

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Aiken County

Honorable Larry B. Hyman, Circuit Court Judge

WAYMON EUGENE NEWTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001995

APPENDIX

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM AIKEN COUNTY

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WAYMON EUGENE NEWTON,

APPELLANT

APPELLATE CASE NO. 2015-001399

RECORD ON APPEAL

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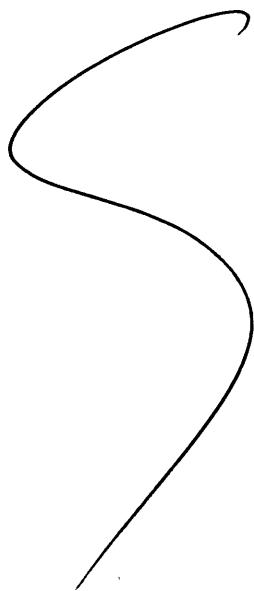
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State of South Carolina) In the Court of General Sessions
) Second Judicial Circuit
 County of Aiken) 2015-GS-02-00441, -00442

State of South Carolina,)
)
 Plaintiff,)
)
 vs.)
)
 Waymon Eugene Newton,)
)
 Defendant.)

Excerpt of
 Transcript of Record

June 15, 2015
 Columbia, South Carolina

B e f o r e:

The Honorable Doyet A. Early III, Judge

A p p e a r a n c e s:

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 Wilder Harte, Esquire
 Attorneys for the Plaintiff

Wallis Alves, Esquire
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 Circuit Court Reporter

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1 (On the record at 11:21 a.m.)

2 THE COURT: Okay. All right. Let me go through these
3 qualifying questions the -- your State senators and House
4 members have -- they've enacted legislation that sets forth
5 the qualifications for jurors. You must have these
6 qualifications in order to serve as a juror. And if any of
7 these questions apply to you after I ask it, please stand,
8 once again identify yourself, and then you can answer the
9 question.

10 Do I have any member of the jury panel who is not a
11 citizen of the United States? If so, please stand.

12 (No one responds.)

13 THE COURT: Do I have any member of the jury panel who
14 is not a citizen and resident of Aiken County, South
15 Carolina? If so, please stand.

16 (No one responds.)

17 THE COURT: Do I have any member of the panel who is
18 unable to read, write, speak, or understand the English
19 language? If so, please stand.

20 (No one responds.)

21 THE COURT: Do I have any member of the panel who has
22 less than a sixth grade education or its equivalent? If
23 so, please stand.

24 (No one responds.)

25 THE COURT: Do I have any member of the panel who is

1 unable to serve on jury duty this week because of a
2 physical or mental infirmity which normally requires a
3 doctor's excuse? If so, please stand.

4 (One juror stands.)

5 THE COURT: Yes, sir. Mr. Poe; is that correct?

6 JUROR: Yes, sir. All right. I have a -- the memory
7 portion of my brain was affected in a car accident ---

8 THE COURT: All right, sir.

9 JUROR: --- years ago. And I --

10 THE COURT: But you're a writer, correct?

11 JUROR: (No audible response.)

12 THE COURT: You're a writer? You write -- and didn't
13 you say you were a writer?

14 JUROR: Yes.

15 THE COURT: Well, you have the appropriate name for
16 that: Mr. Poe, Edgar Allen.

17 (Courtroom laughter.)

18 THE COURT: I'm sorry. Go ahead.

19 JUROR: I'm sorry. My -- my hearing is affected by
20 the accident also. My -- I have a hard time hearing.

21 THE COURT: All right. So you want to be -- you want
22 to be excused?

23 JUROR: Well, yes.

24 THE COURT: Very well. I will excuse you. They'll --
25 they'll send you a check. You can go out the back door.

1 JUROR: Thank you.

2 THE COURT: Thank you.

3 (Juror exits the courtroom.)

4 THE COURT: All right. Ladies and gentlemen, I think
5 that's Mr. Poe, if I remember correctly. And he is No.
6 133.

7 CLERK OF COURT: Yes, sir.

8 THE COURT: Do I have any member of the jury panel who
9 has been convicted by guilty plea or trial in a state or
10 federal court of record of a crime punishable by
11 imprisonment for more than one year, and your civil rights
12 have not been restored by pardon or amnesty? Punishable by
13 more than one year means that you could have received a
14 sentence of more than one year, regardless of what sentence
15 you actually may have received. If so, please stand.

16 (Juror stands.)

17 THE COURT: Your name, please.

18 JUROR: Juror No. 156, Deonte Smith.

19 THE COURT: All right. Mr. Smith, what were you
20 convicted of?

21 JUROR: I had a assault and battery charge in 2008.

22 THE COURT: What kind of assault and battery?

23 JUROR: High and aggravated.

24 THE COURT: All right. That carries more than one
25 year. You are disqualified. You may leave.

1 (Juror exits the courtroom.)

2 THE COURT: Is that correct, Mr. Miller?

3 MR. MILLER: That's it, Your Honor.

4 THE COURT: Anyone else?

5 MR. MILLER: No, sir.

6 THE COURT: Do I have any member of the jury panel who
7 is a clerk or deputy clerk of court, a constable, sheriff,
8 or other commissioned law enforcement officer, a probate
9 judge, county commissioner, magistrate, or other county
10 officer; or employed within the walls of any courthouse?
11 If so, please stand.

12 (No one responds.)

13 THE COURT: Do I have any member of the jury panel who
14 has served on jury duty in circuit court this calendar
15 year, 2015?

16 (No one responds.)

17 THE COURT: Do I have any member of the jury panel
18 who's served on a -- served as a member of the Aiken County
19 Grand Jury during the past several years? If so, please
20 stand.

21 (No one responds.)

22 THE COURT: All right. Ladies and gentlemen of the
23 jury panel, that concludes the qualifying questions. I
24 find that each one of you are qualified. State law also
25 makes -- provides for several exemptions. To serve -- and

1 exemption means not withstanding the fact that you're
2 qualified, you can say, Judge, I just choose not to serve.

3 So the first exemption where you can choose not to
4 serve is: Do I have anyone who is 65 years or older who
5 does not wish to serve? Please stand. 65 or older.

6 (No audible response.)

7 THE COURT: You're not required to serve more often
8 than once every three calendar years, but you may be exempt
9 if you served on a jury in this court, civil or criminal
10 court, during the past three calendar years -- '15, '14, or
11 '13.

12 (No one responds.)

13 THE COURT: You may be exempt if you served on the
14 Aiken County Grand Jury during the past five calendar
15 years. Do I have anyone with -- fits that description,
16 Aiken County Grand Jury?

17 (No one responds.)

18 THE COURT: You may be exempt from jury service if you
19 have a child or children, under the age of seven, you are
20 the principal and primary custodial parent, and you're
21 unable to make arrangements for the care of that child or
22 children while serving on jury duty this week. If they're
23 under seven, seven or under. Under seven, under seven.

24 (Juror stands.)

25 THE COURT: Yes, ma'am. Iron worker; is that right?

1 JUROR: Sheet metal worker.

2 THE COURT: Ma'am?

3 JUROR: Yes --

4 THE COURT: Sheet metal.

5 JUROR: Yes, sir.

6 THE COURT: Your name?

7 JUROR: Candice Vickers. I'm the primary care of my
8 daughter and ---

9 THE COURT: How old's your daughter?

10 JUROR: My daughter just turned eight. My niece is 13
11 and trying to watch her. My mom and dad both have to work,
12 so I'm primary care for this summer.

13 THE COURT: Ma'am, the statute says seven or under.
14 That doesn't qualify. Sorry.

15 (Juror stands.)

16 THE COURT: My cosmetologist, right?

17 JUROR: Yes, sir.

18 THE COURT: Your name?

19 JUROR: My name is Lauren Hartley. My child's two
20 years old.

21 THE COURT: And ...?

22 JUROR: And I -- my mom keeps her during the day, but
23 I have to pick her up between -- about 4:30 because she has
24 her -- she has to go to her job.

25 THE COURT: Okay. We'll get you there by 4:30.

1 What's your name?

2 JUROR: Lauren Hartley.

3 CLERK OF COURT: 65.

4 THE COURT: Thank you, ma'am.

5 (Juror stands.)

6 THE COURT: Yes, sir.

7 JUROR: David Martin. My daughter's one. I have to
8 keep her during the day and her mother keeps her at night.
9 She took off for today.

10 THE COURT: And you don't have anybody who can keep
11 her during the day, Mr. Martin?

12 JUROR: No, sir. I'm the only one that does.

13 THE COURT: All right. You want to exercise that
14 exemption?

15 JUROR: Yes, sir.

16 THE COURT: All right. You may go.

17 (Juror exits the courtroom.)

18 CLERK OF COURT: Juror 103.

19 THE COURT: (To the attorneys) 103, ladies and
20 gentlemen.

21 (To jury panel) You may be exempt if you are the
22 primary caretaker or -- of a severely disabled person who
23 is unable to care for himself, and you can't make
24 arrangements for the care of that person. Does that apply
25 to anyone?

1 (No one responds.)

2 THE COURT: Or you're the primary caretaker of a
3 person who is 65 or older, and that person is unable to
4 provide care for him or herself.

5 (No one responds.)

6 THE COURT: The next exemption -- I know I've got a
7 lot of teachers and students today because there's an
8 exemption if you're in school, you don't have to serve or
9 you can move it to when you're not in school. So I assume
10 a lot of you were -- were transferred here today.

11 But do I have anyone who is a full-time teacher or
12 student or working in some capacity with a school, that if
13 you were required to serve this week it would interfere
14 with your school responsibilities? That includes full-time
15 students, teachers, school crossing guards, bus drivers --
16 I think I had a couple of bus drivers.

17 I can consider transferring you. I cannot exempt you.
18 And anyone want to be transferred who is a full-time
19 school-related situation?

20 (No one responds.)

21 THE COURT: Do I have any member of the jury panel who
22 is employed with the Department of Corrections, at a
23 penitentiary, that would like to be exempt?

24 (No one responds.)

25 THE COURT: All right. Ladies and gentlemen, that

1 concludes the statutory list of exemptions and
2 qualifications. It may very well be that you are qualified
3 and no exemption applies to you, but this week is just --
4 creates an unusual hardship for you. You've got something
5 planned for a long time, doctor's appointments, things of
6 that nature. I cannot excuse you. I can consider
7 transferring you to another term of court.

8 And if it's a personal matter, personal in nature, and
9 you'd rather discuss it with me privately, you can
10 certainly come forward.

11 So does that apply to anyone, that this week would
12 create an extreme hardship?

13 (No one responds.)

14 THE COURT: Okay. The last question is -- sometimes
15 you hear this, if you visit these types of places -- last
16 call: Anybody got any particular reason, personal in
17 nature, that you can't serve this week?

18 (No one responds.)

19 THE COURT: All right. I find my jury panel to be
20 qualified. Solicitor, you may call your first case.

21 MR. MILLER: Thank you, Your Honor. The State calls
22 Indictment 2015-GS-02-441, *State of South Carolina vs.*
23 *Waymon Eugene Newton*. That's a true-billed indictment for
24 the crime of kidnapping.

25 The State calls 2015-GS-02-442, *State of South*

1 *Carolina vs. Waymon Eugene Newton.* That is a true-billed
2 indictment for armed robbery.

3 (Brief pause.)

4 THE COURT: All right. Ladies and gentlemen, the
5 State has called for trial the case of the *State of South*
6 *Carolina vs. Waymon Eugene Newton.* He is charged and
7 indicted for the offenses of kidnapping and armed robbery.

8 To these indictments, Mr. Newton has pled not guilty,
9 and by pleading not guilty, obviously that places the
10 burden on the State of South Carolina to prove his guilt to
11 you beyond a reasonable doubt as to each and every element
12 of the offenses indicted.

13 The indictment is simply the charging document by way
14 this case comes into the courtroom and is not evidence.
15 It's simply a legal formality of bringing him into the
16 courtroom. So do not infer anything from the fact that he
17 has been indicted on these charges. As I say, the State
18 has the burden of proving him guilty beyond a reasonable
19 doubt to a jury of 12 people.

20 Well, let me ask you some preliminary questions before
21 we select this jury.

22 (To the defendant) Mr. Newton, good morning.

23 THE DEFENDANT: How you doing?

24 THE COURT: I'm doing well. And you?

25 THE DEFENDANT: Can't complain.

1 THE COURT: All right, sir. Would you please stand
2 and face the jury panel? I need to see if anybody --

3 (The defendant complies.)

4 THE COURT: Thank you very much. You may be seated.

5 (The defendant complies.)

