately and independently.

23 If you find the Defendant guilty on one of the
24 charges, that does not mean that you must find him
25 guilty on the other charge. Again, if you find him

1 not guilty on one charge, it doesn't mean that you
2 must find him not guilty on the other charge. You'll
3 look at them independently and determine whether The
4 State has met its burden of proving each and every
5 element of the offense beyond a reasonable doubt.

6 Now, ladies and gentlemen, we've bandied around
7 this term reasonable doubt, and I'll define that for
8 you. Proof beyond a reasonable doubt is proof that
9 leaves you firmly convinced of the Defendant's guilt.
10 Now, ladies and gentlemen, there is little on this
11 earth that we can know with absolute certainty. And
12 the law doesn't require that The State prove its case
13 to an absolute certainty. However, if after your
14 review of the evidence, you are firmly convinced of
15 the Defendant's guilt, then under the oath, you will
16 find him guilty. However, if after your review of
17 the evidence, you find that there is a real
18 possibility that he is not guilty, then under your
19 oath, you would find him not guilty of that offense.

20 Now, ladies and gentlemen, you'll determine
21 whether The State has met its burden of proof by,
22 again, weighing and evaluating the evidence. As a
23 part of weighing and evaluating evidence, you're
24 going to look at the credibility of the witnesses and
25 decide who's believable and who's not believable.

1 That's entirely within your discretion to determine
2 what to believe and what not to believe. You know if
3 someone is believable or not based on just your
4 common sense, your good common sense. You can look
5 at the way somebody testified, what they said, what
6 stake they had in what they said. And that is
7 whether they have a stake in the outcome of the case.
8 You can look at their body language, their facial
9 expressions. You can look at their manner of
10 speaking and you can determine whether someone is
11 believable or not.

12 You can take a portion of someone's testimony
13 and find it very believable and very valuable and
14 weigh it heavily. And then take the rest of that
15 person's testimony and discount it entirely as either
16 not credible or not valuable. You decide that in
17 your discretion what's valuable, what's not valuable,
18 what's believable and not believable and you
19 determine the facts based on that.

20 Now, ladies and gentlemen, in a trial, in any
21 trial, just like in this case, the evidence is going
22 to come in one of two different forms. And that is
23 it's either going to be direct evidence or it's going
24 to be circumstantial evidence. You've probably heard
25 both of those before. Understand, first of all, that

1 the law doesn't prefer direct evidence over
2 circumstantial evidence or circumstantial evidence
3 over direct evidence. You decide what value and what
4 weight it has.

5 Now, direct evidence, ladies and gentlemen, is
6 evidence which immediately establishes a fact to be
7 proven. Circumstantial evidence is a proof of
8 collateral facts or a chain of facts which when taken
9 together prove the main fact to be proven. Now,
10 that's kind of a simple explanation. But I'm going
11 to give you an example which may clarify it just a
12 little bit for you. Let's say that you go to bed
13 this evening and you look out across your -- in your
14 front yard or in your parking lot and you see that
15 there is no precipitation on the ground at all. And
16 you go to bed. You wake up the next morning and you
17 look out that very same window at your front yard,
18 front of your house or apartment and you see that
19 there's a blanket of snow on the ground. You also
20 see in that snow footprints which come to your door
21 and then lead away. Well, under that scenario, you
22 have direct evidence that it snowed last night
23 because the snow is immediately evident. It's right
24 there, you can touch it, you can feel it, it's there.
25 But you've got circumstantial evidence that sometime

1 that night or early that morning, somebody walked to
2 your door and then walked away. Now, you can't see
3 that person, you can't touch them, you can't have a
4 conversation with them, but you know as a consequence
5 of the timing of that snowfall and the presence of
6 footprints in the snow that someone must have come to
7 your door and walked away. That's circumstantial
8 evidence.

9 Again, the law doesn't prefer direct evidence
10 over circumstantial evidence or circumstantial
11 evidence over direct evidence. You decide what has
12 weight and what has value and how to weight and value
13 that evidence. Do understand to the extent that The
14 State relies upon circumstantial evidence, all of
15 that evidence together must conclusively point to the
16 guilt of the Defendant and must not simply raise a
17 suspicion.

18 Ladies and gentlemen, in this case,
19 identification is an issue which you must consider.
20 Understand that the identification of the Defendant
21 must be made accurately and to your satisfaction
22 beyond a reasonable doubt.

23 Now, ladies and gentlemen, you can determine the
24 credibility and the accuracy of -- and believability
25 of identification witness in the same way as any

1 other witness. That is, you may consider whether the
2 witness had an adequate opportunity to observe the
3 offender at the time of the offense. This will be
4 affected by things like how long or how short a time
5 was available, how close or how far the witness may
6 have been from the person identified, the lighting
7 conditions and whether the Defendant -- or the
8 witness had a chance to know or meet the Defendant
9 before the time of the occurrence. Again, the burden
10 of identifying the Defendant as the person who
11 committed the crime is on The State beyond a
12 reasonable doubt.

13 Ladies and gentlemen, The State contends in this
14 case that the Defendant can be found guilty on a
15 theory of accomplice liability. That's generally
16 call the hand of one is the hand of all. If a crime
17 is committed by two or more people who are acting
18 together and committing a crime, the act of one is
19 the act of all. A person who joins with another to
20 commit an unlawful act is criminally responsible for
21 everything done by the other person which happens as
22 a probable or a natural consequence of the acts done
23 in carrying out the common plan or purpose. If two
24 or more people acting together and are together
25 assisting each other in committing the offense, the

1 act of one is the act of all. Or in other words, the
2 hand of one is hand of all.

3 Prior knowledge that a crime is going to be
4 committed without more is not sufficient to make a
5 person guilty of the crime. Mere knowledge that the
6 Defendant is present when the crime is committed is
7 not sufficient to convict the Defendant as a
8 principle the accomplice's guilt is shown by actual
9 or constructive presence at the scene as a result of
10 a prior arrangement. Therefore, a finding of a prior
11 arranged plan or common scheme is necessary for
12 finding of guilt as a principle. The State must
13 prove beyond a reasonable doubt by competent evidence
14 the theory of that -- of the hand of one is the hand
15 of all.

16 A principle of a crime is one who either
17 actually commits a crime or who is present aiding,
18 abetting or assisting in the commission of the crime.
19 However, mere presence at the scene of the crime is
20 not sufficient to convict one as a principle in the
21 theory of aiding and abetting.

22 Intent is also a necessary element. There must
23 have been a common design or intent to commit the
24 crime. Intent means intending the result which
25 actually occurs, not accidentally or involuntary.

1 Intent may be shown by acts and conduct of the
2 defendant or other circumstances from which you may
3 reasonably and naturally infer intent. The State
4 must prove intent beyond a reasonable doubt.

5 Now, ladies and gentlemen, I'm going to read to
6 you now the elements and the definitions of the two
7 charges which are before the Court.

8 We'll start with the armed robbery. Ladies and
9 gentlemen, the Defendant is charged with armed
10 robbery. In order to prove to this offense, The
11 State must prove first beyond a reasonable doubt that
12 the Defendant took the property -- took personal
13 property from the person or presence of another
14 person. The State must also prove beyond a
15 reasonable doubt that the Defendant carried the
16 property away intending to permanently deprive the
17 owner of the property and to keep the property for
18 the Defendant's own use. The taking and carrying
19 away of the property must have been done with
20 violence or by putting the owner of the property in
21 fear of violence.

22 Finally, The State must prove beyond a
23 reasonable doubt that the Defendant was armed with a
24 deadly weapon during the robbery. A deadly weapon is
25 an article, instrument or substance, which is likely

1 to cause death or great bodily harm. Whether an
2 instrument has been used as a deadly weapon depends
3 on the facts and circumstances of the case.

4 So, ladies and gentlemen, break it down very
5 simply to three elements. That is, that the
6 Defendant took personal property, took property of
7 the victim, that the taking was done with violence or
8 a threat of violence, putting the victim in the
9 threat of harm, that the Defendant was armed with a
10 deadly weapon. And those are the things that you
11 need to consider, ladies and gentlemen, very simply
12 and succinctly for armed robbery.

13 With regard to assault and battery in the first
14 degree. A person commits the offense of assault and
15 battery in the first degree if the person unlawfully
16 injures another person and the act occurred during
17 the commission of a robbery, burglary, kidnapping or
18 theft.

19 Ladies and gentlemen, a person may also commit
20 the offense of assault and battery in the first
21 degree if the person unlawfully offers or attempts to
22 injure another person with the present ability to do
23 so and the act either is accomplished by means likely
24 to produce death or great bodily injury or occurred
25 during the commission of a robbery, burglary,

1 kidnapping or theft.

2 Ladies and gentlemen, great bodily injury is
3 define as bodily injury which causes a substantial
4 risk of death or which causes serious permanent
5 disfigurement or protracted loss or impairment of the
6 function of a bodily member or organ.

7 Ladies and gentlemen, that's all I'm going to
8 read to you, okay. Now, I've got here the jury
9 verdicts, the verdict forms which I will pass back to
10 you for your consideration. Now, these verdict forms
11 are very simple. I'm going to go over one of them
12 for you just you will have an idea of what you're
13 looking at when you get back there. You'll see that
14 the verdict form just has a simple caption on it.
15 And then it's identified by both indictment number
16 and offense. So, by way of example, I'm looking at
17 assault and battery in the first degree. You'll see
18 it begins, we, the jury, by unanimous agreement find
19 the Defendant.

20 Now, it's important for you to know, first of
21 all, that your verdict must be unanimous. All of you
22 must agree on the verdict. It can't be 11 to one or
23 10 to two or any other combination of numbers that
24 add up to 12. It has to be a unanimous verdict.
25 Understand as well that your verdict must be based on

1 the evidence that was presented at trial. It can't
2 be the product of any sympathy or passion or caprice
3 or any bias or any prejudice. It has to be based on
4 the evidence and the law that you received in the
5 trial of the case.

