

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

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JAN 28 2013

S.C. Supreme Court

CARLOS ANTONE BOLT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212085

APPENDIX

DAYNE C. PHILLIPS
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

KAREN RATIGAN
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS
2007-GS-23-2653

STATE OF SOUTH CAROLINA,

VS.

TRANSCRIPT OF RECORD

CARLOS ANTONE BOLT,
DEFENDANT.

COPY

February 6, 2008
Greenville, South Carolina

B E F O R E:

THE HONORABLE JOHN C. FEW, JUDGE, and a jury.

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

L. MARK MOYER, ESQ.
Assistant Solicitor

CHRISTOPHER T. POSEY, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
 (DW) - Denotes Defense Witness
 (IC) - Denotes In Camera

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All Exhibits were retained by the Clerk of Court for
Greenville County.

P R O C E E D I N G S

1
2
3 THE COURT: Mr. Moyer, Mr. Posey, are you all ready
4 to go?

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

6 MR. POSEY: Yes, sir.

7 THE COURT: Are there any pre-trial issues that we
8 need to take up?

9 MR. MOYER: Your Honor, there is --

10 THE COURT: Can you bring the Defendant, Mr. Bolt,
11 out, please.

12 (WHEREUPON, Defendant Bolt entered the courtroom.)

13 THE COURT: Are there any pre-trial issues we need to
14 take up?

15 MR. MOYER: Your Honor, there was a photo lineup. So
16 I believe the Defendant would require a Neil v. Biggers
17 hearing that we're ready to proceed on.

18 THE COURT: Okay. Well, the jury is downstairs. So
19 let's go ahead and get the jury up here and pick a jury,
20 and then we'll do the hearing.

21 MR. POSEY: Judge, I may show the lineup to Mr. Bolt,
22 and if he doesn't have a problem with it -- he has not
23 seen the lineup. I just saw it for the first time this
24 morning. I knew -- we knew it existed, but I had not seen
25 a copy of it yet. Mr. Moyer showed it to me. And we may

1 can waive the hearing if I can just get a chance to show
2 it to him.

3 THE COURT: All right. I'm going to need every seat,
4 except for what's on the back row. And then if you're in
5 the case, if you're a witness in the case, I want you to
6 stay in here. If you are otherwise involved in the case,
7 then we'll try to create space for you to stay in here.
8 And if you just want to be in here, we'll try to create
9 space for you to be in here. So -- but I need all those
10 seats over there.

11 And you can go ahead and bring the jury up.

12 MR. MOYER: The only other thing I would add is that
13 I believe the indictment is before you. I just want to
14 make sure the Court does know that we are going forward
15 with count one of the indictment, not count two.

16 THE COURT: Okay.

17 (WHEREUPON, the jury panel entered the courtroom.)

18 THE COURT: Any special voir dire?

19 MR. MOYER: Not from the State.

20 MR. POSEY: None from the Defense, Your Honor.

21 THE COURT: Ladies and gentlemen, good morning.

22 We are ready to begin with jury selection in the case
23 of the State of South Carolina v. Carlos --

24 Is it Antone?

25 MR. POSEY: Yes, sir.

1 THE COURT: State of South Carolina v. Carlos Antone
2 Bolt. Mr. Bolt has been indicted in indictment
3 2007-GS-23-2653 for armed robbery. And in that
4 indictment, it is alleged that Carlos Antone Bolt did in
5 Greenville County on or about the 7th day of January 2007,
6 while armed with a deadly weapon or while alleging either
7 by actions or words that he was armed or while using a
8 representation of a deadly weapon or any object which a
9 person present during the commission of the robbery would
10 reasonably believe to be a deadly weapon, take by means of
11 force or intimidation goods or monies described as jewelry
12 belonging to the Gold Gallery from the person or presence
13 of Benjamin Day. This is in violation of Section
14 16-11-330 of the South Carolina Code of Laws.

15 Now, for those of you who are selected on the jury in
16 this case, I'll give you some more detailed instructions
17 about the indictment and some other matters when that time
18 comes. But let me go ahead and tell you now that the
19 indictment I just read to you is not in any sense evidence
20 of the allegations that are contained within that
21 indictment. The indictment is simply the formal document
22 that contains the allegations that have been made against
23 the Defendant. And the indictment serves to process the
24 case and bring this case for trial.

25 The Defendant has pled not guilty to this indictment.

1 And the plea of not guilty casts the burden on the State
2 to prove the Defendant guilty beyond a reasonable doubt.
3 And for those of you who are selected to serve on the
4 jury, that will be your job to determine whether or not
5 the State has met that burden of proof.

6 Now, we are about to go through a series of questions
7 and answers that we call voir dire questions. They're
8 similar in structure to those I asked you all on Monday
9 morning downstairs. Please listen carefully to these
10 questions. If you have any information that is responsive
11 to a question that I ask, then I would like for you to
12 stand and tell me your name, and then tell me your
13 information. If you -- just like I told you on Monday,
14 and some of you may have been in here in this courtroom on
15 Monday, if you don't want to answer the question out loud
16 in front of the other members of the jury panel, then you
17 can tell me you would like to speak to me privately, and
18 I'll bring you down front and let you answer the question
19 with me and with the attorneys.

20 Now, if you know something about this case or if you
21 know some of the people who are going to be involved in
22 this case, and if you think giving your information out
23 loud in front of the other members of the jury might
24 expose those other jurors to information that they should
25 not be exposed to, then in that event, you must come down

1 front and answer the question privately with me and with
2 the attorneys.

3 Mr. Moyer, would you, please, introduce yourself and
4 your assistant to the jury. And I'll introduce the
5 witnesses in a moment.

6 MR. MOYER: Yes, Your Honor.

7 My name is Mark Moyer. I'm an assistant solicitor
8 with the Greenville County Solicitor's Office. Seated
9 next to me is Martha Lynch. She is an investigator with
10 our office, and she will be assisting me with this case.

11 JURY QUALIFICATION

12 THE COURT: Is there any member of the jury panel who
13 is related by blood or by marriage to Mr. Moyer or to
14 Ms. Lynch, or do you know either one of them in any way?
15 If so, please, stand.

16 (There was no response.)

17 THE COURT: Now, Mr. Moyer and Ms. Lynch work for Bob
18 Ariail, who is the elected solicitor of this circuit. It
19 is Mr. Ariail's responsibility to prosecute cases both
20 here in Greenville County and also in Pickens County.
21 Mr. Ariail has a staff of lawyers and non-lawyers who
22 assist him in doing that.

23 Is there any member of the jury panel who is related
24 by blood or by marriage to Solicitor Bob Ariail, or to
25 anyone who works for him, or do you know Solicitor Ariail,

1 or anyone who works for him? If so, please, stand.

2 Yes, sir.

3 JUROR #164, MARK JOHNSTON: My name is Mark Johnston.

4 I know Mr. Ariail.

5 THE COURT: How do you know Mr. Ariail?

6 JUROR #164, MARK JOHNSTON: Through social
7 acquaintance, and also his daughter-in-law used to work
8 with me at my newspaper -- work for me at The Journal.

9 THE COURT: And how often do you see Mr. Ariail?

10 JUROR #164 MARK JOHNSTON: Periodically, probably a
11 couple times a year socially.

12 THE COURT: All right. Would -- the fact that you
13 know Mr. Ariail and know his daughter-in-law, would that
14 interfere in any way with either your willingness or your
15 ability to give both the State and the Defendant a fair
16 and impartial trial in this case?

17 JUROR #164, MARK JOHNSTON: No.

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

19 You can be seated.

20 Yes, ma'am.

21 JUROR #374 KIMILA BALDERSON: I'm a member of the
22 Greenville County Bar. I know Bob Ariail through that,
23 and also because of working with his son, Mills, as an
24 attorney.

25 THE COURT: And you're Ms. Balderson?

1 JUROR #374, KIMILA BALDERSON: Yes.

2 THE COURT: Now, would -- the fact that you know Bob
3 Ariail and also know his son, Mills, would that interfere
4 in any way with either your willingness or your ability to
5 give both the State and the Defendant a fair and impartial
6 trial?

7 JUROR #374, KIMILA BALDERSON: I don't think so.

8 THE COURT: All right. Thank you.

9 Mr. Posey, would you, please, introduce yourself and
10 your client to the jury?

11 MR. POSEY: Yes, sir.

12 Thank you, Your Honor.

13 Good morning, ladies and gentlemen.

14 My name is Chris Posey. I'm representing Mr. Carlos
15 Bolt.

16 Carlos, turn around and stand, please.

17 This is Mr. Bolt.

18 Thank you.

19 THE COURT: Is there any member of the jury panel who
20 is related by blood or by marriage to Mr. Posey or to
21 Mr. Bolt, or do you know either of these gentlemen in any
22 way? If so, please stand.

23 (There was no response.)

24 THE COURT: Now, I'm going to read for you a list of
25 potential witnesses. And then after I have read that list

1 of witnesses, I'm going to ask you whether you know or are
2 related to any of these potential witnesses.

3 If the witness are in the courtroom, when I call your
4 name, I would like for you to stand and face the jury.

5 Benjamin Day.

6 Mr. Day is on the back row.

7 Thank you, sir.

8 Joshua B. Thompson.

9 Mr. Thompson.

10 Kashif Khan.

11 Thank you.

12 Ben Cothran with the Greenville Police Department.

13 Thank you, sir.

14 Doyle Burdette with the Greenville Police Department.

15 Thank you, sir.

16 Tim Conroy with the Greenville Police Department.

17 Mike Aiken with the Greenville Police Department.

18 He's not present. Aubrey Tomlin with the Greenville
19 County Department of Public Safety. And Captain Jackie
20 Kellett with the Greenville County Department of Public
21 Safety.

22 Any additional witnesses whose names I need to put
23 before the jury?

24 MR. MOYER: Not at this time, Your Honor.

25 MR. POSEY: No, sir.

1 THE COURT: Is there any member of the jury panel who
2 is related by blood or marriage to any of those potential
3 witnesses, or do you know any of them in any way? If so,
4 please, stand.

5 All right, sir. Tell me your name, please.

6 JUROR #347, GREG THOMSEN: Greg Thomsen.

7 THE COURT: Mr. Thomsen, who do you know?

8 JUROR #347, GREG THOMSEN: Kashif.

9 THE COURT: And how do you know him?

10 JUROR #347, GREG THOMSEN: I used to work with him.

11 THE COURT: Where was that?

12 JUROR #347, GREG THOMSEN: Haywood Mall.

13 THE COURT: How long ago has it been since you worked
14 together?

15 JUROR #347, GREG THOMSEN: Four years.

16 THE COURT: Four years?

17 JUROR #347, GREG THOMSEN: (Juror nodded.)

18 THE COURT: At a store?

19 JUROR #347, GREG THOMSEN: Yes.

20 THE COURT: In the four years that have passed since
21 you left there or since he left there, have you seen much
22 of him?

23 JUROR #347, GREG THOMSEN: Periodically, yes.

24 THE COURT: Approximately how often?

25 JUROR #347, GREG THOMSEN: Two or three times a

1 month.

2 THE COURT: Two or three times a month?

3 JUROR #347, GREG THOMSEN: (Juror nodded.)

4 THE COURT: All right. Thank you, Mr. Thomsen.

5 You can be seated.

6 Yes, sir.

7 JUROR #177, JOHN KORYBSKI: I know Tim Conroy.

8 THE COURT: Your name?

9 JUROR #177, JOHN KORYBSKI: John Korybski.

10 THE COURT: How do you know Mr. Conroy?

11 JUROR #177, JOHN KORYBSKI: We went to high school
12 together.

13 THE COURT: And since high school, have you seen much
14 of Mr. Conroy?

15 JUROR #177, JOHN KORYBSKI: We've crossed paths once
16 or twice a year.

17 THE COURT: Okay. Thank you.

18 Would the fact that you two potential jurors know
19 these witnesses, would that interfere in any way with
20 either your willingness or your ability to give both the
21 State and the Defendant a fair and impartial trial?

22 Mr. Thomsen?

23 JUROR #347, GREG THOMSEN: No, sir.

24 THE COURT: Mr. Korybski?

25 JUROR #177, JOHN KORYBSKI: No.

1 THE COURT: Is there any member of the jury panel who
2 has any particular interest in the outcome of this case?
3 If so, please, stand.

4 (There was no response.)

5 THE COURT: Is there any member of the jury panel who
6 has formed or expressed any opinion as to the guilt or
7 innocence of this Defendant? If so, please stand.

8 (There was no response.)

9 THE COURT: Is there any member of the jury panel who
10 has any bias or prejudice either towards or against the
11 State or the Defendant in connection with this case? If
12 so, please, stand.

13 (There was no response.)

14 THE COURT: Is there any member of the jury panel who
15 knows of any reason why you could not give both the State
16 and the Defendant a fair and impartial trial in this case?
17 If so, please, stand.

18 (There was no response.)

19 THE COURT: Any additional voir dire from the State?

20 MR. MOYER: Not from the State.

21 THE COURT: From the Defense?

22 MR. POSEY: None from the Defense, Your Honor.

23 THE COURT: Okay. Ladies and gentlemen, we're going
24 to strike the jury. Your names have been sorted randomly
25 and will be called one at a time. When your name is

1 called, please, come down front to the center of the
2 courtroom where this podium is and turn and face the
3 attorneys. We'll first hear from Mr. Moyer who will
4 either ask that you be excused or that you be presented to
5 the Defense. And then we'll hear from Mr. Posey, who will
6 ask either that you be excused or seated on the jury. And
7 we will continue with that process until we have a jury.

8 THE CLERK: Your Honor, the strikes are five and
9 five?

10 THE COURT: The strikes are five and 10.

11 THE CLERK: Thank you.

12 As I call your name, bring your things with you up to
13 the podium.

14 JURY SELECTION

15 THE COURT: Juror #144, Susan Hill.

16 (Susan Hill, a white female, came forward.)

17 THE CLERK: What says the State?

18 MR. MOYER: Please present Ms. Hill.

19 THE CLERK: What says the Defendant?

20 MR. POSEY: Please excuse the juror in this case.

21 THE CLERK: Ms. Hill, you may be seated. You've been
22 excused in this case.

23 #347, Greg Thomsen.

24 (Greg Thomsen, a white male, came forward.)

25 THE CLERK: What says the State?

1 MR. MOYER: Please present Mr. Thomsen.

2 THE CLERK: What says the Defendant?

3 MR. POSEY: Please excuse the juror in this case.

4 THE CLERK: Mr. Thomsen, you may be seated. You've
5 been excused in this case.

6 Juror #383, Robert Perry.

7 (Robert Perry, a white male, came forward.)

8 THE CLERK: What says the State?

9 MR. MOYER: Please present Mr. Perry.

10 THE CLERK: What says the Defendant?

11 MR. POSEY: Please seat the juror.

12 THE CLERK: Mr. Perry, please, have a seat in the
13 jury box.

14 Juror #7, Cyrena Anderson.

15 (Cyrena Anderson, a white female, came forward.)

16 THE CLERK: What says the State?

17 MR. MOYER: Please present Mr. Anderson.

18 THE CLERK: What says the Defendant?

19 MR. POSEY: Please seat the juror.

20 THE CLERK: Mr. Anderson, please, have a seat in the
21 jury box.

22 Juror #19, Fred Bennett.

23 (Fred Bennett, a black male, came forward.)

24 THE CLERK: What says the State?

25 MR. MOYER: Please excuse the juror in this case.

1 THE COURT: Mr. Bennett, you may be seated. You have
2 been excused in this case.

3 #263, Shabnam Pourmand.

4 (Shabnam Pourmand, a white female, came forward.)

5 THE CLERK: What says the State?

6 MR. MOYER: Please present Ms. Pourmand.

7 THE CLERK: What says the Defendant?

8 MR. POSEY: Please excuse the juror in this case.

9 THE CLERK: Ma'am, you may be seated. You've been
10 excused in this case.

11 Juror #122, Dawn Greene.

12 (Dawn Greene, a white female, came forward.)

13 THE CLERK: What says the State?

14 MR. MOYER: Please present Ms. Greene.

15 THE CLERK: What says the Defendant?

16 MR. POSEY: Please seat the juror.

17 THE CLERK: Ms. Greene, please, have a seat in the
18 jury box.

19 Juror #191, Turonnie Lewis.

20 (Turonnie Lewis, a black male, came forward.)

21 THE CLERK: What says the State?

22 MR. MOYER: Please present Mr. Lewis.

23 THE CLERK: What says the Defendant?

24 MR. POSEY: Please seat the juror.

25 THE CLERK: Sir, please, have a seat in the jury box.

1 Juror #202, Connie Martin.

2 (Connie Martin, a white female, came forward.)

3 THE CLERK: What says the State?

4 MR. MOYER: Please present Ms. Martin.

5 THE CLERK: What says the Defendant?

6 MR. POSEY: Please seat the juror.

7 THE CLERK: Ms. Martin, please, have a seat in the
8 jury box.

9 Juror #177, John Korybski.

10 (John Korybski, a white male, came forward.)

11 THE CLERK: What says the State?

12 MR. MOYER: Please present Mr. Korybski.

13 THE CLERK: What says the Defendant?

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

15 THE CLERK: Sir, you may be seated. You've been
16 excused in this case.

17 Juror #327, Raleigh Stokes.

18 (Raleigh Stokes, a white male, came forward.)

19 THE CLERK: What says the State?

20 MR. MOYER: Please present Mr. Stokes.

21 THE CLERK: What says the Defendant.

22 MR. POSEY: Please seat the juror.

23 THE CLERK: Sir, please, have a seat in the jury box.

24 Juror #258, Wayne Pittman.

25 (Wayne Pittman, a white male, came forward.)

1 THE CLERK: What says the State?

2 MR. MOYER: Please present Mr. Pittman.

3 THE CLERK: What says the Defendant?

4 MR. POSEY: Please seat the juror.

5 THE CLERK: Mr. Pittman, please, have a seat in the
6 jury box.

7 Juror #188, Joye Leopard.

8 (Joye Leopard, a white female, came forward.)

9 THE CLERK: What says the State?

10 MR. MOYER: Please present Ms. Leopard.

11 THE CLERK: What says the Defendant?

12 MR. POSEY: Please excuse the juror in this case.

13 THE CLERK: Ma'am, you've been excused in this case.

14 Juror #164, Mark Johnston.

15 (Mark Johnston, a white male, came forward.)

16 THE CLERK: What says the State?

17 MR. MOYER: Please present Mr. Johnston.

18 THE CLERK: What says the Defendant?

19 MR. POSEY: Please excuse the juror in this case.

20 THE CLERK: Mr. Johnston, you're excused in this
21 case.

22 Juror #154, Steven Howard.

23 (Steven Howard, a white male, came forward.)

24 THE CLERK: What says the State?

25 MR. MOYER: Please excuse the juror in this case.

1 THE CLERK: Mr. Howard, you may be seated. You've
2 been excused in this case.

3 Juror #152, Ericka Houston.

4 (Ericka Houston, a black female, came forward.)

5 THE CLERK: What says the State?

6 MR. MOYER: Please present Ms. Houston.

7 THE CLERK: What says the Defendant?

8 MR. POSEY: Please seat the juror.

9 THE CLERK: Ms. Houston, please have a seat in the
10 jury box.

11 Juror #245, Judy Outlaw.

12 (Judy Outlaw, a white female, came forward.)

13 THE CLERK: What says the State?

14 MR. MOYER: Please present Ms. Outlaw.

15 THE CLERK: What says the Defendant?

16 MR. POSEY: Please seat the juror.

17 THE CLERK: Ms. Outlaw, please, have a seat in the
18 jury box.

19 Juror #281, Michael Roper.

20 (Michael Roper, a white male, came forward.)

21 THE CLERK: What says the State?

22 MR. MOYER: Please present Mr. Roper.

23 THE CLERK: What says the Defendant?

24 MR. POSEY: Please seat the juror.

25 THE CLERK: Sir, please, have a seat in the jury box.

1 Juror #282, Richard Rossi.

2 (Richard Rossi, a white male, came forward.)

3 THE CLERK: What says the State?

4 MR. MOYER: Please present Mr. Rossi.

5 THE CLERK: What says the Defendant?

6 MR. POSEY: Please seat the juror.

7 THE CLERK: Sir, please, have a seat in the jury box.

8 Juror #337, Thomas Taylor.

9 (Thomas Taylor, a white male, came forward.)

10 THE CLERK: What says the State?

11 MR. MOYER: Please present Mr. Taylor.

12 THE CLERK: What says the Defendant?

13 MR. POSEY: Please excuse the juror in this case.

14 THE CLERK: Sir, you may be seated. You've been
15 excused in this case.

16 Juror #238, William Nead.

17 (William Nead, a white male, came forward.)

18 THE CLERK: What says the State?

19 MR. MOYER: Please present Mr. Nead.

20 THE CLERK: What says the Defendant?

21 MR. POSEY: Please seat the juror.

22 THE CLERK: Sir, please, have a seat in the jury box.

23 THE COURT: We'll get one alternate. The strikes are
24 one and two.

25 THE CLERK: Juror #128, Katherine Harmon.

1 (Katherine Harmon, a white female, came forward.)

2 THE CLERK: What says the State?

3 MR. MOYER: Please present Ms. Harmon.

4 THE CLERK: What says the Defendant?

5 MR. POSEY: Please seat the juror.

6 THE CLERK: Ma'am, please, have a seat in the jury
7 box.

8 THE COURT: Hold on just a second, Mary.

9 Let me see the lawyers up here for a second, please.

10 (WHEREUPON, a side bar was held with the attorneys.)

11 THE COURT: All right. We're going to get one more
12 alternate. The next one on the list is Eleanor Callison,
13 who works for the Sheriff's Office. And I just want to
14 let you know that, on Monday, when we were qualifying the
15 jury, she said because she worked at the Sheriff's Office,
16 she had -- she wasn't sure if she could be fair.

17 Now, she came up here Monday -- I was downstairs.
18 And she came up here and she was on the panel and we asked
19 her, Could you be fair? And she said, Well, I don't know
20 anybody in the case, so I wouldn't have any trouble being
21 fair. But she never got -- she didn't called. She didn't
22 get on the jury. So I just wanted you all to know that.

23 (WHEREUPON, the side bar was concluded.)

24 THE COURT: We'll get one more alternate.

25 THE CLERK: Juror #43, Eleanor Callison.

1 (Eleanor Callison, a white female, came forward.)

2 THE CLERK: What says the State?

3 MR. MOYER: Please present Ms. Callison.

4 THE CLERK: What says the Defendant?

5 MR. POSEY: Please excuse the juror in this case.

6 THE CLERK: Ma'am, you may be excused in this case.

7 Juror #64, Betty Clowney.

8 (Betty Clowney, a black female, came forward.)

9 THE CLERK: What says the State?

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

11 THE COURT: Ms. Clowney, you may be seated. You've
12 been excused in this case.

13 Juror #150, Rena Horton.

14 (Rena Horton, a white female, came forward.)

15 THE CLERK: What says the State?

16 MR. MOYER: Please present Ms. Horton.

17 THE CLERK: What says the Defendant?

18 MR. POSEY: Please seat the juror.

19 THE CLERK: Ms. Horton, please, have a seat in the
20 jury box.

21 THE COURT: Any exception to the composition or to
22 the manner of the selection of the jury?

23 MR. MOYER: Not from the State, Your Honor.

24 MR. POSEY: Not from the Defense, Your Honor.

25 THE COURT: All right. Ladies and gentlemen, we're

1 going to -- I'm going to send you back into the jury room
2 for a few minutes. Because I have a few matters of law
3 that I need to deal with before we bring you back in for
4 opening statements.

5 When you come back in, I will instruct you on some of
6 the things that you need to know about that will govern
7 your services. Jurors -- and one of the things I will
8 tell you is that you may not discuss this case at all
9 until I have given you permission to begin your
10 deliberations.

11 So when you're back in the jury room, on breaks, or
12 when you're out of the courtroom for any other reason, you
13 may not discuss the case. You can talk about anything
14 other than the case, but you cannot discuss this case in
15 any manner.

16 So I'm going to send you back into the jury room now.
17 I hope that it will take just a few minutes and we can get
18 you back out here just as quickly as we can.

19 Before you go, I'll say that those of you who were
20 not selected to serve on the jury, you are free to go.
21 And you should call back tonight after 6:00 to find out
22 what, if anything, you need to do tomorrow. Y'all have a
23 nice day.

24 And I'll see you all in a few minutes. You can go
25 back to the jury room now.

1 (WHEREUPON, the jury was excused from open court at
2 approximately 10:19 a.m.)

3 THE COURT: All right. You have an identification
4 issue and you're not sure if you're going to challenge it.
5 But I think probably, at a minimum, you need to go ahead
6 and put up your witness about how the photo lineup was
7 presented to the witnesses just to go ahead and get that
8 on the record.

9 And that will be fairly quick?

10 MR. MOYER: Yes.

11 THE COURT: All right. Is there anything else we
12 need to take up before opening statements?

13 MR. POSEY: Judge, the only other issue is my client
14 gave a statement. I know Mr. Moyer does not intend to
15 enter it into evidence. I probably don't intend to enter
16 it into evidence. I probably will question -- ask
17 questions concerning the statement without putting it into
18 evidence. I know Mr. Moyer may object to that.

19 I don't know if you want to go through with a Jackson
20 v. Denno hearing. I know I don't intend to put it in
21 evidence. I don't think Mark does either. But I may
22 question the officers through the course of their
23 investigation about interviewing Mr. Bolt.

24 MR. MOYER: In response to that, I don't know if a
25 Jackson v. Denno would be a proper issue that we're

1 dealing with. I think it's really going to be a hearsay
2 objection that the Defense would not be able to have an
3 exception to the hearsay rule that will apply.

4 So, yes, we will have an objection if that comes up.

5 THE COURT: Okay. We'll take it up at the time it
6 comes up.

7 We'll take a very short break.

8 (WHEREUPON, a break was taken.)

9 (WHEREUPON, State's Exhibit No. 1 was marked for
10 identification only.)

11 THE COURT: All right. Go ahead.

12 MR. MOYER: The State would call Doyle Burdette to
13 the stand.

14 THE CLERK: Raise your right hand and place your left
15 hand on the Bible.

16 WHEREUPON,

17 DOYLE BURDETTE,

18 after first having been duly sworn, testified as follows:

19 THE CLERK: Please state your full name for the
20 record.

21 THE WITNESS: Doyle Malvin [phonetic] Burdette.

22 DIRECT EXAMINATION

23 BY MR. MOYER:

24 Q You're employed with the Greenville Police
25 Department?

1 A Yes, sir.

2 Q And you're an investigator with the Greenville Police
3 Department?

4 A I'm now a sergeant. I was a detective at the time of
5 the incident.

6 Q And you participated in the case that we're here
7 before the Court today, the robbery case against this
8 Defendant?

9 A Yes, sir.

10 Q Now, were you involved in showing a photo lineup in
11 the case?

12 A Yes, sir, I was.

13 Q And did you show that to the victim, Benjamin Day?

14 A I did.

15 Q What was the date you showed him the photo lineup?

16 A I showed Mr. Day the photo lineup on the 8th of
17 January, 2007.

18 Q And did you put that photo lineup together yourself?

19 A I did.

20 Q Now, how many photos were displayed in that lineup?

21 A Six.

22 Q And were the other five persons similar in
23 description to the Defendant?

24 A Yes, sir. I tried as best I could to match hair
25 type, facial structure, the facial hair, as well as

1 anything else so as not to set anyone apart.

2 Q Okay. Let me show you what's been marked as State's
3 Exhibit No. 1. And can you identify that document?

4 A Yes, sir. That is the photo lineup that I showed
5 Mr. Day.

6 Q Okay. And when did you show that photo lineup to
7 Mr. Day?

8 A I believe it was the afternoon of the 8th.

9 Q Okay. And where was it?

10 A It was at the Gold Gallery.

11 Q Tell us how you presented that lineup to Mr. Day.

12 A I told Mr. Day that I had a photo lineup. I showed
13 it to him. And I asked if he could pick out the man that
14 was involved in the robbery the day before.

15 Q Okay. That was my next question. What was the
16 incident date?

17 A It was the seventh of January.

18 Q So this was the day following the incident?

19 A Yes, sir.

20 Q Did you tell him that the person was definitely
21 displayed in that lineup?

22 A No, sir.

23 Q Did you lead him to believe that he had to or that
24 you expected him to pick somebody out of the lineup?

25 A No, sir.

1 Q Did you exert any pressure on him to pick anyone out
2 of the lineup?

3 A No, sir.

4 Q Did you influence him in any way as to who to pick?

5 A No, sir.

6 Q Now, did Mr. Day then select a photograph out of that
7 lineup?

8 A Yes, sir.

9 Q And describe how Mr. Day acted when you showed him
10 the lineup and what he did.

11 A Mr. Day looked at the photo lineup. You could see
12 that he scanned the pictures. And then, without
13 hesitation, he picked Mr. Bolt as the person that was
14 involved in the robbery the day before.

15 Q Okay. And did you have him make any markings on that
16 form to document his choice?

17 A Yes, sir. I had him circle the picture that he
18 picked and initial the picture that he picked.

19 Q So this document before you right now, that's the
20 exact photo lineup that you showed Mr. Day --

21 A It is, sir.

22 Q -- on the 8th.

23 A Yes, sir.

24 Q Okay. And is it in substantially the same condition
25 now as it was back when you showed it to him on January

1 the 8th?

2 A Yes, sir.

3 MR. MOYER: Your Honor, for purposes of this hearing,
4 the State would move to introduce State's Exhibit No. 1
5 into evidence.

6 THE COURT: It's admitted.

7 (WHEREUPON, State's Exhibit No. 1 was admitted into
8 evidence.)