6 THE COURT: Do I have any member of the jury panel who
7 is related by blood or marriage, or do you nor or have you
8 in the past had a close personal or social relationship
9 with the defendant, Waymon Eugene Newton, N-e-w-t-o-n? If
10 so, please stand.

11 (No one responds.)

12 THE COURT: I am informed that the potential witnesses
13 in the trial of the case are as follows -- I will read them
14 out, and then I will ask the same question I just asked.
15 And if it applies to you, please stand.

16 (As read) Potential witnesses are as follows: Lt.
17 Michael Padgett, of the Aiken County Sheriff's Office. If
18 you're in the courtroom, please stand.

19 Investigator Stacey Prince, Aiken County Sheriff's
20 Office.

21 (Investigator Prince stands.)

22 THE COURT: Thank you. Investigator Chuck Cain, Aiken
23 County Sheriff's Office.

24 (Investigator Cain stands.)

25 THE COURT: Gerald Turner with the Aiken County

1 Sheriff's Department.

2 Lt. Clay Adams with the Aiken County Sheriff's Office.

3 Eartha Herrin, H-e-r-r-i-n. Ms. Herrin.

4 (Ms. Herrin stands.)

5 THE COURT: Thank you. Eric Bryant; Harold Craig;
6 Ernest Ashley Cole; Suzanne Hayes.

7 (To the attorneys) Any other witnesses, ladies and
8 gentlemen?

9 MS. ALVES: No, sir.

10 THE COURT: Question: Any member of the jury panel
11 related by blood or marriage, or do you now or have you in
12 the past had a close personal or social relationship with
13 any of the witnesses who I have just announced? If so,
14 please stand.

15 (No one responds.)

16 THE COURT: The lawyers involved in the case are as
17 follows: Mr. David Miller and Mr. Harte, Wilder Harte,
18 representing the State and the Solicitor's Office.

19 (Mr. Miller and Mr. Harte stand.)

20 THE COURT: Ms. Wallis Alves and Mr. Barry Thompson --

21 (To Ms. Alves) anyone else?

22 MS. ALVES: No, sir.

23 THE COURT: -- representing the defendant.

24 (Ms. Alves and Mr. Thompson stand.)

25 THE COURT: Question: Any member of the jury panel,

1 now or in the past, that has had legal services performed
2 by any of these lawyers? If so, please stand.

3 (No one responds.)

4 THE COURT: Any member of the jury panel related by
5 blood or marriage, now or in the past, or do you now or
6 have you in the past had a close, personal, or social
7 relationship with any of the lawyers? If so, please stand.

8 (No one responds.)

9 THE COURT: Ladies and gentlemen, it is alleged in
10 these indictments -- and as I said before, these are simply
11 allegations. These facts have to be proved to you beyond a
12 reasonable doubt.

13 But it is alleged that here, in Aiken County, on or
14 about September 30 of last year, 2014, that the defendant,
15 while armed with a deadly weapon, allegedly a knife,
16 committed the crime of armed robbery by taking from Ms.
17 Eartha Herrin, by means of force or intimidation, goods or
18 monies or other objects that belonged to her and/or to
19 Bryant's Auto Sales. It's alleged that it was a certain
20 amount of money and a purse containing items, including
21 wallets and credit cards and a personal I.D. and checks.

22 It's also alleged on that same date, September 30,
23 2014, that the defendant unlawfully seized or kidnapped Ms.
24 Eartha Herrin without authority of law.

25 Does anybody know anything at all, have you read

1 anything about it, have you seen anything on T.V., on the
2 internet, radio, somebody discuss it with you, have any
3 personal knowledge, have you formed any type of an opinion
4 or expressed any opinion concerning the allegations that
5 this defendant, Mr. Newton, committed the offense of armed
6 robbery and kidnapping against Ms. Eartha Herrin by taking
7 from her, with a knife or the use of a knife, and kidnapped
8 her on September 30, 2014, here in Aiken? Does anybody
9 know anything at all about this case? If so, please stand.

10 (No one responds.)

11 THE COURT: Do I have any member of the jury panel,
12 either you or your close family member, ever been a victim
13 of an armed robbery or kidnapping or other violent crime,
14 or any forgery or financial transaction card fraud? If so,
15 please stand.

16 (Juror stands.)

17 THE COURT: Yes, ma'am. Your name?

18 JUROR: Karin Nine.

19 THE COURT: Number please?

20 JUROR: 122.

21 THE COURT: And your situation?

22 JUROR: I was in a armed bank robbery when I worked as
23 a teller at First Citizens Bank.

24 THE COURT: And how long ago was that, ma'am?

25 JUROR: 13 years?

1 THE COURT: And the fact that you underwent that
2 experience, as being in a -- in a bank and working with a
3 bank when it was robbed, would that in any way preclude you
4 or keep you from being able to try this case in this
5 courtroom based solely on the facts that you hear presented
6 and on the law as I give it to you?

7 JUROR: No.

8 THE COURT: Thank you. You may be seated.

9 (The juror complies.)

10 THE COURT: Do I have any member of the jury panel who
11 has -- you or your close family member is -- worked for any
12 law enforcement agency or the Solicitor's Office of the
13 Second Circuit? If so, please stand.

14 (No one responds.)

15 THE COURT: Please stand if you have any member in
16 your family who works with law enforcement.

17 (Jurors stand.)

18 THE COURT: Yes, sir. My music teacher at USC Aiken.

19 JUROR: Yes, Your Honor.

20 THE COURT: Your name.

21 JUROR: Willie Strong.

22 THE COURT: And ...?

23 JUROR: My brother's a former federal public defender.

24 THE COURT: All right. The fact that your brother was
25 a former federal public defender would that in any way

1 preclude you from being able to try this case based solely
2 on what you hear in the courtroom?

3 JUROR: No, Your Honor.

4 THE COURT: I didn't think so. You may be seated.

5 (The juror complies.)

6 THE COURT: Ma'am, in the black and white.

7 JUROR: My husband is currently an investigator at
8 Aiken County Probation, Parole, and Pardon.

9 THE COURT: Your name please?

10 JUROR: Kristi Murphy, Juror No. 118.

11 THE COURT: And your husband works with the Aiken
12 County Probation and Parole?

13 JUROR: Yes, sir.

14 THE COURT: As of today.

15 JUROR: Yes, sir.

16 THE COURT: All right. I'm going to excuse you from
17 the trial of the case. We'll let you be on the civil side,
18 but this involves Aiken County Sheriff's Department, and
19 they work intimately with Parole. That's too close.

20 (To another juror) Yes, sir. Self-employed
21 construction worked.

22 JUROR: Yes, sir. My brother-in-law, he worked with
23 Public Safety of Aiken County until he retired and went to
24 another job. I don't know if that would excuse me, but he
25 worked with Public Safety of Aiken.

1 THE COURT: Okay. And your name.

2 JUROR: Tommy Johnson.

3 THE COURT: Mr. Johnson, would that in any way keep
4 you from being able to try this case based solely on what's
5 presented to you in this courtroom?

6 JUROR: No, not that I think.

7 THE COURT: Thank you. You may be seated.

8 (The juror complies.)

9 THE COURT: Ma'am, in the Aero t-shirt, your name and
10 number.

11 JUROR: My name is Shannon Lawrence, No. 94. My
12 father works in -- excuse me -- Department of Corrections.

13 THE COURT: Your father-in-law or father?

14 JUROR: Father.

15 THE COURT: For the -- he works for the South Carolina
16 Department of Corrections?

17 JUROR: Yes, sir.

18 THE COURT: Would that in any way, ma'am, keep you
19 from being able to be a fair and impartial juror?

20 JUROR: No, sir.

21 THE COURT: Thank you. And once again, Mrs. -- Miss

22 ...

23 JUROR: Nine.

24 THE COURT: Ms. Ninety.

25 JUROR: Nine. My husband is a retired criminal

1 investigator. He's been retired for at least a year.

2 THE COURT: Okay. And would that in any way, ma'am,
3 preclude you or keep you from being fair and impartial?

4 JUROR: No, sir.

5 THE COURT: Thank you. You may be seated.

6 (The juror complies.)

7 THE COURT: Do I have any member of the jury panel who
8 you or your close family member is a contributor to or
9 supports groups that -- that have their main purpose as
10 supporting law enforcement. And that would include groups
11 such as MADD, Mothers Against Drunk Drivers; or SADD,
12 Students Against Drunk Drivers; or CAVE, Citizens Against
13 Violent Crimes. Do I have any member that supports those?

14 (Courtroom laughter.)

15 THE COURT: Number 90. That's okay.

16 JUROR: My number's 122; my name is Karin Nine. My
17 husband shoots with the South Carolina Police Combat
18 League.

19 THE COURT: Okay.

20 JUROR: And --

21 THE COURT: Thank you for sharing that. Would that in
22 any way preclude you, ma'am, from being fair and impartial?

23 JUROR: No.

24 THE COURT: Thank you. Sir, your name and number,
25 please.

1 JUROR: Chris Powers, Juror 136. My wife and I both -
2 - we're victim's advocates through the Mother's Against
3 Drunk Driving. And that's probably been 10 years since we
4 have been.

5 THE COURT: And would that -- the fact that you've
6 performed that civic duty, would that in any way preclude
7 or keep you from being fair and impartial?

8 JUROR: No, it would not.

9 THE COURT: Thank you. You may be seated.

10 (The juror complies.)

11 THE COURT: Ladies and gentlemen, let me just sort of
12 bring it all in a nutshell with this --

13 (Juror stands.)

14 CLERK OF COURT: Judge, you have one ---

15 THE COURT: Yes, sir.

16 JUROR: Robert Moran, Juror 201.

17 THE COURT: You're the gunshot guy at Cabella's?

18 JUROR: Currently, yes, sir. I'm also a member of the
19 National Tactical Officers Association.

20 THE COURT: National what?

21 JUROR: Tactical Officers Association.

22 THE COURT: Yes, sir. And the fact that you are a
23 member of that association, would that in any way, sir,
24 preclude or keep you ---

25 JUROR: No, sir.

1 THE COURT: --- from being fair and impartial?

2 JUROR: No, sir.

3 THE COURT: Thank you. Let me just sort of finish it
4 up with this question and explanation: When we try a case,
5 whether it be in this courtroom in the criminal arena or in
6 the civil arena, such as getting ready to be tried before
7 Judge Newman, we have two judges who participate in the
8 trial of the case. My position makes me what we call "the
9 judge of the law" in the case. I instruct you on what the
10 law is, and you are required, by taking your oath, to
11 follow the law as I give it to you. So I am the judge of
12 the law in the case.

13 And my other main responsibility is to rule on the
14 admissibility of evidence. The lawyers have to ask their
15 questions under our rules of evidence and our rules of
16 criminal procedure. And if they ask questions that are
17 objectionable and I find that they're not proper, then I'd
18 rule those out.

19 But it may very well be that a question can be asked
20 of one juror and he'll say it's green, and that's a proper
21 question; and the next question to the next juror may say
22 it's red, and the next one may say it's pink. In other
23 words, you can get different answers to the same question
24 by different witnesses and they're all admitted into the
25 trial of the case.

1 So that's what I have -- my responsibility, to tell
2 you what the law is and to rule on the admissibility of the
3 evidence. My job's easy.

4 The hard job is your job because you are the other
5 judge. You're the judges of the facts, and it's your
6 responsibility to determine and judge the credibility or
7 the believability of the witnesses who testify. So when
8 one witness says green and one witness says red and one
9 says pink, you're the judges of the facts. You have to
10 determine who's the credible one, which one is the truth.

11 So 12 of you, collectively acting as one, you are the
12 judge in the facts of the case. And the way the system
13 works is the -- the judge of the facts, when you determine
14 what the true facts are, you take those true facts and
15 apply it to the law as I give it to you; and then you're in
16 a position to render a verdict in the case. And verdict
17 simply means "to speak the truth."

18 So your job as the judge of the facts is the most
19 important job in our judicial system when we try cases.

20 Now, having explained that to you, do I have any
21 member of the jury panel, for any reason whatsoever --
22 whether it be a personal belief, religious belief,
23 political belief, any kind of belief -- that you cannot
24 perform this civic duty of sitting as a judge of the facts
25 in the case with 11 other jurors, listening to the

1 testimony, determining what is the truth, what are the true
2 facts, and then applying those true facts to the law as I
3 give it to you?

4 (No one responds.)

5 THE COURT: If I have anybody that cannot do that, I
6 need to know it now before you sit all the way through a
7 trial and then tell me you can't. And I'll be glad -- if
8 it's personal, I'll be glad to listen to you up here.
9 Anyone?

10 (No one responds.)

11 THE COURT: Does anybody know of any reason whatsoever
12 why he or she should not serve as a juror in the trial of
13 this case, with particular emphasis being placed on your
14 ability to be fair both to the State and the defendant? If
15 so, please stand.

