

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Honorable Grace Gilchrist Knie, Circuit Court Judge

CALVIN TERRELL WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001839

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

ALAN WILSON
Attorney General

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

JOHNNY ELLIS JAMES, JR.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

INDEX

INDEX	i
TRANSCRIPT OF TRIAL HELD JUNE 6, 2016.....	1
APPLICATION FOR POST-CONVICTION RELIEF	370
RETURN.....	401
TRANSCRIPT OF POST-CONVICTION RELIEF HEARING HELD JUNE 18, 2018	408
POST HEARING MEMORANDUM.....	509
RESPONDENT’S POST-HEARING MEMORANDUM.....	513
ORDER OF DISMISSAL	526
MOTION TO ALTER OR AMEND THE JUDGEMENT	538
RETURN TO APPLICANT’S MOTION TO ALTER OR AMEND JUDGEMENT	540
ORDER DENYING APPLICANT’S MOTION TO ALTER OR AMEND THE JUDGEMENT	545
INDICTMENT	549

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

3
4 STATE OF SOUTH CAROLINA,)
5 PLAINTIFF,)
6 VS.)
7 CALVIN TERRELL WILLIAMS,)
8 DEFENDANT.)

TRANSCRIPT
OF
RECORD
2015-GS-42-2312
2016-GS-42-2368

9
10 June 6th, 2016
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge, and a jury.

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

16 BARRY BARNETTE
17 SOLICITOR
18 Attorney for the State

19 MATTHEW SHEALY
20 ASSISTANT PUBLIC DEFENDER
21 Attorney for the Defendant

22
23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

1	<u>I N D E X O F W I T N E S S E S</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3		
4	Motions	9
5	Jury selection	16
6		
7	Motions	43
8	JIM LANNAMANN	
9	Direct examination by Sol. Barnette	47
10	Cross-examination by Mr. Shealy	75
11	Redirect examination by Sol. Barnette	81
12	Recross examination by Mr. Shealy	83
13	DEAN COOK	
14	Direct examination by Sol. Barnette	106
15	Cross-examination by Mr. Shealy	107
16	BOBBY TURNER	
17	Direct examination by Sol. Barnette	116
18	DEAN COOK	
19	Questions by the Court	119
20	Cross-examination by Mr. Shealy	121
21		
22	Opening by the Court	143
23	Opening by Solicitor Barnette	156
24	Opening by Mr. Shealy	161
25		

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	JENNIFER RODRIGUEZ	
4	Direct examination by Sol. Barnette	165
5	Cross-examination by Mr. Shealy	176
6	ROBERT COOPER	
7	Direct examination by Sol. Barnette	179
8	Cross-examination by Mr. Shealy	185
9	SHYQUONE WILLIAMS	
10	Direct examination by Sol. Barnette	187
11	Cross-examination by Mr. Shealy	199
12	JASON MOORE	
13	Direct examination by Sol. Barnette	221
14	Cross-examination by Mr. Shealy	227
15	KENNETH BLASSINGAME	
16	Direct examination by Sol. Barnette	232
17	Cross-examination by Mr. Shealy	241
18	Redirect examination by Sol. Barnette	247
19	Recross examination by Mr. Shealy	248
20	COURTNEY BURGESS	
21	Direct examination by Sol. Barnette	250
22	Cross-examination by Mr. Shealy	267
23		
24		
25		

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	BOBBY TURNER	
4	Direct examination by Sol. Barnette	277
5	Cross-examination by Mr. Shealy	285
6	Redirect examination by Sol. Barnette	287
7		
8	Motions	291
9	Closing by Solicitor Barnette	312
10	Closing by Mr. Shealy	318
11	Charge by The Court	327
12	Question from the Jury	349
13	Verdict	355
14	Motions	357
15	Sentencing	368
16	Certificate	369
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	<u>State's Exhibits</u>			
4				
5	S-1	Map	101	251
6	S-2	Map	101	251
7	S-3	Map	101	251
8	S-4	Photograph	101	254
9	S-5	Photograph	101	254
10	S-6	Photograph	101	254
11	S-7	Lip Gloss	101	
12	S-8	Khaki Pants	101	264
13	S-9	Black Hoodie	101	265
14	S-10	Leather Jacket	101	266
15	S-11	Ski Glove	101	
16	S-12	DVD	101	181
17	S-13	Photograph	101	254
18	S-14	Photograph	101	254
19	S-15	Photograph	101	254
20	S-16	Photograph	101	254
21	S-17	Photograph	101	254
22	S-18	Photograph	101	254
23	S-19	Photograph	101	254
24	S-20	Photograph	101	254
25	S-21	Photograph	101	254

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2				
3	S-22	CD	101	171
4	S-23	Photograph	101	
5	S-24	Photograph	101	254
6	S-25	Photograph	101	259
7	S-26	Photograph	101	259
8	S-27	Photograph	101	259
9	S-28	Photograph	101	259
10	S-29	Photograph	101	259
11	S-30	Photograph	101	259
12	S-31	Photograph	101	259
13	S-32	Photograph	101	259
14	S-33	Photograph	101	259
15	S-34	Photograph	101	
16	S-35	Photograph	101	
17	S-36	Photograph	101	
18	S-37	Photograph	101	
19	S-38	Photograph	101	
20	S-39	Photograph	101	
21	S-40	Photograph	101	
22	S-41	Photograph	101	
23	S-42	Photograph	101	
24	S-43	DVD	101	
25	S-44	Body Camera Video	101	281

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1				
2				
3	S-45	In-car Video	101	
4	S-46	Photograph	101	
5	S-47	Note	101	
6	S-48	Note	101	169
7	S-49	Photograph	101	283
8	S-50	Photograph	101	283

9

10

11

12

13

14

15

16

17

18

19

20

21

22

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24

25

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Court's Exhibits</u>		
3				
4	C-1	Federal Charge Information		46
5	C-2	Grand Jury Information		68
6	C-3	Grand Jury Information		70
7	C-4	Incident Report		72
8	C-5	Notes	101	105
9	C-6	Opinion		102
10	C-7	CD	115	117
11	C-8	Note from Jury		354
12	C-9	Life Without Parole Information		356

13

14

15

16

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1 P R O C E E D I N G S

2
3 (WHEREUPON, the following takes place outside the
4 presence of the entire jury panel.)

5 SOLICITOR BARNETTE: May we approach the bench for a
6 second, Your Honor?

7 THE COURT: Yeah, please do.

8 (WHEREUPON, a bench conference was held at this time.)

9 SOLICITOR BARNETTE: May I approach, Your Honor?

10 THE COURT: Yes, sir.

11 SOLICITOR BARNETTE: Your Honor, would you want the
12 original on this?

13 THE COURT: What is that?

14 SOLICITOR BARNETTE: This is the memo I was discussing
15 earlier.

16 THE COURT: Thank you.

17 SOLICITOR BARNETTE: And I apologize. A lot of the
18 exhibits make the memo much bigger.

19 THE COURT: That's all right.

20 MR. SHEALY: Judge, can we bring my fellow around?

21 THE COURT: Sure.

22 (WHEREUPON, the defendant enters the courtroom at this
23 time.)

24 SOLICITOR BARNETTE: Your Honor, when would you want to
25 do the 404(b) motion?

1 would you want to do that after lunch?

2 THE COURT: We're gonna do it after we pick the jury.
3 So it will probably be after lunch, yeah.

4 SOLICITOR BARNETTE: Okay. So probably two o'clock or
5 so?

6 THE COURT: (Nods affirmatively.)

7 And I'm thinking, what I'm hearing, that we will just
8 send the jury and ask them to come back in the morning.

9 SOLICITOR BARNETTE: Yes, sir.

10 (Pause.)

11 THE COURT: All right. We're on the record in the case
12 of The State of South Carolina versus Calvin Terrell
13 Williams. Mr. Williams is in the courtroom with his
14 attorney, Mr. Shealy.

15 I have been presented with two indictments. Case
16 Number 15-GS-42-2312. It's an indictment, Count One, for
17 armed robbery, Count Two for bank robbery. I'm informed by
18 the State that the State is going forward in trial only on
19 Count Two, the bank robbery.

20 Is that right, Mr. Barnette?

21 SOLICITOR BARNETTE: That's correct, Your Honor.

22 THE COURT: All right. And as to the other indictment,
23 Case Number 16-GS-42-2368, that is for the accessory before
24 the fact to a felony, a bank robbery, and the State is going
25 forward on that charge as well.

1 Is that right, Mr. Barnette?

2 SOLICITOR BARNETTE: That's correct, Your Honor.

3 THE COURT: All right. Mr. Shealy, as to those two
4 indictments, has your client been arraigned on those
5 charges?

6 MR. SHEALY: Your Honor, he was not arraigned on the
7 accessory before the fact.

8 THE COURT: Yes.

9 MR. SHEALY: We had, we had previously waived
10 arraignment. I've explained that charge with my client.
11 He's pled not guilty, judge. We would ask for a jury trial
12 on both as those cases.

13 THE COURT: Okay. So he continues to plead not guilty
14 on that charge.

15 Is that right?

16 MR. SHEALY: It is, Your Honor.

17 THE COURT: Mr., Mr. Williams?

18 (WHEREUPON, the defendant stands.)

19 THE COURT: Has that charge been explained to you by
20 your lawyer?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And is it true you're pleading not guilty
23 on that charge?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Thank you, sir. You can be seated.

1 (Defendant complies.)

2 THE COURT: All right. I have received from the State
3 a list of potential witnesses as well as a State's requested
4 voir dire. I've also received a defendant's request for
5 voir dire in the case. I don't believe I see a defense
6 witness list.

7 Is there one?

8 MR. SHEALY: No, Your Honor. There's just my client.

9 THE COURT: Okay. Very good.

10 Now, is the State ready to proceed with jury selection
11 in this matter at this time?

12 SOLICITOR BARNETTE: Your Honor, I just, I just need to
13 put a couple things on the record before we get started,
14 Your Honor.

15 THE COURT: Yes, sir, please do.

16 SOLICITOR BARNETTE: And just to make sure the record's
17 clear, Your Honor, I do have that he was arraigned by Your
18 Honor on May 8th, 2015, on the bank robbery or Count Two on
19 the indictment, Your Honor, 15-GS-42-2321, Your Honor.

20 He had made a motion to fire his attorney. Judge Cole
21 actually heard that on June 5th, 2015. That was heard by
22 Judge Cole and denied or basically I think he removed that,
23 that request, Your Honor.

24 THE COURT: All right.

25 SOLICITOR BARNETTE: And then on August 27th, 2015,

1 Your Honor, he rejected an offer of accessory after the fact
2 to bank robbery, Your Honor, at that time. He was taken in
3 front of Judge Cole and Linda Moffitt was the court reporter
4 on that one, Your Honor, and that was put on the record and
5 he, and he did not -- he basically rejected the offer at
6 that time and then it was rescinded at that time, Your
7 Honor---

8 THE COURT: All right.

9 SOLICITOR BARNETTE: ---and is not offered at this
10 time. Just wanted to make sure those things were put on the
11 record prior to this, Your Honor.

12 THE COURT: Mr. Shealy, is that a correct statement of
13 the history of the case?

14 MR. SHEALY: It is, Your Honor.

15 THE COURT: Okay.

16 MR. SHEALY: Judge, we do also have a request for ten
17 strikes as opposed to five strikes and the statute---

18 THE COURT: All right. I'll be happy to hear from you
19 on that.

20 MR. SHEALY: Thank you, Your Honor.

21 In the statute it allows for ten strikes for, excuse
22 me, 14-7-110. It allows for ten strikes in an armed robbery
23 case, a grand larceny case, a breach of trust case when it's
24 punishable as for larceny. It makes no sense that we don't
25 get ten strikes with respect to an entry into a depository

1 institution where -- with the intent to commit a crime
2 therein, which is what he's been charged with, as well as
3 accessory before an entry into a depository institution
4 commonly called bank robbery. So, judge, we would ask for
5 ten strikes in this case.

6 Thank you.

7 THE COURT: All right. Well, I, I understand that --
8 your position. However, it is a statutory matter. The
9 Legislature has seen fit to draw the statute in the fashion
10 that it did. I've reviewed that statute. I find that
11 neither of the charges, bank robbery or accessory before the
12 fact of a bank robbery, is included in that statute as
13 allowing for ten strikes. The statute goes on to say that,
14 in all other cases, the strikes will be five and five.

15 Mr. Barnette, I assume that you're asking the Court to
16 go with the five and five.

17 Is that right?

18 SOLICITOR BARNETTE: That's correct, Your Honor. I
19 agree with your reasoning, Your Honor. The Legislature
20 would of changed the statute if they wanted that to be the
21 case.

22 THE COURT: All right. I'm bound by what the
23 Legislature has done and I will allow for five strikes each
24 side. I anticipate picking one alternate.

25 Does the State see any reason why we should pick any

1 more than one alternate?

2 SOLICITOR BARNETTE: No, sir.

3 THE COURT: Okay. How about the defense?

4 Any reason you feel like we should pick more than one?

5 MR. SHEALY: No, Your Honor.

6 THE COURT: All right. I'll pick one alternate. The
7 State having one strike. Defense having two.

8 All right. Any other matters that need to be
9 considered before we bring the jury panel in for voir dire?
10 From the State?

11 SOLICITOR BARNETTE: Your Honor, we do have some
12 motions. I think they're gonna be heard after lunch.

13 THE COURT: Yes, sir, I've agreed to pick the jury, not
14 swear the jury until tomorrow morning so as to allow us
15 sufficient time to cover all pretrial motions before the
16 jury is sworn.

17 All right. Is the defense ready to proceed?

18 MR. SHEALY: We are, Your Honor.

19 THE COURT: All right. Let's bring the jury panel
20 around.

21 SOLICITOR BARNETTE: Can I step out for one second,
22 Your Honor?

23 THE COURT: Yes, sir, it will take a minute.

24 (WHEREUPON, the following takes place within the
25 presence of the entire jury panel.)

1 THE COURT: All right. The jury panel has returned to
2 the courtroom.

3 Ladies and gentlemen of the jury, we're about to begin
4 the trial of the State of South Carolina versus Calvin
5 Terrell Williams.

6 The documents that bring this case into this Court are
7 indictments. I have received two indictments in this case.

8 Let me to explain to you, an indictment is simply an
9 informational document. It informs this Court of the
10 charges to be tried. It informs the defendant of the
11 charges that have been lodged against him. But an
12 indictment is not evidence in a case and can not be used by
13 a jury in any fashion in determining the guilt or the
14 innocence of a defendant who has been charged in the
15 indictment.

16 I'm going to go over the indictments with you at this
17 time simply for the purpose of you being aware of what the
18 allegations are so that perhaps you can more fully answer
19 the questions that I'm about to ask you that pertain
20 specifically to this case.

21 The first indictment that I will talk to you about is
22 in Case Number 15-GS-42-2312. That indictment is for the
23 offense of bank robbery.

24 The indictment states, in part, that the defendant,
25 Calvin Terrell Williams, did, in Spartanburg County, on or

1 about January the 22nd of 2015, enter a building or a part
2 of a building occupied as a bank, depository, or savings and
3 loan association named BB&T located at 1488 W O Ezell
4 Boulevard, Spartanburg, South Carolina with the intent to
5 steal monies, securities for money, or property by either
6 force, intimidation, or threats and received currency by
7 demanding it from the teller, Jennifer Rodriguez, with the
8 intent to deprive the owner permanently of such property,
9 goods, or monies in violation of Section 16-11-380 of the
10 Code of Laws of South Carolina, 1976 as amended, against the
11 peace and dignity of the State and contrary to the statute
12 in such case made and provided.

13 That's the first indictment that I've received.

14 The second indictment that I've received is Case Number
15 16-GS-42-2368. This indictment is for the offense of
16 accessory before the fact of a bank robbery.

17 It states that the defendant, Calvin Terrell Williams,
18 did, in Spartanburg in the -- excuse me, in the City of
19 Spartanburg in Spartanburg County on or about
20 January 22nd, 2015, aid, abet, counsel, hire, or otherwise
21 procure the commission of a felony, to wit, bank robbery, by
22 the principal felon, Shyquone Williams, by conspiring with
23 Shyquone Williams knowing that Shyquone Williams intended to
24 commit a crime in violation of Section 16-140 and 50 of the
25 Code of Laws of South Carolina, 1976 as amended, against the

1 peace and dignity of the State and contrary to the statute
2 in such case made and provided.

3 Those are the two indictments I've received, and,
4 again, I've only gone over with them -- with them with you
5 for the purpose of you being in a position to more fully
6 answer some questions that I'm about to ask. And, again,
7 those documents do not constitute evidence in this case.

8 Now, before I begin to question you, I will also
9 provide you with some additional information.

10 First of all, I'm going to ask that the attorneys
11 involved in this case introduce themselves to you.

12 First of all, for the State.

13 SOLICITOR BARNETTE: I'm Barry Barnette, solicitor of
14 the Seventh Circuit.

15 THE COURT: And for the defense.

16 MR. SHEALY: I'm Matthew Shealy, Public Defender's
17 office here in Spartanburg.

18 THE COURT: And would you introduce the defendant to
19 the jury as well, Mr. Shealy?

20 MR. SHEALY: Sure.

21 THE COURT: Sir, if you'll stand and face the jury
22 panel please.

23 (Defendant complies.)

24 MR. SHEALY: And I represent Calvin Williams.

25 THE COURT: All right. Thank you very much.

1 Now, ladies and gentlemen, again, it's very important
2 that the information that you provide during this
3 questioning is truthful, honest, and complete information,
4 and, for that reason, it's necessary that you again be
5 placed under oath concerning your responses.

6 So, at this time, Madam Clerk, please place the jury
7 under oath for purposes of this trial.

8 THE CLERK: Yes, sir.

9 (WHEREUPON, the jury was placed under oath at this
10 time.)

11 THE CLERK: Thank you. You may be seated.

12 THE COURT: If there was any member of the jury panel
13 who either failed or refused to take the oath just
14 administered by the clerk, I'd ask that you now please
15 stand.

16 (No response.)

17 THE COURT: The record will reflect that all potential
18 jurors have now been placed under oath concerning their
19 responses in this case.

20 I'm going to follow the same procedure that I followed
21 during jury qualification. I'll ask questions. I'll ask,
22 if you have a response to the question, to please stand.
23 I'll call on you individually. I'll need your name and
24 number on the record before I discuss any response that you
25 might have to these questions.

1 The first question I have.

2 Is there any member of the jury panel who has ever been
3 related by marriage or are you related by blood to either
4 the defendant, Calvin Terrell Williams, or the alleged
5 victim, Jennifer Rodriguez, if that's true, please stand.

6 (No response.)

7 THE COURT: Is there any member of the jury panel who
8 is ever had a close personal, social, or business
9 relationship with either the defendant, Calvin Williams, or
10 the alleged victim, Jennifer Rodriguez, if that's true,
11 please stand.

12 (No response.)

13 THE COURT: Has any member of this jury panel ever been
14 represented by either of the attorneys involved in this case
15 or have they ever appeared on the other side of some legal
16 matter from you, if that's true, please stand.

17 (Juror responds.)

18 THE COURT: Yes, ma'am, I need your name and number.

19 THE JUROR: Becky Wooten, 144.

20 THE COURT: Your situation, ma'am?

21 THE JUROR: Mr. Barnette, we were -- my boyfriend's son
22 was killed in a car accident --

23 THE COURT: Yes, ma'am.

24 THE JUROR: -- and---

25 THE COURT: Was the case prosecuted by the solicitor's

1 office?

2 THE JUROR: It was.

3 THE COURT: I see.

4 And so that -- you came into contact with Mr. Barnette
5 through that case?

6 THE JUROR: Yes.

7 THE COURT: All right. Now, is that case now been
8 ended as far as the Court system is concerned?

9 THE JUROR: Many years ago.

10 THE COURT: All right. Now, would that -- the fact
11 that you have that involvement in the fact -- past, if you
12 were selected to serve on the jury, would it affect your
13 ability to be fair and impartial to both sides in this case?

14 THE JUROR: No, it would not affect me.

15 THE COURT: All right. Thank you, ma'am. You can be
16 seated.

17 Anyone else?

18 (No response.)

19 THE COURT: Now, has any member of the jury panel ever
20 had a close social, personal, or business relationship with
21 either of the attorneys that are involved in this case, if
22 that's true, please stand.

23 (No response.)

24 THE COURT: Now, at this time I'm going to go over a
25 list of names that I have been provided as possible

1 witnesses in this trial. The list, let's see, contains
2 quite a number of people. Let me get the right list here.
3 Let's see. Almost 40. 39 people.

4 I'm going to call these out by calling ten names at a
5 time, and then I'll have some questions concerning those
6 individuals, and then we'll do that until we work through
7 the list.

8 All right. The first ten names on the witness list
9 I've received are Officer -- and I'll give you a, a brief
10 description of where they might be employed if I've been
11 provided that information.

12 First of all, Officer Tim Stacey with the Spartanburg
13 Police Department.

14 When I refer to the Spartanburg Police Department, that
15 would be the City Police Department.

16 Number two is Investigator Robert Cheeks with the
17 Spartanburg Police Department.

18 Next is Officer Kevin Renneker with the Spartanburg
19 Police Department.

20 The next investigators are all with the Spartanburg
21 Police Department.

22 Morgan Manriquez.

23 Jason Tapp.

24 Ronnie Forrester.

25 Brendall Mathis.

1 Chris Layton.

2 Katrina Canada.

3 Jeff Kirby.

4 Now, as to those individuals that I've named as
5 possible witnesses in the case, has any member of the jury
6 panel ever been related by marriage or are you related by
7 blood or have you ever had a close social, personal, or
8 business relationship with any of those individuals that I
9 just named, if that's true, please stand.

10 (No response.)

11 THE COURT: All right. The next ten names on the list
12 are and I believe -- let's see. I'll tell you when we
13 change. The rest -- most of them are from the Spartanburg
14 Police Department.

15 First of all, Investigator Courtney Burgess,
16 Spartanburg Police Department.

17 Lieutenant Tim Suber with the Spartanburg Police
18 Department.

19 Investigator Ed Guthro with the Spartanburg Police
20 Department.

21 Mylnor Beach, evidence officer with Spartanburg Police.

22 Investigator Eric Gallman with Spartanburg Police
23 Department.

24 Investigator Josh Bagwell with the Spartanburg Police
25 Department.

1 Investigator Lou Jones with the Spartanburg Police
2 Department.

3 Officer Stoneman with the Landrum Police Department.

4 Investigator Brandon Letterman with the Spartanburg
5 County Sheriff's Office.

6 Sergeant Mark Miller with the Spartanburg County
7 Sheriff's Office.

8 As to those individuals that I just named, has any
9 member of the jury panel ever been related by marriage or
10 are you related by blood or have you ever had a close
11 social, personal, or business relationship with those
12 individuals that I just named, if that's true, please stand.

13 (No response.)

14 THE COURT: All right. The next names off of my list
15 include Sergeant Craig Bradley with the Spartanburg County
16 Sheriff's Office.

17 Deputy Dustin McClary with the Sheriff's Office.

18 Deputy Daniel Linflander with the Sheriff's Office.

19 Lieutenant Bobby Turner with the Sheriff's Office.

20 Bryan Fraley with the Sheriff's Office.

21 Deputy Chris Bush with the Sheriff's Office.

22 Marlee Johnson with BB&T.

23 Jennifer Rodriguez with BB&T.

24 Jerri Ferguson with BB&T.

25 Robert Cooper with BB&T.

1 As to those individuals that I just named, has any
2 member of the jury panel ever been related by marriage or
3 are you related by blood or have you ever had a close
4 social, personal, or business relationship with any of the
5 individuals that I just named as possible witnesses in the
6 case, if that is true, please stand.

7 (No response.)

8 THE COURT: All right. The final group of potential
9 witnesses I will name are Ashley Henson with BB&T.

10 Cynthia Pollard with BB&T.

11 Cathy Jones with BB&T.

12 Antje Crossley from Spartanburg.

13 Jason Moore from Spartanburg.

14 Kenneth Blassingame from Spartanburg.

15 Shyquone Williams from Spartanburg.

16 Jim Lannamann from Spartanburg.

17 Jalessa Burgess from Spartanburg.

18 As to those individuals, has any member of the jury
19 panel ever been related by marriage or are you related by
20 blood or have you ever had a close social, personal, or
21 business relationship with any of the individuals that I
22 just named as potential witnesses in the case, if that's
23 true, please stand.

24 (Juror responds.)

25 THE COURT: Ma'am, I need your name and number.

1 THE JUROR: Andrea Leckey, 76.

2 THE COURT: Yes, ma'am.

3 THE JUROR: Cathy Jones is just a niece of my
4 sister-in-law.

5 THE COURT: I see.

6 So an acquaintance of yours?

7 THE JUROR: Yes.

8 THE COURT: Now, would the fact that she might be a
9 witness in this case, if you were on the jury, would that
10 affect your ability to---

11 THE JUROR: No, sir.

12 THE COURT: ---be fair and impartial to both sides?

13 THE JUROR: No, sir.

14 THE COURT: All right. Thank you, ma'am. You can be
15 seated.

16 Anyone else?

17 (No response.)

18 THE COURT: Has any member of the jury panel or a
19 member of your immediate family or a close personal friend
20 of yours ever been represented by members of the Seventh
21 Circuit Public Defender's Office or by members of the
22 Seventh Circuit Solicitor's Office, if that's true, please
23 stand.

24 (Juror responds.)

25 THE COURT: Has any member of the jury panel -- oh, I'm

1 sorry. Someone's up.

2 Your name and number, sir.

3 THE JUROR: Mikes Stokes, 131.

4 THE COURT: Yes, sir.

5 THE JUROR: I think you said public defender.

6 THE COURT: Has any -- has either you or a member of
7 your immediate family---

8 THE JUROR: My son---

9 THE COURT: ---or a close personal friend of yours---

10 THE JUROR: They defended my son.

11 THE COURT: All right. So is that representation
12 ongoing?

13 Is it still going on?

14 THE JUROR: He's on probation right now.

15 THE COURT: Well, the case then has been processed
16 through the Courts?

17 THE JUROR: (Nods affirmatively.)

18 THE COURT: Would that fact affect your ability to be
19 fair and impartial if you were serving on a jury in this
20 case?

21 THE JUROR: No, sir.

22 THE COURT: Thank you, sir. You can be seated.

23 Has any member of the jury panel ever been arrested for
24 or charged with or convicted of a crime of a violent nature
25 including such crimes as murder, manslaughter, assault and

1 battery with intent to kill, armed robbery, bank robbery,
2 criminal sexual conduct, burglary, criminal domestic
3 violence of a high and aggravated nature involving the use
4 of a weapon, or an assault on another person, if that's
5 true, please stand.

6 (No response.)

7 THE COURT: Has any member of the jury panel ever had a
8 member of their immediate family or a close personal friend
9 arrested for, charged with the crimes I just enumerated, if
10 that has happened, please stand.

11 (Juror responds.)

12 THE COURT: Name and number, ma'am.

13 THE JUROR: Becky Wooten, 144.

14 THE COURT: Yes, ma'am.

15 THE JUROR: My boyfriend's oldest son was in Gaffney.
16 I -- it was -- I forget the charge he got. He spent some
17 time in jail.

18 THE COURT: I see.

19 would that affect your impartiality if you were serving
20 on this jury in this case?

21 THE JUROR: No, sir.

22 THE COURT: Thank you, ma'am.

23 Has any member of the jury panel -- are you currently
24 being or have you, in the past, been prosecuted by members
25 of the Seventh Circuit Solicitor's Office, if that's true,

1 please stand.

2 (No response.)

3 THE COURT: Has any member of the jury panel ever been
4 arrested by the Spartanburg City Police Department or the
5 Spartanburg County Sheriff's Office or the State Law
6 Enforcement Division?

7 So if you've ever been arrested by such an
8 organization, please stand.

9 (No response.)

10 THE COURT: Is there any member of the jury panel who
11 is a member of any group that does not recognize the
12 government of the United States or the authority of the
13 state of South Carolina or do you hold such personal
14 beliefs, if that's true, please stand.

15 (No response.)

16 THE COURT: Has any member of the jury panel or a
17 member of your immediate family ever been employed by any
18 law enforcement agency, jail, detention center, correctional
19 facility, either civilian or military, if that's true,
20 please stand.

21 (Jurors respond.)

22 THE COURT: Name and number please, ma'am.

23 THE JUROR: Martha Hood, 62.

24 THE COURT: Yes, ma'am.

25 THE JUROR: My father was a sergeant for Asheville City

1 Police in North Carolina.

2 THE COURT: All right. Now, would that affect your
3 impartiality if you were selected to be on this jury?

4 THE JUROR: No, sir.

5 THE COURT: Thank you, ma'am. You can be seated.
6 Name and number please, ma'am.

7 THE JUROR: Jennifer Beth McKey, Number 90.

8 THE COURT: Yes, ma'am.

9 THE JUROR: My husband, years ago, was a probation
10 officer in the State of Tennessee.

11 THE COURT: I see.

12 Would that fact affect your impartiality in this case?

13 THE JUROR: No, sir.

14 THE COURT: Thank you, ma'am.

15 Sir, your name and number.

16 THE JUROR: Dave Wilbanks, 139. My father was a
17 Spartanburg County Sheriff officer in the community years
18 ago and my son's in the military.

19 THE COURT: All right. Would that affect your
20 impartiality if you were selected to be on the jury?

21 THE JUROR: No, sir.

22 THE COURT: Yes, ma'am, name and number.

23 THE JUROR: Julianna Lux, 83.

24 THE COURT: Yes, ma'am.

25 THE JUROR: My husband's an investigator with the

1 Spartanburg County Sheriff's Office.

2 THE COURT: would that affect your impartiality if you
3 were selected on the jury in this case?

4 THE JUROR: No, sir.

5 THE COURT: Thank you, ma'am.

6 Ma'am, name and number.

7 THE JUROR: Lulu Jones, Number 70.

8 THE COURT: Yes, ma'am.

9 THE JUROR: My brother is a police officer with the Air
10 Force. I have a brother-in-law that was a probation officer
11 with Spartanburg County.

12 THE COURT: I see.

13 Now, would that affect your impartiality if you were
14 selected to serve on the jury?

15 THE JUROR: No.

16 THE COURT: Thank you, ma'am.

17 Ma'am, name and number.

18 Lady on the front row.

19 THE JUROR: Okay.

20 THE COURT: Yes, ma'am.

21 THE JUROR: Tammy Coffee, 19, and my father was a
22 highway patrolman for 15 years and he's now in the Army
23 National Guard.

24 THE COURT: I see.

25 Now, would that affect your impartiality if you were

1 selected?

2 THE JUROR: No, sir.

3 THE COURT: Thank you, ma'am.

4 Sir, name and number.

5 THE JUROR: 123, Thomas Shoemaker. My father was a
6 deputy chief U.S. Marshal for 35 years.

7 THE COURT: All right. Would that affect your
8 impartiality in this matter?

9 THE JUROR: No, sir.

10 THE COURT: Thank you, sir.

11 Sir, name and number.

12 THE JUROR: Richard Cox, Number 23.

13 THE COURT: Yes, sir.

14 THE JUROR: My brother-in-law was a Spartanburg County
15 judge.

16 THE COURT: All right. Would that affect your
17 impartiality in this matter?

18 THE JUROR: No, sir.

19 THE COURT: All right. Thank you. You can be seated.

20 Has any member of the jury panel or a member of your
21 immediate family or a close personal friend of yours ever
22 been the victim of any type of violent crime, if that's
23 true, please stand.

24 (No response.)

25 THE COURT: Has any member of the jury panel or a

1 member of your immediate family or a close personal friend
2 of yours ever been the victim of a property crime such as a
3 larceny, breach of trust, or other similar property event,
4 if that's true, please stand.

5 (No response.)

6 THE COURT: Now, has any member of the jury panel
7 gathered any information about this case such that it would
8 of caused you to either form or express an opinion about the
9 issues that might be involved in this trial, if that's true,
10 please stand.

11 (No response.)

12 THE COURT: Is there any member of the jury panel who
13 is aware of any bias or prejudice that you might have either
14 for or against either the State or the defense in this
15 matter, if that's true, please stand.

16 (No response.)

17 THE COURT: Is there any member of the jury panel who
18 may have been a member of the Grand Jury that issued the
19 indictments in this case?

20 The indictments were issued on May the 6th of 2015 and
21 on April 30th of 2015. Excuse me. May the 6th of 2016
22 and April the 30th of 2015.

23 If that's true, please stand.

24 (No response.)

25 THE COURT: Is there any member of the jury panel who

1 is a member of or a contributor to a group which has as its
2 primary concern the promotion of law enforcement and/or
3 victim's rights?

4 These groups would include but not be limited to groups
5 like Mothers Against Drunk Driving, Students Against Drunk
6 Driving, Citizens Against Violent Crime, the South Carolina
7 Troopers Association, the South Carolina Sheriffs
8 Association, or other similarly oriented organizations.

9 If you're a member of or a contributor to such a group,
10 please stand.

11 (No response.)

12 THE COURT: Does any member of the jury panel know of
13 any reason whatsoever why he or she should not serve as a
14 juror in this case with particular emphasis being placed
15 upon your ability to be both fair and impartial to both the
16 State and the defendant, if you know of such a reason,
17 please stand.

18 (No response.)

19 THE COURT: State have additional questions?

20 SOLICITOR BARNETTE: No, sir.

21 THE COURT: Defense have additional questions?

22 MR. SHEALY: No, Your Honor.

23 THE COURT: All right. I'll declare the remaining
24 members of the jury panel to be qualified to serve as jurors
25 in this case.

1 I'll direct the clerk to prepare a list of potential
2 jurors in this matter. In this case the State will have
3 five strikes. The defense will have five strikes. We're
4 picking one alternate. State having one strike. The
5 defense having two strikes.

6 Now, I'll explain to you what we're doing right now.
7 The clerk has a random selection program. It will go
8 through your group and randomly select names and place those
9 names on a list in numerical order. We'll begin to call
10 those names in the order in which the names appear on that
11 list.

12 As we call your name, when your name is called, I'm
13 going to ask that you come down front to where the clerk is,
14 stand and face the back-door of the courtroom. At that time
15 the attorneys will be in a position to exercise their
16 strikes.

17 Now, if you're selected to serve on the jury panel
18 you're going to have a seat in this jury box immediately to
19 my left. You will not be returning to your seat. So if
20 your name is called, bring with you any personal belongings
21 you have. Jacket, pocketbook, whatever you might have,
22 bring it with you when you come down front because you won't
23 be going back to your seat if you're selected to serve on
24 the jury.

25 (Pause.)

1 THE COURT: All right. Madam Clerk, you can begin
2 calling the role.

3 THE CLERK: Yes, sir.

4 (WHEREUPON, a jury panel was selected at this time.)

5 THE COURT: All right. We're now selecting the
6 alternate.

7 THE CLERK: Yes, sir.

8 (WHEREUPON, an alternate juror was selected at this
9 time.)

10 THE CLERK: Jury selection is completed.

11 THE COURT: Thank you, Madam Clerk.

12 THE CLERK: Yes, sir.

13 THE COURT: Any objections to the jury selection
14 process from the State?

15 SOLICITOR BARNETTE: None from the State, Your Honor.

16 THE COURT: Any from the defense?

17 MR. SHEALY: No, Your Honor.

18 THE COURT: All right.

19 (Pause.)

20 THE COURT: All right. Ladies and gentlemen, you have
21 been selected as members of the jury panel in this case.
22 There's some things that I want to go over with you at this
23 time.

24 Before we actually start the trial of the case there's
25 some things I have to go over with the lawyers. We'll be

1 going over certain evidence that may be gonna be presented
2 during the trial. We're gonna make an effort to try to
3 streamline some things and perhaps we'll handle some issues
4 before we actually start the trial of the case.

5 So they'll be some pretrial matters that I'll be taking
6 up with the lawyers this afternoon. That means you will not
7 be needed in the case until tomorrow morning. So I'm going
8 to release you for the rest of the afternoon and ask that
9 you be back in the jury room in the morning.

10 Now, during your absence from the courthouse, there's
11 some specific instructions that I want to give you and I'll
12 try to explain to you why I'm asking you or directing you to
13 do these things. We've gone to a lot of trouble here to
14 pick a jury that has an open mind concerning the issues
15 involved in this case. I want you to keep that open mind
16 until such time as you've heard all the arguments by the
17 lawyers, you've heard all the evidence from the witness
18 stand, you've heard my instruction concerning the law, and
19 only then should you begin any discussions about any aspect
20 of this case and that's when you have all the information
21 you need to begin an intelligent discussion.

22 Now, when you come back to the courtroom, you'll be
23 taking an oath concerning your duties and responsibilities
24 as jurors in this case and you'll find that that oath is
25 that you agree or you swear that you will decide this case

1 based upon the law and the evidence that's presented in the
2 trial. The only place that you're going to hear evidence
3 about this case is in this courtroom during this trial from
4 this witness stand from witnesses who've been sworn to tell
5 the truth and whatever evidence comes into the record of the
6 trial through that testimony or by the agreement of lawyers
7 for that evidence to go into the record and that's the only
8 evidence that you will hear. There is no other evidence in
9 this case.

10 For that reason it would be a violation of your oath as
11 a juror for you to try to gather any information about this
12 case from any source outside of this courtroom. I know that
13 you can get on the Internet these days, put in a few words
14 on a Google search or a Yahoo search and come up with
15 information from a lot of different sources. Some of which
16 is true. Some of which is questionable.

17 But, at any rate, it would be improper for you to try
18 to gather any information from that source because, you see,
19 evidence only goes into the record of the case by rules of
20 evidence that have been established and, and tried and
21 tested over many many years. So the only evidence you
22 should consider is evidence that's able to be introduced
23 into the record of a trial during the trial of the case, and
24 I hope you realize that, if you begin to discuss what this
25 case is about with anyone, including your fellow jurors,

1 your discussions may, may lead you to begin to make up your
2 mind about some issue in the case and, again, you haven't
3 heard any evidence in the case yet.

4 So I'm going to instruct you not to gather any
5 information on your own or attempt to do so, to not discuss
6 the case with anyone, including your fellow jurors, and I'm
7 going to ask you also not to allow anyone to discuss the
8 case with you. So, if someone tries to begin a discussion
9 with you about the case, don't discuss -- don't participate
10 in that discussion. It's okay to tell family and friends
11 you've been selected to serve on a jury, that you're going
12 to be serving on that jury. That's as far as the
13 conversation should go.

14 Talk about the weather. Talk about politics, religion,
15 the economy, whatever you want to talk about. But do not
16 talk about this case because, again, that's gonna cause you
17 to potentially begin to make up your mind about certain
18 issues. I want you to keep an open mind until you've heard
19 all the evidence in the case.

20 Also, I don't anticipate that this case will be
21 reported in the media. It may be. So if you were to happen
22 to be present when a television report starts or a radio
23 report starts or something of that nature or you happen to
24 pick up a newspaper and see a mention of this case, don't
25 read the article, don't listen to the reports, turn them

1 off, walk away, get out of ear shot because I can assure you
2 those reports, quite often, contain information that would
3 not be admissible in a Court of law, could not be used in
4 the trial of a case, and, therefore, should not be
5 considered by you in any manner whatsoever in deciding the
6 issues that will be presented to you.

7 So, in a nutshell, let me sum it up. Don't attempt to
8 gather any information on your own. Don't listen to, watch,
9 or read media reports. Don't discuss the case with anyone.
10 Don't allow anyone to discuss it with you. And, finally,
11 should someone try to contact you about your service on this
12 jury, don't participate in that discussion. Report that
13 contact as soon as possible to the Court, Court officials.
14 I can assure you I take those matters very seriously. An
15 investigation would be immediately begun if someone tries to
16 influence your decision in this case improperly. So, again,
17 those are my instructions.

18 Now, tomorrow, when you come back, the first thing I'm
19 gonna do before I do anything with you in the morning, I'm
20 going to ask you if you've been able to comply with my
21 instructions while you've been away from the courthouse.
22 Please be in a position to tell me that you followed my
23 instructions while you've been away. I'll check with you
24 every time we -- you leave the courthouse about your ability
25 to follow those instructions.

1 Those instructions won't change throughout the trial,
2 and you're gonna find, every time you walk out this door,
3 I'm going to instruct you not to discuss the case with
4 anyone. You're gonna get tired of hearing me say that. But
5 I will instruct you on that thoroughly throughout the trial.

6 I only want you to begin your discussions about this
7 case once you're fully armed with the information and I've
8 asked you to start your deliberations at the close of the
9 trial.

10 I want to thank you very much for your cooperation this
11 morning. We intend to start the trial in the morning at
12 nine o'clock. I'd like for you to be back in the jury room.
13 The bailiffs are gonna show you how to get to this jury room
14 in use for this trial. You'll report to that location, not
15 back to the assembly room, in the morning. Be there by nine
16 o'clock. We should start shortly thereafter.

17 Please get a good nights sleep. Be in a position to
18 stay awake and listen to everything that's going on
19 tomorrow. Any trial in this Court is a very important trial
20 to the people involved. So, be in a position to, to carry
21 out our duties tomorrow if at all possible.

22 All right. The bailiffs are gonna show you out. Nine
23 o'clock in the morning be back in the jury room.

24 Thank you very much.

25 (WHEREUPON, the following takes place outside the

1 presence of the jury.)

2 THE COURT: Any objection to my instructions from the
3 State?

4 SOLICITOR BARNETTE: Nothing from the State, Your
5 Honor.

6 THE COURT: Any from the defense?

7 MR. SHEALY: No, Your Honor.

8 THE COURT: All right. We're gonna start, let's say,
9 about two o'clock.

10 Is that okay?

11 MR. SHEALY: Yes, sir.

12 SOLICITOR BARNETTE: Fine, Your Honor.

13 If I can just put one thing on the record really quick?

14 THE COURT: Yes, sir, please do.

15 SOLICITOR BARNETTE: And the only reason I'm doing
16 this, Your Honor, it's a life without parole case, just to
17 make sure. I know he didn't object and I appreciate him not
18 objecting to any of my strikes. I just want to put on the
19 record and make sure it's clear.

20 THE COURT: Uh-huh. (Affirmative).

21 SOLICITOR BARNETTE: 132, his son's been represented by
22 the Public Defender's Office. That's the reason why I
23 struck him.

24 THE COURT: All right.

25 SOLICITOR BARNETTE: Number 7, she had a fraudulent

1 check conviction previously, Your Honor, according to the
2 rap sheet I have.

3 Number 39 had a previous DUI, Your Honor.

4 THE COURT: All right. Very good.

5 SOLICITOR BARNETTE: That's the reason why I struck
6 those three individuals.

7 THE COURT: All right. Thank you.

8 SOLICITOR BARNETTE: No problem. Thank you, Your
9 Honor.

10 THE COURT: All right. Two o'clock we'll be in a
11 position to take up pretrial motions.

12 Thank you very much.

13 SOLICITOR BARNETTE: Thank you, Your Honor.

14 (WHEREUPON, Court was in recess for the lunch hour.)

15 THE COURT: All right. We're back on the record in the
16 case of the State of South Carolina versus Calvin Terrell
17 Williams.

18 Mr. Barnette.

19 SOLICITOR BARNETTE: Yes, sir, I had several motions,
20 Your Honor. Of course, some of these may be solved by other
21 ones.

22 I had a motion -- I believe I gave the Court a memo on
23 the 404(b), Your Honor --

24 THE COURT: Yes, sir.

25 SOLICITOR BARNETTE: -- explaining some things that we

1 would be doing, and there's also a Rule 609 motion, but the
2 404(b) motion may take care of the 609---

3 THE COURT: All right.

4 SOLICITOR BARNETTE: ---about the prior convictions,
5 and then also I have a motion for third party guilt
6 concerning that. The third party guilt one might be the
7 easiest one to handle right now. I don't know if they have
8 anything on third party guilt or not.

9 MR. SHEALY: We don't have any I mean other than just
10 saying my client did not commit the crime.

11 THE COURT: Okay. Well, he's allowed to say he didn't
12 do it.

13 MR. SHEALY: Yes, sir.

14 SOLICITOR BARNETTE: Exactly.

15 THE COURT: Okay.

16 SOLICITOR BARNETTE: There's no problem.

17 Your Honor, on the 404(b) I do have FBI Agent Lannamann
18 here with me. He's here to produce the evidence concerning
19 that, Your Honor.

20 I did -- I know we had a brief bench conference before
21 we broke today. I went through some things. I believe the
22 officer can testify to this. I went through the rules and
23 so forth. I don't know if you need to hear my argument now
24 or until after he testifies.

25 THE COURT: well, I'm gonna let him -- let you go ahead

1 and put up your testimony. I'm sure Mr. Shealy will object,
2 object at whatever point he feels like it's objectionable
3 and we'll deal with it as we go through that.

4 SOLICITOR BARNETTE: And, Your Honor, what I'd like to
5 do before we get started, I believe the two prior
6 convictions of the -- like to enter those as Court's
7 Exhibits 1 and 2 before we start---

8 THE COURT: All right.

9 SOLICITOR BARNETTE: ---the testimony from that, Your
10 Honor, and I know I've included those as part of the---

11 THE COURT: Have those already been put into the
12 record?

13 SOLICITOR BARNETTE: No, sir, but I'm getting ready to
14 now.

15 THE COURT: Okay. All right.

16 SOLICITOR BARNETTE: They're part of the memo that was
17 handed up to the Court earlier---

18 THE COURT: Yes, sir, I have the memo and they're---

19 SOLICITOR BARNETTE: ---and I was gonna go ahead and---

20 THE COURT: ---exhibits to that memo.

21 SOLICITOR BARNETTE: Yes, sir, they are and I just want
22 to enter them as Court Exhibits for the purposes of this
23 hearing.

24 THE COURT: All right.

25 SOLICITOR BARNETTE: They're marked as Exhibit 5 I

1 believe in your materials. Let me show these to Mr. Shealy
2 to see if he has any objection.

3 I'll just mark it as Court Exhibit 1. Just one total
4 exhibit.

5 THE COURT: All right. Let me see if there's an
6 objection.

7 MR. SHEALY: Judge, I don't necessarily have an
8 objection at this moment for the purpose of this particular
9 hearing. They're---

10 THE COURT: I think he's offering those as exhibits for
11 this hearing.

12 MR. SHEALY: Yes, sir.

13 THE COURT: And you---

14 MR. SHEALY: And they're---

15 THE COURT: You don't question the authenticity or
16 anything of that nature?

17 MR. SHEALY: Not at this point, no, sir.

18 THE COURT: All right. Well then they'll be admitted
19 as State's Exhibits as -- for purposes of this hearing.

20 Have they already been marked?

21 THE COURT REPORTER: Court Exhibits?

22 THE COURT: Yeah.

23 SOLICITOR BARNETTE: They'll be Court Exhibit 1, Your
24 Honor, if we could, just for purposes of this hearing.

25 (WHEREUPON, the Federal charges information was marked

Jim Lannamann - Direct examination
by Solicitor Barnette

1 as Court's Exhibit No. 1 and received into evidence for
2 purposes of this hearing only at this time.)

3 SOLICITOR BARNETTE: Your Honor, the State would like
4 to call FBI Agent Jim Lannamann to the stand please.

5 THE COURT: Sir, come forward and be sworn over here to
6 my left please.

7 JIM LANNAMANN, being first duly
8 sworn, testified as follows:

9 THE COURT: Have a seat please.

10 THE WITNESS: Hi, judge.

11 THE COURT: Hi.

12 How are you today?

13 THE WITNESS: Fine.

14 THE COURT: Good.

15 State your name once you're seated.

16 THE WITNESS: James R. Lannamann.

17 THE COURT: Spell that last name for the court reporter
18 please.

19 THE WITNESS: L-A-N-N-A-M-A-N-N.

20 THE COURT: All right. Thank you very much.

21 Your witness.

22 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 DIRECT EXAMINATION

25 BY SOLICITOR BARNETTE:

Jim Lannamann - Direct examination
by Solicitor Barnette

- 1 Q Sir, was you, at one time, an FBI agent, sir?
- 2 A I was.
- 3 Q And for how long?
- 4 A Twenty-eight and a half years.
- 5 Q And have you retired since then?
- 6 A I have.
- 7 Q When was your retirement date?
- 8 A April 30th of last year.
- 9 Q Okay. Back in 2003 was you working at the FBI in this
10 area, sir?
- 11 A I was.
- 12 Q And what was your position with the FBI at that time?
- 13 A I was a special agent.
- 14 Q And back in August 7th, 2003, and August 12th,
15 2003, was you involved in the investigation of two bank
16 robberies or armed bank robberies at that time?
- 17 A I was.
- 18 Q On August 7th, 2003, did you investigate a bank
19 robbery or armed robbery at Central Carolina Bank at 453
20 East Henry Street in Spartanburg, Your Honor?
- 21 A I did.
- 22 Q And who was the two suspects that was developed from
23 your investigation on that?
- 24 A Aderian Fair and Calvin Williams.
- 25 Q Okay. And in August 12th, 2003, there was another

Jim Lannamann - Direct examination
by Solicitor Barnette

1 bank robbery that occurred and was that the First Citizens
2 Bank at 305 North Church Street here in Spartanburg?

3 A It was.

4 Q And who was the two people involved with that bank
5 robbery?

6 A Anastasia Pitts and Calvin Williams.

7 Q Okay. And how old was Calvin -- I mean how old was
8 Miss Pitts at the time this happened?

9 A I believe she was 16.

10 Q And, Mr. Fair, do you know what age he was at the time?

11 A I believe he was 18.

12 Q Okay. And was -- Mr. Fair, what school was he going to
13 at the time?

14 A Spartan High.

15 Q Okay. And on both these two investigations, can you
16 tell the Court what happened -- what would happen?

17 Based on your investigation, what did you discover?

18 A The August 7th bank robbery, a male entered the bank
19 and presented---

20 MR. SHEALY: Objection, Your Honor. I don't believe he
21 has any personal knowledge as to this. It's all hearsay. I
22 think this is when I'm going to object. He has no personal
23 knowledge. There's a foundation problem, judge. I just
24 believe these are conclusions of whose -- this will be
25 impermissible opinion testimony. This is---

Jim Lannamann - Direct examination
by Solicitor Barnette

1 THE COURT: You're going to have to speak up and speak
2 toward me.

3 MR. SHEALY: Sorry.

4 THE COURT: You're looking down.

5 MR. SHEALY: This is impermissible opinion testimony as
6 well. We've got three different, three separate distinct
7 objections. One, that it's hearsay. The other that it's,
8 it's no foundation and the third would be that it's
9 impermissible opinion testimony.

10 THE COURT: All right. Mr. Barnette, I'll ask you to
11 lay a better foundation for his knowledge of these things.

12 SOLICITOR BARNETTE: Yes, sir, I will.

13 THE COURT: Thank you.

14 SOLICITOR BARNETTE: May I approach the witness, Your
15 Honor?

16 THE COURT: You may.

17 Q Let me approach you with what's been marked Court
18 Exhibit No. 1, sir. If you would, take a look at those
19 items.

20 A (Witness complies.)

21 Q Yes, sir.

22 what are those?

23 what is that, sir?

24 A That's a copy of the two count indictment.

25 Q And who's those two count indictments of, sir?

Jim Lannamann - Direct examination
by Solicitor Barnette

1 A Aderian Fair and Calvin Williams on Count One and
2 Calvin Williams on Count Two.

3 Q Okay. And that includes two instances including the
4 August 7th, 2003, bank armed robbery or armed bank robbery
5 and then August 12th, 2003, bank robbery?

6 A Yes.

7 Q And those two counts or whatever, Calvin Williams was
8 charged on both of that.

9 Is that right?

10 A He was.

11 Q And did he plead guilty to those?

12 A He did.

13 Q And was he sentenced on those?

14 A He was.

15 Q And what was the sentence on those two cases, sir?

16 A I don't know the exact time. I think it's about 105
17 months.

18 Q If I asked you to refresh your memory and look at the
19 sentencing sheets on Counts -- on Court Exhibit 1. Give you
20 a chance.

21 A 125 months.

22 Q Okay. And those are run concurrent.

23 Is that right?

24 A Yes.

25 Q And on both those indictments, Mr. Fair, as well as

Jim Lannamann - Direct examination
by Solicitor Barnette

1 Miss Pitts, was listed as codefendants, sir, on those
2 counts.

3 Is that right?

4 A Miss Pitts was not prosecuted federally because she was
5 16-years of age.

6 Q Okay. So she was handled in State Court too?

7 A Yes.

8 Q But she was listed as the codefendant or whatever in
9 the case.

10 Is that right?

11 A Not in the indictment. Just in the FBI case file.

12 Q Okay. And in y'all's case file she was listed as a
13 codefendant?

14 A Yes.

15 Q But she wasn't prosecuted because she was a juvenile at
16 the time?

17 A Yes.

18 Q And that was y'all's policy not to prosecute, prosecute
19 juveniles?

20 A That's correct.

21 Q However, Mr. Fair was cause he was 18 at the time?

22 A Yes.

23 Q Okay. From there.

24 Now, the guilty plea was done I believe on
25 October 30th, 2003.

Jim Lannamann - Direct examination
by Solicitor Barnette

1 Is that correct?

2 A October 31st, yes.

3 Q 2000 -- October 31st, 2003?

4 A Yes.

5 Q And there's not -- we haven't been able to find a
6 transcript.

7 Can they appeal during a guilty plea on Federal Court
8 generally?

9 A Generally not because that's part of the plea
10 agreement.

11 Q Uh-huh. (Affirmative).

12 So that's the reason why there's probably not a
13 transcript that we can find on this case?

14 A That's true.

15 Q Okay. Going back through your investigation and so
16 forth, you found that, in both these cases, the codefendant
17 worked with Mr. Williams in these cases through your
18 investigation?

19 A Yes.

20 Q And on both of these investigations Mr. Williams did
21 not enter the bank?

22 A That's correct.

23 MR. SHEALY: Objection, Your Honor. Still foundation
24 issue. We still got hearsay because, again, he wasn't
25 there. He didn't see who entered the bank, who didn't enter

Jim Lannamann - Direct examination
by Solicitor Barnette

1 the bank. I don't believe he can testify to, to that. I
2 don't think he has personal knowledge, and, again, he's
3 making the ultimate conclusion and conclusions are that of
4 an opinion and an opinion isn't allowed at this -- by this
5 particular witness.

6 SOLICITOR BARNETTE: Your Honor, I would argue, under
7 Rule 101, 1101, Your Honor, application of the rules. It
8 says, under Section D, the rules are applicable in case of
9 preliminary questions of fact, determination of questions of
10 fact, preliminary -- the admissibility of evidence when the
11 issue is to be determined by the Court under Rule 104, and
12 if you go to 104, basically it talks about preliminary
13 questions. You can go under any section there, but
14 basically B, relevance condition on fact. When the
15 relevancy evidence depends on fulfillment of the condition
16 of fact, the Court shall admit, upon subject to introducing
17 of the evidence, sufficient for a finding fulfilling the
18 condition, Your Honor.

19 Basically this is a preliminary hearing where evidence
20 can be allowed in like this for the Court to make a ruling
21 on admissibility concerning that.

22 THE COURT: Well, what I would like to hear I think at
23 this time is what evidence this -- the FBI reviewed. There
24 may of been videos. There may have been other evidence that
25 they gathered that would -- a video is not hearsay. It's

Jim Lannamann - Direct examination
by Solicitor Barnette

1 something you can watch and see. I don't know exactly what
2 evidence they reviewed in regards to this.

3 So when I ask for a better foundation, I'm kind of
4 wanting to know exactly what evidence was gathered, how many
5 witnesses were talked to, that sort of thing, so that we'll
6 have a foundation for his knowledge.

7 But, Mr. Shealy, case law in South Carolina generally
8 does allow a police officer to testify from his
9 investigation. It's not offered for the truth of the matter
10 asserted necessarily, but to indicate why he took certain
11 steps in his investigation.

12 MR. SHEALY: Well, judge---

13 THE COURT: And then let me finish.

14 MR. SHEALY: I thought you were.

15 THE COURT: And, in this particular case, he's
16 testifying that he, apparently, went out and sought
17 indictments, federal indictments for the crimes, obtained
18 them, and then your client pled guilty to them. So I think
19 he can testify that he, in fact, investigated the incident,
20 that he interviewed witnesses, that he took statements based
21 on his, his -- what he found in that investigation. He took
22 the next step, which states why he did what he did, not the
23 truth of what he learned in those steps.

24 So I'm not sure where -- it's been introduced for
25 strictly hearsay purposes.

Jim Lannamann - Direct examination
by Solicitor Barnette

1 MR. SHEALY: But, judge, the reason we're here is to
2 see if the State can introduce these two prior allegedly bad
3 acts against him at trial.

4 THE COURT: Well, your client pled guilty to something.

5 MR. SHEALY: He -- yes, sir, and---

6 THE COURT: And you---

7 MR. SHEALY: ---it would be our position that he had---

8 THE COURT: Do you have a position as to what he pled
9 guilty to?

10 MR. SHEALY: He pled guilty to the facts laid out in
11 the indictment, Your Honor, that the---

12 THE COURT: Well, I'm gonna -- we're gonna go forward
13 with the hearing, Mr. Shealy. I'm gonna let you object
14 whenever you think objections are necessary, but there's
15 more to the hearsay rule simply than he may of talked to
16 someone and gathered some information.

17 MR. SHEALY: Thank you, Your Honor.

18 THE COURT: All right. You may proceed.

19 SOLICITOR BARNETTE: Thank you, Your Honor.

20 CONTINUED DIRECT EXAMINATION

21 BY SOLICITOR BARNETTE:

22 Q Going back through your investigation, could you tell
23 the Court what you did, who you talked to, what you reviewed
24 and everything through the investigation if you could, sir?

25 A I interviewed Aderian Fair after he was apprehended

Jim Lannamann - Direct examination
by Solicitor Barnette

1 immediately after the bank robbery, and he identified a
2 Kevin as being the one who was the master mind of this bank
3 robbery at the CCB.

4 MR. SHEALY: Objection, Your Honor. This is all
5 opinion hearsay, but just so that---

6 THE COURT: Well, again---

7 MR. SHEALY: ---my objection is noted.

8 THE COURT: You asked for a foundation.

9 MR. SHEALY: Yes, sir.

10 THE COURT: He is testifying as to what investigations
11 he did and what steps he took. At this point in time I'm
12 not necessarily gonna find that this is being offered for
13 the truth of the matter asserted. You asked for a
14 foundation. He has to state what he did in order to
15 investigate the claims to lay a foundation.

16 MR. SHEALY: Judge, I'm sorry. I have to make a
17 contemporaneous objection---

18 THE COURT: I understand that.

19 MR. SHEALY: ---and I'm making a contemporaneous
20 objection and, if not---

21 THE COURT: And, at this point in time, I'm going to
22 allow him to continue to testify concerning the foundation.

23 MR. SHEALY: Yes, sir.

24 THE COURT: Go ahead.

25 SOLICITOR BARNETTE: Thank you, Your Honor.

Jim Lannamann - Direct examination
by Solicitor Barnette

1 Q And you spoke to Aderian Fair and he identified a
2 person by the name of Calvin?

3 A Kevin.

4 Q Kevin. Excuse me.

5 A And through -- that this Kevin had generated a demand
6 note and had provided a black bag and had instructed Aderian
7 Fair how to commit this bank robbery, and Fair committed the
8 robbery and was caught immediately thereafter by the YMCA in
9 a Wendy's on South Pine, and he was transported to
10 Spartanburg.

11 Q Who captured, who captured him that time, sir?

12 A Two local officers.

13 Q Was that Department of Public Safety Officers?

14 A Yes.

15 Q And what was found in the bag in his possession?

16 A There was the money from the bank.

17 Q Uh-huh. (Affirmative).

18 A There was a pill bottle found in there. A prescription
19 in the name of Calvin Williams.

20 Q Uh-huh. (Affirmative).

21 And that prescription bottle was found the prescription
22 of the defendant?

23 A Yes.

24 Q Okay. And when he was taken to the police station, was
25 he interviewed by, by local authorities as well as yourself

Jim Lannamann - Direct examination
by Solicitor Barnette

1 and the FBI?

2 A Now this is Aderian Fair?

3 Q Aderian Fair.

4 A Calvin Williams was not arrested---

5 Q No, I mean Aderian Fair. Excuse me. I'm sorry.

6 A He was transported for interview, and through that
7 confession that he gave, he implicated this Kevin, who we
8 later determined to be Calvin Williams, when Aderian Fair
9 was able to identify Calvin Williams from a photo spread.

10 Q Later on did you also find out that another officer had
11 stopped Calvin Williams nearby?

12 A Yes, Officer Councilman detained Calvin Williams in the
13 parking lot of Wendy's at about the same time that Aderian
14 Fair was being apprehended, and Councilman held him until
15 the announcement went out over the radio the bank robber had
16 been seized over by the YMCA.

17 Q Okay.

18 A But Councilman got his name and date of birth, and
19 then, later on, he too was displayed a photo spread and
20 picked Calvin Williams from that photo spread as being the
21 one he had detained.

22 Q Okay. And how far is the Wendy's from the bank that
23 was robbed?

24 A Maybe two doors away on Henry Street.

25 Q So it's very -- fairly close?

Jim Lannamann - Direct examination
by Solicitor Barnette

1 A Very close.

2 Q Okay. Got you from there.

3 On the August 12th bank robbery, can you tell us
4 about the investigation concerning that?

5 A Anastasia Pitts entered the bank with a demand note
6 that threatened explosives.

7 MR. SHEALY: Your Honor, same objection for hearsay and
8 same things.

9 Q And just to clarify, there was videotapes and things
10 that was reviewed concerning this.

11 Is that right?

12 A Yes.

13 Q Okay.

14 THE COURT: Did this person review the videotapes of
15 the incident, this witness?

16 THE WITNESS: I did not.

17 THE COURT: I see.

18 THE WITNESS: Somebody with Public Safety did.

19 THE COURT: Okay.

20 Q Okay. If you would, continue, sir.

21 A And somebody was able to recognize Anastasia Pitts from
22 the video and determined a location where she might be
23 found, and I believe Public Safety found both Calvin
24 Williams and Anastasia Pitts together maybe on August
25 15th. I can't recall how close to the August 12th bank

Jim Lannamann - Direct examination
by Solicitor Barnette

1 robbery that was.

2 Q Okay. And based off that information, was both parties
3 arrested for the August 12th event?

4 A Yes.

5 SOLICITOR BARNETTE: Okay. Just give me one second,
6 Your Honor. I want to look at---

7 THE COURT: Yes, sir.

8 (Pause.)

9 Q Was there also images taken by the bank surveillance
10 cameras of Miss Pitts as the female robber in this case?

11 A That's my recollection.

12 Q And did you review -- could you -- did you also see --
13 I know you didn't see the video, but did you see the images
14 concerning this?

15 A I, I can't recall.

16 Q Okay. And did Miss Pitts give a confession about this
17 incident, this incident?

18 MR. SHEALY: Objection, Your Honor, again, based on
19 hearsay and foundation.

20 THE COURT: Now, let's, let's talk about it again.

21 MR. SHEALY: Judge, I've got to do a contemporaneous
22 objection.

23 THE COURT: The question was did Miss Pitts give a
24 confession.

25 Is that quoting what somebody said?

Jim Lannamann - Direct examination
by Solicitor Barnette

1 MR. SHEALY: Your Honor, it doesn't have to simply be a
2 quote. It's also there's a foundation cause I don't believe
3 that she gave any statements to this officer. We also have
4 the issue of that certainly they---

5 THE COURT: Let's take a look at the case.
6 State versus Weaver, you want to pull that up?
7 Give him the citation.

8 Adam, tell him the citation.

9 THE LAW CLERK: 361 S.C. 73.

10 MR. SHEALY: It's searching, judge.

11 What was that number?

12 THE LAW CLERK: 361 S.C. 73, 602 S.E.2d 786.

13 MR. SHEALY: That's State versus Level1 Leaver.

14 Is that right?

15 THE COURT: Yes, and that case goes to whether or not
16 it's error for a police officer to testify concerning
17 conclusions that he drew from an investigation based on a
18 hearsay objection.

19 (Pause.)

20 MR. SHEALY: I'm ready, judge.

21 THE COURT: Okay.

22 MR. SHEALY: Apparently, Your Honor, it would be our
23 position that the defense counsel opened the door to that
24 information with this testimony that was in response to the
25 questions asked on cross-examination as to why Lieutenant

Jim Lannamann - Direct examination
by Solicitor Barnette

1 Weston did not perform a gunshot residue test on everyone at
2 the scene. That was offered to explain why he did not do
3 that---

4 THE COURT: Well, the question though is whether or not
5 it was hearsay.

6 MR. SHEALY: Well, judge, we would argue that that's
7 distinguished and then the---

8 THE COURT: Well, go look at State versus King, 412
9 S.C. 403, where it talks about the Weaver case, and then it
10 also talks about a case, State, United States versus Baker,
11 a Tenth Circuit case, and it talks about whether or not
12 officers should be allowed to testify concerning their
13 investigations, and, again, it uses the same analysis as his
14 testimony, which is not offered to prove the truth of an
15 out-of-court statement, but is offered instead for relevant
16 context or background is not considered hearsay. And that's
17 a 2015 case. That was last year.

18 MR. SHEALY: I'm reviewing in.

19 THE COURT: And earlier I asked if you had a case that
20 you could cite, when we had our bench conference, that I
21 could review and I haven't heard one yet. I'm waiting.

22 MR. SHEALY: Judge, I've not found a case. We've
23 looked. Now our Internet honestly was down all over lunch,
24 but it would be our position we've also brought you several
25 other rules that create issue here.

Jim Lannamann - Direct examination
by Solicitor Barnette

1 THE COURT: Well, it's okay to raise issues, but I
2 usually ask, for whoever raises it, to cite authority.

3 MR. SHEALY: Your Honor, it would be our position is
4 that the Rules of Evidence -- the rule requires it. I mean
5 that's---

6 THE COURT: No, sir, I want authority.

7 MR. SHEALY: Yes, sir.

8 SOLICITOR BARNETTE: Your Honor, the State versus King,
9 can you give me that cite again?

10 THE COURT: Beg your pardon?

11 SOLICITOR BARNETTE: The cite on the King case, can I
12 get that from you if I could?

13 THE COURT: It is 412 S.C. 403.

14 SOLICITOR BARNETTE: Thank you.

15 MR. SHEALY: Judge, I'm sorry. I'm reading the -- from
16 Part 3 in which Officer Butler, in King, apparently
17 testified as to how many shots there were fired based solely
18 on her -- exclusively on statements made to her by
19 neighbors, and my understanding, judge, is that this is --
20 had -- the State had no purpose for offering Officer
21 Butler's testimony except to prove the truth of the
22 neighbor's statements, that more than one shot was fired.
23 The State didn't argue at trial that her testimony on this
24 subject was necessary to explain her conduct or to give
25 context to other testimony.

Jim Lannamann - Direct examination
by Solicitor Barnette

1 So, judge, I believe, in that case, at least the
2 testimony at issue was deemed to be hearsay and was --
3 should not have been admitted. We find Officer Butler's
4 testimony was hearsay cause it's based exclusively on what
5 other witnesses told her.

6 Judge, this is all been based on what other witnesses
7 tell him. He didn't watch the video. He may of seen a
8 couple of still shots that were -- he was told were from
9 that video, but he didn't see the video. And so far as I
10 can tell, none of these statements were given to him. They
11 were given to other people.

12 So it would be our position that all of that is
13 hearsay, and to the extent that they're going to attempt to
14 use these things to prove the facts underlying my client's
15 prior bad acts, those would be proffered for the truth of
16 the matter asserted because they would be saying that those
17 facts are what happened, that those facts, in other words,
18 told to him by someone else were what or was what happened
19 or were what happened. I'm not sure of the proper -- excuse
20 me, judge. But I think all of this---

21 THE COURT: All right. Mr. Barnette, he's saying that
22 you can't use this to prove what happened.

23 SOLICITOR BARNETTE: Well, I think what, what -- the
24 difference between this -- to be honest with you, this is
25 the first 404(b) I've had where there's a conviction.