9 MR. MOYER: Please answer any questions the Defense
10 may have.

11 MR. POSEY: Your Honor, we have no questions at this
12 time.

13 THE COURT: You can step down.

14 THE WITNESS: Thank you, sir.

15 THE COURT: Anything further from the State?

16 MR. MOYER: At this time, no, Your Honor.

17 THE COURT: Any evidence from the Defense?

18 MR. POSEY: No, sir, Your Honor.

19 THE COURT: Any argument?

20 MR. POSEY: No, sir.

21 THE COURT: And you do not challenge the -- you do
22 not contend that the lineup was unduly suggestive?

23 MR. POSEY: No, sir, not at all.

24 THE COURT: All right. Then are we ready to proceed
25 with the jury?

1 MR. MOYER: We are, Your Honor.

2 THE COURT: All right. Bring in the jury.

3 (WHEREUPON, the jury came into open court at
4 approximately 10:31 a.m.)

5 THE COURT: Swear the jury.

6 THE CLERK: Please stand and raise your right hand
7 for the oath in this case. The proper response is, "I
8 will."

9 (WHEREUPON, the jury was sworn at approximately
10 10:32 a.m.)

11 THE CLERK: Thank you.

12 Please be seated.

13 INTRODUCTORY REMARKS

14 THE COURT: All right. Ladies and gentlemen, we are
15 now ready to begin with the trial in this case. This is
16 the State of South Carolina v. Carlos Antone Bolt.

17 Mr. Bolt has been indicted in indictment number
18 2007-GS-23-2653 for armed robbery. And in that
19 indictment, it is alleged that Carlos Antone Bolt did in
20 Greenville County on or about the 7th day of January 2007,
21 while armed with a deadly weapon or while alleging either
22 by actions or words he was armed, while using a
23 representation of a deadly weapon or any object which a
24 person present during the commission of a robbery would
25 reasonably believe to be a deadly weapon, take by means of

1 force or intimidation goods or monies described as jewelry
2 from Gold Gallery from the person or presence of Benjamin
3 Day. This is in violation of Section 16-11-330 of the
4 South Carolina Code of Laws.

5 Now, as I told you briefly a few moments ago, the
6 indictment that I just read to you is not evidence and
7 cannot be considered by you in any manner as evidence of
8 the Defendant's guilt. The indictment is simply the
9 formal document that processes this case and brings it
10 into this court for trial. And it is the document that
11 contains the allegations made against the Defendant. The
12 Defendant has pled not guilty to this indictment. And the
13 plea of not guilty casts the burden on the State to prove
14 the Defendant guilty beyond a reasonable doubt. And that
15 will be your job to determine whether or not the State has
16 met that burden.

17 Now, ladies and gentlemen, it is a very important
18 rule of law in our country that a Defendant in a criminal
19 trial will always be presumed to be innocent of the crime
20 with which he has been charged, unless and until his guilt
21 has been proven by evidence that satisfies you of that
22 guilt beyond a reasonable doubt. This, obviously, is the
23 presumption of innocence.

24 The presumption of innocence is not merely a legal
25 theory or a legal phrase that we use. It is a substantial

1 Constitutional right to which every defendant is entitled.
2 The presumption of innocence accompanies the Defendant
3 from the time he is charged, throughout the trial, and
4 into the jury room until you find a verdict of guilty
5 that's based on evidence that satisfies you of his guilt
6 beyond a reasonable doubt.

7 Now, the trial of this case will be short. However,
8 like any other trial, it can be divided up into five basic
9 phases. And I'm going to go over those phases with you
10 now. The first phase is the opening statement when the
11 lawyers will stand before you and they will explain to you
12 what this case is about. They'll tell you what the issues
13 are in this case and how each side stands on those issues.
14 And they will go over with you some of the evidence you
15 can expect to see that will relate to those issues.

16 Then after the opening statements, we'll start the
17 second phase, which is the evidentiary phase. Witnesses
18 will be called to the stand here. You'll hear their
19 testimony and you will probably also have other evidence
20 that will be offered that will become part of the basis on
21 which you will decide whether or not the State has met its
22 burden of proof.

23 Then the third phase is the closing arguments when
24 the lawyers will stand before you again. And this time,
25 they will argue to you as to whether or not the State has

1 met its burden of proof. And then the fourth phase is the
2 jury charge when I will explain to you the law that is
3 applicable to this case. And then the fifth phase is when
4 you will go back in the jury room and you will deliberate.

5 Now, it's very important that you not begin to make
6 up your mind about whether or not the State has met its
7 burden of proof until you've been through all five of
8 those phases that I just outlined for you, including, at
9 least, the first part of the fifth phase when you have a
10 chance to listen to each other, discuss the evidence, and
11 discuss whether or not the State has met its burden of
12 proof. Only then will you be in the right position to
13 begin to make up your mind about that. I've already
14 mentioned to you also that you may not discuss this case
15 in any manner until I have given you permission to begin
16 those deliberations.

17 Now, ladies and gentlemen, as members of the jury,
18 you are the exclusive judges of the facts in the case.
19 And I am not permitted to indicate to you how I might feel
20 about the facts. So if I say anything or do anything that
21 leads you to believe that I might have an opinion about
22 the facts, then you should disregard that. The jury must
23 independently weigh the testimony and evidence and decide
24 for itself whether or not the State has met its burden of
25 proof.

1 Now, on the other hand, I am the exclusive judge of
2 the law. So if you have some idea as to what the law is
3 or what the law should be and if that differs from what I
4 will tell you the law is, then you are obligated under the
5 oath that you have just taken, as jurors, to set your
6 notion of the law aside and to accept and apply the law
7 precisely as I will explain it to you.

8 Now, one other role that I play is to decide on the
9 admissibility of evidence. And from time to time, you may
10 hear the lawyers making objections when evidence is
11 offered that they believe does not comply with our rules
12 of evidence. And when that happens, that is not an
13 attempt on the part of the lawyers to hide anything from
14 you. That's just the way our system of evidence works.

15 When an objection is made, it then becomes my
16 responsibility to rule on the objection. If I sustain the
17 objection, that means I believe the evidence is not
18 admissible and I will not allow it in for you to consider.
19 If I overrule the objection, that means I believe the
20 evidence is admissible and I will allow it in and you
21 should consider it.

22 Now, most of the time, I'll be able to do that just
23 as I sit here. You'll hear the lawyers make an objection
24 and then they might say the grounds for their objection.
25 And then you'll hear me say either sustained or overruled.

1 Sometimes, I might have to ask the lawyers to step up to
2 the bench so that I can briefly discuss the evidence
3 questioned with them before I rule. Sometimes, I might
4 have to, actually, send you all back into the jury room so
5 we can openly discuss the evidence questioned. Sometimes,
6 I have to, actually, listen to the testimony before I can
7 decide whether or not you can listen to it.

8 Mr. Moyer.

9 OPENING STATEMENT

10 MR. MOYER: Thank you, Your Honor.

11 May it please the Court?

12 Good morning, ladies and gentlemen.

13 This is going to be a pretty short trial. So I'll
14 keep my remarks relatively -- very short as well. I just
15 want to make -- talk to you a little bit about a couple
16 aspects of the law that's going to be applicable in this
17 case, and then just give you a real quick overview of what
18 the evidence is going to be that you're going to hear in
19 this case.

20 Again, my name is Mark Moyer. I introduced myself
21 earlier. I'm an assistant solicitor. I prosecute cases.
22 I represent the State in criminal cases.

23 Let me just tell you a couple of matters that are
24 significant about the law regarding the charge that is
25 before you. The Defendant has been charged with, as

1 you've heard, armed robbery. You've heard the indictment
2 read, which pretty much mirrors what the statute is in
3 this state about armed robbery.

4 Essentially, armed robbery is a robbery while the
5 perpetrator is armed. A robbery is a type of theft. It's
6 defined as the taking of goods or property from the
7 person -- the actual person or his or her presence
8 accompanied by some force, or intimidation, or violence.
9 So it's a type of theft.

10 If I were to leave my wallet here and leave the room
11 and someone came and stole it, that would be called
12 larceny. However, if this wallet is either in my pocket
13 or very close to me so that I can sort of control it,
14 then -- and if somebody stole it from me using force or
15 intimidation of violence, then that would be robbery.
16 Then what makes a robbery armed robbery is simply that the
17 person does this while armed.

18 Now, that's the basic definition of the law. Let me
19 just hone in on two specific points -- two specific
20 attributes of that law. And the first one is this, it's
21 that the taking of the property continues until the robber
22 gets away. So if a person steals something and runs, that
23 taking of the property continues through that period of
24 time until the person gets away. So if the victim, the
25 person who had the property stolen, chases that robber,

1 then this aspect of the taking of the property would
2 continue until that person who committed the crime gets
3 away.

4 Now, the significance is this, the force, or the
5 intimidation, or the violence aspect doesn't have to be at
6 the beginning. If it happens at any point during this
7 taking, then it is robbery. So if the victim is chasing
8 after the person who robbed him and at some point during
9 the chase that person uses force, either says something
10 that's forceful, intimidating, or threatens violence or
11 acts in some way, then that element is satisfied, the
12 force or the intimidation. And the same thing has to go
13 with being armed. If the person becomes armed while
14 running away from the victim or if the person for the
15 first time shows some type of weapon, then, again, that
16 element for the armed robbery is established. Okay.

17 The second thing I want to mention to you is this, it
18 has to do with what is a deadly weapon. The statute tells
19 us pretty specifically and gives us a list, actually, and
20 the list is a pistol, and it says a dirk, which is a name
21 for a dagger. Also, in the statute, is a slingshot. It
22 has a brass knuckle. It has a razor. It lists those
23 elements. And it says, Or other deadly weapon. So it
24 could be anything that brings about serious bodily injury
25 or death, if used in that way. But it is not restricted

1 to that. The statute also includes representations of a
2 deadly weapon.

3 So if a defendant -- or if a robber leads that victim
4 into thinking he's armed and he has some sort of
5 representation that makes the victim think that person is
6 armed with a deadly weapon, then that would be enough.
7 Okay. And, basically, what that is doing is it's not
8 putting a burden on the victim to say, Well, I've got to
9 make sure that really is a real gun or not. Okay. If the
10 robber is intending for you to think that's a real deadly
11 weapon and if the victim thinks that, then that satisfies
12 the element of a deadly weapon. Okay.

13 With that being said, let me just tell you briefly
14 what the evidence is going to be that you will hear in
15 this case. It's going to be a relatively short trial.
16 You're going to hear that this happened on January the
17 7th, just about a year ago, 2007, at Haywood Mall. It
18 happened at a business, a store called the Gold Gallery.

19 The Gold Gallery is a kiosk. It is not one of the
20 inline stores in the mall, but it's sort of set out in the
21 middle of the mall. It's in a large square-like display
22 and has cases that have jewelry laid out in the square.
23 You're going to hear testimony that this Defendant and
24 another man, who's not on trial today, came up to that
25 display cabinet where Daniel [sic] Day was working and

1 then asked to look at some jewelry. And you're going to
2 hear that Daniel [sic] Day got out a couple pieces of
3 jewelry, a very expensive bracelet, a very expensive
4 necklace, and he gave it to these two men to look at.

5 This conversation goes on for a short period of time.
6 And then all of the sudden, both of those men run. The
7 Defendant goes one way around the kiosk. The other man
8 goes the other way. And they are running down the mall
9 towards Dillards from the J.C. Penney area where this
10 kiosk was. They're running down the mall.

11 Well, Benjamin Day runs after them. He gets out from
12 underneath the kiosk and he takes off down the hallway
13 yelling, Stop, thief, robbery, et cetera, et cetera. A
14 couple of people also join in the chase. And you're going
15 to hear that it leads to outside of the mall. There's a
16 parking deck near the Dillards store there in the mall.

17 And you're going to hear that the two men who
18 committed this robbery run towards a car that's parked out
19 there in the parking deck, not in a parking space, but
20 out, actually, in a loading dock very close to the door.
21 And you're going to hear that one of the men who was
22 chasing, actually, has a brief altercation with this
23 Defendant as he is trying to get in the passenger side of
24 the car.

25 You're going to hear that Daniel [sic] Day runs up to

1 the car and gets in front of it. And you're going to hear
2 that after the Defendant has this brief altercation with
3 one of the men who had been chasing him that he has the
4 door open at this point, he reaches down either into the
5 car or into his pocket -- they can't tell because the door
6 is covering, one or the other -- and he pulled out
7 something that looks like a gun and says, I'm going to
8 shoot this and uses an expletive, MF'er. At that point,
9 people are ducking. They're diving behind cars and
10 getting out of the way. And, at that point, the car
11 drives out of there at a fast rate of speed.

12 So, ladies and gentlemen, that, essentially, is the
13 facts you're going to hear, in this case, in a nutshell.
14 As I said, it's going to be a short case. I ask you to
15 listen closely. It is an important case for everyone
16 involved. Have an open mind as you listen, use your good
17 judgment and your common sense to weigh the testimony.
18 And, at the end of this case, all we ask from you, ladies
19 and gentlemen, is to do justice.

20 Thank you.

21 MR. POSEY: May it please the Court, Your Honor?

22 THE COURT: Yes, sir, Mr. Posey.

23 MR. POSEY: Mr. Moyer.

24 Ladies and gentlemen of the jury, I introduced myself
25 earlier. My name is Chris Posey. And I represent the

1 defendant in this case, Mr. Bolt.

2 I agree with Mr. Moyer's last statement, I want you
3 to keep an open mind. That's the most important thing I
4 ask during this trial. I also want you -- you're going to
5 hear two words banging around, not so much during the
6 evidence, but later on when the Judge gets to the phase of
7 the trial of closing arguments and charging you on the
8 law, reasonable doubt. You're going to hear the words
9 reasonable doubt and a reasonable person. Keep those in
10 your mind.

11 I won't comment much on the evidence now. I'll do
12 that later on. I'll get an opportunity to speak to you
13 again at the end of the trial. And I'll talk to you about
14 the evidence then. As far as the law goes, Mr. Moyer did
15 a pretty good job. But, remember, no matter what I say or
16 Mr. Moyer says, only one person tells you the law in this
17 case. That's Judge Few. Nobody else matters. My opinion
18 doesn't matter about the law. My opinion or Mr. Moyer's,
19 nobody's. Judge Few tells you the law at the end of the
20 case.

21 All I ask is that you keep an open mind and remember,
22 going into this trial that Mr. Bolt is cloaked. This is
23 an old term we use, he is cloaked in innocence. That
24 means he's fully enveloped in innocence. Their burden
25 required of them is that they have to tear that cloak

1 apart beyond a reasonable doubt. That is not a small
2 burden. It's not by a hair. It is a big burden. They
3 must meet that. If they fail in any aspect during the
4 course of this trial, then you will have the duty to
5 render a verdict at the end of the trial saying so.

6 So I just ask you to keep an open mind and to listen
7 to the evidence. Don't make any presumptions. You will
8 hear the testimony. You will hear cross-examination,
9 remember that. The first thing that's always said from
10 the witness stand is not always the only thing you need to
11 hear. Just remember that. I thank you in advance for
12 your attention. And I thank you for your service. You're
13 what allows this system to move forward. Mr. Bolt thanks
14 you. We appreciate your efforts and your attention. And
15 I look forward to speaking with you again at the end of
16 the trial.

17 Thank you.

18 MR. MOYER: The State calls Benjamin Day.

19 THE CLERK: Mr. Day, if you'll pause at the end of
20 the bench. Raise your right hand and place your left on
21 the Bible.

22 WHEREUPON,

23 BENJAMIN DOYLE DAY,
24 after first having been duly sworn, testified as follows:

25 THE CLERK: Thank you.

1 Please be seated.

2 Sir, please, state your full name for the record.

3 THE WITNESS: Benjamin Doyle Day.

4 DIRECT EXAMINATION

5 BY MR. MOYER:

6 Q How old are you, Mr. Day?

7 A 22 years old.

8 Q Where did you go to high school?

9 A I went to Southside High School

10 Q When did you graduate?

11 A 2003.

12 Q Where do you work right now?

13 A I work at the Gold Gallery at Haywood Mall.

14 Q What kind of business is that?

15 A It's a jewelry kiosk.

16 Q First off, tell us where it is in the mall.

17 A It's centrally located right in front of J.C. Penney
18 on the lower level.

19 Q And what do you mean by a "kiosk"? Describe what a
20 kiosk is.

21 A A kiosk is not an inline store. Like I said, it's
22 centrally located. It's rectangular. It's got display
23 cases and things filled with jewelry and such.

24 Q And what kind of business is it?

25 A It's a jewelry store.

1 Q What do you do there?

2 A I'm a sales associate.

3 Q And this is in Haywood Mall, the one that's here in
4 Greenville County?

5 A Yes, sir.

6 Q Now, let me take -- how long have you been working
7 there?

8 A I've worked there a year and a month.

9 Q Okay. So you were working there January 7, 2007?

10 A Yes, sir.

11 Q You were pretty new at that time, I take it?

12 A Yes, sir.

13 Q Now, let me take you to January 7, 2007. Do you
14 remember what day of the week that was?

15 A It was a Sunday.

16 Q And around what part of the day was it that this
17 incident took place?

18 A It was around afternoon time, about 2:00 or 3:00.

19 Q How many men were involved in the incident?

20 A Two.

21 Q What were you doing when you first noticed them?

22 A I was helping another customer at the time,
23 basically, trying to get them out of the way so I could
24 take care of the two other men that were there.

25 Q Were you the only one working there?

1 A Yes, sir.

2 Q All right. So what did the two men do?

3 A They were looking at where I keep my chains. I used
4 to keep my chains there. I keep my rings there now, but
5 they were looking at chains. And then one of the men goes
6 around to see where I keep my diamond charms and
7 bracelets. And the other man followed.

8 Q And then what did you -- did you finish up with that
9 other customer?

10 A I did, yes, sir.

11 Q What did you do then?

12 A I greeted the two men.

13 Q Okay. And did you -- were they interested in
14 jewelry?

15 A Yes, sir.

16 Q And what -- tell us what happened between you and
17 them regarding jewelry.

18 A The first one asked to see a bracelet. It was an
19 eight-row diamond bracelet, yellow and white diamonds in
20 ~~it.~~ He asked to see it. And I showed it to him. I took
21 it out of the case and was still in the middle of a sales
22 pitch. That's what I do.

23 So I let him try it on and everything. He kept
24 asking if I take credit cards or debit cards. And I just
25 continued saying, yes, keeping my eyes on the jewelry, of

1 course.

2 Q And that was the bracelet?

3 A Yes.

4 Q How much was that bracelet worth?

5 A The bracelet might cost around \$1,500. I could sell
6 it anywhere from around \$2,500 to \$3,000.

7 Q Now, what about the other man?

8 A The other man was standing next to him and asked to
9 see a diamond necklace in a jewel setting princess cut and
10 a white and black diamond cross.

11 Q What is the value of that?

12 A The value of the cross, I think, was around \$2,000.
13 And the necklace was maybe around \$1,500, as well.

14 Q That's what you would sell it for?

15 A No. That was my cost. I would probably sell it
16 anywhere from -- the chain and charm together, I would
17 probably sell around \$3,500 to \$4,000.

18 Q All right. Now, tell us about what the men looked
19 like. Describe the two men. Start off with the one who
20 had the bracelet.

21 A The man that had the bracelet was wearing a black
22 hat, had sort of a -- I think a plaid jacket on and jeans.

23 Q Okay. Was he young or old?

24 A He was, I would say, mid 20's, late 20's, something
25 like that.

1 Q And what was his race?

2 A He was African-American.

3 Q And he was male, you said?

4 A Male.

5 Q What about the other one with the necklace?

6 A The one with the necklace had corn rows, a gold
7 grill. I think he was wearing a wind suit at the time.

8 Q Now, what do you mean by "corn rows"?

9 A Braids. Dreadlocks, braids.

10 Q And you said a "gold grill"?

11 A A gold grill. It would be caps on your teeth,
12 they're gold.

13 Q Is this sort of thing permanent?

14 A No, sir. You can remove it.

15 Q And you're familiar -- do you sell these in your --

16 A No, sir, I do not.

17 Q Are you familiar with that?

18 A Yes, sir.

19 Q Now, did you know either one of the men?

20 A At the time, I didn't recognize one of them. But I
21 later found out after searching the photo lineup that I
22 did know, I do believe, two or three men in the photo
23 lineup.

24 Q And what about as far as the two men who were there?

25 A I didn't recognize them at the time. Usually, I

1 would -- if I do recognize you, I will say something at
2 the time, but I didn't say anything. It's kind of what I
3 do. It's in my sales pitch. If I know it's you, I'm
4 going to say something trying to get you to buy it.

5 Q Sure. But you didn't recognize the men. But at some
6 later point, did you recognize --

7 A At some later time, yes, sir.

8 Q And which of the two men did you recognize?

9 A The one with the braids.

10 Q Okay. And how did you know him?

11 A From school.

12 Q Were you a close friend with him?

13 A I might have had a gym class with him. I might have
14 had a couple of classes with him.

15 Q Did you remember his name?

16 A Yes, sir. After looking at my yearbook, I did.

17 Q Okay. But the day this happened, did you recognize
18 him?

19 A No, sir.

20 Q So when was it that you recognized him?

21 A I recognized him on the 8th after looking at my
22 yearbook. I thought that I recognized him. And I looked
23 at my yearbook at home and I found out it was him.

24 Q And that was after you looked at the photo lineup?

25 A Yes, sir.

1 Q Okay. Now, what did the two men do with the jewelry
2 that you had given them?

3 A The one wearing the bracelet kept trying it on, you
4 know, looking at it in the mirror, things like that. The
5 one with the necklace, the chain and charm, asked to see a
6 mirror so he could look at it, and asked if the chain and
7 charm would match the gold grill in his mouth. Of course,
8 I'm going to say, yes. I'm a salesman.

9 So they were looking at it. I kind of tried to get
10 the bracelet back. I kind of almost had my hand on the
11 bracelet. At that time, I saw the one with the necklace,
12 chain and charm, go to my right and the other one go to my
13 left and start running through the mall.

14 Q Did you notice anything before?

15 A Yes, sir. I noticed like one of them kick under my
16 kiosk through the glass, like one of them like kind of
17 nudged a leg.

18 Q Of the other one?

19 A Of the other one.

20 Q Okay. And how long had you been talking to the men
21 before they ran?

22 A Maybe two and a half minutes.

23 Q Okay. So you were pretty close to them?

24 A Pretty close.

25 Q Were you able to get a good enough look at them to

1 recognize them later in the photo lineup?

2 A Yes, sir.

3 Q Where did they go?

4 A They headed down the hallway towards Dillards.

5 Q What did you do when you saw them run off?

6 A I then chased. I kind of -- you know, for a second,
7 I hesitated not knowing what to do. And then I ran after
8 them.

9 Q So you were a few seconds behind them?

10 A I was about 15 yards, 20 yards away from them.

11 Q Now, had anything like this ever happened to you
12 before?

13 A No, sir.

14 Q How far did you follow them?

15 A I followed them all the way down to Dillards. I do
16 believe we have a map.

17 (WHEREUPON, State's Exhibit No. 2 was marked for
18 identification only.)

19 BY MR. MOYER:

20 Q I want you to take a look at State's Exhibit No. 2.
21 I believe it's the diagram that's inside. Do you
22 recognize what that is?

23 A Yes, sir. It's the Haywood Mall map.

24 Q Is that an accurate representation of the layout of
25 Haywood Mall?

1 A Yes, sir.

2 Q And it shows where these events are that you've been
3 describing?

4 A Yes, sir.

5 MR. MOYER: I move State's Exhibit No. 2 into
6 evidence.

7 MR. POSEY: No objection, Your Honor.

8 THE COURT: It's admitted.

9 (WHEREUPON, State's Exhibit No. 2 was admitted into
10 evidence.)

11 BY MR. MOYER:

12 Q If I could ask you to just step aside, because this
13 is going to display behind you.

14 A Okay.

15 MR. MOYER: One moment. Let me get it set up.

16 (Pause.)

17 BY MR. MOYER:

18 Q Can you start off by using that laser pointer and
19 giving the jury an idea of where you were?

20 A My store is located right here, right around here.

21 Q Okay. And which way did the men run?

22 A They ran out this way, down through here.

23 Q And where did they end up going?

24 A They ended up going out here into a loading area
25 here.

1 Q And that's where the other -- that's where the
2 incident outside took place?

3 A Yes, sir.

4 Q Okay. Show us, again, where it took place outside.

5 A Right around here. There's an exit here, like UPS
6 and Fed Ex comes through here to deliver. And then
7 there's a big loading area where trucks come to deliver to
8 J.C. Penney.

9 Q Okay. Thank you.
10 Now, so while you were chasing these men, did they
11 ever stop or slow down or anything?

12 A No, sir.

13 Q You told us very briefly, but tell us, when you got
14 outside, what did you see them going toward, or what did
15 they do?

16 A When they got outside, I kind of lost track of them.
17 And then I turned and I saw -- I heard a door slam. So I
18 turned to look. And I saw them getting into a white
19 Pontiac Vibe.

20 Q And where was it parked?

21 A It was parked -- actually, not -- there were
22 dumpsters there at the time. It was kind of near
23 dumpsters like in a loading area. There's no parking
24 around that area. But it was a pretty busy Sunday. So
25 there were kind of cars around that area.

1 Q Okay. And there are a lot of dumpsters?

2 A There were at the time, yes, sir.

3 Q Okay. You say you saw them go towards a car. Did
4 either of the two men get in the car?

5 A Yes, sir. The man with the hat got in the car in the
6 driver's seat.

7 Q Okay.

8 A At that time, I saw Kashif, who works at another
9 jewelry store down the way, actually, come out of a
10 doorway, like a delivery doorway, from the back hallway
11 and he grabbed the man, Mr. Bolt, and kind of kicked him
12 into the car. At that time, I was kind of out of breath.
13 I had a lot of ground to cover.

14 So I kind of started jogging up to the car. At that
15 time, I see Kashif leave the area. And, at that time, I
16 see -- I hear, I'm going to shoot this Mother Fucker. And
17 I see him -- the door is here and the car is here. And I
18 see him reach down and pull something out like this. And,
19 at that time, I just ducked out of the way.

20 Q When you saw him pull something up, what did you see?

21 A It was metallic in color. It kind of resembled a
22 .22. But I didn't, actually, see a gun. I didn't want to
23 stick around to find out.

24 Q Okay. So where were you in relation to the car?

25 A I was probably about 15 feet away.

1 Q And were you to either side?

2 A I was kind of in front of the door at the time, in
3 front of the car area.

4 Q So if this table right here were the car, you were --

5 A I was standing about right there.

6 Q So you were off to the side, to the passenger side a
7 little bit?

8 A The passenger side.

9 Q The car was facing towards you?

10 A Yes, sir.

11 Q And when you heard him say what you just told us he
12 said, you said the door was open?

13 A It was ajar, yes.

14 Q And where was he standing?

15 A He was standing behind the door.

16 Q Sort of right --

17 A Yes, sir.

18 Q -- in that area?

19 A Yes, sir.

20 Q And just so we're clear on this, which of the two men
21 was it that pulled out this object that looked, to you,
22 like a gun and said that?

23 A It was the Defendant.

24 Q You're talking about Carlos Bolt?

25 A Mr. Bolt, yes.

1 Q And was he the one that had the bracelet or the
2 necklace?

3 A He had the necklace.

4 Q Now, let me ask you this. When you showed him the
5 necklace, what did he do with it? Let me back up to one
6 other question.

7 A Okay.

8 Q When you showed him the necklace at the kiosk before
9 he ran, what did he do with the necklace?

10 A He put the necklace on. I kind of -- I didn't want
11 to keep my eyes off the two men. So I reached back and
12 grabbed a mirror to let him see it on him. And he kept
13 asking if it matched his teeth. He kept smiling in the
14 mirror, you know, asking if it would match his teeth.

15 Q Okay. But it was around his neck?

16 A Yes, sir.

17 Q All right. Now, when you saw this object in his
18 hand, you heard him say what he did. Tell us again, what
19 was your reaction? What did you do?

20 A I was scared. I, basically -- for anyone that was --
21 for Kashif's safety and anyone that might have been
22 following me, I just yelled out, He's got a gun. And I
23 hit the deck. There was another car kind of beside them,
24 probably a space over, and I got behind the tire.

25 Q And what happened when you got behind the tire?

1 A I got behind the tire, and all I heard then was
2 screeching tires and them leaving the parking lot at a
3 fast speed.

4 Q Okay. After the car left, what did you do?

5 A I kind of tried to look for the tag, but I was kind
6 of in shock. I didn't get a good look at it. Everything
7 was kind of blurry at that time. It was kind of a life
8 flashing before my eyes experience. And it was kind of
9 scary.

10 Q Okay. So you went back inside?

11 A I went back inside, yes, sir. At that time, the
12 security officer had come out and there -- and Kashif had
13 said he had gotten the tag.

14 Q Did you get either of the pieces of jewelry back
15 ever?

16 A Yes, sir. I did receive the bracelet back.

17 Q And that was a while later?

18 A Yes, sir. It was probably a month and a half later.

19 Q Okay. Now, did you meet with the police officer the
20 next day to view a photo lineup?

21 A Yes, sir, I did.

22 Q Where did that take place?

23 A It happened at my kiosk, Gold Gallery.

24 Q Do you remember around what time of day it was?

25 A It was around afternoon time.

1 Q So it was somewhere around 24 hours after the
2 incident?

3 A Yes, sir.

4 Q All right. Now, when the officer met with you, you
5 say he showed you a display of photographs?

6 A Yes, sir.

7 Q Okay. And when he showed you that display, did he,
8 at any time, lead you to believe that he expected you to
9 pick someone out of there or he --

10 A No, sir. He just showed it to me.

11 Q And did he put any pressure on you to pick any
12 particular person?

13 A No, sir.

14 Q Did he influence your decision at all when he showed
15 you that lineup?

16 A No, sir.

17 Q Now, when you were shown that photographic lineup,
18 did you see one of the men who had done this?

19 A Yes, sir, I did.

20 Q And which one did you see?

21 A Mr. Bolt.

22 Q You're talking about the Defendant in this case?

23 A Yes.

24 Q Okay. Did you look over that lineup closely?

25 A Yes, sir.

1 Q Did you tell the detective which person you picked
2 out?

3 A Yes, sir, I did. I circled it and I initialed it.

4 Q Was there any doubt as to your selection?

5 A No, sir.

6 Q Let me show you what's been marked as State's Exhibit
7 No. 1. Can you look that over and see if you recognize
8 that?