16 (No one responds.)

17 THE COURT: Any additional questions by the State?

18 MR. MILLER: None by the State, Your Honor.

19 THE COURT: Ms. Alves?

20 MS. ALVES: No, Your Honor.

21 THE COURT: All right. Give me a jury -- ma'am, what
22 is your number, my cosmetologist?

23 JUROR: 65.

24 THE COURT: 65? Ma'am, my sheet metal worker, what's
25 your number?

1 JUROR: 179.

2 THE COURT: 179?

3 JUROR: Yes, sir.

4 THE COURT: Thank you.

5 (Brief pause.)

6 THE COURT: In a criminal case, the way we draw the
7 jury is your names will be put in the computer on a random
8 basis, and you'll be selected randomly. And as your name
9 is called, if you would please come forward and stand right
10 up here between the tables for the two lawyers, turn around
11 and face them.

12 The State has 5 strikes in this case, and the
13 defendant has 10. Now, they can strike you for most any
14 reason or sometimes people say no reason at all. But the
15 lawyers know what the bounds and the -- the boundaries are
16 and what -- what the rules are. So don't get offended if
17 you get struck.

18 But we'll go through that process until we get 12
19 jurors and two alternates. And then once we complete that
20 task, I'll let you go across the way to Judge Newman's --
21 Newman's court, and he'll be drawing a civil jury.

22 And in a civil case, once we reach this stage, they'll
23 print 20 names out on a piece of paper, and you won't come
24 forward and you won't know who's on the paper. And those
25 20 names are given to the lawyers on both sides, and each

1 side has 4 strikes, leaving -- 20 less 8, leaving 12. So
2 that's they way they strike over there.

3 So just bear with us a minute while we get the
4 computer set up. And if your name is called, please come
5 forward.

6 (Brief pause.)

7 THE COURT: And just for planning purposes, I suspect
8 this case, if we start in the morning early, it will be
9 concluded by Wednesday afternoon, certainly no later than
10 Thursday. So it's a -- in the grand scheme of things, it's
11 a short case.

12 (Brief pause.)

13 THE COURT: All right. You may call the first one,
14 please.

15 CLERK OF COURT: Ladies and gentlemen, as I call your
16 name, would you please come forward, turn and face the rear
17 of the court until I tell -- excuse you or have you seated.

18 Juror No. 89, Charles Kleinkauf.

19 (A white male comes forward.)

20 THE COURT: Don't shake your head now. Nod -- happy.

21 (Courtroom laughter.)

22 CLERK OF COURT: What say you for the State?

23 MR. MILLER: Please present the juror.

24 CLERK OF COURT: What say you for Defense?

25 MS. ALVES: Beg the Court's indulgence.

1 (Brief pause.)

2 MS. ALVES: Judge, I --

3 THE COURT: Hold on a second. Just hang tight.

4 (Brief pause.)

5 THE COURT: All right. This juror was at one time a
6 security officer downstairs; is that correct?

7 JUROR: Sheriff's Office.

8 THE COURT: Sheriff's Office. And were you working at
9 the Sheriff's Office in July -- September of 2014?

10 JUROR: Yes, I was.

11 THE COURT: All right. I'm going to excuse him for
12 cause.

13 (Brief pause.)

14 CLERK OF COURT: Juror No. 123, Ruby O'Connor.

15 (A white female comes forward.)

16 CLERK OF COURT: What say you for the State?

17 MR. MILLER: Please excuse this juror.

18 CLERK OF COURT: Return to your seat, please, ma'am.

19 (The juror complies.)

20 CLERK OF COURT: Juror No. 66, Kellen Hatcher.

21 (A white male comes forward.)

22 CLERK OF COURT: What say you for the State?

23 MR. MILLER: Please present the juror.

24 CLERK OF COURT: What say you for Defense?

25 MS. ALVES: Please seat Mr. Hatcher.

1 CLERK OF COURT: Thank you. Have a seat in the jury
2 box to your left, please, sir.

3 (The juror complies.)

4 CLERK OF COURT: Juror No. 79, Cynthia Johnson.

5 (A black female comes forward.)

6 CLERK OF COURT: What say you for the State?

7 MR. MILLER: Please present Ms. Johnson.

8 CLERK OF COURT: What say you for Defense?

9 MS. ALVES: Please excuse Ms. Johnson.

10 CLERK OF COURT: Return to your seat, please, ma'am.

11 (The juror complies.)

12 CLERK OF COURT: Juror No. 170, Willie Strong.

13 (A black male comes forward.)

14 CLERK OF COURT: What say you for the State?

15 MR. MILLER: Please present Mr. Strong.

16 CLERK OF COURT: What say you for Defense?

17 MS. ALVES: Please seat Mr. Strong.

18 CLERK OF COURT: Have a seat in the jury box to your
19 left, please, sir.

20 (The juror complies.)

21 CLERK OF COURT: Juror No. 94, Shannon Lawrence.

22 (A black female comes forward.)

23 CLERK OF COURT: What say you for the State?

24 MR. MILLER: Please present Ms. Lawrence.

25 CLERK OF COURT: What say you for Defense?

1 MS. ALVES: Please excuse Ms. Lawrence.
2 CLERK OF COURT: Return to your seat, please, ma'am.
3 (The juror complies.)
4 CLERK OF COURT: Juror No. 164, Patricia Stauff.
5 (A white female comes forward.)
6 CLERK OF COURT: What say you for the State?
7 MR. MILLER: Please present Ms. Stauff.
8 CLERK OF COURT: What say you for Defense?
9 MS. ALVES: Please seat Ms. Stauff.
10 CLERK OF COURT: Have a seat in the jury box to your
11 left, please, ma'am.
12 (The juror complies.)
13 CLERK OF COURT: Juror No. 6, Stephanie Barnes.
14 (A white female comes forward.)
15 CLERK OF COURT: What say you for the State?
16 MR. MILLER: Please present Ms. Barnes.
17 CLERK OF COURT: What say you for Defense?
18 MS. ALVES: Please excuse Ms. Barnes.
19 CLERK OF COURT: Return to your seat, please.
20 (The juror complies.)
21 CLERK OF COURT: Juror No. 81, Thomas Johnson.
22 (A black male comes forward.)
23 CLERK OF COURT: What say you for the State?
24 MR. MILLER: Please present Mr. Johnson.
25 CLERK OF COURT: What say you for Defense?

1 MS. ALVES: Please excuse Mr. Johnson.

2 CLERK OF COURT: Return to your seat, please, sir.

3 (The juror complies.)

4 CLERK OF COURT: Juror No. 72, Suzanne Holmes.

5 (A black female comes forward.)

6 CLERK OF COURT: What say you for the State?

7 MR. MILLER: Please present the juror.

8 CLERK OF COURT: What say you for Defense?

9 MS. ALVES: Please seat Ms. Holmes.

10 CLERK OF COURT: Have a seat in the jury box to your
11 left, please, ma'am.

12 (The juror complies.)

13 CLERK OF COURT: Juror No. 162, Julie Spires.

14 (A white female comes forward.)

15 CLERK OF COURT: What say you for the State?

16 MR. MILLER: Please present Ms. Spires.

17 CLERK OF COURT: What say you for Defense?

18 MS. ALVES: Please seat Ms. Spires.

19 CLERK OF COURT: Have a seat in the jury box to your
20 left, please, ma'am.

21 (The juror complies.)

22 CLERK OF COURT: Juror No. 84, Henry Jordan.

23 (A white male comes forward.)

24 CLERK OF COURT: What say you for the State?

25 MR. MILLER: Please present Mr. Jordan.

1 CLERK OF COURT: What say you for Defense?

2 MS. ALVES: Please seat Mr. Jordan.

3 CLERK OF COURT: Have a seat in the jury box, please.

4 (The juror complies.)

5 CLERK OF COURT: Juror No. 69, David Herring.

6 (A white male comes forward.)

7 CLERK OF COURT: What say you for the State?

8 MR. MILLER: Please present Mr. Herring.

9 CLERK OF COURT: What say you for Defense?

10 MS. ALVES: Please seat Mr. Herring.

11 CLERK OF COURT: Have a seat in the jury box, please,

12 sir.

13 (The juror complies.)

14 CLERK OF COURT: Juror No. 191, Linda Williams.

15 (A black female comes forward.)

16 CLERK OF COURT: What say you for the State?

17 MR. MILLER: Please seat Ms. Williams.

18 CLERK OF COURT: What say you for Defense?

19 MS. ALVES: Please seat Ms. Williams.

20 CLERK OF COURT: Have a seat in the jury box to your
21 left, please, ma'am.

22 (The juror complies.)

23 CLERK OF COURT: Juror No. 62, George Hannah.

24 (A white male comes forward.)

25 CLERK OF COURT: What say you for the State?

1 MR. MILLER: Please present Mr. Hannah.

2 CLERK OF COURT: What say you for Defense?

3 MS. ALVES: Please seat Mr. Hannah.

4 CLERK OF COURT: Have a seat in the jury box, please,
5 sir.

6 (The juror complies.)

7 CLERK OF COURT: Juror No. 182, Lucius Walker.

8 (A black male comes forward.)

9 CLERK OF COURT: What say you for the State?

10 MR. MILLER: Please present Mr. Walker.

11 CLERK OF COURT: What say you for Defense?

12 MS. ALVES: Please seat Mr. Walker.

13 CLERK OF COURT: Have a seat in the jury box, please,
14 sir.

15 (The juror complies.)

16 CLERK OF COURT: Juror No. 110, Terry McKie.

17 (A black female comes forward.)

18 CLERK OF COURT: What say you for the State?

19 MR. MILLER: Please present Ms. McKie.

20 CLERK OF COURT: What say you for Defense?

21 MS. ALVES: Please seat Ms. McKie.

22 CLERK OF COURT: Have a seat in the jury box to your
23 left, please, ma'am.

24 (The juror complies.)

25 CLERK OF COURT: Juror No. 139, Robert Rentschler.

1 (A white male comes forward.)
2 CLERK OF COURT: What say you for the State?
3 MR. MILLER: Please present the juror.
4 CLERK OF COURT: What say you for Defense?
5 MS. ALVES: Please seat Mr. Rentschler.
6 CLERK OF COURT: Have a seat in the jury box, please,
7 sir.
8 (The juror complies.)
9 THE COURT: All right. Give me two alternates, two
10 and one.
11 CLERK OF COURT: Yes, sir.
12 THE COURT: Please.
13 CLERK OF COURT: Yes, sir. Juror No. 188, Holly
14 Whitson.
15 (A white female comes forward.)
16 CLERK OF COURT: What say you for the State?
17 MR. MILLER: Please present Ms. Whitson.
18 CLERK OF COURT: What say you for Defense?
19 MS. ALVES: Please seat Ms. Whitson.
20 CLERK OF COURT: Have a seat in the jury box to your
21 left, please, ma'am.
22 (The juror complies.)
23 CLERK OF COURT: Juror No. 154, Lois Shields.
24 (A white female comes forward.)
25 CLERK OF COURT: What say you for the State?

1 MR. MILLER: Please present Ms. Shields.

2 CLERK OF COURT: What say you for Defense?

3 MS. ALVES: Please seat Ms. Shields.

4 CLERK OF COURT: Have a seat in the jury box to your
5 left, please, ma'am.

6 (The juror complies.)

7 THE COURT: Any motions by the State in connection
8 with the selection of the jury?

9 MR. MILLER: None from the State, Your Honor.

10 THE COURT: Ms. Alves, by the defendant?

11 MS. ALVES: One moment, please.

12 (Brief pause.)

13 MS. ALVES: No motions.

14 THE COURT: Ma'am?

15 MS. ALVES: No motions.

16 THE COURT: Thank you.

17 (Brief pause.)

18 THE COURT: Okay. As promised or represented, those
19 jurors who were not selected in this case, the bailiff will
20 show you over to the other courtroom, and Judge Newman will
21 be out to give you instructions momentarily. Thank you,
22 and maybe I'll get to see you sometime latter part of the
23 week.

24 Everybody else remain seated. Not my jurors,
25 everybody else.

1 (The remaining panel exits the courtroom at 12:04
2 p.m.)

3 THE COURT: Mr. Miller, Ms. Alves.

4 (Bench conference.)

5 (Briefly off the record.)

6 THE COURT: (To the jury) Our plans are as follows:
7 We've got a number of things to do in this case as I told
8 you earlier. Instead of sitting here waiting on us to do
9 that, we'll go through all of that and I can take care of
10 what other business I have to. I've got about six
11 probation violations and some other matters that will move
12 us into late afternoon.