Jim Lannamann - Direct examination
by Solicitor Barnette

1 Usually we're talking about cases that's been charged or
2 that have not been charged yet --

3 THE COURT: Uh-huh. (Affirmative).

4 SOLICITOR BARNETTE: -- from the standpoint. But, in
5 the case, you have a conviction. You have the underlying
6 facts proven in this case beyond a reasonable doubt, and, in
7 going through the materials that I was looking at, I was
8 reviewing basically, you know, it's by clear and convincing
9 evidence. There's a form and I'll get that form to Your
10 Honor where there's just a -- they just had a thing about
11 prior bad acts that was just presented by this, the South
12 Carolina Bar, and in that, that thing. Let me hand that up
13 to the Court.

14 Basically it says you don't need to prove it basically
15 in this situation. The reason why I want to try to prove
16 the underlying facts is obviously for admission purposes,
17 but the other thing is to give texture to the jury. I just
18 think introducing a bank robbery alone doesn't fit the rule
19 from that standpoint. I would love to tell you it does, but
20 I think, by giving you a basis for that through the
21 investigation, and these were the forms that would of been
22 submitted with the indictments to, to get the warrants or to
23 get the---

24 THE COURT: well, see, I don't know exactly what he
25 signed in connection with his guilty plea in Federal Court.

Jim Lannamann - Direct examination
by Solicitor Barnette

1 SOLICITOR BARNETTE: Uh-huh. (Affirmative).

2 THE COURT: I don't know what was admitted to in those
3 hearings.

4 MR. SHEALY: Well, I think, what we can do, Your Honor,
5 I think Agent Lannamann can testify about what was the basis
6 for those indictments, what he submitted to the -- obviously
7 the U.S. Attorney's Office.

8 THE COURT: Well, I think he can testify to what he
9 submitted to the Federal Grand Jury to get the indictments.

10 SOLICITOR BARNETTE: Yes, sir, and I think that's why
11 I'd like to---

12 THE COURT: Let's find out what he says that you---

13 SOLICITOR BARNETTE: Okay. May I approach the witness,
14 Your Honor?

15 THE COURT: You may.

16 CONTINUED DIRECT EXAMINATION

17 BY SOLICITOR BARNETTE:

18 Q Do you recognize that form, sir?

19 A I do.

20 SOLICITOR BARNETTE: Your Honor, I'd like to mark this
21 as Court Exhibit 2.

22 THE COURT: Let, let Mr. Shealy see it.

23 SOLICITOR BARNETTE: Yes, sir.

24 THE COURT: Any objection?

25 MR. SHEALY: Your Honor, not to it being marked as an

Jim Lannamann - Direct examination
by Solicitor Barnette

1 exhibit, no, sir.

2 THE COURT: Okay.

3 MR. SHEALY: But I think---

4 THE COURT: It will be marked as Court's No. 2.

5 MR. SHEALY: Again, the information in it, we would
6 argue, is all still hearsay but I mean---

7 THE COURT: well, I haven't -- so far Mr. Barnette's
8 indicated this is a document submitted by this witness to
9 the Grand Jury to obtain the indictment.

10 MR. SHEALY: Yes, sir, but as my understanding is that
11 hearsay is generally presented to a Grand Jury for an
12 indictment and I mean it---

13 THE COURT: well, I'm gonna admit it for whatever it --
14 what it is. It's the document he submitted to the Grand
15 Jury to obtain the indictment, the indictment.

16 MR. SHEALY: Yes, sir.

17 THE COURT: Okay. It's admitted for that purpose.

18 (WHEREUPON, the Grand Jury information was marked as
19 Court's Exhibit No. 2 and received into evidence for
20 purposes of this hearing only at this time.)

21 Q Handing you back Court Exhibit No. 2, can you tell us
22 what that is, sir?

23 A This is a letter head memorandum that just gives a
24 synopsis of the bank robbery on August 12th.

25 Q Okay. And would that have been part of the form that

Jim Lannamann - Direct examination
by Solicitor Barnette

1 you submitted to the U.S. Attorney's Office, sir?

2 A It would of been.

3 Q And would that have been a basis for the indictment and
4 for the Grand Jury for them to be presented to the Grand
5 Jury for the indictment, sir?

6 A I would of summarized this information in my
7 presentation to the Grand Jury.

8 Q Okay. And so you presented this to the Grand Jury
9 yourself?

10 A I did.

11 SOLICITOR BARNETTE: Your Honor, I'd ike to move Court
12 Exhibit 2 just for purposes of this hearing at this time for
13 the basis of that.

14 THE COURT: It's admitted for that purpose.

15 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.
16 May I approach the witness, Your Honor?

17 THE COURT: You may.

18 Q Let me show you this document from August the 7th of
19 2003 incident.

20 Do you recognize this document, sir?

21 A I do.

22 SOLICITOR BARNETTE: Your Honor, I'd like to mark this
23 Court Exhibit 3 once I show it to Mr. Shealy.

24 THE COURT: Any objection?

25 MR. SHEALY: Again, judge, I think it's ripe with

Jim Lannamann - Direct examination
by Solicitor Barnette

1 hearsay, but for purposes of this hearing, no, sir.

2 THE COURT: All right. It will be admitted as a
3 document submitted to the Grand Jury or to the U.S. Attorney
4 to be submitted to the Grand Jury.

5 (WHEREUPON, the Grand Jury information was marked as
6 Court's Exhibit No. 3 and received into evidence for
7 purposes of this hearing only at this time.)

8 SOLICITOR BARNETTE: May I approach the witness, Your
9 Honor?

10 THE COURT: You may.

11 Q This is Court Exhibit 3.

12 If you would, tell us what that is, sir.

13 A This is a letterhead memorandum plus a narrative of
14 interview -- of my interview of James Johnson, and the
15 narrative of interview of my interview of Aderian Fair, and
16 also my interview of George Anderson.

17 Q Okay. And that's your notes.

18 Is that right, sir?

19 A These, these are my, my documents.

20 Q Your reports?

21 A Yes.

22 Q Okay. And would you use those documents in submitting
23 this to the Grand Jury, Federal Grand Jury, sir?

24 A Right. I would of given oral testimony to the Grand
25 Jury. The Grand Jury would not have received any of these

Jim Lannamann - Direct examination
by Solicitor Barnette

1 documents. Just my oral testimony.

2 Q But your oral testimony came from these documents?

3 A Yes.

4 SOLICITOR BARNETTE: Okay. Your Honor, I'd like to
5 enter Court Exhibit 3 for the basis of -- for this hearing,
6 sir.

7 MR. SHEALY: Judge, it's -- so is it my understanding
8 that he presented -- these things were presented to the
9 Grand Jury or were not presented to the Grand Jury?

10 I thought that they were --.

11 THE COURT: My understanding---

12 MR. SHEALY: I thought they were.

13 THE COURT: ---is he submitted them to the U.S.
14 Attorney and then he actually testified before the Grand
15 Jury from those documents.

16 MR. SHEALY: Okay. Well, judge, again---

17 THE COURT: I'm gonna let you cross-examine him in a
18 minute.

19 MR. SHEALY: Yes, sir.

20 THE COURT: Okay. Go ahead.

21 SOLICITOR BARNETTE: And may I approach the bench --
22 approach the witness again, Your Honor?

23 THE COURT: You may.

24 Q If you would, sir, what are these documents here?

25 A This is the incident report that Spartanburg Public

Jim Lannamann - Direct examination
by Solicitor Barnette

1 safety provided for the bank robbery at Carolina Central
2 Bank.

3 Q Okay. And that was August 7th, 2013, date?

4 A Yes.

5 Q Okay. And did you review these documents?

6 A I did.

7 Q And would that have been part of your basis for your
8 presentation also?

9 A Yes.

10 SOLICITOR BARNETTE: Okay. Your Honor, I'd like to
11 mark this as Court's Exhibit 4. I'll show it to Mr. Shealy.

12 THE COURT: Any objections or continuing objections?

13 MR. SHEALY: Yes, sir, the same objections that I've
14 had previously.

15 THE COURT: All right.

16 MR. SHEALY: But---

17 THE COURT: It will be admitted as a document that was
18 submitted by this witness in the indictment process.

19 (WHEREUPON, the incident report was marked as Court's
20 Exhibit No. 4 and received into evidence for purposes of
21 this hearing only at this time.)

22 Q I've already asked you about that.

23 You gathered the information and you presented that
24 information on both these cases to the Grand Jury?

25 A I did.

Jim Lannamann - Direct examination
by Solicitor Barnette

1 Q And what was the presentation you would of made to
2 those Grand Juries concerning the August 7th, 2004?

3 If you need these documents back you're welcome to have
4 them back.

5 The August 7th, 2003, incident of the bank robbery,
6 you had presented that to the Grand Jury.

7 Is that right?

8 A Yes.

9 Q What would your presentation be to the Grand Jury?

10 A I would of laid out the information that I had to
11 include the statement that Aderian Fair gave me, the
12 identification of the prescription drug bottle, the photo
13 spread IDs that Aderian Fair and Officer Councilman made,
14 and a statement that Anastasia Pitts gave regarding her
15 knowledge of the first bank robbery.

16 Q Okay. And then the -- you also presented testimony to
17 the Federal Grand Jury on the August 12th, 2003, bank
18 robbery.

19 Is that right?

20 A Yes.

21 Q And what would you have presented then, sir?

22 A My recollection is that there was a public safety
23 officer who identified Anastasia Pitts from the bank
24 surveillance pictures which led to her and then her
25 interview which implicated herself and Calvin Williams.

Jim Lannamann - Direct examination
by Solicitor Barnette

1 Q Okay. And, in your presentation, these forms is what
2 you would of used to help do that presentation?

3 A Yes.

4 Q And later on he was indicted by the Grand Jury on both
5 counts?

6 A He was.

7 Q And he pled guilty to both these counts?

8 A He did.

9 Q Okay. And he was sentenced to 125 months on each count
10 concurrently.

11 Is that right?

12 A He was.

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

14 THE COURT: Yes, sir.

15 (Pause.)

16 SOLICITOR BARNETTE: May I approach the witness for one
17 second, Your Honor?

18 THE COURT: You may.

19 Q If you would, sir, look at Court's Exhibit No. 1. He
20 was represented for these when he pled guilty to these two
21 charges, was he not?

22 A He was.

23 Q And who was the attorney that he had representing him?

24 A Attorney Bradley Bennett.

25 Q Okay. And who was the judge that took the guilty plea?

Jim Lannamann - Direct examination
by Solicitor Barnette

1 A Judge Henry Herlong.

2 Q Okay. And in that too was he also ordered to pay
3 restitution on one of the -- I believe on the Citizens Bank
4 robbery case?

5 A He was.

6 Q Cause I believe on the other bank robbery case his
7 codefendant was captured.

8 Is that right?

9 A That's correct.

10 Q So he was ordered to pay restitution with the bank, the
11 one that got away, I guess Miss Pitts?

12 A I believe the money was recovered contemporaneous to
13 the first bank robbery.

14 Q Yes, sir.

15 A The second bank robbery, I believe the proceeds were
16 spent and not recovered. So restitution, I would guess,
17 would be on Count Two from First Citizens Bank of \$2,636.

18 Q Okay. And he was ordered to pay that back also.

19 Is that right?

20 A He was.

21 Q Okay. If you would, please answer any questions the
22 judge may have for you or Mr. Shealy. Thank you.

23 THE COURT: Mr. Shealy, your witness.

24 MR. SHEALY: Thank you, Your Honor.

25 CROSS-EXAMINATION

Jim Lannamann - Cross-examination
by Mr. Shealy

1 BY MR. SHEALY:

2 Q Officer Lannamann?

3 A Lannamann.

4 Q Lannamann. Excuse me.

5 All right. So I understand you were the officer
6 assigned to this case by the FBI, correct?

7 A I was.

8 Q Okay. And the initial investigation, I guess you've
9 testified, was done by the Spartanburg Police Department?

10 A It was a joint investigation, FBI and local law
11 enforcement.

12 Q Okay. And you've already testified that you did not
13 watch any -- did you watch any video in this case?

14 A I may have. I can't recall.

15 Q You don't remember.

16 All right. Who did you talk to?

17 Simply who. Not what did they say.

18 A I interviewed Aderian Fair and an inmate at the county
19 jail and a taxicab driver --

20 Q Okay.

21 A -- that I recall.

22 Q And ultimately you obtained the indictment or the U.S.
23 Attorney obtained the indictment that has been marked
24 Court's Exhibit No. 1.

25 Is that correct?

Jim Lannamann - Cross-examination
by Mr. Shealy

1 A Yes.

2 Q All right. Could you read for me the two indictments
3 for me, the Count One and Count Two?

4 A The Grand Jury charges that on or about August the 7th,
5 2003, in the District of South Carolina, the defendants,
6 Aderian Jawone Fair and Calvin Terrell Williams, with force,
7 violence, and intimidation, did take from the person and
8 presence of employees of Central Carolina Bank, 453 East
9 Henry Street, Spartanburg, South Carolina, money belonging
10 to and in the care, custody, control, management, and
11 possession of said financial institution the funds of which
12 were insured by the Federal Deposit Insurance Corporation
13 and the committing said, said violation did assault and put
14 in jeopardy the lives of other persons by the use of a
15 dangerous weapon and device, that is explosives, and did aid
16 and abet each other in the commission of the aforesaid
17 offense in violation of Title 18, United States Code Section
18 2113(a), 2113(d)(2).

19 Q Okay. And if you read Count Two as well.

20 A Grand Jury further charges that on or about
21 August 12th, 2003, in the District of South Carolina, the
22 defendant, Calvin Terrell Williams, and a person known to
23 the Grand Jury, by force, violence, and intimidation, did
24 take from the person and presence of employees of First
25 Citizens Bank, 305 North Church Street, Spartanburg, South

Jim Lannamann - Cross-examination
by Mr. Shealy

1 Carolina, money belonging to and in the care, custody,
2 control, management, and possession of said financial
3 institution, the funds of which were insured by the Federal
4 Deposit Insurance Corporation, and in committing said
5 violation did assault and put in jeopardy the lives of other
6 persons by the use of a dangerous weapon and device, that is
7 explosives, and did aid and abet each other in the
8 commission of aforesaid offense in violation of Title 18
9 United States Code Section 2113(a), 2113(d)(2).

10 Q Okay. And what's the minimum -- the mandatory -- okay.
11 That's the max.

12 All right. Do you have a plea agreement in front of
13 you?

14 A I do not.

15 Q Okay. So you don't know what that plea agreement says?

16 A That's correct.

17 Q And you don't actually know whether this case was even
18 appealed or not?

19 A I assume it wasn't since he pled guilty.

20 Q I understand. I understand you assume it wasn't, but
21 you don't know that it wasn't. I mean he, he may have
22 done -- there -- this plea agreement may not of foreclosed
23 that possibility or something?

24 A It would be highly irregular.

25 Q Right.

Jim Lannamann - Cross-examination
by Mr. Shealy

1 But you, you're in the FBI for how long, for 28 years?

2 A I was.

3 Q I assumed some highly irregular things happened?

4 A I would be surprised if this---

5 Q Well---

6 A ---had been appealed.

7 Q Again, I understand you'd been surprised, but it's not
8 out of the realm of possibility, is it?

9 A I've never heard of it happening.

10 Q Okay. So you know it didn't happen?

11 SOLICITOR BARNETTE: Objection, Your Honor. I think
12 it's been asked and answered.

13 MR. SHEALY: Judge---

14 THE COURT: I think it's been asked and answered.

15 MR. SHEALY: ---I don't -- yes, sir.

16 All right. So, in that plea agreement, you don't know
17 what the two agreed to, what the both sides agreed to or
18 anything of that nature?

19 A I may of read the plea agreement 13 years ago. I can't
20 recall it.

21 Q Right.

22 But that was 13 years ago, it's a long time, you don't
23 remember what it says.

24 Is that right?

25 A That's correct.

Jim Lannamann - Cross-examination
by Mr. Shealy

1 Q Okay. So you don't really know why we don't have a
2 transcript?

3 We just know we don't have a transcript?

4 A There's generally not transcripts.

5 Q At all?

6 A Of appeals that didn't happen, if that's what you're
7 asking me.

8 Q Of appeals that didn't happen?

9 A Correct.

10 Q Well, we've already discussed that and it may of
11 happened.

12 A There would of been a transcript of his guilty plea---

13 Q Okay.

14 A ---where he was repeatedly told what he was pleading
15 guilty to, which he did in open Court---

16 Q Okay.

17 A ---with knowing, willing, voluntary. He pled guilty to
18 two counts. He pled guilty to the indictment.

19 Q To two counts embodied in this---

20 A Yes.

21 Q ---these indictments, correct?

22 A Yes.

23 Q Okay. Okay. Did you ever get a copy of this or do
24 you -- I guess you don't have a copy.

25 Did you ever get a copy of this photo array that you've

Jim Lannamann - Cross-examination
by Mr. Shealy

1 mentioned?

2 A I would of had it in my case file.

3 Q Okay. And did you administer that photo array or did
4 somebody else?

5 A A local officer would have.

6 MR. SHEALY: Okay. All right. That's all for this
7 witness.

8 THE COURT: Redirect.

9 REDIRECT EXAMINATION

10 BY SOLICITOR BARNETTE:

11 Q Have you been in the courtroom with Judge Herlong in
12 the past?

13 A I have.

14 Q How thorough is he on his guilty plea?

15 A Very thorough.

16 Q Does he go through all the elements of the crime with
17 the individual?

18 A He does.

19 Q Does he go through the facts of the case with the
20 individuals?

21 A He does.

22 Q And does he make sure that the defendant, assuming he
23 pled guilty on this (sic) charges, that he pled guilty to
24 the facts that was presented to him?

25 A Yes.

Jim Lannamann - Redirect examination
by Solicitor Barnette

1 Q And would that of been part of that basis for those
2 facts of been the report and the investigation that you
3 done?

4 A Yes.

5 Q And, like I say, Judge Herlong would go though all
6 that?

7 MR. SHEALY: Judge, this is all speculation. He
8 doesn't know. He's saying that he assumes that he went over
9 all of this.

10 THE COURT: I'm gonna let him ask the questions. You
11 certainly can argue that later on.

12 A The Assistant United States Attorney would articulate
13 the facts that the government could prove at trial if the
14 case were to go to trial.

15 Q Uh-huh. (Affirmative).

16 And when you're present for those, is that the way
17 they're presented?

18 A Yes.

19 Q And does Judge Herlong make them plead guilty -- I mean
20 make sure they understand the facts before they plead
21 guilty?

22 A He does.

23 Q And make them admit their guilt on the record---

24 A Yes.

25 Q ---before he takes the guilty plea?

Jim Lannamann - Redirect examination
by Solicitor Barnette

1 A Yes.

2 Q And has he done that every time that you've been in his
3 courtroom?

4 A Every time.

5 Q Thank you. Please answer any other questions the
6 defense may have for you.

7 RECROSS EXAMINATION

8 BY MR. SHEALY:

9 Q Again, have you seen the plea agreement in preparing
10 for this case?

11 A No, I have not.

12 Q All right. You don't know what facts were laid out in
13 the plea agreement, do you?

14 A I do not know what facts were laid out in the plea
15 agreement.

16 Q All we know is that there's an indictment and that he
17 pled guilty to that indictment.

18 Is that correct?

19 A That's correct.

20 Q And you've already read that indictment.

21 All we know are those are the facts for certain he pled
22 guilty to.

23 Is that correct?

24 A Can you say that again?

25 Q I said we know that those facts, as embodied by the

Jim Lannamann - Recross examination
by Mr. Shealy

1 indictments, for what he pled guilty to?

2 A Yes.

3 Q He pled guilty to violating this -- these two U.S. Code
4 sections?

5 A Yes.

6 Q Is that correct?

7 Thank you. That's all I have.

8 SOLICITOR BARNETTE: No further questions for this
9 witness, Your Honor.

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

11 You wish to excuse the witness for today?

12 SOLICITOR BARNETTE: For today, Your Honor --

13 THE COURT: All right.

14 SOLICITOR BARNETTE: -- if that would be good for Your
15 Honor.

16 THE COURT: Any objection?

17 MR. SHEALY: No, Your Honor.

18 THE COURT: All right. You're free to go. Thank you.

19 THE WITNESS: Thank you, judge.

20 THE COURT: Yes, sir.

21 All right. The State may call its next witness on this
22 issue.

23 SOLICITOR BARNETTE: Your Honor, we don't have any
24 witnesses at this time based off the issue alone.

25 THE COURT: All right. Defense wish to call any

1 witnesses?

2 MR. SHEALY: No, Your Honor.

3 THE COURT: All right. Mr. Barnette, I'll hear you
4 concerning what conclusions or actions you'd like the Court
5 to take.

6 SOLICITOR BARNETTE: Your Honor, based off the evidence
7 presented, we have, have a conviction. Like I said, I've
8 never had a 404(b) where we've actually had a conviction in
9 a case, Your Honor, from that. In this case, Your Honor---

10 THE COURT: Well, let me, let me ask you where you're
11 going with this.

12 Do you simply want to get in the fact he was convicted
13 of two prior burglaries, I mean bank robberies?

14 SOLICITOR BARNETTE: Well, it depends on where the
15 Court wants to go because, one thing, I'll be handing
16 something up to -- let me go ahead and hand that up right
17 now. Now would be a good time.

18 It's an article that was written on admissibility of
19 defendant's criminal record at trial. Pass that up to the
20 Court.

21 THE CLERK: Yes, sir.

22 THE COURT: Thank you.

23 SOLICITOR BARNETTE: That's -- it's a law article, Your
24 Honor, and it basically goes through different -- it talks
25 about South Carolina too in this also, and one of the things

1 they talk about is how, how far do you want to go with it.

2 Obviously, you know, we'd like to produce armed robbery
3 there. Also, to me, this goes to intent. One of the
4 things -- I did submit this with the memo, Your Honor, and
5 I'd like to include as part of the evidence because it
6 speaks for itself.

7 when the defendant stopped with his son, the
8 codefendant, he is basically telling the officers that he
9 didn't even know anything about this. He's just walking
10 enjoying life, and then he was basically -- he didn't even
11 know who his son was. He'd just met him that day basically.

12 The video's three minutes long and I'd ask to submit
13 that as part, part of the evidence in this hearing too, Your
14 Honor, from there, and basically---

15 THE COURT: Well, now, wait a minute.

16 Any objection to that video being part of the evidence
17 I consider?

18 MR. SHEALY: Well, judge, again, we would like to see a
19 foundation for it, but, again, I guess since this is a
20 preliminary matter, I suppose not but --.

21 THE COURT: You've been, you've been---

22 SOLICITOR BARNETTE: We'll be glad to call Lieutenant
23 Turner.

24 THE COURT: You've been supplied with a copy of it?

25 MR. SHEALY: I have, Your Honor. Now, at trial, there

1 are some parts that need to be redacted. The information---

2 THE COURT: Okay.

3 MR. SHEALY: I believe we talked in chambers about that
4 about warrants and things.

5 THE COURT: All right.

6 SOLICITOR BARNETTE: It will be and the Court may want
7 to review -- we may want to review that together to make
8 sure what parts need to be redacted because there is some,
9 some code language in there, which may or may not be
10 objectionable too, but I just want to make sure about that.
11 But, in the video, he basically says he knows nothing about
12 nothing from that standpoint, and that's gonna be---

13 THE COURT: Well now tell me, tell me what, what
14 happened.

15 SOLICITOR BARNETTE: Oh, okay.

16 THE COURT: He was arrested by somebody in this case---

17 SOLICITOR BARNETTE: Yes, sir.

18 THE COURT: ---or stopped?

19 SOLICITOR BARNETTE: In the memo itself, and I
20 apologize, I should of probably got it to the Court earlier,
21 the Court, going through the memo, Your Honor, back on
22 January 21st, 2015 --

23 THE COURT: Uh-huh. (Affirmative).

24 SOLICITOR BARNETTE: -- the codefendant, Shyquone
25 Williams, is his son, 16-years old, he gets a call from his

1 dad, would like to meet with him. So his dad and his
2 girlfriend goes over and picks up Shyquone. They go to
3 Jonesville, South Carolina to her apartment. He talks to
4 him for a while. Basically tells him about, you know, I use
5 to be in a gang, I use to be, you know, if the gang tells me
6 to kill you I'd kill you and tells him things like that. I
7 use to burn people from that standpoint, and he keeps
8 telling the son, he says I got two big jobs I'm gonna do.
9 One is robbing a drug dealer. The other is to rob a bank.

10 They -- so they get up the next morning and he agrees
11 that he's gonna help him. So he actually draws out the
12 notes, what he wants wrote on the note. He says I need you
13 to write this note because I'm in the system already.

14 So Shyquone writes the note out. They originally was
15 gonna go to North Carolina. They couldn't get a way up
16 there. So they decided they gonna rob a bank in
17 Spartanburg.

18 So they come back to Spartanburg. Calvin Williams
19 calls a friend of his, gets with another guy to give him a
20 ride over to the BB&T on the west side, which is on Ezell
21 Boulevard.

22 THE COURT: Right.

23 SOLICITOR BARNETTE: They go over there. This friend
24 of his, he says I've got a guy that owes me money. He says
25 if you get us over there, he says I'll pay you \$7.00 to

1 drive us over there, but once I get over there, he can give
2 you an extra \$20 to pay you for driving us. He says I just
3 got to send my son down to the bank.

4 They get over. It's basically Jason's Deli and the
5 Marriott. I think you're familiar with that area---

6 THE COURT: Yes, I am.

7 SOLICITOR BARNETTE: ---in-between there. They park
8 back in there, and there was a, a monster truck event. So
9 they got the monster trucks out there in the parking lot.
10 They park there and we've got video from the -- what I
11 called the Marriott. It's the Kangaroo there.

12 You see Shyquone. He's dressed in khaki pants, a black
13 hoodie with a kind of dark coat over the top of it. He
14 walks past the Kangaroo, goes by the Speedee, which is like
15 an oil change place there. He goes in the bank.

16 THE COURT: Right.

17 SOLICITOR BARNETTE: We've got that video, watch him go
18 there. Then we've got the BB&T where he goes in the bank.
19 He hands the note up to the teller. The teller, in response
20 to the note, puts approximately a little bit over \$2,000
21 into his -- originally it's gonna be a book bag and he
22 didn't have the book bag. So he put it in his pockets.

23 He walks out. We've actually got it on video on the
24 Speedee. He -- it blows up on him. It has a dye pack in
25 it. Matter of fact, what was ironic, the manager was

1 walking back to the bank from across the street when the dye
2 pack goes off. So he goes running off, goes back to the
3 van. Shyquone tells Calvin he wasn't there. So the guy
4 wants to know how, where I'm gonna get my money. His name
5 is Mr. Blassingame, and they said well, you just need to
6 drop us off.

7 So he goes down Camelot Drive, a little bit over two
8 miles. He goes to Quail Pointe, Pointe Apartments. There's
9 a gas station there. He lets both of them out. They get
10 out and go to Quail Pointe Apartments. The time --
11 basically there's dye on the stuff Shyquone's wearing. So
12 they go behind and throw the stuff away in the bushes there.

13 When they come back out, two people have actually saw
14 the dye pack go off in this case, two witnesses, and these
15 two witnesses names are, trying to get it correct for you,
16 Jason Moore and Jalessa Burgess, Burgess. They was a stop
17 light at the BB&T when they saw the dye pack go off.

18 They saw him get in the van. They actually followed
19 the van all the way to Quail Pointe Apartments. They was
20 calling the police telling them that they're following this
21 van and helping them to locate it.

22 The police actually went by them, came back to where
23 they were, and they found the defendant, Calvin Williams, as
24 well as Shyquone Williams together and he'd actually given a
25 orange hoodie over to Calvin -- I mean Shyquone from Calvin.

1 They catch them there and that is where we get the body cam
2 video that we're talking about.

3 The Sheriff's Department actually stops them, is
4 talking to them, and what happened is they actually take him
5 in custody on, on another warrant. He had, I think, a
6 probation warrant out at the time. So -- and that's the
7 thing that we'll have to look to redact it from there.

8 But his story was I know nothing, nothing. He didn't
9 even claim that that was his son that was with him. So,
10 based off his defense, show of intent, absence of mistake or
11 whatever, I think it's 404(b), it's very probative in that
12 respect.

13 THE COURT: All right. Now let's backup.

14 These two events that we're talking about that happened
15 some 12 years ago?

16 SOLICITOR BARNETTE: Yes, sir.

17 THE COURT: Both involved a situation where this
18 defendant was alleged to have encouraged someone to commit a
19 bank robbery on his behalf?

20 SOLICITOR BARNETTE: Yes, sir, there was an 18-year old
21 that was a Spartan High student as well as a 16-year old
22 girlfriend at the time.

23 THE COURT: Okay. And are you wanting to introduce
24 those facts to the jury?

25 SOLICITOR BARNETTE: I would like to, Your Honor,

1 because it shows absence of intent or absence of mistake. I
2 mean basically shows intent or absence of mistake in this
3 case.

4 THE COURT: Well, there's, there's a problem with that.
5 Mr. Shealy's raised it I believe.

6 MR. SHEALY: Yes, sir.

7 THE COURT: Am I correct?

8 MR. SHEALY: Yes, sir.

9 THE COURT: So you're saying that there's going to have
10 to be some direct evidence that that occurred?

11 MR. SHEALY: Yes, sir.

12 THE COURT: All right. Now, do we have any direct
13 evidence that it occurred?

14 SOLICITOR BARNETTE: Well, based off the convictions
15 themselves, yes, sir, I think so because the---

16 THE COURT: All right. The convictions, he pointed it
17 out and I think it appears that's what we have. We have two
18 indictments that this gentleman pled guilty to, but no other
19 records from the -- from the plea.

20 Is that correct?

21 SOLICITOR BARNETTE: Yes, sir, at this point, yes, sir.

22 THE COURT: None of the investigative officers who --
23 actually this gentleman, Mr. Lannamann, apparently gathered
24 the information, but didn't really participate in the direct
25 investigation from what I heard him testify to.

1 SOLICITOR BARNETTE: Yes, that's -- well, he did --
2 parts of it he did. Parts of it he didn't.

3 THE COURT: Okay.

4 SOLICITOR BARNETTE: He did some interviewing.

5 THE COURT: He never talked to this defendant?

6 SOLICITOR BARNETTE: well, they tried. He wouldn't
7 talk to them.

8 THE COURT: That's right. well, he never talked to
9 him.

10 SOLICITOR BARNETTE: Yes, sir.

11 THE COURT: I think I understand where we are.

12 Go ahead.

13 SOLICITOR BARNETTE: Okay. I can try to do this, Your
14 Honor. If you think additional evidence is needed in this
15 case, I'd like to leave it open and see if I can bring that
16 additional evidence if that's the case cause there's no
17 question that this occurred.

18 THE COURT: well, I don't think this -- there's no
19 question that he pled guilty to the two events. I think
20 Mr. Shealy may have a point in that, if you're trying to
21 bring in the statements of other defendants to prove that
22 he, in fact, did that, that's gonna be difficult.

23 SOLICITOR BARNETTE: well, let me ask the Court this.

24 Is the Court leaning to possibly enter the two armed
25 robberies by themselves from that standpoint or not let the

1 Court go into -- let the State go into that?

2 THE COURT: Well, I -- there's gonna have to be some
3 connection to show the common scheme, modus -- you know, the
4 mode of operation, the intent, lack of mistake, and that
5 gets into the facts of the matter.

6 SOLICITOR BARNETTE: One thing I will point out to the
7 Court. There was something that was tangible and they did
8 testify to. It was on the one armed robbery that the
9 defendant's prescription bottles was in the bag with the
10 money that was stolen.

11 THE COURT: Okay. Well, that's interesting, but you
12 don't have a copy of the plea agreement?

13 Federal Court didn't keep a copy of the plea agreement?

14 SOLICITOR BARNETTE: I can try and see, Your Honor, if
15 they do have a copy of the plea agreement.

16 THE COURT: Well, if it's in the Court record we can
17 talk about it.

18 SOLICITOR BARNETTE: Yes, sir, can I leave it open to
19 see---

20 THE COURT: Yes, sir, I'll leave it open and let's see
21 what you can bring. Right now it's got some problems.

22 SOLICITOR BARNETTE: Yes, sir.

23 THE COURT: Okay.

24 All right. Mr. Shealy, I've argued your case for you I
25 guess.

1 Do you want to talk some more?

2 MR. SHEALY: No, sir.

3 THE COURT: Let me ask you one other question, Mr.
4 Barnette.

5 SOLICITOR BARNETTE: Yes, sir.

6 THE COURT: Mr. Lannamann, I guess I could of asked
7 this question myself, did he attend the guilty pleas?

8 SOLICITOR BARNETTE: He doesn't remember, Your Honor.
9 He can't remember that.

10 THE COURT: I see. Okay.

11 SOLICITOR BARNETTE: He can't remember.

12 THE COURT: Those questions didn't come up. So I
13 figured there must of been some problem.

14 SOLICITOR BARNETTE: I asked him if he could
15 specifically remember, and he said, you know, he usually
16 went to a lot of them, but he can't remember specifically
17 going to this one.

18 THE COURT: Okay. All right. That answered my
19 question.

20 SOLICITOR BARNETTE: Yes, sir.

21 THE COURT: All right. Next matter.

22 SOLICITOR BARNETTE: I guess the---

23 THE COURT: He's acknowledged, he's acknowledged
24 there's no third party guilt issues.

25 SOLICITOR BARNETTE: Yes, sir.

1 THE COURT: So that's out.

2 SOLICITOR BARNETTE: There's only the Rule 609---

3 THE COURT: Yes, sir.

4 SOLICITOR BARNETTE: ---previous robbery convictions,
5 being able to use them to impeach him with him as well as
6 the failure to give information. The bank robberies are
7 definitely within the ten year period. I just put that
8 included with it, just to put him on notice. I was probably
9 gonna ask for impeachment for---

10 THE COURT: Okay.

11 SOLICITOR BARNETTE: ---to, to balance that test, and
12 then as well as the giving false information, which is
13 outside the ten year period.

14 THE COURT: Okay.

15 MR. SHEALY: But I feel like it would go to his
16 credibility obviously.

17 THE COURT: All right. Let's see what Mr. Shealy has
18 to say about that.

19 MR. SHEALY: Well, judge---

20 THE COURT: So we got two bank robberies and a giving
21 false information to police outside the ten?

22 SOLICITOR BARNETTE: Actually giving false
23 information -- let me make sure I tell you right, Your
24 Honor.

25 THE COURT: Yes, sir.

1 SOLICITOR BARNETTE: There's two, there's two false
2 information types, Your Honor. Your Honor, I'll tell you
3 here in a second.

4 (Pause.)

5 SOLICITOR BARNETTE: I believe one's false information
6 -- both of them are basically false information, Your Honor.
7 They're listed in different ways.

8 THE COURT: Okay. Both more than ten years ago?

9 SOLICITOR BARNETTE: Yes, sir, they're more than ten
10 years ago.

11 THE COURT: All right. Mr. Shealy.

12 MR. SHEALY: Your Honor, as to the two bank robberies,
13 I'd argue that they fall within the same realm as armed
14 robberies for the purposes of State versus Broadnax, which
15 discusses that those are not crimes of turpitude, crimes of
16 lying, crimes of dishonesty, excuse me. We also point out
17 that that would be entirely too prejudicial and that the
18 probative value of two armed or two bank robberies that I
19 understand my client was released from confinement fairly
20 recently. But he was not convicted or he was convicted of
21 them 12 years ago. Now 13 years ago. They're just not
22 probative of anything, again, based on State versus Broadnax
23 would be our position.

24 THE COURT: How about the failure -- the giving false
25 information?

1 MR. SHEALY: Your Honor, given that those are so long
2 ago, it would be our position that they should be excluded
3 simply for that reason. They're 30 day charges. At least I
4 believe they were 30 day charges and because they expand,
5 they happened or they occurred so long ago, again, don't see
6 how they're probative of anything. I understand -- you
7 know, I just don't see how they're probative of his truth
8 telling or not now given that's so many years ago.

9 Thank you, judge.

10 THE COURT: All right. I'll consider that and make a
11 ruling.

12 Anything else, Mr. Barnette?

13 SOLICITOR BARNETTE: Your Honor, just to -- in answer
14 to him just briefly, obviously he's been in jail most of his
15 life. So I don't know, defrauding basically the --
16 obviously it would come in if it was within the ten years
17 and that's one basis I would argue that he's been in jail
18 for almost 125 months when he was released.

19 THE COURT: Uh-huh. (Affirmative).

20 SOLICITOR BARNETTE: And then understand the Broadnax,
21 it's basically probative versus prejudicial and I'd argue
22 these are more probative than any other armed robberies I've
23 ever seen from the fact standpoint.

24 THE COURT: Well, it -- if you can get to the point,
25 Mr. Barnette, where you can bring me some evidence that's

1 admissible that shows the facts he admitted to closely
2 mirror these, in fact, show either an intent or a, a scheme
3 or a plan or lack of mistake, we may get there on that.

4 SOLICITOR BARNETTE: Yes, sir.

5 THE COURT: My question is though on the question of
6 strictly credibility, Broadnax is a problem.

7 SOLICITOR BARNETTE: Yes, sir.

8 THE COURT: Okay.

9 SOLICITOR BARNETTE: I'll see what I can do. Thank
10 you.

11 THE COURT: All right.

12 MR. SHEALY: Thank you, Your Honor. We don't have
13 anything further.

14 THE COURT: Anything else from the State?

15 SOLICITOR BARNETTE: Not at this time, Your Honor.

16 THE COURT: All right. I'll leave it open,
17 Mr. Barnette. If you can obtain the plea agreement.
18 Generally the plea agreement would set out a factual basis
19 for the plea.

20 SOLICITOR BARNETTE: Yes, sir.

21 THE COURT: It should be something in there to that
22 effect.

23 SOLICITOR BARNETTE: Yes, sir, I will try to.

24 THE COURT: All right. Thank you very much.

25 MR. SHEALY: Thank you, Your Honor.

1 THE COURT: We'll resume at nine o'clock in the
2 morning.

3 MR. SHEALY: Judge, if we may approach just for
4 scheduling purposes?

5 THE COURT: Yes, sir, come on up.

6 (Whereupon, a bench conference was held at this time.)

7 MR. SHEALY: Thank you, judge.

8 SOLICITOR BARNETTE: Thank you, Your Honor.

9 THE COURT: All right.

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11 (WHEREUPON, Court was in recess for the evening.)

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(WHEREUPON, a package of notes was marked as Court's Exhibit No. 5. An opinion was marked as Court's Exhibit No. 6. State's Exhibit Nos. 1 through 50 were marked. All of the above mentioned exhibits were for identification purposes only at this time.)

Overnight the State had forwarded to me and to the defense counsel some document, additional documents relating to Mr. Williams pleas in Federal Court.

SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

THE COURT: Any objection to that being made a Court's Exhibit?

THE COURT: Okay. It's -- it is the opinion of the Federal Court regarding an appeal filed by Mr. Williams. So I will accept it as an exhibit.

1 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

2 (WHEREUPON, Court's Exhibit No. 6 was received into
3 evidence for purposes of this hearing only at this time.)

4 SOLICITOR BARNETTE: I'd like to call Dean Cook to the
5 stand, Your Honor.

6 THE COURT: Come forward and be sworn please, sir.
7 Right over here to my left.

8 DEAN COOK, being first duly
9 sworn, testified as follows:

10 THE COURT: Have a seat, sir. Once you're seated,
11 please state your name for us.

12 THE WITNESS: Dean Cook.

13 THE COURT: Thank you.

14 Mr. Barnette, your witness.

15 SOLICITOR BARNETTE: Thank you, sir.

16 DIRECT EXAMINATION

17 BY SOLICITOR BARNETTE:

18 Q Mr. Cook, where do you work at, sir?

19 A I work at the Federal Probation Office.

20 Q And what is your position there, sir?

21 A I'm a sentencing guidelines specialist.

22 Q And how long you been in that position, sir?

23 A Approximately 17, 18 years.

24 Q Okay. And is part of your job handling presentencing
25 reports, sir?

Dean Cook - Direct examination
by Solicitor Barnette

1 A Yes, it is.

2 Q Okay. And do you have control over those too or have
3 those available to you?

4 A Yes.

5 Q And I believe we -- yesterday actually we called the
6 U.S. Attorney's Office and Judge Herlong was the sentencing
7 judge on Calvin Williams cases.

8 Is that right?

9 A Yes.

10 Q And was there a presentencing report that was done on
11 Mr. Williams guilty pleas?

12 A There was.

13 Q And did Judge Herlong release the -- he didn't release
14 the whole report, but did he release the concerns, the
15 charges, the convictions as well as the offense conduct --

16 A Yes.

17 Q -- in this case?

18 And is this, Court Exhibit 5, is this copies of the
19 information that was released from the presentencing report
20 concerning Mr. Williams?

21 A It is.

22 SOLICITOR BARNETTE: Your Honor, for purposes of this
23 hearing I'd like to enter Court Exhibit 5 as the
24 presentencing report concerning Mr. Williams.

25 THE COURT: Objections?

Dean Cook - Direct examination
by Solicitor Barnette

1 MR. SHEALY: Judge, I'd argue that they haven't laid
2 the appropriate foundation as to why that would be
3 admissible in Court at this point.

4 THE COURT: Well, he's indicated that it's a
5 presentencing report released by Judge Herlong from the
6 files at the Federal Court.

7 Is that correct?

8 THE WITNESS: Yes, sir.

9 THE COURT: Okay. So it's a public record.

10 MR. SHEALY: Yes, sir.

11 THE COURT: But it was under control of the judge.
12 Apparently Judge Herlong issued an order yesterday releasing
13 it from the public files. So it's a public record.

14 The question is are you objecting to its authenticity?
15 Do you think it should not be admitted for some reason?

16 MR. SHEALY: Well, judge, I'm not convinced that
17 they've fallen within the public record exception and the
18 hearsay rules. I would argue that they -- that this would
19 be a, in criminal cases, that this is a 703 or 803. Excuse
20 me.

21 THE COURT: All right. Just one second. Let me get to
22 what you're referring to.

23 (Pause.)

24 MR. SHEALY: Subsection 8. 803.

25 THE COURT: Well, it says -- what it says, it's any

Dean Cook - Direct examination
by Solicitor Barnette

1 record or data compilation in any form of birth, death,
2 marriages if the report was made to a public office pursuant
3 to the requirements of law.

4 Let me ask the witness.

5 Is this something that's required by law to be filed?

6 THE WITNESS: Yes, sir.

7 THE COURT: And is it kept in the records of the Court?

8 THE WITNESS: Yes, sir.

9 THE COURT: That's a public court?

10 THE WITNESS: The Court---

11 THE COURT: All right.

12 THE WITNESS: The Federal Court, District Court.

13 THE COURT: All right. So is it your objection it
14 doesn't fall within that exception?

15 MR. SHEALY: That it doesn't fall within that
16 exception.

17 THE COURT: Overruled.

18 MR. SHEALY: Your Honor, they haven't set the
19 foundation.

20 THE COURT: Overruled.

21 You may proceed. I'll accept it.

22 SOLICITOR BARNETTE: Thank you.

23 (WHEREUPON, Court's Exhibit No. 5 was received into
24 evidence for purposes of this hearing only at this time.)

25 Q If you would, Mr. Cook, please tell the Court about

Dean Cook - Direct examination
by Solicitor Barnette

1 presentencing evaluations and how they're or presentence
2 reports and how they're done, sir?

3 A Okay. When a defendant plead guilty in Federal Court,
4 at that time the defendant is referred to the Federal
5 Probation Office for a presentence report. At that time,
6 like criminal history is compiled. We write the offense
7 conduct of what the defendant pled guilty to --

8 Q Uh-huh. (Affirmative).

9 A -- and there's a social history, family history, stuff
10 like that also. We publish the indictment and the
11 presentence report also and the plea date and the fact that
12 the defendant was represented by counsel. At that point,
13 once the presentence report is completed, we send that
14 report to the defendant and his attorney and to the
15 prosecutor, the U.S. Attorney. They have 14 days, 14 days
16 to file objections and then we proceed to sentencing, and if
17 any objections were filed, the judge rules on them at the
18 sentencing hearing and then adopts the presentence report as
19 fact at that time.

20 Q Okay. Was there any objections filed, to your
21 knowledge, after checking the records on this to these?

22 A No.

23 Q Okay. And so it was accepted to the fact by Judge
24 Herlong at that time?

25 A Yes.

Dean Cook - Direct examination
by Solicitor Barnette

1 Q Okay. And just to clear it up, you weren't, you
2 weren't present for this?

3 You weren't the agent that did this report?

4 A No, sir.

5 Q But you're -- obviously you write them down, you handle
6 those, and do them now for this?

7 A Yes.

8 Q And this was part of the records of that plea?

9 A Yes.

10 Q Okay.

11 A It was part of the record at the sentencing.

12 Q Okay. At the sentencing.

13 And, Your Honor, I'd like to -- well, it's been moved
14 into evidence already, Your Honor, for that.

15 THE COURT: All right. It's in evidence.

16 Q Okay. Please answer any questions the Court or the
17 defense attorney may have for you, sir.

18 THE COURT: Mr. Shealy, you may cross-examine.

19 MR. SHEALY: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. SHEALY:

22 Q I'm sorry, agent. What did you say your name was?

23 A Dean Cook.

24 Q Dean Cook.

25 All right. Mr. Cook, when did you start working at the

Dean Cook - Cross-examination
by Mr. Shealy

1 probation office?

2 A 1997.

3 Q Okay. So you've been there since '97.

4 what were your beginning duties there?

5 A I worked doing bond, pretrial hearings, pretrial
6 reports, bail reports, things like that for the magistrate
7 and the district judges.

8 Q Okay. Do y'all -- now y'all's office, does it also
9 supervise individuals who are on probation?

10 A Yes.

11 Q Okay. Does it supervise anybody else?

12 A It's -- we supervise people who are on supervised
13 release, probation---

14 Q Okay.

15 A ---and bond.

16 Q Okay. Now, would you consider yourself a law
17 enforcement officer or I mean are you a sworn officer or how
18 is that?

19 A I am. I have the law enforcement retirement, but my
20 duties are not necessarily law enforcement. I work for the
21 federal, federal judges compiling these reports.

22 Q Okay. But you do have the power to arrest people?

23 A If they're on supervised release or probation.

24 SOLICITOR BARNETTE: I would object. I don't
25 understand the relevancy to these questions.

Dean Cook - Cross-examination
by Mr. Shealy

1 THE COURT: Well, let's, let's tie it together pretty
2 quickly, Mr. Shealy. I'm not sure whether his arrest powers
3 are at issue here.

4 MR. SHEALY: Well, I'm just trying to find out, judge,
5 if he's a law enforcement personnel.

6 And this was a criminal case, correct?

7 A Yes.

8 Q Okay. And you provide -- you create or somebody
9 created this report with the view towards sentencing --

10 A That's right.

11 Q -- correct?

12 Okay. So this was -- this document was prepared for
13 litigation?

14 A Right.

15 Q All right.

16 A For sentencing.

17 Q Okay. And do you know who prepared this report?

18 A I don't.

19 Q All right. Is that not part of the records?

20 A It wasn't released. The only -- it was only -- Judge
21 Herlong only released certain portions and I have the three
22 pages and it doesn't have the signature page on it or the
23 front page---

24 Q Okay.

25 A ---which has the name of the person who wrote it.

Dean Cook - Cross-examination
by Mr. Shealy

1 Q And when you say Judge Herlong only released some part
2 of this, what -- so what parts did he release?

3 A He released the pretrial services adjustment section,
4 the offense conduct, the charges and convictions, and that
5 appears to be all I have.

6 Q Okay. And where would the objections be put in this
7 report?

8 A They're not -- there's an addendum filed if there's
9 objections. It would not be contained in the report itself.

10 Q Okay. Did Judge Herlong mention an addendum?

11 A No.

12 Q Was there an addendum that you know---

13 A There's---

14 Q Do you know if there was one filed?

15 A There's an addendum filed, best of my knowledge, that
16 stated there was no objections to the presentence report.

17 Q The best of your---

18 A I don't have it with me. So --.

19 Q Okay. But what is your knowledge?

20 I mean what kind of knowledge do you have as to that?

21 A Assistant U.S. Attorney Jeanne Howard advised me of
22 that this morning.

23 Q So that's based on your conversation and solely based
24 on your conversation with a U.S. Attorney?

25 A Right.

Dean Cook - Cross-examination
by Mr. Shealy

1 Q All right. And so what records did you personally
2 check?

3 A The ones I have.

4 Q Just these---

5 A That I just read off to you, yes.

6 Q Okay. And y'all don't have records to determine who
7 actually did this presentencing report?

8 A Yes.

9 Q Oh, you do have records?

10 A Yeah, we have records of it.

11 Q But you didn't check?

12 A I don't, I don't have them with me.

13 Q Okay. And you didn't check them -- I mean I know this
14 was all very short notice?

15 A Very short notice.

16 Q Yes. Yes. I, I feel your pain.

17 So my understanding is you weren't in the courtroom for
18 any pleas?

19 A Not for this defendant's plea.

20 Q Not for this defendant's plea.

21 You weren't in the courtroom for this defendant's
22 sentencing?

23 A No.

24 Q So you don't know what was said at the sentencing?

25 A I do not.

Dean Cook - Cross-examination
by Mr. Shealy

1 Q You don't know what was said at the plea?

2 A I do not.

3 Q And are you the keeper of these records?

4 A No, the Court is the keeper of the records. Once the
5 defendant is sentenced, the report belongs to the District
6 Court.

7 Q All right. So the District Court would be the
8 custodian of these records?

9 A Yes. Yes.

10 Q You wouldn't be?

11 A No.

12 Q No.

13 All right. I have no further questions for this
14 witness.

15 THE COURT: Anything further, Mr. Barnette?

16 SOLICITOR BARNETTE: No, sir, of this witness.

17 THE COURT: All right. Just, just one second, sir.

18 The, the report that you have, was that given to you by
19 the Clerk's Office or by the Judge's office?

20 THE WITNESS: It -- I guess I better clarify something.
21 We---

22 THE COURT: Yes, sir.

23 THE WITNESS: I can print the report.

24 THE COURT: Yes, sir.

25 THE WITNESS: I just can't release the report. The

1 Court has to release it.

2 THE COURT: So you have access to this report?

3 THE WITNESS: I do have access. I just am not the
4 official -- I can't release it without the Judge's
5 permission.

6 THE COURT: So far as bringing it to this Court and
7 having it introduced, that requires a judge to release it?

8 THE WITNESS: Yes, sir.

9 THE COURT: And Judge Herlong directed its release
10 yesterday?

11 THE WITNESS: He directed the release of this portion.

12 THE COURT: Okay. Thank you very much.

13 Any other witnesses?

14 SOLICITOR BARNETTE: The only other one would be Bobby
15 Turner, Your Honor, to introduce the DVD. I know they've
16 agreed to it, but I can make that part of the record.

17 THE COURT: Well, let me find out if there's any
18 objection to the, to the DVD. My understanding, from
19 yesterday's hearing, there is a DVD taken from a boby cam at
20 the time of the arrest. The State intends to introduce
21 that, a redacted version. My understanding is that there
22 was mention of several of the warrants, perhaps by coded
23 words, but by, by warrants on there that have nothing to do
24 with this case, and I had directed that they would not be
25 allowed to come in.

1 So have you redacted a version of that video?

2 MR. SHEALY: I do. This is the un-redacted version
3 just for purposes of this hearing, Your Honor.

4 THE COURT: I see.

5 Okay. And the question yesterday was whether there was
6 any objection to the introduction of the video in its
7 redacted form.

8 Where are we on that?

9 MR. SHEALY: At this point, I don't -- I mean we -- the
10 defense would reserve its right to object to things like
11 relevance and foundation and things of that nature. I
12 believe it is a spontaneous utterance. I mean I don't -- we
13 don't have necessarily a Jackson v. Denno issue though.

14 THE COURT: I see.

15 Okay. So you're not intending to raise a, a pretrial
16 issue?

17 MR. SHEALY: No, sir.

18 THE COURT: Okay. To the extent he reserves his right
19 to object to it contemporaneously. I would assume you'll
20 have to present whatever witness recorded it from his body
21 cam.

22 Is he present?

23 SOLICITOR BARNETTE: He's present. I can do it right
24 now, judge. Simple as that.

25 THE COURT: well, I'd rather -- if he's reserving that

1 to trial. He's not making a pretrial motion.

2 SOLICITOR BARNETTE: Okay. So it's entered in for
3 purposes of this hearing?

4 THE COURT: Well, for right now it's not been ruled
5 out. He's reserving his objections to the time of trial.

6 SOLICITOR BARNETTE: Judge, may we approach?

7 MR. SHEALY: Judge, I think he wants to use this as
8 part of his reason 404 evidence comes in. So I think
9 that -- I think that's what he's trying to do.

10 THE COURT: To that extent?

11 MR. SHEALY: To that extent.

12 THE COURT: I see. Okay.

13 MR. SHEALY: Again, I'm not sure as to its relevance
14 and I think that he needed to call Mr. Turner---

15 THE COURT: Well, why don't you call Mr. Turner. Let's
16 put him up where he can tell us---

17 MR. SHEALY: ---the officer.

18 THE COURT: ---what the video says and we can go from
19 there.

20 SOLICITOR BARNETTE: Yes, sir.

21 (WHEREUPON, the DVD was marked as Court's Exhibit No. 7
22 for identification purposes only at this time.)

23 I call Lieutenant Turner please.

24 THE COURT: All right.

25 BOBBY TURNER, being first duly

Bobby Turner - Direct examination
by Solicitor Barnette

1 sworn, testified as follows:

2 THE COURT: Have a seat, sir. I understand your name
3 is Turner, but I'm gonna ask you to state your full name
4 please.

5 THE WITNESS: Bobby Turner.

6 THE COURT: Thank you, sir.

7 THE WITNESS: Yes, sir.

8 THE COURT: All right. Mr. Barnette, your witness.

9 SOLICITOR BARNETTE: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY SOLICITOR BARNETTE:

12 Q Where do you work at, sir?

13 A Spartanburg County Sheriff's Office.

14 Q What is your position there, sir?

15 A I'm a shift lieutenant.

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

17 A I've been -- I'll be 13 years this October.

18 Q Okay. Going back to February 22nd, 2015, was you
19 working that day, sir?

20 A Yes, sir.

21 Q And did you apprehend or make contact with the
22 defendant in this case, Calvin Williams?

23 A I did.

24 Q And did you have your body cam or body -- your body
25 video at the time?

Bobby Turner - Direct examination
by Solicitor Barnette

1 A Yes.

2 Q And let me show you what's been marked as Court Exhibit
3 7 for purposes of this hearing.

4 Have you had a chance to review your video, sir?

5 A Yes, sir.

6 Q Is that a copy of your video?

7 A Yes, sir, I believe so.

8 Q And does that video fairly represent what you recorded
9 that day?

10 A Yes, sir, it does.

11 SOLICITOR BARNETTE: Your Honor, I'd like to enter it
12 for purposes of this hearing from there and I can publish it
13 to the jury. It's three minutes long.

14 THE COURT: All right. Objections to the video at this
15 time, Mr. Shealy?

16 MR. SHEALY: Not at this time. We can't -- I'm not
17 sure it's relevant but---

18 THE COURT: Well, I understand. You can argue that
19 later on, but, as to its authenticity, you're not objecting
20 to that.

21 Is that correct?

22 MR. SHEALY: That's correct, yes, sir.

23 THE COURT: All right. It will be admitted for Court's
24 Exhibit for this hearing.

25 (WHEREUPON, Court's Exhibit No. 7 was received into

Bobby Turner - Direct examination
by Solicitor Barnette

1 evidence for purposes of this hearing only at this time.)

2 SOLICITOR BARNETTE: Your Honor, the first 30 seconds
3 they don't have any sound on it.

4 THE COURT: Okay.

5 (WHEREUPON, Court's Exhibit No. 7 was published for the
6 Court at this time.)

7 SOLICITOR BARNETTE: Your Honor, that's it from there.
8 That's the un-redacted version and obviously I'll have the
9 redacted version for trial and will show it to Mr. Shealy.

10 THE COURT: I understand.

11 SOLICITOR BARNETTE: And, Your Honor, that would be our
12 presentation at this time.

13 THE COURT: All right. Wish to cross-examine?

14 MR. SHEALY: No, Your Honor.

15 THE COURT: All right. You may step down, sir.

16 THE WITNESS: Thank you, sir.

17 MR. SHEALY: Judge, just re -- I would like to reargue
18 my relevance motion now. I don't see how that's relevant to
19 anything else.

20 THE COURT: well, I'll let you reargue that part of the
21 motion that Mr. Barnette's about to make I think.

22 MR. SHEALY: Okay. Yes, sir.

23 THE COURT: All right. One thing, Mr. Barnette, I
24 would like to ask that the probation officer, federal
25 probation officer come back to the stand. One other thing

Bobby Turner - Direct examination
by Solicitor Barnette

1 I'd like to ask him about.

2 SOLICITOR BARNETTE: Yes, sir.

3 (Witness returns to the stand.)

4 THE COURT: Sir, I'll remind you that you're still
5 under oath.

6 Do you acknowledge that fact?

7 THE WITNESS: Yes, sir.

8 DEAN COOK, having been previously
9 sworn, testified as follows:

10 THE COURT: Okay. I think you testified to this when
11 you were on the stand but I want to be sure.

12 You're telling me that the information that is in the
13 report that you have brought was prepared by the Federal
14 Probation Office. Someone in that office.

15 THE WITNESS: Yes, sir.

16 THE COURT: Okay. And that report was prepared from
17 what sources?

18 The information that goes in it, how do you gather that
19 information?

20 THE WITNESS: For the offense conduct, we get all the
21 information from the discovery at the U.S. Attorney's
22 office.

23 THE COURT: Okay. And then that information is
24 submitted to the defendant?

25 THE WITNESS: Yes, sir.

Dean Cook - Questions
by the Court

1 THE COURT: And then they have the right to object?

2 THE WITNESS: Yes, sir.

3 THE COURT: And you've been informed there was no
4 objection?

5 THE WITNESS: That's right. This morning.

6 THE COURT: And there's---

7 THE WITNESS: No, no objection to the facts.

8 THE COURT: And this report was prepared strictly for
9 sentencing purposes?

10 THE WITNESS: Yes, sir.

11 THE COURT: Okay.

12 THE WITNESS: It also follows the defendant if they
13 receive time at the Bureau of Prisons.

14 THE COURT: I see.

15 The statement of facts in there, would that have been
16 the same or similar to the statement of facts given to the
17 judge at the time he accepted the plea?

18 THE WITNESS: Absolutely.

19 THE COURT: So it wouldn't -- it would not have
20 changed?

21 THE WITNESS: Not the facts. Not --.

22 THE COURT: The facts of what occurred?

23 THE WITNESS: The facts of what occurred would of been
24 reflected in the presentence report.

25 THE COURT: Okay. And that's the way it always is

Dean Cook - Questions
by the Court

1 conducted?

2 THE WITNESS: Yes, sir.

3 THE COURT: All right. Anybody wish to follow-up on
4 any questions?

5 SOLICITOR BARNETTE: No further questions, Your Honor.

6 THE COURT: You wish to follow up on any questions on
7 that?

8 CROSS-EXAMINATION

9 BY MR. SHEALY:

10 Q Just don't -- you don't know what happened in this case
11 cause you weren't there?

12 A As far as?

13 Q You weren't in the courtroom for this -- for my
14 client's plea?

15 A No.

16 Q For Mr. Williams plea?

17 A No.

18 Q So you don't know what happened in that courtroom?

19 A No.

20 THE COURT: All right. You may step down. Thank you
21 very much.

22 All right. Mr. Barnette.

23 SOLICITOR BARNETTE: Your Honor, I believe, under our
24 motion for 404(b), we've proven that obviously. He's pled
25 guilty to these charges. We've now proven the facts of

1 these two cases to the Court in presentencing. Basically it
2 shows -- and the reason I wanted to show the Exhibit 7 with
3 Lieutenant Bobbie Turner was obviously the defendant claims
4 he knows nothing about nothing from that standpoint. So
5 he's arguing either there's no intent, absence of mistake in
6 this situation. That is what -- that's the reason why we
7 wanted to present the evidence because basically we know
8 what his story is ahead of time and what's going to be
9 potentially, and I think that it's very crucial.

10 I think that the probative value outweighs the
11 prejudicial value based off his story that he told law
12 enforcement that day, and that's the reason why we've
13 counted that, and I believe those facts have been proven to
14 the Court's satisfaction. Obviously it's what he pled
15 guilty to. He appealed the sentence obviously, but it was
16 the sentence itself. He claimed he did a minor role in it,
17 which was -- he never went in the banks in neither one of
18 those either from that standpoint.

19 So obviously the facts mirror each other. That's not
20 the real issue we're fighting for. We're really basically
21 trying to show intent or absence of mistake cause he says
22 he's just walking there talking about life with the
23 codefendant in this case.

24 THE COURT: I'll hear from you, Mr. Shealy.

25 MR. SHEALY: Thank you, Your Honor.

1 As to what the State claims that they have proven,
2 judge, it would be our position that they can't show, by
3 competent evidence, what my client actually pled to. As
4 you've heard, this presentencing report is a document
5 prepared for litigation.

6 THE COURT: No, sir, litigation had ended at that point
7 in time. He had pled---

8 MR. SHEALY: Judge---

9 THE COURT: He had pled guilty at that point in time.

10 MR. SHEALY: He had pled guilty, but sentencing is
11 still part of litigation and he testified---

12 THE COURT: Well, sir, it has to do with sentencing.
13 It's not guilt or innocence.

14 MR. SHEALY: Judge, I asked him if it was prepared for
15 litigation. He said yes.

16 THE COURT: Well, I'll make that finding that a
17 sentencing report is for sentencing purposes. Not for
18 litigation.

19 MR. SHEALY: Well, judge, if---

20 THE COURT: It's part of the sentencing process.

21 MR. SHEALY: And it would be our position that part of
22 the sentencing process would be litigation. I mean there's,
23 there's still two sides to that, and they still litigated as
24 to what the sentence should be in this case. They're still
25 arguments presented.

1 THE COURT: All right. Well, I mean it is -- it's a
2 report that's presented to the judge for his consideration
3 in determining his sentence.

4 MR. SHEALY: Further, judge, to the extent he has
5 testified that this -- that there were no objections to the
6 facts, that is solely based on his conversation with another
7 person, the U.S. Attorney. That would be hearsay. We
8 talked about State versus King yesterday, and that would,
9 again, be hearsay because that, again, is based solely on
10 his conversations with Ms. -- I believe he said Jeanne
11 Howard or Jean Howard.

12 So I don't believe that that is going to be admissible
13 at trial, and I understand we're at a preliminary stage at
14 the moment, but all of this stuff has to be proven, has to
15 be put in front of the jury by competent evidence. And,
16 again, it would be our position that they, without the
17 transcript, we don't know what was said. My client could of
18 said no, that's not what happened on the record or something
19 like that.

20 THE COURT: Well, I note that there's a record of his
21 appeal in this case. I didn't see anything in that appeal
22 that indicated that the Court didn't have sufficient facts
23 to justify the acceptance of a plea.

24 MR. SHEALY: But, judge, what were those facts that he
25 made?

1 Again---

2 THE COURT: Well, I would -- one would assume that, if
3 you're in the same litigation and you receive a statement of
4 fact for sentencing purposes, it would mirror what the plea
5 was. One would think that would be the case.

6 MR. SHEALY: Judge, we may, we may think that, but we
7 can't prove that. There is no proof of that. There is
8 no---

9 THE COURT: So you're saying Judge Herlong is in the
10 habit of receiving pleas and then getting different
11 statements of fact and basing his sentence upon incorrect
12 statements of facts?

13 MR. SHEALY: I'm telling you, judge, we can't -- we
14 don't know. We don't -- that's a four---

15 THE COURT: Well, some things in life can't be proven
16 beyond any doubt.

17 MR. SHEALY: Well, judge, it's -- they can't even show
18 that -- I mean it's beyond it's simply any doubt or it's --
19 the problem here is that they don't have any sworn
20 testimony, any sworn statements of my client adopting any
21 set of facts. There is not -- there just doesn't seem to
22 exist, and I understand that there's a record of his appeal,
23 but, again, that doesn't set out the facts to which he pled.

24 THE COURT: The appeal indicates that his attorney had
25 reviewed the entire report and found no other appealable

1 arguments. It was an Alford brief.

2 Am I correct?

3 MR. SHEALY: It was an Anders brief, yes, sir.

4 THE COURT: Anders. Excuse me.

5 MR. SHEALY: And -- but, again, judge, it doesn't set
6 out what my client allegedly did or didn't do. We have an
7 indictment. That is what my client pled guilty to. That
8 doesn't set out sufficient facts. We don't know what my
9 client claims he did or did not do. I don't believe that
10 there's any competent evidence.

11 Now, as for absence of mistake, this case is a
12 accessory to a bank robbery. I don't quite understand the
13 State's argument that this goes to show an absence of
14 mistakenly -- it's not our position that he mistakenly aided
15 in a bank robbery. So I don't, I don't understand that
16 position.

17 As for intent, again, I'm not sure how this is
18 probative of my client's intent to assist in a, or alleged
19 intent, to assist, to assist in a bank robbery because,
20 again, it would be our position that they can't show that he
21 intended -- I just don't see how it fits. I don't
22 understand that.

23 Thank you.

24 THE COURT: Yes, sir, Mr. Barnette.

25 SOLICITOR BARNETTE: If I can respond.

1 The first thing, Your Honor, it's clear and convincing
2 is the burden of proof and I think we've definitely done
3 that. I mean there's no question. And I understand -- I've
4 learned a lot in the last 24-hours, I'll be honest with you,
5 or less than 24-hours.

6 The presentencing reports is what's presented. They
7 basically do all the presentation during sentencing the way
8 I understand. U.S. Attorney, you know, is obviously moving
9 the case along, but they have a large amount to it, and
10 basically these are the facts that was adopted by the, by
11 the judge as you are aware of---

12 THE COURT: Uh-huh. (Affirmative).

13 SOLICITOR BARNETTE: ---from there. To me, that's very
14 competent evidence. Judge Herlong released it. I mean this
15 is information he released by the judge himself. So, to me,
16 there's no question, question we've met the clear and
17 convincing part of it and, you know, even---

18 THE COURT: Well, my -- one of my concerns,
19 Mr. Barnette, was with the fact that the exception to the
20 hearsay rule -- just one second. Let me get to it so I
21 don't misquote it.

22 We were talking about number eight, and it said it
23 excludes, in criminal cases, matters observed by police
24 officers or other law enforcement personnel provided,
25 however, that investigative notes involving opinions,

1 judgments, or conclusions are not admissible, and, of
2 course, accident reports are not admissible.

3 What I wanted to be sure of is this particular report
4 was prepared specifically for sentencing. Not as an
5 investigative report by the police. Not as part of the
6 official investigative file. This was prepared after a
7 guilty plea, which is an admission to the indictment,
8 setting forth the facts on which that was based for the
9 judge then to determine his sentencing.

10 My understanding, in Federal Court, the facts of the
11 case are very important in sentencing. The, the guidelines,
12 in Federal Court, take into consideration the level of
13 participation of the defendant in the act, things of that
14 nature, which have to do with the facts of the case, and, in
15 fact, in this case, this defendant appealed that, that
16 sentence based on the fact the judge didn't give him
17 sufficient credit for his minor role. He's appealing it
18 based on the set of facts that have been presented here in
19 Court today.

20 He's saying the judge didn't properly consider those
21 facts. So he's acknowledged the facts were presented. He,
22 in fact, bases his appeal on the facts we're talking about.
23 I find it very interesting -- I'll hear from you,
24 Mr. Shealy. Tell me what you want to say. You're
25 interrupting me but I'll allow you to do so.

1 MR. SHEALY: Judge, I don't mean to. I don't know
2 that -- again, we're assuming a lot of things from Federal
3 Court that---

4 THE COURT: No, sir, this is not an assumption. This
5 gentleman testified that this is the report that was used
6 for sentencing by Judge Herlong. This was taken from his
7 record, the judge's records.