9 A Yes, sir.

10 Q And how are you able to recognize that?

11 A That's my signature here. This is the exact copy
12 that he showed me.

13 Q You said -- is that your initials?

14 A My initials, yes, sir.

15 Q And so is that the photo lineup the investigator
16 showed you?

17 A Yes, sir.

18 Q On January the 8th?

19 A Yes, sir.

20 Q Now, you mentioned, at some point, you recognized --
21 so was it -- at the time you were shown this lineup, was
22 that when you recognized Mr. Bolt?

23 A I recognized, at least, two on there. Like I said, I
24 went to a small school, so a lot of people, we knew each
25 other. And from mutual friends, I've seen people. And I

1 do work at a jewelry store, so I see a lot of folks.

2 Q So you're telling us you recognized one or two other
3 people on the lineup?

4 A Yes, sir.

5 Q That you had known before, also?

6 A Yes, sir.

7 Q But as far as the person you had circled, Carlos
8 Bolt, is that the time where you sort of remembered who he
9 is?

10 A A little bit, yeah. Like I said, I had to look in my
11 yearbook when I got home just to see.

12 Q To make sure?

13 A To make sure, yes, sir.

14 Q Okay. Just to make it clear, the person you picked
15 out in the lineup and the person you've been talking about
16 who took the necklace and who pulled out something that
17 looked to you like a gun and said to you what he said at
18 that time, do you see that person here in the courtroom?

19 A Yes, sir.

20 Q And would you point him out?

21 A Right there.

22 Q You're pointing to the Defendant, Carlos Bolt?

23 A Yes, sir.

24 MR. MOYER: All right. Please answer any questions
25 the Defense may have.

1 MR. POSEY: May it please the Court, Your Honor?

2 CROSS-EXAMINATION

3 BY MR. POSEY:

4 Q Mr. Day, let me take you back to the time of the
5 alleged robbery. Let me just ask you, are you the owner
6 of the kiosk?

7 A No, sir. I'm a sales associate. I'm the assistant
8 manager.

9 Q Okay. When they -- when you were hired, did they
10 have any training for you about what would happen in a
11 robbery situation or anything of that nature?

12 A No, sir, not that much. I just got trained on the
13 jewelry aspect of it.

14 Q Well, let me go back a little bit and ask you about
15 customer service. Is it common practice for you to let
16 people, actually, put the jewelry around their neck?

17 A Yes, sir.

18 Q Is that acceptable corporate policy?

19 A Yes, sir.

20 Q It wouldn't be unusual for you to let people try it
21 on?

22 A No, sir.

23 Q Even if you've got multiple customers?

24 A No, sir.

25 Q When you said you chased the two gentlemen out of the

1 mall, you said you hesitated. How long did you hesitate?

2 A Maybe a split second. I mean, at that time, time
3 just kind of slowed down. I mean, it kind of stood still.

4 Q Were you gaining ground on them?

5 A I was gaining.

6 Q Were you after the first person out of the door that
7 you had been chasing?

8 A The first person, I do believe so, yes, sir.

9 Q You were the first person?

10 A Outside of the door that I went out.

11 Q Okay. There was more than one person chasing them,
12 though; is that correct?

13 A Yes, sir.

14 Q And you were the first to be out of the door?

15 A At the time, I didn't know that I was the only
16 person -- I didn't know that there were other people
17 chasing. I thought I was the only person.

18 Q Okay. So, at the time, you thought you were the
19 first person out?

20 A At the time, yes, sir, until I saw Kashif, then I
21 didn't know.

22 Q Okay. Was there anybody else chasing?

23 A Yes, sir. After the car had left, I found out there
24 was another person chasing them, too.

25 Q Were you -- you don't know the location where he was

1 at the time you were chasing him?

2 A No, sir.

3 Q You gave a statement to law enforcement when this
4 happened, did you not?

5 A Yes, sir.

6 MR. POSEY: Do you mind if I show it to him?

7 MR. MOYER: (Mr. Moyer shook head.)

8 MR. POSEY: Your Honor, may I approach just in case
9 he needs it?

10 THE COURT: Sure.

11 BY MR. POSEY:

12 Q I'm just going to show you that in case you need to
13 refresh your memory or anything. Does that look like the
14 statement you gave law enforcement?

15 A Yes, sir.

16 Q Does anything look changed about it from your
17 appearance, or does it appear to be the statement you
18 gave?

19 A It is the statement.

20 Q Okay. You, basically -- if you want to take just a
21 second to review it. I'm just going to ask you a couple
22 questions about it.

23 A (Witness complied.)

24 Q Is there anywhere in that statement that you
25 mentioned a struggle with somebody else and one of the

1 defendants?

2 A No, sir, not at that time. I don't believe so.

3 Q At what point did you inform law enforcement that
4 there was a struggle between one of the defendants and
5 somebody else?

6 A I do believe I told the officer that was there.

7 Q Okay. Is that the same officer who took the
8 statement from you?

9 A Yes, sir.

10 Q Okay. But you -- did you write your own statement?

11 A Yes, sir.

12 Q Okay. Did anybody review it before you submitted it
13 to them?

14 A I don't believe so.

15 Q Okay. But it wasn't important enough for you to put
16 in the statement at that time?

17 A It was about 10 minutes after this all happened, and
18 everything was kind of coming together, so.

19 Q When you initially ran out of the mall, how far were
20 you away from the car when you stepped out of the door?

21 A When I stepped out of the door, I was probably about
22 30 yards away.

23 Q 30 yards away. And you didn't know where they were
24 at the time, that was your testimony; is that correct?

25 A No, sir, I did not.

1 Q Then you heard a car door slam. Is that what you
2 said?

3 A Yes, sir.

4 Q So that would -- to me, that would effect somebody
5 getting in and slamming the door?

6 A Yes, sir.

7 Q And from that point, did you run in that direction?

8 A Yes, sir.

9 Q Okay. Were there other -- I know Mr. Moyer asked you
10 this, but this is, basically, a parking garage, was it
11 not?

12 A The parking garage would have been to my right. This
13 was a loading area.

14 Q But I'm -- it was a general area where a lot of
15 vehicles would be in and out of this general area?

16 A Sometimes, yes. But most of the time, it's just a
17 loading area.

18 Q Okay. When you heard the car door slam, you ran, you
19 said. And how long did it take you to get to the car?

20 A Maybe five seconds, not that long at all.

21 Q And let me just go back over this. You say one of
22 the defendants was already in the car with the door shut?

23 A Yes, sir.

24 Q Mr. Bolt was in the process of some kind of struggle?

25 A Yes, sir.

1 Q When you heard what you said what Mr. Bolt stated
2 to -- and I guess it was directed to the other gentleman,
3 not to you; is that correct? The way I took your --

4 A He was looking at me when he said it.

5 Q How loud was it?

6 A Very loud.

7 Q Very loud. We're in a parking garage or deck-type
8 situation, so it kind reverberates anyway?

9 A Actually, this was out in the open.

10 Q Okay.

11 A It was in, like I said, a loading area.

12 Q Okay. So when you say "very loud," if I was standing
13 100 yards away, could I have heard it?

14 A No, sir. It was loud to me because it was directed
15 towards me.

16 Q And so give me a quantitative how loud?

17 A Maybe you could hear it from about 30 yards away.

18 Q Okay. This object you saw, you don't know if it was
19 a gun or not?

20 A No, sir.

21 MR. POSEY: One moment, Judge.

22 (Pause.)

23 BY MR. POSEY:

24 Q So any guess or whatever, it would be strictly a
25 guess on your part; is that correct?

1 A Like I said in my statement, it was a metallic object.

2 Q Which could be anything from a key to a piece of
3 metal; right?

4 A Yes, sir.

5 MR. POSEY: I have nothing further at this time, Your
6 Honor.

7 THE COURT: Any redirect?

8 MR. MOYER: Just a couple questions.

9 REDIRECT EXAMINATION

10 BY MR. MOYER:

11 Q That parking area, are there actual painted parking
12 spots?

13 A No, sir, there's not.

14 Q Who parks there?

15 A There are parking spots probably about 15 to 20 yards
16 down the way for J.C. Penney's, mall managers, and things
17 like that. This area is, actually, strictly prohibited
18 from parking.

19 Q And when the man said, I'm going to shoot this MF'er,
20 did you take it personally?

21 A Yes, sir, I did.

22 Q And why?

23 A He was looking at me. So I felt, at that time, that
24 I needed to get out of the way. I didn't want to find out
25 if it was a gun or not.

1 Q And that was at the same time you saw a metallic
2 object in his hand?

3 A Yes, sir.

4 MR. MOYER: Nothing else.

5 THE COURT: Recross?

6 MR. POSEY: No, Your Honor.

7 THE COURT: All right.

8 You can step down, sir.

9 We're going to take a short break for a moment. You
10 all can go back in the jury room.

11 (WHEREUPON, the jury was excused from open court at
12 approximately 11:14 a.m.)

13 THE COURT: All right. We'll take about a
14 five-minute break.

15 (WHEREUPON, a break was taken.)

16 THE COURT: All right. Bring in the jury.

17 (WHEREUPON, the jury came into open court at
18 approximately 11:25 a.m.)

19 MR. MOYER: The State would call Joshua Thompson.

20 THE CLERK: Mr. Thompson, if you'll pause at the end
21 of the bench there. Place your left hand on the Bible and
22 raise your right.

23 WHEREUPON,

24 JOSHUA PARKER THOMPSON,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you.

2 Please be seated.

3 State your full name for the record.

4 THE WITNESS: Joshua Parker Thompson.

5 DIRECT EXAMINATION

6 BY MR. MOYER:

7 Q How old are you?

8 A 25, sir.

9 Q Where are you working at right now?

10 A Golden Strip YMCA.

11 Q Now, you were at the mall on January the 7th, 2007,
12 where the incident involving the Gold Gallery was?

13 A Yes, sir.

14 Q What were you doing? Tell us what alerted you that
15 something was going on.

16 A I was walking with a friend of mine, we had just come
17 out of the Lids hat store. We had gotten down to about
18 where another jewelry store and Jarman shoes was when two
19 individuals pretty much broke through us. I was elbowed.

20 Q And tell us what you mean by two individuals broke
21 through you.

22 A They were running at a high rate of speed. And
23 instead of going around, they decided to, actually, run
24 between us. We were about shoulder to shoulder. During
25 that time, I took an elbow to the neck. And my friend

1 also took an elbow.

2 Q Did it knock you over?

3 A Close. It hit my friend a little more than it hit
4 me.

5 Q So which -- you told us the stores you were in front
6 of. Can you give us an idea in the mall where that was?
7 Was it near any of the big chain stores?

8 A It's right at -- it's the halfway point between J.C.
9 Penney and Dillards.

10 Q Okay. So which direction were you walking?

11 A Towards Dillards.

12 Q So you were walking away from the Gold Gallery then?

13 A Yes, sir.

14 Q And did the men come towards you or from behind you?

15 A They came from behind.

16 Q So you didn't see them until you felt them go by?

17 A No, sir.

18 Q What happened after you were hit?

19 A I heard an individual scream, Security. And at that
20 point in time, Ben hadn't, actually -- Mr. Day went by me
21 running. So I followed him in pursuit. He was the only
22 one running.

23 Q And did -- let me stop you real quick. You said,
24 Ben, were you referring to the witness who testified
25 earlier this morning?

1 A Yes, sir.

2 Q Did you know him at the time?

3 A No, sir.

4 Q And was he the one who was yelling?

5 A Yes.

6 Q When you heard him yell, what did you do?

7 A At that time, I looked back towards the direction the
8 yelling was coming from. At that point, he passed me and
9 he was running. And he pretty well kept up with them. He
10 was a little ways away, but he was gaining.

11 So I decided to take up pursuit with him. I figured
12 that nobody else would.

13 Q Okay. And did you follow him outside?

14 A Yes, sir.

15 Q And what did you see take place outside?

16 A When I came around the corner, I was behind him.

17 Q You were behind who?

18 A Mr. Day.

19 Q Okay.

20 A When I came out of the door, at that point, I saw the
21 passenger still trying to get into the car in the loading
22 zone. I saw another individual, at that point, who was in
23 a scuffle with the passenger. And at that -- at one
24 certain point, I had come down to a jog. Because I wasn't
25 sure what else was going to happen. I then heard the

1 individual, the victim, say that he had a gun. So I
2 stopped my pursuit and backed off the car.

3 Q What did Benjamin Day do when he said, He's got a
4 gun?

5 A He was ducking frantically trying to get away.

6 Q Okay. And then what happened after Ben yelled, He's
7 got a gun, and ducked away?

8 A At that point, the passenger was, finally, able to
9 get into the car. The next thing that happened was them
10 leaving at a high rate of speed.

11 Q What did you do as the car left, or when the car left?

12 A I was just in the process of getting the tag number
13 and description of the vehicle.

14 Q Now, did you notice -- you said there was that little
15 scuffle that was going on. Did you notice anything about
16 the passenger and about the way he got in the car or
17 anything like that?

18 A As far as getting into the vehicle, he was getting in
19 awfully awkward. He was -- the top half of his body was
20 moving towards the floorboard. Normally, I don't see
21 people get in a vehicle like that. Normally, you sit down
22 with your butt first.

23 Q Now, after the car left, what did you do?

24 A I -- at that point, we -- you know, Mr. Day came back
25 out. I was waiting for security. And I was starting to

1 head back inside. And I tried to keep up with Mr. Day.
2 He was in a pretty frantic mood trying to get back to his
3 gallery. But the security officer did show up outside and
4 was able to call 911.

5 MR. MOYER: Please answer any questions the Defense
6 has.

7 MR. POSEY: May it please the Court, Your Honor?

8 THE COURT: Uh-huh.

9 CROSS-EXAMINATION

10 BY MR. POSEY:

11 Q Mr. Thompson, let me take you back. You were -- you
12 said Mr. Day passed you and you turned around and began
13 chase with him?

14 A Yes.

15 Q How far do you estimate you were behind Mr. Day?

16 A Approximately anywhere from eight to 10 yards.

17 Q Okay. You gave a statement to law enforcement that
18 day, did you not?

19 A Yes, sir.

20 MR. POSEY: Your Honor, may I approach to show him
21 that?

22 THE COURT: Certainly.

23 You don't need permission to approach.

24 BY MR. POSEY:

25 Q I'm going to lay this up here in case you need to

1 refresh your memory at any point in time, because I'm
2 going to ask you a couple questions about it.

3 You indicated in your statement that you turned
4 around and began the chase, and you came out the door.
5 And then the way your statement -- did you -- let me ask
6 you this, did you write that statement?

7 A Yes.

8 Q And just take a second to look at it and make sure
9 nothing has changed about it. I want to make sure nothing
10 has been altered or anything, as far as you remember.

11 A That's it.

12 Q Okay. In the statement, you detail about the chase,
13 turning around, then the chase, and coming out the door.
14 Then I believe your statement is that when you walked out
15 the door, you saw two men getting into a white four-door
16 sedan, I believe --

17 A Correct.

18 Q -- is what your statement says?

19 A Yes.

20 Q And you say, At that time, two others joined me,
21 including the victim. Is that pretty much what your
22 statement says?

23 A Yes, sir.

24 Q I would refer just from that tone, that statement,
25 when you say they joined you, that they weren't with you

1 at the time. So how far apart were y'all?

2 A I think as far as that. The gentleman, Mr. Day, when
3 he came out, he was a little bit further ahead of me. As
4 far as being joined, that's when we were joined when we
5 were all outside.

6 Q Okay. But you stayed within a constant eight to 10
7 yards of him; is that correct?

8 A Yes, sir.

9 Q Now, based on your testimony and based on what's in
10 your statement, the only person that said anything about a
11 gun or anything that you heard was Mr. Day; is that
12 correct?

13 A Yes, sir.

14 Q So you didn't hear anybody shout, I'm going to shoot
15 this expletive?

16 A There was a lot of conversation, but, no.

17 Q And I think Mr. Day said he thought you probably
18 could hear that from 30 yards away, according to him. And
19 you were within a 30-yard range, according to your
20 testimony?

21 A Correct, sir.

22 Q You said -- now, when Mr. Day apparently said this to
23 you, did you hit the ground or did you duck or --

24 A No, sir.

25 Q Okay. At that point in time, did you have a clear

1 visual of the car?

2 A Yes. I had a clear visual of the car.

3 Q Were both individuals in the car at that time?

4 A Partially.

5 Q Was the car moving at that time?

6 A No, sir.

7 Q How long after that did the car start moving?

8 A A period of maybe eight to 10 seconds.

9 Q Okay. Did you ever see anything shiny, metallic, or
10 any kind of weapon, or anything in the hand of the
11 Defendant?

12 A No, sir.

13 MR. POSEY: I have nothing further at this time, Your
14 Honor.

15 MR. MOYER: A couple of follow-up questions.

16 REDIRECT EXAMINATION

17 BY MR. MOYER:

18 Q Now, you said there was a lot of conversation. And
19 that was taking place among who?

20 A That was taking place among the individuals in the
21 car.

22 Q In the car. So you're -- including the passenger?

23 A Yes, sir.

24 Q So there were words being said?

25 A Yes, sir.

1 Q Could you tell what they were saying?

2 A No, sir. I was not as much focused on that as I was
3 Mr. Day and making sure they weren't injured.

4 Q So you know something was being said, you just don't
5 know what?

6 A That's correct.

7 Q And in relation to the car, where were you when this
8 took place?

9 A The front side, more to the driver's side.

10 Q Okay. So if this is the car here and Ben was sort of
11 to the front over --

12 A He was more towards the passenger headlight side.

13 Q And you were behind Ben?

14 A Yes. I was behind Ben and more to the driver's side.

15 Q So you were back over there?

16 A Yes.

17 Q Did you have any -- the driver was in the car?

18 A The driver was in the car.

19 Q Did you have any -- was the car running?

20 A He was starting the car or in the process when we
21 first got out there, and the car was running.

22 Q So were you in the path of where the car would go?

23 A At first, yes.

24 Q So what was the focus of your attention during the
25 time you were there?

1 A My attention came down to, I don't think they'll run
2 me over.

3 Q So you focused on the driver?

4 A Yes.

5 MR. MOYER: Nothing further.

6 MR. POSEY: Nothing further, Your Honor.

7 THE COURT: All right. Sir, you can step down.

8 THE WITNESS: Thank you.

9 MR. MOYER: The State calls Kashif Khan.

10 THE CLERK: Sir, if you'll place your left hand on
11 the Bible and raise your right hand.

12 WHEREUPON,

13 KASHIF KHAN,

14 after first having been duly sworn, testified as follows:

15 THE CLERK: Thank you.

16 Please be seated.

17 Please state your full name for the record.

18 THE WITNESS: What?

19 THE CLERK: State your full name for the record.

20 THE WITNESS: Kashif Khan.

21 DIRECT EXAMINATION

22 BY MR. MOYER:

23 Q Would you spell your first name for us, Mr. Khan?

24 A K-A-S-H-I-F.

25 Q And your last name?

1 A K-H-A-N.
2 Q K-H-A-N?
3 A Uh-huh.
4 Q That's Khan?
5 A Khan.
6 Q Mr. Khan, where do you work?
7 A I work at the Shirin Jewelers.
8 Q How do you spell Shirin?
9 A S-H-I-R-I-N.
10 Q Where is that located?
11 A It's between Dillards and J.C. Penney.
12 Q So it's in Haywood Mall?
13 A Yes, sir.
14 Q On the first floor?
15 A Lower level.
16 Q Okay. What kind of business is that?
17 A It's a jewelry and diamond.
18 Q It's a jewelry and diamond store?
19 A Uh-huh.
20 Q And so is it like a kiosk like the Gold Gallery or is
21 it a regular inline store?
22 A It's a regular inline store.
23 Q Were you working on January the 7th of 2007, when
24 this incident took place with Benjamin Day and the Gold
25 Gallery?

1 A Yes, sir.

2 Q Now, what -- were you inside the store when that took
3 place?

4 A Yes, sir.

5 Q Okay. What alerted you? How did you know something
6 was going on?

7 A I saw two guys running with the -- some kind of shiny
8 jewelry. And I saw Ben running after them. So I knew
9 something had happened.

10 Q Was Ben saying anything?

11 A Yeah. Ben was shouting, Help, security, stop them.

12 Q Did you know -- you knew Ben then?

13 A Yeah. I knew Ben.

14 Q What did you do when you saw this?

15 A I came out from my store and take a shortcut from
16 next door, the shop Candy Works, and their door exit to
17 the loading dock parking lot.

18 Q And so you took a shortcut to what, the loading dock?

19 A Yes, sir.

20 Q So you didn't follow Ben and the two men?

21 A No.

22 Q Okay. I'm going to show this diagram of the map real
23 quickly. With the laser pointer, there's a button on
24 there. I want you to show us -- Mr. Khan, can you point
25 out where your --

1 A I work right here.

2 Q Number 31?

3 A Yep.

4 Q And so the two men and Ben ran by. Can you sort of
5 show us where they ran?

6 A They ran in front of my store this way.

7 Q And where did you go?

8 A I came out of my store. And next door, there's a
9 shop, Candy Works, and there's a back door going towards
10 the parking lot.

11 Q Okay. And so that was -- and if you wanted -- it's
12 store number 30?

13 A Yeah, number 30.

14 Q And that back door took you right out into that area,
15 that parking lot?

16 A Yes.

17 Q Okay. What did you see going on when you got
18 outside?

19 A I saw two guys. They were running up to their car.
20 And they the same guys which I saw them that was running
21 in front of my store.

22 Q The same guys running by your store?

23 A Yeah.

24 Q Okay.

25 A And one of the guys was trying to open the door. And

1 I just jumped at him and tried to grab him from the back.

2 And he pushed me. Then I kicked him on his back.

3 Q What happened when you kicked him?

4 A He fall down.

5 Q And what did he do then?

6 A He started shouting, I've got a gun and I'm going to
7 shoot you. Then I ran away.

8 Q Did you hear Ben when he said that?

9 A Yeah.

10 Q Did you hear Ben --

11 A Yeah.

12 Q What did you hear Ben --

13 A Ben said, He got a gun, he got a gun.

14 Q Okay. And what did Ben do?

15 A Ben, he was hiding next to their car, 10 yards, 15
16 yards from there. He was hiding.

17 Q And when you heard the man say, I'm going to shoot,
18 I've got a gun, whatever, what did you do?

19 A I ran. There was a dumpster -- a garbage dumpster
20 and I just hide over there.

21 Q Okay. Now, when you -- you said you first went after
22 him and grabbed him from behind. Did he have the door
23 open at that time?

24 A He was trying to open the door. He had it on his
25 hand and one other hand, he have the jewelry.

1 Q And what happened when you grabbed him?

2 A I grabbed him and he pushed me. And then I kicked
3 him and he fall down.

4 Q Okay.

5 A Then he started yelling and shouting that he's got a
6 gun, he's going to shoot me.

7 Q And then what happened after you ran behind the
8 dumpster?

9 A He sit in the car and the driver start the car. And
10 I came back again and write down the tag number of the
11 car. And they left.

12 MR. MOYER: All right. Please answer any questions
13 the Defense has.

14 CROSS-EXAMINATION

15 BY MR. POSEY:

16 Q What made you go out the shortcut to the loading deck
17 area?

18 A The same thing happened on Christmas Eve with me. A
19 guy took the jewelry, and it was the exact same situation.

20 Q Okay. But the way they were running when they left
21 your store, there were about two or three different ways
22 they could have gotten out of the mall; is that correct?

23 A Yeah.

24 Q Okay. So, basically, you just took a wild guess and
25 got lucky?

1 A Yeah.

2 Q Okay. When did you initially talk to the police
3 after this incident?

4 A I write down the tag number and I give it to the
5 security. And then I came to my store because nobody was
6 there.

7 Q Okay. And when did you first talk to law
8 enforcement? That day?

9 A No. I was at my work, nobody come to me.

10 Q Okay. How long before anybody from law enforcement
11 contacted you?

12 A Like two weeks ago.

13 Q Two weeks ago?

14 A (Witness nodded.)

15 Q Okay. That's the first time you've heard from
16 anybody with law enforcement in this case?

17 A Yes, sir.

18 Q And this happened over a year ago; correct?

19 A Yes, sir.

20 Q Nobody came to you that day and wanted to take any
21 kind of formal statement or anything?

22 A No.

23 Q And you said you immediately handed all this
24 information to Mr. Day right after the incident; is that
25 correct?

1 A Yes.

2 Q Have you spoken with Mr. Day since this incident?

3 A Yeah. I talk to him the same day.

4 Q So it's not like you hadn't seen each other since
5 January?

6 A No. I see him every day.

7 Q Okay. Did he ever mention anything to you about
8 contacting law enforcement or anything, or anybody in law
9 enforcement wanting to speak to you?

10 A No.

11 Q Okay. When you say you heard the Defendant say, I'm
12 going to shoot you, I've got a gun, I'm going to shoot,
13 from what you testified to, he was facing you at the time?

14 A No. He was trying to open the door.

15 Q Okay. So he wasn't facing anybody, he was facing the
16 door?

17 A Yeah. He was just trying to get in the car.

18 Q And that's when he said, I've got a gun, I'm going to
19 shoot somebody?

20 A Yeah.

21 Q He was facing the door, but he wasn't facing anybody?

22 A He was facing the door. I didn't see him.

23 Q Okay. And up until two weeks ago, you had never
24 talked to anybody in law enforcement about this incident?

25 A No.

1 MR. POSEY: No further questions.

2 MR. MOYER: Nothing further.

3 THE COURT: You can step down, sir.

4 MR. MOYER: The State calls Ben Cothran.

5 THE CLERK: Sir, please, place your left hand on the
6 Bible and raise your right hand.

7 WHEREUPON,

8 BENJAMIN HENRY COTHRAN,
9 after first having been duly sworn, testified as follows:

10 THE CLERK: Thank you.

11 Please be seated.

12 Please state your full name for the record.

13 THE WITNESS: Benjamin Henry Cothran.

14 DIRECT EXAMINATION

15 BY MR. MOYER:

16 Q Where do you work?

17 A Greenville City Police Department.

18 Q How long have you been in law enforcement?

19 A A little over four years.

20 Q Has it all been with the Greenville Police
21 Department?

22 A Yes, sir, it has.

23 Q What is your position?

24 A I'm a patrol officer.

25 Q What are your duties as a patrol officer?

1 A I am assigned to a section of the city to answer
2 routine calls, handle wreck investigations, typical calls
3 for service.

4 Q Now, did you -- were you working on January the 7th,
5 2007?

6 A Yes, sir, I was.

7 Q Did you get the call about this case that we're
8 talking about here today?

9 A Yes, sir.

10 Q Now, what time did you get the call?

11 A I was dispatched to the call at approximately 3:28 in
12 the afternoon.

13 Q Were you able to respond right away?

14 A Yes, sir.

15 Q So you were able to get there pretty quickly?

16 A Yes, sir. According to the report, my arrival time
17 was four minutes later.

18 Q What was the address you were called out to?

19 A [REDACTED] Haywood Mall, in the city limits of
20 Greenville.

21 Q Where did you go in the mall?

22 A I went through J.C. Penney's. I was advised the
23 kiosk -- this location was located at the kiosk in front
24 of J. C. Penney's.

25 Q And who did you meet with?

1 A I met with Mr. Day and Mr. Thompson both.

2 Q Now, Mr. Day being the first witness who testified?

3 A Yes, sir.

4 Q Tell us how he was acting when you -- or what his
5 demeanor was when you met with him.

6 A He was visibly shaken. He had what we call an
7 adrenaline rush. He was pretty well souped up. He had
8 been in a foot chase. He had had a large amount of
9 merchandise taken from him. And when I got there, he said
10 that the guy said he had a gun, which definitely got my
11 attention.

12 Q So he appeared to you to be real upset?

13 A Yes, sir.

14 Q So what -- did he tell you then what had happened?

15 A He briefly described, as he stated earlier, that he
16 was showing two pieces of jewelry to two black males, that
17 as he was turning to get the mirrors, he was kind of
18 distracted. Both men went on either side of the kiosk and
19 he began a foot chase down the center of the mall.

20 Q Okay. And he followed them and took up chase?

21 A He said he followed them out in the parking lot where
22 one of the subjects stated that -- as he quoted to me,
23 that he was going to shoot this mother fucker.

24 Q And then did he talk about anything that he saw?

25 A He said he observed the subject appear to pull up a

1 shiny silver item in his right hand. He could not
2 identify positively or negatively, at that time, whether
3 it was, in fact, a handgun. I went under the presumption
4 that it was and I notified dispatch and other responding
5 units to use a heightened sense of caution.

6 Q Okay. Now, after talking to Mr. Day, did you -- what
7 else -- you spoke to Mr. Thompson as well?

8 A Yes, sir.

9 Q You took statements from the two?

10 A Yes, sir.

11 Q Now, when you took the statements from them -- how do
12 you do that? You didn't write it for them?

13 A No, sir.

14 Q You just give them the forms and tell them to write
15 what happened?

16 A Yes, sir. I give them the forms and instruct them
17 how to properly document their name, address, telephone
18 number, age, and describe in as much detail as possible
19 what happened.