6 So, ladies and gentlemen, when you begin your
7 deliberations, you are going to decide did The State
8 meet its burden of proof or did they not? So, you
9 have two choices here, not guilty and guilty. Okay.
10 I prepared these verdict forms. Don't take anything
11 from the order in which I present these choices. If
12 there are only two items, I have to put one before
13 the other, okay. So, don't try to infer anything
14 from the order in which I put your choices, but you
15 have two choices. Not guilty. If after your review
16 of the evidence, you find that The State has failed
17 to meet its burden proving each and every element of
18 assault and battery first degree beyond a reasonable
19 doubt, then you would select not guilty.

20 And Ms. Kosel, you would just simply either X or
21 initial and then sign as the foreperson of the jury
22 indicating that there was a unanimous verdict on that
23 charge.

24 Then you would do the same thing for armed
25 robbery. Again, you do it in whatever order y'all

1 feel is appropriate. I don't micromanage that.

2 Now, ladies and gentlemen, I'm going to ask you
3 to go back to your jury room, but I don't want you to
4 begin your deliberations quite yet. Because this is
5 the opportunity for the attorneys to tell me
6 something that I may have missed in my charge or get
7 me to correct something that I may have misstated.
8 So, we'll have a short conference and discuss whether
9 there's anything else I need to tell you or anything
10 I need to correct. If I need to correct something,
11 I'll bring you back in here, I'll correct it. If we
12 don't have anything to correct, what I'm going to do
13 is I'm going to send back to you these verdict forms.
14 When you get these verdict forms, you will know that
15 it's time to begin your deliberations, but not until
16 then. Also, know that shortly after you receive the
17 verdict forms, you will receive all the evidence that
18 was submitted in the trial as well. So, you will
19 have all of that to review while you're in your
20 deliberations.

21 All right, ladies and gentlemen, please return
22 to your jury room. Don't begin your deliberations
23 yet.

24 (WHEREUPON, the jury left open court at
25 approximately 11:35 a.m.)

1 THE COURT: Exceptions to charge?

2 MR. MOYER: None from The State.

3 MS. TAYLOR: None from the Defense, Your Honor.

4 THE COURT: Okay. All right. Thank you, ladies
5 and gentlemen, I appreciate y'all having tried a very
6 civil and professional case. I appreciate the
7 parties as well being civil and also respectful of
8 one another. It always makes my job easier. Good
9 luck to you both.

10 What I'm going to do is give the verdict forms
11 to the bailiff. Y'all do an inventory of the
12 exhibits. When you are satisfied that they are there
13 and complete, then you can give them to the bailiff
14 as well and have them delivered to the jury. In the
15 meantime, I'm going to dismiss the alternate from
16 chambers.

17 Yes, sir?

18 MR. YOUNG: Can I say something?

19 THE COURT: Sure.

20 MR. YOUNG: No matter what happens today, you
21 know, I just want to apologize, you know, for the
22 situation happening to the victim. However, if they
23 determine -- however they determine my guilt in a
24 situation, I just want, you know.

25 THE COURT: Mr. Young, I appreciate that. I

1 appreciate that.

2 MS. TAYLOR: Your Honor, I just have a brief
3 issue that we talked about yesterday with the
4 scheduling of the lunch because he has -- I think
5 we're going to be on time for everything. I just --
6 if they do come to a verdict really quickly, I don't
7 know how Your Honor wants me -- I will be back here
8 at 1:30 after the meeting.

9 THE COURT: Yeah, you're going to have to be
10 back much earlier than that. That's almost two
11 hours. You can't be gone for two hours.

12 MS. TAYLOR: Okay.

13 THE COURT: You need to be able to be back here
14 in 15 minute. You can leave the clerk of court your
15 number, but be able to come back immediately.

16 MS. TAYLOR: Absolutely.

17 THE COURT: I can't have them wait for two
18 hours.

19 MS. TAYLOR: Absolutely.

20 THE COURT: I'm going to give them a menu and
21 I'm going to let them order lunch, which means I'm
22 trying to get you as much time as I can.

23 MS. TAYLOR: I might really only need 15 minutes
24 to watch her get sworn in, and then I can hop back
25 over here.

1 THE COURT: Fair enough. Fair enough.

2 (WHEREUPON, deliberations began at approximately
3 11:38 a.m.)

4 (WHEREUPON, Court was in recess awaiting a
5 verdict.)

6 THE COURT: It's my understanding the jury has
7 reached a verdict. Are y'all ready to receive the
8 jury's verdict?

9 MR. MOYER: Yes, Your Honor.

10 MS. TAYLOR: Yes, sir, Your Honor.

11 THE COURT: Subject to Mr. Young coming back in,
12 right?

13 Okay. Bring the jury in, please.

14 (WHEREUPON, the jury came into open court at
15 approximately 2:05.)

16 THE COURT: All right, Ms. Kosel, has the jury
17 reached a unanimous verdict, ma'am?

18 THE FOREPERSON: Yes, sir.

19 THE COURT: Can you hand the verdict forms to
20 the bailiff, please?

21 All right, Madam Clerk, you may publish the
22 verdict.

23 VERDICT

24 THE CLERK: In The State vs. Leviticus Young,
25 2014-GS-23-8396, we, the jury, by unanimous agreement

1 find the Defendant guilty. In The State vs.
2 Leviticus Young in 2014-GS-23-8398, we, the jury, by
3 unanimous agreement find the Defendant guilty.

4 THE COURT: All right, ladies and gentlemen, if
5 this was your verdict and it be your verdict, please
6 raise your right hand and signify as such.

7 (WHEREUPON, all member of the jury raised their
8 hand.)

9 THE COURT: All right, let the record reflect
10 that all 12 jurors have raised their hand.

11 All right, Counsel, is there anything additional
12 for this jury?

13 MR. MOYER: Not from The State.

14 MS. TAYLOR: None from the Defense, Your Honor.

15 THE COURT: All right. Will there be any
16 post-trial motions?

17 MS. TAYLOR: No, Your Honor.

18 THE COURT: Ladies and gentlemen, what I'm going
19 to ask you to do is return to your jury room and I'm
20 going to come back and dismiss you informally. I'm
21 not going to keep you any additional time. I hope
22 you're not there any longer than it takes you to
23 receive and collect your phones, but I do want to
24 thank you less formally and give you the opportunity,
25 too, to ask me any questions that you may have about

1 jury service or about this trial. So, if you'll go
2 back to your jury room, I'll be back there in just a
3 second.

4 (WHEREUPON, the jury left open court at
5 approximately 2:08 p.m.)

6 THE COURT: All right. I'm going to go dismiss
7 the jury informally and then when I come back in in
8 10 minutes or so, we'll proceed to sentencing.

9 (WHEREUPON, a short break was taken.)

10 SENTENCING

11 THE COURT: Mr. Moyer, I received the verdict,
12 is there anything that The State needs to add with
13 regards to sentencing, sir?

14 MR. MOYER: I would like to give you his
15 criminal history. Also, I know Mr. Cabrera would
16 like to address the Court.

17 THE COURT: Yes, sir.

18 MR. MOYER: Any particular order?

19 THE COURT: I defer to you, sir.

20 MR. MOYER: Mr. Cabrera.

21 MR. CABRERA: Your Honor. I just want to say,
22 like, I just want justice and I want him to pay for
23 what he did. I want the law to keep these kind of
24 people inside the jail. Because I don't think it's
25 safe in the community. Because if they hurt me, they

1 can hurt somebody else. And I just want justice.

2 That's it.

3 THE COURT: Okay, thank you, sir. I appreciate
4 your being here. I'm sorry this happened to you.
5 Okay. Good luck.

6 Yes, sir.

7 MR. MOYER: As far as his criminal history goes,
8 Your Honor, in 2004, he was convicted of grand
9 larceny and receiving stolen goods. 2005,
10 shoplifting, giving false information to police,
11 loitering to engage in drug activity. 2007,
12 possession with intent to distribute crack cocaine?
13 2009, he had a parole revocation on that charge.
14 2013, he was convicted of distribution of cocaine of
15 crack cocaine.

16 I also want to add, Your Honor, that this
17 Defendant would have been tried almost a year ago
18 with his co-defendant. However, he was out on bond
19 with an ankle bracelet. He cut the ankle monitor off
20 of his leg and was gone at that time. And he wasn't
21 arrested for quite a while after that, which is the
22 reason why he was not tried with Steven Williams when
23 he came to court. Steven Williams was convicted as
24 well. He received a life sentence, but he had a
25 prior armed robbery, burglary first degree, assault

1 and battery with intent to kill charge, so he was
2 trigged under the two strikes and you're out law.

3 THE COURT: All right. Good enough.

4 Is that a fair account of your prior record,
5 sir?

6 MR. YOUNG: Yes, sir, it is, but --

7 THE COURT: I'll give you the opportunity to
8 speak in just a minute, Mr. Young. I just want to
9 know if that was a fair account and if you took
10 exception to any of it, okay.

11 And, Mr. Moyer, it's my understanding that the
12 armed robbery carries between 10 and 30 years, none
13 of which can be suspended to probation, and the
14 assault and battery first, I believe up to 10 years,
15 am I correct?

16 MR. MOYER: That's correct, Your Honor.

17 THE COURT: All right.

18 Ms. Taylor, I'd be happy to hear from you,
19 ma'am.

20 MS. TAYLOR: Thank you, Your Honor. My client
21 has spent, I believe, about a year in jail since that
22 incident happened, so he is entitled to credit for
23 those days.

24 THE COURT: Do you know the date, the start
25 date?

1 MR. MOYER: Your Honor, he's spent three
2 different -- he has three different stints in jail
3 since his arrest and that totals 466 days.

4 THE COURT: I'm sorry, Ms. Taylor, I didn't mean
5 to cut you off --

6 MS. TAYLOR: No, that's okay.

7 THE COURT: -- I just wanted to make sure I got
8 that number right.

9 466 days?