8 MR. SHEALY: But we also don't know, except for what he
9 has asked from the -- what he -- what information he
10 received from somebody, not testifying today, as to whether
11 there were objections to the facts or if there were
12 objections to the facts made on the record by my client.

13 THE COURT: Well, did your client not, not appeal based
14 on the fact he didn't receive sufficient credit under the
15 facts that he alleged?

16 MR. SHEALY: And it may be because he argued in Court
17 that there was insufficient facts or there were improper
18 facts.

19 THE COURT: I didn't see that in the appeal.

20 SOLICITOR BARNETTE: There's no evidence of that right
21 now, Your Honor. Nobody has testified to those facts.

22 THE COURT: So, again, I'm basing it on the fact that,
23 in Federal Court, the judge receives a statement of facts,
24 which is what we're looking at right now, upon which he
25 bases his sentence.

1 MR. SHEALY: Well, judge, again---

2 THE COURT: It's part of the record of the appeal.

3 MR. SHEALY: Well, judge, again, we would, we would,
4 again, argue that this is all based on hearsay. It's not
5 competent evidence and so, if you're gonna over -- and I
6 should also put on the record, we've received this last
7 night. I think I've covered the record properly.

8 THE COURT: Okay. I understand that.

9 MR. SHEALY: And there may be some other arguments I
10 should be making.

11 THE COURT: Well, let me finish my ruling --

12 MR. SHEALY: Yes, sir.

13 THE COURT: -- that I was in the process of explaining.
14 I'm not sure where I am now that I've been interrupted.

15 But at any rate, the -- this document was -- I just
16 wanted to be sure and let me get back to Exception 8 under
17 the hearsay rule that this was not a -- simply a statement
18 of the police officer's observations or other law
19 enforcement personnel or -- and it does not constitute their
20 investigative notes involving their opinions or judgments.

21 Again, this is after a guilty plea. It is presented
22 for sentencing purposes. It is a statement not by the
23 police officer or an investigating officers, officers, but
24 by the Federal Probation Office to the judge for sentencing
25 purposes. I'm going to find that it fits within the

1 exception and allow it to come in.

2 Now, Mr. Barnette, I kind of interrupted your---

3 SOLICITOR BARNETTE: No problem.

4 THE COURT: ---argument.

5 Go ahead.

6 SOLICITOR BARNETTE: Thank you, Your Honor.

7 Talking about listening to Mr. Shealy talk about
8 basically 404(b) evidence, basically there's, there's really
9 four things that it can match here. His identity, showing
10 that he was involved with this, existence of common scheme
11 or plan, absence of mistake or accident or intent. I mean
12 basically that's the reason why I wanted to play his
13 statement afterwards showing he knows nothing about
14 anything.

15 Obviously there's gonna be other evidence that comes
16 in, but I think the probative value of this outweighs on
17 those four counts from that standpoint. The intent of it is
18 obviously he has intent as shown by his previous crimes from
19 this standpoint. He can argue that well, I was just there
20 or whatever basically and mere presence, I was with the
21 fellow when he got arrested from that standpoint. That
22 takes care of the absence of mistake in this situation.
23 Would go towards -- that would be very probative concerning
24 that point.

25 Obviously all three of these crimes, is the way we

1 would present them, are very very similar from that
2 standpoint. All---

3 THE COURT: Well, Mr. Barnette, I have a problem when
4 you mention three crimes. There was a robbery of the First
5 Citizens on I think it was North Church Street as I recall
6 that he -- that a young lady was involved in. She
7 apparently was not of age, and, according to the report
8 you've put in record, the federal authorities were not
9 prosecuting her because of her not -- her not being of age.

10 That particular event, the report you've given me,
11 there's no statement of fact other than a robbery occurred,
12 she participated in it, and that this defendant may have
13 been somehow involved, but it doesn't really outline that
14 involvement.

15 Would you agree that that's where we are on the second
16 one?

17 SOLICITOR BARNETTE: The second one, and I will say,
18 the only thing that's mentioned concerning him, they did
19 talk about the robbery itself, and I think the reason they
20 didn't go into details, obviously she was a juvenile,
21 couldn't prosecute her.

22 THE COURT: They weren't gonna prosecute her.

23 SOLICITOR BARNETTE: And they just put in there Calvin
24 Terrell Williams created the robbery plan being presented to
25 the taxicab during the robbery. Of course, he was

1 identified in the previous robbery too, Your Honor, and I
2 would say that is what was submitted in the report.

3 THE COURT: Okay. All right. Go ahead. I interrupted
4 you.

5 SOLICITOR BARNETTE: But, Your Honor, well, let's just
6 take two crimes. The previous -- the one that's obviously a
7 little bit more detail. The one from August 7th as well
8 as the one we're prosecuting now, very similar. Using a
9 young individual, taking a note in from there. Obviously
10 you got a common scheme and plan and also---

11 THE COURT: Now, does the State anticipate presenting
12 the young man in this case I believe Shyquone -- what's his
13 name?

14 SOLICITOR BARNETTE: Mr. Fair.

15 THE COURT: Yes.

16 SOLICITOR BARNETTE: No, sir, we don't from that
17 standpoint because, to be honest with you, he's in the
18 Department of Corrections right now for a criminal sexual
19 conduct---

20 THE COURT: All right.

21 SOLICITOR BARNETTE: ---charge right now the way I
22 understand from the information that I have from that
23 standpoint. But I think the facts alone, Your Honor, it's
24 been proven by the State by clear and convincing evidence
25 and actually, once you have a conviction, once these facts

1 of what was presented at the sentencing as well as part of
2 the guilty plea as testified from there, that would -- we
3 feel like there's no question this should be entered. It's
4 much more probative than prejudicial based off what he's
5 presented, what potentially he could present as well as
6 being very probative to the jury, and, like I said, it would
7 definitely outweigh -- obviously it's prejudicial. There's
8 no question about that, but I think it would definitely
9 outweigh that.

10 THE COURT: All right. Let's hear from Mr. Shealy.

11 MR. SHEALY: Thank you, Your Honor.

12 To the extent, judge, he -- their position that this is
13 somehow rebuttal that we're going to present some kind of
14 particular defense and that he needs to present this
15 evidence in order to rebut what we could actually -- what
16 our defense would be---

17 THE COURT: Well, I think what he's indicating is that
18 the statement that he made to the officer, spontaneously to
19 the officer, indicated a general denial of any knowledge or
20 participation in the event.

21 MR. SHEALY: Yes, sir, and if we were to present that,
22 then it may be that the calculus is different, but I don't
23 think that we could get it in, and I don't think the State
24 can get it in as it's not relevant to anything. It doesn't
25 make any fact more or less likely to have occurred for

1 the -- from the State's point of view. It's simply a flat
2 denial and flat denials are generally, to police officers,
3 are generally not going to be admitted I don't believe.

4 So I don't see how they -- if I don't believe I can get
5 it in, and I don't believe I can get it in, I don't think
6 the State can get it in. I don't think it's going to come
7 in. So I don't know why it would be needed to rebut that
8 video.

9 THE COURT: Well, now the, the video would have
10 probative value to put the defendant near the location on
11 the day with the other individual involved. It's a lot of
12 other things that that video could be used for.

13 MR. SHEALY: But the, but the audio statements are all,
14 again, and I know I keep saying this, they're all hearsay
15 cause they're all statements made out-of-court but -- and I
16 guess there would be a question as to truth asserted.

17 THE COURT: By your client though.

18 MR. SHEALY: But, again, judge, they're not relevant to
19 anything. They, they -- they're -- those statements are
20 simply not relevant to anything. So I don't know how the
21 statements that are being made, just like if my client had
22 given that statement and he gives statements in the police
23 station that are, again, flat denials, I don't believe that
24 those are generally going to be admitted. I mean cause,
25 again, they're not relevant to anything.

1 So I don't, I don't believe that they need to be able
2 to rebut that testimony. I just don't believe that that's
3 necessary.

4 Again, the State has not, so far as I can tell, they
5 had narrowed down the intent and absence of mistake. They
6 may of just expanded it again to all of the Rule 404(b)
7 reasons. Again, I don't know that how a 13-year old
8 conviction for armed robbery, no matter how similar it --
9 they may claim it to be, and, again, we've not heard how
10 similar it is to this. We've heard no testimony as to what
11 actually happened. The State is giving you their version of
12 facts, but there has been no testimony as to the -- what the
13 facts are in this particular case.

14 I don't believe it goes to show, again, a 13-year old
15 armed robbery or armed bank robbery conviction goes to show
16 any kind of common scheme of a plan because, again, that
17 generally is going to be a -- a common scheme or plan
18 generally is -- are transactions that are connected.

19 THE COURT: Series of events.

20 MR. SHEALY: Yes, sir, and this clearly is not a series
21 of events. They're 13-years apart.

22 THE COURT: Well, now your client had been in prison
23 for some period of time during that 13-years, had he not?

24 MR. SHEALY: He had, judge.

25 THE COURT: How long had he been in prison during that

1 13-years?

2 MR. SHEALY: A hundred and twenty-five months I
3 believe. Hundred twenty-four months and eight days. So
4 that would be ten years and eight days.

5 THE COURT: So of the 13-years, over ten he was in
6 prison?

7 MR. SHEALY: Yes, sir, which means that---

8 THE COURT: Okay.

9 MR. SHEALY: ---while he's out on the street, there's
10 at least three years between -- I mean---

11 THE COURT: Oh, I understand what it means.

12 MR. SHEALY: So, again, it would be our position that
13 those transactions are no where close to each other, and so
14 they can't be -- they're just not a common scheme or plan.
15 Again, I'm not entirely sure how it ties into intent or
16 absence of mistake, and it would just be our position that
17 this, this is only presented to prove conformity of
18 character, and that's why they want to present it. This
19 is -- it's just character evidence and, because of that,
20 it's, it's simply off.

21 As for the probative value, prejudicial effect, it
22 would be our position prejudicial effect obviously outweighs
23 the probative value. Again, this is a 13-year old armed
24 robbery. My client was much younger back then. He was 26
25 then.

1 So, judge, it would be our position that, again, it's
2 the prejudicial effect vastly outweighs any probative value
3 here for a 13-year old armed robbery conviction, and, again,
4 the State hasn't proved any similarities at all.

5 Thank you.

6 THE COURT: Mr. Barnette.

7 SOLICITOR BARNETTE: Just briefly, Your Honor.

8 The first thing, we can introduce -- the first thing,
9 he didn't argue earlier to let him have a Jackson v. Denno
10 hearing on the statement. So, to me, the statement, you
11 know, will come in. I mean it's obviously he says he knows
12 nothing about it. He claims he don't even know who his own
13 son is in the video from that standpoint. So, to me, it's
14 very relevant, very---

15 THE COURT: Well, it could, it could be used to go to
16 credibility as well because he does---

17 SOLICITOR BARNETTE: It's definitely an exception to
18 the hearsay, you know, it's the statements of the defendant.
19 It's definitely hearsay exceptions. So I just briefly
20 wanted to bring that to the Court's attention.

21 MR. SHEALY: Judge, it would be our position, again, we
22 reserved our rights as to foundation as well as relevance.

23 THE COURT: Oh, I've told you -- you've indicated
24 you've preserved your right to object contemporaneously at
25 trial.

1 MR. SHEALY: Yes, sir, and while it may go to
2 credibility, my client hasn't -- isn't testifying at the
3 moment and I mean---

4 THE COURT: Oh, I understand that, but I don't know
5 what he's planning to do at this time.

6 MR. SHEALY: Yes, sir, and so it may come in to impeach
7 his -- but simply impeaching his credibility prior to his
8 testifying, obviously is---

9 THE COURT: I said it may. I didn't say it would.

10 MR. SHEALY: Yes, sir, and---

11 THE COURT: You disagree with that statement that it
12 may?

13 MR. SHEALY: No, sir, but, again, the State's position
14 is that it comes in simply in their case in chief, and I
15 don't believe that it would.

16 THE COURT: Well, here's where we are, Mr. Barnette. I
17 understand your position.

18 I'm gonna preserve my decision on this matter until
19 I've heard how you set up or how the case -- the State is
20 able to prove what happened in this particular case, and how
21 it might be similar to the one that's been described in the
22 report that's been put into the record. So I'll reserve my
23 decision until we get to that point. I don't want to try
24 the whole case pretrial and that's where we're headed.

25 SOLICITOR BARNETTE: Yes, sir.

1 THE COURT: Mr. Shealy wants to insist on you putting
2 up your entire case I believe in order to prove what
3 happened in this case, and I'm not gonna take the time to do
4 that. So, as you go through your case, I'll be listening to
5 hear the similarities that might exist between these events.

6 I recognize the fact that he was in jail for more of
7 the time between the two events. I do have a problem,
8 however, with the North Church Street burglary since it's
9 not described in detail in the document, and I don't think
10 Mr. Lannamann's testimony is sufficiently, how should I say,
11 within the exceptions to the hearsay rule so as to allow it
12 to be used for that purpose. So I've got a problem with
13 that one coming in at all.

14 SOLICITOR BARNETTE: Yes, sir.

15 THE COURT: You understand where we are?

16 SOLICITOR BARNETTE: And I'm not gonna mention anything
17 obviously until I get permission from the Court.

18 THE COURT: Okay. All right.

19 SOLICITOR BARNETTE: The only question I would ask,
20 Your Honor, just for preparation down the road, if -- what
21 my plan was is to call Dean Cook again and let him present
22 the facts of that case at the appropriate time and that's
23 the only thing---

24 THE COURT: well, it should be a point in the time in
25 the trial where you have established or put up the majority

1 of your evidence indicating what happened in this case.

2 SOLICITOR BARNETTE: Yes, sir, I understand.

3 THE COURT: Then I think we might be in a position to
4 judge whether or not that would be probative at that time.

5 SOLICITOR BARNETTE: Yes, sir.

6 THE COURT: Whether the probative value would outweigh
7 its prejudicial effect---

8 SOLICITOR BARNETTE: Yes, sir.

9 THE COURT: ---which is what I'm trying to weigh.
10 Is that not right, Mr. Shealy?

11 MR. SHEALY: Yes, sir.

12 THE COURT: Okay.

13 SOLICITOR BARNETTE: Thank you, Your Honor.

14 THE COURT: All right. Anything other than -- any
15 other matters pretrial from the State's prospective?

16 SOLICITOR BARNETTE: Your Honor, I do have the 609 but
17 I'll reserve that until obviously we get to that point in
18 the trial---

19 THE COURT: Okay.

20 SOLICITOR BARNETTE: ---from that standpoint.

21 THE COURT: Anything else?

22 MR. SHEALY: No, sir.

23 THE COURT: All right. We'll take about a five to ten
24 minute break and then we'll begin with the jury.

25 Court's in recess. I'll stay on the bench.

1 SOLICITOR BARNETTE: Can Mr. Cook be released for now,
2 Your Honor, and bring---

3 THE COURT: For right now, yes, and call him when you
4 need him.

5 (WHEREUPON, a short recess was taken at this time.)

6 THE COURT: All right. Let's come back to order
7 please.

8 Is the State ready for the jury?

9 SOLICITOR BARNETTE: State's ready, Your Honor.

10 THE COURT: Defense ready?

11 MR. SHEALY: It is, Your Honor.

12 THE COURT: Let's bring the jury in.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: All right. The record will reflect the
16 jury's returned to the courtroom.

17 I hope everyone had a good evening. I want to thank
18 you for your patience with us this morning.

19 Yesterday, when you left the courthouse, I gave you
20 instructions concerning your behavior while you were away
21 from the courthouse, and if any of you had any difficulty in
22 complying with my instructions, please stand.

23 (No response.)

24 THE COURT: It appears that all jurors have been able
25 to comply with my instructions thus far.

1 I told you that, upon your return, you will be taking
2 an oath concerning your responsibilities as jurors in this
3 trial.

4 At this time, Madam Clerk, place the jury under oath.

5 THE CLERK: Yes, sir.

6 (WHEREUPON, the jury was placed under oath at this
7 time.)

8 THE COURT: Now, if any of you either failed or refused
9 to take the oath just administered by the clerk, I'd ask
10 that you now stand.

11 (No response.)

12 THE COURT: Court record then reflect that all jurors
13 have been sworn concerning your responsibilities in this
14 case.

15 Now, before we actually begin the trial of the case
16 there's some matters that I would like to go over with you
17 so that perhaps we will better understand the
18 responsibilities that we all have in the trial of this
19 matter.

20 First of all, yesterday I went over with you the
21 indictments in this case. The indictments are the documents
22 that bring the case into this Court, and, again, they inform
23 us of the charges to be tried. They inform the defendant of
24 the charges lodged against him.

25 I will remind you, and I'm not going to read them to

1 you in detail now, we'll talk about them again in more
2 detail when I charge you concerning the law in this case,
3 but the indictments in this case are for the offense of bank
4 robbery and accessory before the fact to a felony, a bank
5 robbery. So those are the two charges that have been
6 presented to this Court and I'm going to remind you that
7 yesterday I indicated to you that the fact that a defendant
8 has been arrested, charged, or even indicted in a case,
9 those facts are not evidence in the case. They can't be
10 considered by you as evidence of guilt in this case nor do
11 those facts create any presumption or inference of guilt.

12 This document, again, these documents are simply the
13 formal written instruments that bring the case into this
14 Court. It's the formal document which informs us of the
15 charges to be tried.

16 Each of those indictments charges a separate offense.
17 At the close of the trial, you'll be required or asked to
18 write a verdict as to each indictment separately and
19 independently from the other indictment. In other words,
20 each charge must stand on its own or fail on its own. You
21 must decide each of them separately regardless of your
22 decision on the other indictment. So a defendant may be
23 acquitted or convicted on any or all of the charges that are
24 before the Court.

25 Now, to that indictment, the, the defendant has pled

1 not guilty and that plea places the burden of proof upon the
2 defendant, excuse me, upon the State to prove the defendant
3 guilty beyond a reasonable doubt, and I'll talk to you about
4 those concepts in much more detail during my charge on the
5 law, but it will be your responsibility, at the close of
6 this trial, to determine whether or not the State has met
7 its burden of proving the indictments to you by proof beyond
8 a reasonable doubt.

9 Now, for many of you, I would expect that this is your
10 first experience in serving on a jury in a situation where
11 someone has been charged with the commission of a criminal
12 offense, and for those of you who have never been in this
13 position before, I would expect that most of what you might
14 know about what goes on in a trial, as far as juries are
15 concerned, you may have gathered from television shows
16 you've watched or movies you've seen, maybe books you've
17 read. They don't teach too much about the jury system and
18 how it works in school these days. I wish they did, but
19 they don't.

20 So you probably, probably have learned from those
21 sources, and I would expect that, if you think about it, you
22 would realize that, in the case of television, you can have
23 an event occur, the case can be tried, and all be wrapped up
24 in the space of an hour and they still have time to stop
25 about five times for commercials. Now, if you think about

1 that, you realize that that may not be a very accurate
2 depiction of what goes on in the real world.

3 I hope you understand that those television shows and
4 movies are intended to entertain you. They're suppose to
5 keep your attention. You know, in the case of television,
6 they make their revenue based on how many people watch those
7 commercials. So they want to keep your attention and keep
8 you watching. So sometimes they bend what goes on in a
9 courtroom as far as the actual facts are concerned.

10 I will tell you that what you're engaged in, during
11 this trial, is intended for anything but your entertainment.
12 What you're involved in is a fundamental part of our
13 governmental structure. That is that you're involved in the
14 trial of one of your fellow citizens under the Constitution
15 of this State and the United States that guarantees that
16 defendant the right to a trial by a jury of one's peers.

17 I tell juries all the time, if you looked around the
18 world at most of the legal systems that exist in this world
19 today, you'd find that very few of them allow citizens to
20 participate directly in the decision making process that
21 goes on in those courtrooms around the world. That's
22 because they don't have our system of governing. Our rights
23 are contained in our Bill of Rights. A good many Americans
24 have lived and died based on those, those principles. I
25 hope it's a principle we never lose in this country because

1 I hope you realize this place, this courtroom, is a place of
2 honor. It's dedicated to the preservation of citizens'
3 rights through those documents, the Constitutions of this
4 state and of the United States.

5 Now, the attorneys who are involved in this trial are
6 here to represent their client's interest. They're here to
7 present their client's cases to you during this trial. I'm
8 sure they'll do an excellent job in doing that.

9 Many lay people don't realize, however, that, first and
10 foremost, lawyers are also officers of this Court. At some
11 point in time they appeared before a judge in this state,
12 they took an oath as prescribed by law. Part of that oath
13 includes a statement that they will assist you, the jury, in
14 your findings of fact in this case. For that reason you'll
15 expect that they'll act in a reasonable, a professional, and
16 an ethical manner in the presentation of their client's
17 cases to you during this trial.

18 I want, I want to, to call your attention to the fact
19 you too just came in front of this Court. You took an oath.
20 Your oath is to decide this case based upon the law and the
21 evidence that's presented during the trial. You too are now
22 expected to act in a reasonable, a professional, and an
23 ethical manner in the discharge of your duties as jurors in
24 this case, and I thanked you many times. I'll do it again.
25 Thank you for your service in this matter. We appreciate

1 your being here.

2 Now, as I told you, I'm not intending now to charge you
3 concerning the law. I'll do that at the close of the trial
4 once you've heard all the evidence and all the arguments by
5 the lawyers. What I am trying to do is to tell you a little
6 bit about our procedure and the roles and responsibilities
7 that we have.

8 As I indicated, the defendant is pled not guilty to the
9 indictment. That plea places the burden of proof upon the
10 State and it's your responsibility to determine if the State
11 has met its burden of proof at the close of this trial.
12 Therefore, it's your purpose and your purposes alone to find
13 and determine the facts of this case. Many Courts refer to
14 the jury as the sole judge of the facts during a trial tried
15 in front of a jury.

16 As the sole judges of the facts, it be will be your
17 responsibility to determine the truth, the value, the
18 weight, weight, and the inferences that can be drawn from
19 the evidence that you hear during this trial. You are to
20 determine those facts from the testimony that's presented
21 during this case and any evidence that comes into the record
22 of the trial through the testimony of witnesses who've been
23 sworn to tell the truth and who will testify from this
24 witness stand in front of you.

25 Now, it's especially important that you perform your

1 jury duty as a fact finder in this case diligently and
2 conscientiously because, under our system of justice,
3 ordinarily there's not a means by which an erroneous
4 determination made by a fact -- made by a jury can ever be
5 corrected.

6 Now, the same law that makes you the sole judges of the
7 facts makes me the sole judge of the law during this trial.
8 It will be my responsibility to preside over the trial.
9 I'll be ruling on certain questions that might come up
10 concerning the admissibility of evidence or the
11 appropriateness of questions that's being asked. There are
12 sets of rules that govern those things and I'll be applying
13 those rules as we move along, and then, at the close of the
14 trial, it's my additional responsibility to charge you
15 concerning the law that you're to apply in this case.

16 You see, under your oath, it's your responsibility to
17 determine the facts as you find those facts to be, and then
18 take the law exactly as I give it to you and apply that law
19 to the facts as you've determined the facts to be. That
20 should put you in a position to render a just, a true, and a
21 fair verdict at the close of this case.

22 Now, as the sole judges of the facts in this case, it
23 will be your responsibility to also determine the
24 credibility or the believability of the testimony that you
25 hear and that's what credibility means. It means

1 believability. I'm going to urge you to use your good
2 common sense in making those decisions. You know, every
3 single day of your life you listen to things, you observe
4 things, you watch things, and you make decisions based upon
5 your common sense as to what you choose to believe and what
6 you choose not to believe, and service on a jury is no
7 different than any other day in that regard. You'll be
8 listening to what's being said, observing what's going on in
9 the courtroom, weighing that evidence against the other
10 evidence that's presented, and you'll be making a
11 determination, based on your good common sense, as to what
12 you choose to believe and what you choose not to believe.

13 You know, as the sole judges of the facts in this case,
14 you have the right to believe all of, part of, or none of
15 what a witness may testify to. You have the right to
16 believe one witness against all the others that testify or
17 you can believe all the others against one. Again, you're
18 the sole judges of the facts. So you decide the
19 credibility, the effect, the value, and the weight of the
20 testimony that you hear during this case.

21 For that reason, I'm going to urge that you listen
22 carefully to what's going on. Try not to let your thoughts
23 wonder as the trial goes on. Try to stay awake and pay
24 attention to what's going on during the trial.

25 This is an important matter to the people involved in

1 it. So I want you to listen and pay attention and be in a
2 position, at the close of this trial, to go back into the
3 jury room with your fellow jurors and discuss the testimony,
4 what you've heard, what you chose to believe, what you chose
5 not to believe. So be in a position to do that at the close
6 of the trial. Try to pay attention as the case goes along.

7 You have the right to consider such factors as whether
8 or not a witness might have a stake in the outcome of the
9 trial. You can consider whether a witness has some bias or
10 prejudice either for or against one side or the other. You
11 have the right to determine whether or not the witness
12 actually had the ability to know the facts about which a
13 witness may testify, and I've been in jury -- in courtrooms
14 for almost 40 years now and I've never been in a courtroom
15 where the witness stand wasn't right in front of the jury
16 box, and the reason for that is we want the juries to
17 observe the witnesses as they testify, how they speak, the
18 way they deliver their testimony. So it's important that
19 you pay attention to what goes on in the courtroom as well
20 as what is being said in the courtroom.

21 Again, as the sole judges of the facts, using your
22 common sense, you can weigh those factors or any other
23 factors you think are important to make a determination as
24 to what you choose to believe and what you choose not to
25 believe in the trial.

1 Now, from time to time there may be an objection that's
2 raised about something or there may be a question about
3 whether or not some piece of evidence ought to come into the
4 record of the trial. If it's my belief that my discussion
5 with the lawyers about those issues might go into a
6 discussion about something that would not be admissible into
7 the record under the rules that govern those things, if I
8 think the direction may go in that direction, I may ask you
9 to step back to the jury room while I discuss those matters
10 with the lawyers.

11 Don't take from the fact that I've asked you to leave
12 the courtroom to somehow indicate to you that I've got an
13 opinion, one way or the other, as to how you determine the
14 facts. Again, you're the sole judges of the facts. I'm not
15 allowed an opinion on those facts. So please don't take,
16 from anything that I say or do in the discharge of my
17 duties, to indicate otherwise. I have no opinion as to how
18 you determine the facts in this case.

19 Once I've completed that discussion with the lawyers,
20 I'll ask you to come back into the courtroom and I'll
21 announce whatever decision I have had to make, and we'll
22 proceed with the trial. But, again, that's not an effort by
23 me to try to influence your decision. It's simply me doing
24 my job.

25 Judges are described sometimes as the gatekeepers at a

1 trial. We decide what comes in and/or what does not come
2 in. So we are the -- considered a gatekeeper and that's me
3 doing my gatekeeping function in the, in the trial. So, so
4 don't take anything from those particular instances should
5 they occur.

6 Now, the lawyers are allowed to directly talk to you on
7 two occasions during the trial. Once at the beginning of
8 the trial they'll be an opening argument or statement where
9 they'll explain to you what their case is about, perhaps
10 what they want you to consider or what they expect you to
11 prove. So they'll be a brief opening statement by both
12 sides followed by the presentation of witnesses and evidence
13 in the case. Once all the evidence is presented and, again,
14 the attorneys are allowed to address you directly and make a
15 final or a closing statement.

16 Now, at that time they'll be summing up the testimony
17 that you've heard. They'll be urging you to draw
18 conclusions or inferences from the testimony that you've
19 heard. So that's their final opportunity to argue their
20 client's case to you. So they'll talk to you twice.

21 I want to point out something to you and have you bear
22 this in mind. Statements made by lawyers during a trial,
23 those statements are not considered to be evidence.
24 Therefore, they can not be used directly by a jury in
25 reaching a verdict in the case. You're suppose to decide

1 the case based upon the law and the evidence.

2 The only evidence in any trial, again, testimony of
3 witnesses from the witness stand, documents or other pieces
4 of evidence that go into the record through that testimony,
5 or evidence that's admitted into the record by agreement of
6 counsel for it to go into the record. So statements made by
7 lawyers, certainly they will indicate their client's
8 position in regards to the evidence, but they are not
9 evidence themselves and can't be used directly by you in
10 making a decision on the guilt or innocence of the
11 defendant.

12 Now, I do not appoint a foreperson of a jury until I
13 charge you concerning the law at the end of the trial. I do
14 that for a reason. That's -- the reason is it allows me to
15 emphasize to you. At the close of this trial I will inform
16 you that you can not reach a verdict in this case until all
17 12 jurors participating in the deliberations agree upon what
18 their verdict is.

19 In other words, the verdict has to be unanimous. Each
20 of you must agree upon it before it's the verdict of the
21 jury. So, therefore, no one juror in your group is more
22 important than any other juror. I don't want you to think,
23 because I've appointed this lady or this gentleman as the
24 foreperson, that somehow they're more important, more
25 intelligent and you can just sit back and do whatever they

1 say at the close of the trial and not pay attention.

2 I want you to think that you might be the foreperson of
3 the jury. You might have to lead those discussions with
4 your fellow jurors during deliberations, and I'll make that
5 determination as to who I choose to appoint at the close of
6 the trial. In the meantime, if there's any issue that you
7 think needs to be brought to my attention or something that
8 I need to be made aware of, you simply have to let one of
9 the bailiffs know what that concern is. I'm sure they'll
10 pass that information along to me and I'll take the
11 appropriate action concerning whatever matter that will be.

12 So that doesn't prevent you from reporting any problems
13 you may have, but it does, I hope, put you on notice that I
14 want all of you to think that you're going to be the
15 foreperson. I want you to be in a position, all of you, to
16 fully discuss this case once we turn it over to you for your
17 deliberations.

18 I want to be sure that I haven't violated anyone's
19 rights in what I've told you thus far.

20 Does the State have an objection to my opening
21 comments?

22 SOLICITOR BARNETTE: Do not, Your Honor.

23 THE COURT: Defense have any objection to my opening
24 comment?

25 MR. SHEALY: No, Your Honor.

1 THE COURT: All right. Now, ladies and gentlemen, let
2 me explain to you the process we're going to go through.

3 I've told you the State has the burden of proof in the
4 case. For that reason the State gets to go first in its
5 opening argument followed by the defense. Then, in the
6 presentation of evidence, again, the State, because it has
7 the burden of proof, has to go first with the presentation
8 of its evidence followed by any evidence the defense chooses
9 to put up. Then, once all the evidence has been presented
10 by both sides, then, at that time, the final arguments will
11 occur from the attorneys. Once those arguments are
12 concluded, it's my responsibility to charge you as to the
13 law to be applied, and then the case will be turned over to
14 you, the jury, for your deliberations in the jury room until
15 such time as a verdict's been reached.

16 So those are the steps that we'll go through as we
17 proceed with the trial.

18 So, at this time, the State may proceed with its
19 opening comments.

20 Mr. Barnette.

21 SOLICITOR BARNETTE: May it please the Court, Your
22 Honor?

23 THE COURT: Yes, sir.

24 SOLICITOR BARNETTE: Ladies and gentlemen, good
25 morning.

1 To tell you, the bank robbery actually occurred on
2 January 22nd, 2015, but I got to go to the day before. Go
3 back to January 21st, 2015, to start telling you this story
4 about this case. Give me (sic) a preview, an idea, what
5 it's gonna be about.

6 Calvin Williams, the defendant, that day calls his
7 16-year old, Shyquone Williams. He says I want to meet you.
8 He hadn't seen him for a long time. So he goes over with
9 his girlfriend and picks up his son. Takes him to
10 Jonesville, South Carolina. His son spends the night with
11 him down there.

12 During that time he talks to him for a while, and he
13 basically says I need your help. He says I'm planning two
14 big scores and one of those scores was to rob a bank, and he
15 looks at him and he says I want you to do this, this, and
16 this, and directing him, and he has him go ahead and write a
17 note out for him. He had wrote the note for him and then he
18 had Shyquone write it out for him.

19 They originally was gonna go to North Carolina but they
20 couldn't get a ride there. So they went back to
21 Spartanburg, South Carolina.

22 Calvin gets a friend to call somebody to see if they'll
23 give him a ride to a bank on the west side, to the BB&T. If
24 you're familiar with that area, it's where the Jason's Deli
25 is. There's a gas station there and then there's like a

1 SpeedDee or oil change place and then you have the BB&T
2 building and the church is right behind it. Saint Matthews
3 I believe is the church. It's across from the Dorman Center
4 if you're familiar with the Home Depot over there.

5 He talks to this guy. Says I'll offer you \$7.00 to
6 drive us over there and he says what we're gonna do is we're
7 gonna meet somebody and we'll give you twenty more dollars.
8 I'll give it to you to drive me somewhere else from there.

9 Him and Shyquone gets into the van with this gentleman,
10 Mr. Blassingame. Mr. Blassingame drives them over and he
11 actually parks. He says I want you to park -- there's the
12 Jason's Deli. There's the gas station. And if you back
13 this way, there's like Gold's Gym, different stores back in
14 there, and they're having a monster truck event in that
15 parking lot. So they parked back in there.

16 He tells him why don't you go get the money from the
17 individual I'm talking. I mean they had already talked
18 about robbing the bank where he gave the note. He was gonna
19 give him a book bag to take with him to get the money.

20 So Shyquone goes from there, walks down to the bank,
21 goes in the bank. Jennifer Rodriguez is the bank teller.
22 She'll be testifying here shortly to y'all. He comes in.
23 He's wearing khaki pants, a black hoodie, and a dark
24 colored, brown, dark brown coat over the top. He comes in
25 and he's covering his face. At one point you'll see him

1 come up. He passes the note telling her to put the money
2 into the book bag. Well, the only problem was he forgot the
3 book bag in the van.

4 So what happened is Mrs. Rodriguez will tell you what
5 happened. She has given the money to him and puts the dye
6 pack into the group. He actually puts it in the pocket in
7 the hood. He walks back out the bank. He's walking back to
8 where the van is. As he's walking out, Mr. Copper will be
9 testifying for you, he came -- was coming back, he's the
10 bank manager, the dye pack explodes on him, and you'll see
11 that on the video coming through.

12 He takes the money. He actually kicks some of it
13 under -- to the pickup truck. He's dropping it and finally
14 he gets to the car and he doesn't have any money. He got
15 rid of it. Basically was covering himself up.

16 The defendant, his father, asked him, he says was he
17 there. He said no, he wasn't there. So that means
18 something had happened. That was like a code word to them.

19 So the guy wants his money. He says well, I can't give
20 you the money. So I just got to go -- I got to get meet to
21 somebody here. So basically he winds up dropping them a
22 couple miles down the road at Quail Pointe Apartments. If
23 you're familiar with that, it's on Blackstock Road. There's
24 a gas station there. He actually lets them off at the gas
25 station. They jump out at the gas station, go over to Quail

1 Pointe Apartments.

2 Shyquone's still got the dye on him from different
3 parts. So he gets rid of the pants, the khaki pants. He
4 has some shorts underneath them. Gets rid of the hoodie.
5 Gets rid of the jacket. They actually throw it up in a
6 bunch of bushes behind one of the apartment buildings there.

7 They come back out and the defendant actually gave him
8 the orange hoodie to wear, and that's what he was wearing
9 when the Sheriff's Department was notified, and what you'll
10 hear too is, you'll hear from two witnesses that actually
11 followed the van. They had actually saw the dye pack go off
12 on Shyquone and followed him all the way to Quail Pointe and
13 was calling 9-1-1 at the time to let them know.

14 So actually you see Shyquone and the defendant, Calvin
15 Williams, get out of the van. The Sheriff's Department
16 called. They come actually to catch them at Quail Pointe
17 Apartments and arrested for that.

18 The reason I wanted to go back and tell you that story
19 is Shyquone Williams is already pled guilty to bank robbery.
20 He is gonna testify in front of you today. He has no
21 offers. It's basically he is pled guilty to it, he's
22 cooperating, and wants to testify. His sentencing will be
23 left up to the judge at a later date. He's now 17-years
24 old.

25 He'll be testifying with you along with folks from the

1 bank teller, other members of the police departments.
2 You'll be hearing all that evidence. And like the judge
3 says, you'll hear all the evidence first before you make a
4 decision. But I wanted to give you a preview or an idea of
5 what you'll be seeing here in court today and I'll be coming
6 back at the end too to ask you to find him guilty for what
7 Calvin Williams did in this case.

8 He's been charged with bank robbery and accessory
9 before the bank robbery. Those are the two separate
10 offenses. We'll talk more about that. The accessory is
11 basically planning of it. Bank robbery is actually where
12 you participate or help with it too. So we'll get back with
13 that to you from there.

14 Again, I appreciate y'all's service. Thank y'all for
15 being here.

16 THE COURT: Mr. Shealy, for the defense.

17 MR. SHEALY: Thank you, Your Honor.

18 May it please the Court?

19 THE COURT: Yes, sir.

20 MR. SHEALY: Ladies and gentlemen, my name is Matthew
21 Shealy. I'm with the Public Defender's Office. I represent
22 Calvin Williams who's over there.

23 We're right under an air vent. So we're a little bit
24 chilly over there. So if you see us shifting, that's
25 probably what it is.

1 Robbing a bank is an exceptionally stupid crime because
2 they have all kinds of ways to catch you. They have bait
3 money. They've got dye packs as you've heard. The dye pack
4 goes off and gets all over you. It may actually injure you.
5 It's a really stupid crime to commit because, once you've
6 committed it, they catch you.

7 And as you've heard from the State, they have a bang up
8 case against Shyquone. They just -- he's got dye all over
9 him. I think he may of been injured by it somewhat, and
10 they just have a bang up case against Shyquone. What they
11 don't have is much of any kind of case against Mr. Williams.

12 Mr. Williams is not the driver of the vehicle. He's in
13 the vehicle with the driver. That's my understanding of how
14 this testimony is going to turn out. But the driver's not
15 arrested. The driver's never arrested. There's -- well,
16 he's questioned, but ultimately not arrested.

17 Mr. Williams, I believe, is going to testify that he
18 initially, or Shyquone Williams, is going to testify
19 initially he denied that Mr. Williams had anything to do
20 with it. He denied this for a good long while until an
21 event happened and then he turned.

22 So this case boils down to whether you believe him or
23 not essentially. That's all this case boils down to and you
24 got to remember that everybody has reasons to lie.
25 Everybody -- or to shade. Lie may be a strong word for it

1 in some cases. Although, in Mr. Williams, Mr. Shyquone
2 Williams case, I believe they're going to be some serious
3 credibility issues, but everybody has reasons to shade
4 things.

5 The reason they have reasons to shade things is because
6 it's part of your employment, they're a victim, they want
7 somebody to get arrested, that want somebody to go to jail,
8 and it's just human nature to shade things. We do it all
9 the time.

10 So you need to, whenever people are testifying, you
11 need to look at them, how they're acting, think through what
12 their motivations are, the reasons they have to shade things
13 and the reasons they have to flat out tell untruths, and,
14 again, we'll -- part of my job is to bring those biases out.

15 Now, I'm not Perry Mason. I'm not Matlock. I'm not
16 gonna get somebody to break down up here and say I did it or
17 out there and they're gonna jump up and say I did it. What
18 cross-examination is more of a picking at the threads of a
19 story and so that y'all can see how threadbare that blanket
20 becomes. And then we finish with cross, with closing
21 arguments, and that's where we bring it all together as to
22 what the problems with the State's case are.

23 Now, the State has to prove, beyond a reasonable doubt,
24 that my client committed this crime. He has to prove it
25 beyond a reasonable doubt. That's not beyond any doubt.

1 It's the doubt that would make a reasonable person hesitate
2 and the judge is gonna explain that to you.

3 My dad was a defense lawyer for a very long time, and
4 the way he use to explain it is it's like whenever you go to
5 the deli counter at the Bi-Lo or wherever you shop, the
6 Ingle's, and you go to the deli or the meat counter and you
7 see a slice of, let's see, a ribeye and you kind of want
8 steak that day. You notice that it's reduced for quick sale
9 and it's got one of those UPC codes on it. It's over the
10 top of another one and they -- it expires today.

11 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
12 this point about trying to define the law. That will be
13 done by the Courts. I hate to object during opening, but I
14 think this maybe is not quite---

15 THE COURT: I'm gonna allow him to continue with that.
16 We will be charging concerning the law, and I've explained
17 to the jury the law, as I give it to them, is the law that
18 they have to apply, but I'll allow him to go forward.

19 Go ahead, Mr. Shealy.

20 SOLICITOR BARNETTE: Thank you, Your Honor.

21 MR. SHEALY: Thank you, Your Honor.

22 And then you, you may want and you may ultimately buy
23 it, but you hesitated cause you think maybe I don't want
24 that. Maybe it's not going to be a good purchase because it
25 might make you sick, some other reason. That's the doubt

1 that would make a reasonable person hesitate.

2 Now, ultimately you may buy it, but you still
3 hesitated, and, at that point, you have to find my client
4 not guilty, and you've got to resolve any doubts again---

5 SOLICITOR BARNETTE: Your Honor, I'm gonna object.
6 That's not a correct statement of reasonable doubt.

7 MR. SHEALY: Judge, I believe that it is but I'll
8 withdraw.

9 THE COURT: Mr. Shealy, let's move on to some other
10 part of---

11 MR. SHEALY: Yes, sir.

12 THE COURT: ---your argument.

13 MR. SHEALY: So, ladies and gentlemen, as I told you,
14 they have to prove it. We don't have to prove anything. We
15 bare no burden at all.

16 Thank you.

17 THE COURT: The State may call its first witness.

18 SOLICITOR BARNETTE: Your Honor, I'd like to call Ms.
19 Rodriguez to the stand please.

20 THE COURT: Come forward please, ma'am. If you'll step
21 over here to my left to be sworn please.

22 JENNIFER RODRIGUEZ, being first duly
23 sworn, testified as follows:

24 THE COURT: Once you've had a seat, ma'am, state your
25 name please.

Jennifer Rodriguez - Direct examination
by Solicitor Barnette

1 THE WITNESS: Jennifer Rodriguez.

2 THE COURT: Thank you.

3 Mr. Barnette, your witness.

4 SOLICITOR BARNETTE: Thank you, Your Honor.

5 THE COURT: Yes, sir.

6 SOLICITOR BARNETTE: If I could have a second to hook
7 up the video.

8 THE COURT: Yes, sir.

9 (Pause.)

10 DIRECT EXAMINATION

11 BY SOLICITOR BARNETTE:

12 Q Yes, ma'am.

13 Back on January 22nd, 2015, where did you work at,
14 ma'am?

15 A BB&T Bank on 1488 W O Ezell Boulevard in Spartanburg.

16 Q Okay. Is that a federally chartered institution or
17 bank---

18 A Yes, sir.

19 Q --in South Carolina?

20 And it's located here in Spartanburg?

21 A Yes, sir.

22 Q And where is it located at, ma'am?

23 A If you're familiar with where Barnes & Noble is, it's
24 directly across the street right where Burger King sits.

25 Q Okay. And was you working that day, ma'am?

Jennifer Rodriguez - Direct examination
by Solicitor Barnette

1 A Yes, sir.

2 Q That day was you or tell the Court what or tell the
3 jury what happened that day to you.

4 A I couldn't tell you exactly what time it was, but there
5 was a point where a gentleman was coming in the bank. My
6 first response is hmmm, this doesn't look too good, but then
7 it was kind of cold still and he was like this (witness
8 gestures.)

9 So my thought was he maybe he's covering his mouth or
10 something, you know, had a cold, nothing. You know I jump
11 to conclusions. So I'm trying to be calm.

12 He gets in line and stands in line. There were a
13 couple people in front of him. I get to be the teller to
14 call him up to my window. So when I call him up, I realize
15 at that point what is going on. He walks up, comes into my
16 window, and passes a note. I pull out the note and I read
17 through it. It states in there an exact amount. I think it
18 was 40,000. It states an amount. That -- no dye packs, no
19 bait money, no silent alarms. To put it in a book bag and
20 that he is armed.

21 So, at that point, I realize what's going on. I ask
22 him if he's got the book bag. He shakes his head no. So
23 then I have to, you know, what do I do. I'm not sure how to
24 do it.

25 At some point I realize, you know, he's -- in my

Jennifer Rodriguez - Direct examination
by Solicitor Barnette

1 opinion, he's scared. I don't know what's going on. He's
2 not talking. He's not anything. So I'm thinking, you know,
3 he's not looking at me as much as I think you know.

4 So I take the moment and I actually -- I am -- one of
5 my co-workers and type in the word rob, and it takes her a
6 minute to realize what's going on but she, she realizes.
7 She types back and she says right now, and I don't answer
8 her. I keep trying to get some money out of my drawer to
9 make it look like, you know, I'm doing what he wants.

10 She realizes what's going on. She shuts her door. So,
11 at that point, I'm not worried about looking at him. I
12 don't care what he looks like, to be honest, and I just go
13 through my drawer. I give him, you know, he said -- I think
14 it was 40,000, but I go through -- at that point I realize I
15 can probably shove the dye pack in there even though he said
16 not to. He had nothing to put the money in.

17 So I decided to put it into the bank envelopes because
18 I can slide it in there. He would not know what was going
19 on.

20 So, at that point, I think I gave him three or four
21 bank envelopes. Once he left, I ran behind him. As I was
22 locking the doors I realize that Mr. Cooper was coming back
23 from lunch and so I'm trying to get his attention so he can
24 see him as he's crossing and maybe get a better description
25 because, at that point, I'm sure he's not covering his face.

Jennifer Rodriguez - Direct examination
by Solicitor Barnette

1 He doesn't want people to see who he is. He's walking down
2 the street.

3 So, at that point, the dye pack goes off, and once the
4 dye packs go off, Jerry's already on the phone with the
5 police and everything. I come back in cause I know Rob now
6 has realized what is going on. So we come back in and
7 that's where the police and everybody showed up at that
8 point.

9 Q Okay. Let me show you State Exhibit 48.

10 Is this a copy of the note that was handed to you that
11 day, ma'am?

12 A Yes, sir.

13 SOLICITOR BARNETTE: Okay. Your Honor, I'd like to
14 enter State Exhibit 48 into evidence.

15 THE COURT: Any objection, Mr. Shealy?

16 MR. SHEALY: No, sir.

17 THE COURT: Without objection it will be received into
18 evidence as marked.

19 (WHEREUPON, State's Exhibit No. 48 was received into
20 evidence at this time.)

21 THE COURT: You may publish it to the jury.

22 SOLICITOR BARNETTE: Thank you, Your Honor.

23 One thing I wanted to go back, ma'am, how did you say
24 he was acting to you?

25 A I mean he -- there was no communication. There was

Jennifer Rodriguez - Direct examination
by Solicitor Barnette

1 nothing. You know, I've been through a couple. He stood in
2 my window, but he wasn't making eye contact. I wasn't
3 looking at him, to be honest. I really, at that point, my
4 fear was I don't want him to know who I was anymore than he
5 knew, you know, cause what if he comes after me. You know,
6 just you're thinking so many things, but he was sitting
7 back. You definitely can realize, you know, I told them,
8 how else was I able to message. You know, I mean I was hand
9 on the computer.

10 He wasn't -- he was there, but it wasn't like he was
11 watching every move cause I think he knew -- I don't know.
12 I just think he was scared as much as I was to be honest. I
13 mean I didn't want to make eye contact, and, you know,
14 really do what I was suppose to as a teller cause, you know,
15 they want us to look and all these things, but I mean I
16 just -- I think -- I don't know. That's my personal opinion
17 but --.

18 Q I understand.

19 In publishing State Exhibit 48, if you could read the
20 note to the, to the jury if you would, ma'am?

21 A This is an armed robbery. This is an armed bank
22 robbery. I demand \$40,000 in large bills with no bands
23 around the money. No dye packs. No bait money. No
24 tracking devices. I want all the money placed in my book
25 bag. No silent alarms. If you obey me nobody will get

Jennifer Rodriguez - Direct examination
by Solicitor Barnette

1 hurt.

2 Q Okay. And he didn't have a book bag with him.

3 Is that right?

4 A No, sir.

5 Q Let me show you what's been marked as State Exhibit 22.

6 Are these videos from different cameras in the bank
7 that day?

8 A Yes, sir.

9 Q And this occurred in the afternoon.

10 Is that right?

11 A I believe so, yes, sir.

12 Q Okay. Does these fairly represent what you saw that
13 day?

14 A Yes, sir.

15 SOLICITOR BARNETTE: Your Honor, I'd like to publish
16 this or enter this into evidence at this time, State Exhibit
17 22.

18 THE COURT: Any objection, Mr. Shealy?

19 MR. SHEALY: No, Your Honor.

20 THE COURT: All right. It will be admitted into
21 evidence.

22 (WHEREUPON, State's Exhibit No. 22 was received into
23 evidence at this time.)

24 THE COURT: You may publish that to the jury if you'd
25 like.

Jennifer Rodriguez - Direct examination
by Solicitor Barnette

1 SOLICITOR BARNETTE: Thank you, Your Honor.

2 Q Ms. Rodriguez, where's this at?

3 A That is in the teller lobby of the BB&T at Westgate.

4 Q Okay. And who is this person right here, ma'am?

5 A Myself.

6 Q Okay. I'm gonna forward this a little bit ahead.

7 Is this the gentleman before the bank robber came in?

8 A Yes, sir.

9 Q Who's the next gentlemen coming up to you?

10 A That is him right there.

11 Q What's he doing?

12 A That -- he passes me the note right there and I unfold
13 it and I started to read it.

14 Q What are you doing now, ma'am?

15 A At that point I had already messaged Jerri. You could
16 see that door shut in the corner and I had let her know---

17 Q Right there?

18 A ---what was going on. That's when I had IMed her and
19 she realized what was going on. So, at that point, I
20 definitely wasn't worried. I'm putting the money, I think,
21 in envelopes. That view you can't really tell, but you'll
22 see where I actually put the dye pack in there and
23 everything. But I know, at that point, she knew what was
24 going on. So that's when I'm getting the money ready to
25 give to him. So --.

Jennifer Rodriguez - Direct examination
by Solicitor Barnette

1 Q What do you do after that, ma'am?

2 A As you see, I'm watching him and the minute he hits
3 that door you'll see me. I run across that lobby to get
4 that door locked to make sure that, that nobody else can
5 come back into the bank because, again, you don't know if
6 there's anybody else with them and once they realize what
7 I've done. I was a little concerned.

8 Q Is this Jerri right here?

9 A Yes, she knew, once she saw him pass the thing, and she
10 saw me, I mean she come out off her office and start doing
11 what needed to be done while I locked the door and stuff.

12 Q Okay. Let me show you another angle here.

13 Now, which angle is this, ma'am?

14 A That's from directly behind my teller station.

15 Q Okay. Who is this right here?

16 A That is the robber right there.

17 Q If you would, just go ahead and describe.

18 A That's after he had just handed me the notes and I'm
19 reading through the note right now just seeing exactly what
20 it says, and, as you can see, he's not really looking at me.
21 So that's when I minimized my computer screen and I try to
22 get to my instant messenger so that I can let, you know,
23 Jerri know what's going on so that somebody else can be
24 looking for me. So that's where you can see it just popped
25 up. The instant messenger pops.

Jennifer Rodriguez - Direct examination
by Solicitor Barnette

1 So I'm trying to keep my hand on the money, getting
2 some money together while I'm trying to type to her and let
3 her know what's going on. So you can see me getting some
4 money together there cause I'm really debating with how much
5 to give him, what to do, you know, how safe, you know, can I
6 get away with a little bit, can I get away with a lot, what
7 do I need to do to get him out of here. So I had already
8 asked him, at that point, cause I'm grabbing envelopes then
9 cause, at that point, I already asked him if he had a book
10 bag and he had shookened (sic) his head no to let me know he
11 did not have a book bag on him. So that's where I start
12 putting some money into envelopes.

13 All right. At that point I'm getting back into my
14 thing and that is the dye pack that I have grabbed out then
15 because I realize I can probably get away with sliding that
16 dye pack into the stuff even though he had mentioned not to
17 because he wasn't paying as much attention. So that's when
18 I took the dye pack and shoved it up into one of the
19 envelopes also.

20 Q So he didn't react to you putting the dye pack in?

21 He didn't know what it was?

22 A No, I mean it's banded money. It's got a strap on it.
23 So I mean he wasn't paying -- you know, he didn't speak at
24 all throughout the whole thing. He did not talk to me at
25 all.

Jennifer Rodriguez - Direct examination
by Solicitor Barnette

1 Q What kind of money are you giving to him though?

2 A I actually threw some straps of ones in there because,
3 like I said, he wasn't paying as much attention. So I threw
4 some ones in there cause it looked -- they're thicker cause
5 a strap of ones is a hundred dollars. So it looks like a
6 lot of money and I figured if I could shove it in the
7 envelope without him noticing it, that I would be able to
8 get away with, you know, not giving him as much, but it
9 would look like I gave him a decent amount of money.

10 Q So you ran to the door and you actually saw him going
11 out?

12 A Yes, sir, I watched him, I watched him walk across the
13 parking lot. I watched him get to -- I mean I saw Rob
14 coming. So I stayed at the door. I was trying to get Rob's
15 attention. I was pointing, you know, trying to get him to
16 look at me so that he could, you know, see this guy cause I
17 had -- they were gonna pass paths, you know, cross paths and
18 he would be able to see a better view of him.

19 So I actually stood there until Rob -- I mean I watched
20 the dye pack go off. Once Rob realized what was going on
21 and he looked and I realized he knew, that's when I came
22 back in.

23 Q Okay. And there was approximately over \$2,000 in the
24 money you gave him?

25 A I believe so, yes, sir.

Jennifer Rodriguez - Direct examination
by Solicitor Barnette

1 Q If you would, please answer any questions that---

2 A Yes, sir.

3 Q ---defense may have for you, ma'am.

4 THE COURT: Mr. Shealy, your witness.

5 MR. SHEALY: Thank you, Your Honor.

6 Just a few questions.

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. SHEALY:

10 Q Just a couple of questions---

11 A Yes, sir.

12 Q ---Ms. Rodriguez.

13 What was he doing with his hands at the time?

14 What was the robber doing with his hands?

15 A To be honest, I really wasn't paying attention.

16 Q Okay. Cause it looked like, from one, was it over his
17 face or---

18 A He had, I think, a bandanna. You know, I thought he
19 was -- you know, when he walked in, he was like this. Like
20 I said, I thought he was coughing. You know, I think it was
21 maybe trying to cover, you know, he had the bandanna or
22 something on his face. I think was trying to cover that.
23 But, you know, a lot of people come in and, you know, you
24 cough. That was my first thought, but I mean I think he
25 might of been, and, like I said, once he hit my window and I

Jennifer Rodriguez - Cross-examination
by Mr. Shealy

1 knew, I didn't want to look at him. I'm not gonna lie. I
2 mean that just scared me that he would be able to point me
3 out later on and, you know, know who I was.

4 Q Okay. So you don't know if he had his hand over his
5 face or what he was doing with this other hand or anything
6 like that?

7 A The one hand, I mean I don't think I saw one hand. If
8 you go through that video, I think the one hand stayed low.
9 I think you could only see the one hand throughout the time.
10 That was the one more up by his face with the bandanna and
11 stuff.

12 Q Okay. And he wasn't talking on a cell phone---

13 A No, sir.

14 Q ---or anything like that?

15 A No, sir, he didn't speak at all.

16 Q All right.

17 A He did not answer me verbally at all.

18 Q Okay. And you saw him through or you saw the dye pack
19 go off?

20 A Yes, sir, cause I stood -- if you look at one of the
21 videos, you can see like -- when you leave, there's the
22 first set of double doors that you have to go out and then
23 there's a second set of double doors. So I was able to
24 stand between the two double doors and watch to see which
25 way he goes so that way I could be relaying back into the

Jennifer Rodriguez - Cross-examination
by Mr. Shealy

1 bank this is where he's headed, he's headed this way to let
2 them know cause they, you know, at that point, Jerri already
3 knew what was going on. So I was trying to relay back which
4 way he was going and then I was able to see the dye pack go
5 off.

6 Q Okay. Did you see him get into a vehicle or anything
7 like that?

8 A No, sir, once, like I said, once that dye pack went
9 off, I was back into the bank cause I knew, at that point, I
10 had stuff I need to take care of.

11 Q And how far had he gotten when the dye pack went off?

12 A Across the street into the Speedee parking lot right
13 there.

14 MR. SHEALY: Okay. That's all I have for this witness,
15 Your Honor.

16 THE COURT: Redirect.

17 SOLICITOR BARNETTE: No questions, Your Honor. I was
18 gonna ask if the witness could be excused, Your Honor.

19 THE COURT: Any objection to her being excused?

20 MR. SHEALY: No, Your Honor.

21 THE COURT: Ma'am, you may step down and you're free to
22 go if you'd like.

23 THE WITNESS: Thank you.

24 THE COURT: The State may call its next witness.

25 SOLICITOR BARNETTE: I'd like to call Robert Cooper to

Robert Cooper - Direct examination
by Solicitor Barnette

1 the stand please.

2 THE COURT: Come forward, sir, to be sworn.

3 ROBERT COOPER, being first duly
4 sworn, testified as follows:

5 THE COURT: Once seated, state your name, sir.

6 THE WITNESS: Robert Cooper.

7 THE COURT: Thank you.

8 Mr. Barnette, your witness.

9 SOLICITOR BARNETTE: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY SOLICITOR BARNETTE:

12 Q Mr. Copper, where do you work at, sir?

13 A BB&T Bank on the west side.

14 Q And what is your position there, sir?

15 A Branch manager.

16 Q And this -- it's located on W O Ezell Boulevard.

17 Is that right?

18 A At 1488 W O Ezell Boulevard.

19 Q And that's in Spartanburg?

20 A Yes, it is.

21 Q In the City of Spartanburg?

22 A Yes, it is.

23 Q And back on January 22nd, 2015, was you working that
24 day, sir?

25 A I was.

Robert Cooper - Direct examination
by Solicitor Barnette

1 Q And, that day, did you go across the street that
2 afternoon?

3 A I did. I actually came back from a lunch appointment
4 and had a prospective banking client, business client across
5 the street in the shopping center across the street and it
6 was a short walk. So I walked over there to talk with them
7 about some banking services and things like that.

8 Q And did you come back to the bank?

9 A I did and it's when I walked back to the bank that I
10 saw what was going on.

11 Q And this bank is a federally chartered bank with the
12 State of South Carolina.

13 Is that correct?

14 A Yes, sir.

15 Q And let me show you State Exhibit No. 12.

16 Have you had a chance to review this video, sir?

17 A I have.

18 Q Does that video fairly represent what you saw that day?

19 A Yes, it does.

20 Q And is this from the Speedee Oil Cleaning I guess their
21 camera there nearby y'all's bank?

22 A Yes, they have a cameras as well at that place.

23 SOLICITOR BARNETTE: Your Honor, I'd like to move State
24 Exhibit 12 into evidence at this time.

25 THE COURT: Any objections?

Robert Cooper - Direct examination
by Solicitor Barnette

1 MR. SHEALY: No, Your Honor.

2 THE COURT: Without objections it will be admitted into
3 the record.

4 (WHEREUPON, State's Exhibit No. 12 was received into
5 evidence at this time.)

6 THE COURT: You may publish.

7 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 SOLICITOR BARNETTE: Go ahead and publish State Exhibit
10 12 at this time.

11 THE COURT: All right.

12 (Pause.)

13 SOLICITOR BARNETTE: I apologize. My computer is not
14 the fastest.

15 Q Mr. Cooper, can you describe what area this is?

16 A Yes, that's the oil change Speedee spot that is just
17 next to our branch. Our branch is in the far top right
18 corner beyond the American flag.

19 Q That's where y'all's bank is and the parking lot is
20 there?

21 A Yes, and there's a road, Saint Matthews Road, between
22 us and the oil change place.

23 Q And which direction is you coming from, sir?

24 A I'll be coming from the far left-hand side of the
25 screen. I walked across 29.

Robert Cooper - Direct examination
by Solicitor Barnette

- 1 Q Show you the video. There's a laser pointer on top.
2 A This one?
3 Q Yes, sir, or point that one. It's right there. Right
4 there.
5 A Oh, okay.
6 Q That should be it.
7 A I see it. I see it.
8 Q Those are -- okay. There you go.
9 A So I'll be coming from -- I had parked my car here
10 after lunch and walked across the street and out of the
11 picture to the shopping center across the street to talk to
12 the --.
13 Q And I'm going to fast forward to, to the area
14 approximately where you start walking across the street.
15 A And then I start walking back this way as I come back
16 to the bank.
17 Q Should be coming along here in a second. That's the
18 wrong one. I went forward a little bit.
19 Is that you coming across the street, sir?
20 A Yes, it is.
21 Q And is this the gentleman coming out of the bank above
22 the---
23 A Yes, that is him. At that point I don't think I had
24 noticed him, but somewhere around this point I look up and
25 notice that we're walking towards each other, and that --

Robert Cooper - Direct examination
by Solicitor Barnette

1 notice that there were red dye coming from his clothes or
2 what appeared to be from underneath his clothes, and, at
3 first, for the first second or two, I was like what, what is
4 that, and it just took a couple seconds to realize that he
5 had probably just robbed the bank. And so around that time
6 or maybe just before this moment I look up and I see
7 Jennifer locking the doors and she was pointing at him. So
8 I noticed that he had -- I figured that he had robbed the
9 bank and so I watch him, and, and back up a little bit, but
10 I watched him---

11 Q I'm gonna start it over again so you can---

12 A That's fine.

13 Q ---so the jury can see him better.

14 A I was witnessed to him throwing the money underneath
15 one of those vehicles parked right beyond the American flag
16 and---

17 Q I'll let it run though and let you describe it.

18 A That's fine. So, yeah, right around this point I made
19 contact with him. I see the red dye. It takes me a couple
20 seconds to realize he had probably just robbed our branch.
21 Jennifer's locking the front doors and pointing at him. So
22 at this point I know he had just robbed the branch. So I
23 turn around and I'm watching him, and as he makes his way
24 through this parking lot, he takes some of the money and
25 throws it under those vehicles right there. So I'm just

Robert Cooper - Direct examination
by Solicitor Barnette

1 watching him go and he, of course, starts to run. You'll
2 see me actually move back into the Speedee parking lot here
3 in a couple of minutes and try to watch to where he is going
4 and seeing if I could see a vehicle that he entered. And
5 within a couple minutes the employee from the Speedee
6 location come out cause I think they realized something was
7 going on.

8 And so I just directed them to, of course, not touch
9 any of the money or anything like that. But I'm just kind
10 of walking back towards the sidewalk to try to see where
11 he's running to cause the gas station is on the other side
12 of the Speedee parking lot, and he was running through the,
13 through that gas station parking lot as well. And here the
14 employees are coming out just realizing that something's
15 going on. And, of course, at this point, the police had
16 already been called and were on their way to the location
17 and I was just instructing them to not touch anything since
18 I knew that the police were going to handle all of that.

19 Q Okay. Could you see him after that when you came back
20 down and try to look and find him?

21 A I lost him once he got through the gas station parking
22 lot. So I could not see the -- him after he ran through the
23 gas station parking lot.

24 Q So he actually ran through the gas station parking lot?

25 A Yes.

Robert Cooper - Direct examination
by Solicitor Barnette

1 Q And obviously the police came.

2 It was over \$2,000 taken in the bank robbery --

3 A Yes, sir.

4 Q -- from your knowledge.

5 If you would, please answer any questions that

6 Mr. Shealy may have for you. Thank you, sir.

7 THE COURT: Mr. Shealy, your witness.

8 MR. SHEALY: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. SHEALY:

12 Q When you noticed him coming out of the bank, was he on
13 a cell phone?

14 A Not to my knowledge. I didn't see him talking on any
15 kind of cell phone or anything like that.

16 Q Okay. And he was headed, I guess, you said across the
17 SpeedDee Oil Change?

18 A Yes.

19 Q All right. And how far did he get before you lost
20 sight of him?

21 A Around the gas station. Somewhere around that gas
22 station parking lot is where I lost sight of him.

23 Q All right. So you didn't see him get into any vehicles
24 or anything like that?

25 A I did not.

Robert Cooper - Cross-examination
by Mr. Shealy

1 Q Did you see any vehicles approaching him --

2 A I did not.

3 Q -- as though to give him any kind of aid or anything?

4 A I did not see that.

5 Q Okay. Did you see the dye pack go off?

6 A Yeah, I mean essentially it was going off when I first
7 noticed him. I mean the smoke and red dye was coming out
8 really from underneath of his clothes -- clothing.

9 Q Okay. And did you see him interact with anybody else?

10 A I did not.

11 Q And did you see him dropping the money?

12 A Yes.

13 Q You did see that?

14 A I saw that.

15 Q And whereabouts did he drop the money?

16 A He took the money and threw it under the vehicle
17 there---

18 Q Okay.

19 A ---two or three -- it looked like two or three packs
20 of, of money that he threw there.

21 MR. SHEALY: All right. That's all I have for this
22 witness.

23 THE COURT: Redirect.

24 SOLICITOR BARNETTE: No further questions. We'd ask he
25 be excused, Your Honor.

Shyquone williams - Direct examination
by Solicitor Barnette

1 THE COURT: Any objection to this witness being
2 excused?

3 MR. SHEALY: No, sir.

4 THE COURT: Sir, you may step down. You're free to go
5 it you'd like.

6 THE WITNESS: Thank you.

7 THE COURT: Thank you for coming today.

8 SOLICITOR BARNETTE: Your Honor?

9 THE COURT: State may call its next witness.

10 SOLICITOR BARNETTE: Like to call Mr. Williams.

11 Shyquone Williams.

12 Mr. Williams, if you would, come up and have a seat up
13 here.

14 THE COURT: Come forward up here, sir.

15 SHYQUONE WILLIAMS, being first
16 duly sworn, testified as follows:

17 THE CLERK: You may be seated.

18 THE COURT: Have a seat, sir. Once you're seated,
19 state your name please.

20 THE WITNESS: My name is Shyquone Williams.

21 THE COURT: Thank you.

22 Your witness, Mr. Barnette.

23 DIRECT EXAMINATION

24 BY SOLICITOR BARNETTE:

25 Q Mr. Williams, I know you speak -- you're soft spoken.

Shyquone Williams - Direct examination
by Solicitor Barnette

1 I need you to speak up louder.

2 Okay. We need for you to be able for this lady---

3 THE COURT: Move as close to the microphone as you can,
4 Mr. Williams.

5 (Witness complies.)

6 THE COURT: Thank you.

7 Q Sir, where do you live at right now?

8 A 320 Spruce Street.

9 Q And who do you live with, sir?

10 A My grandmother.

11 Q And is that the lady in the back row there---

12 A Yes.

13 Q ---with you?

14 A Yes, sir.

15 Q How old are you now, Mr. Williams?

16 A Seventeen.

17 Q Back on February 22nd, 2015, how old was you then,
18 sir?

19 A Sixteen.

20 Q And when's your birthday, sir?

21 A August 8th.

22 Q Do you know the defendant in this case, sir?

23 A Yes, sir.

24 Q And who is he, sir?

25 A Calvin Williams.

Shyquone Williams - Direct examination
by Solicitor Barnette

- 1 Q And what relation is he to you, sir?
- 2 A My father.
- 3 Q He's your father.
- 4 Is that right?
- 5 A Yes, sir.
- 6 Q Back on January 21st, 2015, was you contacted by him?
- 7 A Yes, sir.
- 8 Q How was you contacted by him?
- 9 A Through my brother.
- 10 Q Okay. And he talked to you that day?
- 11 A Yes, sir.
- 12 Q And how did he talk to you that day?
- 13 A Over the phone.
- 14 Q Okay. And where did he meet you at that day?
- 15 A 320 Spruce Street.
- 16 Q Okay. And who came with him that day?
- 17 A Leanne Foster.
- 18 Q And who's Leanne Foster?
- 19 A His girlfriend.
- 20 Q You need to talk a little louder. This lady here needs
- 21 to hear you.
- 22 Okay. If you would, talk loud so that, so they can
- 23 hear you, okay, if you would, and I know it's tough, but
- 24 talk as loud as you can if you can.
- 25 who was the person with him when they met you at

Shyquone Williams - Direct examination
by Solicitor Barnette

- 1 Spruce, Spruce Street?
- 2 A Leanne Foster.
- 3 Q And who is that?
- 4 A His girlfriend.
- 5 Q Okay. And what was they driving that day?
- 6 A A silver, a silver Charger.
- 7 Q And where did y'all -- once they picked you up, where
- 8 did you go?
- 9 A Jonesville.
- 10 Q Jonesville, South Carolina?
- 11 A Yes, sir.
- 12 Q And who lived there?
- 13 A Leanne.
- 14 Q Okay. And when y'all got there, did y'all go into her
- 15 residence?
- 16 A Yes, sir.
- 17 Q Okay. And did you and your dad talk?
- 18 A Yes, sir.
- 19 Q How long had it been since you had seen your dad?
- 20 A About ten years.
- 21 Q Okay. So you hadn't seen him for a long time then?
- 22 A Yes, sir.
- 23 Q When he was talking to you, did y'all just talk trying
- 24 to catch up on things and things like that?
- 25 A Yes, sir.