20 Q All right. And then you called out -- did you call
21 anybody else to the scene?

22 A Yes, sir.

23 Q Who was that?

24 A I called forensics.

25 Q And what was the reason for calling forensics?

1 A Mr. Day had stated -- shown me on the kiosk where the
2 two subjects had been standing. I observed what appeared
3 to be latent evidence on the glass. I believe Mr. Day had
4 stated that he had cleaned it relatively recently. It
5 wasn't smudged up, but there appeared to be good evidence.
6 I requested forensics to come and take it. I tried to
7 secure the scene with different stands that were in the
8 mall.

9 MR. MOYER: Please answer any questions the Defense
10 has.

11 CROSS-EXAMINATION

12 BY MR. POSEY:

13 Q Mr. Cothran, when you met with Mr. Day, did he
14 mention anything about Mr. Khan's involvement in this
15 incident to you?

16 A I don't recall, sir.

17 Q Based on your notes, your investigative notes -- I
18 don't think I saw any mention in it in your investigative
19 notes or filed reports. Is there something there I would
20 have missed regarding Mr. Khan?

21 A No, sir.

22 Q Did Mr. Day give you the tag number of the car?

23 A I believe that was, actually, Mr. Thompson.

24 Q Mr. Thompson gave you the tag number of the car?

25 A Yes.

1 Q So there was no mention about a man, actually,
2 fighting with one of the defendants ever relayed to you at
3 the time of this incident occurring?

4 A They stated there was someone else there, but, at the
5 time, I could not locate them. They were not standing
6 immediately nearby. The only other subject I remember
7 being there was Mr. Thompson's friend, who stated he
8 really didn't observe anything past the initial contact of
9 being struck from the rear.

10 Q When you kind of explained how you give them the
11 statement form, you gave Mr. Day and, I believe,
12 Mr. Thompson the statement forms and asked them to fill it
13 out. Do you review those with them after they fill them
14 out?

15 A I review them to make sure that there's -- they're
16 trying to communicate what they're trying to. If I
17 remember correctly, Mr. Day was on one side of the counter
18 or one end of the kiosk and Mr. Thompson was on the other
19 end of the kiosk.

20 Q Did both of them tell you that was pretty much a full
21 and accurate description, as best they could remember?

22 A The best they could remember, yes, sir.

23 Q And how long after the incident did you, actually,
24 take these statements, or did they give these statements?
25 An hour? Two hours?

1 A No, sir. Probably 20 minutes.

2 Q 20 minutes?

3 A Give or take.

4 MR. POSEY: One moment, please, Your Honor.

5 (Pause.)

6 MR. POSEY: I have nothing further, Your Honor.

7 MR. MOYER: No redirect.

8 THE COURT: All right. Sir, you can step down.

9 THE WITNESS: Thank you, Your Honor.

10 MR. MOYER: The State calls Officer Aubrey Tomlin.

11 THE CLERK: Sir, please, place your left hand on the
12 Bible and raise your right hand.

13 WHEREUPON,

14 AUBREY TOMLIN,

15 after first having been duly sworn, testified as follows:

16 THE CLERK: Thank you.

17 Please be seated.

18 Please state your full name for the record.

19 THE WITNESS: Aubrey Marel [phonetic] Tomlin.

20 DIRECT EXAMINATION

21 BY MR. MOYER:

22 Q Where do you work?

23 A Greenville County Department of Public Safety. I'm
24 assigned to the crime scene section.

25 Q Okay. How long have you been in the crime scene

1 section?

2 A In June, it will be seven years.

3 Q All right. And what do you do with forensics?

4 A Well, like I said, I'm assigned to the crime scene
5 section and, basically, we go out to the field. We'll
6 photograph, collect evidence, dust for latents, basically,
7 do the collection for the investigating officer so they
8 don't have to focus on that and they can spend more time
9 interviewing witnesses, suspects, or victims.

10 Q Okay. Does that include taking fingerprints?

11 A Yes, sir.

12 Q Okay. Were you called out to the crime scene that
13 we're talking about here today at Haywood Mall on January
14 the 7th, 2007?

15 A Yes, sir.

16 Q Around what time of day was it that you were called?

17 A I've got it recorded that I got the call at 4:51 p.m.

18 Q Okay. And you got out there pretty quickly?

19 A I was there by 5:20.

20 Q And what did you do while you were out there?

21 A Well, I met up with the officer and had a brief
22 scenario. Basically, he said that two unknown suspects
23 had been in a certain area of the kiosk and that they had
24 asked to look at a necklace. And when the clerk put it
25 down, they grabbed the necklace and fled the area.

1 Q Okay.

2 A And I, basically, concentrated on that area that was
3 roped off. And I dusted for prints, lifted a few, and
4 left.

5 Q Now, tell us what you mean by how you look for
6 prints. And you used the word "dusted." What is the
7 process you use to get fingerprints?

8 A What we use is a carbon powder with a fiberglass
9 filament brush. And the powder adheres to any debris,
10 greases, oils, whatever it might be for ridge detail.
11 And, like I said, it highlights that. And when it does
12 that, we put tape on it, just regular Scotch tape with a
13 little bit of frosting on the back, and place it on a
14 white background so you can easily see it. And that helps
15 out our latent examiners a whole lot.

16 Q And what do you do with those prints after you
17 collect them?

18 A I fill out the front of the cards, the date, the
19 time, the incident, and the general location of where it
20 was. My name is on there, my unit number, at the time, is
21 on there, and how many I collected or turned in.

22 We take them back to our office and we have what's
23 called a latent envelope. And we put all that in and put
24 the victim on the front, the address, where we got it, my
25 name, and the requesting officer. We put that in the

1 lockbox where it's there until one of the latent examiners
2 come by and pick it up.

3 Q Were you able to collect any in this case?

4 A Yes, sir.

5 (WHEREUPON, State's Exhibit Nos. 3 and 4 were marked
6 for identification only.)

7 BY MR. MOYER:

8 Q Let me show you State's Exhibit Nos. 3 and 4. Can
9 you just take a look at them and determine if you can
10 recognize those items?

11 A Yes, sir.

12 Q What are they?

13 A They're latent four of five and five of five that I
14 pulled that day.

15 Q And how are you able to recognize them?

16 A I have a unique sloppy handwriting. I recognize my
17 handwriting.

18 Q You recognize your handwriting?

19 A Yes.

20 Q Did you fill out each of those cards?

21 A Yes, sir.

22 Q What sort of information do you put on the card?

23 A Like I said, it's got the case number, the date, the
24 incident type, the location of where I lifted them from,
25 the approximate area, and down here, it's got --

1 Q I don't want you to show it yet. It's not in
2 evidence. Just tell us what --

3 A It's my name and how many of how many I pulled.

4 Q And on the back side -- well, when do you fill out
5 that information?

6 A After I pull them.

7 Q What do you mean after you pull them?

8 A After I pull the tape off of the surface.

9 Q And then you fill out all the information on the
10 card?

11 A Yes, sir.

12 Q And what is on the other side of each of those cards?

13 A That is the latent lift, you tape them and lift them
14 off.

15 Q Which that would be what you just described how you
16 dust for prints?

17 A Yes, sir.

18 Q And then you, actually, put it on that card. Okay.

19 Where, at this location, did you find those two
20 fingerprints?

21 A The way my diagram is here, if you're standing behind
22 the counter, it would be the front counter towards the
23 right-hand side, if you're looking over the counter.

24 Q So what kind of surface was it?

25 A It was glass. I believe it had a metal trim around

1 it.

2 Q You said the officer was able to point out to you the
3 area where you were --

4 A Yes, sir.

5 Q Now, what did you do with those cards after you
6 finished filling out all that documentation and --

7 A I took them back to our office, filled out a latent
8 envelope card, and put it in the lock box.

9 Q And was that the last you had anything to do with it?

10 A Yes, sir.

11 Q So you don't do the analysis?

12 A No, sir. We don't have time to do that. That's why
13 we have dedicated latent examiners.

14 Q Tell us about this -- what this lock box is.

15 A It's in the crime scene office where we keep our
16 reports that we turn in. And only the latent examiners
17 have keys to them.

18 Q So when you put something in the lock box, who can
19 get something out of that lock box?

20 A No, sir.

21 Q Who is able to do --

22 A The latent examiners.

23 Q Just the examiners?

24 A Yes.

25 Q No one else?

1 A No one.

2 MR. MOYER: I have no further questions for this
3 witness at this time.

4 MR. POSEY: No questions.

5 THE COURT: All right. You can step down.

6 MR. MOYER: The State calls Captain Jackie Kellett.

7 THE CLERK: Ma'am, if you'll put your left hand on
8 the Bible and raise your right hand.

9 WHEREUPON,

10 JACKIE F. KELLETT,
11 after first having been duly sworn, testified as follows:

12 THE CLERK: Thank you.

13 Please be seated.

14 Please state your full name for the record.

15 THE WITNESS: It's Jackie F. Kellett.

16 DIRECT EXAMINATION

17 BY MR. MOYER:

18 Q Where do you work?

19 A I'm employed by the Greenville County Department of
20 Public Safety in the forensic division. And I'm a captain
21 over the forensic division.

22 Q What are your duties?

23 A My duties, as captain, I oversee the management of
24 the crime laboratory, the crime scene section, the latent
25 prints section, and the identification section. I also

1 function as the lead latent print examiner for Greenville
2 County.

3 Q Okay. How long have you been analyzing fingerprints?

4 A I have been a certified police officer since 1978.
5 I've been employed with Greenville County since 1982. I
6 began my career as a crime scene technician, just like
7 Mr. Tomlin. And, in 1991, I transferred to the latent
8 prints section and have been doing latent print work since
9 that time.

10 Q And would you tell us about the education and
11 training you've had for your work as an examiner?

12 A I've completed 40 hours of basic fingerprint
13 identification at the South Carolina Criminal Justice
14 Academy. I've completed 80 hours of training -- it's
15 advanced latent fingerprint training by the FBI Academy.
16 I've completed a three-week course at the FBI Academy in
17 Quantico, Virginia. It's called Administration Advanced
18 Latent Fingerprint training. It's a more intense study of
19 fingerprint examination and palm print comparison.

20 I've completed a two-week school in Texas, called
21 Card Pack. And that's a more in-depth study of,
22 specifically, palm print identification and the study of
23 ridge detail. And, throughout the year, we have ongoing
24 latent fingerprint training. And we also do proficiency
25 testing. So it's a yearly basis that we do keep up with

1 our latent print training.

2 Q And do you have any idea how many fingerprints you've
3 examined over the years? Do you keep track of that sort
4 of thing?

5 A Hundreds of thousands of examinations since I first
6 began. I've been qualified and testified as an expert in
7 latent fingerprint identification in state, local, and
8 federal courts.

9 MR. MOYER: At this time, I move to have Captain
10 Jackie Kellett qualified as an expert in fingerprint
11 identification.

12 MR. POSEY: Your Honor, I won't be the first fool to
13 say Captain Kellett is not qualified -- I wouldn't be
14 foolish enough to say Captain Kellett is not qualified.

15 THE COURT: All right. Then she is qualified as an
16 expert in fingerprint analysis.

17 BY MR. MOYER:

18 Q Tell us what we mean by the terms a known print and a
19 latent print.

20 A A known print is a print that you take when you have
21 that individual person there in front of you. You know
22 who they are and they have signed a fingerprint card.
23 You've identified that individual and all 10 fingers are
24 placed on a fingerprint card with the right hand on the
25 top, left hand on the bottom.

1 A latent fingerprint is a fingerprint that -- the
2 word latent means hidden. Normally, when someone touches
3 something, they leave an impression behind. And that's
4 mainly from the oils and greases off of your fingers.

 So part of the crime scene technician's job is to
6 recognize those areas that may have been touched by a
7 suspect. They use this carbon-based powder, fingerprint
8 powder, dust this area, and the powder adheres to those
9 oil impressions left behind. And then you take the lift
10 tape, lift it off, and put it on a white contrasting back
11 card. That's what's called a latent print. You don't
12 know who left that print behind. It's unidentified at
13 that time.

14 Q Okay. Once you get a latent print, what is your job
15 to do with the latent print?

16 A Every morning, normally, me -- I go by the crime
17 scene office. And this lock box that Officer Tomlin was
18 talking about, it's where every latent print is placed in
19 a latent print envelope every morning. Only myself and
20 three other latent print examiners have keys to that box.

21 So I pick up the latent prints every morning, bring
22 them back to the office, start evaluating the cases, and
23 examine the latent prints and see if there are any we can
24 use for identification purposes.

25 Q Okay. And then when you have the cards, how do you

1 go about, actually, comparing a latent print?

2 A We use a magnifying glass. And you take the latent
3 print that was developed at the crime scene against your
4 known inked print and do a comparison of the two.

5 Now, everybody -- no two people have the same
6 fingerprints. You can have loops, whirls, and arches.
7 Those are the three basic pattern types. You could have a
8 mixture of loops, whirls, or arches, or just all of one.
9 But I start -- if I can identify what pattern type that I
10 think that latent print might be, whether it's a loop, I
11 look at my known print, see if that person has loops in
12 their fingers, and then start to look for a finger that's
13 the similar shape and looks like the pattern type that I'm
14 looking for. Once I find that this person has a loop in
15 their finger, for example, and my latent print is a loop,
16 then I start to look for individual points of comparison
17 that are in exactly the same place.

18 Once I've identified that, it's just a matter of
19 making sure that every point that I can see in the latent
20 print is also in the known inked print. And once I've
21 done that, I make -- I'm able to effect an identification
22 and say that this latent print was made by this
23 individual.

24 Q And do you have a peer review process in the office?

25 A Yes. We always do peer review. Once a latent print

1 examiner makes an identification, we give the case to
2 another latent print examiner and they, too, look at it
3 and either confirm the identification or say, no, I don't
4 think that is it.

5 Q Now, did you have an occasion to examine some
6 fingerprints in this case?

7 A Yes, I did.

8 Q Let me hand you what's been marked as State's Exhibit
9 Nos. 3 and 4. And can you take a look at them and tell us
10 if you recognize those?

11 A Yes, I do. These are part of the latent prints that
12 were developed by Officer Tomlin at the Gold Gallery at
13 Haywood Mall on January 7, 2007.

14 Q Okay. And that was in your possession?

15 A Yes, it was.

16 Q And around what time frame was it that you had them?

17 A I usually go by the crime scene office anywhere
18 between 7:00 and 7:30 every morning. So whatever shift
19 Officer Tomlin would have been working, either first or
20 second shift, they would place the latent envelope in the
21 lock box, and then I would pick it up the very next
22 morning. So it's a daily basis.

23 Q And did you do an examination with regard to these
24 two fingerprint cards?

25 A Yes, I did.

1 Q And what date was that?

2 A The examination was conducted the next morning on
3 January the 8th of 2007.

4 Q Okay. And so you got those cards from that lock box
5 that Officer Tomlin was talking about?

6 A Yes, I did.

7 Q And after you got them out of the lock box, what did
8 you continue to do with those -- well, what took place
9 with those cards?

10 A I had a known master fingerprint card to look at. I
11 conducted a comparison between the latent prints and the
12 known inked prints. And I was able to make an
13 identification on an individual.

14 Q Okay. And then after you made the identification,
15 what did you do with those two cards?

16 A I write up -- I notified Officer Burdette with the
17 Greenville Police Department that I had made a match. I
18 told him who the individual was. I prepare a case file
19 where I write a report, submit that written report, and
20 then these latents remain in my possession locked in my
21 office should they go to trial.

22 Q Okay. And did you bring those cards here to court
23 today?

24 A Yes, I did.

25 Q When they were in your custody, did you make any

1 markings or notations on the cards?

2 A Yes, I did.

3 Q Okay. And other than what you marked on the cards,
4 are they in substantially the same condition now as when
5 you got them out of the lock box?

6 A Yes, they are.

7 MR. MOYER: All right. At this time, I move to have
8 State's Exhibit Nos. 3 and 4 admitted into evidence.

9 MR. POSEY: No objection, Your Honor.

10 THE COURT: They're admitted.

11 (WHEREUPON, State's Exhibit Nos. 3 and 4 were
12 admitted into evidence.)

13 BY MR. MOYER:

14 Q You told us you did a comparison against some known
15 fingerprints in this case. Tell us what the results of
16 your examination revealed.

17 A I was able to identify that latent number four, which
18 was developed on the exterior portion of the glass top of
19 the display counter, this latent impression was made by
20 the number six, which is the left thumb of Carlos Antone
21 Bolt.

22 Q Were you able to determine a date of birth?

23 A Date of birth given as [REDACTED]

24 Q Okay.

25 A Latent five was developed on the exterior portion of

1 the glass top of the display counter, and it was
2 identified as being made by the left palm area of Carlos
3 Antone Bolt.

4 Q Same date of birth?

5 A Same date of birth.

6 Q When you got that information, what did you do with
7 regard to the findings? Did you tell anybody?

8 A I notified Officer Burdette that a match had been
9 made.

10 Q And that's this investigator seated right here?

11 A Yes, it is.

12 Q And that was on the 8th when you let him know?

13 A Yes, sir.

14 MR. MOYER: Please answer any questions the Defense
15 may have.

16 MR. POSEY: No questions, Your Honor.

17 THE COURT: You can step down, ma'am.

18 THE WITNESS: May I be excused?

19 THE COURT: You may.

20 MR. MOYER: The State calls Doyle Burdette.

21 THE CLERK: Sir, please, place your left hand on the
22 Bible and raise your right hand.

23 WHEREUPON,

24 DOYLE BURDETTE,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you.

2 Please be seated.

3 Please state your full name for the record.

4 THE WITNESS: Doyle Malvin [phonetic] Burdette.

5 DIRECT EXAMINATION

6 BY MR. MOYER:

7 Q You're employed where?

8 A I work for the Greenville City Police Department.

9 Q What is your position with the City Police Department
10 now?

11 A Right now, I'm a sergeant over operations on the west
12 side. At the time this incident occurred, I was a
13 detective in vice and narcotics working weekend duty.

14 Q How long have you been in law enforcement?

15 A Since 1993. And I've been with the Greenville Police
16 Department since 1998.

17 Q And what other agencies were you involved with?

18 A I started with Belton, and then worked for Easley,
19 and then came to Greenville.

20 Q Now, you've had involvement in the case that we're
21 here about today against this Defendant, Carlos Bolt?

22 A Yes, sir.

23 Q When did you first get involved in the case?

24 A I was notified shortly after this incident occurred
25 on that Sunday that there had been an armed robbery at the

1 Gold Gallery at Haywood Mall. It had been sent to our
2 agency, as well as broadcast to county. And I, actually,
3 became involved on that Sunday.

4 Q And did you end up meeting -- let me back up. Who
5 were you notified -- who gave you this notice of this
6 particular case? Where did you get that notification
7 from?

8 A Dispatch.

9 Q And then did you meet with -- did you have any
10 interaction with any officers on the case?

11 A Officer Cothran, as well as Deputy Skinner with the
12 Greenville Sheriff's Department.

13 Q And after your interaction with them, did you meet
14 with any suspects in the case?

15 A I met with the co-defendant.

16 Q And that was -- what's his name?

17 A Jimmy Cobb.

18 Q And that was on January the 7th?

19 A Yes, sir.

20 Q Now, did you get any jewelry back from Jimmy Cobb?

21 A Yes, sir. From Mr. Cobb, the county had retrieved --
22 bear with me so I can get the exact description. At the
23 time of his arrest, he was wearing a bracelet, which was
24 yellow and white metal, approximately one and a half
25 inches wide with clear stones.

1 Q And you got that bracelet?

2 A Yes, sir.

3 Q And that's the bracelet that Mr. Day, eventually, got
4 back?

5 A Yes, sir.

6 Q Okay. Now, let me take you to the next date, January
7 the 8th, 2007. Did you speak to Captain Kellett?

8 A I did.

9 Q And what was -- we heard her just testify. But she
10 forwarded this information about the results of her
11 fingerprint identification?

12 A Yes, sir.

13 Q And when you got the information from her, what did
14 you do with that information?

15 A At that time, I obtained a picture of Mr. Bolt. In
16 looking at the picture, I noticed that he did have corn
17 rows, the facial features matched the description that was
18 given by the clerk, as well as the skin type and age. And
19 I comprised a photo lineup and presented it to the clerk,
20 Mr. Day.

21 Q And you presented that to Mr. Day on the 8th?

22 A Yes, sir.

23 Q Where did you meet with him?

24 A I met with him at the Gold Gallery at the kiosk in
25 front of J.C. Penney.

1 Q Let me show you State's Exhibit No. 1. Can you
2 recognize that?

3 A Yes, sir. This is the photo lineup that I presented
4 to Mr. Day.

5 Q And was the Defendant displayed in that
6 photographic --

7 A Yes, sir.

8 Q And the Defendant -- just so we're absolutely clear
9 on this. Would you point out the person that you were
10 able to identify from Captain Kellett's information? Is
11 he in the courtroom here today?

12 A He is. He's the Defendant, Mr. Carlos Bolt.

13 Q And did you display his photograph in the lineup?

14 A Yes, sir.

15 Q And where was it displayed?

16 A It was displayed in number five in the center.

17 Q Bottom right -- I'm sorry. Bottom middle?

18 A Yes, sir.

19 Q Okay. Now, the other five photographs, the
20 individuals were similar in appearance?

21 A Yes, sir. I tried to match facial structure, as well
22 as hair type, facial hair, any skin tone, to the best of
23 our ability, so no one stands out.

24 Q Now, when you showed this to Mr. Day, that took place
25 at the mall?

1 A Yes, sir.

2 Q Tell us how you presented the lineup to Mr. Day?

3 A I told Mr. Day that I had a photo lineup that I would
4 like for him to look at. I laid it on the kiosk and asked
5 him if he saw the gentleman that was involved in the
6 robbery yesterday.

7 Q And did you influence the decision in any way?

8 A No, sir.

9 Q As far as whose picture to pick out of that lineup?

10 A No, sir.

11 Q Did you tell him that he had to pick somebody out of
12 that lineup?

13 A No, sir.

14 Q Did you tell him that the person that did this was
15 definitely in that lineup?

16 A No, sir.

17 Q Now, after you showed that to Mr. Day, tell us what
18 Mr. Day's reaction was and what he did.

19 A Mr. Day took the photo lineup. And you could tell he
20 looked at each face. And then almost immediately, without
21 hesitation, he pointed his finger and said, This is him,
22 on the picture of Mr. Bolt.

23 Q And did he -- what degree of confidence or certainty
24 did he show?

25 A It appeared 100 percent confidence to me.

1 Q And did you ask him to make any marks or other
2 indications on the form?

3 A Yes, sir. I had him circle the picture that he had
4 picked and then initial that picture.

5 Q And what did you do with that lineup after you had --
6 after you showed it to Mr. Day and had him circle and put
7 his initials on it?

8 A I took it back to the law enforcement center and
9 placed it in property and evidence.

10 Q Did you bring it here to court today?

11 A Yes, sir, I did.

12 Q Is it in substantially the same condition now as it
13 was back when you showed it to Mr. Day?

14 A It is.

15 MR. MOYER: I would move to have State's Exhibit
16 No. 1 moved into evidence.

17 MR. POSEY: No objection, Your Honor.

18 THE COURT: It's admitted.

19 (WHEREUPON, State's Exhibit No. 1 was admitted into
20 evidence.)

21 BY MR. MOYER:

22 Q What is the Defendant's name?

23 A Carlos Antone Bolt.

24 Q And his date of birth?

25 A It is [REDACTED]

1 Q What date was he arrested?

2 A He ws arrested the next day, on the 9th.

3 MR. MOYER: Please answer any questions the Defense
4 may have.

5 CROSS-EXAMINATION

6 BY MR. POSEY:

7 Q Sergeant, you were the lead investigator on the case?

8 A Yes, sir.

9 Q And did you ever have a chance to sit down with the
10 co-defendant at any time, Mr. Cobb?

11 A Yes, sir. I sat down with Mr. Cobb.

12 Q And you interviewed him and you may have even shown
13 him the same photo lineup, I believe; is that correct?

14 A Yes, sir.

15 Q Did you ever have any conversations with him about
16 any weapons being involved in this?

17 A I didn't, specifically, question Mr. Cobb. I asked
18 Mr. Cobb to relate the events of the robbery.

19 Q And did he do so?

20 A He did.

21 Q At any point in time, was any mention of a weapon
22 made in that story he related to you?

23 A No, sir.

24 Q Let me take you back. How many times did you speak
25 with Mr. Day in and around the date of this event?

1 A The day of the event?

2 Q The day or a couple days, you know, within a two- or
3 three-day time frame?

4 A I spoke to him the day I showed him the photo lineup,
5 and then when we recovered the bracelet and he had asked
6 about getting the bracelet back.

7 Q At any point in time, did he ever mention Mr. Khan's
8 involvement in this incident?

9 A No, sir.

10 Q And you've been with the Greenville Police Department
11 a long time. Is that unusual for a witness to
12 forget somebody so highly involved in an incident such as
13 this?

14 A I can't say, sir. As I said, most of my time has
15 been in vice and narcotics, not in robberies.

16 Q What experience do you have in robberies? How many
17 armed robberies have you worked in your total time with
18 law enforcement?

19 A I can't quantify that. Several.

20 Q Several. Would you say that -- would it be fair to
21 say that the vast majority include a weapon, and a weapon
22 is usually brandished at the time of the taking of the
23 merchandise?

24 MR. MOYER: Your Honor, I object to relevance.

25 THE COURT: Sustained.

1 BY MR. POSEY:

2 Q Is the way the weapon was allegedly brandished in
3 this case unusual in armed robbery cases?

4 MR. MOYER: Again, I object to the relevance.

5 THE COURT: What's the relevance of it?

6 MR. POSEY: Your Honor, I think it goes to the whole
7 credibility of whether a weapon, actually, existed or not.
8 Right now, there's only one person that testified to that.

9 THE COURT: I sustain the objection.

10 BY MR. POSEY:

11 Q Let me ask you this. Other than Mr. Day, did anybody
12 give you any indication that they saw anything resembling
13 a weapon --

14 A No, sir.

15 Q -- in this incident?

16 A No.

17 Q Did anybody else that you talked to say they heard
18 the words, I'm going to shoot somebody, said by any of the
19 defendants?

20 A Anybody other than Mr. Day?

21 Q Anybody other than Mr. Day.

22 A No, sir.

23 MR. POSEY: I have nothing further at this time, Your
24 Honor.

25 MR. MOYER: No follow-up.

1 THE COURT: All right. Sir, you can step down.

2 THE WITNESS: Thank you, Your Honor.

3 MR. MOYER: If I could have just one moment, Your
4 Honor.

5 (Pause.)

6 MR. MOYER: Your Honor, at this time, the State
7 rests.

8 THE COURT: All right. Ladies and gentlemen, I'm
9 going to ask you to step back in the jury room for a few
10 minutes while I take up a matter of law.

11 (WHEREUPON, the jury was excused from open court at
12 approximately 12:19 p.m.)

13 MOTIONS

14 THE COURT: Mr. Posey.

15 MR. POSEY: Your Honor, I would move for a directed
16 verdict. Your Honor, the evidence presented, I think, in
17 the light most favorable to the State, there was
18 apparently three witnesses within yards of each other,
19 only one who apparently heard these words, I'm going to
20 shoot you with the expletive, all which would have been --
21 or I think -- I don't want to misstate, Your Honor,
22 apparently, there were two of them, one witness just came
23 forward two weeks ago after over a year and a half -- it
24 might be a year and a month time frame.

25 Your Honor, apparently, even the corroborating

1 witness said it was not directed at the victim, who
2 originally -- that he originally testified that it was
3 directed at him. The best you've got is one witness
4 saying a metallic object in no way resembled a gun, or
5 resembled a weapon. No one else even saw a metallic
6 object.

7 Your Honor, if he had been originally charged with
8 grand larceny, also, he would be guilty of grand larceny.
9 I don't think he's guilty of armed robbery. And we would
10 move for a directed verdict of not guilty on the armed
11 robbery charge.

12 THE COURT: I deny the motion for directed verdict.

13 MR. POSEY: Then, Your Honor, at this time, the
14 Defense -- Mr. Bolt's intention is not to testify. So the
15 Defense will rest when we come back into court -- when the
16 jury comes back.

17 THE COURT: So I'm going to take up with you and with
18 him the question of whether or not he's going to testify.

19 But you do -- is it true that you don't intend to put
20 up any other testimony, except, possibly, his testimony.

21 MR. POSEY: That would be it, Your Honor.

22 THE COURT: And have you talked to Mr. Bolt about his
23 right to remain silent and also his right to testify?

24 MR. POSEY: Yes, sir.

25 THE COURT: Have you talked to him about that both

1 today and before today?

2 MR. POSEY: Yes, sir.

3 THE COURT: And when you talked to him on all of
4 those cases, most importantly, today, was it your belief
5 that he understood his right to testify and his right to
6 remain silent?

7 MR. POSEY: I believe he does, Your Honor.

8 THE COURT: Do you need some more time to talk to him
9 now?

10 MR. POSEY: I don't believe so. I just discussed it
11 with him briefly again, and he's confident in his
12 decision.

13 THE COURT: Mr. Bolt, please, stand and raise your
14 right hand.

15 WHEREUPON,

16 CARLOS ANTONE BOLT,
17 after first having been duly sworn, testified as follows:

18 THE COURT: All right. You can put your hand down.

19 Now, Mr. Bolt, within the last 24 hours, have you
20 taken any medication, drugs, or alcohol?

21 DEFENDANT BOLT: No, sir.

22 THE COURT: Do you -- you just heard me have this
23 discussion with Mr. Posey about your right to remain
24 silent and, also, your right to testify?