10 MR. MOYER: Total, yes, sir.

11 MS. TAYLOR: That's correct, Your Honor.

12 THE COURT: Okay.

13 MS. TAYLOR: We would argue that he doesn't have
14 any violent crimes, unless I misheard Mr. Moyer, and
15 if I did, I apologize. But it appears to be drug
16 related offenses in his previous history --

17 Was I wrong about that, Mark?

18 MR. MOYER: Well -- yeah, not violent.

19 MS. TAYLOR: Not violent. Drug related crimes.
20 Your Honor, we would contend that we're not offering
21 any different set of facts than we presented at
22 trial. He still maintains that he knew the victim.
23 They was something that they had a dispute over. But
24 we would argue that -- I think it's been pretty well
25 shown throughout the course of the trial that he was

1 not the one with the gun. I realize under accomplice
2 liability, he would still be responsible, but he was
3 not the one that had possession of the weapon. It
4 was not registered to him nor could it be traced back
5 to him in any way, nor was the stun gun. So as that,
6 we would ask that you sentence him to the minimum as
7 he's already served his name in this matter -- or,
8 I'm sorry, give him credit for the 461 [verbatim]
9 days he's already served. We would just ask you
10 to -- the evidence you heard today -- or yesterday
11 and today, I think it's pretty clear that he was not
12 the main aggressor in this situation. It was
13 Mr. Williams that was picking up the money, that
14 pistol whipped the victim and that caused the
15 substantial amount of the injuries. So, because of
16 that, we are asking for some leniency.

17 THE COURT: All right.

18 Mr. Young, anything you'd like to tell me, sir?

19 MR. YOUNG: I just ask you to just please have
20 mercy. Please.

21 THE COURT: All right, Mr. Young. All right,
22 the sentence of the Court, sir, is on the assault and
23 battery first degree, 10 years in the Department of
24 Corrections, concurrent, credit for time served for
25 466 days. For your armed robbery, the sentence of

1 the Court is you be sentenced to 18 years in the
2 Department of Corrections, concurrent, credit for
3 time served, 466 days. Good luck to you, sir.

4 MR. MOYER: Thank you, Your Honor.

5 MS. TAYLOR: Thank you, Your Honor.

6 (WHEREUPON, the proceedings were concluded.)
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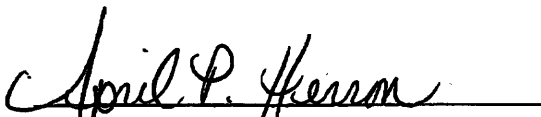
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for
the Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
General Sessions for Greenville County, South Carolina, on
the 11th & 12th day of January, 2017.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

March 1, 2018



APRIL P. HERRON, Court Reporter

WITNESSES

Alvin King

MJ

Greenville County Sheriffs Office

7/18/2014

ARREST WARRANT NUMBER

2014A2330205285

ACTION OF GRAND JURY**TRUE BILL***Wayne Shepherdson*

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT*Guilty**Anthony C. Rosel*

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23-

LMM

000396

The State of South Carolina**County of Greenville****COURT OF GENERAL SESSIONS****March***2015*
TERM 2014**THE STATE****vs.****LEVITICUS DONYASKI YOUNG**

Indictment for

3412

ASSAULT AND BATTERY 1ST DEGREE

VIOLATION § 16-03-0600

FILED

SEP 11 2014

COOPER
ENTERED

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ASSAULT AND BATTERY 1ST DEGREE

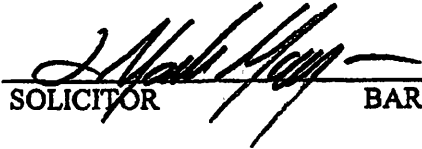
At a Court of General Sessions, convened on
County present upon their oath:

MAR 10 2015

the Grand Jurors of Greenville

That LEVITICUS DONYASKI YOUNG did in Greenville County, on or about the 6th day of June 2014, unlawfully injure Juan Cabrera Figueroa, and the act occurred during the commission of a robbery, burglary, kidnapping or theft. This is in violation of 16-03-0600 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

BAR # 64155

000398

WITNESSESAlvin King *ny*

Greenville County Sheriffs Office

7/18/2014

ARREST WARRANT NUMBER

2014A2330205175, 2014A2330205176

ACTION OF GRAND JURY**TRUE BILL***Wayne Chapman***FOREMAN GRAND JURY***Foreperson of Grand Jury***VERDICT***GUILTY**Ashtley C. Kovel*
Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23-
LMM**The State of South Carolina****County of Greenville****COURT OF GENERAL SESSIONS****March***2015*
TERM 2014**THE STATE****vs.****LEVITICUS DONYASKI YOUNG****Indictment for**

0139, 0549

**ARMED ROBBERY AND POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME****VIOLATION § 16-11-0330 and § 16-23-0490****FILED****SEP 22 2014**Clerk of Court
Greenville County**ENTERED
ACCS**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE) INDICTMENT FOR
) ARMED ROBBERY AND POSSESSION OF A WEAPON DURING
) THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on **MAR 10 2015** the Grand Jurors of Greenville
 County present upon their oath:

COUNT ONE

ARMED ROBBERY

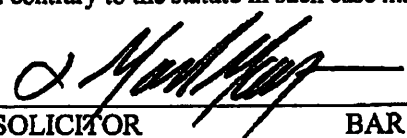
That LEVITICUS DONYASKI YOUNG did in Greenville County, on or about the 6th day of June, 2014, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: U. S. Currency from the person or presence of Juan Cabreva-Figueroa. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That LEVITICUS DONYASKI YOUNG did in Greenville County, on or about the 6th day of June, 2014, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR

BAR # 64155

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Leviticus Donyaski Young

SA:

Race: Sex: M Age: 30

DOB: SS#:

Address:

City, State, Zip: Greenville, SC 296114109

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Assault & Battery 1st degree

IN THE COURT OF GENERAL SESSIONS 10-10-2014

INDICTMENT/CASE#: 2014GS2308396

A/W#: 2014A2330205285

Date of Offense: 6/6/2014

S.C. Code § : 16-03-0600(C)(i)

CDR Code #: 3412

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0600(C)(i) of the S.C. Code of Laws, bearing CDR Code # 3412

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Moyer, Mark

64155
SC Bar#

Defendant

TAYLOR, LAUREN

100417

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 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. 460 days

☐ 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$

% to County (if paid in installments)

TOTAL

\$ 128.75

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, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2158

Sentence Date: 11/2/2014

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

Full name and prison number (if any) of Applicant.

Leviticus Donyaski Young
v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2017-CP-23-05236

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention _____ Lieber Corr. Inst. P.O. Box 245 Ridgerville SC 29472
2. Name and location of Court which imposed sentence _____ Greenville County General Sessions
3. Name(s) of co-defendant(s) (if any) _____ STEVEN L. WILLIAMS
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) _____ 2014 - GS - 23 - 008396 (Assault and Battery 1st Degree)
 - (b) _____ 2014 - GS - 23 - 008398 (Armed Robbery and Possession of a Weapon)
 - (c) _____ during the Commission of a violent crime
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) _____ JANUARY 12, 2017
 - (b) _____ 18 years not concurrent to all other charges

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____ Trial Counsel fail to file Notice of Appeal

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Trial Counsel ineffective in failing to move the court to quash the indictment before the jury was sworn on the grounds that the indictment failed to charge criminal liability. *revised 12/2011*

- (a) _____ Trial Counsel ineffective in failing to move the court to
 (b) _____ quish the indictment before the jury rendered its verdict.
 (c) _____ Trial Counsel ineffective in failing to raise a lack of subject
 matter jurisdiction claim.

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

- (a) _____
 (b) _____
 (c) _____

1 2. 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

1 3. If you answered "yes" 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?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? ✓ yes
- (c) your sentencing? _____
- (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 "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Lauren Taylor:
- ii. 1205 E Washington St.
- iii. Greenville, S.C. 29601

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

- i. Trial ~~Lauren Taylor Esquire~~
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application: Summary judgment or a belated appeal.

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

NO,

STATE OF SOUTH CAROLINA

County of

)
)
)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Antwan D. Young
7/31/17

SWORN to and subscribed before me this 31st
day of July, 2017.

Linda K. B. (L.S.)
Notary Public

My Commission Expires: 6-28-26

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Pentecost D. Young
Applicant
7/31/17

SWORN or affirmed to and subscribed before me this
31st day of July, 2017.

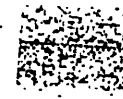
Notary Public

My Commission Expires: 6-20-26

Lieber Correctional Institution
P.O. Box 205
Ridgeville, S.C. 29472

SENSITIVE
MATERIAL

15711381



\$ 001.19

2017-CP-23- 05236

Greenville County Clerk of Court
305 EAST NORTH ST. STE. 232
Greenville, S.C. 29601

RECEIVED

AUG 02 2017

MAILROOM
LJFREER CA

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

Leviticus Donyaski Young, #311607,)

Applicant,)

V.)

State of South Carolina,)

Respondent.)

**IN THE COURT OF COMMON PLEAS
IN THE THIRTEENTH JUDICIAL CIRCUIT**

Case No.: 2017-CP-23-5236

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR")
filed on August 17, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In March of 2015, the Greenville County Grand Jury indicted Applicant for assault and battery 1st degree (2015-GS-23-8396), armed robbery and possession of a weapon during the commission of a violent crime (2015-GS-23-8398). Lauren Taylor, Esquire, represented Applicant and Mark Moyer, Esquire represented the State. Starting on January 11, 2017, Applicant proceeded to trial before the Honorable Robin B. Stilwell. The trial concluded on January 12, 2017. The jury found Applicant guilty of assault and battery 1st degree and armed robbery. Applicant's charge of possession of a weapon during the commission of a violent crime was dismissed. Judge Stilwell sentenced Applicant to imprisonment for fifteen years for the arm robbery and ten years for the assault and battery 1st degree.

Applicant filed a notice of appeal on January 26, 2017. The South Carolina Court of Appeals dismissed Applicant's appeal for failing to timely serve his notice of appeal as required

by Rule 203 SCACR. State v. Young, Appellate Case No. 2017-000166. (S.C. Ct. App. filed May 5, 2017). The remittitur was returned to the circuit court on May 23, 2017.

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

II.

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

1. Trial Counsel ineffective in failing to move the court to quash the indictment before the jury was sworn on the grounds that the indictment failed to charge criminal liability.
2. Trial Counsel ineffective in failing to move the court to quash the indictment before the jury rendered its verdict.
3. Trial Counsel ineffective in failing to raise a lack of subject matter jurisdiction claim.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. 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, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the proceeding "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687;

Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCF. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only

individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

V.

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

VI.