Shyquone Williams - Direct examination
by Solicitor Barnette

- 1 Q Did he tell you at or did he discuss to you about doing
2 some hits or big money things?
- 3 A Yes, sir.
- 4 Q And what kind of big money things did he talk to you
5 about?
- 6 A He said something about robbing a bank.
- 7 Q Okay. Did he tell you where this bank was?
- 8 A Not, not that exact date.
- 9 Q Okay. This was that day, right?
- 10 A Yes, sir.
- 11 Q Did you stay that night?
- 12 A Yes, sir.
- 13 Q When y'all got up in the morning, did y'all talk some
14 more?
- 15 A Yes, sir.
- 16 Q What else did you talk about?
- 17 A He just said that we gonna do it today and then we
18 left.
- 19 Q Okay. And who, who -- do what today?
20 what do you mean?
- 21 A Rob the bank.
- 22 Q Okay. And who wrote the note in this case?
23 who wrote the bank note?
- 24 A I wrote it.
- 25 Q Okay. Did he write a note before you before that?

Shyquone Williams - Direct examination
by Solicitor Barnette

1 A Yes, sir.

2 Q And did he ask you to copy it over in your handwriting?

3 A Yes, sir.

4 Q And he wanted it in your handwriting.

5 Is that right?

6 A Yes, sir.

7 THE COURT: Ma'am, are you able to hear?

8 THE JUROR: I'm good.

9 THE COURT: Okay. Just wanted to be sure.

10 Go ahead, Mr. Barnette.

11 SOLICITOR BARNETTE: Thank you, Your Honor.

12 I'd like to show you State Exhibit 48 and it's already
13 been entered into evidence.

14 Who told you how to write that note?

15 A Calvin Williams.

16 Q And your dad did write it.

17 Is that right?

18 A Yes, sir.

19 Q He told you what to put in that note?

20 A Yes, sir.

21 Q And you wrote down what he had wrote down earlier.

22 Is that right?

23 A Yes, sir.

24 Q Is this the note you handed the bank teller that next
25 day on January 22nd?

Shyquone Williams - Direct examination
by Solicitor Barnette

- 1 A Yes, sir.
- 2 Q When y'all came back to Spartanburg, who was driving?
- 3 A Leanne Foster.
- 4 Q Okay. Where did she drop you off at?
- 5 A My cousin house.
- 6 Q Okay. And who's your cousin?
- 7 A Devin Williams.
- 8 Q When y'all got dropped off there, what happened next?
- 9 A I went to sleep for a little while --
- 10 Q Uh-huh. (Affirmative).
- 11 A -- and then he woke me up and said you ready, and then
- 12 he wrote the note, I copied it, and we left.
- 13 Q Okay. So who woke you up?
- 14 A My father.
- 15 Q Okay. After he woke you up and got you up and got the
- 16 note, where did y'all -- what did y'all do next?
- 17 A We walked to the south side, Union Street.
- 18 Q Walked to Union Street?
- 19 A Yes, sir.
- 20 Q Who did y'all meet there?
- 21 A One of his friends.
- 22 Q Okay. And when he talked to one of his friends, what
- 23 happened then?
- 24 A A van pulled up and he asked him for a ride.
- 25 Q Okay. Did you know any of these people?

shyquone williams - Direct examination
by Solicitor Barnette

- 1 A No, sir.
- 2 Q Did you know his friend that he had talked to?
- 3 A No, sir.
- 4 Q Did you know the gentleman driving the van?
- 5 A No, sir.
- 6 Q When the van got there, what, what was discussed or
- 7 what happened then?
- 8 A He asked him for a ride. He said he had \$7.00 for him
- 9 for gas now and he'd give him 20.00 later.
- 10 Q Okay. And the guy agreed to that?
- 11 A Yes, sir.
- 12 Q Did the guy know anything about this bank robbery?
- 13 A No, sir.
- 14 Q So he gave him \$7.00 for the ride?
- 15 A Yes, sir.
- 16 Q And this fellow drove y'all where to?
- 17 A He drove us to East Main Street.
- 18 Q Okay. And where did he park at?
- 19 A By a gas station behind the monster truck across the
- 20 street from Jason's Deli.
- 21 Q Okay. So it's between like -- between the gas station
- 22 and the Jason's Deli in that parking lot area right in
- 23 there?
- 24 A Yes, sir.
- 25 Q And what was you wearing that day.

Shyquone Williams - Direct examination
by Solicitor Barnette

1 A I had on only some khaki pants, a black jacket, a black
2 hoodie, and blue shirt.

3 Q Okay. And did he instruct you what to do?

4 A Yes.

5 Q And did -- he had told you about the note.

6 How -- what did -- what was you suppose to do?

7 What did he tell the guy how he was gonna get his

8 \$20.00?

9 A He said that I was gonna go pick up the money -- he
10 said he had somebody waiting outside the bank to pick up the
11 money and I was gonna go get it.

12 Q Okay. So he told the driver that you were gonna go get
13 the money for him?

14 A Yes, sir.

15 Q And the fellow was at the bank?

16 A Yes, sir.

17 Q So did you walk from the van to the bank?

18 A Yes, sir.

19 Q Was you the gentleman we saw -- was you the gentleman
20 that robbed the bank?

21 A Yes, sir.

22 Q And once you got the money outside, what happened once
23 you got outside the bank with the money?

24 A It exploded. It exploded. It exploded in a red ink.
25 So I pushed it out my pocket, kicked it up under the car,

Shyquone Williams - Direct examination
by Solicitor Barnette

1 and walked back to -- and walked and ran back to the van.

2 Q So you did both, you ran and walked back?

3 A Yes, sir.

4 Q When you got back to the van, what happened then or
5 what did you say?

6 A He asked me did I have it. I said no, he wasn't there
7 and we pulled off.

8 Q And what happened -- what did the guy want to know
9 about his money, the driver?

10 A Yes, sir.

11 Q And what did Calvin, your dad, say?

12 A He said that he wasn't there. So he couldn't get it.

13 Q Now, you had red dye on you.

14 How did you cover that up or what was you trying to do
15 with that?

16 A I had my hands -- I had my hands in my jacket pocket
17 and was pulling my hoodie and my jacket over me.

18 Q So -- and did you have red dye on your hands too?

19 A Yes, sir.

20 Q In the van, what happened then once the guy just drove
21 off?

22 A We -- my father asked him to drop us off back on Union
23 Street. The man say he couldn't do it cause he had to pick
24 up his daughter and his wife. So he dropped us off at the
25 gas station across the street from Quail Pointe.

Shyquone Williams - Direct examination
by Solicitor Barnette

1 Q Okay. So he wanted -- your dad wanted to go to Union
2 street, but he said I can't take you -- he couldn't take you
3 there because of he had some -- with his family?

4 A Yes, sir.

5 Q Okay. So he wound up dropping you off at the gas
6 station at Quail Pointe Apartments?

7 A Yes, sir.

8 Q When you got out of the van there, what did y'all do
9 then, you and your dad?

10 A We was walking across the street to Quail Pointe. My
11 father took off his orange hoodie and gave it to me.

12 Q Okay. What happened to your khaki -- what did you have
13 underneath your khaki pants?

14 A Some gray shorts.

15 Q Okay. And what did you do with your khaki pants, your
16 hoodie, and your coat?

17 A I gave them to my father and he threw them inside the
18 bushes.

19 Q So they threw them in the -- they were thrown in the
20 pushes.

21 Is that right?

22 A Yes, sir.

23 Q And so he gave you the orange hoodie that you was
24 wearing afterwards?

25 A Yes, sir.

Shyquone Williams - Direct examination
by Solicitor Barnette

- 1 Q And you were in your shorts?
- 2 A Yes, sir.
- 3 Q And did y'all go back into the Quail Pointe parking lot
- 4 or that area where the cars were?
- 5 A Yes, sir.
- 6 Q And did the Sheriff's Department come up to y'all after
- 7 that?
- 8 A Yes, sir.
- 9 Q And did they detain y'all after that?
- 10 A Yes, sir.
- 11 Q Now, initially what did you tell law enforcement about
- 12 your dad's involvement?
- 13 A I said that he had nothing to do with it.
- 14 Q Why did you do that?
- 15 A Because I didn't, I didn't want him to get in no
- 16 trouble.
- 17 Q Okay. But was he the one that planned this?
- 18 A Yes, sir.
- 19 Q Was he the one that told you what to do?
- 20 A Yes, sir.
- 21 Q And he's the one told you how to write the note?
- 22 A Yes, sir.
- 23 Q And you was suppose to take a book bag with you.
- 24 Is that right?
- 25 A Yes, sir.

Shyquone Williams - Direct examination
by Solicitor Barnette

1 Q Did you forget the book bag in the van?

2 A Yes, sir.

3 Q And who had the book bag when the Sheriff's Department
4 came up to them?

5 A My father.

6 Q Okay. If you would, answer any questions the defense
7 may have for you, sir. Thank you.

8 A (Witness nods affirmatively.)

9 THE COURT: Mr. Shealy, your witness.

10 MR. SHEALY: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. SHEALY:

13 Q If I may have a moment. I have some things -- bear
14 with me a moment.

15 (Pause.)

16 Q So you were detained shortly after this incident,
17 Mr. Williams?

18 A Yes, sir.

19 MR. SHEALY: And push the off button.

20 Is that right?

21 It's not gonna mess this thing up, is it?

22 SOLICITOR BARNETTE: It's not, no.

23 Q All right. And you've testified that you initially
24 told the police officers that Mr. Williams, that your father
25 had nothing to do with this, right?

Shyquone Williams - Cross-examination
by Mr. Shealy

- 1 A Yes, sir.
- 2 Q In fact, initially you were -- you didn't say you even
- 3 really knew him.
- 4 Is that correct?
- 5 A Yes, sir.
- 6 Q Do you know how long the officers talked to you for?
- 7 A Not the exact time, sir.
- 8 Q Would an hour and 21 sound about right?
- 9 A Yes, sir.
- 10 Q So they talked to you for a good long while?
- 11 A Yes, sir.
- 12 Q All right. And, in fact, they actually talked to you
- 13 right when they pulled up on you.
- 14 Isn't that true?
- 15 A Yes, sir.
- 16 Q You remember Officer Pridmore?
- 17 A Yes, sir.
- 18 Q Do you remember discussing with him how Mr. Williams,
- 19 how your father, well, Calvin Williams, the guy you were
- 20 with, didn't have anything to do with this?
- 21 A Yes, sir.
- 22 Q Do you remember talking to a Officer Fraley?
- 23 A Yes, sir.
- 24 Q I think he was the one who transported you, right?
- 25 A Yes, sir.

Shyquone Williams - Cross-examination
by Mr. Shealy

1 Q And you told him, on three separate occasions, four
2 separate occasions, that he had nothing to do with this.

3 Isn't that right?

4 A Yes, sir.

5 Q Okay. And were they asking you these questions or were
6 you just volunteering this information or do you remember?

7 A I was volunteering it.

8 Q You were volunteering it?

9 A Yes, sir.

10 Q So just over and over and over again you were telling
11 them he had nothing to do with it?

12 A Yes, sir.

13 Q All right. And who were you living with at this point?

14 A My grandmother.

15 Q Cause you would -- again, your living situation
16 can't -- comes up and I guess you were staying with your
17 grandmother some, but not all of the time?

18 A Yes, sir.

19 Q Where else were you staying?

20 A I was staying at Devin house and sometimes at Leanne's.

21 Q At Leanne's house?

22 A Yes, sir.

23 Q Whose Leanne's?

24 A My father's girlfriend.

25 Q So you were at, from time to time there, spending time

Shyquone Williams - Cross-examination
by Mr. Shealy

1 with -- at, at your father's girlfriend's house?

2 A After I came home, yes, sir.

3 Q After you came home.

4 A Yes, sir.

5 Q Okay. So how many times had you been at Leanne's
6 house?

7 A Twice.

8 Q Okay. Now, isn't it true that you actually been at
9 Leanne's house for the prior I believe it was six days?

10 A Yes, sir.

11 Q So you'd been at Leanne's house the prior six days?

12 A Yes, sir.

13 Q So it's not that this was the first time in ten years
14 you had seen your father because you'd been at his house for
15 six days.

16 Is that correct?

17 A Yes, sir.

18 Q All right. Now, you've testified that you got to
19 Jonesville in a silver Charger.

20 Is that right?

21 A Yes, sir.

22 Q Okay. Do you remember talking to an Investigator
23 Gregory?

24 A No, sir.

25 Q You don't remember talking to an Investigator Gregory

Shyquone Williams - Cross-examination
by Mr. Shealy

1 --

2 A No, sir.

3 Q -- back on February 23rd of 2016?

4 A No, sir.

5 Q You do remember or you don't?

6 I'm sorry. You---

7 A I don't.

8 Q You don't remember that.

9 Okay. So you don't remember speaking -- I believe you
10 were speaking with Mr. Barnette as well as there was an
11 investigator in the room.

12 A I don't remember, sir.

13 Q You don't remember.

14 You don't remember that happening or you don't remember
15 speaking to that person particularly?

16 A I don't remember speaking to that person particularly.

17 Q Okay. So he could of been in the room, but you don't
18 remember if that's who was in the room?

19 A Yes, sir.

20 Q Cause I mean at, at times prior to this you have spoken
21 with Mr. Barnette.

22 Is that right?

23 A I believe so, sir.

24 Q Mr. Barnette's the prosecutor. He's this guy right
25 here.

Shyquone Williams - Cross-examination
by Mr. Shealy

1 A Yes, sir.

2 Q And I believe your lawyer probably would of been
3 present?

4 A Yes, sir.

5 Q All right. And who is your lawyer?

6 A Michael -- I forgot. I don't know.

7 Q You don't know his name?

8 A No.

9 Q Okay. Mike Morin.

10 Might that be it?

11 A Yes, sir.

12 Q All right. All right. Now, you've told the -- when
13 you were talking with the police, and you're going through
14 what happened, do you recall, recall giving a story
15 regarding that you needed money?

16 A No, sir.

17 Q You don't remember giving that story?

18 A No, sir.

19 Q That about 4:21 of that day they were -- they asked you
20 why did you go rob the bank, why, and you said I needed
21 money.

22 You don't remember saying that?

23 A No, sir.

24 Q And you don't remember telling the investigators again
25 that the whole thing was your plan, your idea, that you

Shyquone Williams - Cross-examination
by Mr. Shealy

1 planned everything, you wrote the note, and that those other
2 people didn't have anything to do with it?

3 A Yes, sir.

4 Q You do remember telling them that?

5 A Yes, sir.

6 Q What made you change your mind because, for hours here
7 or an hour here, 19 times you say they didn't have anything
8 to do with it, he didn't have anything to do with it, and
9 then all of a sudden you say well, he did have something to
10 do with it?

11 Why did you flip like that?

12 A At that point in time I was afraid of him.

13 Q You were afraid of who?

14 A My father.

15 Q You were afraid of your father?

16 A (Witness nods affirmatively.)

17 Q Okay. But, again, for an hour you had been in a
18 investigator's room.

19 Were you in -- were you kept in that investigation room
20 with your father?

21 A No, sir.

22 Q Who was in the room with you?

23 A A detective.

24 Q And how many detectives?

25 A I think two.

Shyquone Williams - Cross-examination
by Mr. Shealy

1 Q Two detectives and you were afraid of your father
2 despite the fact there were two detectives there?

3 A Yes, sir.

4 Q Do you remember actually speaking with a third
5 detective?

6 A Yes, sir.

7 Q Is -- I believe he's the one who initially spoke with
8 you. I think that was investigator -- was that Mathis?

9 Excuse me.

10 Investigator Tapp, he was the first investigator to
11 talk to you.

12 A Yes, sir.

13 Q In the room?

14 In the interrogation room?

15 A Yes, sir.

16 Q And when he asked if you wanted to talk to him you told
17 him no.

18 Is that accurate?

19 A Yes, sir.

20 Q Shook your head you didn't want to talk to him, and
21 then they brought in a second investigator, and that would
22 be Investigator Letterman, and you didn't mention being
23 afraid of your father to Investigator Letterman either, did
24 you?

25 A No, sir.

Shyquone Williams - Cross-examination
by Mr. Shealy

- 1 Q And, in fact, over the several hours you were
2 interrogated, not once do you say I'm scared of him, do you?
- 3 A No, sir.
- 4 Q You understand they were police officers?
- 5 A Yes, sir.
- 6 Q And they, they had you arrested, correct?
- 7 A Yes, sir.
- 8 Q And they were leaning on you for information.
9 Is that correct?
- 10 A Yes, sir.
- 11 Q And at no point did you say I'm afraid of him.
12 Is that correct?
- 13 A Yes, sir.
- 14 Q And at no point in all of this, even when you were
15 telling them what you're testifying to now, did you say he's
16 a scary guy?
- 17 A No, sir.
- 18 Q So what -- so your testimony -- so what made you change
19 your mind?
20 what made you change your story?
- 21 A I was afraid of him.
- 22 Q And then you got unafraid of him?
- 23 A Yes, sir.
- 24 Q You got un -- when did you get unafraid of him?
- 25 A After he was incarcerated.

Shyquone Williams - Cross-examination
by Mr. Shealy

1 Q After he was incarcerated?

2 A Yes, sir.

3 Q Now I'm confused.

4 SOLICITOR BARNETTE: Your Honor, may we approach the
5 bench?

6 THE COURT: Yes, you may.

7 (WHEREUPON, a bench conference was held out of the
8 hearing of the jury at this time.)

9 SOLICITOR BARNETTE: Thank you, Your Honor.

10 THE COURT: You may proceed, Mr. Shealy.

11 MR. SHEALY: Thank you, judge.

12 THE COURT: Yes, sir.

13 Q Okay. Well, Mr. Williams, whenever I'm going through
14 this, and I was watching the video, do you recall when they
15 bring Mr. Calvin Williams into the interrogation room?

16 A No, sir.

17 Q You don't remember them bringing him in there?

18 A No, sir.

19 Q No.

20 You don't remember -- I'm sorry, judge. I'm trying to
21 craft my question.

22 You don't remember them bringing him in there and
23 asking him about a bank robbery?

24 A No, sir.

25 Q And his saying I don't know anything about a bank

Shyquone Williams - Cross-examination
by Mr. Shealy

1 robbery?

2 A No, sir.

3 Q And you then saying that---

4 SOLICITOR BARNETTE: Your Honor, I'm gonna object to
5 this line of questioning. They're talking about his client
6 or whatever trying to put testimony in through him.

7 MR. SHEALY: Judge, I'm not offering it as -- for the
8 truth of the matter asserted. It's as to the state of mind
9 of the defendant because it was -- they used it as a tactic
10 in my opinion.

11 THE COURT: Ladies and gentlemen of the jury, I'm gonna
12 ask you to step back to the jury room while I discuss the
13 matter with the attorneys. As always, I'll ask you, when
14 you leave the courtroom, don't discuss anything about the
15 case until I ask you to do so.

16 You may retire to the jury room now.

17 (WHEREUPON, the following takes place outside the
18 presence of the jury.)

19 THE COURT: I'm not privy to the nature of the
20 questioning or what went on. So I'm gonna ask for a little
21 more detail as to what's going on here.

22 MR. SHEALY: Yes, sir. At -- I have it at 16:48 flat
23 of the, of the videotaped interrogation of Mr. Shyquone
24 Williams. I'm sorry. I've got a new computer. So I'm
25 trying to figure it out.

Shyquone Williams - Cross-examination
by Mr. Shealy

1 SOLICITOR BARNETTE: Judge, I'm not, I'm not disputing
2 that. The thing---

3 THE COURT: Right.

4 SOLICITOR BARNETTE: ---I was disputing is he comes in
5 and he's saying what the client is saying and things like
6 that. I don't think that, unless the client testifies,
7 that's hearsay. That's self-serving hearsay.

8 MR. SHEALY: Judge, again, it was, it was used as a
9 tactic, in my opinion, to get Mr.---

10 THE COURT: What, what was used as a tactic?

11 MR. SHEALY: They -- okay. Yes, sir. They---

12 THE COURT: I don't know those things.

13 MR. SHEALY: Yes, sir.

14 THE COURT: I'm trying to find out what you're
15 referring to.

16 MR. SHEALY: They bring Mr. Calvin Williams into the
17 interrogation room. Well -- and they ask him if this bank
18 robbery was his idea. He says no, there wasn't anybody's
19 idea, what are you talking about, a bank robbery. They then
20 walk him back out. Mr. Shyquone Williams then says he's
21 your dad or they're -- he's told he's your daddy.

22 THE COURT: Well, now was this gentleman present when
23 that questioning took place?

24 MR. SHEALY: He was. He was.

25 THE COURT: Okay.

Shyquone Williams - Cross-examination
by Mr. Shealy

1 MR. SHEALY: Your Honor, and, in my opinion, that's --
2 well, that---

3 THE COURT: They brought them both in the same room?

4 MR. SHEALY: And that is when Mr. Shyquone Williams'
5 story changes as to what actually -- as to what happened
6 regarding this bank robbery.

7 THE COURT: All right.

8 MR. SHEALY: And so it's our position that, again, it's
9 not being offered for the truth of what my client was
10 saying. It's simply being offered for the affect on
11 Mr. Williams' story.

12 SOLICITOR BARNETTE: Your Honor, he can merely say was
13 your dad brought in there, and then, afterwards, did you
14 change your story. That's fine. I don't have -- but him
15 putting this hearsay, which is self-serving hearsay, yeah,
16 he is offering it for the truth of the matter. He's trying
17 to keep it from his client having to testify.

18 MR. SHEALY: Judge, I don't think it -- again, I'm not
19 offering it for the truth of the matter. All I can say is I
20 don't think it goes to the -- it isn't testimony. It's
21 simply words that had an affect or had apparently had an
22 affect on Mr. Shyquone Williams.

23 THE COURT: Well, I'm not gonna allow you to quote what
24 your client said unless he, unless he intends to testify but
25 I don't -- we haven't gotten to that stage of the case.

Shyquone Williams - Cross-examination
by Mr. Shealy

1 MR. SHEALY: We have not, Your Honor.

2 THE COURT: So I'm not gonna ask him to make that
3 position -- take that position. I don't mind you asking if
4 they were questioned at the same time in the same room, if
5 what he heard had any affect on his story. You can ask him
6 that, but don't quote what your client said.

7 MR. SHEALY: Yes, sir.

8 THE COURT: So I'll prevent you from doing that.

9 MR. SHEALY: Okay.

10 THE COURT: All right.

11 SOLICITOR BARNETTE: And, Your Honor, I think he's
12 staying away from this, but the reason why he's phrasing it,
13 they're several reasons for that and he keeps that line of
14 questions and I know it's---

15 THE COURT: Well, in our bench conference we had a
16 little discussion. Mr. Shealy's been asking about the
17 witnesses fear of the defendant. I don't know exactly why
18 he has a fear of the defendant. I suspect it could be
19 multiple reasons. I would suspect the State has cautioned
20 this witness about testifying about your client's prior
21 record and his involvement in other crimes.

22 So if you continue to ask this witness about those
23 things, I cautioned you, at that time, that you may be
24 opening the door to a statement by this witness that perhaps
25 those other factors were contributing to his fear of his

Shyquone Williams - Cross-examination
by Mr. Shealy

1 father and urged you to be careful in that regard.

2 Does that correctly state what we said at our
3 conference?

4 MR. SHEALY: It does, Your Honor.

5 THE COURT: Okay. So I would reiterate that if you, if
6 you continue to question this witness about the basis of his
7 fear, you certainly have a right to do that. I'm not
8 telling you you can't do it. But be aware that if he goes
9 into matters which ordinarily I would not allow him to go
10 into unless he were asked questions such as that---

11 MR. SHEALY: Yes, sir.

12 THE COURT: ---that may be allowed to go in front of
13 the jury and become a jury issue.

14 MR. SHEALY: Yes, sir.

15 THE COURT: Okay.

16 MR. SHEALY: That's why I, I stopped.

17 THE COURT: Okay.

18 MR. SHEALY: All right. I had stopped.

19 THE COURT: I think that's a wise thing to do.

20 Anyway, bring the jury in.

21 I'm gonna try to complete this witness and then break
22 for lunch where we are.

23 MR. SHEALY: Yes, sir.

24 (WHEREUPON, the following takes place within the
25 presence of the jury.)

Shyquone Williams - Cross-examination
by Mr. Shealy

1 THE COURT: All right. The record will reflect the
2 jury has returned to the courtroom.

3 I have sustained an objection by the State.

4 You may proceed, Mr. Shealy.

5 MR. SHEALY: Thank you, Your Honor.

6 CONTINUED CROSS-EXAMINATION

7 BY MR. SHEALY:

8 Q So you do -- do you remember when they brought him in
9 or not?

10 A No, sir.

11 Q You don't remember that at all?

12 A No, sir.

13 Q And you don't remember that---

14 THE COURT: Sir, speak up louder. I'm having a hard
15 time hearing you and I'm right beside you and I want to be
16 sure everybody can hear you.

17 THE WITNESS: Yes, sir.

18 THE COURT: You can go ahead.

19 Q And you don't remember that having an affect on your
20 testimony?

21 A No, sir.

22 Q No.

23 Okay. All right. Now, you've testified that
24 Mr. Williams had you copy out a note.

25 A Yes, sir.

Shyquone Williams - Cross-examination
by Mr. Shealy

1 Q Is that correct?

2 And that note is what was previously published. You
3 were -- talked about it, State's Exhibit No. 48. I'll hand
4 it up if you'd like.

5 If I may approach the witness?

6 THE COURT: You may.

7 Q He had you copy that note out?

8 A Yes, sir.

9 Q Okay. And then he -- when they brought you over to the
10 bank, they actually parked in the parking lot of Market
11 Square.

12 Is that what you testified to, that shopping center
13 over there where the Harbor Freight Tools is or where did
14 they have you to park?

15 A By the store. By the store.

16 Q By what store?

17 A The Kangaroo.

18 Q The Kangaroo.

19 Okay. So how close were you to the Jason's Deli over
20 there?

21 A It was right across the street.

22 Q Okay. And when you say across the street, you don't
23 mean the big street?

24 You mean just a small street?

25 A Yes, sir.

Shyquone Williams - Cross-examination
by Mr. Shealy

1 Q All right. Were they in sight of the BB&T or could you
2 see them from the BB&T?

3 A No, sir.

4 Q No. Did you have some way to communicate with the
5 people in the van?

6 A No, sir.

7 Q So, if you got into trouble, no help was coming?

8 A No, sir.

9 Q All right. Okay. Now, you've already testified that,
10 in fact, you had been at Leanne's in Jonesville for I guess
11 the six days prior to this.

12 Is that right?

13 A Yes, sir.

14 Q And now why did you -- what excuse did Mr. Williams,
15 did Mr. Calvin Williams give Mr. Blassingame as to why he
16 needed to go and park over there?

17 A I don't know, sir.

18 Q Do what?

19 A I don't know.

20 Q You don't know?

21 A (Witness nods negatively.)

22 Q You just said park over at The Kangaroo and my son's
23 gonna go to the bank?

24 A No, sir.

25 Q Okay. What did he say or how did, how did he convince

Shyquone Williams - Cross-examination
by Mr. Shealy

1 Mr. Blassingame to park over at The Kangaroo?

2 A He said that he can't go, he said that he can't go to
3 the bank.

4 Q And this is the conversation with Mr. Blassingame?

5 A Yes, sir.

6 Q Okay. And -- but you could go to the bank?

7 A Yes, sir.

8 Q And you needed to go meet another person?

9 A Yes, sir.

10 Q Who were you suppose to meet?

11 A I don't know.

12 Q You don't know?

13 A Nobody.

14 Q Okay. Cause, in fact, you had told my client that you
15 needed to go collect on a debt.

16 Isn't that why you needed to go to the bank?

17 A No, sir.

18 Q In fact, you told him that you had somebody who owed
19 you money from a transaction --

20 A No, sir.

21 Q -- who you didn't want to spook that person?

22 A No, sir.

23 Q That's why you had them park over next to The Kangaroo

24 --

25 A No, sir.

Shyquone Williams - Cross-examination
by Mr. Shealy

1 Q -- is so that guy wouldn't get concerned?

2 A No, sir.

3 SOLICITOR BARNETTE: Your Honor, I would object. Let
4 him answer -- at least have a chance to answer the question.

5 MR. SHEALY: Judge, he's been answering the questions.

6 THE COURT: Well, I'll instruct the witness is he needs
7 more time to explain his answer just let me know. I'll be
8 glad to be sure you have time to explain your answers.

9 You may proceed, Mr. Shealy.

10 Q So that's why they parked over at The Kangaroo, isn't
11 it?

12 A No, sir.

13 Q And you forgot the book bag because you're just bad at
14 bank robbing?

15 A No, sir.

16 MR. SHEALY: Okay. That's all I have for this witness.

17 THE COURT: Redirect.

18 SOLICITOR BARNETTE: No further questions of this
19 witness, Your Honor.

20 THE COURT: You may step down, sir.

21 MR. SHEALY: Judge, I'd ask to keep him here just in
22 case I need to call him for some reason.

23 THE COURT: All right. I'll ask that he stay
24 available.

25 SOLICITOR BARNETTE: Yes, sir.

1 THE COURT: All right. Ladies and gentlemen of the
2 jury, it's about ten minutes to 12:00. We're gonna break at
3 this time for lunch.

4 I'm gonna give you the same instructions I gave you
5 yesterday when you laid -- left the courthouse. Don't
6 attempt to gather any information about this case on your
7 own. Don't listen to, watch, or read media reports. Don't
8 discuss the case with anyone. Don't allow anyone to discuss
9 the case with you, and should anybody contact you about your
10 service on this jury, please report that upon your return to
11 the courthouse.

12 I'll ask you to be back in the jury room let's say a
13 little after 1:00. That will give you an hour and 15
14 minutes or about five after 1:00 or shortly after one
15 o'clock you'll be back in the jury room. We should be able
16 to begin shortly thereafter.

17 Thank you very much for your attention this morning.
18 The bailiffs will show you out.

19 (WHEREUPON, the following takes place outside the
20 presence of the jury.)

21 THE COURT: All right. Court's in recess until a
22 little after one o'clock.

23 Thank you very much.

24 SOLICITOR BARNETTE: May we approach for a second, Your
25 Honor?

1 THE COURT: Yes, sir, please do.

2 (WHEREUPON, a bench conference was held at this time
3 and then Court was in recess for the lunch hour.)

4 THE COURT: All right. Is the State ready for the jury
5 to come in?

6 SOLICITOR BARNETTE: State's ready, Your Honor.

7 THE COURT: Defense ready?

8 MR. SHEALY: Yes, sir.

9 THE COURT: All right. Let's bring the jury in.

10 (WHEREUPON, the following takes place within the
11 presence of the jury.)

12 THE COURT: All right. The record will reflect the
13 jury has returned to the courtroom.

14 I hope everyone had a good lunch, and if you anybody
15 had any problems in following my directions during your
16 absence, please stand.

17 (No response.)

18 THE COURT: It appears that all jurors have been able
19 to comply with my instructions thus far.

20 When we broke before lunch the State was in the process
21 of calling its witnesses.

22 Mr. Barnette, you may call your next witness.

23 SOLICITOR BARNETTE: Like to call Mr. Moore to the
24 stand, Your Honor.

25 THE COURT: Come forward, sir.

Jason Moore - Direct examination
by Solicitor Barnette

1 JASON MOORE, being first duly
2 sworn, testified as follows:

3 THE COURT: Please have a seat and state your name once
4 seated.

5 THE WITNESS: Jason Moore.

6 THE COURT: Mr. Moore, let me caution you, I understand
7 the microphones aren't working today.

8 THE WITNESS: Okay.

9 THE COURT: That's the reason we're not picking people
10 up. So if you'll speak up so that people on the back row
11 can hear you---

12 THE WITNESS: Jason Moore.

13 THE COURT: ---I'd appreciate it.

14 All right. Mr. Barnette, your witness.

15 SOLICITOR BARNETTE: Thank you, sir.

16 DIRECT EXAMINATION

17 BY SOLICITOR BARNETTE:

18 Q Do you live here in Spartanburg, sir?

19 A Yes, sir.

20 Q And how long have you lived in Spartanburg?

21 A Going on five years now, sir.

22 Q Okay. And back on January 22nd, 2015, last year,
23 that afternoon, did you go by the west side, the BB&T Bank?

24 A Yes, sir, I did.

25 Q If you would, tell the jury about what you saw and who

Jason Moore - Direct examination
by Solicitor Barnette

1 was with you.

2 A My fiancée was with me. We were coming back I believe
3 either from the mall or eating. We took a back way from the
4 mall coming up on the left side of BB&T. I believe it was a
5 car in front of us. We was waiting at the light. I believe
6 we were listening to the music or something, and then she
7 said is that smoke.

8 We turned around, saw it was red smoke. Saw a guy
9 cutting through the Jiffy Lube parking lot. Saw a white
10 male we now know to be the bank manager coming in that
11 direction also.

12 As the -- the young guy was running across after the,
13 the dye came, like kicked it, and kept running through the
14 Jiffy Lube, and so my fiancée opened her window and asked I
15 believe either the bank manager or one of the Jiffy Lube
16 employees had the bank been robbed or whatever the case was.

17 Anyway, once that happened, the light changed. She
18 immediately made a left turn. We saw the young guy getting
19 into a -- what looked like a Pontiac minivan. It was like a
20 tannish gray in color. They came out of the, the plaza, the
21 parking plaza, Jason's Deli, made a right, went to the
22 light, made a left.

23 At that time my fiancée was on the phone with 9-1-1,
24 and the operator, operator asked her to follow. I was kind
25 of hesitant cause we didn't know what they had going on, you

Jason Moore - Direct examination
by Solicitor Barnette

1 know, and just robbed the bank or whatever the case.

2 Anyway, she cut, she cut through the, the car wash and
3 proceeded to make a left turn past the Firehouse. I don't
4 know the names of the streets, but it was a Firehouse that
5 sits in the middle of the, the road. Anyway, she went
6 straight through. Went to the light. We had kind of like
7 lost them for a second. So she kind of like sped up and we
8 saw them going -- making a right at that light by the
9 McDonald's.

10 Q And when you're talking about the McDonald's, is that
11 Reidville Road we're talking about there?

12 A Yes, sir, I believe that is Reidville Road, yes, sir.
13 So they had made the right right there by the McDonald's and
14 I assumed the driver to see us because, when he made the
15 right, he immediately made a U-turn across the median and
16 made a right there after the U-turn by I believe that's a
17 Spinx. Continued to go down that road. By this time the
18 light changed and we were pretty much behind them.

19 They pulled into the gas station by Quail Pointe, and
20 then they turned around, again, around the pumps, if I can
21 recall correctly, and that's when we saw two people hop out
22 of the car. At the time, as a matter of fact, I want to say
23 the cops had rode by. They were going the wrong way. So
24 she told the, the operator that the cops were here, but they
25 are going past where these guys just came from.

Jason Moore - Direct examination
by Solicitor Barnette

1 So I said about a minute or two later they spun around,
2 and, and made the left into Quail Pointe. By this time
3 we're sitting in front of the Quail Pointe entrance facing
4 the gas station. A blue Crown Victoria came from behind us
5 and pulled up to the car. I'm assuming the operator told
6 them that we were sitting there. So he pulled up on the
7 side of us and we told him that the guy was now wearing
8 different clothes and it was two of them. The dude had on a
9 bright orange hoodie, pretty much the same color as I have
10 on right now, and ran into Quail Pointe. We didn't follow
11 them into Quail Pointe but the officers had already turned
12 into Quail Pointe.

13 Q So the guy you actually saw do the robbery, he had
14 changed his clothes at that time?

15 A Right. It was a guy holding a book bag and a guy
16 holding a, a -- I can't remember. This is a while ago now.
17 I can't remember if he was holding both the book bag and the
18 hoodie or he was just holding the book bag and one was
19 holding the hoodie.

20 Q Right.

21 A I can't -- it, it was a while ago.

22 Q But the one guy had changed into the orange hoodie?

23 A Yes, cause he had shorts on now.

24 Q Okay. So the guy you saw had khaki pants, dark
25 clothing up top?

Jason Moore - Direct examination
by Solicitor Barnette

1 A Yes, sir, that's the guy that cut through the, cut from
2 the bank into the Jiffy Lube. While he was running, like I
3 said, he kicked the -- he kicked it under what it looked
4 like -- I believe it was a blue pick-up truck, and then the
5 guys from the Jiffy Lube had came out, and I didn't see the
6 bank manager come that way. But we -- like I said, she had
7 asked him like did they rob the bank cause it was --
8 everything happened so fast. We didn't know what was going
9 on to be honest with you.

10 Q But two guys got out of the van?

11 A Yes, sir, at Quail Pointe, two guys got out and ran
12 into Quail Pointe.

13 Q And they both ran to Quail Pointe?

14 A Yes, sir.

15 Q One of them had a book bag or --?

16 A Yes, sir, I can't recall if, like I said, if he was
17 holding both items or one was holding one, one was holding
18 the other. But I recall seeing a book bag and an orange
19 hoodie.

20 Q And they were running---

21 A I know for a fact---

22 Q And they were running together?

23 A They were running into Quail Pointe, yes, sir.

24 Q Together?

25 A Yes, sir.

Jason Moore - Direct examination
by Solicitor Barnette

1 Q Okay. And you waited for the police -- for the
2 Sheriff's---

3 A Yes.

4 Q Directed the Sheriff's Department to the right
5 direction?

6 A Yes, sir. Yes, sir.

7 Q And did they go up in Quail Pointe?

8 A Yes, we were parked in the median in the street before
9 Quail Pointe.

10 Q Right.

11 A Like I said, some officers drove past us and then the
12 Crown Victoria pulled up on the passenger side, which I was
13 on. I rolled my window down and told them that they went
14 into Quail Pointe.

15 Q Okay. Did you see them ever again?

16 The two guys in the van, did you ever see them again?

17 A No, sir. No, I haven't.

18 Q Okay. And you stayed and gave a statement to the, the
19 Sheriff's Department?

20 A Yes, sir.

21 Q You went and talked to them, you and -- your fiancée is
22 here also I believe.

23 Is that right?

24 A Yes, sir.

25 Q And what's her name?

Jason Moore - Direct examination
by Solicitor Barnette

1 A Jalessa Burgess.

2 Q And she saw the same thing you did---

3 A Yes, sir.

4 Q ---basically from there?

5 A Yes, sir.

6 SOLICITOR BARNETTE: One moment, Your Honor, please.

7 THE COURT: Yes, sir.

8 (Pause.)

9 Q If you would, please answer any questions that
10 Mr. Shealy may have for you.

11 A No problem.

12 THE COURT: Mr. Shealy, your witness.

13 MR. SHEALY: Thank you, Your Honor.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. SHEALY:

17 Q You testified now and I think it's just because the
18 microphone's not working, but I didn't hear it, you said he
19 kicked it under a blue pickup.

20 A Yes, sir.

21 Q What?

22 A What I believed to be a blue pickup, yes, sir.

23 Q Right.

24 What is it?

25 A Whatever -- what I know now to be the dye pack, sir.

Jason Moore - Cross-examination
by Mr. Shealy

- 1 Q Okay. So you didn't -- it wasn't clothing or anything?
2 It was a -- apparently a dye pack?
3 A Yes, sir.
4 Q Okay. Like I say, I just couldn't hear you.
5 A No problem. No problem.
6 Q Do you recall giving a statement in this case?
7 A Yes, sir, I do.
8 Q And you wanted that statement to be complete?
9 A I'm sorry?
10 Q You wanted that statement to be complete?
11 A I don't understand what you mean by the question.
12 Q Did you want your statement to fully reflect what
13 happened?
14 A What I saw?
15 Q Yes.
16 A Yes, that's what I gave a statement to.
17 Q Okay. And, as you've said, this was a long time ago,
18 right?
19 A What I understand to be a year ago now, yes, sir.
20 Q Okay. Now I'm reviewing it and no where in the
21 statement does it say that they ran into Quail Pointe. It
22 says they go into Quail Pointe.
23 A Okay.
24 Q But no where does it mention running into Quail Pointe.
25 A Okay.

Jason Moore - Cross-examination
by Mr. Shealy

1 Q So are you sure they ran or do you think they just
2 went?

3 A No, I'm pretty sure they ran.

4 Q Pretty sure.

5 A Maybe I excluded that out of what I wrote, but, yeah,
6 I'm pretty sure they ran.

7 Q So why isn't that in your statement then?

8 A I guess I failed to put it in my statement.

9 Q Okay. All right. Now, whenever you -- you've said
10 that you saw the initial, the guy --

11 A Uh-huh. (Affirmative).

12 Q -- in the -- you said in the Jiffy Lube parking lot I
13 think?

14 A Uh-huh. (Affirmative).

15 Q And you saw him get into the van?

16 A We saw him behind us actually when she said it was
17 smoke.

18 Q Okay.

19 A So we turned behind and that's when he, like I said, he
20 kicked whatever he kicked under the blue, I believe it was a
21 blue pick-up truck, like an older Nissan pickup truck.

22 Q Okay.

23 A And then he like walked and ran across the parking lot.

24 Q All right. So he kind of hustled to a van and then he
25 got into the van?

Jason Moore - Cross-examination
by Mr. Shealy

1 A I didn't know he got to a van until we pulled around.
2 We made the left turn past BB&T and we were in the turning
3 lane to go into where you would go into Jason's Deli at. I
4 believe it's a light there. And that's where we saw a
5 monster truck. Can't remember which monster truck it was.
6 I believe it was orange in color. It was a minivan parked
7 at a 90-degree angle directly there.

8 Q Okay. So you didn't see---

9 A With the door opened. Excuse me.

10 Q All right. Did you see him get in the van or not?

11 A Yes, I did.

12 Q You did see him get in the van?

13 A Yes, I did.

14 Q Okay. Was there anybody else outside of the van?

15 A No, there wasn't.

16 Q All right. Could you see his hands?

17 A No, not that I can recall, no.

18 Q Not that you can recall.

19 Okay. I have nothing further of this witness.

20 THE COURT: Redirect, Mr. Barnette.

21 SOLICITOR BARNETTE: No, sir, we'd ask that this
22 witness be excused.

23 THE COURT: Any objections?

24 MR. SHEALY: No objections.

25 THE COURT: Sir, you may step down. You're free to go.

1 Thank you for coming.

2 THE WITNESS: Thank you.

3 THE COURT: Yes, sir.

4 SOLICITOR BARNETTE: Thank you, sir.

5 We'd ask for him and, excuse me, Ms. Burgess to be
6 excused at this time.

7 THE COURT: Any objection to his fiancée being excused
8 as well?

9 MR. SHEALY: No objection.

10 THE COURT: Ma'am, you're free to go as well. Thank
11 you very much.

12 THE WITNESS: Thank you.

13 THE COURT: Yes, ma'am.

14 All right. The State may call its next witness.

15 SOLICITOR BARNETTE: Your Honor, I would like to call
16 Mr. Blassingame to the stand.

17 THE COURT: Is he outside the courtroom?

18 SOLICITOR BARNETTE: He is, yes, sir. He just got---

19 THE COURT: Step outside and call him.

20 SOLICITOR BARNETTE: I think Mr. Gregory went to get
21 him.

22 THE COURT: Oh, he went out?

23 SOLICITOR BARNETTE: Yeah, he, he---

24 THE COURT: Oh, okay. Thank you.

25 SOLICITOR BARNETTE: He's got a -- he has a hard time

1 sitting.

2 THE COURT: I see. Okay.

3 Sir, if you'd come forward down here to my left and
4 we'll have you sworn in. Right over here.

5 (Witness complies.)

6 KENNETH BLASSINGAME, being first duly
7 sworn, testified as follows:

8 THE COURT: Have a seat, sir.

9 (Witness complies.)

10 THE COURT: Sir, the microphones, I'm told, in this
11 courtroom are not working today.

12 THE WITNESS: Yes, sir.

13 THE COURT: I'm gonna ask you to speak up loud enough
14 for everybody in here to hear you.

15 Okay, sir?

16 THE WITNESS: Yes, sir.

17 THE COURT: What's your name?

18 THE WITNESS: Kenneth Blassingame.

19 THE COURT: Thank you.

20 Mr. Barnette, your witness.

21 SOLICITOR BARNETTE: Thank you, sir.

22 THE COURT: Yes, sir.

23 DIRECT EXAMINATION

24 BY SOLICITOR BARNETTE:

25 Q Mr. Blassingame, where do you live at, sir?

Kenneth Blassingame - Direct examination
by Solicitor Barnette

1 A 105 Maxon Street, Spartanburg, South Carolina.

2 Q And how long have you lived in Spartanburg, sir?

3 A Other than when I left for jobs and military, my whole
4 life.

5 Q Okay. And are you on disability right now, sir?

6 A Yes, I am.

7 Q Okay. And what's that for, sir?

8 A My back. I had major back surgery in March.

9 Q Okay. What did you do before that, sir?

10 What kind of work did you do?

11 A Drove a forklift, machine operator, worked for the
12 railroad in Chattanooga, Tennessee.

13 Q Okay. And did you have some military experience also?

14 A Oh, yes, I did.

15 Q Where was that at, sir?

16 A Fort Bliss, Texas and Fort Sill, Oklahoma.

17 Q Okay. And what branch of the -- Army?

18 A Army.

19 Q Army?

20 A Yes, sir.

21 Q How long was you in the Army, sir?

22 A Four years.

23 Q Okay. Let me take you back to January 22nd, 2015.

24 A Yes, sir.

25 Q If you would, tell the jury how you met the defendant,

Kenneth Blassingame - Direct examination
by Solicitor Barnette

1 Mr. Calvin Williams, that day.

2 A I was out. I stopped at a convenience store and to
3 pick up a soda and I was just waiting. I think I had
4 probably about an hour and a half or so. I was just wasting
5 time to go pick my wife up from work, and after I left the
6 convenience store, I came down and I turned onto, I can't
7 even remember the name of the road, but I turned onto the
8 road and this guy that I grew up with his brothers, he
9 stopped me, and he asked me what I was doing.

10 I said well, nothing really. Just spinning -- wasting
11 time to go pick my wife up from work in about an hour, hour
12 and a half or so. And he said that these two young men was
13 looking for a ride to go pick some money up and they would
14 pay me. And I asked them I said well, I'm not coming back
15 on this side of town. So I could take them, but I will not
16 be able to bring them back.

17 And so, when they came to the car, I explained that to
18 them. I said well, where y'all going and they said well, we
19 going to, I forgot the name of the bank, and they asked me
20 did I know where it was at.

21 Q When you were asking, who's doing all the talking
22 during this time?

23 A The gentleman in the front seat.

24 Q Okay. Was he the older or the younger guy?

25 A The older guy.

Kenneth Blassingame - Direct examination
by Solicitor Barnette

1 Q Okay. The older guy was.

2 Okay. Please go ahead.

3 A And I can't remember if he gave me a couple of dollars
4 then, but I do know he said that, when he got his money from
5 the other guy that I was taking them to meet, he would give
6 me gas money and I said well okay. But I got to make it
7 quick cause I got to pick my wife up and I kept emphasizing
8 picking my wife up because I'm not gonna be late and so we
9 went and, you know, little small talk.

10 Q Who's doing all the talking during this time?

11 A The gentleman in the front seat.

12 Q Okay. Do you see him in the courtroom here today?

13 A Yes.

14 Q Can you identify him for us please?

15 A The young man in the blue shirt.

16 Q Okay. The gentlemen in the blue shirt with the tie?

17 A Yes.

18 SOLICITOR BARNETTE: Your Honor, I'd ask that he's
19 identified the defendant in this case.

20 THE COURT: The record will reflect that he's
21 identified the defendant.

22 You may proceed.

23 Q So is he doing all the talking to you during this time?

24 A Yes.

25 Q Okay. Please continue.

Kenneth Blassingame - Direct examination
by Solicitor Barnette

1 A And I'm just like a little small talk you know, and I
2 was like, you know, I don't mind, you know, helping someone,
3 you know, cause people have helped me, you know, that type
4 stuff. And so, when we got to where we was going, it was
5 like they said the name of the bank, but where I went it was
6 not in that area. So we turned around and I said oh, I know
7 where you're talking about. And so I turned around, and as
8 we proceeded towards that location, and I -- so I was coming
9 up beside the bank cause I was looking for a place to park
10 at the bank and said well, do you see your ride, do you
11 see -- not your ride. But do you see the guy that you're
12 looking for.

13 Q And who's talking during this, during this time?

14 A The guy. The older gentleman.

15 Q Okay.

16 A And I say do you see who you looking for, you see they
17 car, and they like no, I don't see they car. So just park
18 down there on the other side of the gas station. So, you
19 know, I'm, I'm like well, maybe it's some don't want nobody,
20 you know, to know who they dealing with or whatever. So I
21 didn't really pay it no attention, but I, I just parked down
22 here and I kept emphasizing, you know, you need to hurry up
23 because I got to go pick my wife up, and the young guy in
24 the back seat said well, I'll go up there to see if he
25 there.

Kenneth Blassingame - Direct examination
by Solicitor Barnette

1 So he got out and he walked up towards the bank to see
2 if they ride was there. And so, during this time, it's a
3 monster trucks and stuff out or cars or whatever it was. So
4 I'm looking at them and, and I made the comment, I'm like
5 yo, he need to hurry up, man, cause I, I got to go, and like
6 he coming, he coming, and then, a few minutes later, he was
7 walking back down, got in the car, and I -- so drove off and
8 I'm at the red light and then, as I go through the red
9 light---

10 Q When, when the young guy got back, what did he say to,
11 to the older guy?

12 A He said that he wasn't there. He said---

13 Q And what did you say to the dad then or the older guy?

14 A I said, you know, don't, don't worry about it. I got
15 to go pick my wife up. So when I say don't worry about it,
16 I'm referencing about, you know, what -- my gas money. I'm
17 like don't even worry about it, you know. I just got --
18 where y'all getting out at. I got to go pick my wife up
19 and---

20 Q Where did they, where did they originally want you to
21 take them to?

22 A Up to -- on Blackstock Road.

23 Q Uh-huh. (Affirmative).

24 A And I told them I said well, no. I'll, I'll drop you
25 off right here at McDonald's cause, by this time, it's --

Kenneth Blassingame - Direct examination
by Solicitor Barnette

1 I'm sort of, you know, time wise. So I said no, I'll drop
2 you off right here at McDonald's and they said no, can you,
3 can you just get us up there to Blackstock Road. I said
4 whatever, you know, cause I'm irritated and I'm like okay,
5 well, whatever and I go up there. They get out the car and
6 I go on about by business to pick my wife up.

7 Q Okay. Was there apartments across from where you
8 dropped them off at the gas station?

9 A Yes, it's apartments behind the other gas station
10 across the street.

11 Q All right. And during this time, who did all the
12 talking to you from there?

13 A The older gentleman.

14 Q Okay. So what was the only thing that -- what did the
15 young guy -- did -- the only time he talked was when he got
16 out of the van and got back in the van?

17 A Yes.

18 Q Did he say anything else other than that?

19 A No. No.

20 Q So Mr. Williams, the older guy, actually did all the
21 talking?

22 A Yes.

23 Q Okay. And when they got out, where did you go after
24 that?

25 A I went to pick my wife up and so I go pick my wife up

Kenneth Blassingame - Direct examination
by Solicitor Barnette

1 and we come to the gas station. And that's when I hear
2 about something happened at the bank and I was like I was
3 just at that bank, you know, and well, not at the bank, but
4 in the area. And so my wife, you know, I told my wife about
5 picking them up and cause she asked, say what you doing over
6 there. So I told my wife about picking them up and we go
7 home, and I'm sitting at home and then probably about 5:30,
8 6:00, the news getting ready to come in and next thing I
9 know police coming to my house talking about I was involved
10 in a robbery and I'm like no, I wasn't, you know, and then
11 that's when they explained to me what had happened.

12 Q Right.

13 So then you told them, told them your involvement --
14 not your involvement, told them what you knew about it --

15 A Yes, sir.

16 Q -- from there?

17 During this time, did the older guy have a book bag
18 with him or whatever from that standpoint or do you
19 remember?

20 A I can't, I can't remember if he had a book bag or not.

21 Q Uh-huh. (Affirmative).

22 When the kid came back, did he kind of have a jacket on
23 and things like that at the time or can you remember?

24 A No, I, I can't remember if he had a jacket on when he
25 got out the car or not cause I really, you know, I really

Kenneth Blassingame - Direct examination
by Solicitor Barnette

1 didn't pay that much attention to him other than when he got
2 in the car, I turned my head, how you doing, and, you know,
3 just trying to get -- I wasn't really like paying that much
4 attention to what they had on.

5 Q So you really wasn't talking -- he was in the back
6 seat.

7 You really wasn't dealing with him from there?

8 A Right. Right.

9 Q You was dealing with the gentleman in the front seat?

10 A Right.

11 Q So you really didn't even look at him or anything like
12 that?

13 A Right. Only, you know, just when he got in, you know,
14 when they got in the car and when he said that he'll go see
15 is the guy there. I sort of then glanced back and make sure
16 the door was closed, and I saw him when he was coming back
17 and then when they got out the car --

18 Q Okay.

19 A -- at the gas station, but I wasn't really focused in
20 on, you know, him as far as what he had on and all of that.

21 Q I got you.

22 Like I said, you were dealing with the older gentleman?

23 A Yes.

24 Q That's the one you was doing all the dealing with?

25 A Yes, sir.

Kenneth Blassingame - Direct examination
by Solicitor Barnette

1 Q And he was the one paying or gonna pay you the money.

2 A Yes, sir.

3 Q Is that right?

4 A Yes, sir.

5 SOLICITOR BARNETTE: One moment, Your Honor, please.

6 THE COURT: Yes, sir.

7 (Pause.)

8 Q Please answer any questions that Mr. Shealy may have
9 for you.

10 A All right.

11 Q Thank you.

12 THE COURT: Mr. Shealy, your witness.

13 MR. SHEALY: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. SHEALY:

16 Q Mr. Blassingame, you testified that they picked them up
17 after a friend of yours or an acquaintance of yours flagged
18 you down?

19 A Yes.

20 Q Who was that or do you remember?

21 A Well, I'm, I'm more friends with his brothers who are
22 younger than him. I just know him cause we all grew up in
23 the same neighborhood.

24 Q Okay.

25 A But I really had no dealings with him as far as growing

Kenneth Blassingame - Cross-examination
by Mr. Shealy

1 up.

2 Q Okay. And he asked you to give these two people a
3 ride?

4 A No, he, he didn't specifically ask me to give them a
5 ride. He just asked me what I was doing and said that they
6 would like to have a ride. And so -- but it was up to me
7 whether I gave them a ride or not.

8 Q Sure.

9 Okay. And then you offered to give them a ride up to a
10 bank?

11 A Yes, he said he was going to the bank to meet someone.

12 Q Okay. And you testified that after they got into the
13 van you took them somewhere.

14 Do you remember where you took them initially?

15 A Yes, I went down John B. White or Reidville Road down
16 across 85. There use to be a Burger King right there. It's
17 a bank right there and they said that this ain't the bank.
18 This is not -- I guess by the name because it was a
19 different name.

20 Q And when you say they said, you mean my client?

21 A Well, I mean as far as Mr. Williams, the guy, yes, sir.

22 Q He told you that's not the right bank?

23 A Yeah.

24 Q That's not where we have to meet our---

25 A Right.

Kenneth Blassingame - Cross-examination
by Mr. Shealy

1 Q Okay. And so, at that point, you took him to the
2 correct bank?

3 A At that point I said well, the bank -- it's a bank on
4 W O Ezell Boulevard with that -- with the name that he --
5 the name of the bank that he gave me, I said well, that's --
6 that bank right there is on W O Ezell Boulevard.

7 Q Okay. And then you took them there?

8 A Yes, sir.

9 Q Okay. And that's when you went and parked at over near
10 the monster truck?

11 A Yes, sir, when I, when I got on that side of town, I
12 rode because I went down, came up, and I turned and came
13 through and I'm -- I was gonna park at the bank. I say you
14 see who you looking for and they said nah, they ain't there.
15 So don't -- just park down beside the gas station. So
16 that's what I did.

17 Q Okay. And then, throughout that, how long was -- were
18 they in your van?

19 A What, from the time I picked them up?

20 Q From the time you picked them up.

21 A It was probably about, from that side of town to, to --
22 probably about maybe 45 minutes to an hour.

23 Q So they were in your van for about 45 minutes to an
24 hour?

25 A Yes, sir.

Kenneth Blassingame - Cross-examination
by Mr. Shealy

1 Q All right. And were they talking amongst themselves?

2 A No, sir.

3 Q All right. So there was no conversation about any bank
4 robbery or anything like that?

5 A No, sir, if it would of been I would of pulled over at
6 that wherever.

7 Q Okay. Did they talk about who they were waiting on
8 or---

9 A Well, no.

10 Q Who they were looking for. Excuse me.

11 A No, the, the older gentleman, the only thing he was
12 saying was just it was someone that had been holding some
13 money for him and he was going to pick his money up.

14 Q Okay.

15 A It wasn't that, you know -- that's what it -- was said.
16 So it wasn't my place to ask -- you know, wasn't my
17 business.

18 Q Uh-huh. (Affirmative).

19 And how long do you think you were in the van when the
20 younger guy got out and came back?

21 How long do you think that was?

22 A Maybe about -- I don't know. Probably about fifteen --
23 ten to fifteen minutes.

24 Q Okay. And could you see him all the way to the bank?

25 A No, cause I wasn't even looking.

Kenneth Blassingame - Cross-examination
by Mr. Shealy

1 Q Right.

2 But do you think you could, you -- could you see the
3 bank from where you were or not?

4 A Nah, you could probably see it, but you -- not real
5 clear.

6 Q Okay. Could you see the front door do you think?

7 A To the bank?

8 Q Yeah.

9 A No.

10 Q No.

11 Okay. Did Mr. Williams -- again, Mr. Williams was
12 sitting in the front seat, right?

13 A Yes, sir.

14 Q Okay. Did he receive any telephone calls?

15 A I can't remember.

16 Q All right.

17 A I don't think so.

18 Q You don't think.

19 All right. And whenever the younger guy got back to
20 the car, you've said that he asked well, was he there and
21 then the younger guy said nah, he wasn't there.

22 Was there any other conversation then?

23 A No, only that -- only -- after that, the only
24 conversation was where do you want me to let you out at
25 cause I need to go pick my wife up.

Kenneth Blassingame - Cross-examination
by Mr. Shealy

1 Q Okay. And are you sure they didn't ask you to go to
2 Highway 295?

3 A I'm positive.

4 Q From -- I mean from that area cause you said they asked
5 you to go somewhere and then you said no, I want -- I'll
6 drop you off at this McDonald's.

7 A No. Well, they asked me was to drop them off at -- on
8 Blackstock Road and I originally said no.

9 Q Okay.

10 A Because I could turn -- if they had -- if I left them
11 out at McDonald's I could of made that left on John B. White
12 and went right down the road and picked my wife up.

13 Q Okay.

14 A So by not letting them out there and going up to
15 Blackstock meant I would had to come back down to get on
16 John B. White. So it would of been easier for me and less
17 time.

18 Q Okay. And what were you picking your wife up from?

19 A Work.

20 Q Where was she working?

21 A Windsor House.

22 Q Okay. But you don't know my client?

23 A No, I've never met him other -- from that day, I've
24 never met him in my life.

25 MR. SHEALY: No further questions, Your Honor.

Kenneth Blassingame - Redirect examination
by Solicitor Barnette

1 SOLICITOR BARNETTE: Just two on redirect, Your Honor.

2 THE COURT: Yes, sir, redirect. You may proceed.

3 REDIRECT EXAMINATION

4 BY SOLICITOR BARNETTE:

5 Q Mr. Blassingame, who directed you to park your van in
6 the parking lot?

7 who told you to do that?

8 A The gentleman in the blue. Well, he didn't, he didn't
9 necessarily say park in the parking lot. It was just like
10 you just park down here.

11 Q Well, he told you not to park at the bank, right?

12 A Right.

13 Q Directed you to go down---

14 A Right.

15 Q That's the one---

16 A Right.

17 Q He's the one that directed you not to park at the bank?

18 A Right.

19 Q And he was the one that told you he had somebody
20 waiting to give him money to pay you for your gas money?

21 A Yes, sir.

22 Q It was him, Mr. Williams?

23 A Yes, sir.

24 Q Okay. Thank you. That's all the questions.

25 MR. SHEALY: If you'd bare with me, judge?

Kenneth Blassingame - Redirect examination
by Solicitor Barnette

1 THE COURT: Yes, sir, you may follow up if you'd like
2 to recross.

3 (Pause.)

4 RECROSS EXAMINATION

5 BY MR. SHEALY:

6 Q Did you draw any conclusions from that?

7 SOLICITOR BARNETTE: Objection, Your Honor. He's
8 asking the witness to speculate.

9 MR. SHEALY: Judge, I'm asking him what he reasonably
10 concluded from what he was -- where he was told to park. I
11 believe he can testify to his reasonable conclusions.

12 THE COURT: Well, if you ask for any conclusions, then
13 you're asking perhaps for speculation. I'm not sure -- can
14 you rephrase the question?

15 MR. SHEALY: I will.

16 Q When somebody asks you to park out that far, I
17 believe -- well, let me, let me rephrase it this way.

18 Do you remember giving a statement in this case?

19 A Uh-huh. (Affirmative).

20 Q You remember talking to the police?

21 A Uh-huh. (Affirmative).

22 Q Okay. And you remember they told you it was gonna be
23 videotaped?

24 A Yes.

25 Q Okay. If you'll bear with me just one second cause you

Kenneth Blassingame - Recross examination
By Mr. Shealy

1 were, you were talking to the officers and you were -- and
2 it appears that you -- they asked well, did you think this
3 was some kind of a drug transaction?

4 SOLICITOR BARNETTE: Objection, Your Honor. I believe
5 this is outside the scope of redirect.

6 THE COURT: I'll ask the attorneys to approach.

7 (WHEREUPON, a bench conference was held out of the
8 hearing of the jury at this time.)

9 MR. SHEALY: Okay. I'll withdraw the question, Your
10 Honor. I think that's all I have of this witness.

11 THE COURT: All right. You may step down, sir.

12 SOLICITOR BARNETTE: We ask the witness be excused,
13 Your Honor.

14 THE COURT: Any objections to the witness being
15 excused, Mr. Shealy?

16 MR. SHEALY: No, Your Honor.

17 THE COURT: Sir, you're free to go. Thank you for
18 coming today.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Yes, sir. Take your time getting down.

21 THE WITNESS: All right.

22 THE COURT: The State may call its next witness.

23 SOLICITOR BARNETTE: Courtney Burgess I'd like to call
24 to the stand.

25 THE COURT: All right. Come forward, ma'am, and be

Courtney Burgess - Direct examination
by Solicitor Barnette

1 sworn.

2 COURTNEY BURGESS, being first duly
3 sworn, testified as follows:

4 THE COURT: Ma'am, once you're seated, state your name.

5 THE WITNESS: Courtney Burgess.

6 THE COURT: And I would ask you to speak up again.

7 Thank you.

8 Mr. Barnette, your witness.

9 DIRECT EXAMINATION

10 BY SOLICITOR BARNETTE:

11 Q Yes, ma'am.

12 Where do you work at right now, ma'am?

13 A Currently I work for Spartanburg County Sheriff's
14 office as a latent fingerprint examiner.

15 Q All right. And prior to working at Spartanburg
16 County -- how long you been with Spartanburg County?

17 A A little over a year now.

18 Q Okay. And before that, where did you work at, ma'am?

19 A I worked for Spartanburg Police Department as a crime
20 scene investigator.

21 Q And how long was you there, ma'am?

22 A About nine years.

23 Q Okay. So back on January 22nd, 2015, was you called
24 to the scene of a bank robbery, ma'am?

25 A I was.

Courtney Burgess - Direct examination
by Solicitor Barnette

1 Q And in that bank robbery, did you obviously look at the
2 crime scene and so forth?

3 A Yes, I did.

4 Q And later on did you go to Quail Pointe and work where
5 the evidence was there also?

6 A Yes, I did.

7 Q Let me show you this so we can give some reference to
8 the Court.

9 So you was to both areas.

10 Is that right?

11 A Correct. Back and forth.

12 Q Let me show you what's been marked State's Exhibits 1,
13 2, and 3.

14 Are those maps of the areas that we're talking about?

15 A Yes.

16 SOLICITOR BARNETTE: Your Honor, I'd like to enter
17 State's Exhibits 1, 2, and 3 into evidence.

18 MR. SHEALY: I have no objection, Your Honor.

19 THE COURT: Without objections they'll be admitted as
20 marked.

21 (WHEREUPON, State's Exhibit Nos. 1, 2, and 3 were
22 received into evidence at this time.)

23 THE COURT: You may proceed.

24 SOLICITOR BARNETTE: May I publish them?

25 THE COURT: If you wish to publish them you may do so.

Courtney Burgess - Direct examination
by Solicitor Barnette

- 1 SOLICITOR BARNETTE: Thank you.
- 2 If I could get the lights turned down a little bit if I
- 3 could?
- 4 (Bailiff complies.)
- 5 Q And I believe -- what road is this, ma'am, right here?
- 6 A I believe that is W O Ezell---
- 7 Q If---
- 8 A ---Boulevard.
- 9 Q If you want to come down so you can---
- 10 A (Witness comes down from the stand.)
- 11 Yes, it's kind of hard to see.
- 12 Q Yeah, let me fold this so we can actually -- now I got
- 13 to blow it up.
- 14 what road is this actually, ma'am?
- 15 A That is W O Ezell Boulevard.
- 16 Q Okay. And what is this location right here?
- 17 what is there?
- 18 A That right there is the BB&T Bank.
- 19 Q Okay. And that's obviously in Spartanburg County in
- 20 the City of Spartanburg?
- 21 A Yes.
- 22 Q And down from here, what is this right here?
- 23 A I believe, looking at the map, that is Jason's Deli
- 24 there in the Market Square Shopping Plaza.
- 25 Q Okay. And this is the Market Square Plaza.

Courtney Burgess - Direct examination
by Solicitor Barnette

1 Is that right?

2 A Yes.

3 Q And what is this right here, ma'am?

4 A That is the Kangaroo Gas Station.

5 Q Okay. And is this also like -- I call it the little
6 change place?

7 A Yeah, I think it was Speedy at the time. It may still
8 be that.

9 Q Okay. If you would, please have a seat.

10 A (Witness returns to the stand.)

11 Q So you actually went to the crime scene at the bank
12 first.

13 Is that right?

14 A Correct.

15 Q And did y'all take photographs there?

16 A Yes.

17 Q Okay. Is these photographs fairly represent what you
18 saw there?

19 A Yes, they do.

20 Q Okay. Let me hand these to you so you can verify them.

21 Let me show you what's been marked as -- and I'm afraid
22 these aren't completely in order. State's Exhibit 4, 5, 6,
23 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 24. Look at
24 those pictures and see if those are pictures you're familiar
25 with.