25 DEFENDANT BOLT: Yes, sir.

1 THE COURT: Do you understand both of those rights?

2 DEFENDANT BOLT: Yes, sir.

3 THE COURT: And when you've had those conversations
4 with Mr. Posey that you heard me discuss with him, did you
5 understand everything he told you?

6 DEFENDANT BOLT: Yes, sir.

7 THE COURT: Have you had -- now, I'm going to go over
8 it with you so that I can make sure you understand. You
9 have the right to remain silent. That right comes to you
10 by way of the Fifth Amendment of the United States
11 Constitution. And what that means is that nobody can make
12 you testify. Nobody can compel you to testify. If you
13 choose not to testify, then I'll explain to the jury in
14 very clear terms that this is a Constitutional right that
15 you have and the exercise of that right cannot be held
16 against you.

17 On the other hand, you do have the right to testify.
18 And if you choose to testify, then you would be subject to
19 cross-examination just like any other witness who has
20 testified here in the trial.

21 Do you understand everything I just told you?

22 DEFENDANT BOLT: Yes, sir.

23 THE COURT: Do you have any questions you want to ask
24 me or any questions you want to ask Mr. Posey about your
25 right to testify or your right to remain silent?

1 DEFENDANT BOLT: No, sir.

2 THE COURT: Now, you understand that even though you
3 should listen to Mr. Posey's advice, even though you
4 should do that, you are the one that has to make the
5 decision as to whether or not you're going to testify.

6 Do you understand that?

7 DEFENDANT BOLT: Yes, sir.

8 THE COURT: Have you had all the time you need to
9 make up your mind as to whether or not you want to
10 testify?

11 DEFENDANT BOLT: Yes, sir.

12 THE COURT: What's your decision?

13 DEFENDANT BOLT: Not to testify.

14 THE COURT: Okay. You can be seated.

15 All right. Mr. Posey, anything further?

16 MR. POSEY: Nothing further.

17 THE COURT: Well, bring the jury back in and let them
18 know we're breaking for lunch and we will resume at 2:00
19 with closing arguments.

20 Any special requests for charge?

21 MR. MOYER: I do.

22 THE COURT: Pass them up.

23 (WHEREUPON, the jury came into open court at
24 approximately 12:25 p.m.)

25 THE COURT: Let me see y'all for a second.

1 (WHEREUPON, a bench conference was held.)

2 THE COURT: All right. Ladies and gentlemen, you
3 have now heard all of the testimony and evidence that you
4 will hear in this case. We're going to break for lunch
5 now. And I'm going to ask you to be back in your jury
6 room at 2:00. And we'll resume, at that time, with
7 closing arguments.

8 Please remember that you may not discuss this case
9 and you may not go to the mall for lunch. All of the
10 evidence that you should consider, in this case, must come
11 to you in this courtroom. So do not go anywhere near
12 where you think the scene of this alleged crime may be.

13 I'll see you at 2:00.

14 (WHEREUPON, the jury was excused from open court at
15 approximately 12:26 p.m.)

16 THE COURT: Okay. Do you have any objection to the
17 requests for charge, Mr. Posey?

18 MR. POSEY: Your Honor, not so much the one and two.
19 I think three could maybe be whittled down some. I don't
20 know if it needs to be said in full. I think --

21 THE COURT: Okay. I'll tinker around with it and
22 I'll show you what I'm going to say before closing
23 arguments, hopefully.

24 MR. POSEY: Thank you, Your Honor.

25 THE COURT: See you at about 2:00 -- or, actually,

1 come back around a quarter until 2:00 so we can discuss
2 the charge.

3 (WHEREUPON, a lunch break was taken.)

4 THE COURT: Now, ~~you also want -- or do you want me~~
5 ~~to charge the alleging of a weapon in addition to the~~
6 ~~actual use of a weapon?~~

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

8 THE COURT: All right. And I will -- I mean, I think
9 that everything you put in your request to charge is
10 correct. I'll tinker with it to make sure it's -- to get
11 it the way I want it.

12 Anything further?

13 MR. POSEY: Nothing further, Your Honor.

14 THE COURT: Is the jury all here?

15 MR. MOYER: ~~Before we bring the jury in, are you~~
16 ~~going to include lesser included?~~

17 THE COURT: ~~I suppose I should.~~

18 MR. POSEY: Your Honor, my problem is I don't think
19 they've put up any evidence to put up the strong arm.

20 THE COURT: Well, how about the elbow?

21 MR. POSEY: The elbow was a bystander running out of
22 the -- that wouldn't -- I don't think anybody is going to
23 allege that the elbow was intentional by any means.

24 THE COURT: All right. We know that you have the
25 threat to shoot the victim. Mr. Posey suggests that

1 that's either armed robbery or is no robbery, because it
2 is the alleging of the existence of a pistol.

3 Is there other evidence of the use of force?

4 MR. MOYER: Your Honor, I think that it's
5 theoretically possible that the jury could find no
6 representation that coincides with the alleging of a
7 weapon, in which case, just the threat alone of shooting,
8 the jury would or could be considered intimidation for
9 purposes. And the jury could find him guilty of strong
10 armed robbery.

11 MR. POSEY: Your Honor, my thought is they had him
12 indicted for grand larceny, also. And they made a choice
13 and they brought the armed robbery charge. I don't --

14 THE COURT: Well, let me ask you a question. Why
15 would you be arguing against the lesser included?

16 Because they're not going to get to that element
17 unless they've already found the other four elements. So
18 if they find the other four elements, then you're
19 guaranteeing -- well, I mean --

20 MR. POSEY: And I want to talk to Mr. Bolt for a
21 second. My initial thought is, though, the only concern I
22 have is it gives the jury an out. That if all they've
23 proven is a larceny case and not an armed robbery case,
24 that lesser included gives them an out, gives them a
25 compromise verdict, that they have not really proven a

1 strong armed robbery or the elements thereof. That's
2 my -- that would be my concern.

3 Now, I'm going to ask the Court for a moment to talk
4 to my client since the Court raised it. But that would be
5 one of my concerns is it gives them an out verdict. And,
6 of course, Mr. Bolt may tell me to sit down and shut up
7 and that he wants that, but.

8 THE COURT: Well, I will tell you that I'm inclined
9 to charge it. Because the alleging prong of the use of a
10 deadly weapon requires two things. It requires the
11 alleging of a weapon --

12 Does it require both?

13 MR. MOYER: And a representation. I'm looking at the
14 Muldrow case.

15 THE COURT: Yeah. He has to also have been using
16 something that represents a weapon; right?

17 MR. MOYER: Yes, sir.

18 THE COURT: And they could find that he threatened
19 the use of a weapon, but didn't have anything in his
20 possession that he intended to be perceived as a weapon.
21 In that case, it would be strong armed robbery.

22 MR. POSEY: Can I have one moment to talk to Mr. Bolt?

23 THE COURT: Yes. You can have a minute to talk to
24 him.

25 (Pause.)

1 MR. POSEY: Your Honor, I have spoken to Mr. Bolt and
2 he understands the Court is inclined to charge strong
3 armed robbery. He has asked me, on his behalf, to object
4 to it on the record to preserve that issue, Your Honor.

5 THE COURT: Okay. Bring in the jury.

6 (WHEREUPON, the jury came into open court at
7 approximately 2:03 p.m.)

8 THE COURT: All right. Mr. Moyer.

9 CLOSING ARGUMENTS

10 MR. MOYER: Thank you, Your Honor.

11 May it please the Court?

12 Good afternoon, ladies and gentlemen.

13 Generally, when you're about to decide -- determine
14 the guilt or innocence of a person in a case like this or
15 any other criminal case, it's, essentially, a two-step
16 process involving identity and did the offense occur. Is
17 this the perpetrator who did it? And if he is the person
18 who did it, is what he did, actually, a violation of South
19 Carolina law?

20 So let's start off with that first prong. I don't
21 think that's really going to be too much of a hang up for
22 most of you. Is this the Defendant who was at the mall on
23 January 7th, 2007, and stole from the Gold Gallery and
24 Benjamin Day? Well, we know it's the Defendant for
25 several reasons.

1 First off, we have the fingerprint identification.
2 We heard testimony from Officer Cothran that when he was
3 there meeting with Benjamin Day, he looked at the glass
4 case and that he could even see looking at the glass, it
5 looks like there's some fingerprints there. And that Ben
6 had told him he had cleaned it fairly recently. So they
7 figured this is probably some fairly recent fingerprints,
8 so let's get forensics out here. Forensics came out and
9 collected the fingerprints. And, sure enough, they
10 matched this Defendant. On the glass case were recent
11 prints at the location where this incident started.

12 We also know that Benjamin Day picked the Defendant
13 out of a photo lineup. And Sergeant Burdette told you
14 that Benjamin Day looked at that photo lineup and he
15 looked at it for a period of time where he could look at
16 all six photographs. And he said, Yeah, that's the man
17 right there. And Benjamin Day, himself, told you he
18 didn't have any doubt about it.

19 In addition to that, Benjamin Day was able to tell
20 you that he -- after a period of time, after he saw that
21 photo lineup, he remembered that he, actually, went to
22 school with this Defendant and it had been a number years
23 previously. It had been like four years, at least,
24 because he graduated in 2003. It had been a while, but he
25 recognized him and that he had been to school with him.

1 So he knew who he was. He could feel confident and
2 he was even able to pick him out here in court today.
3 This is the man. This is the man who not only stole from
4 him, but this is the man who was the one who had the
5 necklace, and who was the one who threatened him with the
6 use of something that looked like a pistol out in the
7 parking lot. Okay. So let's move on past that. This is
8 the identity. We can set that aside and we can say, yes,
9 this is the man.

10 The second question is, was what he did on January
11 the 7th of 2007 a violation of South Carolina law? His
12 Honor is going to instruct you very soon. Let's talk
13 about it. It hasn't been very long since I just gave you
14 a preview of the law, but let's quickly go over it again.

15 What is an armed robbery? ~~It's a robbery in which~~
16 ~~the perpetrator is armed. Robbery means taking property~~
17 ~~or money by -- from the person or presence of another~~
18 ~~person. It can be around them or on them. And it was~~
19 ~~accompanied by some kind of force, violence, or~~
20 ~~intimidation. It's not just stealing it from them outside~~
21 ~~the presence with no force or violation, but there has to~~
22 ~~be some sort of intimidation. That makes it robbery, and~~
23 ~~then, of course, the armed robbery is if the person is~~
24 ~~armed.~~

25 So what were the two -- I told you there were two

1 aspects of the law that I think are very significant. ~~And~~
2 the first one is this, ~~that the force or intimidation~~
3 ~~aspect or element and the weapon element don't have to~~
4 ~~come at the beginning of the crime.~~ And that kind of goes
5 contrary a little bit to what we think. When you usually
6 think about an armed robber, you think about the man who
7 walks up to the clerk at the bank that puts out the gun
8 and says, fill up the bag, or goes to the convenience
9 store, whatever, pulls out the gun or knife or whatever.
10 That's what we usually think. But that's not the law.

11 The law is -- and it's called the continuous event
12 theory. It's more than just that moment. That taking of
13 the property continues until the person gets away. And so
14 even if the clerk chases down the robber, as happened in
15 this case, runs him down, tries to catch him, and even
16 does catch him, that force or intimidation can take place
17 any time throughout. So if it's just a snatch and grab,
18 run, the victim chases him down, and then there's force or
19 intimidation, it's still robbery. And if there's the
20 weapon or the representation of a weapon, then it's armed
21 robbery. Okay.

22 Let's move on to the other aspect of armed robbery
23 that I think is very significant, and that is ~~this. We~~
24 ~~don't have to prove to you today, ladies and gentlemen,~~
25 ~~that he had the gun on him or that he had a knife on him.~~

1 Armed robbery includes that list that I spoke about at the
2 beginning. It includes a pistol, a dirk, a slingshot,
3 razor, metal knuckles, all of those items are on that
4 list. And that is an armed robbery.

5 But we don't have to prove to you that he, actually,
6 had one because ~~what also is included is a representation~~
7 ~~of a deadly weapon. That is anything which a person -- the~~
8 ~~person at the receiving end, the victim, would reasonably~~
9 ~~believe is a deadly weapon is included.~~ So it's not up to
10 that victim to sit there and say, Is that real? Is that
11 really a deadly weapon? Is that really a real gun? Is
12 that really a real knife? No. ~~If the person thinks it is~~
13 ~~and it's reasonable for him to think so, then that's~~
14 ~~enough. That is armed robbery.~~

15 So the issue today before you, ladies and gentlemen,
16 is, did Benjamin Day think this Defendant had a gun and
17 was that reasonable? ~~Benjamin Day told you he thought it~~
18 ~~was a gun.~~ He came in here, ladies and gentlemen, with no
19 reason to lie. He had no reason to lie on the date this
20 happened. He had no reason to lie now. And he told you,
21 yes, ladies and gentlemen, I thought it was a gun. We
22 ~~know he thought it was a gun also because the two men who~~
23 ~~were out there with him heard him saying, He's got a gun,~~
24 ~~and he shouted it out.~~ He's not going to say that
25 unless that's what he thought. He thought the Defendant

1 had a gun.

2 What do we also ~~know~~ about the way Ben acted? When
3 he saw this incident -- when he saw the Defendant pull out
4 this item and say what he did, Ben was on the ground.
5 Now, why is that significant? Let's think back to what
6 happened again. This was not a couple of -- this was not
7 a person who was all of a sudden surprised by an incident.
8 This is a person, Benjamin Day, who had just chased down
9 somebody who had -- who was stealing from him. He was
10 chasing down some thieves, two thieves. Think about what
11 that means. What kind of person is going to, actually --
12 that takes some guts. It takes a little bit of grit to
13 say, I've just been robbed, I'm going to go after these
14 two grown men that just stole from me.

15 So this is not just somebody with delicate
16 sensibilities. He's out chasing down these two thieves.
17 And, yet, when he gets out to that parking lot, that
18 loading deck area where the Defendants had parked, he is
19 all of a sudden on the ground and ducking. Why, at that
20 point, is he doing so? Something had to happen for him to
21 do that, for him to all of a sudden be on the ground and
22 be scared. And that's because of what the Defendant did.
23 So Benjamin Day thought the Defendant had a gun.

24 Now, it's up to you, ladies and gentlemen, to ask
25 yourself, was it reasonable for him to think so? Was that

1 reasonable? Well, you have to ask yourself if somebody
2 had just stolen from you and had run away and all of a
3 sudden turned and looked at you, like Benjamin Day said he
4 did, and said, I'm going to shoot the mother fucker, and
5 reaches down and pulls up something that looks like a gun,
6 you have every reason to believe that person means what he
7 or she just said.

8 And when the Defendant did that, when the Defendant
9 said, I'm going to shoot the mother fucker, and he reached
10 down and pulled something up, Benjamin Day had every
11 reason to believe that he meant what he said, that he was
12 going to shoot him. And even if he wasn't going to shoot
13 him, that he just had a gun, he had every reason to
14 believe that and every reason explaining why he went down
15 like he did.

16 What about the other two witnesses who were out
17 there? You've got to remember, ladies and gentlemen, that
18 this was happening very fast, very fast. You had a high
19 emotional state on the part of everybody who was out
20 there, an adrenaline rush. They had just been chasing
21 down those two people. Kashif Khan was just grappling
22 with him. You remember that Kashif Khan said he came out
23 the side door and he ran up and he, actually, tried to
24 grab him. He was knocked back. He even, in fact, kicked
25 at him. And during this melee, he heard the man out of

1 the passenger door say, I'm going to shoot -- he used the
2 word gun and shoot you. And then he heard Ben yelling,
3 He's got a gun. And Kashif was ducking down at the trash
4 cans.

5 And you heard about Josh -- what Josh told you
6 happened. He was behind Ben. If you remember, using this
7 as an example of the car, Ben came out of Dillards. And
8 he came over and he was near the passenger side. He was
9 the closest one to the car. And he's focussing on what's
10 happening with the Defendant and Kashif being right there.
11 Josh told you he was back farther and he was towards the
12 other side. And he told you that he was in the
13 direction -- in the line of that car. And that car was
14 about to drive away. It had been started up. And he's
15 focusing on that driver. He's focusing on that driver and
16 what that driver is going to do and is that driver going
17 to run him over. He heard the man in the passenger side
18 say something. He can't say exactly what it was. And
19 then he heard Ben yelling what to do.

20 Ladies and gentlemen, I argue to you that he did have
21 a gun. I argue to you that you have every reason to
22 believe that he meant what he said. When he said, I'm
23 going to shoot, and when he reached down and grabbed
24 something that looked like a gun, we have reason to
25 believe that he did, in fact, have a gun. But, ladies and

1 gentlemen, even if he didn't, he's guilty. Because even
2 if he didn't, Ben thought he did. And Ben had every
3 reason to believe that he thought he had a gun. Because
4 this Defendant led him to believe he had a gun by his
5 actions and by his words. And that makes him guilty of
6 armed robbery.

7 Ladies and gentlemen, I ask you to hold him
8 responsible for what he did and find him guilty.

9 Thank you.

10 MR. POSEY: May it please the Court, Your Honor?

11 THE COURT: Mr. Posey.

12 MR. POSEY: Mr. Moyer.

13 Ladies and gentlemen of the jury, I told you at the
14 beginning that I wasn't going to talk to you much about
15 the evidence, in this case, until the end. But I want to
16 talk to you a little bit about some responsibilities that
17 you have and some of the things you can use when you go
18 back in the jury room.

19 The first thing you take is you take your common
20 sense. Mr. Moyer did a good job proving a theft took
21 place of a necklace and a bracelet. You didn't hear a
22 whole lot of challenge to that evidence. But after that,
23 we kind of get into some fantasy land here. Your job is
24 to use your common sense to judge not only what you heard,
25 but the credibility of what you heard.

1 You had one witness, Mr. Khan, who nobody from law
2 enforcement talked to, but, apparently, gave Mr. Day a tag
3 number and gave him the make and model of the car. Nobody
4 talked to him. And all of a sudden, two weeks before this
5 trial, he's up and out of the blue. As a matter of fact,
6 he's the only person who can verify Mr. Day's statement is
7 that somebody said, I'm going to shoot that expletive.
8 That's the only verification. And he pops up out of
9 nowhere two weeks ago after a year and a month. There's
10 no record, not in any police reports, not anywhere. And
11 that's one of the key witnesses they want you to convict
12 somebody with. You have to judge that credibility.

13 Mr. Day said the Defendant was pointing at him or was
14 turned to him when he made that statement. Even if you
15 believe Mr. Khan, he was trying to open a car door when he
16 heard the statement. You can't do two things at once.
17 I'm sorry. They're wanting you to rely on their
18 credibility to convict somebody. Judge their credibility
19 and listen to what they told you.

20 Mr. Day, in his own statement, never mentioned
21 Mr. Khan. Do you think if you were involved in this
22 situation -- common sense -- that you're not going to
23 remember to write down somebody was, actually, tackling
24 one of the perpetrators of a crime, kicking and fighting
25 with them when you show up? That's a fact you're going to

1 omit, not only from your statement, but you never tell law
2 enforcement whatsoever? I don't know why. It's not my --
3 you're not here to judge why. The fact is that it's not
4 there.

5 How much can you rely on that credibility? That is
6 your first and utmost duty is to judge the credibility of
7 each of these witnesses, to believe all of what they say,
8 part of what they say, or none of what they say. You've
9 got the alleged complainant here. Again, he's the only
10 witness who verifies anything was said of that nature.
11 And two weeks before trial, never heard from him before
12 and, now, he's here today. That's his verification.

13 The most honest witness, as far as people out there,
14 is Mr. Thompson. He told you he was trailing eight to 10
15 yards, at the most, behind Mr. Day the whole time. He ran
16 out right behind him. And Mr. Moyer did a good job of
17 trying to make it seem like we're miles apart here. But,
18 basically, we're feet apart from where he was talking
19 about, one side of the car to the other. Did he hear the
20 words, I'm going to shoot you expletive? No.

21 And what did Mr. Day tell you from the witness stand?
22 You should have been able to hear it from about 30 yards
23 away. It was that loud. Are you going to forget these
24 words if you heard them if you're Mr. Thompson? Because
25 if you hear that, if that was, actually, said, you would

1 have to think it could have been directed at you. But
2 Mr. Thompson told you, no, he never heard those words.
3 Again, credibility, use your common sense to judge
4 credibility.

5 A theft may have occurred. Whether or not you
6 believe a theft occurred does not convict Mr. Bolt of
7 robbery. You can't take that step and automatically go to
8 the next step. It doesn't happen. They're required
9 beyond a reasonable doubt, which I submit to you -- and
10 Your Honor will tell you the law, so you take it from him.
11 But I tell you that it's a doubt that causes a reasonable
12 person to hesitate to act.

13 If that kind of doubt exists as to the second part,
14 not the theft, the second part, then you have to find him
15 not guilty. That is your duty. That is your job. That
16 is your duty under the law of South Carolina. You're the
17 only judge of the credibility of these witnesses. Things
18 may have been happening fast, you don't forget the whole
19 elements of a person tackling a perpetrator who hands you
20 tag numbers. You don't forget that for a year and a
21 month. You might forget it for an hour. You might forget
22 it for a few hours. You don't forget it for a year and a
23 month. It strains common sense.

24 Mr. Moyer is right, they don't have to prove there
25 was a gun. As a matter of fact, there never was -- nobody

1 has ever told you there was a gun. Nobody has ever said
2 they found a gun. Nobody has ever done anything. But
3 even from the witness stand, could it have been a key or
4 could it have been a piece of metal that you saw? Yes.
5 That goes to the reasonableness of his impression. If it
6 would have been a key or if it had been a piece of metal,
7 his belief that it was a gun is not reasonable.

8 I submit to you, ladies and gentlemen, because they
9 prove a theft does not give them the proof they need for
10 robbery. They have to go the whole next step. And they
11 have failed beyond a reasonable doubt. The credibility of
12 the stories just do not line up. Go back and think about
13 Mr. Khan again. He's the luckiest human being alive to
14 pick the right exit to go out of Haywood Mall. How many
15 exits are in Haywood Mall? I think, by his own testimony,
16 there were, at least, three or four others these guys
17 could have went out. And he lucked up and picked the
18 right one?

19 Notice Mr. Thompson never saw any struggle with
20 Mr. Khan fighting anybody. You never heard that from him.
21 He's eight to 10 yards behind. He would have seen it,
22 too. Think about it. Those are the things you have to go
23 through in your mind when you're judging the credibility.
24 The stories don't line up after the taking of the jewelry.
25 They do not. There's nothing they have presented to you

1 here today that lines those stories up. Somewhere along
2 the line, you've got to judge, are they credible?

3 You don't have to give a cause as to why they're not
4 credible. You don't have to give a cause as to why they
5 may or may not be telling the truth. That's not your job.
6 Their job is to prove beyond a reasonable doubt. That's
7 their burden. The Defense is not under any burden.
8 You're not under any burden. That's their job. And if
9 they fail to meet that, if they cause you to hesitate to
10 act in your belief because of the great inconsistencies in
11 these statements and what occurred out there in the garage
12 area, especially, or at any point and time after the
13 taking of the jewelry, if it causes you to hesitate at
14 all, that's reasonable doubt and you must find him not
15 guilty.

16 I thank you for your time. I thank you for your
17 attention. All I ask you to do is go back and weigh the
18 evidence, weigh the credibility of the statements, and
19 weigh the credibility of the testimony. Use your common
20 sense. Witnesses don't appear out of the blue, not when
21 you talk to them every day, as even Mr. Khan said he does.
22 And that's the only corroboration to the whole, I'm going
23 to shoot you line. They've proven a theft. You can't
24 find him guilty of the robbery based on a theft. They
25 have to prove the entire case. I submit to you that they

1 have failed to do so. And if you see that, then it is
2 your duty and I ask you respectfully and humbly to perform
3 your duty and find Mr. Bolt not guilty of the robbery.

4 Thank you, ladies and gentlemen.

5 THE COURT: All right. Ladies and gentlemen, I'm
6 going to have to take up a brief matter of law before I
7 charge you.

8 So I'm going to send you out to your jury room for a
9 few minutes. Do not begin your deliberations.

10 (WHEREUPON, the jury was excused from open court at
11 approximately 2:26 p.m.)

12 THE COURT: All right. Now, let's -- back to this
13 lesser included offense. There's a case from the Court of
14 Appeals that seems to suggest that there does not have to
15 be an object that is used in the commission of a robbery
16 for the allegation of a weapon to be -- to make it an
17 armed robbery, the State v. Muldrow.

18 MR. MOYER: I think it was overturned by the Supreme
19 Court.

20 THE COURT: Was it?

21 MR. MOYER: Yes, sir. February 11th, 2002.

22 THE COURT: Oh, it was? Okay. We just found it
23 quickly and I haven't had a chance to --

24 Do you have a copy of it?

25 MR. MOYER: I do.

1 THE COURT: Pass it up, please.

2 (Pause.)

3 THE COURT: Okay. Here is what I have charged
4 regarding this continuous offense theory, as the Court of
5 Appeals calls it. And I think this incorporates
6 everything you had in your request to charge.

7 Regarding the fourth element, the taking and carrying
8 away of the property is accomplished by violence or the
9 fear of violence, not only if the robber uses violence or
10 fear of violence to accomplish the initial taking of the
11 property, but also, if violence or the fear of violence is
12 used to retain the property during the escape.

13 Regarding the fifth element, the crime of robbery is
14 not completed the moment the property is taken into
15 possession of the person who commits the robbery, rather
16 the robbery continues during the attempt to get away. It
17 is not necessary that the suspect be armed at all times
18 during the robbery. The State has proven the robbery to
19 be an armed robbery if the Defendant was armed with a
20 deadly weapon at any time during the initial robbery or
21 the escape. And I'll add in right there, or alleges with
22 a representation.

23 So any objection to that?

24 MR. MOYER: Not from the State.

25 MR. POSEY: Not to that particular thing.

1 I just renew on the strong armed robbery, Your Honor.

2 THE COURT: Okay.

3 MR. POSEY: And I guess my cite for that would be --
4 I think it's State v. Gosnell. That is a State Grand Jury
5 case which I happened to be involved in where Judge
6 Patterson originally charged that the indictment of 400
7 grams or more. Judge Patterson charged the levels of
8 trafficking on several of the defendants over the
9 objections of the case being presented to the jury, that
10 the defendant objected to the indicted offense. And I
11 think the Supreme Court, if I'm not mistaken, then ruled
12 that if the indictment specifically -- in this case, I
13 would allege it is specific for armed robbery.

14 THE COURT: I'm sorry. Say that again, please.

15 MR. POSEY: I think the Supreme Court -- my
16 understanding of the Supreme Court's ruling was that if
17 the indictment is specific as to the offense, which in
18 this case, it was, in that case it was 400 grams, then
19 there's -- then the Defendants objected to the levels,
20 that they are entitled to go forward to trial on the
21 indictment, the indicted offense.

22 THE COURT: Okay. Well, my ruling is that the
23 evidence, as presented, would support a finding that the
24 State has failed to prove the existence of the fifth
25 element. And so, therefore, the facts could support a

1 strong armed robbery conviction. So I'm going to charge
2 it as a lesser included offense.

3 MR. POSEY: Yes, sir.

4 THE COURT: Did y'all refer to it as strong armed
5 robbery -- neither one of you really argued it, did you?

6 MR. MOYER: I didn't argue. I --

7 THE COURT: Did you refer to it as strong armed
8 robbery?

9 MR. POSEY: No, sir.

10 MR. MOYER: I think I just called it robbery, Your
11 Honor.

12 THE COURT: All right. Bring in the jury.

13 (WHEREUPON, the jury came into open court at
14 approximately 2:35 p.m.)

15 CHARGE ON THE LAW

16 THE COURT: Ladies and gentlemen, now that you've
17 heard all of the evidence and the arguments of the
18 attorneys, it becomes my responsibility to explain to you
19 the law that is applicable to this case. Now, several of
20 the things that I've already told you will sound fresh in
21 your mind since I went over them with you this morning.
22 But I need to go over them with you now during this
23 official charge on the law.

24 Under our Constitution and Code of Laws here in South
25 Carolina, only the jury can make the findings of fact in

1 this case. And I am not permitted to indicate to you how
2 I might feel about the facts. So if I've said anything or
3 if I did anything during the course of this trial that led
4 you to believe that I have an opinion about the facts,
5 then you must disregard that.

6 Now, you have heard the testimony of what we refer to
7 as an expert witness. Expert witnesses are those
8 witnesses who have special knowledge, skill, experience,
9 training, or education in a particular profession or
10 occupation. And because of those special qualifications,
11 experts are allowed to give opinions as to matters within
12 their area of expertise.

13 In determining the weight to be given the opinions of
14 experts, you should consider the qualifications and the
15 credibility of the expert just as you would consider those
16 of any other witness and the reasons given for his or her
17 opinion. You are not bound by the opinion of the expert.
18 Give it the weight you believe it should receive, if any.

19 Now, the same Constitution and Code of Laws that
20 makes you the exclusive judges of the facts also makes me
21 the exclusive judge of the law. So if you have some idea
22 as to what the law is or should be and if that differs
23 from what I now tell you it is, then you must accept and
24 apply the law precisely as I explain it to you now.

25 The fact that the Defendant was arrested, charged,

1 and indicted, in this case, is not evidence and cannot be
2 considered by you in any way as evidence of the
3 Defendant's guilt, nor does it create any presumption or
4 inference of guilt. The indictment is simply the formal
5 document that contains the allegations that have been made
6 against the Defendant. And the indictment serves to
7 process the case and bring it into this court for trial.