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

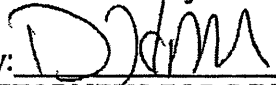
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

March 9, 2018

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

LEVITICUS D. YOUNG, #311607

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent,

IN THE COURT OF COMMON PLEAS

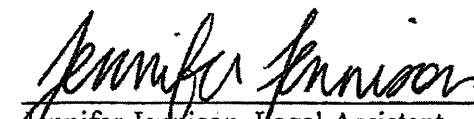
2017-CP-23-05236

AFFIDAVIT OF SERVICE BY MAIL

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

R. Mills Ariail, Jr., Esquire
 Law Office of R. Mills Ariail, Jr.
 11 North Irvine Street, Suite 11
 Greenville, SC 29601

DATED this the 9th day of March, 2018.


 Jennifer Jennison, Legal Assistant
 For Respondent

Court of Common Pleas

Defendant.)

April 19, 2018
Greenville, South Carolina

The Honorable Frank Addy, Judge.

Kelly Oppenheimer, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

I N D E XWITNESSPAGE

Leviticus Young

Direct examination by Mr. Ariail.....7

Lauren Taylor

Direct examination by Ms. Oppenheimer...21

Cross-examination by Mr. Ariail.....27

- - -

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>

No Exhibits.

P R O C E E D I N G S

* * * * *

THE COURT: Go on the record, and I believe that this is Case 17-CP-23-5236 involving *Mr. Young v. The State of South Carolina*; is that correct?

MS. OPPENHEIMER: That's correct, Your Honor.

THE COURT: Mr. Young, I'm Frank Addy. I'm from Greenwood. Pleasure to meet you, sir.

THE APPLICANT: Thank you, Your Honor.

THE COURT: Do you want to call the case?

MS. OPPENHEIMER: May it please the Court? The next matter is *Leviticus Donyaski Young v. The State of South Carolina*, Docket No. 2017-CP-23-05236.

During its March 2015 term, the Greenville County Grand Jury indicted Applicant for first degree assault and battery, armed robbery, and possession of a weapon during the commission of a violent crime.

Lauren M. Taylor, Esquire, represented him on these charges. Assistant Solicitor Mark Moyer of the Thirteenth Circuit Solicitor's Office prosecuted the case.

On January 11th through 12, 2017, Applicant proceeded to a jury trial before the Honor -- Honorable Robin B. Stilwell on assault and battery

1 and armed robbery charges. The weapons charge was
2 dismissed.

3 Following -- following deliberations, the jury
4 convicted Applicant as indicted. Judge Stilwell
5 sentenced Applicant to a term of imprisonment of 10
6 years for first degree assault and battery and
7 18 years for armed robbery. The sentences were to
8 run concurrently.

9 Applicant filed a notice of appeal in the South
10 Carolina Court of Appeals on January 26, 2017.

11 By order dated May 5, 2017, the Court of
12 Appeals dismissed the appeal for failing to timely
13 serve the notice of appeal as required by Rule 203.

14 The remittitur was issued on May 23, 2017.

15 On August 17, 2017, Applicant filed an
16 application for post-conviction relief alleging
17 ineffective assistance of counsel for failing to
18 move the Court to quash the indictment before the
19 jury was sworn on the grounds that the indictment
20 failed to charge criminal liability, for failing to
21 move the Court the quash the indictment before the
22 jury rendered its verdict, and for failing to raise
23 the lack of subject matter jurisdiction.

24 The State made its return on March 9, 2018,
25 requesting an evidentiary hearing be held.

1 Applicant is present today and is represented
2 by Mills Ariail.

3 THE COURT: Mr. Ariail, are y'all ready to
4 proceed?

5 MR. ARIAIL: Yes, Your Honor. We're ready to
6 proceed, Your Honor.

7 THE COURT: Call your first witness, please.

8 MR. ARIAIL: I call Mr. Young to the stand.

9 THE COURT: Mr. Young, come forward, please.

10 THE APPLICANT: (Complying.)

11 THE CLERK: Mr. Young, please place your left
12 hand on the Bible and raise your right hand.

13 THE APPLICANT: (Complying.)

14 THE CLERK: You do solemnly swear or affirm
15 that the testimony you're about to give in this case
16 will be the truth, the whole truth, and nothing but
17 the truth so help you God?

18 THE APPLICANT: Yes, ma'am.

19 THE CLERK: Thank you. You may be seated.

20 THE APPLICANT: Thank you.

21 THE CLERK: Please state your full name for the
22 record.

23 THE APPLICANT: Leviticus Donyaski Young.

24 LEVITICUS YOUNG,
25 having been produced and first duly sworn as a

1 witness on behalf of the Applicant, testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MR. ARIAIL:

5 Q. Mr. Young, how are you doing today?

6 A. I'm doing okay, Mr. Ariail.

7 Q. Good. Good. I want to go through a little bit
8 of the facts or the background in regards to your
9 case.

10 You were represented by Ms. Taylor in regards
11 to armed robbery, assault and battery first degree,
12 and possession of a weapon during the commission of
13 a violent crime; is that correct?

14 A. Yes, sir.

15 Q. Okay. She was appointed as your counsel; is
16 that right?

17 A. Yes, sir.

18 Q. Okay. You were incarcerated at some point in
19 time after you were arrested on these charges; is
20 that correct?

21 A. Yes, sir.

22 Q. And I don't think you made bond; is that right?

23 A. The first, I -- I was -- I was in -- I was
24 first detained July 2014, and I -- I sat in the
25 county -- I sat in the Greenville County Detention

1 Center for like ten months.

2 Q. Right.

3 A. And then once they -- they let me -- released
4 me on GPS, and I -- I was released home.

5 I got back in -- when I got arrested in '16
6 July ---

7 Q. Right.

8 A. --- when I got arrested in 2016 July, I
9 never -- I never made a -- made bond. I stayed
10 until like -- it was really too early. She didn't
11 know nothing about my case.

12 Q. Okay. Let's -- and let me go back and make
13 sure I understand complete -- correctly. She was
14 appointed as your counsel and I guess discussed with
15 you about your case; is that correct?

16 A. Yes, sir.

17 Q. Okay. When -- when -- after you were
18 incarcerated during that ten-month period, was she
19 representing you during that time frame?

20 A. No, sir.

21 Q. Okay. Was that after that you'd gotten out and
22 then got, I guess, placed back in?

23 A. Got placed back in the detention center.

24 Q. Okay. And then she got appointed as your
25 counsel for that; is that correct?

1 A. Yes, sir.

2 Q. Okay. How many times when you were
3 incarcerated, how many times did y'all meet and
4 discuss your case?

5 A. Ms. Taylor came. She -- she came down one time
6 and said that she was, you know -- well, she came
7 down two times altogether.

8 The third time she came down to the detention
9 center, she said that the State was -- if I didn't
10 plead to the -- to the ten years, they was taking me
11 to trial and it carried 10 to 30.

12 And I said, "Well, I'm just going to trial."

13 Q. Okay. So let me go through this. When she
14 came down, did y'all discuss the discovery that
15 was -- or the evidence that was presented, I guess,
16 by the solicitor to her about your cases?

17 A. Repeat that again, Mr. Ariail.

18 Q. Maybe I can make it a little simpler. Did
19 y'all -- did she bring down and discuss to you the
20 evidence that she had that the solicitor could
21 present at trial?

22 A. No. She -- she came -- when she came down to
23 the -- when she came down to the detention center,
24 she -- she always came around and was like, "Well, I
25 haven't had enough time to just really look over

1 your -- look over your case because this is a whole
2 case and they -- they're trying to get -- get this
3 over with. They're trying to get this over with.
4 And they're not -- they're not trying to negotiate
5 anything under the ten years. If you ain't pleading
6 to ten years, then you got to go to trial."

7 I said, "All right. I want to go to trial."

8 Q. Okay. So you had a ten-year plea at some point
9 in time; is that correct? A plea offer?

10 A. Well, that's after they called me every --
11 every -- every offer of every plea negotiation they
12 came at me, they wanted me to help prosecute my
13 codefendant and I kept denying it.

14 Q. Okay. But at some point in time ---

15 A. Once I got -- got -- once I got caught and got
16 put back in the detention center after the ten
17 months I sat in the detention center ---

18 Q. Yeah.

19 A. --- that's when they -- they came at me with a
20 ten-year plea.

21 Q. And you said, "I'm not taking that"?

22 A. Right.

23 Q. Okay. So you wanted to go to trial. You made
24 a decision to go and, I guess, have a trial in this
25 matter; is that correct?

1 A. Yes, sir.

2 Q. Okay. Now, I -- and I think we've kind of hit
3 on it a little bit, but did you discuss with her
4 what the State was going to present at trial? For
5 instance, are they going to present what your
6 codefendant could've said. They're going to present
7 video of you at the scene. Did -- did y'all go over
8 all -- any of that information?

9 A. Yeah, we -- we discussed it several times.
10 And -- and, you know, the same thing I was telling
11 Ms. Taylor that I was telling Ms. Ross prior before
12 me relieving her as counsel that Ms. Taylor was
13 like, "They don't have anything -- they don't have
14 anything on me." They did not -- this is not about
15 me. Everything that's about me in this case is
16 dealing with my codefendant.

17 I just don't - I don't want to plead. I even
18 told Mr. Moyer when he came to the detention center
19 when I filed the -- I filed a motion to suppress --
20 to suppress the victim impact statement and I made
21 up a statement and sent it to the Solicitor's Office
22 instead of the Clerk of Court and the solicitor
23 never filed it.

24 Q. Okay. Did -- I guess when you were discussing
25 all this with her, did she talk to you and have a

1 discussion with you about the impact your
2 codefendant's statement could have on you at trial?

3 A. No. No, sir, she didn't.

4 Q. Did she explain to you what would happen if he
5 got on the stand and testified?

6 A. Not really. Like Ms. Lauren -- Ms. Taylor,
7 she -- she just -- she didn't -- she didn't know --
8 she didn't know my case. Like she didn't know --
9 she wouldn't even know my -- she didn't even know my
10 case three months before I was pushed -- pushed
11 in -- pushed in the courtroom for trial.

12 Q. Okay. Well, let's -- let's also go through
13 this a little bit. Did you ask her to do certain
14 things in the case?