Courtney Burgess - Direct examination
by Solicitor Barnette

1 A (Witness complies.)

2 These are pictures taken in and around the area there
3 on the map.

4 Q Okay. And these do fairly represent what you saw that
5 day?

6 A Yes, they do.

7 SOLICITOR BARNETTE: Your Honor, I'd like to enter
8 these into evidence at this time.

9 MR. SHEALY: No objection, Your Honor.

10 THE COURT: Without objections, they'll be admitted as
11 marked.

12 (WHEREUPON, State's Exhibit Nos. 4 through 6, 13
13 through 22, and State's Exhibit No. 24 were received into
14 evidence at this time.)

15 THE COURT: You may publish.

16 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

17 Starting with State Exhibit No. 4 -- I'll move that
18 over a little bit.

19 If I can ask you to dim the lights again, sir, if you
20 would.

21 (Bailiff complies.)

22 Q What is this a picture of?

23 A This is inside the lobby of the bank.

24 Q Was this the area that was -- the bank robbery occurred
25 at?

Courtney Burgess - Direct examination
by Solicitor Barnette

1 A Yes.

2 Q Okay. State's Exhibit 5.

3 A That's just a closer photo of the actual teller window
4 that was robbed.

5 Q And obviously y'all processed it trying to work it and
6 so on.

7 Is that right?

8 A Correct.

9 Q State Exhibit 6, what is this a picture of, ma'am?

10 A This is of the front door area of the bank looking
11 towards -- if you see that blue roof in the -- yeah, right
12 there. I believe that is the roof of the oil change place.
13 So you're looking from the other side of the bank towards
14 the oil change place.

15 Q Okay. Make this State Exhibit 13.

16 A And---

17 Q Can you tell us what this is, ma'am?

18 A That is standing in the parking lot or the oil change
19 place looking at the bank.

20 Q Okay. So this is the oil change place actually
21 somewhere over here I guess---

22 A Correct.

23 Q ---if you're looking at the picture?

24 A Yeah.

25 Q Okay. Showing you State Exhibit No. 14.

Courtney Burgess - Direct examination
by Solicitor Barnette

1 Can you tell us what this is, ma'am?

2 A This, this is looking into the parking lot there at the
3 oil change place.

4 Q All right.

5 A Okay. This is the Dodge Ram pickup. I believe there
6 is an envelope of money right there if you can see the point
7 where I think -- it's hard to see.

8 Q And is that the oil change place above that?

9 A Yes, it is.

10 Q Okay. State Exhibit 15, what is this, ma'am?

11 A That is that same envelope containing the money.

12 Q Okay. And State Exhibit 16.

13 What are those things, ma'am?

14 A That's some more envelopes of the money. They've
15 been -- they're underneath the pickup truck there.

16 Q Okay. And was one of these -- one of these winded up
17 being the dye pack also?

18 A I believe so. One of those was the dye pack.

19 Q Okay. Let me show you State Exhibit 17.

20 Can you tell us what this is, ma'am?

21 A This is in the gas station parking lot looking towards
22 the oil change. If you see the U-Haul trucks right there,
23 they're parked along the side of the oil change parking lot.

24 Q Can you shortly came -- obviously you came to this
25 crime scene very shortly after the bank robbery?

Courtney Burgess - Direct examination
by Solicitor Barnette

1 A Correct. Yes.

2 Q And those, and those U-Hauls was there.

3 Is that right?

4 A Yes, they were.

5 Q Okay. So that would even block your vision more so
6 from the parking lot beyond the gas station towards the
7 bank?

8 A Yes, it's pretty hard to see the bank from there if you
9 can. It's hard to tell in that photo but it would be
10 difficult to see.

11 Q State Exhibit 18.

12 Can you tell us what this is, ma'am?

13 A Right there on, if I can get it to show up, on the
14 ground between the tree and the U-Haul truck, you see that
15 red item, that's another envelope of money with the dye on
16 it from the dye pack.

17 Q Okay. Showing you State Exhibit No. 19.

18 A That's just a closer shot of that item.

19 Q And State Exhibit 20.

20 A And, again, another close-up.

21 Q And obviously I think over \$2,000 was taken in the
22 robbery.

23 Is that right?

24 A Yes.

25 Q Okay. State Exhibit 21.

Courtney Burgess - Direct examination
by Solicitor Barnette

1 A This is in the parking lot kind of behind the gas
2 behind the gas pumps. I believe Investigator Bagwell was
3 standing by with a glove that had been found on the ground
4 between him and the -- I think that's the air pump back
5 there along the fence --

6 Q Okay.

7 A -- or vacuum maybe.

8 Q State Exhibit 23.

9 A Okay. And---

10 Q And State Exhibit 24.

11 A That's, that's the glove.

12 Q Okay. Obviously y'all collected the money and
13 everything from that.

14 Is that right?

15 A Correct.

16 Q Okay. And later on was you notified to go to another
17 crime scene?

18 A I was.

19 Q And let's see. Let me show you State Exhibit No. 3.

20 Is this the area around Quail Pointe Apartments?

21 A Yes.

22 Q I believe it's already been entered into evidence, and
23 this is State Exhibit 3 I'm now showing to the jury.

24 Okay. Can you describe what this picture shows, ma'am?

25 A That is Quail Pointe Apartments. If you see all of the

Courtney Burgess - Direct examination
by Solicitor Barnette

1 longer buildings there, yes, those are the apartment
2 buildings in that complex.

3 Q And was you there to call -- to collect evidence,
4 ma'am?

5 A I was.

6 Q And did y'all collect evidence there?

7 A Yes.

8 Q Let me show you what's been marked as State's Exhibits
9 25, 26, 27, 28, 29, 30, 31, 32, and 33. Let me see if those
10 pictures fairly represent what you saw that day.

11 A Yes.

12 SOLICITOR BARNETTE: Your Honor, permission to enter 25
13 through 33 into evidence.

14 MR. SHEALY: No objection, Your Honor.

15 THE COURT: Without objections they'll be admitted as
16 marked.

17 (WHEREUPON, State's Exhibit Nos. 25 through 33 were
18 received into evidence at this time.)

19 THE COURT: You may publish.

20 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

21 Before I do that, what items did you find in the bushes
22 behind one of the buildings there, ma'am?

23 A There was a pair of khaki pants, a black hooded
24 sweatshirt, and I think it was a dark brown leather type
25 jacket. All of the items had a red dye substance on them.

Courtney Burgess - Direct examination
by Solicitor Barnette

1 Q Can you show where you found those on the map?

2 A Yes.

3 Q Here I'm gonna draw it up a little bit more---

4 A Okay.

5 Q --so the jury can see it better too.

6 A Okay. When I responded to the apartment complex there,
7 all of the buildings are lettered. I responded to the --
8 behind the K building, which is not showing up very well.
9 This is the K building. Actually let me just point to it.

10 Q Yeah, it might be easier to see.

11 A Apparently that light -- laser isn't showing up.

12 (Witness comes down from the stand.)

13 A The K building is this building right here.

14 Q Okay. And where was the items?

15 They were in the bushes behind that building?

16 A Yes, there was a -- step back up there?

17 Q Please do.

18 A (Witness returns to the stand.)

19 There was a tall row of hedges along -- I'm, I'm
20 assuming there's a fence or maybe it was just bushes behind
21 that building. They were the pants, if I recall, were kind
22 of thrown up on top of the bushes.

23 SOLICITOR BARNETTE: Your Honor, can I -- it may be
24 easier to show with the pictures.

25 A Yeah.

Courtney Burgess - Direct examination
by Solicitor Barnette

1 Q Showing you State Exhibit 25.

2 Now, if I could get you to turn -- dim that more for
3 me, sir, if you could.

4 (Bailiff complies.)

5 A It's a little difficult to see in this picture, but the
6 pants---

7 Q See if I can -- go ahead, ma'am.

8 A Okay.

9 Q I think that's probably as good as it gets.

10 A There it goes. The pants are right in that area right
11 there. There's another picture.

12 Q Okay. And then State Exhibit 26.

13 A Yes, they were thrown up in the top. It was, it was
14 pretty tall hedges. They were thrown up on the top. We had
15 to get a ladder to get them down.

16 Q Okay. And State Exhibit 27.

17 Are these the pants that you got from the top of the
18 bushes?

19 A Yes, those are.

20 Q Okay. State Exhibit 28.

21 Is that just a closer up picture of it?

22 A It is.

23 Q And what did the -- what was on the front of the pants?

24 A The -- you see kind of a pinkish color all over the
25 front. That's the dye substance --

Courtney Burgess - Direct examination
by Solicitor Barnette

1 Q Okay.

2 A -- from the dye pack.

3 Q And then I'm showing you State Exhibit 29.

4 What is this, ma'am?

5 A That, kind of shoved in the bottom of the bushes there,
6 is gonna be the black hooded sweatshirt and the other
7 jacket.

8 Q Okay. Showing you State Exhibit 30, and let me
9 brighten that a little bit now.

10 Is that just a closer up picture of what you described?

11 A Yes, that's how it was found there.

12 Q Did you pull them out of the bushes?

13 A I did.

14 Q Okay. Showing you State's Exhibit 32.

15 What are those items, ma'am?

16 A That is the hooded sweatshirt and the jacket just
17 pulled out and laying there on the ground.

18 Q Okay. State Exhibit 31.

19 What is that, ma'am?

20 A That is the hooded sweatshirt. If you see right here,
21 that's the -- I call it the kangaroo pocket on the front of
22 the, the hoodie. That is the dye substance. It's mostly on
23 the inside of the pocket, but you can see it's on the
24 outside of the pocket and on the sweatshirt itself.

25 Q Okay. And State Exhibit 33.

Courtney Burgess - Direct examination
by Solicitor Barnette

1 what is that, ma'am?

2 A That is the jacket. This is actually the inside of the
3 jacket and you can see the red substance there and there.

4 Q And is that from the dye pack, ma'am?

5 A I would assume so, yes.

6 Q Okay. Did you collect these items of -- in evidence?

7 A I did.

8 Q And I don't know if I can get these out cause I think
9 they've got red dye on them.

10 Is that right?

11 A Yes, they do.

12 SOLICITOR BARNETTE: If I can get you to turn the
13 lights back on, sir, if you could?

14 (Bailiff complies.)

15 Q Let me show you what's been marked as State Exhibit No.
16 8.

17 what is that, ma'am?

18 A This is the khaki pants.

19 Q Okay. And are those the khaki pants that you gathered?

20 A Yes.

21 Q And did you collect those and put those into evidence?

22 A I did.

23 SOLICITOR BARNETTE: Your Honor, I'd like to move that
24 into evidence at this time.

25 THE COURT: Any objection?

Courtney Burgess - Direct examination
by Solicitor Barnette

1 MR. SHEALY: No, Your Honor. If I could look at the
2 bag I suppose.

3 THE COURT: Let him take a look at that.

4 SOLICITOR BARNETTE: Yeah, I can let him look in the
5 bag.

6 Do you want some gloves?

7 MR. SHEALY: No.

8 No objection, Your Honor.

9 THE COURT: All right. Without objections it will be
10 received into evidence as it's been marked.

11 (WHEREUPON, State's Exhibit No. 8 was received into
12 evidence at this time.)

13 Q And State Exhibit No. 9.

14 Can you tell us what this is, ma'am?

15 A This is the, the black hooded sweatshirt.

16 Q Did you collect this, ma'am?

17 A I did.

18 Q And was that what you found that we saw in the
19 pictures?

20 A Yes.

21 SOLICITOR BARNETTE: Your Honor, I'd like to move this
22 into evidence now, State's Exhibit 9, and I'll let you see
23 that also. We can show the jury, Your Honor, but it's got
24 the red dye on it. I don't know if---

25 THE COURT: Let me see if he's going to---

Courtney Burgess - Direct examination
by Solicitor Barnette

1 MR. SHEALY: I don't object.

2 THE COURT: All right. Without objection it will be
3 admitted.

4 (WHEREUPON, State's Exhibit No. 9 was received into
5 evidence at this time.)

6 THE COURT: You may -- however you want to do it.

7 SOLICITOR BARNETTE: Cause we got pictures and
8 everything. So I better---

9 THE COURT: Okay. So you're not going to show it?

10 SOLICITOR BARNETTE: No.

11 THE COURT: That's fine.

12 SOLICITOR BARNETTE: Cause of the red dye on it.

13 THE COURT: Okay.

14 Q And then is this State's Exhibit No. 10, ma'am?

15 A Yes.

16 Q And what is that, ma'am?

17 A This---

18 Q Do you need your gloves?

19 A I think I may be able to look down in here. It's the
20 brown leather, leather like jacket. I'm not sure if it's
21 actually leather.

22 SOLICITOR BARNETTE: Your Honor, I'd like to enter this
23 into evidence at this time.

24 MR. SHEALY: No objection, Your Honor.

25 THE COURT: All right. Without objection, it's

Courtney Burgess - Direct examination
by Solicitor Barnette

1 received as marked.

2 (WHEREUPON, State's Exhibit No. 10 was received into
3 evidence at this time.)

4 SOLICITOR BARNETTE: And State Exhibit 1 is already
5 been entered into evidence.

6 If I can just publish this to the jury, Your Honor?

7 THE COURT: If it's already in evidence you may do so.

8 Q Basically can you tell us what this map shows here?

9 A This shows just a broader area. The bank is there as
10 well as the apartments.

11 Q Okay.

12 THE WITNESS: Do you mind if I step down?

13 THE COURT: No, ma'am, you may step down.

14 THE WITNESS: Okay.

15 (Witness comes down from the stand.)

16 Q If you can show where the bank is and where the
17 apartments are in relation to that?

18 A Yes.

19 Q And if you need a pen, right here might be easier if
20 you use that pen.

21 A Okay. The bank is right here and the apartments are
22 right here.

23 Q Okay. And the McDonald's that they're talking about on
24 Reidville Road, can you show approximately where that was?

25 A Let's see.

Courtney Burgess - Direct examination
by Solicitor Barnette

1 Q I believe it's on the corner of the---

2 A Yes, sir, right here, this right here is Camelot. The
3 McDonald's is right here.

4 Q Okay. Thank you, ma'am. You can have a seat.

5 A (Witness returns to the stand.)

6 Q Investigators Burgess, thank you for answering my
7 questions. Please answer any questions the defense may have
8 for you.

9 THE COURT: Mr. Shealy, your witness.

10 MR. SHEALY: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. SHEALY:

14 Q Investigator Burgess, you collected all of these or you
15 took all these pictures, collected the items that have been
16 entered into evidence.

17 Is that correct?

18 A Yes.

19 Q Did you pull any fingerprints off anything?

20 A Not that day at the bank, no.

21 Q Okay. Are you -- do you recall any fingerprints coming
22 back to my client?

23 A I do not know.

24 Q You don't know?

25 A I don't -- at the -- when I worked at the City I did

Courtney Burgess - Cross-examination
by Mr. Shealy

1 not do the fingerprint analysis. I was just responsible for
2 collecting any fingerprints.

3 Q Okay. But did you ultimately collect some
4 fingerprints?

5 I've got a copy.

6 If I may approach?

7 THE COURT: You may approach.

8 Q A copy of this -- I believe it's the second page of
9 your statement or your incident report.

10 A Yes, when we -- we processed the vehicle that was
11 involved. So I believe some fingerprints were lifted
12 from -- let me, let me look here. Yeah, a total of three
13 print cards were lifted from the vehicle.

14 Q Okay. And those were all from the vehicle?

15 None of these -- not these clothes?

16 A Correct. Correct.

17 Q Now I'm gonna show you State's Exhibit No. 17.

18 Bear with me, judge, I'm looking for State's Exhibit
19 17. Thank you.

20 All right. I'm gonna show you what's been marked
21 State's Exhibit 17.

22 Could you tell us what that is one more time?

23 A That is standing in the, the gas station parking lot
24 looking back towards the oil change place and the bank.

25 Q Okay. And the bank is over here?

Courtney Burgess - Cross-examination
by Mr. Shealy

1 A Yes, past, past the blue roof.

2 Q All right. Past the blue roof all the way over there?

3 A Yes.

4 Q All right. And Market Square is somewhere back here
5 somewhere?

6 A Yes, behind.

7 Q Behind the picture taker?

8 A Right.

9 Q Which would be you?

10 A Correct.

11 Q All right. Can you tell me what separates Market
12 Square from that Speedee Oil Change and the gas, the
13 Kangaroo Gas Station?

14 Are there any bushes?

15 A I don't recall if there are any bushes in-between where
16 the, the part of the gas station there is. I don't, I don't
17 remember.

18 Q You don't remember.

19 Okay. That's fine.

20 Now, how far away is this Kangaroo from that BB&T
21 because, in this picture, it looks pretty far away?

22 Is it?

23 A I mean as far as feet goes, I don't -- I wouldn't try
24 to estimate that, but I mean there is an entire business and
25 parking lot in-between the two.

Courtney Burgess - Cross-examination
by Mr. Shealy

1 Q Okay. And, in fact, there's actually even a street
2 between the---

3 A Yes, and, and Saint Matthews -- I think it's Saint
4 Matthews Lane.

5 Q Okay. Now, you didn't see any of the -- anything that
6 happened in this particular case?

7 A Correct. I was, I was there after the fact.

8 Q Right.

9 So you don't have any personal knowledge as to whose
10 clothes these are or who touched them or anything like that?

11 A Correct. I don't.

12 Q Okay.

13 All right. That's all I have for this witness.

14 SOLICITOR BARNETTE: No further questions of this
15 witness, Your Honor. We'd ask for her to be excused.

16 THE COURT: Any objections?

17 MR. SHEALY: None, Your Honor.

18 THE COURT: Ma'am, you may step down and you're free to
19 go.

20 THE WITNESS: Thank you.

21 THE COURT: Thank you very much.

22 THE WITNESS: Thank you.

23 THE COURT: All right. We're gonna take a short break
24 at this time.

25 I'm gonna allow you to step back to the jury room,

1 stretch your legs. As always, when you leave the courtroom,
2 I'll advise you not to discuss anything about the case until
3 I ask you to begin your deliberations.

4 You may retire to the jury room.

5 (WHEREUPON, the following takes place outside the
6 presence of the jury.)

7 THE COURT: All right. I'll ask the attorneys to
8 approach briefly.

9 (WHEREUPON, a bench conference was held at this time.)

10 THE COURT: All right. We're in recess.

11 (WHEREUPON, a short recess was taken at this time.)

12 MR. SHEALY: Judge, may we approach?

13 THE COURT: Yes, sir, please do.

14 (WHEREUPON, a bench conference was held at this time.)

15 THE COURT: All right. I have been informed that the
16 State's next witness is Officer Turner.

17 Is that right?

18 SOLICITOR BARNETTE: Yes, sir, it is.

19 THE COURT: Okay. And we took some testimony from him
20 pretrial. Part of his -- the evidence presented during his
21 pretrial testimony was the video taken at the scene of the
22 arrest from a, I guess, a body camera that he was operating.
23 Mr. Shealy's informed the Court that he wishes to make an
24 objection to a portion of that testimony or the evidence.

25 I'll be happy to hear from you, Mr. Shealy.

1 MR. SHEALY: Judge, the entirety of this or yeah, the
2 entirety of this disk is a movie regarding my client's
3 statements. None of those statements implicate him in any
4 crime.

5 I know the State has repeatedly hammered the fact that
6 my client apparently did deny that Mr. Williams was his son,
7 but he hasn't gotten up and testified. So there's no -- he
8 hasn't put his credibility in issue.

9 I don't see how this is relevant to anything. Again,
10 it is a denial that he committed any crime. It's, it's a
11 flat denial. I don't see how it's relevant to prove any
12 particular fact in issue here. So I just don't know, I
13 don't know of any relevance. So I'd ask that it be
14 excluded.

15 THE COURT: All right. I'll hear from you,
16 Mr. Barnette.

17 SOLICITOR BARNETTE: Your Honor, I think it's very
18 relevant from the standpoint there was a book bag that was
19 listed on the note that was handed up to the teller.
20 Obviously the defendant's got, I think you've seen it, seen
21 it, there's a book bag. He actually has -- he says it's his
22 book bag. He tells the officer. The officer says why are
23 you taking the book bag. He said I'm going to my aunt's or
24 whatever from that standpoint.

25 He also denies knowing his son. I think it goes to

1 credibility of the witness. Obviously it's relevant because
2 he has the book bag in hands, talking about the book bag,
3 and the way I understand it, the only objection he's got is
4 to the relevance or the probative value, and obviously I
5 think it's very probative for the jury to see that and see
6 that information, and it's not hearsay because obviously the
7 statement was made by the defendant in this case.

8 THE COURT: Uh-huh. (Affirmative).

9 Okay.

10 MR. SHEALY: Judge, again, credibility is not in issue
11 here.

12 THE COURT: Well, sir, I understand that, but the, the
13 book bag has gotten into -- is an issue. According to
14 the -- I think, according to the testimony of Mr., the,
15 the -- was it -- what's that young son's name?

16 How does it go?

17 SOLICITOR BARNETTE: That's Shyquone Williams is as
18 close as I can go.

19 THE COURT: Okay. The Younger Mr. Williams I'll call
20 him. He indicated that the book bag was provided to him by
21 his father for the purpose of putting the money in it for
22 the robbery.

23 MR. SHEALY: Then, judge, we would ask that only that
24 portion where he claims the book bag be played because,
25 again, I don't -- each part of this statement has to be

1 admissible for some reason and there just is not, and other
2 than if, if Your Honor is ruling that the book bag part is,
3 in fact---

4 THE COURT: Oh, I think---

5 MR. SHEALY: ---relevant---

6 THE COURT: ---definitely the book bag would be of
7 importance and then the relationship between the two
8 individuals in the van I think is an important issue too in
9 the case.

10 According to the Younger Mr. Williams testimony, he
11 gave prior statements that his father was not involved in
12 the case. Then he changed his story and said he was
13 involved in the case. So I think there is definitely an
14 issue as to whether -- what their relationship was and how
15 they related to each other in this incident.

16 You don't see that as a -- are you not gonna argue that
17 to the jury at the close of the trial, that the Younger
18 Mr. Williams, at some point in time, indicated that his
19 father was not involved?

20 MR. SHEALY: Judge, he did indicate that his father was
21 not involved.

22 THE COURT: He did. I expect that's how---

23 MR. SHEALY: I don't see how it---

24 THE COURT: I expect that to be an issue before the
25 jury.

1 MR. SHEALY: But I don't see how that makes my client's
2 statement that he was not involved in---

3 THE COURT: Well, I find it---

4 MR. SHEALY: ---relevant in this case.

5 THE COURT: Well, I find it does make it relevant. The
6 manner in which he said it, the way in which he said it, his
7 demeanor at the time would be important. So I'm gonna
8 overrule the objection. I'll allow it to come in. I find
9 it to be relevant.

10 SOLICITOR BARNETTE: Thank you, Your Honor.

11 THE COURT: Now, do you have the redacted version?

12 SOLICITOR BARNETTE: Yes, sir, I do.

13 THE COURT: And had it been agreed upon?

14 Has Mr. Shealy looked at it and agreed that it's
15 sufficient?

16 SOLICITOR BARNETTE: He was given a copy, Your Honor.
17 We actually went back in chambers and talked to Your Honor.

18 THE COURT: Right. We talked about it briefly, but I
19 wanted to be sure.

20 Is there objections to the redacted version?

21 MR. SHEALY: No, sir.

22 THE COURT: Okay.

23 SOLICITOR BARNETTE: And I'll set the groundwork.

24 THE COURT: I don't know if it's been put into evidence
25 yet.

1 SOLICITOR BARNETTE: It has not. Not the redacted.
2 The redacted version is not in. Actually the full version
3 is just a Court Exhibit at this time, Your Honor.

4 THE COURT: Okay. And how -- what -- how is the
5 redacted version marked?

6 SOLICITOR BARNETTE: It's marked as State Exhibit 44,
7 Your Honor. Now, we do have, to make sure I didn't screw up
8 cause I don't want to do that, we've got on here BC, BWC,
9 redacted. We might be -- if it goes back to the jury, we
10 might want to move -- do something to mark that out. But
11 it's marked redacted at this point so we can make sure which
12 copy we got.

13 THE COURT: All right. I can note -- I can tell the
14 jury that it's subject to my prior rulings.

15 SOLICITOR BARNETTE: Yes, sir.

16 THE COURT: That it has been redacted according to my
17 prior rulings.

18 SOLICITOR BARNETTE: Yes, sir.

19 THE COURT: Any objection to me admitting it subject to
20 my prior rulings?

21 MR. SHEALY: No, sir, so long as it---

22 THE COURT: I'll take the blame for it having been
23 altered.

24 SOLICITOR BARNETTE: That will be fine, Your Honor.
25 That was -- I just want to make sure I play the right

1 version for you if you don't mind.

2 THE COURT: I can understand that.

3 Bring the jury in -- ready for the jury?

4 SOLICITOR BARNETTE: Yes, sir, we are.

5 THE COURT: You ready for the jury?

6 MR. SHEALY: Yes, sir, Your Honor.

7 THE COURT: All right, sir. Bring the jury in.

8 (WHEREUPON, the following takes place within the
9 presence of the jury.)

10 THE COURT: All right. The Court record will reflect
11 the jury's returned to the courtroom.

12 The State is in the process of calling its witnesses.

13 Mr. Barnette, you may call your next witness.

14 SOLICITOR BARNETTE: Thank you, Your Honor.

15 Like to call Lieutenant Turner to the stand please.

16 THE COURT: Sir, come forward and be sworn.

17 BOBBY TURNER, being first duly
18 sworn, testified as follows:

19 THE COURT: Once you're seated, sir, state your name.

20 THE WITNESS: Bobby Turner.

21 THE COURT: Thank you.

22 Mr. Barnette, your witness.

23 DIRECT EXAMINATION

24 BY SOLICITOR BARNETTE:

25 Q If you would, sir, where do you work at?

Bobby Turner - Direct examination
by Solicitor Barnette

1 A Spartanburg County Sheriff's Office.

2 Q What is your position there, sir?

3 A I'm a shift lieutenant.

4 Q And how long have you been at the Sheriff's Department,
5 sir?

6 A Be 13 years this October.

7 Q How long you been in law enforcement, sir?

8 A Probably 21 years this November.

9 Q Okay. Was you on duty January 22nd, 2015?

10 A Yes, sir, I was.

11 Q If you would, tell the jury about the bank robbery call
12 that you received.

13 A Okay. On the 22nd around 14:21 or 2:11 in the
14 afternoon, the radio -- Communications gave out a BOLO in
15 reference to a robbery that just took place at the BB&T Bank
16 on W O Ezell Boulevard. I was on Highway 29 near South
17 Blackstock Road. So I wasn't very far. So I proceeded to
18 that area to try to assist in looking for the suspect.

19 A short time later they got out information that there
20 was a tan in color minivan that the suspects had gotten into
21 and were being followed by witnesses. The route, I don't
22 remember the exact route that they took or whatever that
23 they provided.

24 They gave information that the suspects got out at
25 Quail Pointe Apartments out of a van onto -- into Quail

Bobby Turner - Direct examination
by Solicitor Barnette

1 Pointe Apartments at which point I proceeded to that area.
2 I approached Quail Pointe from Old Anderson Mill Road. As I
3 pulled in, I think witnesses gave information that the
4 suspect was wearing an orange hoodie. I observed an
5 individual wearing an orange hoodie and another individual
6 wearing a, let's see, orange hoodie and khaki shorts, and
7 the second subject was wearing a dark jacket with blue
8 jeans.

9 I approached from Old Anderson Mill side. Another
10 officer approached from the other side off of East
11 Blackstock. As he made approach, he made contact with the
12 individual with the orange hoodie. I approached the
13 individual with the black jacket and blue jeans, which I
14 later identified as Mr. Calvin Williams at which point I
15 detained him at -- due to the fact they were walking
16 together.

17 Q And do you see that individual in the courtroom today
18 that you saw?

19 A Yes, sir, I do.

20 Q And what -- how is he dressed in the courtroom, sir?

21 A He is dressed in a blue shirt with a tie.

22 SOLICITOR BARNETTE: Your Honor, I'd ask for the record
23 to reflect that he's identified the defendant in this case.

24 THE COURT: The record shall so reflect.

25 You may proceed.

Bobby Turner - Direct examination
by Solicitor Barnette

1 Q At that time did you have a body cam video on you, sir?

2 A Yes, sir, I did. I activated my body cam shortly after
3 I got out and patted Mr. Williams down.

4 Q Okay. Now, the body cam video, to explain to the jury,
5 and I've seen, I've seen numerous of them, I know, when you
6 push it on, does it revert back 30 seconds?

7 A It backs up 30 seconds. So there's a -- the first 30
8 seconds that it backs up, you can see the video, but there's
9 no audio to it.

10 Q All right. And then audio kicks in?

11 A The audio kicks in just as quick as I touch the camera.

12 Q Right.

13 But it goes back 30 seconds beyond---

14 A It does.

15 Q ---when you touched it?

16 A Right.

17 Q Okay. To explain to the jury why they're not gonna
18 hear sound for the first 30 seconds of it.

19 A Right. You'll not hear any kind of sound or anything
20 like that for the first 30 seconds due to the fact that,
21 once I activated it, it reverts back. So --.

22 Q Okay. And did the -- did the defendant have anything
23 with him?

24 A He did. He had a book bag, a black book bag that he
25 had -- he was carrying with him. I actually took that from

Bobby Turner - Direct examination
by Solicitor Barnette

1 him and felt it down kind of -- just felt of it first to
2 make sure there wasn't no weapons readily available before I
3 patted him down, and once I got him done, patted down, I
4 checked the book bag and I think I found two pairs of boxer
5 shorts in it in the front pocket and that was it.

6 Q Let me show you State Exhibit 44.

7 Is this a -- you've reviewed that video, sir?

8 A Yes, sir.

9 Q Is that a fair copy of what, what happened that day?

10 A Yes, sir, it is.

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

13 THE COURT: Objections?

14 MR. SHEALY: Subject -- my prior objections.

15 THE COURT: Subject to the prior objections and subject
16 to my prior rulings, I have ordered that certain portions of
17 the video were not admissible. So the video has been
18 changed to remove those portions that I found to be not
19 admissible under the rules.

20 SOLICITOR BARNETTE: Yes, sir.

21 (WHEREUPON, State's Exhibit No. 44 was received into
22 evidence at this time.)

23 THE COURT: You may proceed.

24 SOLICITOR BARNETTE: Thank you, Your Honor.

25 Q Also, is that his son across there being talked with

Bobby Turner - Direct examination
by Solicitor Barnette

1 the other officers?

2 A Yes, sir.

3 (WHEREUPON, State's Exhibit No. 44 was played for the
4 jury at this time.)

5 SOLICITOR BARNETTE: You can turn that back on.

6 (Bailiff complies.)

7 SOLICITOR BARNETTE: Thank you.

8 Q I know the jury could hear that or whatever, did he say
9 that was not his son?

10 A He stated that was not his son even though they had the
11 same last name.

12 Q Okay. And also he claimed that was his book bag?

13 A Yes, he claimed it was his book bag.

14 Q Okay. And I know -- I mean I took two stills off here.
15 State Exhibit 49, does that picture fairly represent
16 what you saw that day?

17 A Yes, sir.

18 Q And is that a picture off a video itself?

19 A It is.

20 Q And then State Exhibit 50, is that another picture from
21 the video?

22 A Yes, sir, it is.

23 Q Does that fairly represent what you saw that day?

24 A Yes, sir.

25 SOLICITOR BARNETTE: Okay. Your Honor, I like to enter

Bobby Turner - Direct examination
by Solicitor Barnette

1 these into evidence at this time.

2 MR. SHEALY: No objection.

3 THE COURT: Objections, there are none?

4 MR. SHEALY: No.

5 THE COURT: Then it will be admitted as marked.

6 MR. SHEALY: Again, subject to the relevance.

7 THE COURT: Oh, yes, sir, subject to your prior
8 objections.

9 (WHEREUPON, State's Exhibit Nos. 49 and 50 were
10 received into evidence at this time.)

11 SOLICITOR BARNETTE: Your Honor, I'd like to publish
12 these to the jury at this time.

13 THE COURT: You may do so, yes, sir.

14 Q Let me show you what's been marked as State's Exhibit
15 49.

16 What is that, sir?

17 A That is the book bag that Mr. Williams was caring.

18 Q Okay. And actually you see it earlier in the video.

19 Is that right?

20 A Yes, sir.

21 Q And, in the video, does he tell you that that's his
22 book bag?

23 A Yes, sir, he claimed it to be his book bag.

24 Q And showing you State Exhibit No. 50.

25 What is that a picture of, sir?

Bobby Turner - Direct examination
by Solicitor Barnette

1 A That's a picture of Mr. Calvin Williams and some of the
2 property that I took out of his pocket laying on my patrol
3 car.

4 Q Okay. And the -- his son's been over here talking at
5 the same time.

6 Is that right?

7 A Yes, sir.

8 Q Okay. And was his son wearing an orange hoodie at that
9 time?

10 A His son was wearing an orange hoodie.

11 Q Okay. And obviously y'all was assisting and wind up
12 the City -- the City winds up actually working the case that
13 day?

14 A Yeah, the City's the actual one that responded to the
15 bank robbery. We just happened to be close in the area and
16 responded to that area to try to help locate the subjects,
17 and they actually ended up in the County where they were
18 apprehended outside the City's jurisdiction.

19 Q Okay. But it's still in Spartanburg County though?

20 A Still inside Spartanburg County, yes, sir.

21 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
22 please.

23 (Pause.)

24 Q Please answer any questions that the defense may have
25 for you, sir.

Bobby Turner - Cross-examination
by Mr. Shealy

1 THE COURT: Your witness, Mr. Shealy.

2 MR. SHEALY: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. SHEALY:

5 Q Now, you found a bag you said in his hands?

6 A I believe it was in his hands, yes, sir.

7 Q In his hands.

8 Not over in the bushes?

9 A Right.

10 Q All right. He had a hold of it?

11 A Yes, sir.

12 Q All right. You testified also that it -- you testified
13 it's empty, but it actually had a couple of pairs of boxer
14 shorts in it?

15 A Yes, I said it was empty except for the two pair of
16 boxer shorts in it.

17 Q All right. So it had some clothes in it?

18 A Yeah, two pair of boxer shorts.

19 Q All right. Now, had you, in any of this -- when the
20 call came out over dispatch --

21 A Yes, sir.

22 Q -- did they say a book bag had been used?

23 A No, sir.

24 Q No.

25 Okay. Now, how many officers were out in that area?

Bobby Turner - Cross-examination
by Mr. Shealy

- 1 A By that time they was probably eight to ten of us
2 easily I'm sure in that general area by that time.
- 3 Q Okay. How many cars do you think were out there?
4 Rough guess.
- 5 A Four or five, six, something like that.
- 6 Q Okay. And now you said this goes back 30 seconds and
7 then there's---
- 8 A Yes, sir.
- 9 Q ---no audio?
- 10 A Correct.
- 11 Q Did you ever read him Miranda?
- 12 A No, sir.
- 13 Q You didn't?
- 14 A No, sir.
- 15 Q At all there?
- 16 A No, sir.
- 17 Q Why not?
- 18 A I didn't ask him any questions.
- 19 Q You didn't ask him any questions?
- 20 A Not related to the armed robbery itself, no, sir.
- 21 Q You asked him why he had the book bag?
- 22 A Yes, sir, I asked him why he had a book bag, why you
23 carrying an empty book bag.
- 24 Q All right.
- 25 A It's not normal for people to carry empty book bags,

Bobby Turner - Cross-examination
by Mr. Shealy

1 right.

2 Q So you didn't believe that the book bag had anything to
3 do with an armed robbery?

4 A At that point, no. There was no information related to
5 that.

6 MR. SHEALY: Okay. If you'll bear with me, judge?

7 THE COURT: Yes, sir.

8 (Pause.)

9 MR. SHEALY: That's all I have for this witness, judge.

10 THE COURT: Redirect.

11 SOLICITOR BARNETTE: Just two on redirect, Your Honor.

12 THE COURT: Yes, sir.

13 REDIRECT EXAMINATION

14 BY SOLICITOR BARNETTE:

15 Q You didn't know about the book bag on the note, did
16 you?

17 A No, sir.

18 Q So you didn't know the relevance of the book bag until
19 later --

20 A Right.

21 Q -- from that standpoint?

22 Matter of fact, you had not -- you didn't take it, did
23 you?

24 A No, sir.

25 Q So, later on, you did find out the relevance once you

Bobby Turner - Redirect examination
by Solicitor Barnette

1 found out the information and the facts of the robbery?

2 A Correct. I believe the book bag actually was given
3 over to the other officers that took Mr. Williams with them.

4 Q No problem. Thank you, sir.

5 THE COURT: Anything further, Mr. Shealy?

6 MR. SHEALY: No, Your Honor.

7 THE COURT: You may step down.

8 You wish to excuse the witness?

9 SOLICITOR BARNETTE: Yes, sir, I would.

10 THE COURT: Any objections?

11 MR. SHEALY: No, Your Honor.

12 THE COURT: All right. Sir, you're free to go at this
13 time. Thank you very much.

14 THE WITNESS: Thank you, sir.

15 THE COURT: All right. Ladies and gentlemen of the
16 jury, we've reached a point where there's some matters that
17 I have to take up with the attorneys concerning the, the
18 trial as it goes forward. I'm not gonna require that you
19 sit through that because that could be fairly lengthy at
20 this point in time.

21 So I'm going to excuse you for the rest of the
22 afternoon. Ask you be back in the jury room in the morning.
23 Be there at 9:30. Not nine o'clock this morning -- in the
24 morning.

25 Same instructions as you leave the courthouse this

1 afternoon that I've always given you. Don't attempt to
2 gather any information about the case on your own. Don't
3 listen to, watch, or read media reports. Don't discuss the
4 case with anyone. Don't allow anyone to discuss it with
5 you. And if anybody attempts to contact you about the case,
6 please report that as soon as possible.

7 So I'm asking that you be back in the jury room, 9:30
8 in the morning. We should be able to start shortly
9 thereafter.

10 Thank you for your patience in the matter. You're free
11 to go at this time.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right. I'm gonna put on the record the
15 fact that, prior to our beginning after the lunch break, I
16 had a meeting with counsel from both sides in my chambers,
17 and, at that time, the gentleman who testified earlier from
18 the Federal Court -- what was his name?

19 SOLICITOR BARNETTE: Mr. Cook, sir.

20 THE COURT: Mr. Cook. Mr. Cook came into my courtroom.
21 He brought with him certain documents that Judge Herlong had
22 authorized that he release to me, which he did, with the
23 instructions that I have the right to handle those as I saw
24 from Judge Herlong.

25 I've had both my law clerk and myself review the

1 documents since that time. I have had them copied. A
2 copy's been provided to both counsel. My understanding is
3 the State may wish to make further use of those documents in
4 the case.

5 So I'm going to break at this time. It's three o'clock
6 in the afternoon. That would -- should give Mr. Shealy an
7 opportunity to review those documents that have been
8 presented. I intend to be here at nine o'clock in the
9 morning and we'll take up those matters at that point in
10 time.

11 So we're breaking at this time in order to give the
12 defense an opportunity, and the State for that matter, I
13 don't think Mr. Barnette has seen all of these documents
14 until I turned them over to him recently, to give both sides
15 an opportunity to review them. They have been presented to
16 the Court from Judge Herlong's office and I'd like both
17 sides an opportunity to review them so that we can discuss
18 them in the morning.

19 Nine o'clock in the morning. We'll resume at that
20 time.

21 Thank you very much.

22

23 (WHEREUPON, Court was in recess for the evening.)

24

25

1 wednesday, June 8th, 2016

2
3 THE COURT: All right. We're on the record in the case
4 of The State versus Williams.

5 Had a brief chambers conference with both counsel. I'm
6 informed that the State has certain motions to make
7 concerning information that's been submitted to the Court.

8 Mr. Barnette.

9 SOLICITOR BARNETTE: Yes, sir.

10 The State's been informed, Judge Herlong has asked all
11 the federal documents be, presentencing report, be returned
12 back to him. Probation Agent Dean Cook is here. He's the
13 one that testified earlier. He has been ordered not to
14 testify or say anything in Court. So that's the reason I'm
15 speaking for him in this situation.

16 They want -- I think there's a Court Exhibit 5, which
17 is part of the presentencing report, was the offense conduct
18 that was introduced earlier. Based off Judge Herlong's
19 order, have all items returned back to his possession, we'd
20 ask for that document, that document to be returned.

21 THE COURT: So you're asking to be allowed to withdraw
22 that document, that---

23 SOLICITOR BARNETTE: Yes, sir.

24 THE COURT: ---exhibit?

25 SOLICITOR BARNETTE: Per Court order by the Federal

1 Court.

2 THE COURT: Okay. Does the State -- I mean defense
3 object to that exhibit being withdrawn?

4 MR. SHEALY: No, Your Honor.

5 THE COURT: All right. I'll order then it be
6 withdrawn, returned to Mr. Barnette.

7 SOLICITOR BARNETTE: And, Your Honor, he also requests,
8 I believe the Court had, and I think you've already complied
9 with that, the Court -- to have the Court return the
10 documents that was---

11 THE COURT: The documents that I received from my
12 review yesterday that have not yet been put into evidence,
13 I've provided a copy to Mr. Barnette and a copy to
14 Mr. Shealy. I have returned my copy and my understanding is
15 that they have both returned their copies. So those have
16 been returned to the custody.

17 SOLICITOR BARNETTE: Yes, sir, and I think Agent Cook's
18 here to accept and I think---

19 THE COURT: All right. If you'll just step up---

20 SOLICITOR BARNETTE: And Pam Green get the---

21 THE COURT: ---and retrieve the exhibit.

22 SOLICITOR BARNETTE: He'll be signing for it to make
23 sure there's a receipt back for it.

24 THE COURT: Thank you.

25 SOLICITOR BARNETTE: I just wanted to make sure the

1 record is clear.

2 (WHEREUPON, Court's Exhibit No. 5 was returned to Mr.
3 Cook at this time.)

4 THE COURT: okay. Thank you, sir.

5 MR. COOK: Thank you, judge.

6 SOLICITOR BARNETTE: And, Your Honor, just for the
7 record, I understand this came from Washington, this order.

8 THE COURT: I understand.

9 SOLICITOR BARNETTE: Just to make it clear for the
10 record so the case -- the record needs to be cleared.

11 THE COURT: They are their documents and they have not
12 yet been put into evidence.

13 SOLICITOR BARNETTE: Yes, sir.

14 THE COURT: All right.

15 SOLICITOR BARNETTE: Thank you, Your Honor.

16 THE COURT: Except for the one that you've withdrawn.
17 Now, does the State -- does the State intend to call
18 any additional witnesses?

19 SOLICITOR BARNETTE: No, sir, not at this time---

20 THE COURT: All right.

21 SOLICITOR BARNETTE: ---based off what happened.

22 THE COURT: That means the State will be resting.

23 I will allow you to go ahead and make any motions you'd
24 like to make, Mr. Shealy, at this time, out of the presence
25 of the jury.

1 MR. SHEALY: Thank you, Your Honor.

2 Judge, the defense would argue, would make a motion for
3 directed verdict as to both of these cases. As to the
4 accessory before the fact of a felony, we would make that
5 based on a failure to show sufficient evidence that my
6 client had knowledge of this particular bank robbery or in
7 anyway solicited the bank robbery.

8 As for the bank robbery that's Count Two of the
9 indictment, Number, excuse me, 15-GS-42-2312, it would be
10 our position that the State has failed to prove my client's
11 presence for the requirements of the bank robbery. It's --
12 everybody has testified that my client was, was outside of
13 view from the bank robbery, that my client was not the
14 driver. So could not have rendered any kind of aid to the
15 bank robber. There was just no way that he could have aided
16 or abetted this bank robbery.

17 Mr. Blassingame has admitted -- testimony is that he's
18 the one that did the actual driving, that there was never
19 any telephonic communication between the two, but he
20 couldn't recall any. There was -- there's evidence from the
21 tellers that there was no telephone conversations between
22 the two I believe, and I -- I'm not sure what Mr. Shyquone
23 Williams testified to. I don't believe he testified that
24 there was any direct communication between the two.

25 Again, that distant, judge, it would be our position

1 that the State can't -- has failed to prove that my client
2 could of possibly be the principal in this bank robbery.
3 Those would be my motions for directed verdict.

4 Thank you.

5 THE COURT: Hear from the State.

6 SOLICITOR BARNETTE: Thank you, Your Honor.

7 I think there's ample evidence in the record showing
8 that he was involved in the planning of this from the
9 standpoint. The testimony that Shyquone Williams basically
10 the note that was done that was written out after his dad
11 wrote out for him and he followed up with it. Of course, if
12 you look at the language of it, my, and when the prior goes
13 to the jury, a 16-year old wouldn't be able to figure out
14 all the evidence that needs to be put on there from there
15 and basically him---

16 THE COURT: Look, looking at that note, it does appear
17 that whoever prepared it had a -- some level of
18 sophistication in these types of matters.

19 SOLICITOR BARNETTE: Yes, sir, and, obviously, you
20 know, he was involved in the planning of it. He actually
21 told Mr. Blassingame where to go. He was actually -- Mr.
22 Blassingame's testimony was basically the older gentleman
23 did all the talking. The young guy did basically the going
24 to the bank, going back and forth. But he said he was the
25 one going to meet him at the bank to get money from, from

1 the bank or was going to have somebody there that he knew.

2 Plus, he also directed, directed him where to go. Not
3 to park at the bank, but to go somewhere else from there,
4 and the reason why I indicted him on both counts was
5 obviously I feel like he could definitely be shown as the
6 person which was involved, you know, obviously involved in
7 the planning of it. There's an argument he may not of been
8 present, but the thing was he was present. He went down in
9 the van, was with him in the van during that time, and was
10 directing everything basically to that point even to
11 indicate which bank to go to and everything from there. So
12 he was definitely aiding and abetting in that situation.

13 THE COURT: Anything further, Mr. Shealy?

14 MR. SHEALY: Judge, I just probably I put on the record
15 that in order to convict someone of accessory before the
16 fact, that they would have to prove that my client -- the
17 elements are that he advised and urged the parties to commit
18 the offense. The second element is generally that he was
19 not present when the offense was committed. And three, that
20 when he committed the offense. That's from State versus
21 Barn. That's 190 S.C. 75.

22 Again, I point out that he would -- all of the -- the
23 uncontradicted -- all of the testimony says that he would of
24 been absent from the crime scene. So I don't see---

25 THE COURT: well, doesn't South Carolina though

1 recognize constructive presence---

2 MR. SHEALY: well, judge, constructive---

3 THE COURT: ---under a theory under the law?

4 MR. SHEALY: It does, but constructive presence would
5 require that my client be in a position that he could, in
6 fact, aid the robber and, again, everybody has testified the
7 distance---

8 THE COURT: well, the testimony, as I recall, was that
9 he directed the driver of the vehicle where to park, stayed
10 with that vehicle during, the getaway vehicle if you wanted
11 to phrase it as that, during the robbery, directed it when
12 to leave and where to go after it left, arranged for it to
13 begin with to go.

14 So there's certainly evidence that he was present at
15 the scene and directing elements of the offense.
16 Asportation is part of the offense where things are carried
17 off, carried away. So the carrying away of the loot is, in
18 any robbery, is part of the offense.

19 MR. SHEALY: Judge, we would argue, again, that because
20 he was so far away, we would also point out that the crime
21 is simply entering into the depository institution with the
22 intent to steal money. So I don't know that even carrying
23 away, it would be our position, that carrying away may not
24 even be an actual element of -- I understand we call it bank
25 robbery, but the actual title and the actual elements are

1 entry into the institution with the intent to steal from it.

2 THE COURT: Uh-huh. (Affirmative).

3 MR. SHEALY: So it would be, again, our position that,
4 because he was so far away, he was not in any position to
5 aid the bank robber. There was no way of a vocal call out
6 for help could of reached him.

7 THE COURT: And under the---

8 MR. SHEALY: There's no phone call.

9 THE COURT: ---theory of hand of one, hand of all, if
10 he was aiding and assisting, he's considered to be there.

11 MR. SHEALY: Well, judge, again the -- that meets
12 accessory before the fact and accessory before the fact no
13 longer---

14 THE COURT: well, I'm talking about the bank robbery.

15 MR. SHEALY: ---exists. Well, judge, it would be our
16 position that, to rule in that way would essentially consume
17 the crime of accessory before the fact. I mean there is no
18 actual difference between the two.

19 THE COURT: well, there may -- I'm a little bit
20 concerned where we're charging him with the act and also
21 being an accessory before that act. As you stated, an
22 accessory is not -- not normally not present when the act is
23 performed. Here he was in the vicinity. He was close
24 enough to be in the getaway vehicle.

25 MR. SHEALY: Well, judge, if it's, if it's your

1 position that they have proven his or that they have, for
2 these purposes of a directed verdict motion, presented
3 sufficient evidence to say that he is present, then we would
4 argue that the opposite, that he was, therefore, they
5 haven't proven accessory before the fact.

6 THE COURT: How about that, Mr. Barnette?

7 SOLICITOR BARNETTE: Your Honor, that's State versus
8 Gentry. Let me pass that up to the Court if I could.

9 THE COURT: All right.

10 SOLICITOR BARNETTE: And, Your Honor, this is State
11 versus Gentry. It's 363 S.C. 93, Your Honor, decided in
12 2005, Your Honor. This is actually a Spartanburg case tried
13 in front of Judge Cole. I was the prosecutor -- one of the
14 prosecutors.

15 THE COURT: So you have some familiarity with it?

16 SOLICITOR BARNETTE: I do. Basically the argument was
17 for Mr. Gentry was they were doing a armed robbery on a drug
18 dealer. Several -- there was eight defendants involved with
19 it. Four of them actually went in the house and Mr. Gentry
20 was one of the four. And what happened was he leaves before
21 the shooting starts. He goes out in the yard. And
22 basically his argument was I knew we were gonna commit an
23 armed robbery, but I didn't -- my -- we were not gonna
24 murder anybody. Well, literally, it went back and took the
25 person -- the drug dealer took him out back and basically

1 executed him and his wife was shot four times inside the
2 place.

3 So the problem we ran into, and how we found that out,
4 we had a cooperating witness that found out, through the
5 jail, that that was gonna be his story. So, when we
6 presented the case, we presented several additional facts,
7 which was the murder, armed robbery, ABWIK, as well as the
8 principal offense and our argument was it's gonna be a
9 factual issue for the jury to decide because, obviously, we
10 got enough to get by DV on both these. But, to me, he's in
11 the vicinity like Mr. Gentry was.

12 Mr. Gentry had actually -- he was in the -- and then he
13 left and that was his argument that he wasn't -- he was in
14 the front yard. So really we left it up to the jury and the
15 jury came back with accessory before the fact on the I
16 think -- well, accessory before the fact on armed robbery,
17 accessory before the fact on the ABWIK, which was the wife.
18 They did come back with not guilty on other counts.

19 I think there was a jury nullification basically, in my
20 opinion, what happened there because there's really a split
21 verdict. It was consistent because no question the armed
22 robbery occurred. They said he knew about that. He knew
23 about basically the wife did -- found not guilty of the
24 murder.

25 But my point is, in this case, the Gentry, both those

1 was submitted to the jury because there's a factual basis
2 where the jury could find one or the other and that's what
3 happened in this case.

4 THE COURT: Well, it was submitted to the jury though
5 where they had, if they found him guilty of one, they should
6 not answer the other question?

7 SOLICITOR BARNETTE: I don't think the judge did that
8 to be honest with you, and I'm trying to remember back to
9 the case, but I think he submitted all of it to them and let
10 them make the factual basis, and they came back with
11 accessory before the fact on the armed robbery and the
12 ABWIK. And he got a 30 year sentence and a 20 year sentence
13 to run concurrent.

14 But I would not have a problem with the Court
15 instructing them to find one or the other because,
16 obviously, you know, that would be a factual finding made by
17 the jury.

18 THE COURT: How about that, Mr. Shealy?
19 Interesting argument.

20 MR. SHEALY: Well, judge, I mean, at this point, we're
21 making a motion for directed verdict.

22 THE COURT: Well, I understand that, but we're gonna
23 cross this bridge shortly thereafter I would suspect.

24 MR. SHEALY: Yes, sir. Well, it would still be our
25 position that you would have to -- that they can't have it

1 both ways. Either they presented---

2 THE COURT: And that's what I'm suggesting, that the
3 jury would have to either find him not guilty of both or, if
4 they find him guilty of one, that would exclude the other.

5 MR. SHEALY: And, judge, quite frankly, I don't think
6 that the State has presented sufficient evidence to submit
7 the question of the bank robbery to the jury.

8 THE COURT: Okay. Well, I disagree and would---

9 MR. SHEALY: Yes, sir.

10 THE COURT: ---would -- I'm not gonna grant that. I'll
11 deny that motion.

12 MR. SHEALY: Okay. And as to the accessory before the
13 fact?

14 THE COURT: I think there's sufficient evidence either
15 way. It's a factual determination. So there is -- there
16 are facts both that would support both possibly. That's up
17 to the jury to decide.

18 MR. SHEALY: Yes, sir, and then, at that point, we
19 would---

20 THE COURT: You would join in a request that it be
21 either or?

22 MR. SHEALY: I would, but I think I may have to wait
23 until after I make my second directed verdict motion after
24 I -- I'm gonna -- my client, I believe, is not gonna testify
25 and---

1 THE COURT: Well, let me -- I'm gonna get to that in
2 just a moment.

3 MR. SHEALY: I'm happy---

4 THE COURT: So let's just leave it for now I've denied
5 your motion.

6 MR. SHEALY: Yes, sir, judge.

7 THE COURT: Okay. I'll leave it at that at this point
8 in time.

9 Now, I do want to inquire of your client concerning his
10 right to testify in the case.

11 Madam Clerk, place the defendant under oath.

12 THE CLERK: Yes, sir.

13 (WHEREUPON, the defendant was placed under oath at this
14 time.)

15 THE COURT: All right. You can be seated.

16 (Defendant complies.)

17 MR. SHEALY: Judge, I apologize. I should of done a
18 motion to settle his record.

19 THE COURT: Oh, you want to do that now?

20 MR. SHEALY: Yes, sir.

21 THE COURT: All right, sir.

22 MR. SHEALY: Before you inquire.

23 THE COURT: All right. Go ahead.

24 MR. SHEALY: Judge, we would ask that the State be
25 required to show what convictions they intend to question my

1 client on---

2 THE COURT: All right. I'll hear from the State.

3 MR. SHEALY: ---if he were to testify.

4 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

5 There was the two previous armed robbery convictions
6 that we talked about quite a bit from the '03, but he
7 actually served 125 months on that. So, obviously, that's
8 with the ten year period, Your Honor.

9 I believe there's shopliftings and basically the two
10 things I asked on the motion beyond the ten year period was
11 false information. There was two charges on that and we'd
12 like to use those to impeach the defendant if he testifies.

13 THE COURT: All right. As to the prior burglaries, I
14 do not have sufficient evidence to show me that the -- there
15 was any element present in those burglaries other than the
16 burglaries themselves. No indicia of some type of deception
17 or lying. And so I will not allow those to be used. I
18 would find that they're, they're prejudicial effect would
19 outweigh any probative value on his credibility.

20 On the giving false information to police officers,
21 they're both more than ten years old and I'm not going to
22 allow those to come in for that reason.

23 Now, I would like to inquire of your---

24 MR. SHEALY: I just wanted to make sure those were the
25 only convictions they would attempt to use.

1 THE COURT: That's all he told me.

2 SOLICITOR BARNETTE: Yeah, there's some shopliftings
3 and things, but they're beyond ten years, Your Honor.

4 THE COURT: All right.

5 Okay. Now, Mr. Williams, we've reached the stage of
6 the trial where you have the right to present your defense.
7 I'm going to go over certain of your Constitutional rights
8 with you at this time. When I finish my discussion or my
9 explanation, I'll give you a chance to ask questions about
10 this if you would like or you certainly will have the right
11 to consult with your attorney about these matters if you
12 choose to do so.

13 Do you understand what I'm doing at this time?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. As I said, we've reached the
16 stage of the trial where you have the right to present your
17 defense. As part of that defense you have the right to
18 testify in this case, but you also have the right to claim
19 the protections which are given to you under the Fifth
20 Amendment to the United States Constitution. That amendment
21 reads, in part, that no person shall be compelled, in a
22 criminal case, to be a witness against himself.

23 So, while you have the right to testify, you can not be
24 made or forced to testify. Therefore, you have the right to
25 remain silent if you wish to do so.

1 The right to remain silent or to not testify is a
2 personal right. No one can waive or give up that right
3 except yourself. I will advise you that, if you decide to
4 testify, your testimony will be governed just like any other
5 witnesses testimony. You'll be examined by your attorney.
6 You'll be cross-examined by the State's attorney.

7 I have already gone over your prior convictions and
8 made a ruling concerning that. You were present for that
9 ruling.

10 I will tell you that, if you decide to testify, that
11 decision has to be made freely and voluntarily by you with
12 knowledge of the protections given to you by the Fifth
13 Amendment and the consequences that could result from your
14 decision to testify. I will advise you that, if you decide
15 not to testify, then I will instruct the jury that they can
16 not give the fact that you did not testify any consideration
17 whatsoever in reaching a verdict in this case. In fact, I
18 would advise them or instruct them that they could not even
19 discuss the fact that you did not testify during their
20 deliberations. So, therefore, there should be absolutely no
21 prejudice to you because of the fact that you did not
22 testify.

23 Again, this decision is left entirely up to you. You
24 can talk to your lawyer, you can talk to family or friends,
25 anyone else you think could give you advice on the subject,

1 but the decision is yours and yours alone.

2 Now, do you understand the rights that I have explained
3 to you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you have any questions of me concerning
6 those rights?

7 THE DEFENDANT: No, sir.

8 THE COURT: Have you had an opportunity to discuss this
9 decision with your attorney?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you wish to discuss this with him or
12 anyone else any further?

13 THE DEFENDANT: No, sir.

14 THE COURT: Do you intend to testify in this case?

15 THE DEFENDANT: No, sir.

16 THE COURT: Thank you, sir.

17 Now, does the defense intend to call any other
18 witnesses?

19 MR. SHEALY: No, Your Honor.

20 THE COURT: So it would be your position that you're
21 going to rest?

22 MR. SHEALY: We are, Your Honor.

23 THE COURT: All right. Now, do you want to renew your
24 prior motions?

25 MR. SHEALY: I do, Your Honor.

1 THE COURT: All right.

2 MR. SHEALY: Particularly regarding Officer Turner's
3 body worn camera.

4 THE COURT: All right. Those motions are noted. The
5 Court would make the same rulings at this time. Therefore,
6 there will be no change in our position at this time.

7 Now, we can discuss the question of the verdict.

8 MR. SHEALY: Yes, sir, we would ask that the jury would
9 have to find him guilty of either one or the other or not
10 guilty on both.

11 THE COURT: The State have any problem with me
12 instructing the jury in that fashion?

13 SOLICITOR BARNETTE: No, sir, we don't.

14 THE COURT: Okay. Then I'll do so.

15 All right. Any specific request for charge from the
16 state?

17 SOLICITOR BARNETTE: No, sir, I think you have your
18 standard charge. Reasonable doubt I think you say firmly
19 convinced.

20 Is that right?

21 THE COURT: Yes.

22 SOLICITOR BARNETTE: Okay. I just wanted to make sure
23 and follow that.

24 THE COURT: And I do intend to start -- charge the
25 bankruptcy -- I mean the bankruptcy -- the bank robbery

1 statute. Fairly short and sweet. It doesn't contain a lot
2 in there. I do intend to charge intent since it requires an
3 element of intent for that to exist.

4 Any specific request for charge from the defense?

5 MR. SHEALY: No, Your Honor.

6 THE COURT: I will charge hand of one hand of all. I
7 will charge mere presence at the scene from the defense
8 prospective. I am going to charge constructive presence as
9 something the jury has the right to consider.

10 All right.

11 SOLICITOR BARNETTE: And, Your Honor, your accessory
12 before the fact, can I take a look at that charge just to
13 see?

14 I'm assuming it follows the statute. If it does,
15 that's fine with me.

16 THE COURT: Just give me a second. I'll go over it
17 with you.

18 SOLICITOR BARNETTE: I just wanted to make sure what
19 the language would be in that.

20 THE COURT: The defendant is charged with being an
21 accessory before the fact of bank robbery, bank robbery. In
22 order to prove this crime, the State must prove, beyond a
23 reasonable doubt, that the defendant either advised, agreed,
24 urged, counseled, hired, or, in some way, aided or abetted
25 another person to commit a crime and that the defendant was

1 not present when the offense was committed. Aid means to
2 help, to promote the course or accomplishment of, to give
3 support to or give assistance to. Abet means to encourage
4 or appear to favor or support.

5 SOLICITOR BARNETTE: Thank you, Your Honor.

6 THE COURT: That's the charge.

7 All right. I'm gonna bring the jury back in. I'll
8 call on you to call your next witness. I assume you'll be
9 resting. I'll then call on the defense and allow you to
10 rest before the jury. Once we do that, then we will be
11 proceeding with arguments.

12 Now, I'm not aware that the defense has introduced any
13 evidence in the case.

14 Am I correct in that?

15 MR. SHEALY: Yes, sir.

16 THE COURT: So the State will be going first with its
17 argument?

18 SOLICITOR BARNETTE: Yes, sir.

19 THE COURT: Are you prepared to go forward?

20 SOLICITOR BARNETTE: Yes, sir, I am.

21 THE COURT: All right. Let's bring the jury in.

22 (WHEREUPON, the following takes place within the
23 presence of the jury.)

24 THE COURT: All right. The record will reflect the
25 jury has returned to the courtroom. I thank you for your

1 patience in this matter.

2 while you were away from the courthouse, did any of you
3 have any difficulty in complying with my instructions?

4 If that's true for any of you, please stand.

5 (No response.)

6 THE COURT: It appears that all jurors have been able
7 to comply with my instructions thus far.

8 When we took our break yesterday the State was in the
9 process of calling its witnesses.

10 The State may call its next witness.

11 SOLICITOR BARNETTE: The State would rest at this time,
12 Your Honor.

13 THE COURT: All right. The State is rested. That
14 means they have completed the presentation of their evidence
15 before you. At this time the defense has the right to call
16 any witnesses that they choose to call.

17 The defense may call any witnesses.

18 MR. SHEALY: Judge, the defense would rest.

19 THE COURT: All right. The defense has rested as well.
20 So that means that completes the presentation of evidence in
21 the case. I told you, when we reached this stage of the
22 proceedings, the attorneys would be given their second
23 opportunity to directly address you concerning this case in
24 their closing or final arguments.

25 The State will be going first.

1 Mr. Barnette, you may proceed.

2 SOLICITOR BARNETTE: May it please the Court, Your
3 Honor?

4 THE COURT: Yes, sir.

5 SOLICITOR BARNETTE: Ladies and gentlemen of the jury,
6 if you go back and look at the evidence in this case,
7 there's so many key parts, but the main key part I want you
8 to look at is look at this note. I'm gonna show this note
9 to you up here from there.

10 You got to remember a 16-year old took this note into
11 the bank, and on this note it says this is an armed robbery.
12 I demand \$40,000 in large bills with no bands around the
13 money. No dye packs. No bait money. No tracking devices.
14 I want all the money placed in my book bag. No silent
15 alarms. If you obey me, no one will get hurt.

16 A 16-year old did not think about this or be able to do
17 this. That gentleman right over there did it.

18 He told him what to do and how to do it, and you
19 remember the witness testimony is the way you heard it. Not
20 the way I'm trying to tell you. Not the way defense is
21 trying to tell. You remember it the way you heard it.

22 But you heard from Mr. Blassingame. Here's a guy that
23 picked them up, was suppose to give them a ride for gas
24 money. He says well, I'll take you to the bank.

25 And who was the man that was guiding him the whole

1 time?

2 That gentleman right there.

3 He told him I wanted to go to these certain banks, and
4 even when they got to the bank they were suppose to go to,
5 he said no, don't stop at the bank. He said I want you to
6 drive down here. He directed him not to go to the bank, to
7 go away from the bank.

8 His son never really said anything the whole time they
9 was in there until he told him to go out. Then he went and,
10 of course, you saw the bank robbery. You saw him come back
11 and run back. A 16-year old. And the dye pack went off.
12 He just reacted, kicking the money underneath, just letting
13 it go everywhere.

14 He got back to the car. He told him and he wasn't
15 there. His dad took over there. Said we need to go
16 somewhere. Of course, Mr. Blassingame, he had to go back to
17 his wife to work. He didn't know what was going on, and he
18 didn't even really look back at him. I mean he was busy.
19 He wanted to get where he was suppose to get it if he didn't
20 get his money.

21 He was gonna stop at the McDonald's. Then he said no,
22 we want to go on. Basically he told him we needed to go on
23 to the gas station.

24 Mr. Blassingame has got nothing to lose in this thing.
25 He's telling you the truth from that standpoint.

1 Then you heard Mr. Moore said he saw the dye pack go
2 off, him and his fiancée. He watched his 16-year old son
3 get in the van and followed him to the McDonald's they
4 talked about. Went over and dropped them off at Quail
5 Pointe Apartments. At Quail Pointe they jump and run and
6 get out.

7 This gentleman here takes his son's clothes and throws
8 them up into the bushes. You saw where they was high up
9 into the bush underneath the bush, trying to hide behind the
10 building. When they come back out they're caught by the
11 Sheriff's Department.

12 And you got a video. And another key point to this was
13 I want all the money placed in my book bag. Shyquone forgot
14 the book bag in the van. So he had to put all the money in
15 his thing because, you remember, Ms. Rodriguez, the teller,
16 telling you he didn't have a book bag. Couldn't do the book
17 bag. So he just put it into the pockets when she handed it
18 to him.

19 And remember her testimony. He seemed scared. He
20 wouldn't look at her and that let her put smaller bills in.
21 Well, you know, if he was complying with this note, he would
22 of looked at her and said I want the big bills. Not the
23 little bills. But she said he wasn't paying any attention
24 to that. He was there to be a pickup man for that gentleman
25 right there. Be used by him.

1 So she even slipped a dye pack in there. She said
2 well, I just noticed it and she said he just wasn't paying
3 any attention. Just scared. And you saw what happened
4 after he ran out of the bank and so forth.

5 He gets rid of all the clothes. He does have a pair of
6 shorts on. He gives him his orange hoodie to wear, which he
7 had when the Sheriff's Department caught him.

8 And who had the book bag?

9 He did.

10 He said that book bag was his, and it's the first part
11 of the video you can see it that you'll have this picture of
12 where the book bag was and he said it's my book bag. And,
13 of course, you'll have the videos of what we showed you
14 earlier plus the conversation that the defendant had with
15 the Sheriff's Department, the officer back there.

16 And then the thing to me that shows unbelievable
17 character credibility or whatever you want to call it, the
18 evidence shows this. Here's a son telling police he had
19 nothing to do with it. He's trying to protect his dad.
20 He's a 16-year old little boy trying to protect his dad.

21 And you saw the statements made on that video. The
22 defendant telling the police I don't know who he is. We was
23 just walking talking about life.

24 He used his 16-year old son to do a bank robbery for
25 him. That's exactly what he did. He counseled him. He had

1 aided and abetted him. He told him what to do. He told him
2 how to write the note. There's no way Shyquone Williams,
3 you saw him testify, there's no way he could think of all
4 those things and know about those things.

5 The one thing you bring to this courtroom, ladies and
6 gentlemen, you bring your common sense and you saw Shyquone
7 Williams up here. He was scared. He's 17-years old now and
8 he's been convicted of bank robbery, and he pled guilty to
9 it, and he's facing the judge one day and that judge will
10 determine that sentence. Not determined by anybody else.

11 The one thing, ladies and gentlemen, don't let this man
12 get away with using his son. The evidence is clear what
13 happened in there. All the witnesses, all the evidence
14 points to one conclusion.

15 This gentleman right here used his son to commit a bank
16 robbery. He aided and abetted him afterwards trying to get
17 rid of the clothes, everything for him, and you saw where
18 the clothes were, the dye's on the clothes. It's the same
19 clothes that Shyquone was wearing that night or that day I
20 mean.

21 The judge is gonna charge you about reasonable doubt,
22 and like you say, you take the law as the judge gives you.
23 He is the judge of the law. But talking about reasonable
24 doubt, he will talk to you, if you're firmly convinced that
25 this happened. That's the key to listen to reasonable

1 doubt, and he'll give that to you in your charge. You'll
2 hear it. If you're firmly convinced.