8 The Defendant has pled not guilty to this indictment.
9 And the plea of not guilty casts the burden on the State
10 to prove the Defendant guilty beyond a reasonable doubt.
11 A person charged with committing a crime in South Carolina
12 is never required to prove themselves innocent.

13 Now, as I said this morning, and I'll say it again,
14 it is a very important rule of law in our country that a
15 defendant in a criminal trial will always be presumed to
16 be innocent of the crime with which he has been charged
17 unless and until his guilt has been proven by evidence
18 that has satisfied you of that guilt beyond a reasonable
19 doubt. This presumption of innocence accompanies the
20 Defendant from the time he is charged, throughout the
21 trial, and into the jury room until you reach a verdict of
22 guilt that is based on evidence that has satisfied you of
23 that guilt beyond a reasonable doubt.

24 Now, ladies and gentlemen, I instruct you and I
25 emphasize to you that the fact that the Defendant did not

1 testify, in this case, cannot be considered by you in any
2 way during your deliberations. The Defendant has a
3 Constitutional right to remain silent. And the exercise
4 of that right cannot and must not be held against the
5 Defendant. Under the oath you have taken, as jurors, you
6 are to draw no inference or conclusion whatsoever from the
7 fact that the Defendant did not testify. Do not even
8 discuss this in the jury room. The Defendant is not
9 required to prove anything. The burden of proof remains
10 on the State.

11 A reasonable doubt is a doubt which makes an honest,
12 sincere, conscientious juror in search of the truth, in
13 the case, hesitate to act. Proof beyond a reasonable
14 doubt must, therefore, be proof of such a convincing
15 character that a reasonable person would not hesitate to
16 rely on it and act on it in the most important of his or
17 her own affairs. Proof beyond a reasonable doubt can also
18 be described as proof that leaves you firmly convinced of
19 the Defendant's guilt.

20 Now, there are very few things in this world that we
21 know with absolute certainty. And, in criminal cases, the
22 law does not require proof that overcomes every possible
23 doubt. If, based on your consideration of the evidence,
24 you are firmly convinced that the Defendant is guilty of
25 the crime charged, then you must find him guilty. But, on

1 the other hand, if you think there is a real possibility
2 that he is not guilty, then you must give him the benefit
3 of the doubt and find him not guilty.

4 Before you may convict the Defendant of the crime
5 charged, you must find that the State has proven beyond a
6 reasonable doubt that this Defendant is the one who
7 committed the crime. In this regard, you have heard the
8 testimony of witnesses who have identified the Defendant.
9 Identification testimony is an expression of belief or
10 impression by a witness. And you must evaluate the
11 credibility of each identification witness in the same way
12 that you would for any other witness. You must determine
13 not only whether the witness's testimony is truthful, but
14 you must also determine whether the witness's
15 identification testimony is accurate.

16 In considering the accuracy of the identification,
17 you should consider whether the witness had an adequate
18 opportunity to observe the offender at the time of the
19 offense. This will be effected by factors such as the
20 length of time available for observation, the distance
21 from which the witness -- I'm sorry, the distance from the
22 witness to the Defendant, the lighting conditions, and
23 whether the witness had the chance to see or to know the
24 person in the past.

25 You should also consider whether the latter

1 identification made by the witness was the product of his
2 own recollection. And this will be effected by the same
3 factors listed above and, also, by the time that elapsed
4 between the witness's observation of the Defendant and his
5 later identification, whether there were any occasions on
6 which the witness failed to make an accurate
7 identification, the strength of the identification, the
8 circumstances under which it was made, and any other
9 factor that you believe to be important.

10 I emphasize to you that the State must prove every
11 element of the crime charged. And I'll go over those with
12 you in just a moment. But that, specifically, includes
13 the burden of proving beyond a reasonable doubt that the
14 identity of the person who committed this crime is this
15 Defendant. If after examining all the evidence in the
16 case you have a reasonable doubt as to whether this
17 Defendant committed the crime, then you must find the
18 Defendant not guilty.

19 The Defendant is charged with armed robbery. In
20 order to convict the Defendant of armed robbery, the State
21 must prove five essential elements each beyond a
22 reasonable doubt. First, the State must prove that the
23 Defendant took personal property from the person or
24 presence of another person. Second, the State must prove
25 that the Defendant carried the property away. Third, the

1 State must prove that the Defendant intended to
2 permanently deprive the owner of the property and to keep
3 the property for the Defendant's own use. Fourth, the
4 taking and carrying away of the property must have been
5 done with violence or by putting the owner of the property
6 in fear of violence.

7 Fifth -- as to the fifth element, the State may prove
8 the fifth element in either of two alternative ways, but
9 it need not prove both. For the first alternative, the
10 State must prove beyond a reasonable doubt that the
11 Defendant was armed with a deadly weapon during the
12 robbery or the escape. For the second alternative, the
13 State must prove that, at some point, during the robbery
14 or the escape, the Defendant alleged or asserted, either
15 by actions or by words, that he was armed with a deadly
16 weapon and that he used a representation of a deadly
17 weapon or any object which a person present during the
18 robbery or the escape reasonably believed to be a deadly
19 weapon.

20 Now, property is in the presence of a person if it is
21 within the person's reach, inspection, observation, or
22 control so that the person could, if not overcome with
23 violence or prevented by fear, keep possession of the
24 property. The slightest removal of the property or the
25 complete possession of the property, even for an instant

1 by the Defendant, is sufficient to show a taking and
2 carrying away of the property.

3 Now, regarding the fourth element, the taking and
4 carrying away of the property is accomplished by violence
5 or the fear of violence, not only if the robber uses
6 violence or fear of violence to accomplish the initial
7 taking of the property, but also if violence or the fear
8 of violence is used to retain the property during the
9 escape.

10 Regarding the fifth element, the crime of robbery is
11 not completed the moment the property taken is in the
12 possession of the person who commits the robbery, rather,
13 the robbery continues during the attempt to get away. It
14 is not necessary that the suspect be armed at all times
15 during the robbery. The State has proven the robbery to
16 be an armed robbery if the Defendant was armed with a
17 deadly weapon or if he alleged or asserted that he was
18 armed with a deadly weapon and he used the representation
19 of a deadly weapon at any time during the initial robbery
20 or the escape.

21 A deadly weapon is any article, instrument, or
22 substance which is likely to cause great bodily harm or
23 death. And it may include a pistol, a dirk, a slingshot,
24 metal knuckles, or a razor. Whether an instrument has
25 been used as a deadly weapon depends on the facts and

1 circumstances of each case.

2 If you find that the State has failed to prove each
3 of the elements of the crime of armed robbery beyond a
4 reasonable doubt, then you must consider whether the State
5 has proven the lesser included offense of robbery. In
6 order to convict the Defendant of robbery, the State must
7 prove the first four elements of armed robbery, but it
8 need not prove the fifth.

9 And to refresh your recollection, the first four
10 elements of armed robbery which would be the elements of
11 robbery are: First, the State must prove that the
12 Defendant took the personal property from the person or
13 presence of another person; second, the State must prove
14 that the Defendant carried the property away; third, the
15 State must prove that the Defendant intended to
16 permanently deprive the owner of the property and keep the
17 property for the Defendant's own use; and, fourth, the
18 taking and carrying away of the property must have been
19 done with violence or by putting the owner of the property
20 in fear of violence.

21 Now, ladies and gentlemen, your verdict, in this
22 case, must be unanimous. All 12 of you must agree before
23 you can write a verdict. In just a moment, I'm going to
24 send you back to the jury room. But I'm going to ask you
25 not yet to begin your deliberations. Because I will have

1 some matters of law to take up with the attorneys. While
2 I do that, I would like for you all to select a
3 foreperson. The job of the foreperson is to preside over
4 the deliberations and then when it becomes necessary to do
5 so, to communicate with me. And those communications will
6 have to be in writing.

7 Now, one of the times you will have to communicate
8 with me is when you have reached a verdict. And I have
9 taken the liberty of preparing for you a verdict form that
10 I will have sent back to you. And it gives you your
11 verdict options. The verdict form will read like this, On
12 the charge of armed robbery, we, the jury, unanimously
13 find the Defendant, and then it lists the three options
14 that you have. And they're listed in no particular order.
15 The first option is guilty of armed robbery. The second
16 option is guilty of robbery. And the third option is not
17 guilty. There's a place for the Foreperson to sign and
18 date the verdict form. And as soon as the jury has
19 reached a unanimous verdict, please, notify the bailiff
20 that you have done so and we will get you back out here to
21 the courtroom to receive that verdict.

22 Now, ladies and gentlemen, what goes on in the jury
23 room is private to you. And you should not disclose to
24 anyone your discussions, except when you have reached a
25 unanimous verdict, you, of course, disclose that to us.

1 And that's particularly true if you take a vote that is
2 not unanimous. Do not disclose the result of any vote you
3 may take to anyone. That stays in the jury room.

4 I'm going to send you back to the jury room now.
5 Please do not begin the deliberations because I have to
6 take up a matter of law. And as soon as we are ready for
7 you to begin, I will send the exhibits and the verdict
8 form back to you and the bailiff will, at that time,
9 instruct you that you may begin. And as soon as you've
10 picked a foreperson, please, let the bailiff know who that
11 is and we'll put that on the record.

12 Ms. Harmon, and, Ms. Horton, please, remain in your
13 seats. If you have anything in the jury room, Ms. Sims
14 will get it out for you.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 2:48 p.m.)

17 THE COURT: All right. Take these two ladies back to
18 that other jury room, please, and let them sit in there
19 for a few minutes, please. And I'll be back with you
20 shortly.

21 (WHEREUPON, the alternate jurors exited the
22 courtroom.)

23 THE COURT: Any exceptions to the charge?

24 MR. MOYER: Not from the State, Your Honor.

25 THE COURT: From the Defense?

1 MR. POSEY: None from the Defense, Your Honor, except
2 as previously noted.

3 THE COURT: Okay. I'm going to let y'all take a look
4 at the verdict form. And then we'll be ready to send
5 it -- as soon as they tell us who the Foreperson is, we'll
6 be ready to send it back.

7 MR. POSEY: Do you plan on sending the indictment
8 back?

9 THE COURT: No.

10 MR. POSEY: Because I knew it had count two on there
11 and we talked about that.

12 THE COURT: No. That's why I prepared the verdict
13 form.

14 Y'all take a look at the exhibits and make sure
15 they're all there and ready to go back.

16 MR. MOYER: I've looked. That's fine.

17 MR. POSEY: That's good.

18 THE COURT: Y'all look at the verdict form.

19 MR. POSEY: Yes.

20 THE COURT: Okay. Do y'all agree that Ms. Sims has
21 the correct set of exhibits and do you agree to the
22 verdict form?

23 MR. POSEY: Yes, sir.

24 MR. MOYER: Yes, sir.

25 THE COURT: Send it back.

1 And as soon as they've told you who the Foreperson
2 is, they can begin.

3 (Pause.)

4 THE COURT: The Foreperson is Michael Roper.
5 We'll be at ease.

6 (WHEREUPON, the proceedings were recessed at
7 approximately 2:51 p.m.)

8 THE COURT: I understand that we have a verdict.
9 Bring the jury in.

10 (WHEREUPON, the jury came into open court at
11 approximately 4:01 p.m.)

12 THE COURT: Mr. Foreman, has the jury reached a
13 verdict?

14 JUROR #281, MICHAEL ROPER: Yes, sir.

15 THE COURT: Will you pass it to the bailiff, please?
16 Publish the verdict.

17 VERDICT

18 THE CLERK: Your Honor, this is case 2007-GS-23-2653,
19 the State v. Carlos Antone Bolt. On the charge of armed
20 robbery, we, the jury, unanimously find the Defendant
21 guilty of armed robbery. And this is signed by the
22 Foreperson, Michael Todd Roper.

23 Ladies and gentlemen of the jury, if you agree this
24 is the verdict you reached in your deliberation room,
25 would you, please, raise your right hand.

1 (All jurors raised their right hand.)

2 THE CLERK: Thank you.

3 THE COURT: Anything before we move into
4 sentencing?

5 MR. MOYER: Nothing from the State, Your Honor.

6 MR. POSEY: Nothing from the Defendant, Your Honor,
7 except renewing all previous motions.

8 THE COURT: All right. The motions are denied.
9 Bring him around, please.

10 Mr. Posey, I'm going to ask you to look over this
11 sentencing sheet with your client to make sure the
12 information in the caption is correct. And then would
13 you, please, sign it if it is. And you can give him the
14 opportunity to sign it as well.

15 Any prior record?

16 MR. MOYER: Your Honor, his only conviction is a
17 simple assault and battery from 2003 that was reduced from
18 assault and battery with intent to kill. He does have an
19 extensive list of pending charges.

20 Can I tell you briefly?

21 THE COURT: Please.

22 MR. MOYER: He has pending a charge of pointing a
23 firearm from August of 2006. He got out of jail on that
24 date and was picked back up in -- three days later for
25 loitering to engage in drug activity and was put on home

1 incarceration. He was arrested on this case on January
2 9th. It also involved an incident from about a week and a
3 half previous that was briefly referred to by the witness,
4 Mr. Khan. He was robbed in the exact same manner, again,
5 by this Defendant. That charge is still pending. That
6 case also involved a firearm that a different individual
7 had.

8 THE COURT: He's charged with armed robbery?

9 MR. MOYER: He's charged with armed robbery for that
10 as well. And he also has charges -- so he got out of jail
11 on January the 10th of 2007, for these cases that are
12 before the Court. And then on February 28th of 2007, he
13 was put back in jail for assault and battery with intent
14 to kill, discharging a firearm into a dwelling, and
15 lynching, an incident where three people were shot,
16 including one person was paralyzed. Those cases are all
17 pending.

18 THE COURT: All right. Anything else from the State?

19 MR. MOYER: No, Your Honor.

20 THE COURT: Mr. Posey.

21 MR. POSEY: May it please the Court?

22 Your Honor, Mr. Bolt is 22 years of age. He's a
23 lifelong resident of Greenville. He's here supported by
24 his family. His mother and father, Carlos and Bobbie
25 Bolt, are standing with him here today.

1 Your Honor, as the Solicitor said, he only has one
2 prior misdemeanor conviction. I understand the Solicitor
3 relayed the other information to you, but I would ask the
4 Court to place it in the context of merely charges at this
5 point. He's not been convicted of anything else, other
6 than a misdemeanor.

7 I would urge the Court -- respectfully urge the Court
8 to impose the minimum sentence by law given his age and
9 lack of former prior record, Your Honor.

10 THE COURT: Is there --

11 MR. POSEY: And I think his mother would like to
12 address Your Honor at the appropriate time.

13 THE COURT: Sure.

14 Let me ask you this question, is there any use in you
15 all having a discussion about whether or not some of these
16 other charges can be disposed of all in one package?

17 MR. POSEY: I don't know if that can happen today,
18 Your Honor. Mr. Moyer and I have spoken peripherally of
19 various outcomes of today and if it's possible doing that.
20 And Mr. Bolt and I have spoken briefly, but not detailed
21 enough that I would feel comfortable with all those
22 charges going forward today. I think it can be reasonably
23 worked out at some point in time, Your Honor.

24 THE COURT: Ma'am.

25 MS. BOBBIE BOLT: Can I come up?

1 MR. POSEY: Stay right there. Just state your name.

2 MS. BOBBY BOLT: Okay. My name is Bobbie Bolt. And
3 I'm Carlos Bolt's mother.

4 And I just want to say, yeah, he's got some pending
5 charges. But some of the charges the guy have already
6 stated that he was not the one that did the stuff.

7 And like this right here, he's not saying that he
8 didn't do it. He's just saying he was not armed. He
9 admitted that he did this. He's just saying he was not
10 armed with anything. And this is -- I mean, you know,
11 from all this that has gone on, all these charges, this is
12 just -- they make charges.

13 And the guy that's paralyzed, that's his friend.
14 That's his best friend that's paralyzed, you know. It's a
15 lot to the story. This is his best friend that's
16 paralyzed. And, you know, it's just a lot to it. I mean,
17 I'm not saying it because it's my son.

18 THE COURT: Well, I would not sentence him, of
19 course, based on charges that have not yet become
20 convictions and may never become convictions. That's just
21 information that's given to me. And I get a lot of
22 information in the course of sentencing people. And I
23 would not use that information to influence my decision on
24 his sentence.

25 MS. BOBBY BOLT: Okay. But I'm not saying this just

1 because this is my son. I'm not going to apologize. He
2 let me know the truth. He told the truth. He went and
3 got the jewelry and he ran with the jewelry, you know. He
4 told the truth. He told the truth. He admitted he got
5 the jewelry. He said he ran with the jewelry. But I'm
6 not going to uphold him. He did wrong. I told him he did
7 wrong.

8 This boy has been raised up in the church all his
9 life, all his life. And he knows, like I said, he did
10 wrong. And I admit that he did wrong. And I'm not trying
11 to uphold him. But he was not armed. And this is why
12 we -- you know, he didn't want to plead guilty. He said,
13 I'm not going to plead guilty to something that I did not
14 do. I was not armed. But I will plead that I took the
15 jewelry. This is the reason why we had a trial, because
16 he did not want to plead guilty that he was armed.

17 THE COURT: Thank you, ma'am.

18 What was your name, sir?

19 MR. CARLOS BOLT, SR.: Carlos Bolt. I'm his father.

20 THE COURT: Mr. Posey.

21 MR. POSEY: Your Honor, I think he did give a
22 statement. For evidentiary reasons, he did not testify in
23 the trial, which could have opened the door to some things
24 coming in. But, of course, we did not want to -- the
25 possibility of that happening. But he did give a

1 statement initially admitting taking the jewelry, Your
2 Honor. He was not uncooperative.

3 THE COURT: Let me see the statement, please.

4 (Pause.)

5 THE COURT: Anything you want to say, Mr. Bolt?

6 DEFENDANT BOLT: (Defendant Bolt shook head.)

7 MR. CARLOS BOLT, SR.: All I can say, my son, he
8 mentioned what he did. He admitted what he did. He took
9 the jewelry and ran off with it. And I don't think it
10 fair that they going to say he pulled a gun. He's my boy
11 and he did -- he told me what he did. He never lied. He
12 admitted -- he tell everything out. And I know he did it.

13 And the only thing I say about the other stuff, the
14 shooting, all one boy started going in and shooting stuff.
15 And it was a mistake that Greenville County is going to
16 try to say he shot his own friend in the back. They
17 don't -- and then they take revenge out on my son. I know
18 what's going to start happening, sir. They don't like
19 him. And then the -- they had nothing on the table.
20 Every time something goes on with gang stuff -- they ain't
21 no gangs in the neighborhood. And when I come up, in my
22 day, if my friend gets trouble, one of his buddies jump
23 in. I'm going to help my friend out. That ain't no gang
24 fight. Everything is gang. I mean, he shoot his own
25 friend and -- in fact, I don't know.

1 I ain't going to see my boy for a long time. And I
2 don't think it's fair. And if I -- when I do -- but, you
3 know --

4 THE COURT: All right. Mr. Bolt, I appreciate your
5 comments.

6 Now, I'm about to sentence your son. And if you
7 don't feel like you can control yourself when you hear
8 what the sentence is, I'm going to ask you to go ahead and
9 leave. Okay.

10 Can you control yourself?

11 MR. CARLOS BOLT, SR.: I'm all right.

12 THE COURT: Was there ever any kind of discussion
13 about reducing the charge and allowing a plea on a reduced
14 charge?

15 MR. MOYER: In conjunction with a guilty plea to
16 other charges, but never this by itself. If he would have
17 entered guilty pleas regarding some of the other
18 charges -- part of what played in our decision -- I mean,
19 whether or not he had a gun on this occasion, the victim,
20 certainly, thought he did.

21 This Defendant has been charged, at least, four times
22 in incidents where he had a gun. The case that was on
23 yesterday's docket was a pointing a firearm when he was
24 seen with a pistol. The woman -- yesterday, there was a
25 case on the docket that got continued.

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, 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 the 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 6th day of February, 2008.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 18, 2008

Hollie M. Jenkins

Hollie M. Jenkins, Court Reporter

My Commission Expires: 11-17-10

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS

John C. Few, Circuit Court Judge

Case No. 2007-GS-23-2653

The State, ... Respondent,

v.

Carlos Anthone Bolt, ... Appellant.

Appellant's Final Brief

J. Falkner Wilkes
638 East Washington Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 facsimile
Counsel for Appellant

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in denying the defense's motion for directed verdict?
2. Does the record support a conviction for armed robbery?

STATEMENT OF THE CASE

Carlos Athony Bolt was indicted by grand jury in Greenville County for the offense of armed robbery. A trial by jury was had February 6, 2008, the Honorable John C. Few presiding. Appellant was represented at trial by Christopher T. Posey of Greenville. The State was represented at trial by L. Mark Moyer, Assistant Solicitor for Greenville County. The Appellant was found guilty and sentenced to a period of twenty years in the South Carolina Department of Corrections. Notice of appeal was timely filed. J. Falkner Wilkes, of Greenville, represent Appellant on the brief of this case.

ARGUMENT

I. THE TRIAL COURT ERRED IN HOLDING THAT THE EVIDENCE SUPPORTS ARMED ROBBERY WHERE FORCE, INTIMIDATION OR THREAT OF WEAPON WAS NOT DIRECTED AT THE VICTIM AS PART OF THE RES GESTAE OF THE THEFT.

This case involves the theft of jewelry from a kiosk at the Haywood Mall in Greenville. Two suspects, one alleged to be the defendant in this case, approached Benjamin Day, sales clerk at the Gold Gallery, and asked to see certain pieces of jewelry. R. 51-55. Shortly after Day allowed each suspect to hold a piece of jewelry, both suspects suddenly took off running through the mall. 56-57. There was no evidence offered as to any threat or intimidation in the theft.

Upon seeing the two suspects run off with the jewelry the victim immediately gave chase through the mall. 58. At least two people fell in running behind the victim even though neither had witnessed the theft. 58, 76-79, 86-88. One of these two people, Kashif Khan, was an employee of another store in the mall. 78-86. Kahn came out of his store when he saw the two suspects running by with the victim in pursuit. 87-88. Kahn cut through an adjacent store and outside to the mall parking lot where he saw the suspects getting into a car. 88-90. Khan ran up to the suspect who was getting into the passenger side of the car and grabbed him from behind. 90. The suspect pushed Kahn who then kicked the

suspect, knocking him to the ground. 90. When the suspect fell down he yelled that he had a gun and was going to shoot Khan. 90. By Khan's testimony, the suspect was not looking at anyone else as he threatened Khan. 92. At the time the suspect threatened to shoot Khan the victim had come out of the Mall but had not reached Khan or the suspect's car. 61. After making the threat to Khan the suspect got into the car which immediately drove off. 92.

The defense timely moved for a directed verdict on the grounds that the evidence did not support a charge of armed robbery which it renewed at the conclusion of the trial. 123-124; 162.

In denying the defendant's motion for a directed verdict the trial court relied on this Court's prior opinion in State v. Moore for the proposition that becoming armed at any point after a robbery will support the offense of armed robbery. *See State v. Moore*, 374 S.C. 468, 649 S.E.2d 84 (Ct.App. 2007). In doing so the trial court failed to recognize that the facts of the present case are distinguishable from Moore. Unlike Moore, and related cases, there was no force, intimidation or threat of weapon directed *toward the victim* as part of taking in the present case. The record shows simply a larceny from the victim, Day, with a subsequent assault on Kashif Khan, a third party unrelated to the actual theft of the jewelry. In this case the trial court failed to recognize a distinction between the facts in the present case

and the operative facts of Moore and its underlying cases. In analyzing the limits of armed robbery in seemingly similar cases the Moore court made a distinction between cases where the use or threat of a weapon was directed *to the victim* as part of the taking and cases where the use or threat of a weapon constitutes a separate assault. In doing so the Moore court analyzed the force or intimidation at issue as the foundation for a robbery.

The Model Penal Code espouses the theory, focusing on whether the force or intimidation asserted against the *victim* is part of the entire act, and includes the use of force or intimidation to retain possession of the thing taken or to escape or prevent pursuit. Model Penal Code § 222.1(1) (2001). *Emphasis added.*

State v. Moore, 374 S.C. 468, 473-74, 649 S.E.2d 84, 86 (Ct.App. 2007).

While the court in Moore clearly adopts the position that a robbery occurs if the force or intimidation takes place "in the course of committing a theft" including the flight after the attempt or commission, this holding appears limited to cases where the force or intimidation is asserted *against the victim* as part of the theft, as opposed to a later assault on a third party. Such limitation is consistent with the language and facts in Moore as well as the cases on which Moore rests. In Moore the court recognized a clear distinction between the use or threat of a weapon directed to a victim as part of the taking, and the use or threat of a weapon as a separate assault:

The efficacy of the rule is to distinguish the perpetration of a robbery from the commission of a larceny and a subsequent assault, limiting the latter to cases where the intimidation or force is not directly related to the taking.

State v. Moore, 374 S.C. 468, 473-74, 649 S.E.2d 84, 86 (Ct.App. 2007).

In the present case the threat of a weapon was directed at Kashif Khan, a third party who had engaged in an altercation with one of the suspects after the theft, and not the unlawful taking from the victim. As a result, the threat of a weapon was not part of the *res gestae* of the theft. It constituted instead a subsequent separate assault on Khan. The trial court therefore erred in holding that the evidence supported the charge of armed robbery, or even robbery, under the holding in Moore. Despite the apparent expansive interpretation Moore gives to the supreme court's holding in State v. Keith, 283 S.C. 597, 598, 325 S.E.2d 325, 326 (1985), the Moore court clearly recognized that a larceny with separate later assault does not necessarily constitute a robbery. In denying the defendant's motion for a directed verdict the trial court failed to recognize that any force or intimidation or the use or threat of weapon directed later to Kahn constituted a subsequent assault and was "not directly related to the taking." See Moore, *supra*.

Application of a subsequent assault analysis is appropriate in the present case and consistent with the supreme court's prior rulings on the issue. The basic

proposition the Moore court began with was soundly rooted in prior law which held that when a defendant commits robbery without a deadly weapon, but becomes armed with a deadly weapon before asportation of the victim's property, a conviction for armed robbery will stand. State v. Keith, 283 S.C. 597, 325 S.E.2d 325 (1985). While the court in Kieth stated that "the crime of robbery is not completed the moment the stolen property is in the possession of the robbers, but may be deemed to continue during their attempt to escape," such statement is limited to the facts of Kieth where the subsequent threat were directed *to the victim* of the larceny immediate to the taking. A review of the supporting citations in Kieth support limiting its holding to cases where threats of force, intimidation or the use of a weapon is directed *to the victim* of the larceny immediate to the taking.

In support of its decision in Keith the court cited State v. Bridges, 444 So.2d 721 (La.App. 1984), and People v. Heller, 131 Ill. App.2d 799, 267 N.E.2d 685 (Ill. 1971). In both Bridges and Heller the arming of the defendant occurred immediately after the robbery and prior to the asportation of the goods from the victim. In both cases the arming was directed *at the victims* of the taking. In State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979), the supreme court upheld an armed robbery conviction, even though the defendant was apparently unarmed at the time

the victim's ring was taken. In Jones the court found that the defendant had threatened *the victim* with a deadly weapon prior to the robbery. In State v. Kieth, no weapon appeared until after the money had already been taken from the victim. There the defendant stole the victim's wallet and pocket knife before stabbing *the victim* with the knife and fleeing. Consistently in cases dealing with a defendant that becomes armed subsequent to the taking the force, intimidation, or threat of weapon, is directed *to the victim* to effectuate the larceny.

Although the court in Moore held that the crime of the defendant continued as he attempted his escape the store and through the parking lot, it was his threat *to the victim* which raised the offense from larceny to armed robbery. Likewise, in cases cited by Moore the threats or use of a weapon subsequent to the taking is always directed *towards the victim* as part of the taking. See Burko v. State, 19 Md.App. 645, 313 A.2d 864, 871 (1974) (where the arming occurred immediately after the taking and was directed *to those being robbed.*); See also Perkins, Criminal Law, ch. 4, § 2C (2d ed.1969) wherein it is stated, at 284: "Furthermore, if one snatches property from the hand *of another* and uses force or intimidation to prevent an immediate retaking *by the other*, this is all one transaction and constitutes robbery." *Emphasis added.* In Ball v. State, *the victim* was shot prior to the taking. In State v. Meyers, 620 So.2d 1160, 1163 (La. 1993) the threat of a

weapon was made *to the victim* of the larceny immediately after the taking. In

Meyers the court in its analysis stated:

In instances when a thief must use force to retain the stolen property, the thief does not acquire full possession of the property until the force or threat of force has overcome the *custodian's* resistance to the taking. See Wharton's Criminal Law § 463, at 39-40 (15th ed.1996). *Emphasis added.*

State v. Meyers, 620 So.2d 1160, 1163 (La. 1993).

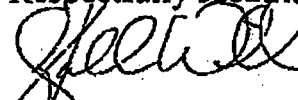
An analysis of prior cases suggests that to support the a charge of robbery or armed robbery the record must establish that the use of force, intimidation, or threat of weapon be directed *to the victim* of the larceny as part of the taking.

The record in present case fails to establish the use of force or intimidation *directed at the victim* of the larceny to effectuate the theft of the property. Instead, the record shows a only a larceny followed by separate assault against Kashif Kahn, an unrelated third party. In denying the defendant's motion for directed verdict the trial court failed make a distinction between the commission of a larceny with separate subsequent assault, and robbery as in Moore and related cases. The subsequent assault, not being directly related to the taking from the victim, fails to support a charge of either robbery or armed robbery. The trial court therefore erred in failing to direct a verdict in favor of the defendant.

Conclusion

Based on the foregoing the conviction and sentence of the defendant should be reversed and set aside accordingly.