15 A. Yes, I did.

16 Q. Okay. What'd you -- what'd you tell her to do?

17 A. First, I -- I stated to her that the victim
18 never -- never picked me out of a photo lineup. I
19 explained to her that prior to -- prior to me
20 catching those charges that Investigator King was --
21 was on my case once before, and I felt like it
22 was -- that he was being prejudiced and biased
23 towards -- towards this case and not -- and, you
24 know, not giving the equal opportunity, but the
25 equal protection of the law.

1 And I was -- I was just telling her like, hey,
2 I never been -- this victim ain't never picked me
3 out of a photo lineup and going off the statement
4 that -- that my codefendant. He didn't even come --
5 he ain't even testified against his -- against his
6 statement in trial.

7 Q. Okay. So you discussed those items with her.
8 And what -- I guess, what did y'all discuss that you
9 wanted her to do or what do you think she should've
10 done in regards to those items?

11 A. I -- I really wanted her -- I didn't even want
12 to -- I took it to trial. I didn't want to plead to
13 something I ain't had nothing to do with it.

14 Q. Okay.

15 A. And I just kept -- I just kept saying like --
16 "Like, listen, I didn't have anything to do with
17 this. Ain't none of them -- ain't none of this is
18 about me. This is about somebody who said that
19 they -- they -- I asked him for a ride and he gave
20 me a ride."

21 Q. Okay. Now, you've alleged some other things in
22 your ap -- application. I think motion to quash,
23 indictments, subject matter. What is the basis for
24 those items?

25 A. Well, subject -- subject matter. My

1 indictment -- my indictment failed -- you know, it
2 failed to -- to explain, you know, the subject
3 matter, you know, the dispute -- the dispute of the
4 nature, the cause of the action, like the cause of
5 the action. I wasn't the cause of the action. You
6 know, like criminal liability.

7 Q. Did y'all -- did y'all discuss the hand of one,
8 hand of all, or any other how you can be tied in
9 with, you know, what the codefendant had done? Did
10 she tell you any of that?

11 A. No, sir.

12 Q. Okay. So you're saying that she should have, I
13 guess, filed a motion to quash this because you're
14 saying the indictment failed to charge criminal
15 liability?

16 A. Yes, sir.

17 Q. Okay. Now also that she should have -- there's
18 no subject matter to jurisdiction of the charge?
19 That's also one of your issues, correct?

20 A. Yes, sir.

21 Q. Okay. And I'm trying to look at some other
22 items on here. I think those are the main ones we
23 have discussed.

24 Are there any other items that you believe
25 based upon what happened at trial or her

1 representation of you that you want the Court to be
2 aware of?

3 A. Well, I want the Court to be aware of -- I want
4 to, you know -- I want to ask the Court that --
5 what's your name again, Your Honor?

6 THE COURT: Addy, Frank Addy.

7 THE APPLICANT: Okay. Your Honor Addy,
8 everybody -- to my understanding, there's nolle pros
9 is what?

10 THE COURT: Dismissed.

11 THE APPLICANT: Dismissed. Okay. I got a
12 General Session docket tracking sheet right here,
13 and I got my -- I got the indict -- I got the
14 indictment for 2014-GS-23-08398, Warrant No.
15 2014A2330205176. The indictment for armed robbery
16 and possession of a weapon during the commission of
17 a violent crime was dismissed.

18 They said they found -- they said I was
19 convicted of other charges. I want to ask the Court
20 how -- how was -- how was a charge dismissed and I
21 was found guilty on it?

22 Q. What you're saying is, you were not convicted
23 of the -- of the commission -- or the possession
24 of a weapon ---

25 A. She said -- they said that I was found guilty.

1 They said I was found guilty on armed robbery and
2 possession of a weapon during the commission of a
3 violent crime and assault and battery in the first
4 degree.

5 I don't under -- I don't -- I don't understand
6 how when right here the docket with the tracking
7 sheet is saying that the indictment for armed
8 robbery and possession of a weapon during the
9 commission of a violent crime was dismissed. What
10 was the other charges I was convicted on?

11 Q. But you -- I mean, those are the ones we're
12 discussing today, the armed robbery and the assault.

13 A. They say like I was convicted of other charges.
14 They say they explained them. And they say they
15 dropped -- they say they dropped the gun charges the
16 morning of the trial ---

17 Q. Right.

18 A. --- and took me -- and still took me to trial
19 for armed robbery.

20 Q. And it was a -- if I'm not mistaken, as part of
21 this, was a stun gun or some other type of weapon,
22 correct?

23 A. Correct. It was a -- it was a firearm and a
24 stun gun.

25 Q. Did you talk with her about that type of

1 weapon?

2 A. I was never caught. My codefendant took
3 ownership to the firearm. I was never caught in
4 possession with a firearm. I was never -- a firearm
5 never was took off me.

6 Q. Okay. Let me maybe say it this way. Were you
7 informed or did you have a discussion with
8 Ms. Taylor about how it could be an armed robbery
9 with a stun gun or another object being involved?

10 A. Of course. Yeah, that any object can be used
11 for -- you know, for the armed robbery.

12 Q. Right.

13 A. Yes.

14 Q. Okay. So you did have a discussion with her on
15 that?

16 A. Yes, sir.

17 Q. You're just saying they dismissed that charge
18 and I guess then how can you be guilty of the armed
19 robbery? Is that what you're saying?

20 A. Right. But like he just said, this was
21 dismissed. The indictment for armed robbery and
22 possession of a weapon by a felon was dismissed.

23 Q. Maybe I'm -- I don't know what form you're
24 looking at on here.

25 A. It's right here.

1 THE COURT: I'm looking at the tracking sheet
2 that indicates that there was a nolle pros of I
3 think the weapons violation.

4 MR. ARIAIL: Correct.

5 BY MR. ARIAIL:

6 Q. The -- the -- the form I'm looking at too is a
7 tracking sheet that says the offense name was
8 weapons -- possession of weapons during -- and then
9 it actually says "DU." Note, date of disposition
10 was 1/12/2017, it says it's dismissed. And it says
11 you were convicted of other charges.

12 A. Okay. I was convicted of -- I was -- I was
13 convicted -- they say I was convicted on armed
14 robbery. I was convicted of accomplice. There was
15 never -- it was never a charge. I wasn't ever
16 charged or indicted on a criminal liability.

17 Q. Okay. You've put all of that out there. Are
18 there any other items that you want the Court to be
19 aware of in regards to Ms. Taylor's representation
20 of you?

21 A. Ms. Taylor just -- she just failed to object to
22 the procedure on my indictment. You know, if she
23 would've -- if she would've objected to the
24 procedure on my indictment, I -- I feel like I
25 would've had ---

1 Q. Okay. And we got that. Now, the other, and I
2 think one last issue I need to raise, you said that
3 you -- did you request her to file an appeal on your
4 behalf?

5 A. I -- the -- the day -- the morning I came up
6 here to pick my jury, my trial started that same
7 day.

8 And the next day, my trial proceeded and I got
9 sentenced that day. That afternoon, I told -- I --
10 I addressed her and I told her -- I asked her was --
11 was I appealing -- was I going to be able to appeal.

12 She said -- she said yes. She said, "Give me a
13 second and I'll be out there to talk to you."

14 Ms. Taylor never showed up back there to talk to me.
15 I never seen Ms. Taylor again. This is -- today is
16 my first time seeing her since I got -- since I got
17 my time.

18 Q. Okay.

19 A. And I was calling the officer and they was
20 telling me that it was no longer in their hands,
21 like ---

22 Q. Okay.

23 A. --- it's in the appeal -- it's in the Court of
24 Appeals now.

25 MR. ARIAIL: Okay. That's all the questions I

1 have for you, Mr. Young. Thank you. Answer any
2 questions the Attorney General has.

3 MS. OPPENHEIMER: No questions for this
4 witness, Your Honor.

5 THE COURT: Sir, you can step down.

6 THE APPLICANT: (Complying.)

7 MR. ARIAIL: Your Honor, that is our case.

8 THE COURT: Ms. Oppenheimer.

9 MS. OPPENHEIMER: State would call Lauren
10 Taylor.

11 THE COURT: If you'll come up, please.

12 THE WITNESS: (Complying.)

13 THE CLERK: Ms. Taylor, please place your left
14 hand on the Bible and raise your right hand.

15 THE WITNESS: (Complying.)

16 THE CLERK: You do solemnly swear or affirm
17 that the testimony you're about to give in this case
18 will be the truth, the whole truth, and nothing but
19 the truth so help you God?

20 THE WITNESS: I do.

21 THE CLERK: Thank you. You may be seated. And
22 please state your full name for the record.

23 THE WITNESS: Lauren Marie Taylor.

24 LAUREN TAYLOR,
25 having been produced and first duly sworn as a

1 witness on behalf of the State, then testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MS. OPPENHEIMER:

5 Q. Good morning, Ms. Taylor.

6 A. Good morning.

7 Q. How long have you been practicing law?

8 A. I was sworn in in May of 2012.

9 Q. Okay. And where are you employed?

10 A. I have my own practice. I've had it since I
11 was sworn in.

12 Q. Okay. About what percentage of your practice
13 is criminal law?

14 A. It's changed in the last year. But when I
15 first started in the first couple of years, I would
16 say it was probably 60/40 with family law being 40
17 percent.

18 Q. Okay. Now, were you appointed or retained on
19 this case?

20 A. I was appointed through the 608 Program.

21 Q. Okay. Do you recall the approximate date?

22 A. I don't off the top of my head.

23 Q. But would it have been well in advance of
24 trial?

25 A. I believe it was -- Leviticus Young is correct.

1 We -- I believe he was appointed to Susannah Ross.
2 He had a conflict with her. She was relieved.

3 And then through the conflict system, I was
4 appointed. So I would say there's probably six-ish
5 months, maybe a little bit longer, since when I was
6 appointed and went to trial.

7 Q. Okay. About how many times did you meet with
8 Mr. Young prior to his trial?

9 A. I would say that I met with him about three or
10 four times. The last time, obviously, was for a
11 couple of hours going through the video evidence and
12 all the discovery.