3 And I submit to you, ladies and gentlemen, the evidence
4 in this case shows that -- should firmly convince you.
5 You're gonna be given two charges, accessory before the fact
6 to bank robbery and bank robbery. The two differences
7 really is, accessory before the fact is where you aid,
8 counsel, help somebody to commit a bank robbery or tell them
9 or planning from that standpoint, and you weren't present
10 for the bank robbery.

11 The other one is basically aided and abetted with a
12 bank robbery and it says you have to be present. That's a
13 factual issue you're gonna have to make a decision on. Of
14 course, he stayed in the van a couple blocks down the road
15 while his son went through this after he directed
16 Mr. Blassingame where to go, where he directed everything
17 that happened, where he wrote the note and told his son to
18 write the note out for him.

19 Ladies and gentlemen, to me, this evidence leaves you
20 firmly convinced of what happened, and, like you say, you
21 bring your common sense here in everyday, everyday lives.
22 You see kids, parents, and how they interact. And the one
23 thing a child wants to do is to please his parents.

24 The only problem was this father did not act like a
25 father. He used his son.

1 And, ladies and gentlemen, I'm asking you to make him
2 pay for what he did.

3 Thank y'all very much.

4 Thank you, Your Honor.

5 THE COURT: Yes, sir, Mr. Shealy, for the defense.

6 MR. SHEALY: Thank you, Your Honor.

7 If it may please the Court?

8 THE COURT: Yes, sir, Mr. Shealy.

9 MR. SHEALY: Again, I'm Matthew Shealy. I represent
10 Calvin Williams.

11 You've heard that there's all kinds of evidence
12 regarding my client. There just isn't and that's his job.
13 He's got to say there is, but there just isn't.

14 As I told you at the beginning of all this, there's a
15 bang up case against Shyquone Williams. That's his name,
16 Shyquone Williams. They got him. He's got dye all over
17 him. He gives statements. All of that sort of thing.

18 Now, they tell you that a judge is going to determine
19 his sentence and that's true. A judge always determines the
20 sentence. But if you don't think the fact that he testified
21 is gonna come up, then you're a fool.

22 I'm a criminal defense attorney. I'll tell you it's
23 gonna come up. It's going to, in fact, be a great deal of
24 his strategy as to get a smaller sentence as possible. And
25 if they can say that he helped in the conviction as opposed

1 to in the trial, then it gets even better. That's just the
2 way it is. And if y'all don't believe that, then, again,
3 I'm surprised because that's the way these things work.

4 Okay. Anybody whose seen Law & Order knows that.

5 Now, he's also told you that this note is very
6 sophisticated cause it says I demand \$40,000 in large bills
7 with no bands around the money. No dye packs. No bait
8 money. No tracking devices.

9 Again, if you've ever watched TV, all of those things
10 are discussed. In fact, even more things are discussed.

11 That's the kind of thing a 16-year old would put in a
12 note, and it's also the kind of thing, whenever he says
13 \$40,000, only a 16-year old is gonna think that a teller has
14 access to \$40,000 in that little bitty drawer she's got.

15 All right. So this note is proof of nothing. It's not
16 sophisticated. It's generated from a TV show and they point
17 out in the note there's this discussion of a book bag.

18 Now, Shyquone never said that this book bag was the
19 book bag he was suppose to take but he forgot this
20 particular book bag in the car.

21 In fact, it makes no sense that that's what he did
22 because, if my client had the book bag and is the great
23 mastermind of this case, then how does he not say here don't
24 forget your book bag or how does he not just give it to him
25 from the beginning?

1 The State has been very clear that this book bag was
2 always in my client's possession.

3 Now, that's what people have testified to. They've got
4 it. They have made very certain that we got pictures of my
5 client and the book bag and all of this other stuff, but
6 there's no testimony tying this book bag as the book bag
7 that was to be used in a robbery and that this book bag is
8 the one that was forgotten and all this other business.
9 They're asking you to make giant leaps of logic that are not
10 warranted by the evidence, and, quite frankly, aren't
11 warranted by common sense.

12 Because, if my client is so sophisticated, according to
13 the State's theory, based on this note, how does he forget
14 the book bag?

15 It just doesn't -- it just doesn't make any sense. It
16 further makes no sense that when Mr. Blassingame takes them
17 to the first bank, my client doesn't say well, hey, just go
18 rob that one. In point of fact, he says no, this isn't the
19 bank where we're suppose to meet this guy. He says it's
20 this other bank. It's this other bank we need to go and
21 meet him at.

22 why?

23 The note doesn't specify a bank. There's no reason
24 that's been presented to you, no reason that I can quite
25 frankly think of, as to why this other bank that

1 Mr. Blassingame took them to was somehow worse. In fact,
2 the only thing that makes sense, the only reason this bank
3 was in particular the bank they had to go to is because my
4 client believed, according to Mr. Blassingame's testimony as
5 to the conversations in the car, that they were meeting
6 somebody at the bank.

7 Now, they've also made a big to do about the fact that
8 my client did most of the talking. Well, you saw
9 Mr. Blassingame and Mr. Blassingame was an older fellow. My
10 client's an older fellow. That's just the way that -- I
11 mean we've all got parents. At least my parents do a lot of
12 my talking for me. I don't know if y'all had that
13 experience, but that just makes -- that's just the way that
14 it works.

15 I mean Mr. Blassingame says he pulls up to a friend on
16 the street and is asked to give them two guys a ride.

17 who's he gonna talk to?

18 He's gonna talk to a kid or is he gonna talk to a grown
19 man?

20 Now, you've also heard about the various things that
21 the forensic officers collected and all of that. Again,
22 none of that ties my client to anything. There's no
23 fingerprints. There's no nothing. There are some clothes
24 in a bush.

25 Now, if my client knew about this, and he's the one

1 discarding the clothes, and they claim he knows what's in
2 the note, why didn't he get rid of the book bag?

3 Cause, again, they're saying this book bag, you got to
4 look at this book bag, it's very important.

5 Well, why isn't that in the bushes too?

6 Because he didn't know. He didn't know. He has
7 nothing to do with this.

8 A kid comes in and says no, he wasn't there and they go
9 to a McDonald's?

10 He wants to go to Blackstock Road, which, again, if
11 you're familiar with Spartanburg, ain't that far.

12 This isn't the best getaway plan in the world, is it?

13 It's just not there.

14 Now, you've heard Shyquone testify and we've already
15 discussed his, you know, his plea. Then, as I told you,
16 they're always biases and reasons to shade and things, and
17 the State, again, wants to talk up the fact they're father
18 and son and they say my client is just a terrible human
19 being for having denied his son, but you heard Shyquone
20 testify that he also said he's not my father.

21 Okay. That seems to be the way that they dealt with
22 the police.

23 SOLICITOR BARNETTE: Your Honor, I would have to
24 object. I don't remember him -- the testimony about him not
25 being his father. I said---

1 MR. SHEALY: Judge, he testified to that. I asked that
2 question specifically.

3 THE COURT: All right. Ladies and gentlemen of the
4 jury, I'll ask you to step back to the jury room. Don't
5 begin any discussion until such time as I've asked you to do
6 so.

7 You may retire to the jury room.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: I don't recall that testimony, Mr. Shealy.
11 Maybe you can tell me about where it would of happened in
12 his---

13 MR. SHEALY: I can't. I believe that the State had or
14 objected shortly thereafter to something. So I didn't make
15 a note in my -- but I asked him specifically whether or not,
16 during his testimony or his statement to police on the body
17 camera I believe is Officer Pridmore specifically, if he
18 said whether or not my client was not his father.

19 THE COURT: Can you look it up for me, Ms. Pam?

20 THE COURT REPORTER: It will take me a minute, but
21 yeah.

22 THE COURT: Beg your pardon?

23 THE COURT REPORTER: It will take me a minute, but
24 yeah.

25 (Pause.)

1 SOLICITOR BARNETTE: Your Honor, may I step out for one
2 second or get my glasses?

3 THE COURT: Sure.

4 (Pause.)

5 THE COURT REPORTER: He, he asked him at one point, in
6 fact, initially you were -- you didn't say you even really
7 knew him, is that correct?

8 That was talking about his father.

9 THE COURT: Uh-huh. (Affirmative).

10 THE COURT REPORTER: The question before that was and
11 you've testified that you initially told the police officer
12 that Mr. Williams, that your father had nothing to do with
13 this, right?

14 He said yes, sir.

15 The next question was in fact, initially you were --
16 you didn't say you even really know him, is that correct?

17 Yes, sir.

18 THE COURT: Okay. I'll allow you to make the argument
19 then.

20 MR. SHEALY: Thank you, Your Honor.

21 THE COURT: All right. Bring the jury back.

22 (WHEREUPON, the following takes place within the
23 presence of the jury.)

24 THE COURT: All right. The record will reflect the
25 jury has returned to the courtroom.

1 I have overruled the objection.

2 You may proceed, Mr. Shealy.

3 MR. SHEALY: Thank you, Your Honor.

4 Now, as I was saying, you heard him say he didn't
5 really know my client, and that that seems to just be the
6 way that they handle police.

7 Now, he (sic) also heard him testify that he hadn't
8 seen my client for ten years, and then, on cross, he
9 admitted that he had been with my client for six days prior
10 to that at my client's girlfriend's house. There's been no
11 testimony, no testimony at all, from that girlfriend saying
12 anything about any conversations regarding a bank robbery.
13 None at all.

14 Pretty easy witness to get. I mean she lives in
15 Jonesville I suppose. But not a bit.

16 Now, we don't have to prove anything, as I told you at
17 the very beginning of all this, and the reason we don't have
18 to prove anything is because then it all just degenerates
19 into a hu huh contest.

20 You can't prove a negative. I can't prove today that I
21 didn't commit this bank robbery. I just can't. I have no
22 idea where I was on January the 22nd, 2015. I got no
23 burden to prove to y'all that I didn't commit all these or
24 they didn't commit. We don't have to prove it.

25 The reason is because you can't prove negatives.

1 Particularly you can't prove aiding or abetting or disprove
2 aiding or abetting. You can't, you can't prove unless you
3 have a recorder I didn't say that.

4 I mean anybody who has seen cable news today sees how
5 people can just twist out -- I mean they just -- you just
6 can't prove you didn't say it. Anybody whose been on the
7 Internet knows you can't prove that you didn't say
8 something. They have to prove that he did. They have to
9 prove that he committed this crime, that he said you go rob
10 this bank, and all you have is the testimony of a 17-year
11 old who's looking at -- who has pled guilty and has very
12 much reason to minimize his involvement.

13 And now they'll say but what about his confession and
14 then he says that my client did all of this. Nineteen times
15 he said it and he testified to that, that, 19 times, he said
16 my client had nothing to do with it. He also testified he
17 didn't change his story until they brought his father in and
18 brought -- took his father back out and that's when he
19 changed his story.

20 This, this son that the State claims is going to just
21 really want to protect his father, says he hadn't seen him
22 in ten years, why is he trying to protect him?

23 why would he try to protect my client?

24 Did he seem like he wanted to protect my client?

25 No.

1 He just didn't. I mean they were reconnecting
2 apparently cause ten years he hadn't seen him and then for
3 six days he did.

4 But why does he want to protect it?

5 There's no, no explanation except for well, it's just
6 kind of what sons do, but you didn't hear that from
7 Shyquone.

8 What you heard from Shyquone is basically why he
9 shouldn't go to jail. So, ladies and gentlemen, you have to
10 be convinced beyond a reasonable doubt, and I've already
11 gone over with you my explanation of what reasonable doubt
12 is, and the judge is gonna charge you what reasonable doubt
13 is and firmly convince language is in there. There's also
14 the language about reasonable doubt, about the doubt that
15 would cause a reasonable person to hesitate to act, and I
16 don't know how you couldn't hesitate to act in this case
17 cause they just got nothing.

18 We spent days here and they proved the heck out of
19 their case on Shyquone, but they ain't got nothing on
20 Mr. Williams, Calvin Williams.

21 So I expect you to find him not guilty cause I can't
22 see how you can find him any other way.

23 Thank you, ladies and gentlemen.

24 THE COURT: Ladies and gentlemen of the jury, that
25 concludes the attorneys' closing arguments. I told you

1 that, when you reached this stage of the trial, it would be
2 my responsibility to charge you concerning the law to be
3 applied in this case.

4 I'm going to begin by going over with you again the
5 indictments. The indictments are the documents that bring
6 the case into the Court, that informs us of the charge to be
7 tried, and informs the defendant of the charges lodged
8 against him.

9 There are two indictments in this case. The first
10 indictment that I will discuss with you, excuse me, is in
11 Case 15-GS-42-2312. This indictment is for the offense of
12 bank robbery.

13 The indictment states that the defendant, Calvin
14 Terrell or Terrell Williams, did, in Spartanburg County, on
15 or about January the 22nd, 2015, enter a building or a
16 part of a building occupied as a bank, depository, or
17 savings and loan association named BB&T, located at 1488
18 W O Ezell Boulevard in Spartanburg, South Carolina with the
19 intent to steal monies, securities for money, or property,
20 by either force, intimidation, or threats, and received U.S.
21 Currency by demanding it from the teller, Jennifer
22 Rodriguez, with the intent to deprive the owner permanently
23 of such property, goods, or monies in violation of Code
24 section 16-11-380 of the Code of Laws of South Carolina,
25 1976 as amended, against the peace and dignity of the State

1 and contrary to the statute in such case made and provided.

2 That's the indictment for the offense of bank robbery.
3 I'll talk to you about that offense in more detail later in
4 my charge.

5 The other indictment is for the offense of accessory
6 before the fact to a felony, bank robbery. This indictment
7 is in Case Number 16-GS-42-2368.

8 This indictment states that Calvin Terrell Williams
9 did, in the City of Spartanburg, in the County -- in
10 Spartanburg County, on or about January 22nd of 2015, aid,
11 abet, counsel, hire, or otherwise procure the commission of
12 a felony, to wit, bank robbery, by the principal felon,
13 Shyquone Williams, by conspiring with Shyquone Williams
14 knowing that Shyquone Williams intended to commit a crime in
15 violation of Section 16-1-40 and 50 of the Code of Laws of
16 South Carolina, 1976 as amended, against the peace and
17 dignity of the State and contrary to the statute in such
18 case made and provided.

19 Now, those two indictments set forth two separate
20 offenses. It will be your responsibility, once I give you
21 the case for your deliberation, to reach a verdict on each
22 separate indictment separate and distinct from your verdict
23 on the other indictment. In other words, you must consider
24 each indictment on its own merits concerning the offense
25 charged within that indictment.

1 Now, to those indictments the defendant has pled not
2 guilty, and, as I indicated to you earlier, that plea places
3 the burden upon the State to prove the defendant guilty. A
4 person charged with the commission of any criminal offense,
5 in South Carolina, is never required to prove himself
6 innocent. It's an important rule of law that a defendant,
7 in a criminal trial, and it doesn't matter what the
8 seriousness of the crime might be, will always be presumed
9 to be innocent of the crime for which the indictment has
10 been issued until and unless guilt has been proven to you by
11 proof that satisfies you of the defendant's guilt beyond a
12 reasonable doubt.

13 Now, the presumption of innocence that a defendant has
14 doesn't end when you begin your deliberations. It's been
15 described sometimes like a robe that a judge wears into the
16 courtroom. If you considered the robe to be that
17 presumption of innocence, it's around the defendant's
18 shoulders when the trial begins. It remains about the
19 defendant's shoulders throughout the trial. It accompanies
20 him into your deliberations. It remains about his shoulders
21 until such time as that robe has been stripped from him by
22 proof that satisfies you of the defendant's guilt beyond a
23 reasonable doubt.

24 Now, the presumption of innocence is not just a legal
25 theory. It's not just a legal phrase. It's a substantial

1 right that all defendants are entitled to unless you, the
2 jury, are satisfied, from the evidence, of the defendant's
3 guilt beyond a reasonable doubt.

4 Now, you've already heard me refer several times to the
5 state's burden of proof as being proof beyond a reasonable
6 doubt. You may ask yourself well, what's the definition of
7 a reasonable doubt.

8 What is a reasonable doubt?

9 The cases that have defined that phrase have defined
10 that phrase as that kind of doubt that would cause a
11 reasonable person to hesitate to act, and the State has the
12 burden of proving the defendant guilty beyond a reasonable
13 doubt.

14 Now, if any of you have ever -- let me, let me be sure
15 I clear up one possible source of confusion for you. If
16 you've ever been involved in a civil case, and I talked
17 earlier in the week about the fact that the Court's divided
18 into a civil side and a criminal side.

19 In civil cases are where people are seeking money for
20 some reason. It can be breaches of contracts, injuries,
21 things of that nature. In a case that's civil in nature,
22 the standard of proof is proof by the greater weight of the
23 evidence. Sometimes it's referred to as the preponderance
24 of the evidence.

25 So if you were to imagine the scales of justice, in a

1 civil case, if the scales tilt ever so slightly in favor of
2 the plaintiff, the plaintiff's entitled to a judgment. If
3 those scales tilt ever so slightly in favor of a defendant,
4 then a defendant is entitled to a judgment. So, in those
5 cases, the standard of proof is proof by the greater weight
6 of the evidence.

7 That's not the case in a criminal case. In a criminal
8 case, the standard of proof is more powerful than that.
9 Again, it's proof beyond a reasonable doubt.

10 Now, I'm going to tell you there's very few things that
11 happen in this world that can be proven beyond any doubt
12 whatsoever, and the State does not have the burden of
13 overcoming every possible doubt.

14 What I will tell you if, after considering all of the
15 evidence, if you are firmly convinced of the defendant's
16 guilt beyond a reasonable doubt, then you must find the
17 defendant guilty. However, on the other hand, if you think
18 there's a real possibility that the defendant is not guilty,
19 then you must give the defendant the benefit of that doubt
20 and find the defendant not guilty.

21 Now, I'll remind you that, during the trial, we've had
22 certain duties to perform. It's been my responsibility to
23 preside over the trial and rule on certain matters that have
24 come up during the trial, and I will tell you that, in
25 reaching your verdict, you should consider only the evidence

1 that was allowed into the record. So, if I overruled a
2 question or, or I ruled in favor of an objection or excluded
3 anything from the record, those matters should not be
4 considered by you at all in reaching a verdict in this case,
5 and I'll caution you again.

6 Don't take from anything that I say or do in the
7 discharge of my duties as the presiding officer or even the
8 person charging the law during this charge on the law to
9 indicates to you that I have an opinion one way or the other
10 as to how you determine the facts in this case. You're the
11 sole judges of the facts. You remain the sole judges of the
12 facts. I'm not allowed an opinion on that subject. I do
13 not have an opinion as to how you should determine the facts
14 in this case. That's a question and a job that's left
15 solely to you.

16 However, it is my duty to charge you concerning the law
17 that's applicable in this case, and I told you earlier I'm
18 the sole judge of the law. Therefore, it's your
19 responsibility to take this law as I give it to you, apply
20 it to the facts as you decide those facts to be, and that
21 should put you in a position to render a fair, a just, and a
22 true verdict in this case.

23 Now, I told you, at the beginning of the trial, it's
24 your duty, as jurors, to be in a position to determine the
25 effect, the value, the weight, and the truth of the evidence

1 presented in this case, and that makes you the sole judges
2 of the credibility or the believability of what you've heard
3 in this case. You have the right to consider or believe all
4 of what a witness might have told you, part of what a
5 witness may have told you, or none of what a witness may
6 have told you. You have the right to believe all against
7 one or one against all.

8 You're the sole judges of the facts. Therefore, you're
9 the sole judges of the credibility of the testimony you've
10 heard.

11 You have the right to consider whether or not a witness
12 has some motive in testimony or testifying, whether or not a
13 witness has a stake in the outcome of the case, whether or
14 not the witness had the ability to know the facts about
15 which the witness testified, and you've had the opportunity
16 to observe those witnesses as they testify. Use your good
17 common sense and make a determination as to the credibility
18 or believability of what you've heard in this case.

19 In doing so, you have the right to consider two types
20 of evidence in reaching your verdict, and let me explain to
21 you what I mean by two types of evidence. The law divides
22 evidence into either direct evidence or circumstantial
23 evidence.

24 Direct evidence is testimony by a witness who claims to
25 have actual knowledge of the facts about which that person

1 is testifying. In other words, someone who says to -- says
2 to have actually experienced the event, an eye witness, a
3 participant in the event. That's direct testimony. That
4 person is testifying directly on the facts sought to be
5 proven, proven.

6 The other type of evidence that a jury has the right to
7 consider in reaching a verdict is what we refer to as
8 circumstantial evidence. Now, circumstantial evidence is
9 proof of a chain of facts or circumstances that indicate the
10 existence of some other fact. It's been described as proof
11 of collateral facts from which a main fact might be
12 reasonably inferred.

13 I use a very simple example to try to illustrate to you
14 what we might mean by proof of collateral facts from which a
15 main fact could be inferred. I think that's a little too
16 fancy language to -- for us to use in this situation.

17 Let's say last night, before you went to bed, you, you
18 walked over to the window in your bedroom and you looked out
19 that window and it was a beautiful night outside.
20 Everything was fine and you went to bed and slept well all
21 night, didn't wake up at all. You got up the next morning.
22 You walked back to that same window in your bedroom and you
23 looked outside and the sun was shining, but when you looked
24 a little closer, you noticed well, there's water dripping
25 out of all the trees. There's puddles in the road or the

1 driveway in front of your house that weren't there the night
2 before. You look at the lawn in front of your house and
3 it's completely covered with water.

4 Now, you know, you slept all night. You didn't hear it
5 rain and you didn't see it rain. But from the proof of
6 certain collateral facts that you know to be true, water in
7 the trees, puddles that weren't there the night before,
8 water on the grass, you know those facts are true. So, from
9 those facts, you could reasonably infer that, at sometime
10 during the night, it rained. So that's what we mean by
11 proof of a chain of facts that indicate the existence of
12 another fact.

13 Now, the law doesn't make any distinction between the
14 weight or the value you, the jury, can give to either direct
15 or circumstantial evidence nor is there a greater degree of
16 certainty required of circumstantial evidence than that of
17 direct. I will tell you that you should weigh all of the
18 evidence in this case, and if, after weighing all of
19 evidence, if you're not convinced of the guilt of the
20 defendant beyond a reasonable doubt, you may find the
21 defendant not guilty. However, on the other hand, if you
22 are firmly convinced of the defendant's guilt beyond a
23 reasonable doubt, you must find the defendant guilty.

24 Now, I'm going to instruct you about something and I
25 want to emphasize something to you at this time. I want to

1 emphasize to you that the fact that the defendant did not
2 testify in this case is not a factor to be considered by you
3 at all or in any manner in your deliberations. You see, it
4 must not be considered by you in any manner whatsoever
5 because a defendant has a Constitutional right to remain
6 silent.

7 The assertion or exercise of this right should not be
8 considered by you in your deliberations. I repeat, under
9 your oath, you are to draw no conclusion whatsoever from the
10 fact the defendant did not testify. The fact that the
11 defendant did not testify should not even be discussed by
12 you in the jury room.

13 The burden of proof is upon the State in this case,
14 and, as I've stated to you, the defendant is not required to
15 prove his innocence, and the, excuse me, the burden of proof
16 remains upon the State, throughout the trial, to prove guilt
17 beyond a reasonable doubt.

18 Now, I'm going to go over with you these charges in a
19 minute, and as I go over these charges, you may hear some
20 word concerning intent, and I want to talk to you just a
21 little bit about that word intent in a legal context.

22 In order to establish criminal liability for certain
23 offenses, the State must prove a certain level of intent.
24 That's the mental state that is, that is required to be
25 proven for a particular offense to have occurred, and it

1 might be described as purpose, intent, knowledge. It can be
2 even recklessness or criminal negligence in some cases.

3 Criminal intent must be proven by the State, if it is
4 required by the particular offense, beyond a reasonable
5 doubt. Criminal intent is always a matter, however, that
6 must be shown to you by showing you the circumstances
7 surrounding the event because there's no way that we can go
8 back in time, open up someone's head, look at their brain,
9 and know exactly what they intended to do at any given
10 moment. So that's not how you prove intent.

11 Intent is proven from the facts and circumstances that
12 have been shown to you to have existed at the time of the
13 event. So -- and that's what you look at to determine what
14 a person may have had in mind at that time. So it's not
15 necessary to establish intent by direct evidence or positive
16 evidence. It can be established by inference, the same way
17 as any other fact, by taking into consideration the acts of
18 the parties and all of the facts and circumstances of the
19 case.

20 I will tell you that criminal intent is a mental state.
21 It's a conscious wrongdoing. It's up to you to determine
22 what the defendant intended to do based on the circumstances
23 shown to you to have existed at the time of the event.

24 Now, the defendant has been charged with accessory
25 before the fact to a felony, and that felony is bank

1 robbery, and I will tell you that, in order, in order to
2 prove that crime, the State must prove, beyond a reasonable
3 doubt, that the defendant either advised, agreed, urged,
4 counseled, hired, or in some way aided or abetted another
5 person to commit a crime, and that the defendant was not
6 presented when the offense was committed.

7 Aid means to help, to promote the course of or the
8 accomplishment of, to give support to, or to give assistance
9 to.

10 Abet means to encourage or appear to favor or support.

11 So that's the offense that's stated in one of the
12 indictments. That is of being an accessory before the fact
13 of a felony.

14 The other offense in the other indictment is the
15 offense of bank robbery, and I will tell you that the bank
16 robbery statute is embodied in Code Section 16-11-380 of the
17 South Carolina Code, and what that says is, that particular
18 Code Section says it's unlawful for a person to enter a
19 building or a part of a building that's occupied as a bank,
20 depository, building and loan association, with the intent
21 to steal money, securities for money, or property either by
22 force, intimidation, or threats.

23 Now, there's a couple of things that I would like to go
24 over with you in, in this particular vein.

25 Aiding/abetting, accomplice liability, is defined as a

1 person who was present at the scene of a crime and
2 intentionally, or through a common plan, aided, abetted, or
3 assisted in the commission of that crime through some overt
4 act, and that person can be found guilty as an accomplice.
5 To be liable as an accomplice, the defendant must have
6 knowledge of the principal's criminal conduct. Merely being
7 present at the scene of a crime, in and of itself, is not
8 sufficient to establish guilt as an accomplice.

9 Intentionally means willfully, intending the result
10 which actually occurred. Not something that occurred
11 accidentally or involuntarily.

12 Now, under the law, there's a theory known as what's
13 called constructive presence. A person may be
14 constructively present at the commission of a crime, even
15 though that person is some distance away from the actual
16 scene, if it is shown, beyond a reasonable doubt, that the
17 person played a role in the commission of the crime as a
18 result of some prior arrangement.

19 There's also a theory under South Carolina law that's
20 known as the hand of one is the hand of all, and I will tell
21 you that, if a crime is committed by two or more people who
22 are acting together in the committing of a crime, the act of
23 one becomes the act of all. A person who joins with another
24 to commit an unlawful act is criminally responsible for
25 everything done by the other person which happens as a

1 probable or natural consequence of the acts done in carrying
2 out their common plan or -- and purpose. For example, two
3 people, under this theory -- this doesn't apply specifically
4 to this case. This, again, is an example.

5 Two people can be guilty of killing another person when
6 only one had a gun and there was only one bullet and only
7 one of them fired a shot that caused the death if the two
8 people -- two or more people are together, acting together,
9 assisting each other in the commission of the offense.
10 Again, the act of one is the act of all or it's sometimes
11 referred to as the hand of one becomes the hand of all.

12 Now, prior knowledge that a crime is going to be
13 committed, without more, is not sufficient to make a person
14 guilty of the crime. Mere knowledge that someone is going
15 to commit a crime, even if the defendant is present when the
16 crime is committed, is not sufficient to convict the
17 defendant as a principal. Guilt as a principle is shown by
18 actual or constructive presence at the scene as a result of
19 a prior arrangement. Therefore, a finding of a prior
20 arrangement -- arranged plan or common scheme is necessary
21 for a finding of guilt as a principle. The State must
22 prove, beyond a reasonable doubt by competent evidence, the
23 theory of the hand of one is the hand of all.

24 A principal in the crime is a person who either
25 actually commits the crime or who is present aiding,

1 abetting, or assisting in the commission of the crime. When
2 the person does -- when a person does an act in the presence
3 of and with the assistance of another, then the act is done
4 by both. There are two or more acting -- when there are two
5 or more acting with a common plan or intent, and are present
6 at the commission of the crime, it does not matter who
7 actually commits the crime. All are guilty. The hand of
8 one is the hand of all.

9 Present at the commission of a crime means to be
10 sufficiently near so as to aid, abet, or assist in the
11 commission of the crime. Again, however, mere presence at
12 the scene of a crime, by itself, is not sufficient to
13 convict one as a principle on the theory of aiding and
14 abetting.

15 Intent is also a necessary element. For there must
16 have been a common design or a scheme, excuse me, to commit
17 the crime and the crime must have been committed pursuant
18 thereto with the person aiding and abetting by some overt
19 act.

20 Intent means intending the result which actually
21 occurs. Not happening accidentally or involuntarily. And,
22 again, intent is shown by the acts and conduct of the
23 parties that have been shown to you and from which you might
24 naturally and reasonably infer intent. And the State must
25 establish these elements beyond a reasonable doubt.

1 Now, I will point out to you, a little bit later when
2 we talk about these two particular offenses, the offense of
3 accessory before the fact carries with it the element that
4 the person not be present at the scene of the crime. The
5 offense of bank robbery does require a presence at the scene
6 of the crime.

7 So what you're going to have to do is make a factual
8 determination as to what happened in this particular case in
9 which, if any -- if either of these offenses occurred. You
10 will have the right to find the defendant either guilty or
11 not guilty of either or both of the crimes. However, you
12 can not find him guilty of both offenses because one
13 excludes the other because of the element of presence. I'll
14 explain that to you when I go over the verdict form with you
15 in a little more detail in just a moment.

16 Mrs. Jennings, you're gonna be the foreperson of the
17 jury. That means you'll be the person who's responsible for
18 conducting the discussions of the jury. If the jury has any
19 questions during their deliberations, I'll ask that you
20 write it on a piece of paper, submit it to the bailiff, the
21 bailiff will bring it to me. I'll consider my response to
22 that question.

23 I'm not allowed to answer everything you might ask
24 during your deliberations because, obviously, I can not get
25 involved in your discussions or decisions on the facts. I

1 can answer questions about the procedure we followed, the
2 law that I've charged you, even certain, certain questions
3 about the evidence. I'll decide the appropriate answer.
4 Don't edit any questions. Just send them out to me. I'll
5 decide what I can say -- what I can answer, what I can not
6 answer.

7 Also, it will be your responsibility to fill out the
8 verdict form and I'm going to go over that with you in
9 detail in just a few minutes.

10 Now, I told you earlier that, when we ask a question on
11 the verdict form, your verdict, in order for it to be a
12 verdict, has to be unanimous. Each of you must agree upon
13 the verdict of the jury, of the jury before it becomes the
14 verdict of the jury. So you will not record any verdicts on
15 the form until all jurors deliberating are in agreement with
16 that verdict.

17 Do you understand that?

18 THE FORELADY: (Nods affirmatively.)

19 THE COURT: All right. I've gone over a great deal
20 with you. There's a good bit of evidence we need to present
21 to you so you can take it to the jury room with you.

22 I'm gonna ask you one last time to step into the jury
23 room. Don't discuss anything about this case yet until I
24 bring you back for your final instructions.

25 So, at this time, you may retire to the jury room.

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

3 THE COURT: Any exceptions to the charge from the
4 State?

5 SOLICITOR BARNETTE: None from the State, Your Honor.

6 THE COURT: Any from the defense?

7 MR. SHEALY: None, Your Honor.

8 THE COURT: All right. I'll ask you to come forward
9 and agree upon the exhibits to go back to the jury.

10 (Pause.)

11 THE COURT: All right. Mr. Barnette, I don't know if
12 you have a clean computer to send back.

13 SOLICITOR BARNETTE: Yes, sir.

14 THE COURT: You do?

15 SOLICITOR BARNETTE: We do, yes, sir. I've given it to
16 Ashley.

17 THE CLERK: Yes, sir.

18 THE COURT: Very good. Be sure to look at the verdict
19 form.

20 (Pause.)

21 THE COURT: All right. Have we agreed on the exhibits,
22 Mr. Barnette?

23 SOLICITOR BARNETTE: Yes, sir, we have.

24 THE COURT: Mr. Shealy.

25 MR. SHEALY: Yes, sir, Your Honor.

1 THE COURT: Any objection to the verdict form from the
2 State?

3 SOLICITOR BARNETTE: No, sir.

4 THE COURT: Any from the defense?

5 MR. SHEALY: No, Your Honor.

6 THE COURT: All right. Let's bring the jury back.

7 (WHEREUPON, the following takes place within the
8 presence of the jury.)

9 THE COURT: Mr. Alford, if you would pass this over to
10 the forelady for me.

11 (Bailiff complies.)

12 THE COURT: Thank you.

13 All right. Ma'am, what I've had him hand you is the
14 verdict form that will be in use for this case. Let me go
15 over it with you.

16 At the top you'll see that it has the county and state
17 and the Court that we're located in. Just below that it
18 indicates the name of the case, which is The State against
19 Mr. Williams. Down below that, the body of the verdict
20 form, there are basically two questions that mirror the two
21 indictments.

22 The first question has to do with the indictment
23 concerning armed robbery. There's two choices for that
24 verdict, either not guilty or guilty. When the jury reaches
25 a unanimous conclusion as to that charge, you'll either put

1 an X or a check on the blank line adjacent to the
2 appropriate verdict.

3 Now, below that there's an instruction that if the
4 defendant were found not guilty of bank robbery, then you
5 must consider the verdict concerning the accessory before
6 the fact, and then the choices, again, are either not guilty
7 or guilty.

8 Now, if the defendant is found guilty of bank robbery,
9 then you would not answer the second question.

10 Do you understand that direction, what that means?

11 THE FORELADY: Yes, sir.

12 THE COURT: All right. And, of course, again, the
13 difference in the two, let me go over that charge with you
14 again. Bank robbery is an unlawful -- it's unlawful for a
15 person to enter a building or a part of a building occupied
16 as a bank, depository, or building and loan association with
17 the intent to steal money, securities for money, or property
18 either by force or intimidation.

19 So that particular crime requires a presence of some
20 kind. Now, that presence can be either actual or
21 constructive I charged to you earlier.

22 The other offense, aiding -- accessory before the fact,
23 again, that requires that someone either advised, agreed, or
24 urged, or, counseled, hired, or participated, or aided or
25 abetted another person in the commission of the crime and

1 that the defendant was not present when the offense was
2 committed.

3 So there's a factual determination that the jury will
4 have to make. Of course, the jury also has the right to
5 find the defendant not guilty of both offenses. So those
6 are the choices that you have.

7 Please don't take from the fact that I placed those
8 choices in any order on that form to somehow indicate to you
9 that I have a preference. I've been preparing these now as
10 long as I've been in this position, which is about 12 years,
11 and I always put them in that same order for every case. So
12 that's no preference on my part. That's just the way I do
13 the verdict forms.

14 Now, the exhibits are going to be given to you to take
15 back to the jury room with you. Now, there's video evidence
16 there. We're going to send back a computer. It's a clean
17 computer, doesn't have anything on it. It does have a
18 program that will play those videos for you. So, if the
19 jury chooses to watch those or wants to watch those, it will
20 be available for you to do so.

21 If you have any technical difficulties, if something
22 doesn't go right with the computer, let the bailiff know.
23 We'll try to get that straightened out for you.

24 So, at this time, I'm going to ask the alternate to
25 remain seated.

1 The remainder of the jury, I'm instructing you to step
2 back to the jury room and begin your deliberations.

3 (WHEREUPON, the following takes place outside the
4 presence of the jury.)

5 (WHEREUPON, the alternate juror was dismissed at this
6 time.)

7 THE COURT: Any exceptions to my final charges from the
8 State?

9 SOLICITOR BARNETTE: None from the State, Your Honor.

10 THE COURT: Any from the defense?

11 MR. SHEALY: No, Your Honor.

12 THE COURT: All right. We'll be in recess until a
13 verdict's reached in the case.

14 Thank you very much.

15 (WHEREUPON, the jury began deliberations at 2:15PM and
16 returned with a question at 3:07PM.)

17 THE COURT: Come on up.

18 (WHEREUPON, a bench conference was held at this time.)

19 THE COURT: Bring the jury in.

20 (WHEREUPON, the following takes place within the
21 presence of the jury.)

22 THE COURT: All right. The record will reflect that
23 the jury has returned to the courtroom.

24 I've received a question from the jury concerning my
25 charge on the law.

1 The question is will you explain again hand of one hand
2 of all and how his presence or not being there prevents him
3 from being guilty of both charges.

4 First of all, let me explain to you, the two charges
5 that, that are, that have been brought in this case, the
6 first one I'll discuss is accessory before the fact. An
7 accessory before the fact of a crime is someone who has
8 provided assistance to the person who commits the crime, but
9 that assistance would be provided before the act occurred.

10 Let me go over that charge with you. The defendant is
11 charged with being an accessory before the fact of bank
12 robbery. In order to prove this crime, the State must
13 prove, beyond a reasonable doubt, that the defendant either
14 advised, agreed, urged, counseled, hired, or in some way,
15 aided, aided or abetted another person to commit a crime and
16 that the defendant was not present when the offense was
17 committed. So that's the -- an element of the crime, the
18 crime itself is the person is not present when the offense
19 is committed.

20 Aid means, means to help, to promote the course or
21 accomplishment of, to give support to or give assistance to.
22 Abet means to encourage or appear to favor or support. So
23 that has to do with acts that occurred, that happened before
24 the event itself occurred, the bank robbery occurred.

25 The other charge is actually bank robbery, and that's

1 the charge to which the hand of one, hand of all may apply,
2 depending on your findings of fact, and I'm gonna charge
3 both bank robbery and I'll also charge you presence,
4 constructive presence, and the theory of hand of one, hand
5 of all.

6 The bank robbery section -- code section states it's
7 unlawful for a person to enter a building or a part of a
8 building occupied as a bank, depository, or building and
9 loan association with intent to steal money, securities, or
10 money or property, either by force, intimidation, or
11 threats.

12 Now, a person can be a aided or abettor in the
13 commission of a bank robbery and that's where we talk about
14 the hand of one is the hand of all as well as aiding and
15 abetting liability.

16 A person who was present at the scene of the crime and
17 intentionally, or through a common plan, aided, abetted, or
18 assisted in the commission of that crime, through some overt
19 act, can be held responsible or guilty as an accomplice. To
20 be liable as an accomplice the defendant, defendant must
21 have, must have knowledge of the principal's criminal
22 conduct. Merely being present at the scene of a crime is
23 not sufficient to establish guilt as an accomplice.

24 Intentionally means willfully, intending the result
25 which actually occurs. In other words, not happening

1 accidentally or involuntarily.

2 Now, a person can be you constructively present at the
3 commission of a crime even though the person may be some
4 distance away from the actual crime scene if it is shown,
5 beyond a reasonable doubt, that the person played a role in
6 the commission of the crime as a result of some prior
7 arrangement.

8 Now, if a crime is committed by two or more persons who
9 are acting together in committing the crime, in other words
10 they're participating in some fashion in the commission of
11 the actual crime, the act of one is the act of all. A
12 person who joins with another to commit an unlawful act is
13 criminally responsible for everything done by the other
14 person which happens as a probable or natural consequence of
15 the acts done in carrying out the common plan or purpose.

16 For example, two people could be guilty of killing
17 another person when only one of them had a gun and only one
18 bullet was used and only one of the two fired the shot that
19 caused the death if the two or more people are together
20 acting together, assisting each other in the commission of
21 the offense. The act of one is the act of all or sometimes
22 that's referred to as the hand of one is the hand of all.

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

1 going to commit a crime, even if the defendant is present
2 when the crime is committed, is not sufficient to convict a
3 defendant as a principal in the crime. Guilt as a principal
4 is shown by actual or constructive presence at the scene as
5 a result of a prior arrangement. Therefore, a finding of a
6 prior arranged plan or scheme is necessary for a finding of
7 guilt as a principal. The State must prove, beyond a
8 reasonable doubt by competent evidence, the theory of hand
9 of one is hand of all.

10 Now, a principal in a crime is the one who actually
11 commits the crime or who is present aiding, abetting, or
12 assisting in the commission of the crime. When a person
13 does an act in the presence of and with the assistance of
14 another, the act is done by both. There -- where two or
15 more acting with a common plan or scheme are present at the
16 commission of a crime, it does not matter who actually
17 committed the crime. All are guilty. The hand of one is
18 the hand of all.

19 Present at the commission of a crime means to be
20 sufficiently near so as to aid, abet, and assist in the
21 commission of the crime. Again, mere presence at the scene
22 of a crime is not sufficient to convict one as a principal
23 under the theory of aiding and abetting, and, again, intent
24 is also a necessary element. There must have been a common
25 design or intent to commit the crime, and the crime must

1 have been committed pursuant thereto with the persons
2 acting, aiding and abetting by some overt act.

3 Intent, again, means intending the result which occurs.
4 Not something that happens accidentally or involuntarily,
5 and intent, as I've said before, can be shown by acts and
6 conduct of the defendant and other circumstances from which
7 you might naturally and reasonably infer intent. The State
8 must prove all of the elements of hand of one of hand of all
9 beyond a reasonable doubt.

10 Does that answer your question?

11 THE FORELADY: (Nods affirmatively.)

12 THE COURT: All right. Then I'll ask you to return to
13 the jury room and continue your deliberations.

14 (WHEREUPON, the following takes place outside the
15 presence of the jury.)

16 THE COURT: Any objections to my response from the
17 State?

18 SOLICITOR BARNETTE: None from the State, Your Honor.

19 THE COURT: Any from the defense?

20 MR. SHEALY: No, Your Honor.

21 THE COURT: All right. The question will be made a
22 Court's Exhibit and part of the record of the case.

23 (WHEREUPON, the note from the jury was marked as
24 Court's Exhibit No. 8 and received into evidence at this
25 time.)

1 THE COURT: We'll be in recess until a verdict is
2 reached or another question is asked.

3 SOLICITOR BARNETTE: Thank you, Your Honor.

4 (WHEREUPON, the jury began deliberations again at
5 3:14PM and returned with a verdict at 3:46PM.)

6 THE COURT: All right. I've been informed by the
7 bailiff that a verdict has been reached.

8 Is the State ready to receive the verdict?

9 SOLICITOR BARNETTE: Yes, sir, we are.

10 THE COURT: Defense ready?

11 MR. SHEALY: We are, Your Honor.

12 THE COURT: Bring the jury in.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: All right. The record will reflect the
16 jury's returned to the courtroom.

17 Has a verdict been reached, Madam Forelady?

18 THE FORELADY: Yes, sir.

19 THE COURT: Pass the form to the bailiff please.

20 (Forelady complies.)

21 THE COURT: Thank you.

22 Madam Clerk, you may publish the verdict.

23 THE CLERK: Yes, sir.

24 In the State of South Carolina, County of Spartanburg,
25 we, the jury, unanimously find the defendant, Calvin Terrell

1 Williams, concerning the offense of bank robbery, Case
2 Number 2015-GS-42-2312, guilty. Signed by the foreperson.
3 Dated June the 8th of 2016.

4 Ladies and gentlemen of the jury, is this verdict and
5 still your verdict, if so, please raise your right-hand.

6 (WHEREUPON, all jurors raise their hands at this time.)

7 THE CLERK: So say you-all.

8 THE COURT: Anything further from the State before---

9 SOLICITOR BARNETTE: Nothing from the State.

10 THE COURT: ---before I release the jury?

11 SOLICITOR BARNETTE: Nothing from the State, Your
12 Honor.

13 THE COURT: Anything further from the defense?

14 MR. SHEALY: No, Your Honor.

15 THE COURT: All right.

16 (WHEREUPON, the jury panel was dismissed at this time.)

17 (WHEREUPON, the life without parole information was
18 marked as Court's Exhibit No. 9 for identification purposes
19 only at this time.)

20 THE COURT: Yes, Mr. Shealy, I'll be happy to hear from
21 you.

22 MR. SHEALY: Your Honor, we have nothing to say.

23 THE COURT: Okay. All right.

24 MR. SHEALY: Mr. Williams would like to speak, but I
25 have nothing.

1 THE COURT: I'll give him that opportunity.

2 I assume you renew---

3 MR. SHEALY: We do, Your Honor.

4 THE COURT: ---all your motions?

5 MR. SHEALY: We would also make a motion for a new
6 trial based on our previous --.

7 THE COURT: All right. Those are -- that motion is
8 noted. The motion is denied.

9 SOLICITOR BARNETTE: Thank you, Your Honor.

10 I've marked as Court Exhibit 9. We served a notice of
11 life sentence pursuant to Section 17-25-45(a), Your Honor.
12 In this case, there was two previous convictions in Federal
13 Court for armed bank robbery.

14 One was on August 7th, 2003. The other one was
15 August 12th, 2003, Your Honor. And under Bryant versus
16 State, Your Honor, if I can pass this up to, Your Honor?

17 THE COURT: Yes, sir.

18 SOLICITOR BARNETTE: You may already be familiar with
19 it. I just wanted to put it on the record there.

20 THE COURT: Yes, sir.

21 SOLICITOR BARNETTE: Hand a copy to the defense
22 counsel.

23 Under Bryant versus State, that's 683 S.E.2d 280 and
24 384 South Carolina Reporter 525, Your Honor. I believe it's
25 a 2009 case, Your Honor. The Supreme Court ruled there,

1 convictions for the first two of three armed robberies
2 committed over a three day period were prior convictions
3 that subjected the defendant to mandatory life sentence
4 without parole. Those subsequent convictions for the third
5 robbery, Your Honor, overruling State versus Gordon at that
6 time, Your Honor. Basically said three armed robberies
7 committed over a three day period, which involved three
8 different victims, were not one offense for sentencing
9 purposes.

10 So, my position would be, Your Honor, obviously the two
11 bank robberies or armed robberies that was done in '03 were
12 two separate victims, two separate events together. They
13 would of been classified most serious I believe under our
14 system. Entering a bank robbery carrying a 30 year
15 sentence, Your Honor, under our section code classifies as a
16 serious offense, Your Honor. And basically since a serious
17 offense means this is coming from 17-25-45 I think
18 Subsection (b)(2)(A), Your Honor. A serious offense means
19 any offense which is punishable by a maximum term of
20 imprisonment for 30 years or more that is not referenced in
21 the section, Your Honor.

22 This does carry a 30 year sentence, Your Honor. So,
23 therefore, I think he is mandatorily noticed and should be
24 sentenced with life without parole based off the law and the
25 State -- case and statutory law, Your Honor.

1 THE COURT: Mr. Shealy, the State takes the position
2 your client has been previously convicted of two prior bank,
3 bank robberies, which would qualify as most serious offenses
4 under our statute. State's requesting that the Court impose
5 a mandatory life sentence.

6 I'll be happy to hear from you concerning that.

7 MR. SHEALY: Well, judge, obviously we've discussed
8 those two armed bank robberies in length.

9 THE COURT: At length, yes, sir.

10 MR. SHEALY: I don't think we can argue that we -- that
11 he was not convicted of those two prior armed bank
12 robberies. This would be -- these are serious offenses. We
13 have no legal basis for objection to that.

14 THE COURT: Okay. Do you have the sentencing sheet,
15 Mr. Barnette?

16 SOLICITOR BARNETTE: I do, Your Honor. I just want to
17 put a few other things on the record, if I could, especially
18 since a couple of jurors are in the back so they'll
19 understand the basis for those bank robbery convictions
20 earlier, Your Honor.

21 THE COURT: All right. Go ahead. I'll be happy to
22 hear from you.

23 SOLICITOR BARNETTE: Your Honor, he does have a
24 prior -- other prior record too along with the bank robbery
25 cases, Your Honor.

1 THE COURT: Yes, sir.

2 SOLICITOR BARNETTE: Starting in 1994, he was convicted
3 of breaking into motor vehicle, Your Honor. 1994,
4 shoplifting, Your Honor. Filing false information, 1994,
5 Your Honor.

6 Giving false information again, Your Honor, 1996.

7 In 2002, Your Honor, he was, or 2001, he was charged,
8 convicted in 2002 of contributing to the delinquency of a
9 minor, Your Honor. He received a three year sentence
10 suspended to one years and three years probation at that
11 time, Your Honor. And then he had the bank robbery
12 convictions, Your Honor, and, to explain, I know the Court
13 knows this, just to put on the record, he had done the same
14 thing with two other individuals.

15 He'd done it with his 16-year old girlfriend in '03. I
16 think it was August 12th, 2003, and August 7th, 2003,
17 used an 18-year old boy who was a Spartanburg High student
18 to commit bank robberies on both of those cases where he sit
19 and let them go do it. So I wanted to make sure -- I know
20 that's been part of the record. We've been discussing that
21 for a long time. But I wanted to make sure, upfront, I know
22 a couple of the jurors are in the back, to understand the
23 basis for all these charges and everything.

24 THE COURT: All right. You indicated that your client
25 might wish to exercise his right of allocution concerning

1 his sentencing.

2 Mr. Williams, if you would, please stand.

3 (Defendant complies.)

4 THE COURT: I'll be happy to hear from you, sir.

5 THE DEFENDANT: Yes, sir.

6 I did not -- I mean I argued the fact that I did send
7 Aderian Jawone Fair inside of the bank. Me and him didn't
8 even know each other, but he said that we was friends. In
9 the process of us, me and somebody else conversing, he ended
10 up hearing the conversation and saying that he would commit
11 a crime, but I never thought that he was gonna commit the
12 crime.

13 At the time of them stopping me I was actually having
14 an asthma attack. That's the reason why I actually stopped
15 at Wendy's. And they said that I fit the description of the
16 robber. When I left---

17 THE COURT: You're describing to me one of the previous
18 convictions?

19 THE DEFENDANT: Okay. My bad. I apologize.

20 THE COURT: All right. Is that what you're doing?

21 THE DEFENDANT: Yes.

22 THE COURT: Okay. You did plead guilty to those.

23 THE DEFENDANT: I'm telling you what I, what I pled
24 guilty to was Anastasia Pitts robbery. What they law did
25 was they, they told me they was gonna run that concurrent

1 with that actual sentence on the end from it.

2 THE COURT: All right. Well, I'll be happy to hear
3 from you.

4 Go ahead.

5 THE DEFENDANT: And I was like -- and I told them that
6 I wasn't pleading guilty to that charge. Me and Judge
7 Herlong actually got into a debate inside of the courtroom
8 which got him -- which in return became a heated debate
9 because of that charge, and I said that I didn't do, do that
10 charge. But he was like, well, my lawyer, Bradley Bennett
11 at the time, told me he was like well, they gonna run it
12 concurrent. So you might as well take it.

13 But they did not explain to me that these two bank
14 robberies could be actually charged separately. At no time
15 did they say that these bank robberies could be charged --
16 they could divide them up and charge me with a three
17 strikes. They notified -- they never notified me of these
18 being a strike against me. I was never notified of that.

19 Being that I was never notified of that, I mean I took
20 it that okay, if I plead -- if I go ahead and take this
21 charge, run it concurrent, and go ahead and do this time and
22 get out, that that would be, that would be the end of that.

23 And in the process now -- I'm now -- I find myself in
24 the situation that I really had nothing to do with.
25 Honestly I had nothing to do with him robbing the bank.

1 what it was is he found---

2 THE COURT: When you say him, who are you talking
3 about?

4 THE DEFENDANT: Shyquone. I had nothing to do with it.

5 THE COURT: You're talking about this case now?

6 THE DEFENDANT: Yeah.

7 THE COURT: Okay.

8 THE DEFENDANT: I had nothing to do with Shyquone
9 robbing the bank. In fact, he didn't ever mention to me
10 nothing concerning a bank robbery. When we had a
11 discussion, I told him simply, as a father would tell a son,
12 what had happened in my life, and I told him what separated
13 me from them.

14 And we had that conversation November the 26th. That
15 was before the six days in which he came, which he came to
16 my house cause my mama brought him to the house that I was
17 living in. He didn't -- we didn't never go and pick him up.
18 All of that was a bunch of lies that he created and he added
19 to a story to -- he fabricated a story knowing that he could
20 play on the innocence of the jury.

21 And the sad part is, the reason why I didn't testify
22 and take the stand was because of the fact that my prior
23 criminal history was gonna come up and those bank robberies
24 was gonna come up and it was gonna make me look even badder.

25 I did not tell him to rob no bank, and the crazy part

1 is he sat right there and lied with an honest face. And
2 these people, they -- the same way they believed Aderian
3 Jawone Fair, and then after they let him go, he turned
4 around and catch sexual charges. Now -- and then y'all --
5 and then they sit right here and they put him on the stand
6 and he still doing the same thing. That's the reason why I
7 didn't take the six years.

8 They offered me six years. I didn't take the six years
9 for the simple fact that he's still doing the same thing,
10 and I would of took six years for my child. I took the ten
11 years for Anastasia. I told her to tell on me.

12 Now, I didn't take the six years for my son because of
13 the fact that he still out there doing the exact same thing
14 in which led to me being in jail. He do not care nothing
15 about me. He think I had something to do with his mother's
16 death. That's the reason -- that's the whole reason why he
17 sat right there and caught -- got the attitude with me and
18 then that's the reason why he's doing what he's doing.

19 He's doing it to deliberately destroy my life. Me and
20 him, me and him had no dealings with each other outside of
21 the fact that his people told me to talk to him about the
22 fact that he's so disobedient to them.

23 So that's the reason why he was with me so that I could
24 try to talk some sense into him. That was the only reason
25 that -- and I realize that, during the time he was trying to

1 mess with a 14-year old girl, and I tried to talk to him
2 about that. I realized during that time right there that he
3 wasn't meant to be talked to, and I kept on trying to send
4 him home.

5 The reason was we was in the van from the beginning was
6 to take him home so he can go enroll inside of Dorman High
7 school. In the process of us taking -- in the process of us
8 doing that, he ended up saying he wanted to go and pick up
9 some money from his friends -- from a guy named George. I
10 thought that it was odd and I didn't want to go on the bank
11 premises. That's the reason why I told the Blassingame not
12 to go on the bank parking lot.

13 And I ain't want Mr. Blassingame to think that I had
14 something to do -- I would allow my son to sell drugs. That
15 was another reason why I was like okay, listen, don't go on
16 the bank parking lot and I don't want to do no drug
17 transaction on no bank parking lot cause anything can
18 happen, and the first time something happens, I was gonna
19 get blamed for it just because I have criminal -- I have
20 bank robberies prior.

21 That was the last thing I wanted to do, get caught on
22 bank premises with a person who him and -- I don't know if
23 they gonna get into it or not. But I spoke up for my son.
24 I was speaking for him, not because of the fact that I
25 wanted him to rob a bank. I didn't want him to rob no bank.

1 That was the last thing I wanted him to do.

2 In life, I always talked to him about going to school
3 and the importance of going to college. I appreciate (sic)
4 time and time again to them and my oldest son. My oldest
5 son happened to graduate. Shyquone happened to be too
6 disobedient to listen to anybody. He's too stubborn and too
7 bullheaded to listen to anybody.

8 He's gang affiliated and he holler about me being in
9 the gang. He's gang affiliated hisself. He's a GD
10 (phonetic). So that would of created, by me and him, by him
11 saying that I would of killed him, that would of created a
12 gang war, and he knows it would of created a gang war, but
13 instead of him saying anything about him being gang
14 affiliated, he sat right there and tried to play on the
15 innocence, he used his innocence to get me found guilty.

16 I did not do none of the stuff that he said I did.
17 I -- listen, I did not, I did not force him. I -- in fact,
18 since he was a child, I only whopped him one time in his
19 whole entire life. So, therefore, I could of been abusive.
20 He couldn't of been scared of me. I mean he ain't even seen
21 me since he was five years old.

22 How -- how can, how can I be abusive to you?

23 I ain't never threaten him. I ain't never said nothing
24 out the way to him and it's crazy.

25 THE COURT: Mr. Williams, the jury has found you guilty

1 of the offense of bank robbery. I've listened to you.
2 You're pleading your case over again, but you've been found
3 guilty by a jury of your peers of the offense. The issue
4 that's before me, at this time, is sentencing.

5 THE DEFENDANT: I'm asking that, I'm asking that -- I
6 understand that, I understand that the prosecution is
7 seeking life. I understand that. And there's nothing that
8 I can really do to change the prosecution's opinion of --
9 change they views of me. But, at the same time, I don't, I
10 don't feel like life is what I deserve.

11 I mean cause I ain't did nothing that was harsh enough
12 for me to deserve life. I mean I understand that these are
13 more serious -- these are the most serious offenses.

14 THE COURT: Yes, sir.

15 THE DEFENDANT: But at the same time of me -- at the
16 same time of these being most serious offenses, I didn't
17 have no involvement inside of this, and I understand they
18 don't understand I ain't have no involvement inside of this.
19 But I'm asking for leniency.

20 The only reason why I didn't take the six years is
21 because the fact that he's out there doing the same thing.
22 When I called home, I find out he's doing the same thing,
23 and it's like it was nerve racking for me to plead guilty to
24 six years when a person is out there doing the same thing.

25 I mean I'm fixing to go -- I'm fixing to take a chance

1 and put my life inside of an environment that I don't even
2 want to be in for somebody who don't want to change they
3 life. So that's the reason why I feel like I shouldn't get
4 life because I'm being punished for something that somebody
5 who don't even honor his own life. Somebody who I tried to,
6 tried to talk to time and time again. I mean but I'm fixing
7 to sit right here and my life is gonna be destroyed for
8 somebody who, who, who don't value life.

9 So I ask that, I ask that the Court's reconsider the
10 life sentence.

11 THE COURT: Mr. Williams, having been found guilty by a
12 jury of your peers, the Court having determined that you
13 have been convicted previously of two previous bank
14 robberies, both of which are violent, serious, or most
15 serious offenses, the Court finds that the sentence to be
16 imposed is a mandatory life in prisonment without parole.

17 Good luck to you, sir.

18 THE DEFENDANT: All right.

19 THE COURT: Court's in recess until tomorrow morning.
20 Thank you very much.

21 SOLICITOR BARNETTE: Thank you, Your Honor.

22

23

24 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 6th, 7th, and 8th day of June, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 14th, 2016

A handwritten signature in cursive script that reads "Pamela E. Green". The signature is written in dark ink and is positioned above a horizontal line.

PAMELA E. GREEN, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of SPARTANBURG)CALVIN TERRELL WILLIAMS 218862)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2018 CP4200057

APPLICATION FOR

POST-CONVICTION RELIEF

2018 JAN -8 AM 11:27
FILED IN CLERK'S OFFICEINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE CORRECTIONAL INSTITUTION DORM F3 ROOM
2135, 990 WISACKY HIGHWAY, BISHOPVILLE SC 29010
2. Name and location of Court which imposed sentence SPARTANBURG COUNTY
COURTHOUSE, SEVENTH JUDICIAL CIRCUIT, GENERAL SESSION
3. Name(s) of co-defendant(s) (if any) SHYQUONE MALIK WILLIAMS
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-68-42-2312
 - (b) 2015-68-42-2368

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) JUNE 8TH 2016, MANDATORY LIFE IN PRISON WITHOUT PAROLE
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. APPEAL DISMISSED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. OCTOBER 18, 2017
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UNPUBLISHED OPINION NO 2017-UP-395
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) REFER TO THE BACK

(b) REFER TO THE BACK

(c) REFER TO THE BACK

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

(a) REFER TO THE BACK

(b) REFER TO THE BACK

(c) REFER TO THE BACK

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

(a) any petition in a State Court under South Carolina Law? N/A

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A 1 00

(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. N/A 27

ii.

iii.

iv.

(b) the name and location of the Court in which each was filed:

i. N/A

iii.

iv.

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- 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?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

FILED - 8 AM 11:27
MAR 11 2003
CLERK OF COURT

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) 10 A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A
 (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?
N/A

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. TRIAL LAWYER WILLIAM MATTHEW SHEALY
APPEAL LAWYER LAURA BAER
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. TRIAL AND SENTENCING
 ii. APPEAL (SOUTH CAROLINA COURT OF APPEALS)
 iii. _____

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

VACATE SENTENCE, REVERSE AND REMAND CONVICTION
FOR A NEW TRIAL

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

NO

STATE OF SOUTH CAROLINA

County of SPARTANBURG

VERIFICATION

I, CALVIN TERRELL WILLIAMS, 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.

SWORN to and subscribed before me this 28th
day of December, 2017.

Uniqua Greene (L.S.)
Notary Public

My Commission Expires: 9-29-2027

2019 JAN -8 AM 11:21
HARRIS COUNTY

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, _____.

Notary Public

My Commission Expires: _____

2019 JAN -8 AM 11:27
11.11.2019

10 (A) THE DEFENDANT CALVIN TERRELL WILLIAMS' S TRIAL
ATTORNEY WILLIAM MATTHEW SHEALY WAS INEFFECTIVE FOR NOT
CONTEMPORANEOUSLY- OBJECTING TO THE THREE (3) STRIKES , OR
THE NOTICE OF LIFE WITHOUT POSSIBILITY OF PAROLE UNDER
17-25-45 (B)(2).

2018 JAN -8 AM 11:28
RECEIVED

(11A)

"THE DEFENDANT CALVIN TERRELL WILLIAMS'S TRIAL ATTORNEY WILLIAM MATTHEW SHEALY WAS INEFFECTIVE FOR NOT CONTEMPORANEOUSLY OBJECTING TO THE THREE (3) STRIKES, OR THE NOTICE OF LIFE WITHOUT POSSIBILITY OF PAROLE UNDER 17-25-45 (B)(2)(A) THIS IS NOT IN CODE OF LAW OF SOUTH CAROLINA 1976. RECTIFYING THE STATE PRESUMPTION OF CODE OF LAW OF SOUTH CAROLINA 1976 ANNOTATED TITLE 17. CRIMINAL PROCEDURE. CHAPTER 25 JUDGMENT AND EXECUTION ARTICLE 5, THE STATE PROBABLY MEANT 17-25-45 (B)(2). THE ISSUE HERE IS A LEGISLATIVE PROBLEM THE OFFENSE OF ARMED^{BANK} ROBBERY OR BANK ROBBERY IS NOT ON THE LIST OF MOST SERIOUS OR SERIOUS OFFENSES.

RECORD ON APPEAL PAGE 553 LINES 16 THROUGH 21

"AND BASICALLY SINCE A SERIOUS OFFENSE MEANS THIS IS COMING FROM 17-25-45 I THINK SUBSECTION (B)(2)(A), YOUR HONOR. A SERIOUS OFFENSE MEANS ANY OFFENSE WHICH IS PUNISHABLE BY A MAXIMUM TERM OF IMPRISONMENT FOR 30 YEARS OR MORE. THAT IS NOT REFERENCED TO IN THE SECTION

TITLE 13 U.S.C. 2113 (D)

WHOMEVER IN COMMITTING, OR IN ATTEMPTING TO COMMIT, ANY OFFENSE DEFINED IN SUBSECTION (A) AND (B) OF THIS SECTION, ASSAULTS ANY PERSON, OR PUTS IN JEOPARDY THE LIFE OF ANY PERSON BY THE USE OF A DANGEROUS WEAPON OR DEVICE, SHALL BE FINED UNDER THIS TITLE OR IMPRISONED NOT MORE THAN TWENTY-FIVE YEARS OR BOTH.

THE CODE OF LAW OF SOUTH CAROLINA 17-25-45 DOES NOT MAKE THE DEFENDANT ELIGIBLE FOR LIFE THIS MAKE THE NOTICE OF LIFE AN ILLEGAL OR INAPPROPRIATE DOCUMENT, IT CREATES A PROCEDURAL VIOLATION UNDER THE FOURTEENTH (14) AMIENDMENT IT VIOLATE THE DEFENDANT DUE

2003 JAN-8 AM 11:28

PROCESS.

THE DEFENDANT'S ATTORNEY WAS NEGLIGENT FOR NOT CONTEMPORANEOUSLY OBJECTING TO THE FACT ARMED BANK ROBBERY IS NOT CLASSIFIED MOST SERIOUS UNDER 17-25-45 NEITHER IS THE OFFENSE CONSIDERED SERIOUS. THE TRIAL ATTORNEY WILLIAM MATTHEW SHEALY FAILED TO INVESTIGATE WHAT IS MOST SERIOUS, AND SERIOUS THIS RESULTED IN THE DEFENDANT RECEIVING LIFE WITHOUT POSSIBILITY OF PAROLE UNCONSTITUTIONALLY.

THE STATE DOES NOT HAVE THE AUTHORITY TO CHANGE THE MAXIMUM ON FEDERAL ARMED BANK ROBBERY TO THIRTY(30) YEARS TITLE 18 U.S.C. 2113 (D) CLEARLY STATE "IMPRISONMENT TO EXCEED TWENTY-FIVE YEARS" RECORD ON APPEAL, AND 17-25-45 IS THIRTY(30) YEARS THIS CREATED A FUNDAMENTAL UNFAIRNESS. THE STATE DOES NOT HAVE THE AUTHORITY TO MODIFY FEDERAL STATUTE TO MAKE IT FIT THE STATE CODE 17-25-45. THIS VIOLATE THE DEFENDANT'S FIFTH, SIXTH, EIGHTH, AND FOURTEENTH CONSTITUTIONAL AMENDMENT. BY THE STATE ALTERING FEDERAL STATUTE TO ENHANCE THE DEFENDANT CALVIN TERRELL WILLIAMS TO LIFE IN PRISON IS CRUEL AND UNUSUAL PUNISHMENT THE STATE HAS BECAME THE LEGISLATIVE BODY BY AMENDING FEDERAL STATUTE. THE DEFENDANT'S TRIAL LAWYER WILLIAM MATTHEW SHEALY WAS INEFFECTIVE FOR FAILING TO ARGUE THE THREE STRIKES

2018 JAN -8 AM 11:28
CLERK OF COURT

EXHIBIT

17-25-45

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EXCEPT IN CASES IN WHICH THE DEATH PENALTY IS IMPOSED, UPON A CONVICTION FOR A SERIOUS OFFENSE AS DEFINED BY THIS SECTION, A PERSON MUST BE SENTENCED TO A TERM OF IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE IF THAT PERSON HAS TWO OR PRIOR CONVICTION FOR

1) A SERIOUS OFFENSE

2) A MOST SERIOUS OFFENSE

3) A FEDERAL OR OUT-OF-STATE OFFENSE THAT WOULD BE CLASSIFIED AS A SERIOUS OFFENSE OR MOST SERIOUS OFFENSE UNDER THIS SECTION; OR

(C) AS USED IN THIS SECTION

(1) "MOST SERIOUS OFFENSE" MEANS

16-1-40

ACCESSORY FOR ANY OFFENSE ENUMERATED IN THIS ITEM

16-1-80

ATTEMPT, FOR ANY OFFENSE ENUMERATED IN THIS ITEM

16-3-10

MURDER

16-3-29

ATTEMPTED MURDER

16-3-50

VOLUNTARY MANSLAUGHTER

16-3-30-3 APR 11:28

16-3-85 (A)(1)

HOMICIDE BY CHILD ABUSE

16-3-85 (A)(2)

ADING AND ABETTING HOMICIDE BY CHILD ABUSE

16-3-210

LYNCHING, FIRST DEGREE

16-3-210 (B)

ASSAULT AND BATTERY BY MOB, FIRST DEGREE

16-3-620

ASSAULT AND BATTERY WITH INTENT TO KILL

16-3-652

CRIMINAL SEXUAL CONDUCT FIRST DEGREE

16-3-653

CRIMINAL SEXUAL CONDUCT SECOND DEGREE

16-3-655

CRIMINAL SEXUAL CONDUCT WITH MINORS EXCEPT WHERE EVIDENCE PRESENTED AT THE CRIMINAL PROCEEDING AND THE COURT, AFTER THE CONVICTION MAKES A SPECIFIC FINDING ON THE RECORD THAT THE CONVICTION OBTAINED FOR THIS OFFENSE RESULTED FROM CONSENSUAL SEXUAL CONDUCT WHERE THE VICTIM WAS YOUNGER THAN THE ACTOR, AS CONTAINED IN SECTION 16-3-655 (3)

16-3-656

ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT, FIRST AND SECOND DEGREE

16-3-910

KIDNAPPING

200 JUN -3 PM 11:23
16-3-655

16-3-920

CONSPIRACY TO COMMIT KIDNAPPING

16-3-1075

CARJACKING

16-3-2020

TRAFFICKING IN PERSONS

16-11-110 (A)

ARSON, FIRST DEGREE

16-11-311

BURGLARY, FIRST DEGREE

16-11-330 (A)

ARMED ROBBERY

16-11-330 (B)

ATTEMPTED ARMED ROBBERY

16-11-540

DAMAGING OR DESTROYING BUILDING, VEHICLE, OR OTHER PROPERTY BY MEANS
OF EXPLOSIVE INCENDIARY, DEATH RESULT

24-13-450

TAKING OF A HOSTAGE BY AN INMATE

25-7-30

GIVING INFORMATION RESPECTING NATIONAL OR STATE DEFENSE TO FOREIGN
CONTACT DURING WAR

25-7-40

GATHERING INFORMATION FOR AN ENEMY

43-35 85 (F)

ABUSE OR NEGLECT OF A VULNERABLE ADULT RESULTING IN DEATH

2013 JUN -3 PM 11:23
16-11-330 (A)

CONTROLLED SUBSTANCE WITHIN PROXIMITY OF SCHOOL

56 5-2945

CAUSING DEATH BY OPERATING VEHICLE WHILE UNDER INFLUENCE OF DRUGS OR ALCOHOL AND

(c) THE OFFENSES ENUMERATED BELOW

16-1-40

ACCESSORY BEFORE THE FACT FOR ANY OF THE OFFENSES LISTED IN SUBITEMS 3

(A) AND (B)

16-1-80

ATTEMPT TO COMMIT ANY OF THE OFFENSES LISTED IN SUBITEMS (A) AND (B)

43 35 85 (L)

ABUSE OR NEGLECT OF A VULNERABLE ADULT RESULTING IN GREAT BODILY INJURY

2025-09-08 17:11:28

10(B) THE DEFENDANT CALVIN TERRELL WILLIAMS'S TRIAL ATTORNEY WILLIAM MATTHEW SHENLY WAS INEFFECTIVE FOR NOT CONTEMPORANEOUSLY-OBJECTING TO THE FACT THE HONORABLE JUDGE COUCH ADMITTED THE ELEMENT OF ENTER DID NOT EXIST.