13 We'll start this case -- we'll have everything out of
14 the way and we'll start this case -- 9:30, everybody?

15 Ms. Alves, 9:30?

16 MS. ALVES: Yes, Your Honor.

17 THE COURT: 9:30, Mr. Miller?

18 MR. MILLER: Yes, Your Honor.

19 THE COURT: Everybody make it by 9:30?

20 (No one responds.)

21 THE COURT: We can get started right after 9:30, the
22 beginning of the case. As soon as we do the preliminary
23 matters, we'll start taking testimony.

24 Please be here at 9:30 sharp because I start sharp, if
25 I have a court reporter. We'll have one tomorrow and start

1 on time, I promise you.

2 I'd like to do this for you. We can have some hot
3 coffee for you and sausage biscuits, egg biscuits, and
4 fruit, donuts. But I can't have all three. It's got to be
5 one or the other. I don't know what you'd rather have.
6 Anybody on a diet?

7 (No one responds.)

8 THE COURT: You want to start tomorrow with biscuits,
9 and I'll probably buy you some lunch tomorrow and so forth.
10 So if you want your hot coffee and your biscuits, be here
11 before 9:30 because you can't bring those out in the
12 courtroom. It'll be here earlier than that.

13 I haven't seen anybody from the newspaper in here, but
14 it may be some news coverage on it in the paper tomorrow,
15 perhaps on T.V. I don't know. But would ask that you
16 please avoid looking at anything in the newspaper or on
17 T.V. What we're trying to do, what the object is, the main
18 focus is is this case to be tried based on what the State
19 presents to you and any defense by the -- by the Defendant.

20 And sometimes when people report things on the news,
21 it gets a little distorted. Not saying that it is, but it
22 may be, you know, their view, how they write it. You're
23 the finders of the facts because you'll listen to the
24 evidence and decide what evidence is truth and you'll apply
25 those true facts to the law as I give it to you.

1 I think you'll find that it may not be what you want
2 to do the most, but it's a rewarding civic responsibility
3 and duty; and we have, by far, the best system of any
4 country in the world. When someone's accused of something,
5 they can choose 12 people from the community to listen to
6 everything and decide what the true facts are and apply it
7 to the law instead of taking some dictator or some firing
8 squad or something, like they do in other parts of the
9 world, how they settle matters.

10 Have a pleasant evening. Do not do any kind of
11 internet research on what the law is or anything of that
12 nature. We want to try it based solely on what we hear in
13 the courtroom.

14 If you would go with the bailiffs, they will show you
15 how to get back up here in the morning and where to go.
16 And I will have you some hot coffee and sausage, ham
17 biscuits, etc., and we'll start right at 9:30.

18 If everything runs smooth tomorrow, which I anticipate
19 it will, we'll probably -- well, we probably won't go any
20 later than five o'clock. And I'll probably send out for
21 some lunch for you, and give you bout an hour/hour and
22 fifteen minutes for lunch. You can eat it in here or you
23 can go outside and eat it, whatever. But we'll take a
24 little bit of a break for lunch, and -- so set your plans
25 up for tomorrow.

1 Anybody need rides? Everybody okay?

2 (No one responds.)

3 THE COURT: And if we're very lucky tomorrow, we've
4 got a musician on the jury panel, maybe we can bring some
5 instruments ---

6 (Jurors laugh.)

7 THE COURT: --- try to play the flute or something.

8 Y'all have a very pleasant evening and I look forward
9 to working with you.

10 (Jury exits the courtroom at 12:11 p.m.)

11 (Brief pause.)

12 THE COURT: Two o'clock suit y'all to get started
13 back? Y'all, that suit y'all?

14 MR. MILLER: Yes, sir, Your Honor.

15 THE COURT: And then what y'all got, about an hour's
16 worth of stuff at two o'clock?

17 MR. MILLER: Your Honor, I wouldn't think that our
18 *Biggers* hearing would last more than 30 minutes, and that's
19 the only hearing that I'm aware ---

20 THE COURT: That's fine. If we need -- if you have
21 anything else, we'll do that.

22 (Off the record at 12:13 p.m.)

23 (Back on the record at 2:05 p.m.)

24 THE COURT: Mr. Miller.

25 MR. MILLER: Thank you, Your Honor. May it please the

1 Court. This matter -- we're back on the record in the
2 matter of Waymon Eugene Newton. That's 2015-GS-02-441 and
3 -442.

4 Your Honor, in this case, the incident occurred on
5 September 30 of 2014, and three days later on October 3 of
6 2014. The victim picked Mr. Newton out of a photo lineup
7 that had been produced by SLED. The State would have a
8 hearing pursuant to *Neil vs. Biggers* to establish to the
9 Court the sufficiency of that photo lineup and the lack of
10 suggestiveness of the photo lineup.

11 Additionally, Ms. Alves and I are actively working on
12 coming up with a stipulation relative to some Bank of
13 America financial records. The State had some records that
14 we wanted to get in. My understanding is Ms. Alves has
15 some Bank of America records that were important to her
16 case as well, and we found out this morning that they --
17 Bank of America was going to have to bring their
18 representative from Ft. Lauderdale, Florida to testify
19 about that.

20 Ms. Alves and I have gotten together and basically
21 agreed as to what the records say for each other, which
22 would -- the stipulation would eliminate the need for the
23 witness coming to say, yes, these are both Bank of
24 America's records.

25 The State's records have been turned over to Ms. Alves

DIRECT EXAMINATION BY MR. MILLER - INVESTIGATOR STACEY PRINCE 41

1 in the course of discovery, the ones that we obtained. Ms.
2 Alves, I understand, got the records on her own for Mr.
3 Newton's check -- personal banking account, and we're going
4 to confirm that those records are, in fact, accurate from
5 Bank of America and then we will stipulate to that fact.

6 Aside from that, I'm not aware of any other motions
7 that need to be heard relative to the case.

8 THE COURT: All right. You may proceed.

9 MR. MILLER: Thank you, Your Honor. The State calls
10 Investigator Stacey Prince.

11 THE COURT: Come around, sir. Place your left hand on
12 the Bible. Please raise your right.

13 INVESTIGATOR STACEY PRINCE, having
14 been first duly sworn, testifies as follows:

15 CLERK OF COURT: Have a seat in the witness box,
16 stating your full name, spelling your last for the Court,
17 please.

18 THE WITNESS: Stacey, last name Prince. It's P-r-i-n-
19 n-c-e.

20 DIRECT EXAMINATION BY MR. MILLER:

21 Q Investigator Prince, where do you work?

22 A Currently employed with the Aiken County Sheriff's
23 Office.

24 Q And how long have you worked there?

25 A I've been employed with Aiken County since 1996. In

DIRECT EXAMINATION BY MR. MILLER - INVESTIGATOR STACEY PRINCE 42

1 the capacity of criminal investigations since 2003.

2 Q What was your involvement in the investigation of the
3 armed robbery that occurred at Bryant's Auto Sales on
4 September 30 of 2014?

5 A I'm the lead investigator in the case.

6 Q Did you have occasion to interview the victim in the
7 case?

8 A I did.

9 Q Was the victim able to give you a description of the
10 perpetrator in the case?

11 A She did.

12 Q Did she indicate that she knew the perpetrator or had
13 any familiarity with him prior to the incident?

14 A No, she did not.

15 Q Did you ultimately later request that a photo array be
16 produced which included the image of the defendant, Waymon
17 Newton, so it could be shown to the victim in this case?

18 A Yes, I did.

19 Q I'm going to show you what's been marked, for purposes
20 of this hearing, as State's Exhibit 1. Ask you if you
21 recognize this?

22 (Hands document to the witness.)

23 A I do.

24 Q And that page that is attached to it.

25 A Pardon me?

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1 Q The page that's attached to it, the second page there.
2 Do you recognize that?

3 A I do.

4 Q All right. Where did you get those from?

5 A The lineup itself was requested from SLED.

6 Q Okay.

7 A The second page attached to it is a standard
8 investigative form used by the Sheriff's Office when a
9 lineup is presented.

10 Q All right. Do you recall when you asked for that
11 photo array?

12 A On October 3.

13 Q Why did you ask for that photo array on October the 3?

14 THE COURT: October 30 or 3?

15 THE WITNESS: October 3; number 3. Yes, sir.

16 THE COURT: Three.

17 THE WITNESS: Yes, sir.

18 A We had responded to assist -- actually, assist other
19 agency, the Highway Patrol, to an accident. And the course
20 of this accident the vehicle and the individual that was
21 observed fleeing the incident matched the description of
22 the robbery that had occurred prior.

23 Q Okay. How far away was the wreck from the location of
24 the robbery?

25 A It was within two miles.

DIRECT EXAMINATION BY MR. MILLER - INVESTIGATOR STACEY PRINCE 44

1 Q And you said that the vehicle matched the description
2 of the vehicle involved in the robbery?

3 A Yes, it did.

4 THE COURT: How many days was that after the robbery?

5 THE WITNESS: Three days.

6 THE COURT: Thank you.

7 Q Did you notice anything -- did you go to the scene of
8 the wreck?

9 A I did.

10 Q Did you notice anything at the scene that gave you
11 reason to think that that vehicle might further be
12 connected to the robbery that occurred three days earlier?

13 A It was a identification card with the name "Eartha
14 Brown" located on the ground outside of the vehicle.

15 Q Okay. I don't know if you -- explain to the Court,
16 what kind of -- what kind of damage was done to the vehicle
17 during the course of this wreck?

18 A The vehicle had rolled several times. A lot of its
19 contents had been ejected from the vehicle and was thrown
20 out the -- on the ground.

21 Q All right. The victim in this case, when you talked
22 to her, what did she tell you her name was?

23 A Eartha Herrin.

24 Q Okay. And you said that this said "Eartha" -- you
25 noticed a identification card that said "Eartha Brown."

DIRECT EXAMINATION BY MR. MILLER - INVESTIGATOR STACEY PRINCE 45

1 Why did you think that that might be Miss Eartha Herrin?

2 A The name "Eartha" is kind of unique.

3 Q Okay. Did you contact Ms. Brown or -- excuse me. Did
4 you contact Ms. Herrin to ask her about whether or not that
5 was her I.D. card?

6 A I did.

7 Q And what did she tell you?

8 A That was her maiden name.

9 Q Okay. Did you do anything else to try to connect that
10 vehicle to a particular person, to a particular suspect?

11 A Yes. We run [sic] the tag on the vehicle. Once we
12 got the tag identification, we contacted the registered
13 owner of the -- of the vehicle, which he advised us that
14 the vehicle was currently in possession of his roommate,
15 the defendant.

16 Q Okay. Was the driver of the wrecked vehicle taken
17 into custody?

18 A Later that day, yes, sir.

19 Q Do you how -- about how long?

20 A I -- within approximately three to four hours.

21 Q And was he taken into custody near the scene where the
22 wreck occurred?

23 A Within a few miles.

24 Q Thank you.

25 MR. MILLER: No further questions. Please answer any

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1 questions they may have.

2 THE COURT: Ms. Alves?

3 MS. ALVES: No questions.

4 THE COURT: No questions. Next witness.

5 THE WITNESS: May I be excused, Your Honor?

6 THE COURT: You may.

7 THE WITNESS: Okay.

8 (The witness exits the stand.)

9 MR. MILLER: The State calls Investigator Chuck Cain.

10 (Brief pause.)

11 INVESTIGATOR CHUCK CAIN, having
12 been first duly sworn, testifies as follows:

13 CLERK OF COURT: Have a seat in the witness box,
14 stating your full name, spelling your last for the Court,
15 please.

16 THE WITNESS: Investigator Chuck Cain, C-a-i-n.

17 DIRECT EXAMINATION BY MR. MILLER:

18 Q Good afternoon, Investigator. Where are you employed?

19 A Aiken County Sheriff's Office.

20 Q How long have you been with the Sheriff's Office?

21 A Twenty-five years.

22 Q And what is your position there?

23 A Investigator.

24 Q How long have you been an investigator?

25 A Twelve years.

DIRECT EXAMINATION BY MR. MILLER - INVESTIGATOR CHUCK CAIN 47

1 Q What was your involvement with the investigation of
2 the armed robbery that occurred at Bryant's Auto Sales on
3 September 30 of last year?

4 A I was brought a board after the fact to assist
5 Investigator Prince.

6 Q What was your assistance to Investigator Prince?

7 A My assistance was to return from the wreck scene to my
8 office where Investigator Prince had requested a SLED photo
9 lineup. It was to have been emailed from Columbia to my
10 computer, and at that point in time I was to receive it and
11 make contact with the victim and present the lineup to her.