Respectfully submitted,



J. Falkner Wilkes
638 East Washington Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 facsimile
Counsel for Appellant

November 24, 2008.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS

John C. Few, Circuit Court Judge

Case No. 2007-GS-23-2653

The State, ... Respondent,

v.

Carlos Anthony Bolt, ... Appellant.

CERTIFICATE OF COMPLIANCE

I certify that the Record on Appeal contains all of the matter designated by the Parties and no matter irrelevant to the appeal.

I certify that the Appellant's Final Brief is in compliance with Rule 211(b) and further that the Appellant's Final Brief and the Record on Appeal have been reviewed and redacted in accordance with the Supreme Court's Order on the redaction of private data and personal identifiers.


J. Falkner Wilkes, 12893
638 East Washington Street
Greenville, SC 29601

(864) 282-1292

(864) 271-6035 facsimile

Counsel for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
COURT OF GENERAL SESSIONS

John C. Few, Circuit Court Judge

Case No. 2007-GS-23-2653

The State, ... Respondent,
v.
Carlos Anthony Bolt, ... Appellant.

Certificate of Service

I certify that I have served on the Respondent the Appellant's Final Brief, and Certificate of Compliance by placing a copies of same in the United States Mail, postage prepaid, first class, addressed as follows this 1st day of December, 2008:

A. West Lee
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211

Respectfully submitted,



J. Falkner Wilkes
638 East Washington Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 facsimile
Counsel for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
John C. Few, Circuit Court Judge

THE STATE,

Respondent,

vs.

CARLOS ANTONE BOLT,

Appellant.

FINAL BRIEF OF RESPONDENT

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3374

ROBERT M. ARIAIL
Solicitor, Thirteenth Judicial Circuit

305 E. North St., Ste. 325
Greenville, SC 29601
(864) 467-8647

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL**I.**

Did the trial court err in denying the defense's motion for directed verdict?

II.

Was the issue of the conviction's sufficiency properly preserved for appellate review?

STATEMENT OF THE CASE

Carlos Antone Bolt was indicted by the Greenville County Grand Jury for the offense of armed robbery (2007-GS-23-2653). Defendant pled not guilty, and a jury trial was held February 6, 2008, before the Honorable John C. Few. Defendant, represented by counsel, was found guilty and sentenced to twenty years imprisonment in the South Carolina Department of Corrections. Notice of appeal was timely filed.

ARGUMENT

I. The trial court properly submitted the case to the jury where the State presented sufficient evidence reasonably tending to prove the guilt of the accused, or from which guilt may be fairly and logically deduced, at trial.

The defendant was convicted of armed robbery and was sentenced to a twenty year term of imprisonment. The defendant made a motion for a directed verdict, alleging that insufficient evidence was produced to merit a conviction for armed robbery; but the motion was denied. (R. pp. 123-124). Defendant renewed his motion at the end of the trial, and was again denied. (R p. 162, lines 6-8). In his initial appellate brief, the defendant argues that the trial court erred in denying the defendant's motion for a directed verdict and submitting the issue to the jury where the evidence presented at trial did not support armed robbery because force, intimidation or threat of a weapon was not directed at the victim as part of the theft.

The appellate court may reverse the trial judge's denial of a motion for a directed verdict only if there is no evidence to support the judge's ruling. State v. Zeigler, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005). When ruling on a motion for a directed verdict, the trial judge is concerned with the existence or nonexistence of evidence, not its weight. State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury. State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001). A trial court should only grant directed verdict motion where jury would be speculating as to guilt of accused or where evidence is sufficient only to raise mere

suspicion of guilt. State v. Ballenger, 322 S.C. 196, 470 S.E.2d 851 (1996). On appeal from the denial of a directed verdict, an appellate court must review the evidence in the light most favorable to the State. State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001).

South Carolina Code Section 16-11-330(A) states that a person who commits a robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, that 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 and, upon conviction, must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted. As such, the state may prove armed robbery by establishing the commission of a robbery and either one of two additional elements: (1) that the robber was armed with a deadly weapon, or (2) that the robber alleged he was armed with a deadly weapon, either by action or words, 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. State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002). Additionally, South Carolina case law has repeatedly held that a defendant who is unarmed or makes no representation of being armed at the time of the robbery, but becomes armed during his attempt to escape, will be considered armed for the purposes of satisfying the armed robbery statute. See State v. Keith, 283 S.C. 597, 325 S.E.2d 325 (1985); State v. Moore, 374 S.C. 468, 649 S.E.2d 84 (Ct. App. 2007).

At trial, the State called Benjamin Day, who testified that two men robbed his store,

the Gold Gallery of Haywood Mall in Greenville, South Carolina, on January 7, 2007. (R. pp. 52-57). The State presented evidence that one of the robbers was the defendant in this case, Carlos Antone Bolt. Mr. Day stated that he recognized the defendant in the photo lineup he was shown after the incident (R. p. 65, lines 17-23), and solidified this assertion by pointing out the defendant when asked to clarify who he was referring to. (R. p. 67, lines 14-23). An officer, Doyle Burdette, confirmed Mr. Day's selection, saying that when he showed him the photo lineup, Mr. Day identified the defendant with a high degree of confidence. (R. p. 118, lines 17-25). Another State witness, Jackie Kellet, of the Greenville County Department of Public Safety, Forensics Division, testified that she examined fingerprints left at the scene, and was able to positively identify certain fingerprints as those of the defendant. (R pp. 111-113).

Mr. Day further testified that the defendant alleged he was armed with a deadly weapon. He stated that while the defendant was looking in his direction, Day heard him shout "I'm going to shoot this mother fucker," while reaching into his pocket and pulling out something metallic in nature resembling a .22 caliber handgun. (R. p. 61, lines 15-23). Another State witness, Kashif Khan, testified that, in trying to prevent an escape, he engaged in an altercation with the defendant. (R. pp. 88-89). Mr. Khan stated that during said altercation, the defendant started shouting "I've got a gun and I'm going to shoot you." (R. p. 89, lines 6-7)

Mr. Day said that when he heard the defendant say he had a gun, he ducked out of the way. (R. p. 61, lines 18-19). In his testimony, Mr. Thompson confirmed that Mr. Day was ducking frantically, trying to get out of the way. (R p. 79, lines 3-7). Mr. Khan also testified

that, upon hearing of a gun, both he and Day ran away. (R. p. 89, line 7-20).

As already stated, in order to sustain a conviction for armed robbery, the State need only prove that the robber *alleged* he was armed with a deadly weapon, by action or words, 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*. In the present case, the State presented three witnesses who established that the defendant was in fact one of the two men who robbed the Gold Gallery on January 7, 2007. Further, two witnesses testified that the defendant claimed to have a gun and threatened to shoot. One witness, Mr. Day, claimed to have seen a metallic object resembling a .22 caliber handgun. And finally, two witnesses testified to believing that the defendant was armed, and to being frightened for their safety. This clearly meets the requirements of the armed robbery statute, and is more than enough to withstand the defendant's directed verdict motion.

Defendant's counsel argues that the law requires that the allegation and representation of the deadly weapon be directed at the victim of the crime, and that in the present case such allegation and representation were not made to the victim, Mr. Benjamin Day, but to an subsequent third party. However, §16-11-330(A) makes no mention of such a requirement, stating only that such allegation and representation must be made to *a person present during the commission of the robbery*, with 'during the commission' being defined by the case law as any point during the actual taking or attempted escape. Under the general rules of construction, the words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002). Thus, although the defendant cites a

plethora of case law where allegations and representations were made to the victim, the statute itself does not create such a requirement and this court should hold that no such requirement exists. And even if the court finds that any threatening overtures must have been made toward the victim, the evidence taken in the light most favorable to the state reflects that the defendant was in fact looking at the victim when he shouted 'I'm going to shoot this motherfucker.' This created a legitimate factual issue for the jury to decide.

A defendant is only entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001). Here, the State did not fail to produce evidence relating to the offense charged. In fact, it presented evidence covering each prong of the armed robbery statute, all of which tended to prove the guilt of the defendant. As such, a factual issue was created regarding the defendant's guilt or innocence and the case was properly submitted to the jury. Therefore, the respondent submits that the court did not err in denying the defendant's motion for a directed verdict, and that this Court should affirm the trial court's ruling on the matter.

II. To the extent that the defendant seeks to overturn his conviction for armed robbery based on insufficiency of the evidence, he must fail because this issue was not preserved for appellate review.

The defendant also seems to argue in his initial appellate brief that his conviction for armed robbery should be overturned and a new trial granted based on the insufficiency of the evidence presented against him at trial. Although the exact wording is not used, this appears to be a motion for a new trial.

A motion for a new trial is a post-trial motion properly raised after a verdict is entered but before the adjournment of the court. When timely made, the trial judge will hear and rule upon said motion. The decision to grant or deny a motion for a new trial is within the discretion of the trial court. State v. Johnson, 376 S.C. 8, 654 S.E.2d 835 (2007).

Here, however, no post-trial motion for a new trial was made. Despite the fact that the defendant and his counsel had an opportunity to make such a motion after the entry of the verdict, neither did so, and instead the defendant's counsel simply renewed his previous motions, which included only a motion for a directed verdict. (R. p. 162, lines 6-7). As a result, the motion for a new trial was never raised to and ruled upon by the trial judge.

In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003). Issues not raised and ruled upon by the trial court will not be considered on appeal. State v. Passmore, 363 S.C. 568, 611 S.E.2d 273, 281 (Ct. App. 2005).

Because the motion for a new trial was not raised to and ruled upon by the trial judge, the issue was not preserved for appellate review. As such, respondent submits that the

sufficiency of the defendant's conviction must not be considered in this appeal, and that this court should affirm the lower court's ruling.

CONCLUSION

Based on the foregoing, Respondent respectfully submits that Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

ROBERT M. ARIAIL
Solicitor, Thirteenth Judicial Circuit

BY: _____
A. WEST LEE

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3374

ATTORNEYS FOR RESPONDENT

November 25, 2008

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenville County
John C. Few, Circuit Court Judge

THE STATE,

Respondent,

vs.

CARLOS ANTONE BOLT,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

ROBERT M. ARIAIL
Solicitor, Thirteenth Judicial Circuit

By:


A. WEST LEE

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3374

ATTORNEYS FOR RESPONDENT

November 25, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
John C. Few, Circuit Court Judge

THE STATE,

Respondent,

vs.

CARLOS ANTONE BOLT,

Appellant.

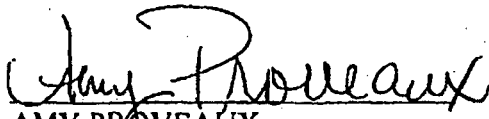
PROOF OF SERVICE

I, Amy Proveaux, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

J. Falkner Wilkes, Esquire
638 East Washington Street
Greenville, South Carolina 29601

I further certify that all parties required by Rule to be served have been served.

This 25th day of November, 2008.


AMY PROVEAUX
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Carlos Antone Bolt,

Appellant.

Appeal From Greenville County
John C. Few, Circuit Court Judge

Unpublished Opinion No. 2009-UP-617
Submitted December 1, 2009 – Filed December 22, 2009

AFFIRMED

J. Falkner Wilkes, of Greenville, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
Assistant Attorney General A. West Lee, all of
Columbia; Solicitor Robert Mills Ariail, of
Greenville, for Respondent.

PER CURIAM: Carlos Antone Bolt appeals his conviction for armed robbery. On appeal, he argues the trial court erred in denying his motion for a directed verdict. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: S.C. Code Ann. § 16-11-330(A) (2003) (stating armed robbery occurs when a person commits robbery while either armed with a deadly weapon or alleging to be armed by the representation of a deadly weapon); State v. Mitchell, 382 S.C. 1, 6, 675 S.E.2d 435, 438 (2009) (holding "[a robbery] occurs not only if the perpetrator uses force or intimidation to take possession of the property, but also if force or intimidation is used to retain possession immediately after the taking, or to carry away the property, or to facilitate escape"); State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002) (holding the State must show evidence corroborating the allegation of being armed, such as the use of a physical representation of a deadly weapon).

AFFIRMED.

WILLIAMS, PIEPER, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville, SC)Carlos Bolt #326593)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2010-CP-23- 10378

APPLICATION FOR

POST-CONVICTION RELIEF

2010 DEC 2 P 12:05
 CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSHER

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 SC Greenville County Detention Center; Currently Lieber C+I
2. Name and location of Court which imposed sentence General Session, Greenville SC
3. Name(s) of co-defendant(s) (if any) Jimmy Cobb
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) _____
 - (b) _____

RECEIVED
 2010 DEC 2 P 12:05
 CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSHER

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Feb. 10th 20 year sentence imposed
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty I was found guilty in trial
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- Yes I did
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. My Conviction was Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Dec 22 2010; I got notified on Jan. 4th
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) The Applicant received ineffective
- (b) assistance of trial Counsel
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Applicant must have Counsel to
- (b) ensure all available ineffective
- (c) assistance of counsel issues are →
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- 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?

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) See number 10
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? NO
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

NO

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. Christopher T. Posey
Greenville, SC 29601
 ii. J. Falkner Wilkes: 638 East Wash-
ington St. Greenville, SC 29601
 iii. _____

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

i. Trial
 ii. Appeal
 iii. _____

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

A Reversal of my sentence.

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

No

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Carlos Bolt, 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.

Carlos Bolt

SWORN to and subscribed before me this 17th
day of November, 2010.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Carlos Bolt, 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.

Carlos Bolt
Applicant

SWORN or affirmed to and subscribed before me this
17th day of November, 2010.

Ludman Bryant
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2010-CP-23-10378
COUNTY OF GREENVILLE	)	
	)	
Carlos Antone Bolt,	)	
S.C.D.C. No. 326593,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed December 23, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the March 2007 term of General Sessions for armed robbery (2007-GS-23-2653, count 1) and possession of a weapon during commission of a violent crime (2007-GS-23-2653, count 2). Christopher T. Posey, Esquire represented the Applicant.

After the State called the case to trial on the charge of armed robbery, the Applicant was found guilty. On February 6, 2008, the Honorable John C. Few sentenced the Applicant to twenty (20) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. J. Falkner Wilkes, perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Bolt, Op. No. 2009-UP-617 (S.C. Ct. App. filed December 22, 2009).

Attached herewith and incorporated herein by reference are the records of the Greenville

County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

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

I. Ineffective assistance of counsel.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used 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 prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

April 12, 2011

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

2010-CP-23-10378

CARLOS ANTONE BOLT, 326593

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

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

Carlos Antone Bolt, 326593
 Lieber Correctional Institution
 Post Office Box 205
 Ridgeville SC 29472

DATED this 12th day of April, 2011.


 Judy A. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	) COURT OF COMMON PLEAS
	)
COUNTY OF GREENVILLE	) Case No(s) : 2010CP2310378
	)
Carlos Antone Bolt,	)
	)
Applicant,	)
	)
-VS-	) TRANSCRIPT OF RECORD
	)
State of South Carolina,	)
	)
Respondent.	)
	)

April 3, 2012
Greenville, South Carolina

B E F O R E:

HONORABLE EDWARD W. MILLER, Judge.

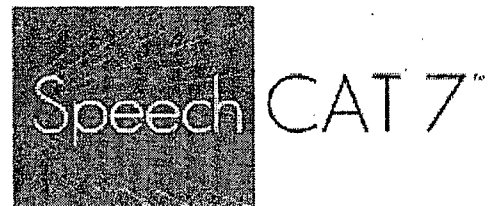
A P P E A R A N C E S:

KAREN RATIGAN, Esquire
Attorney for the State

JONATHAN NEAL, Esquire
Attorney for the Applicant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

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APPLICANT EXHIBITS

(No exhibits offered.)

RESPONDENT EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 3rd day of April, 2012 at approximately 2:32 p.m.)

THE COURT: Yes, ma'am.

MS. RATIGAN: May it please the Court.

This is the case of Carlos Bolt versus the state of South Carolina. Docket number 2010-CP-23-10378. Mr. Bolt was indicted for Armed Robbery and Possession of a Weapon during the Commission of a Violent Crime. He was represented on that charge, on those charges by Mr. Posey.

The State brought the armed robbery case to trial in February of 2008. The jury found him guilty of that charge. On February 6th of 2008, Judge Few sentenced him to 20 years. The case was appealed at the Court of Appeals. Mr. Wilkes perfected the appeal of the Court of Appeals from the conviction and sentence in December of 2009. The State is ready to proceed. However, I've been advised counsel has a motion to make.

MR. NEAL: Yes, Your Honor. I have a motion for a continuance. I requested the file of Mr. Posey, made arrangements to see it. He

1 went to retrieve it and it was destroyed by
2 water damage. The files I need are discovery
3 and plea offers which I think I can get from
4 the Solicitor's office, but I didn't have
5 enough time based on when I got the information
6 from Posey. This is a first call on this case.

7 **THE COURT:** What's the State's position?

8 **MS. RATIGAN:** This is the first time it's
9 been put on the docket. The State's general
10 position is once we're in court, we're ready to
11 go forward. We've got Mr. Posey here today.
12 Obviously, that's something in the Court's
13 discretion.

14 **THE COURT:** I mean, what do you hope to
15 gleam from all that?

16 **MR. NEAL:** Uh, Mr. Bolt raises the issue
17 of whether, uh, pleas were effectively
18 communicated, whether different, uh, discovery
19 should have been done. This is a crime that
20 occurred at the mall. He is concerned that Mr.
21 Posey did not subpoena some that he should
22 have.

23 **THE COURT:** What good is it going to do to
24 continue?

25 **MR. NEAL:** Uh, I have a better opportunity

1 to question Mr. Posey about those plea offers
2 and how he communicated those to Mr. Bolt.

3 THE COURT: Well --

4 MR. NEAL: Cause he's only got the most
5 recent plea offer. I'm not sure that there are
6 any more other plea offers out there.

7 THE COURT: Well, let's go forward. We'll
8 see where we end up.

9 MR. NEAL: Okay. All right. Your Honor,
10 I call Mr. Carlos Bolt.

11 THE COURT: All right.

12 THE CLERK: Place your left hand on the
13 Bible and raise your right hand.

14 CARLOS BOLT

15 having first been sworn, testifies as follows:

16 THE CLERK: Thank you. Please state your
17 name for the record.

18 THE WITNESS: Carlos Bolt.

19 THE CLERK: Thank you. Be seated.

20 DIRECT EXAMINATION

21 BY MR. NEAL:

22 Q Mr. Bolt, you were convicted of armed
23 robbery, is that correct?

24 A Yes, sir.

25 Q You went to trial on that charge, correct?

1 A Yes, sir.

2 Q You were represented by Mr. Posey?

3 A Yes, sir.

4 Q I believe in your PCR that you claim that
5 he was ineffective.

6 A Yes, sir.

7 Q Uh, did you receive several, uh, plea
8 offers from the Solicitor's office?

9 A Not for armed robbery, no, sir. I never
10 received a plea for armed robbery.

11 Q You were facing several charges, is that
12 correct?

13 A Yes, sir.

14 Q You remember what those charges were?

15 A A couple of assault and battery intent to
16 kills, second degree lynching, pointing and
17 presenting, shooting into a dwelling.

18 Q Those were -- you were convicted of an
19 armed robbery that occurred at Haywood Mall, is that
20 correct?

21 A Yes, sir.

22 Q And those charges -- those other charges
23 were from other incidences?

24 A Yes, sir. Unrelated to the armed robbery.

25 Q So as part of your plea negotiations, you

1 and Mr. Posey go to the Solicitor and say you are
2 willing to plea to these events that occurred at the
3 Haywood Mall, is that correct?

4 **A** No, sir. That's not correct. Mr. Posey
5 only came to me for a 0 to 20 plea for Assault and
6 Battery with Intent to Kill. I told him several
7 times I didn't want to plea to the Assault and
8 Battery with Intent to Kill. I rather would -- the
9 plea was for the Assault and Battery with Intent to
10 Kill and maybe four or five other charges. I told
11 him I didn't want to plea to the Assault and Battery
12 with Intent to Kill, I would rather plea guilty to
13 the Armed Robbery singularly because I never been
14 convicted of any crime before. I felt as though I
15 would have a better chance to plea guilty to the
16 armed robbery singularly.

17 He told me he didn't want to deal with the
18 Armed Robbery because it was from 10 to 30. He
19 wanted to deal with something a little closer to 0 to
20 20. I told him pleading guilty to Assault and
21 Battery with Intent to Kill and five or six other
22 charges was -- I felt like that was going to get me
23 more time than just pleading guilty to armed robbery
24 singularly.

25 **Q** But that charge was from not the event that

1 occurred at the Haywood Mall?

2 A Yes, sir. I never had a -- I never had a
3 plea for the armed robbery.

4 Q Okay. And did you tell Mr. Posey to
5 communicate that to the Solicitor?

6 A At one point in time, I told Mr. Posey when
7 he kept urging me to plea guilty to the assault and
8 battery with intent to kills, I told him that I would
9 pled guilty to 10 years. He told me he was sure that
10 Mr. Moyer, the Solicitor, would agree to that. When
11 I told him to go ask him about it, he told me I had
12 to agree to it right then or sign something right
13 now. I told him I would rather wait until I got back
14 to the detention center. We was here at the
15 courthouse when he asked me.

16 When I told him about that plea, I told him
17 I would rather get back to the detention center and
18 talk to my mother and father and let them know what I
19 was going to do. He told me that my mother and
20 father was not going to have to do the time with me.
21 He told me he wasn't going to Moyer with the plea if
22 I didn't accept it, and have Moyer upset with him
23 with me not accepting the plea.

24 Q So you wanted to plea at one point?

25 A Yes, sir.

1 Q But you wanted to have time to go back to
2 the detention center, talk with your mom?

3 A Just to let them know what I was going to
4 do. He told me if I didn't --

5 Q Mr. Posey did not want to communicate that
6 to --

7 A Yeah, he told me he didn't want Mr. Moyer
8 upset with him if I didn't go through with the plea.

9 Q Okay. Now, you -- let's talk about the
10 incident that occurred at the Haywood Mall. The
11 State allege that you went to a kiosk at the Haywood
12 Mall.

13 A Yes, sir.

14 Q And asked to see a piece of jewelry?

15 A Yes, sir.

16 Q And you took off with the piece of jewelry?

17 A Yes, sir.

18 Q You were with someone that day, is that
19 correct?

20 A Yes, sir. It was me and another -- well, I
21 don't know if I can call him co-defendant -- but me
22 and another individual named Mr. Jimmy Cobb, we went
23 to the jewelry stand, both of us together. I got a
24 necklace. He got a bracelet. We both ran out of the
25 door. He was the driver. He was never charged with

1 armed robbery. He was only charged with Grand
2 Larceny. I asked Mr. Posey to subpoena him to court
3 because he could have been a better witness. We was
4 both right there with it hand-to-hand. But Mr. Posey
5 didn't issue any subpoenas to him either.

6 Q You asked Mr. Posey to subpoena Mr. Cobb?

7 A Yes, sir.

8 Q He was not tried together with you at that
9 trial?

10 A No, sir.

11 Q You were the only defendant tried at that
12 trial?

13 A Mr. Cobb was -- I think he was only charged
14 with Grand Larceny. I was charged with Armed
15 Robbery.

16 Q So as I understand the State's case, uh,
17 you ran out of the mall.

18 A Yes, sir.

19 Q They allege that you got into a vehicle.
20 At that point, someone testified to "you have a gun"
21 or "he got a gun", something along those lines.

22 A They said they seen something that was
23 metallic in color that they perceived to be a weapon.

24 Q You understand that that statement,
25 "something metallic in color", that's the basis for

1 the armed robbery as opposed to robbery.

2 A I didn't even understand that that was
3 armed robbery. Mr. Posey, he didn't tell me until
4 maybe a couple of weeks before trial that Mr. Moyer
5 came with a pamphlet or booklet with the new statute
6 of armed robbery in saying the victim's perspective
7 at the time of the armed robbery, if he reasonably
8 believes his life was in danger, it can constitute
9 armed robbery. I didn't even know we was dealing
10 with armed robbery until maybe a couple of weeks
11 before trial.

12 Q You know Mr. Cobb pled guilty?

13 A I believe he pled guilty to Grand Larceny.

14 Q Do you know what sentence he received? Less
15 than you?

16 A Yes, sir. Very less than me.

17 Q Uh, are you familiar with who Kashif Khan
18 [phonetic spelling] is?

19 A Yes, sir. I am now.

20 Q Who is that person?

21 A He was the surprise witness that showed up
22 the day of trial. He said -- he only came forward
23 two weeks before trial and he's also a victim in a
24 pending case that I had, in a case that was unrelated
25 to the armed robbery. He was a victim in a pending

1 case that was unresolved before that.

2 Q When did the State allege that the robbery
3 had occurred?

4 A I'm sorry. I couldn't hear your question.

5 Q Let's just call it the robbery, when did
6 that occur?

7 A I believe maybe it was January of 2007.

8 Q Okay. And when did you go to trial?

9 A February of 2008.

10 Q So about a year later?

11 A Yes, sir.

12 Q Mr. Khan came and testified against you, is
13 that correct?

14 A Yes, sir.

15 Q When did you learn who he was?

16 A The day of trial.

17 Q When do you believe that Mr. Posey learns
18 who he was?

19 A Two weeks before trial.

20 Q To your knowledge, did Mr. Posey do
21 anything to prevent that person from testifying?

22 A No, sir. When I looked at the -- I believe
23 it was a witness sheet. I seen Mr. Khan's name on
24 the sheet. I asked Mr. Posey who he was. Mr. Posey
25 said he had him. He said I got him. I told Mr.

1 Posey, you don't know what this guy is going to say.
2 I didn't want him to testify. I didn't know what was
3 the legalities that he had to do to prevent him from
4 testifying. I told him I don't want him to testify.
5 Mr. Posey said keep your cool. I got him. I got
6 him.

7 Q Was it Mr. Khan that testified about the
8 gun or the appearance of the gun?

9 A When Mr. Khan came and added a whole bunch
10 of events that was not in the statements or anything.
11 He came and said that he fought me. He kicked me to
12 the ground. He tackled me. He fought me. He said
13 he never seen a gun. He heard the victim say I had a
14 gun. That's when he ran off.

15 Then the victim testified to the same thing
16 even though he wrote a statement that didn't reveal
17 any of this. He only wrote a statement and said we
18 ran out of the mall. He seen one of us had something
19 metallic in color, jumped into a white four-door and
20 left. At trial, he testified that me and Mr. Khan
21 were fighting. Now, it was a whole fight.

22 Q So Mr. Khan didn't testify that he saw
23 anything metallic. He testified that he heard
24 somebody yell that.

25 A Mr. Khan said that he came out of, I

1 believe, a back door out the mall. Kicked me.
2 Kicked me down. Me and him fought. He said that's
3 when he heard I'm going to shoot this MF'er. I
4 believe he said I'm going to shoot this MF'er. Mr.
5 Khan said he took off.

6 Q Did Mr. Posey discuss Mr. Khan's testifying
7 with you before trial?

8 A No, sir. I don't even believe Mr. Posey
9 knew anything -- was even prepared for Mr. Khan's
10 testimony. I don't even believe Mr. Posey knew what
11 Mr. Khan was going to say.

12 Q If you had known about Mr. Khan, would that
13 have affected your decision to plead guilty or go to
14 trial?

15 A Yes, sir. Yes, sir. I would have pled
16 guilty if I would have known that Mr. Khan was going
17 to come and testify as a witness and say that he seen
18 a weapon or he heard me say I'm going to shoot these
19 explicatives, "MF'ers". He fought me. I would have
20 felt as though that it was too much leaning towards
21 me being guilty and I would have just pled guilty. I
22 wouldn't have went to trial that day.

23 Q Okay. You were willing to plead guilty on
24 a 10-year sentence, is that correct?

25 A Yes, sir. I was willing to plead guilty to

1 armed robbery period. I didn't want to plea guilty
2 to Assault and Battery with Intent to Kill and a slew
3 of other charges. I believe that it was Assault and
4 Battery with Intent to Kill, two grand larcenies, a
5 second degree Lynching and maybe another charge for 0
6 to 20. I felt like the judge could give me five
7 years a piece and I would still end up with 20 years.
8 I just rather plead guilty to the armed robbery
9 singularly. By that being my first conviction, I
10 haven't been -- I only had pending charges. I never
11 been convicted, never did any time. I felt like I
12 would have received the minimum 10 years and that
13 would have been it.

14 Q And Mister, uh, Khan was allegedly a victim
15 of a similar crime that occurred prior to that?

16 A Yes, sir. He had came forward and said
17 that he believed I was the individual that robbed his
18 store. That was still unresolved. That charge was
19 still pending. Then he came and testified in the
20 armed robbery I went to court for. His store was
21 right, you know, right up the hall from Mr. Day's
22 store. I don't understand why he couldn't get with
23 law enforcement and write a statement on why he
24 couldn't come forward until two weeks before trial.
25 I felt as though it was perfectly withheld from me to

1 have me go to court and then have him pop up in here
2 and testify against me. They know if they would have
3 disclosed that information to me, I wouldn't have
4 went to trial.

5 Q Did Mr. Posey subpoena anybody?

6 A No, sir.

7 Q Anybody testified on your behalf?

8 A No, sir. It was people that was at the
9 mall. That was right around the first of the year and
10 Christmas. It was people at the mall that I knew who
11 was there who seen the whole thing. They gave me
12 names, they gave me addresses. They told me they
13 would come and testify on my behalf.

14 Mr. Posey didn't issue any subpoenas. I
15 wanted him to subpoena Mr. Cobb, who was there. I
16 wanted him to subpoena him. I wanted him to -- in my
17 Rule 5, my motion of discovery, it said that it was
18 surveillance footage at the Haywood Mall of us at the
19 time of when this weapon supposed to been presented.