2012 JUL -3 AM 11:28
ALBANY COUNTY CLERK

(11 B)

THE SIXTH AMENDMENT PROVIDES THAT THOSE ACCUSED OF A "CRIME" HAVE THE RIGHT, IN CONJUNCTION WITH THE DUE PROCESS CLAUSE REQUIRES THAT EACH ELEMENT OF A CRIME BE PROVED TO THE JURY BEYOND A REASONABLE DOUBT. U.S. V. GUADIN 515 U.S. 506, 510, 115 S. CT 2310, 132 L. ED 2D 444 (1995)

APPENDI V. NEW JERSEY 530 U.S. 466, 488-92, THESE RIGHTS INDISPUTABLY ENTITLE A CRIMINAL DEFENDANT TO A "A JURY DETERMINATION THAT (HE) IS GUILTY OF EVERY ELEMENT OF THE CRIME WITH WHICH HE IS CHARGED BEYOND A REASONABLE DOUBT. SEE SULLIVAN V. LOUISIANA 508 U.S. 275, 278, 113 S. CT 2078, 124 L. ED 2D 182 (1993) WINSHIP, 397 U.S. AT 364 90 S. CT 1068. THE DUE PROCESS CLAUSE PROTECTS THE ACCUSED AGAINST CONVICTION EXCEPT UPON PROOF BEYOND A REASONABLE DOUBT OF EVERY FACT NECESSARY TO CONSTITUTE THE CRIME WITH HE IS CHARGED.

AN INDICTMENT IS SUFFICIENT TO CONFER JURISDICTION "IF THE OFFENSE IS STATED WITH SUFFICIENT CERTAINTY AND PARTICULARITY TO ENABLE THE COURT TO KNOW WHAT HE IS CALLED UPON TO ANSWER..." BROWNING V. STATE 320 S.C. 366, 368, 465 S.E. 2D 359

STATE V. MYERS 313 S.C. 391, 438 S.E. 2D 236. WORDS IN STATUTE MUST BE GIVEN THEIR PLAIN AND ORDINARY MEANING.

STATE V. CAN... S.E. 2D... 2017 WL 57159. IT IS A FUNDAMENTAL CONCEPT OF CRIMINAL LAW THAT THE STATE MUST PROVE BEYOND A REASONABLE DOUBT ALL THE ELEMENTS OF THE OFFENSE CHARGED AGAINST THE DEFENDANT STATE V. BROWN, 360 S.C. 581, 590, 620 S.E. 2D 392, 397 (2004). THE STATE MAY NOT OBTAIN A CONVICTION

WHEN THE PROOF AS TO ANY ONE ELEMENT REQUIRES THE JURY TO SPECULATE OR GUESS WHETHER THE DEFENDANT ENGAGED IN THE CONDUCT THE LEGISLATURE SOUGHT TO CRIMINALIZE. STATE V. BROWN 267 S.C. 311, 316, 227 S.E. 2D 674, 677.

STATE V. JACKSON 338 S.C. 565, 527 S.E. 2D 367. THE STATE IS REQUIRED TO PROVE EVERY ELEMENT OF A CHARGE OFFENSE TO OBTAIN A CONVICTION. STATE V. ATTARD 263 S.C. 546, 211 S.E. 2D 868.

THE DEFENDANT CALVIN TERRELL WILLIAMS'S TRIAL ATTORNEY WILLIAM MATTHEW SHEALY DID REQUEST A DIRECT VERDICT BASED UPON THE STATE FAIL TO PROVE THE ELEMENTS. THE TRIAL LAWYER IS INEFFECTIVE FOR NOT ARGUING THAT THE COURT COMMITTED FUNDAMENTAL UNFAIRNESS BY AGREEING INDIRECTLY OR UNINTENTIONALLY THAT THE DEFENDANT DID NOT MEET THE ELEMENT OF "ENTER" IN THE INDICTMENT. WITHOUT THE DEFENDANT NOT ENTERING INTO THE BANK, HE COULD NOT HAVE SATISFYING COMMITTED THE OFFENSE

RECORD ON APPEAL PAGE 16 LINE 24 THROUGH 25
PAGE 17 LINE 1 THROUGH 12

THE INDICTMENT STATES, IN PART, THAT THE DEFENDANT, CALVIN TERRELL WILLIAMS, DID, IN SPARTANBURG COUNTY, ON OR ABOUT JANUARY THE 22nd OF 2015, ENTER A BUILDING OR A PART OF A BUILDING OCCUPIED AS A BANK, DEPOSITORY, OR SAVINGS

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AND LOAN ASSOCIATION NAMED BB&T LOCATED AT 1488 W. O. EZELL BOULEVARD, SPARTANBURG, SOUTH CAROLINA WITH THE INTENT TO STEAL MONIES, SECURITIES FOR MONEY, OR PROPERTY BY FORCE, INTIMIDATION, OR THREATS AND RECEIVED CURRENCY BY DEMANDING IT FROM THE TELLER, JENNIFER RODRIGUEZ, WITH THE INTENT TO DEPRIVE THE OWNER PERMANENTLY OF SUCH PROPERTY, GOODS, OR MONIES IN VIOLATION OF SECTION 16-11-380 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976 AS AMENDED AGAINST THE PEACE AND DIGNITY OF THE STATE AND CONTRARY TO THE STATUTE IN SUCH CASE MADE AND PROVIDED

THE ELEMENTS OF THE OFFENSE REQUIRES THE DEFENDANT CALVIN TERRELL WILLIAMS TO "ENTER" THE BANK IN ORDER TO COMMIT THE OTHER ELEMENTS. THERE IS NO ELEMENT GREATER THAN ANOTHER. ENTER MUST BE ESTABLISH FOR THE ELEMENTS IN THE INDICTMENT TO BE POSSIBLE. THIS ELEMENT IS SIGNIFICANT THE LEGISLATURE GAVE IN PLAIN LANGUAGE THE ELEMENTS. NO TESTIMONY GIVEN AT TRIAL STATE THE DEFENDANT COMMITTED BANK ROBBERY. THE TESTIMONIES DOES SUPPORT THE DEFENDANT'S AND HIS ATTORNEY WILLIAM MATTHEW SHEALY'S REASON FOR DIRECT VERDICT.

RECORD ON APPEAL PAGE 294 LINE 8 THROUGH 16
WILLIAM MATTHEW SHEALY

"AS FOR THE BANK ROBBERY THAT'S COUNT TWO OF THE INDICTMENT, NUMBER, EXCUSE ME, 15-GS-42-2312, IT WOULD

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BE OUR POSITION THAT THE STATE HAS FAILED TO PROVE MY CLIENTS PRESENCE FOR THE REQUIREMENTS OF THE BANK ROBBERY. IT'S ... EVERYBODY HAS TESTIFIED THAT MY CLIENT WAS, WAS OUTSIDE OF VIEW FROM THE ROBBERY, THAT MY CLIENT WAS NOT THE DRIVER. SO COULD NOT HAVE RENDERED ANY KIND OF AID TO THE BANK ROBBERY.

THE HONORABLE JUDGE ROGER L. COUCH AGREED TO THE FACT THAT THE DEFENDANT CALVIN TERRELL WILLIAMS DID NOT ENTER INTO THE BANK.

RECORD ON APPEAL PAGE 298 LINE 23 THROUGH 24 (THE COURT)

"HERE HE WAS IN THE VICINITY. HE WAS CLOSE ENOUGH TO BE IN THE GETAWAY VEHICLE."

THE DEFENDANT'S TRIAL ATTORNEY WILLIAM MATTHEW SHEALY WAS INEFFECTIVE FOR NOT BRINGING THIS TO THE COURT ATTENTION. THE COURT AGREEMENT INTENTIONALLY OR UNINTENTIONALLY IS FACTUALLY SUPPORTED BY THE TESTIMONIES GIVEN DURING TRIAL. THE TRIAL ATTORNEY FAILURE TO BRING THIS TO THE COURT ATTENTION EFFECTED THE OUTCOME OF THE TRIAL. LEGISLATURE CLEARLY PUT "ENTER" IN THE ELEMENTS OF BANK ROBBERY. IT DOES NOT REQUIRE THE DEFENDANT TO BE IN THE VICINITY. NEITHER DOES IT STATE HE HAS TO BE CLOSE ENOUGH TO BE IN THE GETAWAY VEHICLE

WITHOUT ENTERING THE BB&T BANK, THE DEFENDANT CALVIN TERRELL WILLIAMS COULD NOT HAVE VIOLATED 16-11-380.

CONTRARY TO THE COURT'S STATEMENT, ASPORTATION IS NOT AN ELEMENT OF BANK ROBBERY. ASPORTATION ENDED AT THE STORE BESIDE THE BANK. THE LOOT DID NOT REACH THE VEHICLE. THIS SHOW THE DEFENDANT DID NOT RECEIVE NO FUNDS FROM THE CRIME.

BY THE TRIAL ATTORNEY FAILING TO SHOW HOW THE ELEMENTS WERE NOT PROVEN, THE COURT ALLOWED THE STATE TO BE RELIEVE ON ITS BURDEN OF PROOF ON ALL THE ELEMENTS OF THE OFFENSE. THE COURT AGREED THAT THE ELEMENT OF ENTER DID NOT HAPPEN. THE TRIAL ATTORNEY DID NOT USE THAT TO GET THE COURT TO GRANT A DIRECT VERDICT.

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HONORABLE CLERK

10(C) THE DEFENDANT CALVIN TERRELL WILLIAMS'S TRIAL ATTORNEY WILLIAM MATTHEW SHEALY WAS INEFFECTIVE FOR NOT CONTEMPORANEOUSLY OBJECTING TO THE CONSTRUCTIVE AMENDMENT OF THE INDICTMENT CHANGING THE NATURE OF THE OFFENSE OF BANK ROBBERY TO REFLECT THE ELEMENTS OF ACCESSORY BEFORE THE FACT OF BANK. IN WHICH IS NOT LESSER OR INCLUDED. THIS MADE THE DEFENDANT DEFEND HIMSELF TWICE AGAINST THE SAME OFFENSE BASED ON THE JURY'S CHARGE.

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CLERK OF COURT

(11c)

THE DEFENDANT CALVIN TERRELL WILLIAMS'S TRIAL ATTORNEY WILLIAM MATTHEW SHEALY WAS INEFFECTIVE FOR NOT CONTEMPORANEOUSLY OBJECTING TO THE CONSTRUCTIVE AMENDING OF INDICTMENT NUMBER 2015 GS-42-2312, BANK ROBBERY. THE CONSTRUCTIVE AMENDING OF THE INDICTMENT CREATED A FUNDAMENTAL UNFAIRNESS BY THE COURT GIVEN THE CHARGE OF CONSTRUCTIVE PRESENCE, THE NATURE OF THE OFFENSE OF BANK ROBBERY. THE OFFENSE OF ACCESSORY BEFORE THE FACT OF BANK ROBBERY IS NOT A LESSER OR INCLUDED OFFENSE OF BANK ROBBERY. BANK ROBBERY HAS THE ELEMENT OF ENTER. ACCESSORY BEFORE THE FACT OF BANK ROBBERY DOES NOT HAVE THE ELEMENT OF ENTER. BY THE COURT ADDING CONSTRUCTIVE PRESENCE, IT DID NOT SIMPLY AMEND THE INDICTMENT. IT CHANGED THE NATURE OF THE OFFENSE.

U.S. V. RANDALL 171 F.3d 195

THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION, WHICH IN RELEVANT PART PROVIDES: NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY. "U.S. CONST. AMEND. V," "GUARANTEES THAT A CRIMINAL DEFENDANT WILL BE TRIED ONLY ON CHARGES IN A GRAND JURY INDICTMENT." UNITED STATES V. REYES, 102 F.3d 1361, 1364 (5TH CIR. 1996) (QUOTING UNITED STATES V. ARLEN, 947 F.2d 139, 145 (5TH CIR. 1991)) THEREFORE, ONLY THE GRAND JURY MAY BROADEN OR ALTER THE CHARGES IN THE INDICTMENT.

WHEN THE GOVERNMENT, THROUGH ITS PRESENTATION OF EVIDENCE AND, OR ITS ARGUMENT, OR THE DISTRICT COURT, THROUGH ITS INSTRUCTIONS TO THE JURY, OR BOTH, BROADENS THE BASES FOR CONVICTION BEYOND THOSE CHARGED IN THE INDICTMENT. A CONSTRUCTIVE AMENDMENT - SOMETIMES REFERRED TO AS A FATAL VARIANCE - OCCURS. SEE UNITED STATES V. REDD 161 F.3d 793, 795 (4TH CIR. 1998). A CONSTRUCTIVE AMENDMENT IS A FATAL VARIANCE BECAUSE THE

INDICTMENT IS ALTERED " TO CHANGE THE ELEMENTS OF THE OFFENSE CHARGED, SUCH THAT THE DEFENDANT IS ACTUALLY CONVICTED OF A CRIME OTHER THAN THAT CHARGED IN THE INDICTMENT. " UNITED STATES V. SCHNABEL, 939 F.2d 117, 243 (4TH CIR 1991) THUS, A CONSTRUCTIVE AMENDMENT VIOLATES THE FIFTH AMENDMENT RIGHT TO BE INDICTED BY A GRAND JURY, AND MUST BE CORRECTED ON APPEAL EVEN WHEN THE DEFENDANT DID NOT PRESERVE THE ISSUE BY OBJECTION. SEE UNITED STATES V. FLORESCA, 38 F.3d 706, 712-13 (4TH CIR. 1994)

STATE V. GUTHRIE 352 S.C. 10'S, 572 S.E. 2d 307

THE INDICTMENT MUST STATE THE OFFENSE WITH SUFFICIENT CERTAINTY AND PARTICULARITY TO ENABLE THE COURT TO KNOW WHAT JUDGMENT TO PRONOUNCE, AND THE DEFENDANT TO KNOW WHAT HE IS CALLED UPON TO ANSWER, AND WHETHER HE MAY PLEAD AN ACQUITTAL OR CONVICTION THEREON. BROWNING V. STATE 320 S.C. 366, 465 S.E. 2d 358 (1995) STATE V. HAMILTON, 341 S.C. 543 S.E. 2d 586 (Ct. App. 2001), STATE V. ERVIN, 333 S.C. 351, 510 S.E. 2d 220 (Ct. App. 1998) THE TRUE TEST OF THE SUFFICIENCY OF AN INDICTMENT IS NOT WHETHER IT COULD BE MADE MORE DEFINITE AND CERTAIN BUT WHETHER IT CONTAINS THE NECESSARY ELEMENTS OF THE OFFENSE INTENDED TO BE CHARGED AND SUFFICIENTLY APPRISES THE DEFENDANT OF WHAT HE MUST BE PREPARED TO MEET. BROWNING, 320 S.C. AT 368, 465 S.E. 2d AT 359; REDDICK, 348 S.C. AT 635, 560 S.E. 2d AT 443

AN INDICTMENT IS SUFFICIENT TO CONVEY JURISDICTION IF IT APPRISES THE DEFENDANT OF THE ELEMENTS OF THE OFFENSE INTENDED TO BE CHARGED AND INFORMS THE DEFENDANT OF THE CIRCUMSTANCES HE MUST BE PREPARED TO DEFEND. LOCKE V. STATE, 341 S.C. 54, 533 S.E. 2d 324 (2000); CARTER V. STATE 329 S.C. 365, 495 S.E. 2d 773 (1995) HAMILTON, 344 S.C. AT 364, 543 S.E. 2d AT 597.

STATE V. MYERS 313 S.C. 311, 438 S.E. 2d 236

WORDS IN STATUTES MUST BE GIVEN THEIR PLAIN AND ORDINARY MEANING.

SMITH V EAGLE CONSTRUCTION CO , 282 S C 140, 318 S E. 2d 8

(2) AMENDMENT OF INDICTMENT

THE TRIAL COURT AMENDED THE INDICTMENT TO CHARGE MYERS WITH ARSON UNDER S C. CODE ANN § 16-11-140. AMENDMENTS TO AN INDICTMENT ARE PERMISSIBLE IF THEY DO NOT CHANGE THE NATURE OF THE OFFENSE, THE CHARGE IS A LESSER INCLUDED OFFENSE OF THE CRIME CHARGED ON THE INDICTMENT, OR THE DEFENDANT WAIVES PRESENTMENT TO THE GRAND JURY AND PLEADS GUILTY. S C. CODE ANN § 17-19-100 (1985); STATE V. MURDOCK, 303 S C. 143, 417 S E. 2d 543 (1992) STATE V. RIDDLE, 301 S C. 211, 391 S E. 2d 253 (1990)

GRANGER V STATE 333 S.C. 2, 507 S E. 2d 322

AN INDICTMENT IS SUFFICIENT IF IT APPRISES THE DEFENDANT OF THE ELEMENTS OF THE OFFENSE INTENDED TO BE CHARGED AND APPRISES THE DEFENDANT WHAT HE MUST BE PREPARED TO MEET. STATE V. EVANS.

U S V MORRISON 529 U S 598, 120 S Ct 1740

EVERY LAW ENACTED BY CONGRESS MUST BE BASED ON ONE OR MORE OF ITS POWER ENUMERATED IN THE CONSTITUTION "THE POWERS OF THE LEGISLATURE ARE DEFINED AND LIMITED; AND THAT THOSE MAY NOT BE MISTAKEN, OR FORGOTTEN, THE CONSTITUTION IS WRITTEN

THE DEFENDANT CALVIN TERRELL WILLIAMS'S ATTORNEY WILLIAM MATTHEW SHEALY FILED SHOW THE COURT BY AMENDING THE INDICTMENT IT CREATED A FUNDAMENTAL UNFAIRNESS. IT CHANGED THE NATURE OF THE OFFENSE BY MAKING BANK ROBBERY REFLECT, OR MIRROR ACCESSORY BEFORE THE FACT OF BANK ROBBERY ACCESSORY BEFORE THE FACT OF BANK ROBBERY IS NOT A LESSER INCLUDED OFFENSE OF BANK ROBBERY.

TRANSCRIPT OF RECORD PAGE 16 THROUGH 17 LINE 25, LINE 1 THROUGH 12

CALVIN TERRELL WILLIAMS, DID, IN SPARTANBURG COUNTY, ON OR ABOUT JANUARY THE 22nd OF 2015, ENTER A BUILDING OR A PART OF A BUILDING OCCUPIED AS A BANK, DEPOSITORY, OR SAVINGS, AND LOAN ASSOCIATION NAMED BB&T LOCATED AT 1458 W.D. EZELL BOULEVARD, SPARTANBURG, SOUTH CAROLINA WITH THE INTENT TO STEAL MONIES, SECURITIES FOR MONEY, OR PROPERTY BY EITHER FORCE, INTIMIDATION, OR THREATS AND RECEIVED CURRENCY BY DEMANDING IT FROM THE TELLER, JENNIFER RODRIGUEZ, WITH THE INTENT TO DEPRIVE THE OWNER PERMANENTLY OF SUCH PROPERTY, GOODS, OR MONIES IN VIOLATION OF SECTION 16-11-380 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976 AS AMENDED, AGAINST THE PEACE AND DIGNITY OF THE STATE AND CONTRARY TO THE STATUTE IN SUCH CASE MADE AND PROVIDED

TRANSCRIPT OF RECORD PAGE 17 THROUGH 18 LINE 17 THROUGH 25, LINE 1 THROUGH 2

CALVIN TERRELL WILLIAMS, DID, IN SPARTANBURG IN THE CITY OF SPARTANBURG IN SPARTANBURG COUNTY ON OR ABOUT JANUARY 22nd, 2015, AID, ABET, COUNSEL, HIRE, OR OTHERWISE PROCURE THE COMMISSION OF A FELONY, TO WIT, BANK ROBBERY, BY THE PRINCIPAL FELON, SHYQUONE WILLIAMS, BY CONSPIRING WITH SHYQUONE WILLIAMS KNOWING THAT SHYQUONE WILLIAMS INTENDED TO COMMIT A CRIME IN VIOLATION OF SECTION 16-140 AND 50 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976 AS AMENDED AGAINST THE PEACE AND DIGNITY OF THE STATE AND CONTRARY TO THE STATUTE IN SUCH CASE MADE AND PROVIDED

THE ELEMENTS OF BANK ROBBERY FIRST STATE "ENTER"

BLACK'S LAW DICTIONARY

ENTER (VERB) (13C)

TO COME OR GO INTO; ESP, TO GO ONTO (REAL PROPERTY) BY RIGHT OF ENTRY SO AS TO TAKE POSSESSION< THE LANDLORD ENTERED DEFAULTING TENANT'S

8 A NO, SIR

THIS CLEARLY SHOWS THAT THIS SHOULD NOT HAVE BEEN GIVEN. THE COURT AMENDED THE INDICTMENT AGAIN BY ADDING "CONSTRUCTIVE PRESENCE." THIS ADDED ANOTHER ELEMENT THAT WAS NOT MENTIONED IN THE INDICTMENT.

TRANSCRIPT OF RECORD PAGE 352 LINE 2 THROUGH 7

NOW, A PERSON CAN BE YOU CONSTRUCTIVELY PRESENT AT THE COMMISSION OF A CRIME EVEN THOUGH THE PERSON MAY BE SOME DISTANCE AWAY FROM THE ACTUAL CRIME SCENE IF IT IS SHOWN, BEYOND A REASONABLE DOUBT, THAT THE PERSON PLAYED A ROLE IN THE COMMISSION OF THE CRIME AS A RESULT OF SOME PRIOR ARRANGEMENT.

THE COURT ALSO ADDED PRINCIPAL. THIS ALSO AMENDED THE INDICTMENT.

TRANSCRIPT OF RECORD PAGE 353 LINE 10 THROUGH 16

NOW, A PRINCIPAL IN A CRIME IS THE ONE WHO ACTUALLY COMMITS THE CRIME OR WHO IS PRESENT AIDING, ABETTING, OR ASSISTING IN THE COMMISSION OF THE CRIME. WHEN A PERSON DOES AN ACT IN THE PRESENCE OF AND WITH THE ASSISTANCE OF ANOTHER, THE ACT IS DONE BY BOTH. THERE -- WHERE TWO OR MORE ACTING WITH A COMMON PLAN OR SCHEME ARE PRESENT AT THE COMMISSION OF A CRIME,

THESE AMENDMENTS TO THE INDICTMENT OF BANK ROBBERY MADE BANK ROBBERY MIRROR AND REFLECT ACCESSORY BEFORE THE FACT OF BANK ROBBERY. THESE OFFENSES ARE NOT LESSER INCLUDED. THEREFORE, THE DEFENDANT WAS BASICALLY ON TRIAL FOR THE SAME OFFENSE TWICE. THE CHARGES ARE DIFFERENT, BUT THE ELEMENTS ARE THE SAME. THIS IS DOUBLE JEOPARDY.

TRANSCRIPT OF RECORD PAGE 213 LINE 3 THROUGH 24

3. MR. SHERIDAN: SO IT WOULD BE, AGAIN, OUR POSITION THAT, BECAUSE HE WAS SO FAR AWAY, HE WAS NOT IN ANY POSITION TO AID THE BANK ROBBER. THERE WAS NO

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MATERIALLY DIFFERENT FROM THOSE ALLEGED IN THE INDICTMENT. ") THE SIXTH AMENDMENT GUARANTEE THAT DEFENDANT BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION IS SATISFIED WHEN A DEFENDANT. (1) RECEIVES ADEQUATE NOTICE THE STATE IS PURSUING ACCOMPLICE LIABILITY, AND (2) THE STATE HAS NOT AFFIRMATIVELY MISLED THE DEFENDANT.

U.S. V. REDD 161 F.3d 793

NOT ALL VARIANCE BETWEEN AN INDICTMENT AND THE PROOF OFFERED AT TRIAL, HOWEVER, CONSTITUTE A CONSTRUCTIVE AMENDMENT OF AN INDICTMENT. A VARIANCE IN THE INDICTMENT VIOLATES A DEFENDANT'S RIGHTS ONLY IF IT PREJUDICES HIM. FLETCHER, 74 F.3d AT 53 AS THIS COURT HAS STATED THIS OCCURS WHEN THE VARIANCE EITHER "SURPRISES" THE DEFENDANT AT TRIAL AND HINDER[S] THE PREPARATION OF HIS DEFENSE, OR... EXPOS[ES] HIM TO THE DANGER OF A SECOND PROSECUTION FOR THE SAME OFFENSE.

U.S. V. FLORESCA 38 F.3d 706

LIKEWISE, THROUGH THE DISTRICT COURT PLAINLY FAILED TO INSTRUCT THE JURY ON PARAGRAPH 1, ITS ACTION CANNOT BE CLASSIFIED AS A "MERE" FAILURE TO INSTRUCT. THE CHARGE TO FLORESCA'S JURY ON THE ESSENTIAL ELEMENTS OF COUNT NINE WAS FLAWED, NOT ONLY BY THE ABSENCE OF THE INSTRUCTION, BUT ALSO BY THE PRESENCE OF A MISINSTRUCTION - AND NOT AN ORDINARY MISINSTRUCTION AT THAT THE COURT'S INSTRUCTION ON PARAGRAPH 3 WAS MORE THAN JUST A MISTATEMENT OF LAW APPLICABLE TO THE INDICTED OFFENSE; IT STATED A DISTINCT, UNINDICTED OFFENSE. IT WAS BY NO MEANS ONLY A "SLIGHT DEFECT IN THE CHARGE [THAT] COULD BE CURED BY OTHER CIRCUMSTANCES. UNITED STATES V. POLOWICHAK, 793, F.2d 416 (4TH CIR 1986)

THE COURT'S MISINSTRUCTION RESULTED IN AN AMENDMENT TO

WAY OF A VOCAL CALL OUT FOR HELP COULD OF REACHED HIM.

THE COURT. AND UNDER THE ---

MR. SHEALY: THERE'S NO PHONE CALL.

THE COURT: --- THEORY OF HAND OF ONE, HAND OF ALL, IF HE WAS AIDING AND ASSISTING, HE'S CONSIDERED TO BE THERE.

MR. SHEALY: WELL, JUDGE, AGAIN THE -- THAT MEETS ACCESSORY BEFORE THE FACT AND ACCESSORY BEFORE THE FACT NO LONGER --

THE COURT: WELL, I'M TALKING ABOUT THE BANK ROBBERY.

MR. SHEALY: --- EXISTS. WELL, JUDGE, IT WOULD BE OUR POSITION THAT, TO RULE IN THAT WAY WOULD ESSENTIALLY CONSUME THE CRIME OF ACCESSORY BEFORE THE FACT. I MEAN THERE IS NO ACTUAL DIFFERENCE BETWEEN THE TWO.

THE COURT: WELL, THERE MAY -- I'M A LITTLE BIT CONCERNED WHERE WE'RE CHARGING HIM WITH THE ACT AND ALSO BEING AN ACCESSORY BEFORE THAT ACT. AS YOU STATED, AN ACCESSORY IS NOT -- NOT NORMALLY NOT PRESENT WHEN THE ACT IS PERFORMED. HERE HE WAS IN THE VICINITY. HE WAS CLOSE ENOUGH TO BE IN THE GETAWAY VEHICLE.

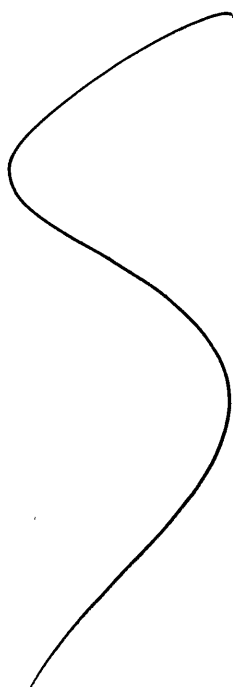
INDICTMENT VARIANCE: A DEFENDANT MUST BE CONVICTED, IF CONVICTED AT ALL, OF THE PARTICULAR OFFENSE CHARGED IN THE BILL OF INDICTMENT. A MATERIAL VARIANCE BETWEEN CHARGE AND PROOF ENTITLES THE DEFENDANT TO A DIRECTED VERDICT; SUCH A VARIANCE IS NOT MATERIAL IF IT IS NOT AN ELEMENT OF THE OFFENSE. SEE, BAILEY V. STATE, 709 S.E. 2d 671 (2011); STATE V. SMITH, 753 S.E. 2d 612; STATE V. GREEN, 753 S.E. 2d 259.

41 AM JUR 2d INDICTMENTS & INFORMATION'S § 252 (2005) (STATING THAT ONE OF THE TWO WAYS AN INDICTMENT CAN BE IMPROPERLY MODIFIED IS THROUGH "A VARIANCE, WHEREBY THE CHARGING TERMS OF THE INDICTMENT ARE LEFT UNALTERED, BUT THE EVIDENCE OFFERED AT TRIAL PROVES FACTS

THE INDICTMENT. A CONSTRUCTIVE AMENDMENT TO AN INDICTMENT OCCURS WHEN THE COURT (USUALLY DURING ITS PRESENTATION OF EVIDENCE AND / OR ITS ARGUMENT), THE COURT (USUALLY THROUGH ITS INSTRUCTIONS TO THE JURY), OR BOTH, BROADENS THE POSSIBLE BASES FOR CONVICTION BEYOND THOSE PRESENTED BY THE GRAND JURY.

THE JURY'S CHARGES AMENDED THE INDICTMENT UNTIL THE NATURE OF THE OFFENSE WAS CHANGED THE ELEMENTS OF BANK ROBBERY BECAME THE ELEMENTS OF ACCESSORY BEFORE THE FACT. THESE OFFENSES ARE NOT LESSER OR INCLUDED. THEREFORE, THE DEFENDANT WAS ON TRIAL FOR THE SAME OFFENSE TWICE BY THE ELEMENTS ADDED BY THE JURY'S CHARGE

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
Calvin Terrell Williams, #218862	)	Case No.: 2018-CP-42-0057
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The State (Respondent), making its Return to the application for post-conviction relief filed on January 8, 2018, would respectfully show this Court:

I.

Calvin Terrell Williams (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In April 2015 the Spartanburg County Grand Jury indicted Applicant for armed robbery and bank robbery (2015-GS-42-2312). In May 2016, the Spartanburg County Grand Jury also indicted Applicant for accessory before the fact to felony bank robbery (2016-GS-42-2368). Assistant Public Defender Matthew W. Shealy, Esquire, represented Applicant. Seventh Circuit Solicitor Barry Barnette prosecuted the case.

On June 6, 2016, Applicant proceeded to a jury trial in the Spartanburg County Court of General Sessions before the Honorable Roger L. Couch, circuit court judge. On June 8, 2016, the jury found Applicant guilty as indicted. Judge Couch sentenced Applicant to imprisonment for life without possibility of parole pursuant to S.C. Code Ann. § 17-25-45.

Applicant filed a timely notice of appeal. Appellate Defender Laura R. Baer of the South Carolina Commission on Indigent Defense—Office of Appellate Defense filed a brief pursuant

to Anders v. California, 386 U.S. 738 (1967). Applicant then filed his own *pro se* brief. On October 18, 2017, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Williams, Op. No. 2017-UP-395 (S.C. Ct. App. filed October 18, 2017). The remittitur was returned to the circuit court on November 3, 2017.

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

II.

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

1. "Ineffective Assistance of Counsel," in that:
 - a. "ineffective for not contemporaneously objecting to the three strikes or the notice of life without possibility of parole under 17-25-45(B)(2)"
 - i. "The defendant's attorney was negligent for not contemporaneously objecting to the fact armed bank robbery is not classified most serious under 17-25-45. Neither is the offense considered serious."
 - ii. "The issue here is a legislative problem the offense of armed robbery or bank robbery is not on the list of most or serious offenses"
 - iii. "Trial attorney William Matthew Shealy failed to investigate what is most serious and serious this resulted in the defendant receiving life without possibility of parole unconstitutionally."
 - iv. "This violates the Defendant's Fifth, Sixth, Eighth and Fourteenth constitutional amendment, by the state altering federal statute to enhance the defendant Calvin Terrell Williams to life in prison is cruel and unusual punishment."
 - b. "ineffective for not contemporaneously objecting to the fact the Honorable Judge Couch admitted the element of enter did not exist"

- i. "The defendant Calvin Terrell Williams' trial attorney William Matthew Shealy did request a direct verdict based upon the state fail to prove the elements. The trial lawyer is ineffective for not arguing that the court committed fundamental unfairness by agreeing indirectly or unintentionally that the defendant did not meet the element of "Enter" in the indictment. Without the defendant not entering into the bank, he could not have satisfying committed the offense."
 - ii. "The Honorable Judge Roger L. Couch agreed to the fact that the defendant Calvin Terrell Williams did not enter into the bank."
 - iii. "The defendant's trial attorney William Matthew Shealy was ineffective for not bringing this to the court attention. This court agreement intentionally or unintentionally is factually supported by the testimonies given during trial. The trial attorney failure to bring this to the court attention effected the outcome of the trial. Legislature clearly put "Enter" in the elements of bank robbery. It does not require the defendant to be in the vicinity, neither does it state he has to be close enough to be in the getaway vehicle."
 - iv. "By the trial attorney failing to show how the elements were not proven, the Court allowed the state to be relieve on its burden of proof on all the elements of the offense. The Court agreed that the element of Enter did not happen. The trial attorney did not use that to get the Court to grant a direct verdict."
- c. "ineffective for not contemporaneously objecting to the constructive amendment of the indictment changing the nature of the offense of bank robbery to reflect the elements of accessory before the fact of bank in which his not lesser or included. This made the defendant defend himself against the same offense based on the jury's charge."
- i. "The defendant Calvin Terrell Williams' attorney William Matthew Shealy failed to show the court by amending the indictment it created a fundamental unfairness. It changed the nature of the offense by making bank robbery reflect or mirror accessory before the fact of bank robbery. Accessory before the fact of bank robbery is not a lesser included offense of bank robbery."
 - ii. "The jury's charges amended the indictment until the nature of the offense was changed. The elements of bank robbery became the elements of accessory before the fact. These offenses are not lesser or included. Therefore the defendant was on trial for the same offense twice by the elements added by the jury's charge."

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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

Respondent submits Applicant can satisfy neither requirement of the Strickland test.

However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

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

VII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VIII.

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

IX.

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

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By:


ATTORNEYS FOR RESPONDENT

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

April 18, 2018

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
)
)
)

CALVIN TERELL WILLIAMS, #218862

) 2018-CP-42-00057
)
)

Applicant,

vs

) AFFIDAVIT OF SERVICE BY MAIL
)
)

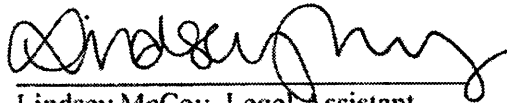
STATE OF SOUTH CAROLINA,

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:

Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee Street
Greenville, South Carolina 29601

DATED this the 18th day of April, 2018.



Lindsey McCoy, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3

4 CALVIN T. WILLIAMS,) TRANSCRIPT
5 APPLICANT,) OF
6 vs.) RECORD
7 THE STATE OF SOUTH CAROLINA,)
8 DEFENDANT.) 2018-CP-42-57

9

10 June 18th, 2018
11 Spartanburg, South Carolina

12

13 B E F O R E:

14 THE HONORABLE GRACE GILCHRIST KNIE, Judge.

15

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

17 SUSANNAH C. ROSS
18 ESQ.
Attorney for the Applicant

19 MEGAN H. JAMESON and JORDAN A. COX
20 ASSISTANT ATTORNEY GENERAL
Attorney for the State

21

22

23 PAMELA E. GREEN
24 Circuit Court Reporter
Seventh Judicial Circuit

25

I N D E X O F W I T N E S S E S

<u>WITNESSES</u>	<u>PAGE</u>
CALVIN WILLIAMS	
Direct examination by Ms. Ross	7
Cross-examination by Ms. Jameson	20
SHYQUONE WILLIAMS	
Direct examination by Ms. Ross	38
MATTHEW SHEALY	
Direct examination by Ms. Jameson	45
Cross-examination by Ms. Ross	57
Redirect examination by Ms. Jameson	71
BARRY BARNETTE	
Direct examination by Ms. Jameson	76
Cross-examination by Ms. Ross	86
Redirect examination by Ms. Jameson	91
Closing by Ms. Ross	91
Closing by Ms. Jameson	94
Certificate	101

P R O C E E D I N G S

MS. JAMESON: May it please the Court?

THE COURT: Yes, ma'am.

MS. JAMESON: Your Honor, Megan Jameson on behalf of the State.

This is the matter of Calvin Williams versus The State of South Carolina. Docket Number 2018-CP-42-0057.

In April of 2015, Spartanburg County Grand Jury indicted Mr. Williams for armed robbery and bank robbery. Subsequent to that, in May of 2016, the Grand Jury also indicted him for accessory before the fact to bank robbery, felony bank robbery. Assistant Public Defender Matthew Shealy represented him, and Seventh Circuit Solicitor, Barry Barnette, prosecuted the case.

On June 6th, 2016, he proceeded to a jury trial before the Honorable Roger Couch. On June 8th, 2016, the jury found Mr. Williams guilty of bank robbery. Judge Couch sentenced Applicant to imprisonment for life without the possibility of parole pursuant to 17-25-40.

Mr. Williams filed a timely Notice of Appeal. An Anders brief was filed on his own -- his own behalf, and then he filed his own pro se brief as well. On October 18th, 2017, the Court of Appeals affirmed his convictions and sentence, and granted Appellate Defender's

1 Baer's motion to be relieved as counsel. The Remittitur was
2 returned to the Circuit Court on November 3rd, 2017.

3 On January 8th of this year, he filed a timely
4 Application for Post-Conviction Relief. In that
5 Application, he alleged that Trial Counsel Shealy was
6 ineffective for failing to object to the State's Notice of
7 Life Without Parole pursuant to 17-25-45, ineffective for
8 not objecting to his contention that Judge Couch admitted
9 the element of entry did not exist during the directed
10 verdict motion, and ineffective assistance of counsel for
11 failing to object to the constructive amendment of the
12 indictment changing the nature of the offense of bank
13 robbery to reflect the elements of accessory before the fact
14 as not a lesser included. It's my understanding that his
15 argument, essentially, is that he should not have been
16 indicted for both accessory before the fact, and bank
17 robbery for the same actions.

18 The State made its return on April 18th, 2018,
19 requesting an evidentiary hearing, and he is present along
20 with his counsel, Susannah Ross.

21 THE COURT: Thank you.

22 MS. ROSS.

23 MS. ROSS: Thank you, Your Honor.

24 May it please the Court.

25 Those are the allegations. Specifically there was a

1 failure to object with life without parole on Page 256, Line
2 20. We argue that his priors didn't constitute charges that
3 could be categorized as serious or most serious, and should
4 not have been used.

5 Also the failure to object to the, the indictments.
6 Part of that, as well, goes to on Page 349 and 354. There
7 was no exception to the jury charge of constructive
8 presence, which we would argue, given the two indictments,
9 became confusing and prejudicial to the jury. So, it just
10 adds to the, the, the damage done by these two indictments
11 for the same thing.

12 I'd also reference SC Code Annotated 16-1-50, which
13 states one who counsels may be indicted for accessory or as
14 the principal. It doesn't say and. We've also argued that
15 Shyquone Williams, who testified, was led, and, and that was
16 ineffective leading, not objecting to the leading, and
17 failure to reveal, reveal the deal, and do a better job of
18 cross-examining that damaging witness, and here's just -- if
19 I may approach?

20 I just made a outline with---

21 THE COURT: Yes, ma'am.

22 MS. ROSS: ---some case law.

23 THE COURT: And have you given that to counsel?

24 MS. ROSS: Yes, I have.

25 THE COURT: Thank you.

1 MS. JAMESON: Your Honor, I'm just seeing this for the
2 first right now. So, if any additional argument needs to be
3 made, I'd like to -- if we could argue at the end or
4 potentially submit memoranda in response to, to this new
5 docket we're just seeing.

6 THE COURT: Yes, ma'am. If you think that's necessary,
7 at the conclusion, I'll grant you that right.

8 Okay?

9 MS. JAMESON: Thank you.

10 THE COURT: All right.

11 MS. ROSS: Well, and, and what that consisted of is
12 just of my notes, and then I printed out -- this is the, the
13 law that -- the bank robbery that he was convicted of prior.
14 I'd point out, and we can argue this further later, that it
15 carries, in, in one aspect, in Section A, not more than 20
16 years, and, in Section D, not more than 25 years. And we,
17 we would argue that that shows that it's not equivalent to a
18 most serious or serious strike.

19 MS. JAMESON: Your Honor, would you like the State to
20 respond to these legal argument now or were we, we doing an
21 argument at the end cause I do have---

22 MS. ROSS: We -- I can go ahead and call my witnesses.

23 MS. JAMESON: I do have a response to some of these.

24 THE COURT: Why don't you don't -- we wait until the
25 conclusion?

1 If you want to call your witness, please.

2 MS. JAMESON: Thank you, Your Honor.

3 MR. ROSS: Okay. We'd call Calvin Williams.

4 THE COURT: Okay. Mr. Williams, good morning, sir. If
5 you'll come forward.

6 (Witness complies.)

7 THE COURT: Can you raise your right-hand?

8 THE WITNESS: Yes, ma'am.

9 CALVIN WILLIAMS, being first duly
10 sworn, testified as follows:

11 THE COURT: Thank you.

12 THE WITNESS: Thank you.

13 THE COURT: Please be seated, sir. Make yourself
14 comfortable. Answer your lawyer's questions, and then
15 opposing counsel will have questions for you as well.

16 Yes, ma'am.

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Thank you.

19 DIRECT EXAMINATION

20 BY MS. ROSS:

21 Q Mr. Williams, you've alleged ineffective con --
22 assistance of counsel against your attorney, Matthew Shealy.

23 Can you outline some of the reasons why?

24 A Yes. Up under 17-25-45, it clearly states that, in
25 order for you to be eligible for a life sentence, you have

1 to meet two different criterias (sic), and one is that, the
2 charge, that it has to fit up under that category for most
3 serious -- and most serious and serious offenses. Bank
4 robbery does not fit under serious or most serious,
5 serious -- serious or most serious. Neither do armed bank
6 robbery, which is a federal offense. Neither one of them
7 fits up under there.

8 Armed bank robbery, and, and they got a -- they got
9 another part, which is B-2, that states that, in order for
10 you to fit up under this without the charge being on this
11 list, it has to carry 30 years or more. Armed bank robbery
12 only carries 25 years, a maximum of 25 years. Therefore, it
13 would not fit the criteria of that Statute of 17-17-2545.

14 Q Okay. And, and is that -- I believe it's part of the,
15 the record, but was 18 U.S. Code 2113 --

16 A Yes, ma'am.

17 Q -- the charge that --

18 A Yes, ma'am.

19 Q That was your prior?

20 A 18 -- 18 U.S.C. 21 -- 2113.

21 Q Okay.

22 A 2113(d) if I'm not mistaken.

23 Q Well, let me show you the statute.

24 (Pause.)

25 Q I'm gonna show you this statute.

Calvin Williams - Direct examination
By Ms. Ross

1 A Yes, ma'am.

2 Q Do you know what you were convicted of, what your
3 indictments alleged you did---

4 A Yes.

5 Q ---your prior federal indictments?

6 A I was -- in one of the bank robberies, I was convicted
7 as the principal. In the other -- in the other bank
8 robbery, I was considered a person who aided and abetting a
9 person who committed a bank robbery.

10 Q Okay.

11 A And that was the aider in Juwan Ferrett (phonetic) bank
12 robbery. I was considered as a person who aiding and
13 abetting him to a bank -- to bank robbery.

14 Q And those are in your -- the indictments, the federal
15 indictments?

16 A Yes, they're in the actual writing of the language of
17 the federal indictment.

18 Q And, and those are part of the record, correct?

19 A Yes, ma'am.

20 Q Now, did you ever get a Notice of Intent to Seek Life
21 Without Parole?

22 A I got one while I was in the County, and I had --
23 didn't have time to do any research on it because of the
24 fact that I was in the County, and the County don't -- in
25 the County Jail, you don't have access to the Law Library.

1 Q Okay. And did your lawyer discuss that notice with
2 you?

3 A Brief as possible. If -- I mean, if any, he didn't
4 actually bring me a list of what was on the on -- what was,
5 what was el -- what would make me eligible for life. He
6 just was telling me that bank robbery itself, they was
7 seeking life because I had three bank robberies.

8 Q Okay. And did you -- did he ever show you the statute
9 or go over it with you?

10 A I don't recall him going over it -- going over the
11 statute or showing it to me.

12 Q Okay. Now, you'd also alleged at, at one point that he
13 failed to effectively argue about a directed verdict---

14 A Yeah.

15 Q ---on your indictments?

16 A I did. I -- one of my arguments concerning my,
17 concerning my PCR was I wasn't granted a direct indictment
18 when I felt like I was suppose to because of the fact that
19 the Judge himself admitted that the element of enter did not
20 exist, and the Constitution says that I have to be found
21 guilty of all elements inside of an indictment. If the
22 element of enter did not exist, then none of the other
23 elements could of existed because, in order for you to
24 commit a bank robbery, you had to first enter into the bank.

25 Q Okay. And this was discussed during your trial back

Calvin Williams - Direct examination
By Ms. Ross

1 and forth.

2 Is that correct?

3 A Yes, the Judge also admitted that I was in a vicinity
4 of the bank close enough to be in the getaway vehicle. He,
5 he admitted out of his mouth that I never entered into the
6 bank. So, therefore, by him admitting that, I felt like a
7 directed verdict should of been -- it should of been
8 acknowledged or it should of been brought up because of the
9 fact that he, out of his own mouth, said I didn't meet the
10 elements --

11 Q Okay.

12 A -- of bank robbery.

13 Q And around Page 301, Line 24, there was some objection
14 to the two indictments made by your attorney, correct?

15 A Yes, ma'am, because he felt like it changed the nature
16 of the actual charge, and, and it makes the charges reflect
17 each other because, if you take all the -- if you take all
18 the elements that they added to the bank robbery, and you
19 take the elements of accessory before the fact, they become
20 the same charge. Only, only thing different is the title.

21 Q Okay. And, at some point, Mr. Shealy allowed that to
22 go forward, and withdrew the objection to the second
23 indictment.

24 Is that correct?

25 A Yes, he did.

1 Q And do you feel that concession was in error?

2 A Yes, I do. I felt like if, if that, if -- from the
3 beginning, if I would of been fighting one charge versus
4 fighting multiple charges with different, with different
5 elements, and basically they end up becoming the same charge
6 with the same elements, I was so -- it was like fighting the
7 same crime twice.

8 Q All right. And was there any objection by your
9 attorney to any of the jury instructions that were given?

10 A Not that I know -- no, he never objected to any of the
11 jury instructions. He told me, prior to case -- prior to
12 trial, that I could help him with the questioning, but I
13 can't tell him what to object to. Therefore, I'm -- I never
14 raised the issue about him objecting to anything because he
15 said I couldn't tell him what to object to.

16 Q And I'm referring to Page 350 and 352. On Page 350,
17 the Judge charged accessory before the fact.

18 Is that correct?

19 A Yes, ma'am.

20 Q And did your lawyer have any exceptions to the charges
21 of the, the Judge?

22 A No, he didn't have any exceptions to the charge outside
23 of later on, when the, the Judge brought it up, he told the
24 Judge -- he said that, by you using these two charges and by
25 you doing this, by you adding this element of constructive

Calvin Williams - Direct examination
By Ms. Ross

1 presence, that means that these two charges are basically
2 the same. There's no difference.

3 Q And I believe---

4 A The---

5 Q ---the jury had a question about that, didn't they, on
6 Page 349?

7 A Yes, the jury came -- the jury, during the time they
8 was meeting, they came in with the question concerning
9 constructive presence, and they was asked why is these --
10 why can he be charged -- why can he be found guilty of one
11 and not the other. I think that was their, their wording
12 inside of it.

13 Q Okay. And, and, at that point, the Judge reinstructed
14 on hand of all, and constructive presence, correct?

15 A Yes, ma'am.

16 Q And there's no objection to those jury instructions?

17 A No, ma'am.

18 Q Now -- and specifically, on Page 349, this is the point
19 where the Court, at Line 7, asked whether there's any
20 exceptions to the jury instruction, and Mr. Shealy says
21 they're, they're none.

22 A Yes, ma'am.

23 Q What do you think the effect of having the two
24 indictments for essentially the same thing had on the jury?

25 A I felt like it created a bias. It was biased, and it

1 created prejudice because of the fact that it's like either
2 you find him guilty of one or you find him guilty of the
3 other one. And it was like okay, well, these elements
4 are -- these elements are different, but these elements
5 looks -- so, it's like you giving, you giving a person a
6 choice between two different crimes, and two different
7 things to find a person guilty on based on different
8 elements. And, even though they're not, they're not lesser
9 included, it's just a point that you made it unfair because
10 the jury got two different things to look at that's dealing
11 with one, one particular crime.

12 Q Okay.

13 A It's either you gonna charge me as the principal or you
14 was gonna charge me as, as not being the principal. But you
15 charged me as the principal, and you charged me with being
16 an, an accomplice. It's like it was unfair.

17 Q And you don't feel that, that having the Judge tell the
18 jury it's one or the other, you can't convict of both---

19 A I felt like---

20 Q ---corrected that?

21 A I felt like that was unfair.

22 Q Okay. And you don't think that corrected the, the
23 error in any way?

24 A It didn't correct the error. Actually it made it worse
25 because, by you saying that, and by me being ready to go

Calvin Williams - Direct examination
By Ms. Ross

1 home, and you saying either you gonna decide now or, or, or
2 y'all are not going home, basically then it's like okay,
3 well, we got to pick one. Let's pick, let's pick this one.

4 That's what I felt like. I mean I felt like it, it
5 causes the jury to rush to pick something -- to pick between
6 the two in which the jury should of used the elements that's
7 used inside of the indictment to find me guilty in the first
8 place. I wasn't gonna stand. So, the jury should of used
9 the elements that's inside of the indictment.

10 Q Okay. Now, you also talked about the video statement.
11 Was that an, an issue or --?

12 A Yes, the video statement was an issue because, in the
13 video statement, it was a tactic that the, that the police
14 used in order for them to get me to come in there, and
15 ask -- get me to answer questions. And, when I came in
16 there to answer questions, they, they said there was -- they
17 said it was a self-serving statement.

18 How is it a self-serving statement when the police used
19 this as a tactic to get me to answer questions?

20 It was their tactics that was used for me to answer
21 this question, and, when I answered the question, they said
22 that it was self-serving in which I told the truth. I
23 didn't know nothing about a bank robbery. I had knowledge
24 of the bank robbery prior to them -- the arrest, and them
25 telling me that there was -- I was being arrested for

1 somebody who had robbed a bank---

2 MS. JAMESON: Your Honor---

3 A ---and that's---

4 MS. JAMESON: ---the State would object to this line of
5 questioning. This is not one of the three enumerated
6 allegations as set forth in his Application. He has a
7 lengthy attachment to his Application outlining his legal
8 arguments for the three issues we're here for today, and
9 this is not one of those.

10 MS. ROSS: And, again, Judge---

11 THE COURT: Ms. Ross.

12 MS. ROSS: ---this, this creates a difficult situation
13 because we'd argue that the degree of specificity that the
14 State is asking for is not actually required by statute.
15 Alleging ineffective assistance would encompass failing to
16 object in certain places, failing many things that don't
17 have to be exactly specified to give the State enough notice
18 to defend, and go forward with the case.

19 THE COURT: Okay.

20 MS. ROSS: And, and this is one of those places where
21 it's, it's quite common, and that someone has alleged these
22 smaller issues as an additional that may not have been in
23 the original Application, and the State would still have
24 notice that this was part of ineffective assistance of
25 counsel.

1 MS. JAMESON: If I can be heard on that?

2 The Application clearly, in Question 10 and 11, says
3 state concisely the grounds, and the same facts to support
4 each of these grounds, and pursuant to the statute.

5 The State has to have notice of the grounds that are
6 going forward on. You can't just allege ineffective
7 assistance of counsel, and have it envelope every potential
8 error that counsel might of, might of had during the course
9 of his representation. We need to be prepared to go forward
10 on the allegations. He had a lengthy attachment. We're
11 here to go forward on these three.

12 So, the State's position is you do need to plead, with
13 specificity, the grounds you're gonna be going forward on.

14 THE COURT: Okay. I'm going to overrule the objection.
15 I will allow the questioning. I will also allow you a lot
16 of latitude on cross.

17 All right?

18 MS. JAMESON: Thank you, Your Honor.

19 THE COURT: All right. Yes, ma'am.

20 MS. ROSS: Thank you, Your Honor.

21 Mr. Williams, your son, Shyquone, testified at your
22 trial.

23 Is that correct?

24 A Yes, ma'am.

25 Q Did you -- did you feel like -- and I'd refer to Page

1 191.

2 were there the issues that your lawyer did not handle
3 properly regarding his testimony?

4 A Yes, I felt like it was a -- quite a few issues that
5 they didn't handle properly.

6 First and foremost, he confessed 19 times that I had
7 nothing to do with the crime, and, the two times that he
8 did, I felt like they, they -- the two times weighed more
9 weight than the 19 times, and he admitted, under oath, that
10 those was 19 times he said, voluntarily, that I didn't have
11 anything to do with this crime.

12 Q And do you -- are you aware whether those other times
13 were videotaped?

14 A Yeah, those, those are the times when it's on a video,
15 and not only, not only was they on the video, he also
16 admitted, during the trial during questioning, that, 19
17 times, that he gave voluntary statements that I had nothing
18 to do with this crime.

19 Q Do you know if the or did you find out later or was he
20 offered any plea deal by the State?

21 A I didn't find out period whether or not he was offered
22 any plea deal. I -- and when it was brought up, it was like
23 brushed away. So, I, I took it that he wasn't offered any
24 plea deal. However, I found out later that he end up with a
25 YOA or he end up with some probation, and I end up with a

Calvin Williams - Direct examination
By Ms. Ross

1 life sentence.

2 Q All right. And did your lawyer make a motion or ask to
3 reveal the deal or find out any information?

4 A He didn't make no motion. He didn't do anything to
5 reveal the deal.

6 Q Okay. These are the questions that, that I sort of
7 outlined for you for the case, but would you like to add
8 anything else to your Application or testify to any other
9 aspects?

10 A Yes, I would just -- I mean, from me reading the
11 perjury statute, and me -- from everything that I read, I
12 was just curious of how can perjury be used to gain a
13 conviction when perjury is a crime that is -- it's, it's a
14 crime itself.

15 Anytime you change a statement from being that a person
16 didn't have something to do with it, and then they did have
17 something to do with it, it, it shows that something went
18 wrong. It also shows that somewhere somebody is minimizing
19 culpability. And, if it's a serving -- self-serving
20 statement as far as the video, why couldn't it be also
21 looked at that he was minimizing culpability?

22 Q Okay. The, the -- I, I just -- set me straight on
23 that.

24 What do you mean minimizing, minimizing---

25 A Okay.

1 Q ---culpability?

2 A He was minimizing his role inside of the crime. I mean
3 he was minimizing -- by him minimizing his role, he was
4 minimizing his punishment because the, the police said that
5 I done catch -- the police said on the video, in which they
6 didn't show, he said that you can be facing 25 -- you can be
7 facing 25 years or he can be facing a life sentence. By him
8 stating that on the video, I mean any, anybody who's young
9 who's facing 25 years would change they story, the average
10 person.

11 Q Okay.

12 A So, I mean by them doing that, and by them not showing
13 it to the jury, showing the reason why he changed his story,
14 story, pardon me, I felt like that right there created a
15 bias, and there was -- it was discriminatory (sic) within
16 itself.

17 Q Okay. Anything else?

18 A No, ma'am.

19 Q I've got no further questions.

20 THE COURT: Okay. Ms. Jameson.

21 MR. JAMESON: May it please the Court?

22 THE COURT: Yes, ma'am.

23 CROSS-EXAMINATION

24 BY MS. JAMESON:

25 Q Mr. Williams, you previously pled guilty to two federal

Calvin Williams - Cross-examination
By Ms. Jameson

1 indictments for bank robbery, correct?

2 A Yes, ma'am.

3 Q One involved a 16-year old girl who was your girlfriend
4 at the time, correct?

5 A No, ma'am, she wasn't my girlfriend.

6 Q So, you're denying that?

7 A Yes. Yes, ma'am.

8 MS. JAMESON: Moments indulgence, Your Honor.

9 (Pause.)

10 Q But it was a 16-year old?

11 A Yes, sir.

12 MS. ROSS: I'll object. I don't see the relevance of
13 the age.

14 THE COURT: Overruled.

15 Q So, you're dying she was your girlfriend, but you, you
16 do concede that you pled guilty to one bank robbery
17 involving a 16-year old girl, correct?

18 A Yes, we fabricated that story actually if you really
19 wanted the truth on it.

20 Q And you admitted at your sentencing, at the conclusion
21 of this trial, that you were, indeed, guilty of that bank
22 robbery involving the 16-year old girl, correct?

23 A I mean I admitted to it.

24 Q Pardon?

25 A I admitted to it.

1 Q You admitted it to the Judge at the end of this trial,
2 correct?

3 A No, I didn't. I admitted it to the Judge at the, at
4 the federal trial cause I wasn't on trial for that charge.

5 MS. JAMESON: Moments indulgence, Your Honor.

6 (Pause.)

7 Q So, you don't deny that you admitted your guilt at the
8 end of this trial during sentencing, but you did plead
9 guilty to that first bank robbery with the 16-year old
10 girl---

11 A I pled guilty to it.

12 Q ---Anastasia?

13 You admit to that?

14 A Yeah, I pled guilty to it.

15 Q Okay. And the other second bank robbery involved an
16 18-year old high school student, correct?

17 A That or -- that bank robbery was argued that me and the
18 -- me and the federal judge got into a debate about that
19 bank robbery.

20 Q And you actually did tell Judge Couch that during
21 sentencing, correct?

22 A Yes, we got into a debate because I actually didn't
23 have nothing to do with this bank robbery.

24 Q But you did plead guilty to that, correct?

25 A Because of the fact that they said they was gonna try

Calvin Williams - Cross-examination
By Ms. Jameson

1 to give me life if I didn't plead guilty to it, and he was
2 already lying, and they let lies get past the -- he didn't
3 never pick me out of a photo lineup. The detective did.
4 The detective picked me out of three photo lineups.

5 How can I win when I'm going against him and the
6 detective?

7 Q So, you pled guilty to two federal bank robbery
8 charges, correct?

9 A Yes.

10 Q And you served a little over ten years in federal
11 prison for those sentences?

12 A Two -- yeah, two armed federal bank robberies.

13 Q And the jury, in this case that we're here for today,
14 they were never told about either of those---

15 A No, they wasn't.

16 Q ---convictions, correct?

17 And you knew the State was seeking life without parole
18 based on your prior convictions, correct?

19 A When I was in the County -- when I came back to the
20 County, they sent me a letter. But they didn't send me no
21 letter until I got to the County in which I couldn't do
22 no -- do any research as far as what could be applied, and
23 what couldn't be applied to this one.

24 Q But you had an attorney?

25 You were represented by Mr. Shealy at this time,

1 correct?

2 A Yes. But I also filed for -- filed to relieve, relieve
3 counsel, and the Judge, and the -- Judge Cole told me it's
4 either go to trial by myself, defend myself, and go to
5 trial, or either take Matthew Shealy. So, with that, I took
6 the experience over me not knowing.

7 Q Okay. Cause you don't know the law, correct?

8 A Yeah, that's why I took Matthew Shealy over me
9 defending myself.

10 Q And you told Judge Couch, during sentencing, that you
11 knew the State had served you with notice to seek life
12 without parole if you had been convicted for bank robbery,
13 correct?

14 A Yeah, and I told you -- just like I just told you, I
15 say he -- they served me while I was in the County. I mean
16 I couldn't read no law books or --.

17 Q And you argued to Judge Couch that you shouldn't be
18 sentenced to life without parole because your son was the
19 responsible party, correct?

20 He's the one who went to the bank?

21 A I don't recall what speech I gave. I mean I don't, I
22 don't recall all the, all the speech.

23 Q Do you recall telling Judge Couch that your son was
24 still out on the streets committing crimes and that upset
25 you?

Calvin Williams - Cross-examination
By Ms. Jameson

1 A I mean I don't recall saying nothing -- I don't recall
2 none of the actual thing -- none of the actual speech after
3 the --.

4 MS. JAMESON: Your Honor, may I approach?

5 It's Page 366.

6 THE COURT: Yes, ma'am.

7 Q This is a copy of your transcript.

8 will you read Page 3 -- 366 to yourself?

9 A (Witness complies.)

10 Okay. I, I missed the part---

11 Q well---

12 A ---where it say I said he was committing crimes.

13 Q Okay. So, would you agree, after your refreshing your
14 memory of what you told Judge Couch, that you told Judge
15 Couch you shouldn't be sentenced to life because he was gang
16 affiliated, and he was committing crimes, and that he was in
17 a different gang than you, correct?

18 A I don't recall -- I mean, from what I read, just read
19 inside of that, that page, Page 366, I don't recall me
20 saying anything about he was committing crimes. I missed
21 that part.

22 Q Do you recall telling Judge Couch that this is the
23 reason you turned down the six year plea offer?

24 A What reason did I tell him I turned down the six year
25 plea offer?

1 Q Because your son was still out on the streets
2 committing crimes, and, and you weren't gonna do six years
3 for him.

4 A That was partially of the reason -- part of the reason.
5 And then the other reason was I ain't had nothing to do with
6 the crime.

7 why would I take six years for something that I had
8 nothing to do with?

9 Q Do you recall telling Judge Couch the reason you
10 accepted responsibility for the federal crimes is because
11 you were trying to protect that 16-year old?

12 A I did protect her.

13 Q But you didn't want---

14 A And---

15 Q ---to do that here for your own son?

16 A And me and her still communicated. Me and her was
17 still communicating until the time I was sentenced.

18 Q One of your allegations is that you never entered the
19 bank, and your attorney didn't properly argue that to the
20 Court, right?

21 A Yeah, that's one of my arguments, and, and enter is an
22 element of the offense.

23 Q You're correct it is.

24 The State never alleged you entered the bank, correct?

25 A The State charged me with bank robbery. That's

Calvin Williams - Cross-examination
By Ms. Jameson

1 correct.

2 Q And, and---

3 A The change---

4 Q ---you were present for your trial, correct?

5 A Yeah.

6 Q And all the evidence established that you stayed in the
7 van, that you never got out of the van, you never went into
8 the bank, you didn't go to the doors of the bank, correct?

9 A Yep. Basically.

10 Q Okay. And the testimony was that you sent your son
11 into the bank -- the State's testimony is that you had sent
12 your son into the bank, correct?

13 A Yeah, that was the testimony, but I didn't send him
14 into the bank.

15 Q Okay. And the testimony was that you told him how to
16 write the demand note. You had written a practice one.

17 That's what the State presented, correct?

18 A No, the State -- well, that's what the State presented,
19 but nobody never showed any facts that I, I even -- I gave
20 him a letter to write---

21 Q That's---

22 A ---or we practiced. Nobody showed any facts. That was
23 all speculation.

24 Q And your son testified to that though, right?

25 A But it was still speculation. No facts was showed.

1 Q And the State presented evidence that you had
2 coordinated a ride to the bank. You had asked a friend who
3 knew the, the driver to give you a ride over near the bank.
4 Correct?

5 A Okay. The State -- yeah, the State said that, but the
6 whole thing is I didn't coordinate a ride for him to go to
7 the bank. What happened was I was -- I actually got the
8 ride for him to go to his grandmama house --

9 Q Then why did you---

10 A -- so that he could go to school. He said he was going
11 to pick up some money.

12 Q Then why did you---

13 A I mean---

14 Q ---ask the driver, Mr. Blassingame, to, to drive you to
15 the bank, and you---

16 A Cause---

17 Q ---and you tell him that you needed to -- your son
18 needed to pick up some money?

19 A No, the first thing I had told him was I was taking my
20 son to his grandmother house. And I asked him would he do
21 this for me, and I would give him \$20.00 if he would --
22 cause my son brought up the fact that he was going to pick
23 up some money. After the fact, I had already told him that
24 we was taking my son to his grandmama house because he was
25 suppose to get enrolled inside of Dorman High School.

Calvin Williams - Cross-examination
By Ms. Jameson

1 Q And that's not what the, the driver of the van
2 testified to, correct?

3 A The, the reason---

4 Q He testified you told him to take him to the BB&T,
5 correct?

6 A The -- nah, the driver of the van said that -- well, he
7 said that we asked him to -- we asked -- I asked him to go
8 and pick up some money. He ain't say nothing about I said
9 take him to the BB&T. I don't think so.

10 Q And he didn't say anything about take him to his
11 grandmother's house, correct?

12 A I mean I don't know the driver's full -- Kenneth
13 Blassingame, I don't know his full testimony.

14 Q Okay. So, you don't recall any of that?

15 A I mean I don't recall his full testimony.

16 Q Okay. And then the State also presented evidence that,
17 after, after the robbery when the dye pack exploded, you
18 gave your son your orange hooded sweatshirt, correct?

19 A No, the State didn't present evidence that I gave him
20 anything. The State said that I gave him something, but the
21 State never presented evidence that that sweatshirt belonged
22 to me or that I gave it to him.

23 Q Okay. Did the driver testify you were originally in an
24 orange sweatshirt?

25 A No, the driver did not.

1 Q And when you were -- when you and your son were
2 detained by law enforcement, you weren't in an orange
3 sweatshirt, correct?

4 A I never had on an orange sweatshirt.

5 Q And do you recall your son testifying that you threw
6 his clothing that was covered in the red dye into the
7 bushes?