12 Q And on what date did that occur?

13 A That was on October 3, 2014.

14 Q And when did you present the SLED lineup to the
15 victim?

16 A At -- around 12:30/12:40. It was shortly after lunch.

17 Q Where did you do that?

18 A That was at Fatz Café in Aiken.

19 Q Did you say anything to the victim about the case
20 prior to showing her that lineup?

21 A Only that -- I introduced myself to her. I had never
22 met her before. I explained to her that Investigator
23 Prince had requested that I make contact with her, and that
24 I was going to show her a photo lineup pertaining to the
25 case. That's pretty much all I knew.

1 Q Did you indicate to her in any way which photo she
2 should pick?

3 A No, sir.

4 Q And what did the victim do when you showed her the
5 lineup?

6 A When I presented the lineup, she immediately
7 identified the facial image in Photograph No. 4, and place
8 her finger on it.

9 Q Did you ask her any questions after that?

10 A I -- I did ask the standard question: Was she -- was
11 that a positive -- was she 100 percent certain; and she
12 said she was. And then she signed the document that I
13 presented to her.

14 Q Are those the documents in front of you that you
15 showed her?

16 A Yes, sir, they are.

17 Q Can you describe them for us?

18 A (Indicating) This is a SLED photo lineup that I
19 received by email from SLED. This is the standard
20 statement form that is associated with photo lineups from
21 the Sheriff's Office, and it indicates the statement from
22 the victim; and is witnessed by myself, date and time.

23 Q Is that photo lineup and the form attached to it fair
24 and accurate representations of what you showed the victim
25 on October 3?

1 A Yes, sir, it is.

2 Q Thank you.

3 MR. MILLER: At this time we would enter those into
4 evidence.

5 THE COURT: Any objection, ma'am?

6 MS. ALVES: No, Your Honor.

7 (State's Exhibit No. 1, photo lineup and statement
8 document, two pages, in evidence.)

9 MR. MILLER: Nothing further, Your Honor.

10 THE COURT: Any cross?

11 MS. ALVES: No.

12 THE COURT: (To the witness) You may step down.

13 (The witness exits the stand.)

14 MR. MILLER: Your Honor, the State would rest at this
15 time.

16 Pursuant to *State v. Duke*, there's been no showing of
17 any kind of irregularity as to the presentation of the
18 photo lineup or the selection of the individual in
19 identification No. 4 of that photo lineup. And the State
20 would address any motions from the Defense.

21 THE COURT: Ms. Alves?

22 MS. ALVES: No motions, Your Honor.

23 THE COURT: Well, obviously, the case law inquires
24 that I make an inquiry, under the *Neil vs. Biggers* Supreme
25 Court Case, to evaluate whether or not there's any

1 misidentification because of suggestiveness.

2 And it appears that all the factors in *Neil vs.*
3 *Biggers* require us to look at, including description of the
4 -- the defendant and the level of certainty; and obviously
5 this photo lineup is not suggestive in my opinion. They've
6 all got clean-shaven heads, no facial hair, same similar
7 facial features. And the victim immediately picked out No.
8 4, who is the defendant here.

9 So I find that it is appropriate and I will allow it.
10 The jury can give it whatever weight it deems necessary.

11 Anything else?

12 MR. MILLER: Nothing from the State, Your Honor, as to
13 this issue.

14 THE COURT: Ms. Alves?

15 MS. ALVES: Nothing regarding this issue.

16 THE COURT: All right. Anything else we need before
17 we proceed? Is there anything else?

18 MR. MILLER: Your Honor, this would be a good time to
19 go ahead and put on the record that obviously, the
20 defendant has other charges that are pending that are only
21 very tangentially related to the charges that he's on trial
22 for.

23 THE COURT: Those other charges are what?

24 MR. MILLER: Burglary in the first degree, possession
25 of knife during a violent crime.

1 THE COURT REPORTER: Possession of ...?

2 THE COURT: Knife.

3 MR. MILLER: Yes, sir.

4 THE COURT: When did the burglary allegedly take
5 place?

6 MR. MILLER: October the 3.

7 THE COURT: Three days after the case he's involved
8 with here?

9 MR. MILLER: Yes, sir, Your Honor. And the -- the way
10 that that kind of broke down was he ran from the scene of
11 the wreck, and we would allege that he then committed a
12 burglary where he basically held up inside a house. And
13 the Sheriff's Office had to surround the house, and
14 ultimately they had to gas the house to get him to come out
15 of the house; and that's how he was placed under arrest.

16 Ms. Alves and I agreed that in fairness and
17 efficiency, that we didn't need to go into all of those
18 facts in front of the jury. And in fact, that Investigator
19 Prince's ---

20 THE COURT: All of the facts or some of the facts or
21 none of the facts?

22 MR. MILLER: Well, we agreed that Investigator
23 Prince's testimony would be limited exactly as it was here
24 in this -- during this part hearing, that the defendant ran
25 from the scene, and he was taken into custody a short time

1 later nearby the scene of the wreck.

2 THE COURT: No mention that he's been charged with
3 burglary for being in that alleged building, or wherever he
4 was?

5 MR. MILLER: That -- that is correct. And there were
6 also some other things that happened when he got arrested
7 that we're not going to be getting into and we don't have
8 any intention to bring it up. And I've instructed the
9 witnesses not to mention -- for us, not to mention any of
10 those things.

11 THE COURT: Ms. Alves?

12 MS. ALVES: Your Honor, that is correct. The
13 solicitor and I have agreed that they were not going to
14 mention anything to do with the fact that Mr. Newton has
15 been charged with burglary; specifically when he's
16 referring to something else that happened at the scene,
17 there's not going to be any mention of the fact that Mr.
18 Newton, when he came out of the house, had his throat cut.
19 And there's not going to be any mention ---

20 THE COURT: Who cut his throat?

21 (No one responds.)

22 THE COURT: Who cut his throat?

23 MS. ALVES: It's alleged that he cut his own throat,
24 Your Honor.

25 THE COURT: None of that will be mentioned, that's ---

1 MS. ALVES: Yes, sir.

2 THE COURT: --- not relevant to this situation that
3 happened three days earlier.

4 MS. ALVES: Yes, sir. Also, Your Honor, Mr. Newton
5 has -- was recently released from the Department of
6 Corrections, and his Department of Corrections's I.D. was
7 found in the purse that was found by a witness over this
8 past weekend, and the solicitor -- there were other items
9 of Mr. Newton's that were found in that purse as well. And
10 the solicitor has agreed he's not making any mention of
11 these items found in that ---

12 THE COURT: The SCDC I.D.

13 MS. ALVES: Yes, sir.

14 THE COURT: But can make mention of other items that
15 were found. Just won't mention that he was incarcerated
16 until sometime ---

17 MR. MILLER: Your Honor, what we agreed to is that we
18 wouldn't mention any kind of items that were found inside
19 the purse that would say that Mr. Newton as an inmate; and
20 that the Department of Corrections I.D.s or reintegration
21 into the work world or whatever it might that's in there,
22 if it references him being recently released from prison,
23 we're not going to be mentioning it.

24 THE COURT: Very well. Now, does he have a prior
25 record? Obviously he did if he's been in prison.

1 MS. ALVES: Yes, sir.

2 MR. MILLER: Your Honor, he has a 1998 conviction for
3 two counts of armed robbery. He was sentenced to 20 years,
4 and he was released from incarceration and placed on
5 community supervision on July the 1 of 2014. And this
6 armed robbery was 60 days later.

7 THE COURT: Well, obviously, if he takes the witness
8 stand and we'll deal with that as far as attacking his
9 credibility at that time.

10 MR. MILLER: Yes, sir.

11 MS. ALVES: Yes, sir.

12 THE COURT: Anything else we can do today to expedite
13 matters?

14 (No one responds.)

15 THE COURT: Y'all gonna try to reach some stipulation
16 on the bank records to preclude having to call that lady or
17 man from South Florida?

18 MR. MILLER: Yes, sir, Your Honor. And I believe that
19 we can have that done. Ms. Alves was actually going to
20 write it out for me. I think we can have that done. We've
21 got our portion done and we should be able to have that in
22 about 10 or 15 minutes, so we can get it approved by the
23 Court.

24 THE COURT: Anything else?

25 MR. MILLER: Nothing from the State, Your Honor.

1 THE COURT: Ms. Alves?

2 MS. ALVES: Nothing from the defense.

3 THE COURT: Mr. Newton, any questions?

4 THE DEFENDANT: No.

5 THE COURT: Anything -- any concerns we need to
6 discuss? Everything okay?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. All right. We will start
9 bright and early in the morning. Jury will be ready to go
10 at 9:30. Y'all be here no later than 9:15 in case we have
11 any kind of concerns that we need to address prior to 9:30.

12 Anything else we need to do today on any other
13 matters, Mr. --

14 MR. MILLER: Not with regard to this matter -- or this
15 case, Your Honor.

16 THE COURT: Thank you. All right. Thank you.

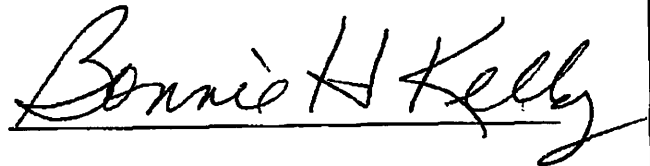
17 (Off the record at 2:23 p.m.)

18 -- END OF TRANSCRIPT RECORD --

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Second Circuit Court for Aiken County, South Carolina, on the 15th day of June, 2015.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.



Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

September 23, 2015

State of South Carolina
County of Aiken

Court of General Sessions

State	)	
	)	
	)	Transcript of Record
v.	)	2015-GS-02-00441
	)	2015-GS-02-00442
Waymon Eugene Newton	)	
	)	
<u>Defendant.</u>	)	

June 16-17, 2015
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge; and a jury.

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

David Miller, Assist. Solicitor
Wilder Harte, Assist. Solicitor
Attorneys for the State

Wallis Alves, Assist. Public Defender
Attorney for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

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E X H I B I T S				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	STATE'S			
4	1	Photo - Bryant's	16	16
5	2	Photo - Durango	16	16
6	3	Photo - Bryant's	16	16
7	4	Photo - Bryant's	16	16
8	5	Photo - Bryant's	16	16
9	6	Photo - Bryant's	16	16
10	7	Photo - Bryant's	16	16
11	8	Photo - Bryant's	16	16
12	9	Photo - Bryant's	16	16
13	10	Photo - Bryant's	16	16
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15	12	Photo - wrecked Trailblazer	76	77
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17	14	Photo - Trailblazer exhaust		83
18	15	Victim Birth Certificate		29
19	16	Documents from Trailblazer		20
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1 (The following proceedings were held June
2 16-17, 2015.)

3 THE COURT: Is the State ready to proceed?

4 MR. MILLER: Yes, Your Honor.

5 Let the record reflect that the defendant is
6 present in the courtroom.

7 Bring the jury in, please.

8 (Jury enters the courtroom at 9:33 AM.)

9 THE COURT: Good morning, ladies and gentlemen.
10 I hope you had a pleasant evening. First thing we
11 have to do to get started is stand, raise your right
12 hand, and the Clerk will swear you in for this
13 trial.

14 (Clerk administers oath to the jury.)

15 THE JURY: I do.

16 (Jury sworn.)

17 THE COURT: Let me make some opening remarks.

18 As I told you yesterday, the defendant in this
19 case has been indicted by the Aiken County Grand
20 Jury for the offense of armed robbery, and the other
21 is for the offense of kidnapping. Now, the
22 defendant, as I told you yesterday, has pled not
23 guilty to both indictments, and that puts the burden
24 on the State of South Carolina Solicitor's Office to
25 convince you, beyond a reasonable doubt, of his

1 guilt.

2 The fact that he's been indicted and arrested
3 and charged, that's not evidence in this case.
4 You'll make your decision in this case beyond a
5 reasonable doubt from testimony and relevant
6 exhibits that they introduce during the trial of the
7 case.

8 The way the case will run is this: Because the
9 State has the burden of proof, they will go first.
10 So when I finish my opening statement, they'll
11 present their case to you. At the conclusion of
12 that, the defendant, if he chooses, has a right to
13 put up his defense, his side of the story. If he
14 does that, the State has the right to reply to that.
15 The State goes first, followed by the defendant, and
16 the State sometimes has the right to put up reply
17 testimony. There will be opening statements made by
18 the defendant --

19 For security purposes, y'all step back into the
20 jury room. I don't think there's anything going on,
21 but just to be safe.

22 (The jury exits the courtroom at 9:36 AM.)

23 (The jury enters the courtroom at 9:37 AM.)