20 They said it was us on camera. I wanted
21 Mr. Posey to subpoena the mall for the tapes. Mr.
22 Posey told me that the tapes was already in evidence.
23 I asked Mr. Posey could get a copy of the tape and
24 could we review the tape before trial. He never got
25 a copy of the tape to let me review it. Then, the

1 day of trial, he didn't have the tapes submitted into
2 evidence for the tapes -- for the jury to see them.

3 Q You believe the tapes would have shown that
4 you were not carrying a gun?

5 A I know the tapes would have shown I wasn't
6 carrying a gun.

7 Q And if they had shown something different,
8 it would have affected your ability of whether you
9 wanted to plead guilty?

10 A The tapes would have totally affected the
11 outcome of my trial by just showing -- the jury would
12 have got to see with their own eyes that the only
13 thing we done was ask to try on some jewelry, run out
14 of the mall and jump into the car.

15 Q You never saw any of those?

16 A No, sir. I never got to see the tape. I
17 asked Mr. Posey could we review the tape. He never
18 brung the tape for me to review it. He didn't have
19 the tape ready to be viewed at trial. Mr. Posey was
20 totally ineffective. He prejudiced me.

21 Q How many times did you meet with Mr. Posey?

22 A Maybe in the span of a year, Mr. Posey
23 maybe came five times. That's maybe.

24 Q Were you in the detention center the entire
25 time?

1 A Yes, sir.

2 Q Uh, did you ever discuss trial defense with
3 Mr. Posey?

4 A No, sir. Mr. Posey was too concerned, I
5 believe, with trying to get me to take a plea for the
6 ABWIKs, the Assault and Battery with Intent to Kills.
7 And he told me a couple of times that Mr. Moyer was
8 not going to push the armed robbery because it was
9 weak. He didn't even think it was an armed robbery.
10 He didn't think I would be able to get a trial --
11 that they would be able to get at trial for the armed
12 robbery. He never wanted to talk about the armed
13 robbery. We never discussed any kind of strategy,
14 any kind of defense, anything for armed robbery.

15 Q So you thought you were -- did you believe
16 you were there for other charges?

17 A I believe -- Mr. Posey today -- I believe
18 it was maybe two weeks, three weeks at the most, Mr.
19 Posey came and told me you are on the docket. He
20 told me I was going to go to trial for Pointing and
21 Presenting a Firearm. He told me I was going to be
22 going to trial back to back. I'm like how are we
23 going to go to trial. We ain't even prepared for
24 anything.

25 So I went -- we came one day. We didn't go

1 to trial. They sent me back to the detention center.
2 I came the next day. I wasn't even sure what I was
3 coming to trial for the next day. I came. We picked
4 a jury. He told me I was there for armed robbery.
5 That's how it went down. Mr. Khan was there.

6 Everything went fast. It was all spare of
7 the moment. Mr. Posey, it just seem like he was just
8 doing everything on the fly. I feel as though he
9 prejudiced me by not allowing me -- even at one point
10 in time, I told Mr. Posey, you know, when I knew that
11 Mr. Khan was going to take the stand, I wanted -- I
12 rather -- I rather -- I wanted to take the stand at
13 that time. Mr. Posey told me to keep my cool. I
14 believe he prejudiced me by, you know, giving me bad
15 counsel by not letting me go forward and take the
16 stand.

17 Q Did you tell Mr. Posey you wanted to
18 testify?

19 A Yes, sir. At one point in time, I told him
20 I didn't want to testify. I told him that based on
21 -- it was only two people who had been testifying,
22 but when I seen it was a third surprise witness, then
23 I told Mr. Posey I wanted to get on the stand. He
24 told me to keep my cool, that he had him. He told me
25 that he had Mr. Khan like he knew -- like he was

1 prepared. Like he knew what was going on.

2 Q He testified, you believe it affected the
3 outcome of the trial?

4 A Yes, sir. I believe it would have totally
5 affected the outcome of my trial. I could have got
6 to testify and told my side of the story and let them
7 know, you know, I didn't have a weapon. Mr. Khan was
8 a victim in a pending case that I had. Let him know
9 his motives for getting on the stand and lying.

10 Q I believe a Mr. Day testified?

11 A Yes, sir.

12 Q What did he testify to?

13 A Initially, Mr. Day wrote a statement and
14 said he only seen us coming to the kiosk asked to try
15 on jewelry, we took off running. He seen one of us
16 pull out something that was metallic in color and
17 jump into a white four-door.

18 At trial, he testified to us running
19 outside, Mr. Khan coming out of some back alley
20 kicking me down. Me and Mr. Khan fighting. Then he
21 said I pulled out something. Now, it turned from one
22 of us to it being me pulling out something saying I'm
23 going to shoot this explicative, "MF'er". Mr. Posey
24 asked him did he actually see a gun. He said no, he
25 never actually seen a gun. He just -- he didn't want

1 to stick around to find out. He just ran off.

2 Q And did you know Mr. Day prior to that?

3 A Yes, sir. I went to high school with Mr.
4 Day. His name is Benjamin Day. We sort of teased
5 him in school about his name. She sort of called him
6 Bengay. We were kids. We teased him in school. I
7 told Mr. Posey this. I told him our relationship.
8 Mr. Posey told me that if the Solicitor spoke upon
9 this first, he wasn't going to say anything about it
10 because it wouldn't do any good. The Solicitor was
11 ready for it. It wasn't doing any good.

12 I believe if he would have acknowledged this
13 and let the jury know that me and Mr. Day had prior
14 history, that Mr. Day could have been bitter about
15 high school, you know, about us teasing him through
16 high school, they would have better understood his
17 reasoning for all of a sudden testifying to something
18 almost totally different than his initial statement.

19 Q And Mr. Day was the one that worked at the
20 kiosk that day?

21 A Yes, sir.

22 Q So he would have testified that you took the
23 jewelry and ran off with it?

24 A Yes, sir.

25 Q But you believe that he changed his story

1 about seeing something metallic.

2 A Yes, sir.

3 Q Did you tell Mr. Posey that you knew him?

4 A Yes, sir. I told Mr. Posey. Mr. Posey said
5 we'll see. Keep that in a -- I guess he wanted to
6 use it like an ace in the hole or something. He gave
7 me a piece of paper at trial. He told me if I wanted
8 to ask any questions or if I had any questions of
9 anybody to write it on the paper and he would speak
10 on it. So I put it on the paper like you, know, say
11 -- you know, ask him about -- you know, about the
12 school. Mr. Posey wouldn't do it.

13 THE COURT: Let me just interrupt. Let's
14 stick to the issues about ineffective assistance
15 of counsel. We're not here to hear the whole
16 case again. What did he do wrong and how was --
17 how was -- where is the prejudice.

18 BY MR. NEAL:

19 Q Do you think you were prejudiced by him not
20 raising that issue at trial?

21 A Yes, sir. I believe I was prejudiced by
22 that because I believe if he would have raised that
23 issue, the jury would have, you know, sort of
24 understood a little more of why Mr. Day's testimony
25 was different from his statement.

1 Q So you believe that Mr. Posey was
2 ineffective by not communicating with you properly?

3 A Yes, sir. I believe Mr. Posey prejudiced me
4 because he didn't allow me to have any type of trial
5 strategy, any type of trial defense. I believe he
6 prejudiced me because he wouldn't try to work a --
7 you know, try to get me a plea for the Assault and
8 Battery with Intent to Kill -- I mean, for the armed
9 robberies.

10 I believe Mr. Posey prejudiced me because he
11 wouldn't subpoena them all for the tapes. He would
12 haven't have the tapes shown at trial. He didn't
13 object to the -- I believe he prejudiced me because
14 he wouldn't object to the witness testifying, this
15 new witness. He didn't ask the judge for a
16 continuance or to try to suppress this witness. It
17 was a lot of things Mr. Posey did. It was a lot of
18 things that he didn't do.

19 Q You believe it was Mr. Posey's
20 ineffectiveness that led to your conviction, is that
21 correct?

22 A Yes, sir. I believe the outcome of my trial
23 could have been a lot different had Mr. Posey, you
24 know, told the judge this surprise Mr. Khan is a
25 victim in a pending case. Mr. Khan just came forward

1 to law enforcement two weeks ago. We are not ready
2 to proceed with trial. We just got knowledge of Mr.
3 Khan. I believe things could have been totally
4 different if Mr. Posey would have did that.

5 Q Are those all the ways in which you believe
6 Mr. Posey is ineffective?

7 A I believe Mr. Posey was ineffective with the
8 tapes. I believe he could have --

9 Q We've already covered the tapes, haven't we?

10 A I'm just trying to -- I'm just trying to go
11 over and remember. You have my paperwork up there.
12 I sort of had everything wrote down so I could have
13 it. You took it with you so I'm not sure what's all
14 on the paper.

15 MR. NEAL: If I could approach the
16 witness, Your Honor. (Pause.)

17 MR. BOLT: I believe Mr. Posey was
18 ineffective because he didn't allow me to invoke
19 my 6th Amendment by calling people on my behalf
20 to come testify and speak out when I had already
21 told him about certain individuals who was there
22 that were willing to come testify on my behalf.
23 He wouldn't subpoena those individuals to court.
24 I believe that prejudiced me. Had those
25 individuals come to give an eyewitness account

1 of what they had seen, the outcome of my trial
2 would have been different. Uh, I believe Mr.
3 Posey prejudiced me at a time of the day of
4 trial when I told him I would like to speak out,
5 you know, take the stand and give my account of
6 what went on.

7 BY MR. NEAL:

8 Q You told him you wanted to testify?

9 A Yes.

10 Q Testify that -- you wanted to testify and
11 Mr. Posey didn't call you as a witness?

12 A Yes, sir.

13 Q Move on to the next thing. Something we
14 haven't covered so far.

15 A I believe Mr. Posey could have attacked the
16 witnesses' credibility a little more. I believe that
17 prejudiced me because --

18 Q Now, we've talked about that. We talked
19 about Mr. Khan and we talked about Mr. Day, is that
20 correct?

21 A I don't believe we spoke on how Mr. Posey --
22 how they testified to something totally different --
23 Mr. Day testified to something totally different than
24 what he wrote in his statement. Mr. Posey refused.
25 He told me, if I wanted, to write it down and let him

1 know. He refused to acknowledge the point that Mr.
2 Day was testifying to something totally different
3 than he wrote in his statement.

4 Q Mr. Posey did not move to impeach on that?
5 Did not raise that issue?

6 A No, sir.

7 Q How else ineffective?

8 A That's all.

9 MR. NEAL: All right. No other questions,
10 Your Honor.

11 THE COURT: All right. Cross.

12 MS. RATIGAN: No cross, Your Honor.

13 THE COURT: All right. Thank you. You
14 can step down.

15 MR. NEAL: Your Honor, I call Mr. Posey.

16 THE COURT: Come on around.

17 THE CLERK: Put your left hand on the
18 Bible and raise your right hand.

19 CHRIS POSEY

20 having first been sworn, testifies as follows:

21 THE CLERK: Thank you. State your full
22 name for the record.

23 THE WITNESS: Christopher Todd Posey.

24 DIRECT EXAMINATION

25 BY MR. NEAL:

1 Q Mr. Posey, you represented Carlos Bolt at
2 trial?

3 A Yes.

4 Q You also represented him on several other
5 charges that have not been pursued by the Solicitor,
6 is that correct?

7 A About 20 total, I believe.

8 Q The only one he had a trial on was this
9 armed robbery charge?

10 A Yes.

11 Q You were in court and you heard Mr. Bolt's
12 testimony. How many times did you meet with him?

13 A It was several. I don't know exactly how
14 many. We met quite a few times.

15 Q Whenever you received an offer from the
16 Solicitor, did you communicate that to Mr. Bolt?

17 A Yes.

18 Q What offer was the --

19 A The best offer he ever got was a combination
20 of charges. The best of my recollection, the best
21 that he ever got on paper was a cap of 20 years for a
22 plea of, uh, I think five or six charges, which
23 included Assault and Battery with Intent to Kill,
24 included the armed robbery, which they were willing
25 to reduce to common law robbery at the time in

1 exchange for a plea for the charges. I believe as we
2 got a little closer to the disposition date, Mr.
3 Moyer might have knocked a year or two off of that,
4 but it substantially in the 20-year range was as good
5 as it ever got.

6 Q Would you testify that it was always at
7 least 1 to 15?

8 A Oh, yeah.

9 Q Uh, there are several people that -- before
10 that, did you subpoena any witnesses?

11 A No. There was really -- the only subpoena
12 we talked about was Mr. Cobb. Mr. Cobb was -- I
13 actually contacted Mr. Cobb, I do believe, or
14 attempted to contact Mr. Cobb. And he said he had no
15 desire to participate. I do not believe his charges
16 had been handled at the time. My ability to force
17 him to testify in a proceeding where he could
18 incriminate himself is also somewhat limited.

19 Q So he was represented by an attorney?

20 A Yes. I don't remember -- that was in my
21 other file. I apologize. I don't remember who it
22 was.

23 Q You would have anticipated he may invoke his
24 5th Amendment --

25 A I would assume his counsel would have done

1 that.

2 Q You didn't subpoena anybody else?

3 A There was really no one else to subpoena
4 that was given.

5 Q Did you send a discovery request to the
6 Solicitor?

7 A I got full and complete discovery. More
8 than two folders full.

9 Q And you completely reviewed all that
10 discovery?

11 A And made copies for Mr. Bolt.

12 Q Was there anything that you did not give to
13 Mr. Bolt?

14 A Not to my knowledge. He got everything I
15 got.

16 Q Uh, did you do anything to independently
17 investigate?

18 A Uh, talked to -- did talk to witnesses and I
19 don't remember when and where. He had so many
20 different cases. We were always looking, but I did
21 talk to several people involved in the case, yes.

22 Q You recall reviewing any video in this case?

23 A I don't believe there was an actual video.
24 The location -- the -- especially of the crucial crux
25 of the whole trial was whether he actually had a

1 weapon or represented to Mr. Khan and, through that,
2 Mr. Day who was apparently hiding out by the
3 dumpster. After giving chase, they believe he had a
4 weapon. There was no video of that area that was
5 available.

6 Q So where -- where the kiosk ran outside,
7 where they got outside --

8 A Basically, the loading dock area.

9 Q There were no cameras around there?

10 A Not that was made available to me or any of
11 my requests. It was not part of any discovery or
12 anything I requested from the Solicitor and was told
13 they are not available.

14 Q When did you become aware of Mr. Khan?

15 A Without my other file, I hate to tell you.
16 It was prior to trial. We knew about it when we went
17 to trial. It was not a trial day surprise.

18 Q But it was a --

19 A It was not part of the original discovery
20 package that came later. I can't tell you when
21 without the other file.. I apologize.

22 Q Is that the file that was destroyed?

23 A Yes, by water.

24 Q Is it fair to say Mr. Khan came forward
25 quite a bit of time after?

1 A Yes, yes. It was not immediate. I think I
2 questioned several law enforcement officers about it.

3 Q Were you satisfied that you were prepared
4 for whatever testimony he provided?

5 A Yeah, I knew what he was going to testify
6 to, yes. It wasn't a secret. It was just the timing
7 and the involvement with the other incident. It was
8 a credibility question.

9 Q So you feel you adequately --

10 A I think we put the issue in front of the
11 jury, yes.

12 Q Did Mr. Bolt tell you that he knew Mr. Day?

13 A I don't have a specific recollection we may
14 have. Like I said, there had been notes in the other
15 file. I don't have a specific recollection of that.

16 Q Do you believe that Mr. Day's testimony
17 changed at trial?

18 A Not substantially, other than the point with
19 Mr. Khan. I think that was the biggest difference.

20 Q Did Mr. Bolt ever tell you that he wanted to
21 testify?

22 A No. And I think, in fact, the judge
23 questioned him thoroughly about that on the record.
24 I may have advised him not to testify. Matter of
25 fact, I'm sure I did. It was his decision. I never

1 make that decision for a client. I'm pretty sure I
2 advised him not to.

3 Q Was the Solicitor willing to negotiate more
4 than the 20 years?

5 A Like I said, he may have knocked a year or
6 two off, you know, at some point in time. It was
7 always up there and it was never just going to be for
8 one charge. If we were going to do a plea, it was
9 going to be a plea for the encompassed, the
10 disposition of all of his charges in some manner,
11 shape or form.

12 Q Did the Solicitor disclose to you that any
13 video was available?

14 A To the best of my knowledge, I was told
15 there was no video available.

16 MR. NEAL: No other questions, Your Honor.

17 THE COURT: You got any cross?

18 MS. RATIGAN: Yes, Your Honor. Briefly.

19 CROSS-EXAMINATION

20 BY MS. RATIGAN:

21 Q So you never received any kind of plea offer
22 on just this armed robbery? It was always kind of a
23 package deal?

24 A Every plea offer included disposition on all
25 the charges.

1 Q And this best offer you referred to with a
2 cap of 20, when was that offer?

3 A Uh, I believe it was in June or July of '07.
4 Like I said, I'm not going to say that Mark and I
5 didn't talk about doing 18 or 17 or somewhere along
6 those lines at some point in time. Assistant
7 Solicitor Moyer, I should say. But it was never
8 going to get any better than that.

9 Q Did Mr. Bolt reject that 20-year offer right
10 off the bat or did he have some time to think about
11 it?

12 A Well, he had plenty of time to think about
13 the prior trial. It was -- he -- Carlos never gave
14 me an indication he was willing to plead to a
15 substantial prison sentence..

16 Q Mr. Bolt said that he did not know that this
17 would be a trial for armed robbery only until a
18 couple of weeks beforehand. Can you speak to when
19 you were put on notice that this was coming up on the
20 trial docket?

21 A Uh, I think Mr. Moyer probably let us know
22 which charge he picked, you know, probably about a
23 month or so ahead of time. I think he had four or
24 five separate incidents he could have chose. He
25 chose this one and he put us on notice.

1 Q In your opinion, had you had a proper amount
2 of time at that point to prepare the case?

3 A Yes.

4 Q And what was your general trial strategy?

5 A I did not think it was an armed robbery. I
6 thought it was a grand larceny. Uh, they argued for
7 that. I know that was the issue that went up on
8 appeal as well. I did not think the facts supported
9 an armed robbery conviction.

10 Q Had you discussed with Mr. Bolt that was how
11 you were going to proceed with the trial?

12 A Yes. He, in fact, had given a statement
13 that he had taken the necklace. He never done -- he
14 never denied taking the necklace.

15 Q Do you recall if you impeached Mr. Day with
16 his statement regarding inconsistencies about the --

17 A I'm pretty sure I questioned him about it.
18 I don't remember the exact questions of it. I did
19 not bring the transcript up here with me. I think I
20 went over that with him and the detectives.

21 Q Do you know what happened with the bulk with
22 the bulk of these pending charges of Mr. Bolt's?

23 A Most of them were dismissed in lieu of the
24 sentence he received.

25 MS. RATIGAN: That's all I have..

1 **THE COURT:** Okay. You can step down.

2 Call your next witness.

3 **MR. NEAL:** No witness, Your Honor.

4 **MS. RATIGAN:** The State would rest of Mr.
5 Posey's testimony and record before the court.

6 **THE COURT:** All right. Anything? I don't
7 think there is any reason to continue this case.
8 So I am denying the motion to continue the case
9 or even hold the record open.

10 I'll just tell you, Mr. Bolt, that when you
11 bring an action like this, it's your burden to
12 prove your case. The performance of the
13 attorney is deficient and fell below an
14 objective standard of reasonableness and that
15 there was resulting prejudice which would have
16 resulted in a different jury verdict.

17 I don't find based on what's been presented
18 in court that Mr. Posey was deficient in his
19 representation of you. Even if he was, I don't
20 see any deficiency he might have had that you've
21 alleged that would have necessarily changed or
22 undermined the confidence in the verdict that
23 the jury rendered. So I'm going to deny your
24 petition. Okay. Where do they have you? Where
25 are you?

1 MR. BOLT: Lee County.

2 THE COURT: Lee County? How is that? You
3 doing okay?

4 MR. BOLT: I'm making it.

5 THE COURT: All right. How much more you
6 got? A good bit, huh? I wish you the best of
7 luck. I hope things go well for you.

8 (WHEREUPON, the proceedings conclude at
9 approximately 3:15 p.m.)

10

11

12

13

14

15

CERTIFICATE

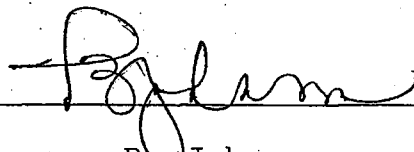
STATE OF SOUTH CAROLINA)

)

COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, 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 all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 6th day of January, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.



Teresa B. Johnson

Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Carlos Antone Bolt,)
 S.C.D.C. No. 326593,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2010-CP-23-10378

ORDER OF DISMISSAL

RECEIVED
 05/11/2012

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 2012 MAY -8 PM 3:24

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 23, 2010. The Respondent made its return on April 12, 2011. An evidentiary hearing into the matter was convened on April 3, 2012 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Jonathan A. Neal, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Christopher T. Posey, Esquire. The Court had before it the trial transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the March 2007 term of the Greenville County Grand Jury for armed robbery (2007-GS-23-

1
 [Signature]

2653, count 1) and possession of a weapon during commission of a violent crime (2007-GS-23-2653, count 2). He was represented by Christopher T. Posey, Esquire.

After the State called the case to trial on the charge of armed robbery, the Applicant was found guilty. On February 6, 2008, the Honorable John C. Few sentenced the Applicant to twenty (20) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. J. Falkner Wilkes, perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Bolt, Op. No. 2009-UP-617 (S.C. Ct. App. filed December 22, 2009).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he and trial counsel met five (5) times in a year to discuss multiple pending charges (most of which were unrelated to this armed robbery). The Applicant stated the solicitor never made a plea offer for only the armed robbery charge at issue in this case. The Applicant stated trial counsel conveyed a plea offer for multiple charges in exchange for a twenty (20) year sentence. The Applicant stated he wanted to plead guilty in exchange for a ten (10) year sentence for armed robbery but did not want to enter guilty pleas to the other charges. The Applicant testified he did not know when he came to court that day which charge the State was pursuing. The Applicant testified trial counsel did not discuss trial strategy with him and gave "bad counsel" when he advised the Applicant about testifying in his own defense. The Applicant testified trial counsel failed to subpoena Cobb (who was with him at the mall during the incident) and other eyewitnesses from the mall to testify at trial. The Applicant stated trial counsel was not prepared for the testimony of Kashif Kahn. The Applicant stated trial counsel failed to ask the victim (Benjamin Day) whether he knew the Applicant from high school.

Trial counsel testified he represented the Applicant on twenty (20) charges and met with the Applicant "quite a few times." Trial counsel testified he filed discovery motions, reviewed those materials with the Applicant, and spoke to several witnesses. Trial counsel testified the best plea offer they received from the State was for a cap of twenty (20) years to five or six charges (which included the armed robbery charge at issue being reduced to strong arm robbery). Trial counsel testified the Applicant rejected this offer, as he did not want to plead guilty to a large sentence. Trial counsel testified he would have had notice the State would be proceeding with this armed robbery charge approximately one (1) month before trial. Trial counsel stated he called co-defendant Cobb, who had not yet been sentenced and did not want to testify at the Applicant's trial. Trial counsel stated there were no other witnesses to subpoena. Trial counsel testified he knew Kahn would testify as a State witness but that he questioned the police offers about why Kahn was late in coming forward. Regardless, trial counsel stated he was prepared for Kahn's testimony. Trial counsel stated he did not recall if the Applicant told him he knew the victim, but that the victim's testimony did not substantially change at trial. Trial counsel stated he discussed his trial strategy – that he would argue this was a grand larceny but not an armed robbery – with the Applicant before trial. Trial counsel testified the Applicant never said he wanted to testify. Trial counsel testified he probably advised the Applicant it was his decision whether or not he testified but that he likely advised him not to do so.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel was not

prepared for trial. Trial counsel testified he was on notice of the charge the State called to trial approximately one (1) month before the trial date. Trial counsel testified he had developed a trial strategy in this case and determined there were no helpful defense witnesses. Trial counsel testified he knew Kahn would testify as a State witness. This Court notes trial counsel cross-examined Kahn and the investigating officers about why this witness was late in coming forward. This Court finds the Applicant has failed to meet his burden of proving trial counsel was not prepared for this armed robbery trial.

This Court finds the Applicant failed to meet his burden of proving trial counsel was ineffective in failing to subpoena Cobb and potential eyewitnesses to testify at trial. As these alleged witnesses did not testify at the evidentiary hearing, any discussion regarding what they would have testified about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original).

This Court finds the Applicant failed to meet his burden of proving he was not properly advised about whether to testify at trial. Trial counsel testified he discussed the issue with the Applicant and that, while he may have advised against his testimony, he would have told the Applicant it was his decision. This Court notes the trial judge discussed the right to testify with the Applicant and the Applicant waived that right. (Trial transcript, pp.119-21). This Court finds the Applicant has failed to prove trial counsel was deficient in discussing this right with him. See Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000) (holding a defendant's decision to testify or not must be made with knowledge of the consequences of either choice).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

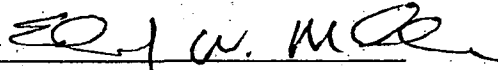
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 30 day of April, 2012.



Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

Summit, South Carolina.

ARREST WARRANT

J-480764

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Greenville

THE STATE

07-6576

against

Carlos Antone Bolt

Address:

Phone: SSN: [REDACTED]
 Sex: M Race: B Height: 6 Weight: 200
 DL State: SC OL #: 100223800
 DOB: [REDACTED] Agency ORI #: SC0230200
 Prosecuting Agency: Greenville Police Department
 Prosecuting Officer: D M Burdette
 Offense: ARMED ROBBERY

Offense Code: 0139
 Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the
☒ County/ ☐ Municipality of
Greenville The accused
 is to be arrested and brought before me to be
 dealt with according to the law.

(L.S.)

Signature of Judge

Date: 01-09-07

RETURN

A copy of this arrest warrant was delivered to
 defendant Carlos A. Bolt
 on 1-9-07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Of Greenville
 426 North Main Street
 P O Box 488
 Greenville, SC 29601

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Greenville

Personally appeared before me the affiant D M Burdette whobeing duly sworn deposes and says that defendant Carlos Antone Boltdid within this county and state on or about 01/07/2007 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE ARMED ROBBERY

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

AFFIANT STATES THE ACCUSED CARLOS ANTONE BOLT DID ALLEGE AND REPRESENT HE WAS ARMED BY
 WITHDRAWING AN ITEM FROM HIS WAIST AND STATING THAT HE WAS GOING TO SHOOT THE VICTIM, WHILE
 HE WAS FLEEING WITH MERCHANDISE VALUED AT OVER \$3000 HE HAD TAKEN FROM THE VICTIMS BUSINESS.
 THE VICTIM BELIEVED THE ACCUSED HAD A PISTOL AND HIS LIFE WAS IN DANGER. THIS INCIDENT OCCURED
 WITHIN THE CITY OF GREENVILLE, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Greenville

Affiant's Address 4 MCGEE STREET
GREENVILLE, SC 29601-
 Affiant's Telephone (864)467-5325 x 0000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/7/2007defendant Carlos Antone Bolt

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of GreenvilleDESCRIPTION OF OFFENSE: ARMED ROBBERY

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
 her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
 soon thereafter as is practicable

Sworn to and subscribed before me

on 01/08/2007

Signature of Issuing Judge

Ralph Putnam

Judge Code: 6676

Judge's Address 426 North Main Street
Greenville, SC 29601-

Judge's Telephone (864)467-2405Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

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Print Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 518

AFFIDAVIT

COMPUTER ENTERED

JAN 09 2007

GREENVILLE COUNTY
SHERIFF'S OFFICE

WITNESSES

D. Burdette

/Hamlett/s

Greenville Police Department

1/9/2007

ARREST WARRANT NUMBER

J480764, J480765

ACTION OF GRAND JURY

TRUE BILL

(Butt Murphy)

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-23-

LMM

The State of South Carolina

002653

County of Greenville

COURT OF GENERAL SESSIONS

MARCH TERM 2007

THE STATE

GUILTY
COUNT 1

vs.

CARLOS ANTONE BOLT

Indictment for

0139, 0549

ARMED ROBBERY POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

VIOLATION § 16-11-0330 and § 16-23-0490

A Certified Copy
Paul B. Williamson
Clerk of Court C.P. & G.S.
Greenville County, SC

Dated 11-7-12

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 March 28, 2007 the Grand Jurors of Greenville
 County present upon their oath:

COUNT ONE

ARMED ROBBERY

That CARLOS ANTONE BOLT did in Greenville County, on or about the 7th day of January, 2007, 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: Jewelry belonging to Gold Gallery from the person or presence of Benjamin Day. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That CARLOS ANTONE BOLT did in Greenville County, on or about the 7th day of January, 2007, 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.

J. Mark May
 SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
Carlos Bolt

AKA:

R B Sex: M Age: 22

DOB:

Address:

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS2302653

A/W#: J480764

Date of Offense: 1/7/2007

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: ARMED ROBBERY

in violation of § 16-11-0330(A)

of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

Carlos Bolt
Defendant

Chris J. B.
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 ~~days~~ years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 35.13 (Public Def/Prob)	\$500
§ 73.3, 1B TP (Law Enforce. Funding)	\$25
§ 33.7, 1B TP (Drug Court Surcharge)	\$100
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TR L	\$

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

Paul B. Wickensmeyer
Clerk of Court/ Deputy Clerk

Court Reporter:

H. Jenkins

PRESIDING JUDGE

Judge Code:

Sentence Date:

SCCA/217 (10/2007)