8 A I don't recall him testifying to that either.

9 Q And Judge Couch instructed the jury that they could
10 find you guilty of accessory before the bank robbery, or
11 bank robbery, but not both, correct?

12 A Yes.

13 Q And Judge Couch told the jury this multiple times,
14 correct?

15 A Yes, that was after Matthew Shealy brought to his
16 attention that by charging that, by adding the element of
17 constructive presence, you made these two charges the
18 same -- these two things are -- these two things are the
19 same. There's no difference.

20 Q And your attorney did argue this during the directed
21 verdict motion, correct?

22 A No, he didn't argue it. He, he brought it to the
23 Judge's attention. He didn't object to it at all. I mean
24 if you want to classify it that -- I mean you want to
25 consider that as arguing, then yes, okay, he argued it. But

Calvin Williams - Cross-examination
By Ms. Jameson

1 I don't consider that as arguing because he never object to
2 it.

3 Q And I believe you talked about this before with Ms.,
4 Ms. Ross, but the jury was charged in full on both accessory
5 before the fact of bank robbery, and bank robbery, correct?

6 A Yes, but they---

7 Q And then the jury had a question?

8 A Yes.

9 Q And the Judge brought the jury back out, and Judge
10 Couch recharged them again a second time, correct?

11 A Yes, on constructive presence and aiding and abetting.

12 Q And---

13 A I mean construction -- constructive presence and hands
14 of one the hands of all.

15 Q But, but he also charged in full on the crime of
16 accessory before the fact of bank robbery, correct?

17 A I don't think he went back over the actual crimes
18 itself.

19 Q You don't recall that---

20 A I think he just went---

21 Q You don't recall that---

22 A I think he just went over those two things in
23 particular.

24 Q Okay. You don't recall him again reminding the jury
25 that they, that they couldn't convict you of both?

1 They had to convict you of either or---

2 A Yeah, I remember him---

3 Q ---none?

4 A ---saying that he -- they had to convict me on one or
5 the other.

6 Q Or none.

7 He gave the jury the option---

8 A I don't remember---

9 Q ---multiple times?

10 A It's none wasn't even in there. I don't remember none
11 being in there period.

12 Q You don't recall the Judge telling the jury they could
13 find you not guilty as an option?

14 A I don't remember him saying guilty of one or the other
15 and not -- and none -- or none. I don't remember him saying
16 that. That's no where you can find that in there.

17 Q So, your testimony to the Court today is that Judge
18 Couch told the jury they had to convict you of one or the
19 other, but not not guilty on both offenses?

20 MS. ROSS: Judge, I'd ask her to, to---

21 THE WITNESS: I don't---

22 MS. ROSS: ---to show the, the Applicant---

23 THE COURT: One second, sir.

24 MS. ROSS: ---where on the record he says that, and
25 that might refresh his memory---

Calvin Williams - Cross-examination
By Ms. Jameson

1 THE WITNESS: Yeah, because I don't remember---

2 MS. ROSS: ---cause he's saying---

3 THE COURT: All right, sir.

4 MS. ROSS: ---he just doesn't remember.

5 THE COURT: Sir?

6 THE WITNESS: ---that at all.

7 THE COURT: Sir, when somebody objects, you need to be
8 quiet for just a moment.

9 Okay?

10 THE WITNESS: Okay. I apologize.

11 THE COURT: Okay. We've got one court reporter that's
12 trying to take it all down.

13 All right?

14 Okay. Thank you, sir.

15 THE WITNESS: You welcome.

16 THE COURT: All right. So, Ms. Ross, I'm sorry.

17 MS. ROSS: My objection would be he, he says he doesn't
18 remember, and showing him the page from the transcript could
19 refresh his recollection such that he may or may not
20 remember that one way or the other. And I ask that he be
21 allowed to look at that transcript to see.

22 MS. JAMESON: Moments indulgence to find those
23 portions, Your Honor?

24 THE COURT: Yes, ma'am.

25 (Pause.)

1 MS. JAMESON: Your Honor, may I approach?

2 I'm handing you, Mr. Williams, Page 348.

3 THE COURT: Yes, ma'am.

4 Q If you'll look at Lines 4 through 6 to refresh your
5 recollection.

6 A Yeah, he say that he have -- they have a choice to find
7 me not guilty on both. Not guilty --

8 Q So, Judge---

9 A -- on both.

10 Q So, Judge Couch did tell the jury they could find you
11 not guilty?

12 A Yeah, on both.

13 Q Of both the---

14 A He didn't say not guilty on one of them. He said not
15 guilty on both.

16 So, what happens if they find me guilty on -- well,
17 they, they decided I'm not guilty on the bank robbery, and
18 they be like well, we got to find him not guilty on both of
19 them?

20 MS. JAMESON: Moments indulgence, Your Honor.

21 THE COURT: Yes, ma'am.

22 (Pause.)

23 Q Mr. Williams, one of your allegations that you're
24 raising now today is that your son told law enforcements 19
25 times that you had nothing to do with the crime, correct?

Calvin Williams - Cross-examination
By Ms. Jameson

1 A Yes, ma'am.

2 Q And then he flipped and said you were involved,
3 correct?

4 A Yes.

5 Q Do you recall your attorney, Mr. Shealy,
6 cross-examining your son about this?

7 A Yes, I do.

8 Q And your son admitted that he did deny 19 times that
9 you weren't involved, correct?

10 A I -- he did admit that he said 19 times that I wasn't
11 involved. He said that. That was a voluntary statement --
12 that was voluntary statements. He didn't deny it. He
13 admitted to it.

14 Q So, he admitted he had changed his story after 19
15 times?

16 It was the twentieth time he finally said you were
17 involved?

18 A Yeah, the twentieth -- the twentieth and I think the
19 twenty-first time cause he wrote two statements.

20 Q And when you were apprehended, you actually denied
21 knowing your son, correct?

22 A Yes, I did.

23 Q One of your other allegations that's coming forward
24 today is that your son had a plea offer from the State, and
25 you weren't told about it, correct?

1 A I said -- I didn't know whether or not he had a plea
2 offering or not.

3 Q well---

4 A We never got to -- we never got to whether or not he
5 got a plea offering because, when the question was asked,
6 the prosecution didn't say anything about it. Neither did
7 my lawyer follow up on it, but I know that he ended up with
8 a one to six, and I end up with a life sentence.

9 Q So, you still don't know if he had a plea offer?
10 He just -- he, he was sentenced after you, correct?

11 A Yeah, I mean---

12 Q And the Judge gave him a YOA of one to six years?

13 A Yes.

14 Q All right. So, you don't have any evidence that he had
15 a plea deal to present to the Court today, do you?

16 A I mean outside of, outside of what he, you know, what
17 he can testify to.

18 Q Okay. And do you have your son here today to testify?

19 A Yes, he's right there.

20 Q Okay. No further questions, Your Honor.

21 THE COURT: Any redirect?

22 MS. ROSS: No, Your Honor.

23 THE COURT: Okay. All right. Mr. Williams, sir, you
24 may step down. Watch your step.

25 All right?

Shyquone Williams - Direct examination
By Ms. Ross

1 THE WITNESS: All right. I appreciate it.

2 THE COURT: Next witness.

3 MS. ROSS: Judge, I would ask for a brief two minute
4 break at this point that I can confer with my client.

5 THE COURT: Okay. We'll be in recess then until ten
6 till.

7 All right?

8 MS. ROSS: All right. Thank you.

9 (WHEREUPON, a short recess was taken at this time.)

10 THE COURT: We still have a couple of minutes. I'm not
11 trying to rush you.

12 MS. ROSS: No, we are ready, Judge. We are ready.

13 The Applicant would call Shyquone Williams.

14 THE COURT: Okay. Mr. Williams, sir, come on forward.
15 I'll ask you to come up right here to the witness stand, and
16 if you would raise your right-hand for me please.

17 (Witness complies.)

18 SHYQUONE WILLIAMS, being first duly
19 sworn, testified as follows:

20 THE COURT: Okay. Thank you. Please be seated.

21 All right?

22 (Witness complies.)

23 THE COURT: First you'll answer Ms. Ross's questions,
24 and then you'll answer opposing counsel.

25 okay?

1 THE WITNESS: Yes, ma'am.

2 THE COURT: All right. Yes, ma'am.

3 DIRECT EXAMINATION

4 BY MS. ROSS:

5 Q Okay. Shyquone, how are you related to Calvin
6 Williams?

7 A I'm his son.

8 Q All right. And you testified in a trial against him
9 for bank robbery.

10 Is that correct?

11 A Yes, ma'am.

12 Q And you had signed a statement regarding your
13 testimony, and, and mailed it to me a few months ago.

14 Is that correct?

15 A Yes, ma'am.

16 Q And what did that statement say?

17 MS. JAMESON: Your Honor, I would object to the --
18 again, the State doesn't have any notice of these
19 allegations. These aren't the three that were enumerated
20 here before. I know Your Honor has overruled, and said
21 she'll allow some leeway, but we're just simply not prepared
22 to have an -- had an opportunity to talk to solicitor
23 Barnette or Mr. Shealy about these allegations.

24 I haven't seen this statement. It sounds like Ms. Ross
25 has had this statement for a few months. So, the State

Shyquone Williams - Direct examination
By Ms. Ross

1 would, again, object.

2 MS. ROSS: I have it, and I simply, until I met with
3 this, this witness, did not know that he would be willing to
4 testify to this statement or this was his statement at all.
5 And I verified that today. He came into Court a little
6 late, and, and talked to him. I'm happy not to make this
7 statement part of the record. It was not my intention to do
8 so. It would---

9 THE COURT: Just to allow him to refresh his
10 recollection.

11 MS. ROSS: ---be simply his testimony. It's just---

12 THE COURT: Okay. I will allow -- I, I will overrule,
13 and I will allow the witness to refresh his recollection
14 with the statement. It's my understanding that she -- that,
15 that counsel is not intending to make this part of the
16 record.

17 MS. JAMESON: May I be provided with a copy of this
18 statement?

19 I, I haven't seen this. Again, we're not on notice of
20 any of these allegations.

21 THE COURT: If counsel agrees to show it to you, yes,
22 ma'am.

23 MS. ROSS: And I have no objection to her seeing it.

24 Q Okay. Mr. Williams, essentially, when -- was your
25 testimony truthful at your father's trial?

1 A No, ma'am.

2 Q And what is the truth?

3 A The truth is I was coerced into testifying about my
4 father.

5 Q Now, how were you coerced into testifying?

6 A Because, at the age, at the age I was, telling me that
7 I was looking at anywhere from 15 to 30 years, I, I was
8 scared. I was scared of doing the time, and---

9 MS. JAMESON: Your Honor, may we approach briefly?

10 THE COURT: Yes, ma'am.

11 (WHEREUPON, a bench conference was held at this time.)

12 THE COURT: Okay. All right. Mr. Williams, sir,
13 you're still under oath, but you can step down from that
14 witness stand for just a moment. I need to research and
15 review your testimony from the prior hearing, sir. And so,
16 if you will -- you can stand down for just a few moments.
17 You'll probably be more comfortable.

18 Okay?

19 THE WITNESS: (Nods affirmatively.)

20 THE COURT: Mr. Williams, don't speak with anybody
21 because you, you are going to be recalled to the stand.

22 All right?

23 THE WITNESS: All right.

24 THE COURT: All right. Thank you. We'll be in recess
25 for 15 minutes.

Shyquone Williams - Direct examination
By Ms. Ross

1 MS. JAMESON: Thank you.

2 (WHEREUPON, a short recess was taken at this time.)

3 MR. COX: Your Honor, Ms. Jameson stepped out on a, on
4 a phone call.

5 would you like me to poke my head out and see if I can
6 get her in or we can wait a second?

7 THE COURT: Let me just get situated and we'll see.

8 MR. COX: Okay.

9 (Pause.)

10 MS. JAMESON: I apologize, Your Honor.

11 THE COURT: I just got back in.

12 Okay. If we are ready to proceed?

13 MS. JAMESON: Yes, Your Honor.

14 THE COURT: Counsel.

15 MS. ROSS: Yes, ma'am.

16 THE COURT: Okay. Mr. Williams, sir, if you'll come
17 back up.

18 (Witness complies.)

19 THE COURT: All right, sir. Before we go any further
20 with your testimony, let me ask you a few questions.

21 All right?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: I've, I've had an opportunity to review
24 your testimony from the hearing that was held on June the
25 6th of 2016 in the matter of The State versus Calvin Terrell

1 williams.

2 And so, sir, do you have an attorney at this time?

3 THE WITNESS: No, ma'am.

4 THE COURT: Have you consulted with an attorney prior
5 to today concerning your testimony?

6 THE WITNESS: No, ma'am.

7 THE COURT: All right. I need for you to speak up for
8 me.

9 All right?

10 THE WITNESS: (Witness nods affirmatively.)

11 THE COURT: Okay. So, sir, I've -- you're under oath.

12 Okay. And so the problem is that, if you testify
13 today, and that testimony is inconsistent with the testimony
14 that you gave to the Court in the matter of The State versus
15 Calvin Terrell Williams on, on or about June 6th of 2016,
16 the -- there can be an investigation by law enforcement.

17 Okay. You're under oath. There's going to be a record
18 today of, of your testimony. And, and so you could be
19 charged with a crime, and that crime could be perjury.

20 Do you understand that?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: All right. And so, sir, my question for
23 you is do you wish to speak with an attorney prior to giving
24 this testimony?

25 THE WITNESS: I don't want to give testimony.

Shyquone Williams - Direct examination
By MS. ROSS

1 THE COURT: You don't want to give the testimony?

2 THE WITNESS: No, ma'am.

3 THE COURT: Okay.

4 THE WITNESS: I got too -- I got too much -- I got too
5 much to lose. I can't do it.

6 THE COURT: All right. Counsel, I'm not going to force
7 him to testify today, and expose himself to criminal
8 charges. He has stated that he does not wish to testify.

9 MS. ROSS: All right.

10 MS. JAMESON: Your Honor, may we approach briefly just
11 --.

12 THE COURT: Okay. Yes.

13 (WHEREUPON, a bench conference was held at this time.)

14 THE COURT: All right. I'm going to let him stand
15 down.

16 MS. JAMESON: Thank you, Your Honor.

17 THE COURT: Okay. And is there any objection to him
18 being excused?

19 MS. JAMESON: I don't believe he's been subpoenaed.
20 So, no objection from the State.

21 THE COURT: Okay. Ms. Ross.

22 MS. ROSS: And let me just briefly confer with my
23 client.

24 (Pause.)

25 MS. ROSS: We would just object to him not testifying,

1 and not being able to testify at this time.

2 THE COURT: Okay. That objection is noted for the
3 record.

4 Anything further before I excuse this witness?

5 MS. JAMESON: No, Your Honor.

6 MS. ROSS: No, Your Honor.

7 THE COURT: Okay. Sir, you may step down.

8 THE WITNESS: I got to stay inside the courtroom?

9 Do I need to stay inside the courtroom?

10 THE COURT: And he may be excused.

11 You said he's not been subpoenaed?

12 MS. ROSS: He has been, but I've got no objection to
13 him being excused.

14 THE COURT: Okay.

15 All right. Thank you, sir. You may be excused.

16 Next witness.

17 MS. ROSS: We'd, we'd rest at this time.

18 THE COURT: Okay.

19 MS. JAMESON: Your Honor, the State would call Trial
20 Counsel Matthew Shealy.

21 THE COURT: Good morning, Mr. Shealy.

22 THE WITNESS: Good morning, Judge.

23 MATTHEW SHEALY, being first duly
24 sworn, testified as follows:

25 THE COURT: Thank you. Please be seated.

Matthew Shealy - Direct examination
By Ms. Jameson

1 (Witness complies.)

2 MS. JAMESON: May it please the Court?

3 THE COURT: Yes, ma'am.

4 DIRECT EXAMINATION

5 BY MS. JAMESON:

6 Q Mr. Shealy, how long have you been practicing law?

7 A Since 2005. So, about -- well, 2008. Excuse me. So,
8 ten years.

9 Q Where are you presently practicing law?

10 A I've got my own firm at the Shealy Law Firm. It's
11 across the street.

12 Q Where have you -- was is in that capacity that you
13 represented Mr. Williams?

14 A No, ma'am, I was with the Public Defender's Office for
15 the first eight years---

16 Q Okay.

17 A ---nine years of my career.

18 Q So when you said you've been practicing -- okay.
19 Apologize.

20 So, you were appointed to represent Mr. Williams?

21 A Yes, ma'am.

22 Q Were you his first attorney?

23 A I believe so, yes, ma'am.

24 Q Do you recall how many times you met with him?

25 A I don't know the -- exactly how many, but I would say

1 at least six and maybe as many as ten. Maybe more than
2 that, but --.

3 Q Did you file any discoveries and Rule 5 or Brady
4 motions here?

5 A Yes, ma'am, it's our practice to -- every case that we
6 get, we, we just -- it is done through our process.

7 Q Did you receive discovery materials from the State?

8 A Yes, ma'am.

9 Q Did you review this material with Mr. Williams?

10 A Yes, ma'am.

11 Q What was the State's theory of the case?

12 A Basically that Mr. Williams convinced his son to
13 actually enter the bank with a note, present a note, get
14 cash, and then he was going to be with -- he had allegedly
15 arranged a ride through, I believe, is Mr. Blassingame. He
16 stayed in the van. Allegedly, you know, his son went in,
17 got that money, and then came back out, got in the van, and
18 they drove off.

19 Q So, the State never -- there was no evidence that
20 Mr. Williams ever entered the bank personally?

21 A No, ma'am, everybody agreed that it was Mr. Williams --
22 it was the son who entered the bank.

23 Q And you knew this prior to trial based on discovery and
24 your review of it?

25 A Yes, ma'am.

Matthew Shealy - Direct examination
By Ms. Jameson

1 Q Do you recall if -- where the van was parked?

2 A It was parked -- as I recall, the bank is -- I guess
3 it's the BB&T over on -- it becomes W.O. Ezell Boulevard.
4 I'm not sure that it's W.O. Ezell Boulevard at that point,
5 but there's a shopping center next to the bank. There's an
6 oil change place, and then the bank. And so I believe that
7 they were kind of allegedly in that area of, of the shopping
8 center.

9 Q And do you recall whether the evidence showed whether
10 the defendant could actually even see the bank from where
11 the van was parked?

12 A I don't recall that. I don't think he could. I think
13 that you would of had to look through the oil change place.

14 Q But there was evidence that he was kind of the
15 mastermind of the bank robbery, and he assisted in drafting
16 a demand note?

17 A That's -- that was certainly Mr. -- the younger Mr.
18 Williams testimony.

19 Q And the testimony from his son, and from the van driver
20 was that he was the one who secured the ride to the bank?

21 A Yes, ma'am.

22 Q And that he had selected the bank location?

23 The driver originally went, went to another bank, and
24 he rerouted him to the correct BB&T?

25 A Yes, ma'am.

1 Q Was there any testimony regarding him assisting his son
2 after the robbery took place?

3 A I, I believe that the son testified, and, again, I
4 don't have the transcript right in front of me, and so I
5 don't want to read -- tell, tell you wrong, but I believe
6 it's in the transcript that he was, I believe, gave him his
7 hoodie to cover the dye pack explosion. And so they, they
8 had a change of clothes allegedly. There was a bag, I
9 believe, that was allegedly thrown into the bush, and things
10 like that.

11 Q So, the State was proceeding forward on bank robbery
12 under a theory of constructive presence, not actual presence
13 at the bank robbery, correct?

14 A Correct. It was more or less that he came up with the
15 idea. He was there enough. I mean, obviously, our argument
16 was that he wasn't present, but you -- that he shouldn't be
17 convicted of something called entry into a depository
18 institution while with the intent to steal because he didn't
19 enter into it, but, obviously, Judge Couch disagreed.

20 Q And, and you did argue this to, to Judge Couch?

21 A Vociferously.

22 Q Pretrial and during your directed verdict motions?

23 A Yes, ma'am.

24 Q And that was one of the grounds for your directed
25 verdict motions, correct?

Matthew Shealy - Direct examination
By Ms. Jameson

1 A Yes, ma'am.

2 Q Essentially, your argument was he -- the State's
3 alleging he wasn't present for accessory before the fact,
4 but then he was present for the bank robbery, and it
5 couldn't be both, correct?

6 A Yes, ma'am.

7 Q And that was denied by Judge Couch?

8 A It was. It was. He and I had a lot of arguments like
9 that over the years.

10 Q What sort of investigation did you do in this case?

11 A I mean that -- spoke with Mr. Williams. We drove to
12 the bank. There's a Lutheran Church right there. So, we
13 went to the Lutheran Church. We retraced the alleged steps
14 by the younger Mr. Williams. We drove from the bank out to
15 where the Mr. -- the both Mr. Williams were encountered by
16 law enforcement. We looked around.

17 The goal of all that is to see the kind of the, the
18 timing, how long it takes to get from those various
19 positions. Could everybody have seen the things that they
20 said they saw. I always like to go and get a feel for where
21 things happened because sometimes you, you will find that
22 no, in fact, you know, you might think that everything could
23 be seen, but it wasn't.

24 Unfortunately, we didn't pull -- we didn't find any
25 defenses from that investigation. Again, I went through

1 the, the discovery. We looked up the law, things of that
2 nature.

3 Q Was Mr. Williams served with notice of intent to seek
4 life without parole?

5 A He was.

6 Q And what were those qualifying offenses?

7 A Two armed bank robberies.

8 Q Okay. And had he pled guilty or been convicted of
9 those?

10 A He had.

11 Q Did you do any sort of research or investigation to see
12 if those underlying federal armed bank robberies properly
13 qualified him for life without parole pursuant to 17-27-45?

14 A Well, I mean you look at the -- we looked at the
15 statute or I looked at the statute, and the statute
16 includes -- covers federal crimes. That would be most
17 serious or serious offenses under the law of South Carolina,
18 and then you looked at or I looked at the elements of those
19 indictments. And the elements of those indictments are that
20 there was a taking of money from the person of another while
21 armed with a deadly weapon, which is, in our State, armed
22 robbery.

23 And so those are most serious -- and an, an armed
24 robbery is a most serious offense under our statutes. So,
25 in my opinion, you know, I would, I would love to have

Matthew Shealy - Direct examination
By Ms. Jameson

1 challenged something, but I have to have a good faith basis
2 to believe that that challenge is going to be somewhat
3 successful. I can't just argue things cause they're fun to
4 argue.

5 Those are black letter armed robberies. I mean they
6 just are. Even though they don't carry these same penalty
7 section, I mean they're not 30 year charges in our State,
8 they are still -- the elements count as armed robbery. And
9 so I just -- he had two most serious offenses on his record.
10 This would of been a serious.

11 Q Did you explain that to Mr. Williams?

12 A I did. I don't think that I took out the statute and
13 went over every enumeration, but I did explain the way
14 that -- I believe I explained it just the way that I
15 explained it now.

16 Q Do you think the State also could of served a LWOP
17 notice based on entering bank with intent to steal?

18 A They could of. I think that they would of had to make
19 out that he had entered because, again, my argument for this
20 case would of possibly held true in that case that, in fact,
21 he hadn't entered into a depository institution with the
22 intent to steal in at least one of those cases cause I think
23 he may have told me -- again, I just had the indictments,
24 but I don't know that he entered into the bank in one of
25 those. So --.

1 Q The State sought to introduce these two prior federal
2 convictions pursuant to 404(b), correct?

3 A Correct.

4 Q Do you recall why they wanted to introduce these?

5 A To show that he's a bank robber I imagine.

6 Q But, but do you recall what specific provision of
7 404(b)?

8 A I believe that they wanted to argue or that they did
9 argue that, basically, he would inveigle other people to do
10 the actual robbing. So, that -- I think you had talked to
11 him about the 16-year old girl earlier today. So, I don't
12 have the 404(b) right in front of me, but I believe it would
13 be modus operandi, and those -- the, the -- those sections
14 of 404(b).

15 Q And you had a lengthy pretrial hearing regarding these,
16 correct?

17 A We did.

18 Q And the State presented or attempted to present some
19 evidence that they both involved juveniles, and he,
20 essentially, similar to the facts here?

21 It was a common scheme or plan or absence of mistake,
22 correct?

23 A Correct.

24 Q You challenged this evidence coming in vigorously,
25 correct?

Matthew Shealy - Direct examination
By Ms. Jameson

1 A Yes, ma'am.

2 Q Was the State ultimately able to introduce this
3 evidence?

4 A They were not.

5 Q So, the jury never heard about these two prior federal
6 armed bank robbery convictions?

7 A Correct.

8 Q Going back a little bit to the, the indictment process,
9 he was indicted for accessory before the fact to bank
10 robbery, correct?

11 A Correct.

12 Q And bank robbery?

13 A Yes, ma'am.

14 Q Correct?

15 Did you make any -- could you see any legal arguments
16 you could make for why it was improper to be indicted for
17 both of these?

18 A Well, I mean it was my position, and I think we talked
19 about this earlier, that our -- the, the central tenet of
20 accessory before the fact is that you not be present at the
21 crime, and their argument for the bank robbery was or the
22 entering into the depository institution or -- was that he
23 was present. And so my position is she -- you couldn't be
24 indicted for both of those, that that was improper. Again,
25 Judge Couch disagreed with me.

1 Q And that was your argument in your directed verdict
2 motion, correct?

3 A Correct.

4 Q And that was denied by Judge Couch, correct?

5 A It was.

6 Q So, you didn't acquiesce and withdraw your motion or
7 anything like that?

8 A I, I don't believe so. If I did, I shouldn't of.

9 Q If the record reflects you did not, you don't have any
10 independent basis to---

11 A No.

12 Q ---disagree with that?

13 A No, ma'am.

14 Q Do you recall challenging the State's theory of
15 constructive presence at the scene?

16 A What do you mean by -- I mean I, I argued that he
17 wasn't.

18 Q It -- and that was one of your grounds in your directed
19 verdict motion was that the State hadn't, hadn't asserted
20 that he was actually present, and that he wasn't even
21 constructively present cause he couldn't even see the bank
22 from the van?

23 A Yes, ma'am.

24 Q Do you recall a charge conference with Judge Couch?

25 A Not independently. No, I don't.

Matthew Shealy - Direct examination
By Ms. Jameson

1 Q Do you recall Judge Couch giving any guidance, before
2 the verdict form was given to the jury, about what options
3 they possibly had for conviction?

4 A Yes, I believe he did tell the jury that he could only
5 be found guilty of either accessory before the fact or
6 entering into the depository institution or he could be
7 found not guilty of both. So that---

8 Q But not both?

9 He couldn't---

10 A You're, you're right.

11 Q Okay.

12 A You couldn't find him guilty of both, and you could
13 find him not guilty on all of them. And the verdict form, I
14 believe, had spaces for and generally Judge Couch's verdict
15 form has not guilty first, and then guilty second on both of
16 those charges.

17 Q So, the verdict form made it clear that he could be
18 convicted of accessory before bank robbery or acquitted of
19 both?

20 A Correct.

21 Q Not guilty of both, correct?

22 A Yes, ma'am.

23 Q And Mr. Williams was convicted of the bank robbery
24 only, not the accessory before the fact?

25 A Yes, ma'am.

1 Q The jury followed his instructions and verdict form,
2 and, and didn't convict of accessory before the fact,
3 correct?

4 A Yes, ma'am.

5 MS. JAMESON: Moments indulgence, Your Honor.

6 THE COURT: Yes, sir.

7 (Pause.)

8 Q Do you recall Mr. Williams son testifying at trial?

9 A I do.

10 Q Do you recall your cross-examination of him?

11 A I do.

12 Q Did you cross-examine him about his inconsistent
13 statements to law enforcement?

14 A I believe so.

15 Q Do you recall how many times he had denied to law
16 enforcement his father was involved?

17 A I believe I counted it as 19.

18 Q Do you recall asking him whether he had any plea offers
19 from the State?

20 A I do.

21 Q Do you recall what his response was?

22 A He said that he was hoping for a good outcome, but that
23 he didn't have or he didn't have any, and I'd asked
24 Mr. Barnette the same question. And he told me there were,
25 were no plea deals. That is Mr. Barnette's ordinary way of

Matthew Shealy - Direct examination
By Ms. Jameson

1 doing things. He very rarely offers explicit plea deals.

2 In fact, he, he -- they're, they're rarely implicit.

3 I think that they offered him to or they let him plead
4 straight up to -- in front of a judge. They would of told
5 the judge that he cooperated. That's generally as far as
6 Mr. Barnette would go, and that's what Mr. Barnette told me
7 he was going to do in this case.

8 MS. JAMESON: Moments indulgence, Your Honor.

9 THE COURT: Yes, ma'am.

10 (Pause.)

11 MS. JAMESON: No further questions, Your Honor.

12 THE COURT: Okay. Ms. Ross.

13 MS. ROSS: Thank you, Judge.

14 CROSS-EXAMINATION

15 BY MS. ROSS:

16 Q So, I guess I'm gonna start in the middle with the two
17 indictments. You made a directed verdict regarding two
18 indictments. Essentially one is accessory, and one is the
19 principal.

20 A Yes, ma'am.

21 Q And then that was denied, and it's on Page 302, I
22 believe, Line 20. At that point, you agree to join in the
23 request that the jury be told conviction of one or the
24 other.

25 Is that, is that right, or is that a fair reflection of

1 what was going on there?

2 A Yes.

3 Q Okay.

4 A I mean now it was also because I wanted to make sure
5 that I wasn't withdrawing my objection. It was a -- if
6 you're going to deny my request, then, yeah, I want both
7 of -- I want the Judge to tell him that he can only find him
8 guilty of one of those two things. In other words, once I
9 had lost---

10 Q One or none?

11 A Right. I mean once I had lost, I wanted to protect,
12 protect my client because, otherwise, I would have been in,
13 I think, trouble for that.

14 Q And, and that makes perfect sense, but as far as what
15 the effect for the client, would it really matter, under the
16 Life Without Parole Statute, either way, if, if both had
17 gone up?

18 A Well, I mean, for appeal reasons, it would have
19 mattered because let's say he has an appeal, and I just had
20 this happen to me, where I -- my client was convicted of
21 both murder, and leaving the scene of an accident. He got
22 life -- or he got 30 years on the murder. He got 25 years
23 on leaving the scene.

24 well, the murder got overturned on appeal out of
25 obviously wonderful lawyering by me. But he's still doing

1 25 years because the leaving the scene stuck around.

2 So, had he been convicted of both of them, if there was
3 an appeals issue that only lay on one of those grounds,
4 then, you know---

5 Q Right.

6 A ---he wouldn't of been in trouble. So, it, it -- I
7 mean it didn't matter a whole lot, but it still did matter,
8 and then---

9 Q well -- but you agree that it was prejudicial to have
10 two indictments essentially for the same act---

11 A I would certainly prefer---

12 Q ---go in front of the jury?

13 A I certainly would of preferred to have one as opposed
14 to two. Having said that, that ship had sailed.

15 Q Did you specifically argue the prejudicial affect
16 outweighed any, any reason that the State could have to
17 present the two indictments?

18 A I, I don't know. If the record says that I did, then I
19 did. If the record says that I didn't---

20 Q Okay.

21 A ---I didn't.

22 Q And did you specifically argue that, under the statute,
23 someone should be indicted either as a principal or as an
24 accessory, not both?

25 Either or?

1 A I think that was implicit in my argument. I don't know
2 that I specifically said those things.

3 As for the, the prejudice, I, I don't know -- I can
4 tell you what Judge Cole would of told me or Judge Couch
5 would of told me if I had argued that there were too many
6 indictments, and those were prejudicial. It was that --
7 well, that the State gets to indict them for the things that
8 the State thinks that he did. So, I mean I, I don't think
9 that a prejudicial argument would of gotten me very far.

10 Q All right. And on Page 11, Line 12, here you asked, at
11 the arraignment, for a jury trial on the two indictments
12 that the State wanted to proceed on.

13 A That he is asking for a jury trial on both of those
14 cases, yeah.

15 Q Right.

16 And, at that point, you didn't object, and, and the,
17 the -- move to dismiss or not go forward on one of the two
18 indictments?

19 A I did not. It doesn't appear so at least.

20 Q Okay. Now, just moving on from that issue, I think---

21 A I do remember talking to my client about that. The
22 reason that we didn't object to the two indictments is what
23 often will happen -- I believe that we should of been -- we
24 should of gotten that directed verdict. And so I thought
25 that we'd gone from two down to one, at directed verdict,

1 that the jury would of heard two allegations, and then there
2 was only one, and then, hopefully, they would of found him
3 not guilty.

4 Q well, wouldn't you agree that it'd be prejudicial,
5 prejudicial or arguably prejudicial to hear two allegations
6 versus one?

7 A Not if the judge dismisses one mid trial.

8 Q And on -- so, your---

9 A Also---

10 Q That was your reason for having -- allowing the
11 Court -- the State to go forward---

12 A well, I mean there were---

13 Q ---with two indictments?

14 A And I should clean that up. I think that both of those
15 indictments were allowed to be -- I mean I think they're
16 allowed to have indicted him on both of those. I think we
17 had talked in the back about if they were gonna -- I talked
18 to Mr. Barnette about whether they were gonna elect, and
19 they said no. But, ultimately---

20 Q And at no point---

21 A ---he---

22 Q ---did you bring up Section 16-1-50 that says a person
23 should be indicted on either as a principal or as an
24 accomplice, but not---

25 A I need to see that statute---

1 Q ---both of those?

2 A ---but I think that say indicted.

3 Does it also say and convicted?

4 So --.

5 Q I'm not sure. Let me find it.

6 MS. JAMESON: It's got commentary, but I have a copy of
7 it here if you'd like.

8 A So, be indicted and convicted.

9 Q Right.

10 A So, I mean---

11 Q For either or.

12 So, you didn't make that argument or show this statute
13 to the Judge or opposing counsel at the time?

14 A It, it didn't --.

15 Q Now, just going -- you talked about investigation.

16 Was there any questioning about what happened to this
17 first note that was supposedly out there according to
18 Shyquone's story?

19 A I don't think I -- I don't believe that I asked
20 Shyquone that question, no.

21 Q And did -- it was supposedly around LeAnn Foster.

22 Did you ever talk to her about whether there -- she
23 found an original note in Mr. Williams handwriting?

24 A I don't believe so. I don't have any notes to that
25 effect.

Matthew Shealy - Cross-examination
By Ms. Ross

1 Q Okay. And was there, in fact, a plea offer to six
2 years?

3 A It wasn't to six years. My understanding -- it was an
4 accessory after the fact. Now, he had also, I believe, a
5 shoplifting. So, I mean that's -- and I think he may of
6 gotten six years on that shoplifting, and I thought I could
7 get it run concurrently. So, I think that's where the six
8 years came from.

9 That's my speculation, but it was -- there's certainly
10 a plea offer of accessory after the fact. I thought he
11 should probably take that. He decided not to.

12 Q And that was before life without -- LWOP was on the
13 table at all?

14 A Yes, ma'am.

15 Q And---

16 A Well, I mean we knew that that was a possibility, that
17 life without parole was a possibility. So, I explained
18 that, you know, that you're looking at LWOP, but --.

19 Q Now, how did you know that was a possibility?

20 A Based on his prior convictions.

21 Q Now, just going -- I guess we can go ahead and talk
22 about -- under the statute, you're familiar with 17-25-45,
23 the Life Without Parole Statute?

24 A I am, yes, ma'am.

25 Q And your argument was that a federal bank robbery is

1 like a state bank robbery, and that would be an armed
2 robbery, and a most serious offense?

3 A No. I -- well, my, my argument or -- well, it's not my
4 argument. It is my reading of the indictment.

5 Q I'm sorry. I don't want to put it in -- any, any words
6 in your mouth, but---

7 A Right.

8 Q ---what is, what is your position on that?

9 A My view of the indictments, the two federal
10 indictments, were that they made out an armed robbery. You
11 can have a federal bank robbery that doesn't count as a --
12 an armed robbery. Now, it probably is gonna count as an
13 entry into a depository institution with the intent to
14 steal. But, again, I never got there because, the way that
15 they read, to me at least, is they're armed robberies.
16 They're taking of goods from the presence of another while
17 armed with a deadly weapon.

18 Q All right. And it does say federal out-of-state
19 offense that would be classified as a serious or more
20 serious offense.

21 A Yes, ma'am.

22 Q Now, wouldn't that entail a test of comparison of the
23 elements of those crimes?

24 A It would of -- there would of -- yes.

25 Q And, and it's dangerous weapon, I believe, in the

1 federal.

2 Did you look up the Federal---

3 A I've got the indictment---

4 Q ---Code?

5 A ---here. I can tell you exactly what the indictment
6 says. Use of a dangerous weapon and device.

7 Q All right.

8 A And that is explosives is Count 1, and Count 2 was,
9 committing said violation, did assault and put in jeopardy
10 the lives of other persons by the use of a dangerous weapon
11 and device. That is explosives.

12 Q All right. And that wording doesn't specifically say
13 deadly weapon as in---

14 A No.

15 Q ---armed robbery?

16 A No, ma'am, it says explosives, which -- and I would
17 submit to you, in every case, would be considered a deadly
18 weapon in an armed robbery prosecution. I could be
19 incorrect, but I --.

20 Q Now, didn't any bombs go off in the prior charges?

21 A They didn't do off.

22 Q Okay. Now, let's back up to just the elements that
23 were brought in. The State -- and this goes to the prior
24 bad acts. There was extensive dispute back and forth over
25 whether the State could use the presentencing guideline

1 report, and the probational reports, and different things to
2 bring in the elements of the prior federal charge.

3 Is that correct?

4 A In front of the jury, yes, ma'am.

5 Q Right, and the Judge denied that those elements could
6 come in?

7 A Yes, ma'am.

8 Q And that they would have to have a witness to present
9 those elements, and that would not entail---

10 A In front of the jury, yes, ma'am.

11 Q ---what the -- now -- and you're correct. That's in
12 front of the jury.

13 But at anytime did you ask the Judge or challenge the
14 life without parole in this case, did you?

15 A You mean based -- I didn't, I didn't---

16 Q Based on that coming in---

17 A ---require them to put all---

18 Q ---or at all?

19 A I didn't require them to present a witness for the life
20 without parole --

21 Q Right.

22 A -- is that my understanding?

23 No, I did not do that. Now --.

24 Q And you didn't require a witness to show that the
25 elements would have been met in this, in this case or the

Matthew Shealy - Cross-examination
By Ms. Ross

1 federal cases with the prior convictions to meet with the
2 life without parole standard?

3 A Right. I did not require them to bring a witness. I
4 think there -- I think my reasoning there was that these are
5 self-authenticating documents. Again, that may have been
6 bad reasoning. If it's bad reasoning, then I'll take that
7 hit.

8 Q All right. Now, on Page 349, there was a, a jury
9 charge on constructive presence, and, and you didn't take
10 any exception to that, did you --

11 A I did -- I don't believe so.

12 Q -- if it's not in the record?

13 A If it's not in the record, no.

14 Q Now, as far as the witness Shyquone Williams, during
15 his testimony, there was a, a bit of leading, and you, and
16 you didn't object to that witness being led, did you?

17 And I will reference you to Page 191, and then 198.
18 Line 70. Excuse me. 17.

19 A No, ma'am, I mean in every witness there's gonna be
20 some leading. I mean, again, we don't object to every
21 instance of it. Perhaps I should of objected to that one,
22 but I did not.

23 Q And so when he went down on Page 198 and said he was
24 the one that planned it, he was the one who told you what to
25 do, he was the one that told you how to write the note,

1 there was no objection there?

2 A No, ma'am.

3 Q Now -- and in -- and, with him, you didn't make a
4 pretrial motion to reveal, reveal the deal. You discussed
5 that some on direct.

6 But there was not a pretrial motion to reveal the deal?

7 A I don't believe that I filed a pretrial motion given I
8 had asked everyone involved that -- whether there was a deal
9 or not, and would of asked -- I asked Mr. Moore, and I asked
10 Mr. Barnette. I mean -- and I was assured that there was no
11 such deal, that there just wasn't any.

12 Q And he had---

13 A And then---

14 Q ---he hadn't pled guilty---

15 A ---I asked.

16 Q ---at that point?

17 A I don't believe so. I can't answer that question.

18 Q Now---

19 A He may of pled and withheld sentencing, but I don't
20 believe so.

21 MS. ROSS: Okay. Beg the Court's indulgence.

22 (Pause.)

23 Q well, one thing, just going back to the life without
24 parole, basically it, it says the, the catchall for a
25 serious offense is an offense which is punishable by a

Matthew Shealy - Cross-examination
By Ms. Ross

1 maximum term of 30 years.

2 Isn't it true the federal charges don't carry a maximum
3 of 30?

4 It's 25.

5 A I mean---

6 Q So, they wouldn't fall under that catchall?

7 A It wouldn't fall under the catchall, but I mean I
8 didn't -- I didn't think that they fell under the catchall
9 anyway. So --.

10 Q Now, there were -- on Page 114 and 275, they're,
11 they're no objections to a DVD of the arrest.

12 Was that -- wasn't that an amended DVD or parts of the
13 statement?

14 A I believe there were redactions that were in our favor.
15 And so no, I don't --.

16 Q So, you didn't object to those?

17 A I didn't object to those because, again, it was --.

18 Q And it wasn't that the self-serving statements were
19 allowed to come in?

20 A And I, I don't remember what -- I don't know what
21 exactly he's meaning by the self-serving statements.

22 Q Okay. Statements of I wasn't involved in this or
23 anything like that that---

24 A Right.

25 Q ---that was redacted out?

1 A I, I can't speak to that. I don't remember.

2 Q All right. Now -- and just going back to the facts
3 from the presentence -- presentencing report not being
4 allowed in. That was on Page 131 and 139, and, at that
5 point, you didn't use that to argue that LWOP was improper
6 if the facts of the prior could not come in?

7 A Well, again, I think that there's a difference between
8 sentencing and in front of a jury.

9 Q Right.

10 A But---

11 Q But you---

12 A No, I did not use -- I mean I understand what you're
13 saying---

14 Q And you---

15 A ---that I should of objected, and, and I think that
16 those two documents would have probably come in as
17 self-authenticating documents. But I did not require them
18 to produce a witness. I should of probably. I don't know
19 that, ultimately, it would of stopped them from getting them
20 in if I had objected, but your, your point is well taken.

21 Q Okay.

22 A I should of---

23 Q Just that day, they couldn't perform or they couldn't
24 produce that witness, and they'd been trying all day to go
25 around and get, get a witness, and they could not produce

Matthew Shealy - Cross-examination
By Ms. Ross

1 that witness that day.

2 A Well, I mean it -- they couldn't produce, produce that
3 witness. I, I think that they would of been produced --
4 able to put those indictments in at sentencing because I
5 think that the Judge would of let them. But you're right.
6 I should of -- I, I could of, at least, put on the record
7 that they need to put them in.

8 MS. ROSS: Okay. I have no further questions.

9 Beg the Court's indulgence.

10 (Pause.)

11 MS. ROSS: No further question.

12 THE COURT: Okay. Redirect.

13 MS. JAMESON: Yes, Your Honor. Briefly.

14 REDIRECT EXAMINATION

15 BY MS. JAMESON:

16 Q Mr. Shealy, let's start right with what you were just
17 questioned about that the State could of put the indictments
18 in for, for the LWOP notice, correct?

19 A I believe so. I mean I think that they would of fallen
20 within self-authenticating documents. I think they would of
21 been able to put them in via -- I mean I think they could of
22 complied with the Rules of Evidence, and I think that the
23 Judge would of allowed them to, to do that.

24 Q Do you recall whether they were made a Court's Exhibit
25 during sentencing, and Solicitor Barnette did move them in?

1 A I believe that he -- he almost certainly did. He
2 generally moves everything in the --.

3 Q That's his standard practice?

4 A It is.

5 Q And---

6 A But then I probably should of objected if that's what
7 he did do.

8 Q well, let's go back to that. Now you're saying you
9 probably should of objected.

10 You testified before that you investigated his prior
11 record including these two prior armed bank robberies,
12 correct?

13 A Correct.

14 Q And that you looked up the law on these federal
15 offenses, and you compared it to our South Carolina law in
16 17-27 45, correct?

17 A Correct.

18 Q And you testified that yes, it didn't meet the
19 catchall, but it met one of the enumerated offenses?

20 A I believe so.

21 Q So, what would your objection have been at that point
22 cause you didn't have a good faith basis---

23 A well---

24 Q ---to make an objection?

25 A well, my objection would of been they can't prove it.

Matthew Shealy - Redirect examination
By Ms. Jameson

1 I mean I think she's right. I should probably could of
2 argued well, they need to prove that -- just like
3 whatever -- a shoplifting case, a person is convicted of
4 shoplifting third or subsequent, they have to prove those
5 other two convictions. Now, that's very easy to do. Again,
6 I think that Mr. Barnette would have been able to prove
7 that, but, at a life without parole case, I probably should
8 have made them prove it.

9 Q But, again, those, those indictments, which are part of
10 the Clerk's records in this case, we don't need to move them
11 in, both of those indictments reference explosives as the
12 deadly weapon or the dangerous weapon?

13 A They did and that would fall within an armed robbery.
14 I mean armed robbery can cover any number of things
15 including a Maglite. I've seen that before. Explosives
16 would certainly be deadly.

17 Q And I believe there was some questioning during
18 cross-examination that I, that I think we need to clear up.

19 The Court didn't actually determine that the
20 presentencing report couldn't come in based on hearsay as
21 you argued, correct?

22 A I don't remember exactly. I'll, I'll leave Judge
23 Couch's words to -- as to why he was excluding those things.

24 Q Okay. well, they were actually excluded because the
25 Federal Courts determined that the witness couldn't testify,

1 and the presentencing report couldn't come in, and they were
2 not to have any involvement in this case, correct?

3 A Okay. Yeah, that, that sounds right, but, again, I
4 don't want to put words in Judge Couch's mouth.

5 MS. JAMESON: Moments indulgence, Your Honor.

6 (Pause.)

7 Q Do you have a copy of the transcript up there?

8 A Not with me. I think it's sitting on my desk
9 unfortunately---

10 MS. JAMESON: Your Honor, may I approach?

11 A ---in my office.

12 THE COURT: Yes.

13 Q I'm handing you Page 139, which I believe Ms. Ross
14 referenced before, and asked you to read. If you'll review
15 that briefly?

16 A Okay.

17 (Pause.)

18 A Okay.

19 Q So, at this point, Judge Couch isn't saying the State
20 can get the presentencing report, and these federal offenses
21 in under 404(b) or not. He's saying I'm not gonna rule on
22 it right now. I want to see how the case unfolds.

23 Correct?

24 A Correct.

25 MS. JAMESON: Moments indulgence, Your Honor.

Matthew Shealy - Redirect examination
By Ms. Jameson

1 (Pause.)

2 Q And if you'll turn to Page 291 in the transcript, and
3 look at 291 and 292 briefly.

4 A Okay.

5 (Pause.)

6 A Yes, ma'am.

7 Q So, does this refresh your recollection as to what
8 happened, and why this -- why there was no ruling from Judge
9 Couch on this issue?

10 A Well, I mean, ultimately, it -- yes, that they had
11 pulled all the documents back.

12 Q That Judge Herlong had ordered all the documents
13 returned to him, and instructed the probation agent that he
14 was not gonna be able to testify?

15 A Yes, ma'am.

16 Q So, it's not accurate to say that the Court wouldn't
17 allow in the presentencing report.

18 At that time, it was withdrawn by the State, correct?

19 A It was, yes, ma'am.

20 MS. JAMESON: Moments indulgence.

21 (Pause.)

22 MS. JAMESON: Okay. No further questions, Your Honor.
23 Thank you.

24 THE COURT: Okay. Thank you.

25 Mr. Shealy, you may step down.

Barry Barnette - Direct examination
By MS. Jameson

1 THE WITNESS: Thank you, Judge.

2 MS. JAMESON: Thanks.

3 THE COURT: May Mr. Shealy be excused?

4 MS. JAMESON: Yes, Your Honor. The State doesn't have
5 any additional witnesses to call.

6 MS. ROSS: No objection.

7 MS. JAMESON: Actually, Your Honor, the State would
8 call Solicitor Barry Barnette.

9 Mr. Shealy, you're free to go. Thank you, sir.

10 THE WITNESS: Thank you, ma'am.

11 THE COURT: Okay. Solicitor, raise your right-hand.

12 BARRY BARNETTE, being first duly
13 sworn, testified as follows:

14 THE COURT: Thank you, sir. Please be seated.

15 (Witness complies.)

16 DIRECT EXAMINATION

17 BY MS. JAMESON:

18 Q Good almost afternoon, Mr. Barnette.

19 Do you re -- you prosecuted this case, correct?

20 A Yes, ma'am, I did.

21 Q Okay. Do you recall serving Mr. Williams with an LWOP
22 notice?

23 A We did. What happened was we actually -- I made an
24 offer of accessory after the fact with this case. I believe
25 we did it in front of Judge Cole. I think Linda Moffitt was

Barry Barnette - Direct examination
By Ms. Jameson

1 the court reporter. I think we did that back on
2 August 27th, 2015.

3 He decided he did not want to take that offer. After
4 that, we served an LWOP notice on him, and also served it on
5 Mr. Shealy.

6 Q What were the qualifying offenses for this life without
7 parole?

8 A It was the two prior federal bank robbery convictions,
9 and, obviously, we got the indictments. I'll usually make
10 the rap sheet, as well as those indictments, part of the
11 LWOP notice.

12 Q And that was filed with the Clerk's Office, correct?

13 A Yes, ma'am.

14 Q And did you introduce a copy of that during sentencing?

15 A Yes, ma'am.

16 Q Prior to serving the life without parole notice, did
17 you investigate the underlying offenses?

18 A Yes, what I did, I contacted the U.S. Attorney's
19 Office. They gave me the information concerning the
20 offenses. At first we had the FBI agent testify that
21 actually worked the cases that then -- we needed additional
22 information, according to Judge Couch.

23 I contacted Dean Cook, which is one of the probation
24 officers at that time. He's now an attorney here in our
25 circuit. At that time, he was a, a probation agent for

Barry Barnette - Direct examination
By Ms. Jameson

1 them.

2 They released the PSIs which basically confirm all
3 the -- it's very thorough going through showing exactly
4 what's activity he was involved with and everything. Matter
5 of fact, we filed a 404(b) motion where Mr. Shealy adamantly
6 opposed it. Kept opposing through the whole -- basically
7 the pretrial hearing, and even the trial.

8 But we was gonna have Mr. Cook come over to testify.
9 Actually was gonna be our last witness at the trial. We, we
10 just finished up. I was getting ready -- went out for
11 lunch, and I got a phone call from Mr. Cook saying you
12 cannot use any of the documents. Judge Herlong has ruled
13 that he is gonna take the documents back. I've never had
14 this situation happen in my career, and hopefully it will
15 never happen again.

16 So, I had to go down and I let Mr. Shealy know. We
17 went back in chambers, and told him I had to make a motion
18 to withdraw all those items, and they had to be returned
19 back to Mr. Cook, and they had to be returned back to the
20 U.S., to the U.S. Courts, which we did, and, obviously, none
21 of that was mentioned in front of the jury. It was in
22 pretrial motions.

23 And, during the, the trial, that he was gonna allow
24 those to be heard in. To me, it was classic 404(b). Like I
25 said, Mr. Shealy adamantly objected to it, but the Court, I

Barry Barnette - Direct examination
By Ms. Jameson

1 believe, was gonna rule in our favor and allow it. But once
2 Judge Herlong made -- obviously I'm not -- when a federal
3 judge tells me to do something, I'm gonna do exactly what he
4 says, and that's what we did.

5 Q And those qualifying offenses, what were they most
6 similar to in South Carolina law or what were they akin to?

7 A Armed---

8 Q Were they---

9 A ---robbery in this case cause she used an explosive.
10 I, I remember being here in Spartanburg when that happened.
11 They basically had to call the bomb squad in, and everything
12 else they did. It wasn't ignited or whatever, but
13 especially with a 16-year old. That was the, the armed
14 robbery, and very similar armed robbery stature here in my,
15 in my position.

16 MS. ROSS: And I'd just object to considering the facts
17 of the case based on his recollection of, of the facts of
18 the prior case, and keep it to the indictment only.

19 MS. JAMESON: I believe that---

20 MS. ROSS: She's required to---

21 MS. JAMESON: ---Ms. Ross questioned witnesses
22 regarding this presentencing report, and the material that
23 was in there. And so I believe she opened the door to this,
24 and, and Solicitor Barnette can testify as to these
25 presentencing reports.

1 Additionally, the record reflects that Judge Couch
2 determined that those were not hearsay. They were exempt
3 from the hearsay objections. And so I, I believe Solicitor
4 Barnette should be able to testify to this.

5 THE COURT: To the content of the presentencing report?

6 MS. JAMESON: Not so much the content, but his role as
7 a prosecutor in determining to serve the LWOP notice, and
8 whether he did his due diligence in investigating the
9 underlying offenses. And it seems like Applicant wants to
10 have it both ways. He wants to say there isn't any
11 information about it, but then prohibit us from presenting
12 information to show that he did his due diligence in serving
13 the LWOP notice, and investigating the underlying offenses.

14 THE COURT: And this is the -- these are the reports
15 that, that Federal Judge Herlong would -- had the Solicitor
16 withdraw?

17 MS. JAMESON: After extensive testimony on the record
18 about them. The first two to three witnesses, one, two,
19 three -- the first 139 pages all deal with the prior
20 offenses. Solicitor Barnette filed a pretrial 404(b) motion
21 to, to have that -- those prior convictions submitted before
22 the jury. It's part of the Clerk's records that are---

23 MS. ROSS: They are---

24 MS. JAMESON: Yeah.

25 THE COURT: And Judge Couch denied the Solicitor's

Barry Barnette - Direct examination
By Ms. Jameson

1 motion?

2 THE WITNESS: No, did not.

3 THE COURT: Okay.

4 THE WITNESS: He was gonna allow in the evidence. What
5 happened was Judge Herlong contacted me, and said we're
6 gonna with---

7 THE COURT: Okay.

8 THE WITNESS: You have to -- he ordered us to withdraw
9 it. So, I went to Judge Couch and said, Judge, we have to
10 withdraw this. Mr. Shealy and me met. We put this on the
11 record. That's the reason why you don't have the PSIs and
12 everything else.

13 THE COURT: Okay.

14 THE WITNESS: And my position was Judge Cole -- Couch,
15 no disrespect, when a federal judge calls me and says you're
16 not gonna use this, I would of loved to have used it.
17 Believe me. That was my whole goal, but Judge Couch was
18 gonna allow it in. That's the reason I called Dean Cook as
19 our last witness. But when Dean called -- he left me a
20 message upstairs. When I got up there, he said we got to
21 have all this back. So, I had to make a motion to withdraw
22 the evidence in which I did.

23 THE COURT: Okay.

24 THE WITNESS: It was turned over to Dean Cook, and then
25 Dean Cook took it back to Greenville.

1 THE COURT: Okay. And so rather than us taking a break
2 at this time and me reviewing, I think you said it's over a
3 hundred pages of the transcript that I've been provided
4 today, I would just prefer that Mr. -- that Solicitor
5 Barnette -- I think he can testify that he did do due
6 diligence before serving the notice. I don't know that he
7 needs to get into the details of the prior two -- the facts
8 of, of the other two crimes.

9 Okay?

10 MS. JAMESON: Certainly, Your Honor. We can, we can --
11 would move along.

12 THE COURT: Okay.

13 CONTINUED DIRECT EXAMINATION

14 BY MS. JAMESON:

15 Q And, again, none of that 404(b) evidence came before
16 the jury, correct?

17 A No, it did not. It was never placed, placed in front
18 of them. And, also, I was talked (sic) to Assistant U.S.
19 Attorney Jeanie Howard about these cases also.

20 Q And so your belief was they, they qualified for the
21 Life without Parole Notice pursuant to 17-25-45 based on our
22 South Carolina Armed Robbery Statute?

23 A In my opinion, yes.

24 Q And that's what you served the LWOP Notice based on?

25 A Yes, ma'am.

Barry Barnette - Direct examination
By Ms. Jameson

1 Q There's been some testimony about a possible deal for
2 the codefendant, Mr. Williams son.

3 Was there a deal?

4 A No, ma'am.

5 Q When did he plead guilty?

6 A He pled guilty in front of Judge Dean Hall or Dan Hall.
7 Excuse me. Not Dean. Dan Hall. Mike Morin was his
8 attorney. It was a straight up plea, and Judge Hall took
9 the plea, and, and sentenced him. The only thing was told
10 was that he cooperated.

11 Q So, had there been a motion to reveal the deal, there
12 was no deal, which you had already told Mr. Shealy, correct?

13 A Right. He had asked me that. I mean they generally
14 just ask me from there, and I do have motions, and, and I
15 tell the attorneys because that's my duty.

16 Q Now, Mr. Williams was originally indicted, in April of
17 2015, for armed robbery, and bank robbery in a two count
18 indictment, correct?

19 A Yes, ma'am.

20 Q And then, about 13-months later, he was also indicted
21 for accessory before the fact to bank robbery, correct?

22 A Correct.

23 Q Were those both based on the same chain of events or
24 actions?

25 A What happened was State versus Gentry is a case that I

1 was actually a prosecutor in. In Gentry, we had a similar
2 case situation.

3 Basically, we tried accessory before the fact as well
4 as the principal offenses with it. It's a little bit
5 different story. He said he was part of the plan of an
6 armed robbery, and never planned the murder and everything.
7 So, it was the same theory from this standpoint. Obviously,
8 he was involved in the planning of it. I felt like hand of
9 all, hand of all counts for the robbery, but I could also
10 see where they could try to argue that he was not present.

11 So, that's the reason I did the accessory before the
12 fact after looking at all the evidence, and especially when
13 he turned down the accessory after the fact offer.

14 Q And he wasn't convicted of both offenses, correct?

15 A That's correct.

16 Q Did Judge Couch advise the jury as to whether they
17 could find him guilty of both offense?

18 A He told them they could not. They had to pick one or
19 the other or not guilty. He gave them all three options.
20 And I believe, like Mr. Shealy testified earlier, he always
21 gives not guilty as his first option, and then he -- then
22 any other offenses, guilty afterwards. And he usually uses
23 the sentencing sheet for that.

24 Q Do you believe the status of the law in South Carolina
25 allows you to have that prosecutorial discretion to indict

Barry Barnette - Direct examination
By Ms. Jameson

1 under two different theories and proceed to trial on both of
2 those?

3 A I do. It's kind of interesting. We just had a case,
4 State verse Stephanie Greene, that came out of our Circuit.
5 It basically had dealt with homicide by child abuse and
6 involuntary manslaughter. Both of them was submitted. Both
7 of them they were found guilty.

8 The Court upheld the homicide by child abuse, but
9 vacated the involuntary manslaughter basically saying that
10 both of them could be submitted to the jury, but they should
11 of been instructed they should of -- they had to pick one or
12 the other or not guilty in that case. And that just
13 recently came out.

14 Q And that's similar to the situation here, correct?

15 A It is, in my opinion.

16 Q After the jury charge, do you recall whether there were
17 any, any notes or the jury had to be recharged on anything?

18 A They did, and the -- Judge Couch, I think, charged them
19 correctly, and went through the -- to answer their question
20 or questions. I guess it was a question or questions.

21 Q Did Judge Couch again advise the jury that they
22 couldn't convict him of both accessory before the fact and
23 bank robbery?

24 It had to be one or the other or none?

25 A Correct.

1 MS. JAMESON: A moments indulgence, Your Honor.

2 (Pause.)

3 Q And, Solicitor Barnette, your theory of the case for
4 the bank robbery was never that Mr. Williams entered the
5 bank, correct?

6 A That's correct.

7 Q What was your theory as to how he could be convicted
8 of, of bank robbery?

9 A Basically the hand of one, the hand of all. He was
10 involved in the planning of it. He actually set up the ride
11 to go over there. I think both his son, as well as the
12 witness that was driving, testified to that. He actually
13 helped him after the facts basically trying to conceal by
14 giving him his hoodie.

15 I just felt like there was evidence of both, and I
16 think the way Judge Couch charged it it was correct. It had
17 to be one or the other. There was evidence of both.

18 Q And you didn't go forward on the armed robbery, Count 1
19 of that two count indictment for armed robbery and bank
20 robbery, correct?

21 A Correct.

22 MS. JAMESON: No further questions, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. ROSS:

25 Q Mr. Barnette, I guess, as far as the armed robbery,

Barry Barnette - Cross-examination
By Ms. Ross

1 did, did you feel like that was your weaker case, and that's
2 why you didn't go forward on that one?

3 A Well, we decided not to go on armed robbery because he
4 didn't present a weapon. I think that's what the warrant
5 charged originally, and, looking at it a lot of times, I
6 should of looked at it closer. It was a bank robbery case.

7 Q And he didn't present a weapon.

8 And, and I think there's a bank robbery case out there
9 where just saying there's a note, saying there's a weapon,
10 or a deadly weapon is not enough?

11 There has to be some presentation of a weapon?

12 A That's correct. There has to be a presentation of some
13 weapon, yes, ma'am.

14 Q And as far as -- I'll just turn your attention to Page
15 358, Line 20. I've got a copy of it.

16 A Yes, ma'am.

17 Q Do you kind of outline your argument of, of why you
18 sought life without parole there on that page?

19 And I think specifically Line 20 where you're -- you
20 mentioned it being an offense that carries 30 years and all.

21 A Well, the reason why I said that, I feel like it
22 equated to our armed robbery statute or armed robbery.
23 That's when you look at the facts of the events or whatever.

24 Q All right.

25 A And basically it'd be a 30 year statute in our system.

1 Q Okay. But there on the transcript you didn't say that,
2 did you?

3 A Well, entering a bank robbery would be 30 years in our,
4 in our system.

5 Q All right. But an armed bank robbery, the one that's
6 30 years, armed bank robbery --

7 A Yes, ma'am.

8 Q -- requires being armed, correct?

9 A Well, being an -- having an explosive would be armed.

10 Q Okay. Well, based on -- did an actual bomb go off on
11 the prior ones?

12 A No, ma'am.

13 Q Or was an explosive recovered?

14 A No.

15 Q So, there was explosive referenced---

16 A There was a -- there was a representation they had an
17 explosive.

18 Q In the note?

19 A And what I'm saying was I remember, when they called
20 the bomb squad here in Spartanburg when they had the bomb in
21 the middle -- basically they had to call the bomb squad in
22 concerning that incident.

23 Q Right.

24 But that's not in the actual indictment, is, is it?

25 A No, that's my personal recall -- I mean I also knew,

Barry Barnette - Cross-examination
By Ms. Ross

1 knew about the part cause I remember that. I mean people in
2 Spartanburg remember that cause that's something that just
3 doesn't happen every day.

4 Q All right. And Judge Herlong had called those
5 documents back, and that's why they couldn't be used. They
6 were stricken from the record.

7 Isn't that correct?

8 A They were removed from the record, yes, ma'am.

9 Q And now, just going back to the plea offer, you had a
10 plea offer of accessory after the fact?

11 A Yes, ma'am.

12 Q Would that carry up to 15?

13 A Yes, ma'am.

14 Q Half the amount.

15 And he turned down that plea offer and asked for a
16 trial?

17 A Yes, ma'am, we did that in front of Judge Cole here,
18 and, of course, I think I put in the record for this -- for
19 the trial also, and he turned it down on the record with
20 Judge Cole asking the questions.

21 Q And, and, at that time, did you advise him that you
22 were gonna seek life without parole after he asked for
23 trial?

24 A Yes, ma'am. He knew, he knew life without parole was
25 an option. I did not serve it on him cause I was -- if he

1 took accessory after the fact, there was no need to serve it
2 on him.

3 Q But as a result of him asking for his trial, and
4 asserting his trial rights, he then was served with life
5 without parole?

6 A No, ma'am, that's not the case. He was told, if he
7 took the offer -- I, I could serve it to him beforehand.
8 But I told him ahead of time that basically or he was --
9 informed Mr. Shealy that basically he, he faced a life
10 without parole situation. I mean if I'm gonna try a case, I
11 mean we're gonna, you know -- if he wants to plea to
12 accessory after the fact, that's his right, and he had that
13 opportunity. But he was fully informed that life without
14 parole was on the table.

15 Q All right. And -- but you didn't personally inform him
16 of that?

17 You didn't speak to him?

18 A No, but he would -- it was put on the record in that
19 case. I did it and I know I've told Mr. Shealy. I'm sure
20 Mr. Shealy shared that with him, but it was also put on the
21 record.

22 Q Now, during the trial or during the plea---

23 A The---

24 Q ---transcript?

25 A No, not the plea. It was during the, the -- Judge

Barry Barnette - Cross-examination
By MS. ROSS

1 Cole. I think it was August 27th, 2015. I put that on the
2 record and had to reemphasize that before we started the
3 trial. Put that on the record.

4 Q All right. I've got no further questions.

5 MS. JAMESON: Very briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. JAMESON:

8 Q Solicitor Barnette, it wouldn't be proper to speak to a
9 defendant who's represented by counsel personally, would it?

10 A No, and I've never done that.

11 MS. JAMESON: No further questions, Your Honor.

12 THE COURT: Okay. Mr. Barnette, Solicitor, thank you,
13 sir.

14 THE WITNESS: Thank you, ma'am.

15 THE COURT: May he be excused?

16 MS. JAMESON: Yes, Your Honor. The State has no
17 additional witnesses to call, but would like to do some
18 argument if Your Honor would allow.

19 THE COURT: Yes, ma'am.

20 MS. ROSS: I would reiterate the points I began with.
21 As far as the life without parole, the federal charge,
22 there's, there's no weapon required. So, it's not an armed
23 robbery, and we'd argue it's not equivalent as required by
24 17-25-45(c)(1). The elements are not the same, and that is
25 the basis of our argument.

1 As far as -- and, Judge, I should of brought this case.
2 I did not. But my understanding of a bank robbery is
3 putting something in a note along, and Mr. Barnette
4 explained that well, if a, if a, a robbery note says this is
5 a robbery, and there's a gun, but there's no evidence of a
6 gun, no one acts like or points a finger or makes a
7 suggestion of a weapon, then, then it's not armed bank
8 robbery.

9 You have to have that weapon, and that goes back to the
10 priors, and whether they would come in. And, Judge, I would
11 leave that up to you. I believe State v. Phillips is
12 slightly helpful. It's not really on point, but it is about
13 life without parole, and making a distinction when a prior
14 charge is an equivalency that such that it can be used in
15 our life without parole statute, and that's 400 S.C. 460,
16 2012 case.

17 Furthermore, it -- the, the two indictments part, while
18 I understand case law sort of around on that, it gives the
19 State quite a bit of leeway. The Section 16-1-50, I think,
20 presents what the Legislature intended solicitors around the
21 state to do with that, and that charge either as a principal
22 or as an accessory.

23 In this case, Mr. Shealy didn't argue the prejudicial
24 nature of doing both. Clearly, if you can hand up 30
25 indictments against someone, and knowing that only they can

1 pick one, that's prejudicial. It's pure numbers of the
2 indictments being presented to the jury, and we would argue
3 that was prejudicial as well in that the nature of that
4 prejudice discharged by the jury being like why can't we
5 convict on both. He was there and not.

6 And then that brings in a confusing issue with
7 constructive possession or constructive presence. And my
8 understanding, and I just cited a case that, again, is not
9 perfect on point, but State v. Dudley is a 2003 Court of
10 Appeals case, 354 S.C. 514, and the dissent kind of
11 discusses, and it's in the dissent I know, discusses that
12 sort of a common law thing applying to jurisdictional issues
13 explaining how you could be, you know, a Georgia -- you
14 know, stay in Georgia and never come here to South Carolina,
15 and somehow be constructively present to be part of a South
16 Carolina indictment. And there was no objection to that.
17 And we argue that it affected the outcome of the trial.

18 As far as the, the witness, we would argue there was no
19 reveal the deal motion done before, and I mean Shyquone
20 Williams, the son. There was no pursuit of finding the
21 original note or even asking where is this original note,
22 and effective attack on his, his statement.

23 We'd also, just as always, had -- argue that, if there
24 was -- you know, we'd, we'd argue definitely there was
25 ineffective assistance of counsel. But, if not, there was a