24 THE COURT: Sorry about that.

25 When we start in just a few minutes, the State

1 will open by making an opening statement. The
2 opening statements, that is not evidence in the
3 case; that's simply what the lawyers will tell you
4 what their positions are, what they're attempting to
5 prove, and sort of give you a roadmap of the case
6 and tell you a little about the case and what you'll
7 be hearing. Once they're done with opening
8 statements, we'll take testimony and make final
9 arguments. And once final arguments are made, I'll
10 charge you on the law, and then you'll be in a
11 position to decide the case.

12 This is a criminal case, so the State has to
13 prove their case to you beyond a reasonable doubt.
14 If we were next door with Judge Newman, they're
15 trying a condemnation case, it's a civil case where
16 you're attempting to decide which party should
17 receive monetary damages. The parties come in on
18 equal footing and the person trying to prove his
19 case in a civil case has to prove it by the
20 preponderance or the greater weight of the evidence.
21 For the plaintiff to prevail, he has to tip the
22 scales of justice ever so slightly. He has to prove
23 his case by the preponderance or the greater weight
24 of the evidence.

25 We have a different standard of proof in a

1 criminal case; someone is innocent until proven
2 guilty beyond a reasonable doubt. They come in with
3 the scales of justice in this manner, tipped in
4 their favor, and for the State to prove their case
5 beyond a reasonable doubt by this illustration, they
6 have to tip the scales in that manner. So the
7 burden in a criminal case is greater than that in a
8 civil case, so please bear that in mind. I'll tell
9 you more about that at the conclusion of the case.

10 A few little ground rules: I try to be
11 efficient, try to run things efficiently, but I'm
12 not running a race up here. I try to keep things
13 moving so we can keep things moving right along.
14 We're going to order you lunch from one of the local
15 delis. Any time during the trial of the case you
16 become uncomfortable, just get tired of listening to
17 me, let me know. We'll go to 10:30 or 11:00 and
18 stop for a morning break, and then we'll stop
19 somewhere between 12:30 or 1:00 for lunch. We'll
20 come back this afternoon and run till 5:00 with an
21 afternoon break.

22 I'll tell you every time we break, please don't
23 deliberate or start talking about the trial. You
24 cannot begin your discussions about this case until
25 you've heard all of the evidence from the witness

1 stand and I charge you on the law. Then you can
2 start your deliberations. You're welcome to talk
3 about anything you want to.

4 I need a foreperson to serve as a spokesperson
5 on behalf of the jury. If you can't do that, I will
6 randomly select someone when you come out. But I
7 think you can do that, select a foreperson. So
8 we'll get started here in just a second. This is an
9 important case for the State and an important case
10 to the defendant.

11 You'll be asked to judge and determine the
12 believability and credibility of the witnesses who
13 testify. Ultimately you'll be asked to determine
14 what the true facts are in the case. And once you
15 make that determination, you'll take those true
16 facts and apply it to the law as I give it to you,
17 and then you'll be in a position to render a
18 verdict. So you determine who's telling the truth
19 and those will be the true facts.

20 Any objections to my opening remarks by the
21 State?

22 MR. MILLER: Nothing by the State.

23 MS. ALVES: Nothing, Your Honor.

24 THE COURT: Mr. Miller.

25 MR. MILLER: Thank you. May it please the

1 Court.

2 Ladies and gentlemen of the jury, good morning.
3 My name is David Miller. I'm a deputy solicitor
4 here in Aiken. And what we do is prosecute criminal
5 cases that occur in Aiken County. That's why you're
6 here today and why we're here today. Wilder Harte
7 is my co-counsel. You'll see him handle some
8 witnesses.

9 Seated on the front row is Ms. Eartha Herrin;
10 she is the victim in this case. The judge has told
11 you this is an armed robbery trial and kidnapping
12 trial. This case comes down to credibility;
13 credibility to believability. Who do you believe?

14 Now, the good news is, as each of you sit
15 there, you've already got all of the tools that you
16 need to judge credibility because you do it every
17 single day. You do it with your children, you do it
18 with your coworkers, you do it with your friends.
19 You know how to judge credibility.

20 And, ladies and gentlemen, we're going to try
21 to be efficient and we're going to try to move
22 forward in an expeditious manner. But at the end of
23 the day, you'll have to make that decision: Who's
24 credible? What are the facts? What happened?
25 You'll hear testimony about it. You'll get to see

1 some evidence and photographs and some documents and
2 some physical evidence. But at the end of the day,
3 you're going to put all that evidence together and
4 you're going to take all of the testimony that
5 you've heard and you're going to decide who's
6 telling the truth. And when you decide that
7 Ms. Eartha Herrin is truthful about her testimony,
8 there's only one way that these facts can apply to
9 the law that the judge is going to give you, and
10 that is that Waymon Newton is guilty of armed
11 robbery and he's guilty of kidnapping.

12 And hopefully not too long from now, I'll be
13 standing here and ask you to go back into your jury
14 room, ask you to deliberate collectively, and
15 collectively come to the decision that Waymon Newton
16 is guilty of armed robbery and he's guilty of
17 kidnapping and return those verdicts, because that's
18 the fact. Thank you.

19 THE COURT: Ms. Alves.

20 MS. ALVES: May it please the Court.

21 THE COURT: Yes, ma'am.

22 MS. ALVES: Mr. Miller.

23 Ladies and gentlemen, it will be so easy to sit
24 here and say, oh, whoa, they've charged him with
25 these charges, he must be guilty. That's not what

1 you do; the judge told you that. You can't say he's
2 guilty because they charged him. It will be so easy
3 to hear the State's case and hear from Ms. Herrin
4 and say, wow, the defendant is guilty. But that's
5 not your role here either. Wait until you hear all
6 of the evidence, the testimony, and wait until the
7 end of the trial. Go into the room to deliberate
8 and then you'll decide who is credible and what
9 happened on September 29th of last year -- excuse
10 me, September 30th of last year.

11 Now, Mr. Newman sits over there an innocent
12 man; the judge told you that. He told you that
13 there's a presumption of innocence. There's/a
14 presumption of innocence, and that will stay with
15 him. If you find him guilty, it's gone; but he
16 starts an innocent man.

17 The State has the burden of proof in this case.
18 That means the State has to prove to you that
19 Mr. Newton is guilty of kidnapping, that he's guilty
20 of armed robbery, and guilty of kidnapping
21 Ms. Herrin. That's a heavy burden, because the
22 Defense doesn't have to do anything. Mr. Newton
23 doesn't even have to be present.

24 The State has to prove to you that Mr. Newton,
25 while armed with a deadly weapon, went into this

1 business and took Ms. Herring's purse while
2 threatening her with that deadly weapon, and they
3 have to prove to you that he kidnapped her. I know
4 that's saying that's serious; he's in a trial, he
5 must be guilty. But, like I said, wait until the
6 evidence comes out. You're not going to hear
7 everything from the first, second or third witness;
8 you have to wait until all of the witnesses have
9 testified, wait until all of the evidence is in, and
10 the judge tells you what the law is.

11 The judge told you yesterday there's two judges
12 in this courtroom; he's the judge of the law, you're
13 the judges of the facts. You're the judges that's
14 going to decide what happened on that day. And,
15 ladies and gentlemen, I'm pretty confident that once
16 you've heard all of the facts and all of the law,
17 you'll find Mr. Newton not guilty of armed robbery
18 and that he's not guilty of kidnapping.

19 THE COURT: Please call your first witness.

20 MR. MILLER: Thank you, Your Honor. The State
21 calls Ms. Eartha Herrin.

22 THE COURT: Ms. Herrin, come up here, please,
23 and place your left hand on the Bible and raise your
24 right.

25

1 EARTHA HERRIN

2 being first duly sworn, testified as follows:

3 THE WITNESS: Yes.

4 THE CLERK: Have a seat in the witness box.

5 State your full name for the Court and spell your
6 last.

7 THE WITNESS: Eartha Herrin, H-E-R-R-I-N.

8 DIRECT EXAMINATION

9 BY MR. MILLER:

10 Q. Good morning, Ms. Herrin.

11 A. Good morning.

12 Q. Where do you live?

13 A. .

14 Q. Who lives with you?

15 A. My husband and my son.

16 Q. Okay. How long have you been married?

17 A. Twenty-seven years.

18 Q. And how old is your son?

19 A. Seventeen.

20 Q. Where do you work?

21 A. Bryant's Auto Sales.

22 Q. I want you to kind of flip through those
23 pictures and tell me if you recognize what those
24 pictures are.

25 A. It's a car lot and a Durango someone was

1 looking at. The offense all took place at Bryant's.

2 Q. Now, I just handed you these pictures. Do
3 those pictures fairly and accurately depict how the
4 car lot appeared on September 30th of 2014?

5 A. Yes.

6 Q. Were working there at this time?

7 A. Yes, sir.

8 MR. MILLER: Your Honor, at this time, the
9 State moves Exhibits 1 through 11 into evidence.

10 MS. ALVES: No objection, Your Honor.

11 THE COURT: Thank you.

12 (State Exhibit Nos. 1-11 marked and admitted
13 into evidence.)

14 BY MR. MILLER:

15 Q. How long have you worked at Bryant's Auto
16 Sales?

17 A. Two years.

18 Q. Where did you work before then?

19 A. Urban Outfitters.

20 Q. You said you were working September 30th of
21 2014. Why do you recall that specific day?

22 A. Because that's the day I got robbed.

23 Q. Where were you when you first saw the person
24 that robbed you?

25 A. Outside checking on another car.

1 Q. Do you remember what time of day it was?

2 A. It was close to 5:00.

3 Q. Late in the day?

4 A. Yeah late in the afternoon.

5 Q. Okay. When you saw the person that robbed you,

6 what were they doing? What was the first thing that

7 they did?

8 A. They got out the car and came over and asked

9 about a vehicle.

10 Q. Okay. Do you remember what vehicle it was that

11 they asked about?

12 A. Dodge Durango, black.

13 Q. Did you talk to him about the Durango?

14 A. Just for a brief moment.

15 Q. Then what happened?

16 A. He asked to use the bathroom.

17 Q. Did you tell him where the bathroom was?

18 A. Yes, I did.

19 Q. I'll refer you what's been entered into

20 evidence here State's Exhibit 4. Can you explain to

21 the jury what that is a picture of.

22 A. A picture of a doorway to go into the garage

23 and also where the bathroom is, through the garage.

24 Q. All right. So while the person that robbed you

25 went to the restroom, what did you do?

1 A. I went inside to get the key for the Durango.

2 Q. Then where did you go?

3 A. Outside.

4 Q. Did he come back out of the building?

5 A. Yes, sir, he did.

6 Q. At the time, late in the day of September 30th,
7 2014, was there anyone else working on the car lot
8 at that time?

9 A. Not at that time, no.

10 Q. Anyone in the garage?

11 A. No, sir.

12 Q. All right. When the person who robbed you
13 returned, what did he do?

14 A. He looked it over and said he needed to take
15 the information to his bank.

16 Q. Okay. The information on the vehicle?

17 A. Yes.

18 Q. Okay. Did he ever ask to drive the vehicle?

19 A. No.

20 Q. Okay. After he asked for the information about
21 the vehicle to take to the bank, what did you do?

22 A. Well, in order for me to get the information, I
23 would have to go inside and -- because we have it on
24 the computer.

25 Q. Okay. So did you go inside?

1 A. We went inside.

2 Q. Where was the person that robbed you when you
3 went inside?

4 A. He came into the office with me.

5 Q. Okay. So State's Exhibit 3, what is that?

6 A. That was the outside part.

7 Q. Okay. Is that the door that you went through
8 to get in?

9 A. Yes.

10 Q. Okay. And --

11 A. That's the office.

12 Q. Okay. Once you get inside -- and that's the
13 picture of the office. So you go into the office to
14 get the paperwork off the computer and he follows
15 you. What happened then?

16 A. Well, he's talking about how we must, you know,
17 make a lot of money. And I was like, no. But then
18 he also pulled a knife.

19 Q. Where did he pull a knife? Where did he get
20 it?

21 A. I'm not for sure. I didn't see that part.

22 Q. Okay. What happened next?

23 A. Then he tried to stab me with the knife, so I
24 was defending myself.

25 Q. Where were you --

1 A. Behind the desk.

2 Q. I'll get you to look at pictures. Where were
3 you when you were trying to defend him off when he
4 came at you with a knife in the office?

5 A. There. (Indicating)

6 Q. On the side with the chair or the other side of
7 the desk?

8 A. Where the chair is.

9 Q. Okay. And that's State's Exhibit 6.

10 As you were trying to fend him off with this
11 knife, what was he saying to you?

12 A. Give me the money.

13 Q. Did you have any money?

14 A. No, I didn't.

15 Q. Did the business have any money?

16 A. No, it did not.

17 Q. So what happened then?

18 A. Then, after he was trying to stab me, we
19 tussled a little bit, you know, with the knife,
20 because I'm still trying to take it away. He put
21 the knife to my throat.