13 Q. Okay. Did you file any Brady or Rule 5
14 motions?

15 A. Yes, I did.

16 Q. And did you review the discovery material with
17 Mr. Young?

18 A. Yes.

19 Q. What evidence was in discovery that you
20 reviewed with him?

21 A. There was a surveillance tape of the Poinsett
22 Tire location.

23 There were photographs of the car, the black
24 Mercedes, that after a chase actually hit a
25 telephone pole.

1 There were pictures of a weapon found in the
2 car.

3 There were statements by codefendants,
4 statements of witnesses. There were several people
5 that witnessed the high-speed chase, along with the
6 actual victim, Mr. Cabrera.

7 So several statements, photographs, and videos.

8 Q. Okay. And what did the State allege occurred?

9 A. The State's, I think, main theory was that this
10 was a robbery that was targeted at this individual
11 because he was an illegal immigrant and he worked in
12 a cash-heavy business.

13 And so I guess their thought was that Mr. Young
14 and his defendant targeted this man thinking he
15 would not report the crime to the police and they
16 could make a quick little payday.

17 Q. Okay. So based on your memory and
18 understanding of this case, what theory was the
19 State operating under?

20 A. That was the theory the State was operating
21 under, that they targeted Mr. Cabrera because he was
22 not going to go to the police and report the crime
23 and they could take a few hundred dollars off of him
24 right then.

25 Q. Okay. Did they -- were they operating under a

1 hand of one, hand of all theory at any point?

2 A. Well, yes. Obviously, when they got the
3 photographs when the car stopped, there was -- the
4 gun was in plain sight. I'm not sure where the stun
5 gun was actually. I can't remember that.

6 But the -- the codefendant was startled by the
7 accident, so he remained at the scene and that's
8 where they apprehend him. Mr. Young took off on
9 foot and was apprehended later.

10 Q. Okay. Did you explain to Mr. Young that he
11 could be accountable of any criminal acts of his
12 codefendant?

13 A. Yes.

14 Q. And did he understand that?

15 A. Yes.

16 Q. Did you discuss with Mr. Young the elements
17 that the State would have to prove at trial?

18 A. Yes.

19 Q. And what did Mr. Young say happened?

20 A. Mr. Young alluded to the fact that this was not
21 a robbery. That this was over a female. That they
22 had had words previously about this woman and that
23 this was like them going over there to make things
24 right and talk to this guy, but that they never
25 intended to rob him. They were just there to kind

1 of mess with him a little bit.

2 Q. Okay. Did y'all ever discuss any possible
3 defenses?

4 A. I certainly, you know, explained to him that
5 we -- we did go through several. The video, I
6 think, was pretty difficult, along with the
7 codefendant's statement.

8 Q. Can you explain that for the Court?

9 A. What?

10 Q. How they were difficult.

11 A. I mean, the video showed the -- a large part of
12 the altercation taking place. It showed the car
13 arriving, people running back and forth and then
14 getting back in the car. And then there were
15 several 9-1-1 calls that pinged off along the route
16 that they were taking.

17 The victim actually chased them -- followed
18 them in his car and chased them down, and that's
19 what led to the wreck.

20 Q. Okay. Did Mr. Young ever give you any leads or
21 witnesses to investigate?

22 A. No. He gave me a letter from, I believe, his
23 codefendant that was written in jail where he said
24 that he never turned him in. That was all I got.

25 Q. Where the codefendant said he never turned him

1 in?

2 A. Uh-huh.

3 Q. Okay.

4 A. He said, "I didn't rat you out."

5 Q. Okay. What was your overall strategy in this
6 case?

7 A. My strategy was that -- honestly, I thought it
8 was kind of crazy that a victim who was held at
9 gunpoint and stunned with a stun gun would get in
10 his car and chase after these people that he knew
11 was armed. So my strategy was that this doesn't
12 really make sense. The victim is more involved in
13 this than he's claiming to be and just really poke
14 holes in the prosecution's case.

15 Q. Did you explain that to Mr. Young?

16 A. Yes.

17 Q. Did you see any reason to quash the indictment?

18 A. I didn't. I thought it was pretty specific in
19 its allegations.

20 Q. All right. And under your understanding, does
21 accomplice liability have to be charged on an
22 indictment?

23 A. No.

24 Q. And at the close of the State's case, what, if
25 anything, did you do with regards to the charges?

1 A. Oh, I did make a motion to set aside the
2 verdict.

3 Q. Okay. And what was your basis for that motion?

4 A. I was really just covering my bases.

5 Q. Were you successful?

6 A. No.

7 Q. Okay. Did you discuss with Mr. Young his right
8 to appeal?

9 A. I did.

10 Q. Okay. And did he ask you to appeal?

11 A. He did not to my recollection.

12 Q. Did you see any basis to file an appeal?

13 A. I did not.

14 MS. OPPENHEIMER: No further questions. Please
15 answer any questions that Mr. Ariail may have.

16 THE COURT: Mr. Ariail.

17 MR. ARIAIL: Thank you, Your Honor. May it
18 please the Court?

19 CROSS-EXAMINATION

20 BY MR. ARIAIL:

21 Q. Ms. Taylor, how are you doing today?

22 A. Good.

23 Q. Let me go through a little bit of the
24 background. You, I guess, said you were
25 representing Mr. Young for about six months; is that

1 correct?

2 A. I'm not exactly sure. I don't have my
3 appointment letter, but I believe it was a shorter
4 than normal ---

5 Q. Okay.

6 A. --- time to go to trial.

7 Q. Okay. I guess my question on that is, do you
8 think you had enough time to be able to discuss with
9 him the case, the facts, the elements, and
10 everything to be ready for trial?

11 A. Yeah.

12 Q. Okay. He said at some point he had a ten-year
13 offer. Do you remember that?

14 A. I do.

15 Q. Okay. Do you remember discussing that with
16 him?

17 A. At length.

18 Q. Okay. And why -- and, I guess, during that
19 conversation, did he specifically say he didn't want
20 to take that?

21 A. Yeah, he -- he said he -- that this was a fight
22 with somebody about their woman and that he did not
23 go over there to arm -- to rob this man.

24 Q. Okay. Did y'all get into, I guess, discussions
25 about a stun gun and a pistol and if that was

1 involved or if he had any knowledge of that?

2 A. Oh, yeah, we discussed it. I mean, there's
3 photographs of the gun in the car.

4 Q. The phone -- did he -- and I guess this video
5 didn't show -- from my reviewing of the record,
6 didn't show the actual confrontation?

7 A. Correct.

8 Q. So you couldn't tell if there was a weapon in
9 that or a stun gun. Did you discuss with him about
10 the codefendant's statement about, I guess, it was a
11 pistol whipping too during this?

12 A. I did. Yes.

13 Q. And did he -- what was his response to any of
14 that?

15 A. He said his codefendant wasn't going to be
16 testifying against him.

17 Q. Okay. Did you go over -- I guess there was a
18 statement from the codefendant too saying what had
19 happened?

20 A. Uh-huh.

21 Q. Was he aware of that statement?

22 A. Yes.

23 Q. And I guess it implicated him in it too,
24 correct?

25 A. It did. Yes.

1 Q. Okay. And despite all that, he still was of
2 the mindset his codefendant wasn't going to testify
3 against him at trial?

4 A. That's right. Based on the letter. I think
5 they had exchanged a note in -- in lockup.

6 Q. Okay. And that statement did come out at
7 trial, correct?

8 A. Yes.

9 Q. Yeah, and was he aware that it could or there
10 was some information that could be used against him
11 on that?

12 A. Yes.

13 Q. Okay. Now, as part of, I guess, your review of
14 this, was there -- and I guess you talked about
15 defenses. The only -- okay. Was your strategy to
16 say this was just a confrontation that went wrong, I
17 guess?

18 A. I think my strategy was really to hammer in on
19 the victim and try to, like, delegitimize his claim.

20 And like I said, if I was the victim of a crime
21 and somebody pistol whipped me, I surely would not
22 be in my car and chase them down while they're
23 leaning out the window firing shots at me.

24 So I really was -- and maybe that wasn't an
25 effective strategy, but I thought it was really all

1 I had to go on. It didn't make sense his version of
2 the crime.

3 Q. Okay. Was he aware, and I guess y'all
4 discussed, I think you said already, the hand of
5 one, hand of all, that he could be convicted if
6 there was co -- tying him to his codefendant?

7 A. Yes.

8 Q. Okay. The -- the appeal issue, so you remember
9 having a discussion with him about this appeal and
10 him, I guess he not raise or did he never ask you
11 about it?

12 A. He talked to me about if he could appeal like
13 the day of the trial, before the trial started.

14 Q. Okay.

15 A. After the trial, we did not have a discussion
16 about it.

17 Q. Okay.

18 A. I -- if my memory serves me right, I was going
19 to speak to him, and he turned around and walked
20 away.

21 Q. Okay.

22 A. I think he was not satisfied with the outcome.

23 Q. And I guess asking, a lot of people aren't
24 satisfied with the outcome. Looking back at it, was
25 there an appellate issue that you saw that could be

1 raised that was meritorious?

2 A. Not that I saw. No.

3 Q. Okay. The indictment -- and maybe I can start
4 with the -- this nolle pros sheet in there with
5 regards to the weapons charge. Do you remember, was
6 that done before the trial?

7 A. It was done the day of I believe.

8 Q. Okay. So they dis -- tell me exactly kind of
9 how that works because why did they dismiss that
10 before the trial?

11 A. I -- honestly, I'm not sure. I think the
12 solicitor just decided not to go forward on that.
13 Probably because there was some issue of whether he
14 actually had the gun or whether he had the stun gun.

15 So it was just the solicitor's decision. He
16 did not inquire with me about that. It was the day
17 of trial, and he said he was not going forward on
18 that on.

19 Q. So he wasn't going forward with the -- and when
20 I say weapons charge, it was the pistol that was
21 still -- and I guess did Mr. Young understand there
22 was still this allegation about a stun gun being
23 involved which can be used as an object or whatever
24 under the armed robbery statute?

25 A. Right. He actually said he understood that

1 anything could be used as a weapon in an armed
2 robbery.

3 Q. Okay. And you didn't -- was there anything
4 that you could've done or seen to say that was not
5 his stun gun, it was the codefendant's, or anything
6 along those lines?