22 Q. Were you standing or sitting at that time?

23 A. At that time, I was sitting.

24 Q. Okay.

25 A. And when he put the knife to my throat, he

1 said, I know you got some money in your purse.

2 Q. Okay.

3 A. And I was telling him, you know, I don't have
4 any money. He said, give me your card. I said, I
5 don't have a card. He said, where is it? I said,
6 in my purse.

7 Q. Okay. So then what happened?

8 A. He grabbed my purse and ran out the door.

9 Q. You say your purse was stolen during the
10 robbery. What were some of the things in your
11 purse?

12 A. Everything; wallet, credit cards, checkbook.

13 Q. IDs?

14 A. Keys. Everything.

15 Q. Okay. Everything you'd keep in your purse?

16 A. Yes, sir.

17 Q. Were you injured during the course of the
18 robbery?

19 A. Yes, sir I was.

20 Q. Would you describe your injuries to the jury.

21 A. Well, I was cut, the inner part of my hand,
22 around my thumb, two different cuts.

23 Q. Okay. Two different cuts, one --

24 A. This way, and one that way.

25 Q. Okay. And did you have to get treated for

1 that?

2 A. Yes, sir, I did.

3 Q. Do you know during the robbery that you got
4 cut?

5 A. No, sir. I had no clue.

6 Q. Did you have to go to the hospital?

7 A. Yes, sir, I did.

8 Q. What hospital did you go?

9 A. Aiken Regional.

10 Q. What did they do for you?

11 A. Tetanus shot and 11 stitches.

12 Q. Before you went to the hospital, did you give a
13 recorded statement to law enforcement?

14 A. No, sir.

15 Q. Did you call law enforcement after this
16 happened?

17 A. Yes, sir, I did.

18 Q. A lot of people came out?

19 A. Yes, they did.

20 Q. While you were at the hospital, did anyone from
21 the sheriff's office come and talk with you?

22 A. Yes, sir.

23 Q. Do you know who that was?

24 A. Investigator Prince.

25 Q. And did you give Investigator Prince a recorded

1 statement?

2 A. Yes, sir.

3 Q. And did you describe to Investigator Prince
4 what happened that day?

5 A. Yes, sir, I did.

6 Q. Did you describe the person that robbed you?

7 A. Yes, sir, I did.

8 Q. Do you remember what your description of him
9 was?

10 A. White male, bald, medium build.

11 Q. Okay. Did you tell Investigator Prince -- let
12 me go back.

13 Do you recall from that day what kind of
14 vehicle the person that robbed you drove up in?

15 A. Yes.

16 Q. What was it?

17 A. Black Chevy Trailblazer.

18 Q. Did you tell Investigator Prince about the
19 black Chevy Trailblazer?

20 A. Yes, sir.

21 Q. You left the hospital that day; right?

22 A. Yes, sir.

23 Q. You got stitches and a shot and they sent you
24 home?

25 A. Yes.

1 Q. When was the next time you were contacted about
2 this case by the Aiken County Sheriff's Office?

3 A. Three days later.

4 Q. Who was it that contacted you?

5 A. Investigator Cain.

6 Q. Okay. And what did they want -- why did they
7 contact you?

8 A. They wanted to know was my last name Brown.

9 Q. Okay. But it's Herrin?

10 A. Yes. Brown was my maiden name.

11 Q. And you told them that?

12 A. Yes.

13 Q. Did investigator Cain call you back later on in
14 the day?

15 A. Yes, sir.

16 Q. Why did he call you back the second time?

17 A. Said he wanted to meet with me for a photo
18 lineup.

19 Q. Okay. I'm going to show you what's marked for
20 identification as State's Exhibit 17 and ask if you
21 recognize that.

22 A. Yes, sir.

23 Q. Have you seen it before?

24 A. Yes, sir.

25 Q. Okay. This page?

1 A. Yes, sir.

2 Q. Okay.

3 MR. MILLER: Your Honor, the State would move
4 to admit State's Exhibit 17 into evidence.

5 MS. ALVES: No objection.

6 (State's Exhibit No. 17 marked and admitted
7 into evidence.)

8 BY MR. MILLER:

9 Q. Explain to the jury what that is.

10 A. That's the photo lineup that I was able to
11 identify Mr. Waymon.

12 Q. Okay. This is the photo lineup that
13 investigator Cain showed to you?

14 A. Yes, sir.

15 Q. And what picture did you point out?

16 A. Number 4.

17 Q. And did you -- is that your signature?

18 A. Yes, sir.

19 Q. This is to show that you picked number 4 out of
20 the photo lineup?

21 A. Yes, sir.

22 Q. Before September 30th, had you ever seen Waymon
23 Newton before?

24 A. No, sir, I had not.

25 Q. Do you see the person that robbed you in the

1 courtroom today?

2 A. Yes, sir, I do.

3 Q. Could you point him out for the jury and
4 explain for the record what he's wearing and
5 describe him.

6 A. Mr. Waymon Newton is the white male over there
7 with the white shirt.

8 Q. What about his hair, physical appearance?

9 A. Bald.

10 Q. Okay.

11 MR. MILLER: Your Honor, let the record reflect
12 that the victim has identified the defendant as the
13 person that robbed her.

14 THE COURT: Yes, sir.

15 BY MR. MILLER:

16 Q. Now, where were you when you met with
17 Investigator Cain to review that lineup?

18 A. At Fatz Cafe.

19 Q. What time of day?

20 A. Lunchtime.

21 Q. Did he say anything about the case prior to
22 showing you the lineup?

23 A. No.

24 Q. Did he give you any indication or hint as to
25 which person you should pick out?

1 A. No.

2 Q. After you had picked number 4 out of the lineup
3 there, did Investigator Cain tell you what his name
4 was, who he was?

5 A. Yes, sir, after.

6 Q. Okay. And after you learned what his name was,
7 did you ever recall having any type of relationship
8 with him before?

9 A. No.

10 Q. Did you ever have any business, social, or
11 personal dealings with him?

12 A. No.

13 Q. Had you ever written any personal checks to
14 him?

15 A. No.

16 Q. I'll show you what's been marked for
17 identification as State's Exhibit 18.

18 I'm going to ask you to take a look at these
19 and tell me if you recognize them.

20 A. These are some checks from my checkbook.

21 Q. Okay. Did you write those checks?

22 A. No, sir, I did not.

23 Q. Who were those checks made out to?

24 A. Waymon Newton.

25 Q. Now, when did you find out that these checks

1 existed?

2 A. A couple months ago when you contacted me.

3 Q. So those checks never came out of your bank
4 account?

5 A. No, sir.

6 Q. Did you even know those checks had been written
7 before I showed them to you?

8 A. No, sir, I did not.

9 Q. After this incident, did you contact -- well,
10 at the time of this incident, what bank did you use?

11 A. SIP Federal Credit Union.

12 Q. After this incident, did you contact the bank?

13 A. Yes, I did.

14 Q. Did you cancel your credit and debit cards?

15 A. Everything.

16 Q. How about checkbooks?

17 A. Yes, sir.

18 Q. You said your keys were in the purse. Did you
19 change the locks on your house?

20 A. Yes, sir, I did.

21 MR. MILLER: One second please.

22 BY MR. MILLER:

23 Q. Ms. Herrin, I'm going to show you what's marked
24 for identification State's Exhibit 15. Do you
25 recognize that?

1 A. Yes; that's my birth certificate.

2 MR. MILLER: Your Honor, at this time I'd ask
3 that State's Exhibit 15 be admitted into evidence.

4 MS. ALVES: No objection.

5 (State's Exhibit No. 15 marked and admitted
6 into evidence.)

7 MR. MILLER: Your Honor, at this point in time,
8 I don't have any further questions. I would like to
9 publish State's 1 through 11 to the jury at this
10 point.

11 THE COURT: You may.

12 BY MR. MILLER:

13 Q. While we're getting that up, Ms. Herrin, can
14 you tell us what's in State's Exhibit 2 here?

15 A. That's the black Dodge Durango that the
16 defendant wanted.

17 Q. Okay. He's going to put all of the photos up
18 on the screen and --

19 MR. MILLER: Your Honor, may she step down to
20 see?

21 THE COURT: She may.

22 Ladies and gentlemen of the jury, if you can't
23 see it, raise your hand.

24 BY MR. MILLER:

25 Q. Ms. Herrin, I'll ask you to describe what each

1 of those photos are --

2 THE COURT: Mr. Miller, identify them by number
3 for the record, please.

4 MR. MILLER: The first photo is State's Exhibit
5 1, Your Honor.

6 THE COURT: All right. Identify that for us.

7 THE WITNESS: The photo of the car lot.

8 BY MR. MILLER:

9 Q. All right. State's Exhibit 2?

10 A. That's the black Dodge Durango that the
11 defendant wanted.

12 Q. And State's Exhibit 3?

13 A. That's the office door to go in.

14 Q. Okay. 4?

15 A. That's the -- as soon as you walk into the
16 office, that's the door that goes out to the garage
17 also.

18 Q. Okay. 5?

19 A. And that's the office where we do all the
20 transactions at.

21 Q. Okay. 6?

22 A. And that's the desk -- that's the desk that I
23 was sitting at.

24 Q. This is the desk you were standing at when you
25 were attacked?

- 1 A. Yes, with the chair.
- 2 Q. 7?
- 3 A. That's just another desk that's in the office.
- 4 Q. 8?
- 5 A. Another photo of that same desk just showing
- 6 there.
- 7 Q. So this office has two desks in it?
- 8 A. Yes.
- 9 Q. Okay. 9?
- 10 A. That's the office. That's just that corner
- 11 where the monitor and everything is.
- 12 Q. This in the top left-hand corner, what is this?
- 13 A. That's the monitor that shows where the cameras
- 14 are.
- 15 Q. That's cameras that are around the business?
- 16 A. Yes, sir.
- 17 Q. State's Exhibit 10?
- 18 A. That's my desk.
- 19 Q. Okay. That's the desk that had all of the
- 20 stuff on it?
- 21 A. Yes.
- 22 Q. Okay. And State's Exhibit 11?
- 23 A. That's my earring and the --
- 24 Q. And your mouse pad here?
- 25 A. Yes.

1 Q. You talked about monitor with the --

2 THE COURT: Ma'am, you may sit back up here.

3 BY MR. MILLER:

4 Q. You talked about the monitor with the cameras
5 on it. Was there video surveillance at Bryant's
6 Auto Sales?

7 A. Well, it was. The camera was showing the
8 video. Yes.

9 Q. Okay. You say it was. Was there a recording
10 of this incident from those video cameras?

11 A. We found out later that it was not recording on
12 the video.

13 Q. Okay. Do you know a lot about the surveillance
14 system?

15 A. No, sir, I don't.

16 Q. Do you know more about it now than you did back
17 then?

18 A. Not much more.

19 Q. Okay.

20 MR. MILLER: Thank you, Ms. Herrin. That's all
21 I have. Please answer any questions Ms. Alves has
22 for you.

23 THE COURT: Ms. Alves.

24

25

1 CROSS-EXAMINATION

2 BY MS. ALVES:

3 Q. I'd like to go back through what you're saying
4 happened on this day.

5 Now, you testified just now that the person who
6 robbed you came up, said that -- and you said that
7 was Mr. Newton; that he came up to the business in
8 a -- I think you said it was a black Chevy
9 Trailblazer?

10 A. Yes, ma'am.

11 Q. Did you see anybody else in the car?

12 A. No.

13 Q. Could you tell if there was anybody else in the
14 car?

15 A. I couldn't because it was off in the distance.

16 Q. So you can't say whether there was somebody
17 else in the car.

18 A. No.

19 Q. Okay. You say he got out of the car and
20 immediately asked about the Dodge Durango?

21 A. Yes, sir.

22 Q. You talked for a brief moment and he asked to
23 use the bathroom?

24 A. Yes.

25 Q. And then you said that you went inside to get

1 the key to the Durango while he was in the bathroom
2 and came back outside?

3 A. Yes.

4 Q. And then after you came back outside, he came
5 back outside?

6 A. Yes.

7 Q. From the bathroom?

8 A. Yes.

9 Q. And then he looked at the vehicle at that
10 point?

11 A. Yes, ma'am.

12 Q. And where were you?

13 A. Outside -- still outside.

14 Q. Okay. And he said he was going to take his --
15 take the information to the bank?

16 A. Yes; he needed the information to take to his
17 bank.

18 Q. So it's at that point that you went inside?

19 A. Yes, ma'am.

20 Q. And went into the office?

21 A. Yes.

22 Q. And you just testified that he followed you in
23 the office and that's when he started talking about
24 how you must make a lot of money?