7 A. No. I -- I don't think so.

8 Q. And even if you could, you still have the hand
9 of one issue and all that?

10 A. Correct.

11 Q. Okay. So the indictment -- quashing of the
12 indictment, and I've gone back and read it and you
13 have too. Was there anything that you saw you
14 could've done to quash that or suppress or do
15 anything to keep some of this stuff out?

16 A. No. I thought it was pretty specific.

17 Q. Were there any items that brought up during
18 trial that you could -- that you thought you
19 could've suppressed that were hurtful to Mr. Young
20 during the trial?

21 A. There were a lot of things that were hurtful.
22 I don't think you could suppress any of them.

23 Q. You didn't see any legal grounds to be able to
24 file a motion to suppress or anything along those
25 lines?

1 A. No.

2 Q. Did you at some point inquire or discuss with
3 Mr. Young about calling his codefendant as a witness
4 to be able to get him to testify I guess that
5 Mr. Young wasn't involved?

6 A. No. Because it was a conflicting statement at
7 that point, and I really felt like if I was going
8 to have any decision on what my strategy was going
9 to be. If I was going to go that route, I thought
10 it was going to muddy the waters for the jury and
11 they were going get confused and just assume they
12 were both guilty.

13 Q. Okay. So you made a strategic decision just to
14 let that go with the codefendant and not call him,
15 and also I guess you discussed with Mr. Young about
16 him testifying?

17 A. Yes.

18 Q. Was he aware of what could happen if he
19 testified?

20 A. Absolutely.

21 Q. Were there issues in regards to his criminal
22 history that were ---

23 A. Yes.

24 Q. Okay. So he made an informed decision not to
25 testify about that?

1 A. Correct.

2 MR. ARIAIL: Your Honor, I have no further
3 questions. Thank you.

4 THE COURT: Anything on redirect?

5 MS. OPPENHEIMER: Nothing from the State, Your
6 Honor.

7 THE COURT: One quick question or a couple of
8 quick questions.

9 You said that the codefendant in this case gave
10 a statement to the police at some point in time,
11 gave a confession?

12 THE WITNESS: Yes.

13 THE COURT: And was that -- did that confession
14 also implicate Mr. Young?

15 THE WITNESS: I believe it did.

16 THE COURT: Okay. Was the entire statement
17 read at trial?

18 THE WITNESS: I don't think -- I don't recall,
19 but I don't think so.

20 THE COURT: Okay. So it was redacted ---

21 THE WITNESS: I believe so.

22 THE COURT: --- to eliminate any reference to
23 Mr. Young?

24 THE WITNESS: Correct.

25 THE COURT: Do you know which witness off the

1 top your head several years later was the one that
2 introduced that statement?

3 THE WITNESS: I don't.

4 MS. OPPENHEIMER: Your Honor, based on our
5 review of the records, the statement by the
6 codefendant was not introduced ---

7 THE COURT: Oh, okay.

8 MS. OPPENHEIMER: --- at trial. I believe one
9 of the officers merely testified to the fact that
10 based on his conversation with the codefendant, it
11 led him to investigate Mr. Young.

12 THE WITNESS: Okay. I apologize.

13 THE COURT: Okay. No. That's okay. Any
14 follow-up based on those questions?

15 MR. ARIAIL: No, Your Honor.

16 THE COURT: Thank you very much.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Take care.

19 THE WITNESS: You too.

20 THE COURT: Any additional witnesses from the
21 State?

22 MS. OPPENHEIMER: Nothing further from the
23 State, Your Honor.

24 THE COURT: Anything further, Mr. Ariail?

25 MR. ARIAIL: No, Your Honor. That's our case.

1 MS. OPPENHEIMER: Can Ms. Taylor be excused?

2 THE COURT: Please, yes. Thank you for coming.

3 (Witness excused.)

4 THE COURT: The Court will take the matter
5 under advisement. My clerk has had an opportunity
6 to -- to review the -- the transcript in this case.
7 I've only had a chance to give it a cursory review,
8 so if you would allow me to take it under advisement
9 and to read the transcript again and -- or to read
10 the transcript myself. And I'll have an order for
11 you hopefully some time, if not next week, the week
12 after. Okay?

13 MR. ARIAIL: Thank you, Your Honor.

14 MS. OPPENHEIMER: Thank you.

15 (The proceedings concluded at 11:00 a.m.)

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Greenville County, South Carolina, on the 19th day of April, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 29, 2018

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Leviticus Donyaski Young, #311607,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Case No. 2017-CP-23-05236

ORDER OF DISMISSAL

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THIS MATTER CAME BEFORE THE COURT on April 19, 2018 by way of an application for post-conviction relief filed August 7, 2017 by Leviticus Donyaski Young (Applicant). The State (Respondent) made its Return on March 9, 2018, requesting an evidentiary hearing be held. At the hearing, Applicant was present and was represented by R. Mills Ariail, Jr., Esquire. Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office represented Respondent.

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. During its March, 2015 term, the Greenville County Grand Jury indicted Applicant for first-degree assault and battery (2014-GS-23-008396), armed robbery (2014-GS-23-08398), and possession of a weapon during the commission of a violent crime (2014-GS-23-008398). Lauren M. Taylor, Esquire, represented him on these charges. Assistant Solicitor Mark Moyer of the Thirteenth Circuit Solicitor's Office prosecuted the case. On January 11-12, 2017, Applicant proceeded to a jury trial before the Honorable Robin B. Stillwell on the assault and battery, first degree and armed robbery charges. The weapons charge was dismissed.

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Following deliberations, the jury convicted Applicant as indicted. Judge Stillwell sentenced Applicant to a term of imprisonment of ten (10) years for first-degree assault and battery and eighteen (18) years for armed robbery with the sentences running concurrently.

Applicant filed a Notice of Appeal in the South Carolina Court of Appeals on January 26, 2017. By Order dated May 5, 2017, the Court of Appeals dismissed the appeal for failing to timely serve the Notice of Appeal as required by Rule 203, SCACR. The Remittitur was issued on May 23, 2017.

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

1. Ineffective Assistance of Counsel;
 - a. "Trial counsel fail [sic] to file notice of appeal;"
 - b. "Trial counsel ineffective in failing to move the court to quash the indictment before the jury was sworn on the grounds that the indictment failed to charge criminal liability;"
 - c. "Trial counsel ineffective in failing to move the court to quash the indictment before the jury rendered its verdict" and
 - d. "Trial counsel ineffective in failing to raise a lack of subject matter jurisdiction claim."

At the evidentiary hearing, Applicant proceeded forward on the allegations raised in his application for post-conviction relief, as well as an allegation trial counsel was ineffective for failing to prepare for trial.

STATEMENTS OF FACTS ADDUCED AT TRIAL

On June 6, 2014, Juan Cabrera (hereinafter "the victim") was working at Poinsett Tires by himself. Tr. 179. At approximately six o'clock in the evening, a black Mercedes pulled inside the gate of the tire shop and stopped fifteen to twenty feet from the front door. Tr. 180-81. Applicant was in the passenger seat, wearing a white shirt, and his co-defendant, Steven Williams, was driving. Tr. 183. The two men exited the vehicle and approached the victim. Tr.

182. Applicant was holding a stun gun, and Williams asked the victim for money. Tr. 182-83. Applicant and Williams pushed the victim to the back of the store, and Williams put a gun in the victim's face and demanded money. Tr. 184. The victim took \$150 out of his pocket and threw the money in the air. Tr. 185-86. As Williams picked up the money the victim had thrown, Applicant began fighting with the victim, pushing and hitting him. Tr. 187. As the two were fighting, someone hit the victim in the back of the head with a gun. Tr. 188. Applicant also attempted to hit the victim with the stun gun. Tr. 188. Williams proceeded to the Mercedes, but as Applicant attempted to exit the tire store, the victim hit him on Applicant's side and the back. Tr. 188. Applicant began throwing tires at the victim, returned to the Mercedes, and he and Williams sped away. Tr. 188-89.

The victim could not locate his phone to call 911, so he chased Williams and Applicant in victim's car. Tr. 189-90. The cars proceeded down Fair Street with the Mercedes leading and traveling approximately forty-five to fifty miles per hour. Tr. 144-45. The passenger of the Mercedes, who was wearing a white shirt, was hanging out of the window, looking back. Tr. 146. The victim abruptly stopped at Stephanie Bishop's house, who was outside in her yard, and yelled for her to call 911. Tr. 147-48, 193. The victim then immediately got back in his car and proceeded to follow the Mercedes. Tr. 148.

The two cars proceeded to Old Buncombe Road and were side-by-side at some point. Tr. 107, 109. Witnesses who lived on Old Buncombe Road heard three gunshots around the same time. Tr. 108, 120, 130, 196. The victim reported Applicant, who was in the passenger seat, shot at the victim. Tr. 196. The victim maneuvered his car behind the Mercedes and rammed it, causing the Mercedes to crash into a pole. Tr. 110, 195. Applicant then got out of the car and ran down Morris Street. Tr. 111-12, 132-33, 196. A witness ran after Applicant and yelled for

him to stop. Tr. 112, 114. Applicant looked back at the witness but continued running away. Tr. 112. The driver, Williams, remained in the car after the accident. Tr. 115, 136, 137. The victim drove off and subsequently stopped to advise law enforcement officers of the accident and the robbery at his tire shop. Tr. 121, 159-60, 197-98, 211.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented the testimony of Lauren M. Taylor, Esquire (hereinafter "Counsel"). This Court also had before it a copy of Applicant's trial transcript, Applicant's appellate records, the records of the Greenville County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified he was incarcerated in the county detention center after his arrest in July of 2014 for approximately ten months, at which point Counsel did not represent him. He further testified he was then released on GPS monitoring but was again arrested in July of 2016. After that arrest, Applicant testified he was denied bond and Counsel was subsequently appointed to represent him.

Applicant testified Counsel did not know anything about his case. He maintained that Counsel told him she did not have enough time to review his case. He further elaborated Counsel told him his case was an old case, and she was trying to get it over with.

Applicant also testified Counsel met with him approximately three times. During these meetings, Applicant testified Counsel presented him with a plea offer for ten years, which he rejected. He also testified he and Counsel reviewed the State's evidence several times and also discussed the fact the evidence did not involve him, but rather was against his co-defendant, Steven Williams. He maintained the State did not have anything against him. He further

testified that he and Counsel did not discuss the impact of Williams' statement, nor did they discuss the consequences if Williams were to testify against Applicant at trial. He also said he told Counsel that the victim had not identified him out of a lineup and also expressed concerns regarding the case detective's bias against him. Applicant testified that he and Counsel never discussed the theory of hand of one, hand of all.

Applicant also testified Counsel failed to object to the indictment. Specifically, Applicant testified the indictment failed to explain subject matter jurisdiction. He further testified Counsel should have moved to quash the indictment because it did not charge criminal liability. He also testified the weapons charge was dismissed, but he was still charged with armed robbery. He elaborated his co-defendant took possession of the firearm. He further testified he was convicted of accomplice liability but complained that he was not charged under such a theory.

Applicant also testified he asked Counsel to file an appeal after his trial. He further testified, however, that he and Counsel did not discuss appealing his case.

Following Applicant's testimony, Counsel testified. Counsel testified she admitted to the practice of law in 2012 and was appointed to represent Applicant, who was initially represented by Susannah Ross, Esquire. She testified although she had a shorter period of time than normal to prepare for trial, she did have enough time to prepare adequately. She also testified she met with Applicant three or four times. She testified that she and Applicant discussed the ten-year plea offer at length, but Applicant insisted this was not a robbery and wanted to challenge the indictment at trial. She further testified she discussed with Applicant the elements of the charges and what the State would be required to prove at trial, as well as the theory of hand of one, hand of all. She maintained that Applicant was aware of the hand of one, hand of all theory and,

therefore, was aware he could be convicted of the indicted crimes. Counsel also testified she and Applicant discussed the weapon, and Applicant was aware that the devices used could support a charge of armed robbery. She also testified she discussed possible defenses with Applicant.

She testified she filed *Brady* and Rule 5, SCRCrimP, motions, and she reviewed the discovery materials with Applicant. They reviewed the surveillance tape from the tire shop which showed parts of the robbery. They also reviewed photos of the scenes, Williams's statement, witness statements, and the victim's statement. She did say that the surveillance video did not show the actual confrontation between Applicant and the victim. However, Williams's statement clearly implicated Applicant.

Counsel also testified Applicant did not give her any leads or witnesses to investigate, although he did present her with a letter from Williams in which Williams alleged he did not "rat out" Applicant. She testified she did not consider calling the co-defendant as a witness because he gave a conflicting statement which implicated Applicant. She said that presenting his testimony would have muddied the waters for the jury, and she feared the jury would assume both Applicant and Williams were guilty. Therefore, she made a strategic decision not to call Williams as a witness at trial.

Counsel also testified that Applicant maintained this incident was not supposed to be a robbery, but rather a conversation with the victim about a girl. The defense at trial was to allege the victim was more involved in the incident than the State cared to admit. In trial, she sought to poke holes in the State's theory since the victim's version of events arguably did not make sense.

Counsel testified she did not see any reason to move to quash the indictment. She also testified the weapons charge was dismissed the day of the trial, but she was unsure why it was dismissed. She speculated there may have been an issue with whether a gun or a stun gun was

used; however, she did not discuss with the solicitor the specifics of why the State elected not to proceed with that charge.

Counsel also testified Applicant was aware of his right to testify. She further testified Applicant made an informed decision not to testify at trial, particularly in light of Applicant's prior criminal history.

She further testified that she and Applicant discussed his right to appeal, but Applicant never asked her to appeal. She further testified she did not see any meritorious issues which could have been raised on appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety, including the full trial transcript, and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel's alleged failure to file an appeal

Applicant alleges Counsel was ineffective for failing to file an appeal on his behalf. Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470 (2000). When counsel has consulted with the defendant regarding the right to appeal, "Counsel performs in a professionally unreasonable manner *only* by failing to follow the defendant's express instructions with respect to an appeal." *Id.* at 478 (emphasis added).

Here, Applicant testified he and Counsel did not discuss his right to appeal, but he did ask Counsel to appeal on his behalf. On the other hand, Counsel testified she and Applicant did discuss his right to appeal, and Applicant never asked her to appeal. This Court finds Counsel's testimony with respect to this allegation very credible, whereas Applicant's testimony is not credible. Because Counsel and Applicant did consult regarding Applicant's right to appeal and Applicant never requested Counsel to file an appeal, this Court finds Applicant has failed to establish any deficiency on the part of Counsel. Additionally, having reviewed the trial transcript, the Court is unable to find any meritorious issue which could have been raised on appeal. Therefore, any appeal would have been fruitless. Accordingly, this allegation is dismissed with prejudice.

Counsel's alleged failure to quash the indictment

Applicant alleges Counsel was ineffective for failing to quash the indictments for first-degree assault and battery and armed robbery on the grounds that the indictment charged neither criminal liability nor accomplice liability. Indictments are not jurisdictional in nature but are merely notice documents. *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). When judging the sufficiency of an indictment, the court must determine "whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged." *Id.* at 102-03, 610 S.E.2d at 500 (citing *State v. Wilkes*, 353 S.C. 462, 578 S.E.2d 717 (2003)). "An indictment passes legal muster if it 'charges the crime substantially in the language of the . . . statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood.'" *State v. Reddick*, 348 S.C. 631, 635,

560S.E.2d 441, 443 (Ct. App. 2002) (quoting S.C. Code Ann. § 17-19-20 (1985)). Moreover, “whether the indictment could be more definite or certain is irrelevant.” *Id.* at 103, 610 S.E.2d at 500.

Here, the indictments stated with sufficient certainty and particularity that Applicant was charged with the crimes of first-degree assault and battery and armed robbery. Moreover, the indictments clearly apprised Applicant of the elements of each charged offense. In particular, the indictment for first-degree burglary charged: “That [Applicant] did in Greenville County, on or about the 6th day of June 2014, unlawfully injure [the victim], and the act occurred during the commission of a robbery, burglary, kidnapping or theft.” This is precisely the same language as that of section 16-3-600 of the South Carolina Code, which states in pertinent part: “A person commits the offense of assault and battery in the first degree if the person unlawfully: injures another person, and the act . . . occurred during the commission of a robbery, burglary, kidnapping, or theft.” S.C. Code Ann. § 16-3-600(C)(1)(a)(ii). Similarly, the indictment for armed robbery charged:

That [Applicant] did in Greenville County, on or about the 6th of June, 2014, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: U.S. Currency from the person or presence of [the victim].

The language in this indictment reflects that found in section 16-11-330 of the South Carolina Code, which states:

“A person who commits robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon is guilty of a felony.”

S.C. Code Ann. § 16-11-330(A). As each indictment specifically enumerated the offense with which Applicant was charged and described in relevant detail the crime substantially in the language of the statute prohibiting the crime, this Court finds this allegation must be denied and dismissed with prejudice.

Notwithstanding the sufficiency of these indictments, this Court finds Applicant has failed to establish any deficiency on the part of Counsel or any resulting prejudice. In particular, Counsel testified she explained each charge to Applicant prior to trial, including the elements of each charge and what the State would be required to prove at trial. Furthermore, Counsel testified she explained the hand of one, hand of all theory to Applicant prior to trial, specifically explaining that Applicant could be convicted under this theory of the crimes his co-defendant committed during the course of this incident. From this, Applicant was clearly aware of each offense for which he was charged, the particular elements of each offense, and his liability under a hand of one, hand of all theory. Therefore, this Court finds Applicant has failed to meet his burden, and this allegation is dismissed with prejudice.

Counsel's alleged failure to raise a lack of subject matter jurisdiction claim

Applicant alleges Counsel was ineffective for failing to raise a claim the court lacked subject matter jurisdiction. An applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. *See Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” *Gentry*, 363 S.C. at 101, 610 S.E.2d at 499. *See also* S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant was indicted by the Greenville County Grand Jury for first-

degree assault and battery, armed robbery, and possession of a weapon during the commission of a violent crime, and the indictments allege the criminal offenses occurred in Greenville County. Moreover, Applicant was prosecuted for these charges in Greenville County Court of General Sessions. Accordingly, this Court finds Applicant has failed to present any facts or evidence which would establish the convictions which he challenges in this application are of a class over which the circuit court lacks the authority to preside. This Court further finds Applicant has failed to establish any deficiency on the part of Counsel or any resulting prejudice therefrom, as the Court of General Sessions in Greenville County clearly had subject matter jurisdiction over these charges. This allegation is dismissed with prejudice.

Counsel's alleged failure to prepare for trial

Applicant alleges Counsel was not prepared for trial. Specifically, Applicant contends Counsel was neither interested in his case nor had the time to prepare for trial. "There is a strong presumption counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decision in the case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). Moreover, when there is evidence that counsel met with Applicant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective. *See Harris v. State*, 377 S.C. 66, 659 S.E.2d 140 (2008), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). Here, Counsel testified that, although she had a shorter than normal time in which to prepare for trial, she was indeed able to prepare adequately. Furthermore, she testified she met with Applicant three to four times, during which she and Applicant would discuss the charges, the elements of each charge, the theory of hand of one, hand of all, and all of the discovery materials. Based on the foregoing, this Court finds

Applicant has failed to establish any deficiency on the part of Counsel. In addition, Applicant has presented no evidence which would establish any prejudice on the part of Applicant. In particular, Applicant has wholly failed to provide this Court with any reason as to why additional preparation on the part of Counsel would have affected the outcome at trial. Accordingly, this allegation is dismissed with prejudice.

CONCLUSION

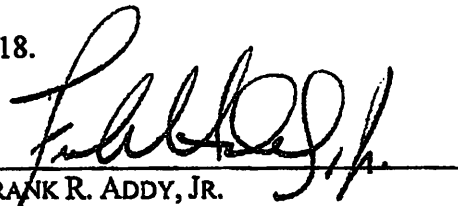
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. That the Applicant shall be remanded to and remain in the custody of the State.

IT IS SO ORDERED this 31st day of May, 2018.


FRANK R. ADDY, JR.
Presiding Judge
Thirteenth Judicial Circuit

Greenwood, South Carolina