25 A. Yes.

1 Q. What were you doing when he made that comment?

2 A. I was looking at him at that time like no.

3 Q. Okay. So then he pulled a knife out?

4 A. Right. But I don't know where the knife came
5 from.

6 Q. I just want to be clear about what happened.

7 So you went into the office because you were going
8 to get the paperwork off the computer?

9 A. Yes.

10 Q. But you didn't get a chance to get the
11 paperwork off the computer?

12 A. No.

13 Q. Then he started saying how you must make a lot
14 of money and pulled the knife out?

15 A. Yes.

16 Q. And immediately tried to stab you?

17 A. Yes.

18 Q. And you were defending yourself?

19 A. Yes.

20 Q. Can you tell us how you were defending
21 yourself?

22 A. I was standing up maybe (demonstrating) and,
23 you know, trying to keep his hand from hitting me
24 with the knife. So --

25 Q. So you had your hands out towards him?

1 A. Yes.

2 Q. And you were standing up at this point?

3 A. Yes.

4 Q. So did you sit down at all?

5 A. Well, once he got me in the corner, I fell up
6 against -- we have a shredder in the corner. I fell
7 against the shredder, and that's where he had the
8 knife against my throat.

9 Q. Okay. So you're saying that -- at what point
10 did you fall against the shredder?

11 A. When I backed up enough, I guess.

12 Q. So you backed up and fell in the corner against
13 the shredder. So you were standing the whole time?

14 A. Not at first; once he tried to stab me.

15 Q. So you put your hands up?

16 A. Yes.

17 Q. And backing up. What did you do to defend
18 yourself?

19 A. Just trying to hold him back, keep the knife
20 from --

21 Q. Were you physically touching him?

22 A. No.

23 Q. So you were just holding your hands up?

24 A. Right.

25 Q. Okay. And then -- okay. So at this point you

1 said you fell over the shredder. And then what
2 happened?

3 A. That's when he had the knife to my throat and
4 said, you know, he wanted my money since -- and, you
5 know, we didn't have any in the office.

6 Q. Okay. Wait a minute. Before I get to that
7 part. You didn't mention the shredder when the
8 solicitor was asking the questions.

9 A. I didn't.

10 Q. Do you know why you didn't mention that part?

11 A. I just didn't think of that part.

12 Q. Okay. So how did you get up from when you fell
13 over the shredder?

14 A. After he left.

15 Q. So you were waiting in the corner over the
16 shredder until after he left?

17 A. Yes.

18 Q. Okay. Now, while you were laying in the corner
19 over the shredder, he told you to give him the
20 money?

21 A. He wanted my card because --

22 Q. I'm going through what you told the solicitor
23 when you were answering his questions. You said
24 when the solicitor asked what did he say, you said
25 he said give me the money, and you said you didn't

1 have any money. That's what you said; right?

2 A. That's what I said.

3 Q. You said the business didn't have any money?

4 A. Correct.

5 Q. Well, you didn't tell him that. You told the
6 solicitor that the business didn't have any money;
7 right?

8 A. (Nonverbal response.)

9 Q. Okay. You're saying it was at this point he
10 had the knife at your throat before he asked for
11 money?

12 A. No, not before.

13 Q. So after he asked for money?

14 A. Right.

15 Q. You told the solicitor you were sitting down;
16 you're now telling us you were laying over the
17 shredder.

18 A. I wasn't laying. I was, like, over it because
19 I tripped, maybe.

20 Q. You testified -- you said when he had the knife
21 to your throat, you were sitting down. But now
22 you're telling us you were in the corner leaning
23 over the shredder, that you had fallen over the
24 shredder.

25 A. I wasn't leaning.

1 Q. So how did you fall over the shredder?

2 A. Maybe fell, like, I was up against it, like,
3 sat on it pretty much.

4 Q. Okay. And you just said that you were against
5 the shredder until he left.

6 A. Yes.

7 Q. So at what point did you go back to sitting
8 down?

9 A. That's when I was sitting on the shredder.

10 Q. Oh, you were sitting on the shredder?

11 A. Yes.

12 Q. Okay. And then he told you that I know you
13 have money in your purse and told you to give him
14 your card.

15 A. Yes.

16 Q. Did he specify what kind of card?

17 A. No. That's when I told him, you know,
18 everything -- my card was in my purse.

19 Q. What kind of card did you think he was asking
20 for?

21 A. Any kind that you get money off of.

22 Q. Okay. Then he grabbed your purse and ran out
23 the door?

24 A. Yes.

25 Q. Okay. Now, did you immediately call the police

1 after he ran out the door?

2 A. Yes.

3 Q. And do you remember the first officer who
4 showed up?

5 A. I don't.

6 Q. You don't? A deputy came first?

7 A. I'm not for sure because they all pretty much
8 showed up at the same time.

9 Q. You talked to multiple people?

10 A. Yes, sir.

11 Q. Do you remember talking to this gentleman right
12 here, this man here?

13 A. Prince.

14 Q. Investigator Prince?

15 A. Yes.

16 Q. You talked to him at the hospital?

17 A. Yes.

18 Q. You didn't talk to him at Bryant's that day?

19 A. No.

20 Q. On that day, do you remember telling the police
21 what happened?

22 A. Yes.

23 Q. And do you recall that when you talked to the
24 officers and told them what happened, you told them
25 you were printing the information, you turned

1 around, and the man placed a knife at your throat
2 and then demanded money?

3 A. I can't remember exactly what I told them.

4 Q. Okay. Well --

5 A. But it was something of that nature.

6 Q. Okay. It's a little different than what you're
7 telling us here today. So I want to make sure I
8 have it accurate.

9 You told the police when you went to print the
10 information, you turned around, and the man had
11 placed a knife at your neck?

12 A. That may be what I said.

13 Q. Okay. And then he demanded the money after he
14 placed the knife at your neck. You admit or deny
15 that's what you told the officer?

16 A. Okay.

17 Q. Yes?

18 A. Either way, I was robbed.

19 Q. I'm just trying to get to exactly what you
20 said.

21 A. Yeah.

22 Q. And do you recall that you never told the
23 officers that the person that robbed you went to the
24 bathroom? Do you recall that you didn't mention
25 that?

1 MR. MILLER: Your Honor.

2 THE COURT: Yes, sir.

3 MR. MILLER: She's asking if she recalls not
4 saying something and -- may we approach?

5 THE COURT: Just object to the form of the
6 question.

7 MR. MILLER: Object to the form of the
8 question.

9 THE COURT: Rephrase it, please, Ms. Alves.
10 BY MS. ALVES:

11 Q. Did you tell the officers about the person
12 going to the bathroom?

13 A. I'm not sure.

14 Q. Okay. And I just want to be clear that you
15 told the officers that you turned around and there
16 was a knife to your neck. You didn't tell them you
17 were facing the person when they pulled it out. Do
18 you recall?

19 A. I'm not sure.

20 Q. You're not sure. Okay. And did you tell the
21 police that there was money taken from the business?

22 A. No.

23 Q. No?

24 A. No.

25 Q. Do you know who might have told the police that

1 money was taken from the business?

2 A. No.

3 Q. Okay. All right. And do you recall what you
4 told Investigator Prince when he came to the
5 hospital?

6 A. Yes.

7 Q. Okay. And you told Investigator Prince that
8 the person you identified as Mr. Newton came up and
9 wanted to check out the Durango, so you went and got
10 the keys and let him check out the Durango; right?

11 A. Yes.

12 Q. And then you told Investigator Prince that the
13 person asked to use the bathroom and you told them
14 they'd have to go to the back to use the bathroom?

15 A. No. I don't remember.

16 Q. You don't remember? Okay. And do you recall
17 telling Investigator Prince that when he went to the
18 bathroom, you stayed outside?

19 A. I'm not sure.

20 Q. You're not sure?

21 Okay. And do you recall that when you talked
22 to Investigator Prince, you told him that Mr. Newton
23 was outside and asked to get information about the
24 Durango? Do you recall telling him that?

25 A. Yes.

1 Q. Do you recall telling Investigator Prince you
2 were still outside and Mr. Newton came out from the
3 bathroom and asked to get the information?

4 A. After he came out from the bathroom?

5 Q. Yes.

6 A. He asked to get the information to take to the
7 bank.

8 Q. Right.

9 A. Yes.

10 Q. According to what you told Investigator Prince
11 he checked out the Durango with the keys before he
12 went to the bathroom?

13 A. No.

14 Q. No? That's not right?

15 ——— Okay. And do you recall that you told
16 Investigator Prince that you went to the computer
17 and actually gave him the information and that's
18 when he demanded the money and pulled the knife?

19 A. I can't remember.

20 Q. Okay. And you never mentioned to Investigator
21 Prince that he had pushed you to the point that you
22 had fallen over the shredder, did you?

23 A. I may not have. I'm not sure.

24 Q. Okay. Your statement was taped, wasn't it?

25 A. Yes, ma'am.

1 Q. And you don't remember everything that you
2 said?

3 A. I can't remember everything.

4 Q. Okay. Would you recognize your voice if you
5 heard it on the tape?

6 A. Yes, I would.

7 THE COURT: Mark it, ma'am.

8 MR. MILER: Your Honor, Ms. Alves has shown me
9 a copy of the interview of Ms. Herrin taken by
10 Investigator Prince. The State has no objection to
11 her showing it to the jury.

12 MS. ALVES: This will be Defense Exhibit 6.

13 (Defendant's Exhibit No. 6 marked for
14 identification.)

15 (Audio played for his Honor and the jury.)

16 BY MS. ALVES:

17 Q. Is that your voice on that tape?

18 A. Yes.

19 Q. And you're currently at the hospital?

20 A. Yes.

21 Q. And you're talking to Investigator Prince?

22 A. Yes.

23 Q. I just want to be clear now, that tape does
24 accurately reflect what you told Investigator Prince
25 that day at the hospital?

1 A. Yes.

2 Q. And you also talked about this incident with me
3 and another attorney who came from my office, didn't
4 you?

5 A. Yes.

6 Q. And do you recall what you told us?

7 A. Probably about the same thing.

8 Q. Okay. Do you recall that you never mentioned
9 that the knife was placed to your neck when you
10 talked to us a couple weeks ago?

11 A. I don't remember.

12 Q. You don't remember what you told us? Okay.

13 All right. Now I want to talk about the
14 checks. Do you admit or deny that -- let me ask you
15 this: You never gave Waymon Newton any checks?

16 A. No.

17 Q. So you're saying you did not?

18 A. No.

19 Q. Okay. And you went to the bank the very next
20 day, the very next morning, matter of fact, to let
21 the bank know that you needed to close your account?

22 A. Yes, I did.

23 Q. Okay. And you never told the police about the
24 checks, did you?

25 A. What about the checks?

1 Q. You never told the police that the checks were
2 in your purse, did you?

3 A. I told them everything that was in my purse.

4 Q. You just said everything. But --

5 A. I said everything. I mean, that was a purse.

6 Q. I understand what's in a purse now; I carry a
7 big one myself. But you never told them
8 specifically that your checkbook was in your purse,
9 did you?

10 A. I'm not for sure, because -- it's my purse. I
11 told them everything, so that includes the
12 checkbook, I would think.

13 Q. Okay. You never told the police that you never
14 went to the bank to cancel your checking account,
15 did you?

16 A. No.

17 Q. And I want to ask you about -- so when the
18 person came up to the lot -- the person you're
19 saying was Mr. Newton came to the lot, you had --
20 you gave him the keys to the vehicle?

21 A. Yes, I did.

22 Q. Where were you?

23 A. I was outside when I gave them to him.

24 Q. You were outside when you gave them to him?

25 A. Yes.

1 Q. And did you get any information from him before
2 you handed him the keys?

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

4 Q. Is it customary just to hand people keys
5 without getting their information?

6 A. Unless they're driving it off the lot, we don't
7 get their information.

8 Q. You just hand them keys if they want to look at
9 the vehicle? You don't get their license tag?

10 A. Not until they're ready to drive it off the
11 lot.

12 Q. So you don't get a first name before you hand
13 them the keys?

14 A. No.

15 Q. Did you hand him one key or more than one key?

16 A. Whatever was on that ring -- on that key ring.

17 Q. There was more than one key on the key ring?

18 A. Yes.

19 Q. I'm sorry. Are you saying today you were
20 inside or outside when he was in the bathroom? Were
21 you inside or outside? You've said other times
22 inside and other times outside, so I'm trying to be
23 sure what your story is today.

24 A. When he came up, I was already outside. He
25 asked to use the bathroom and he had mentioned he

1 wanted to look at the Durango. So while he went
2 back to the bathroom, I went in and got the key and
3 went back outside and I gave him the key outside.

4 Q. Okay. So while he was in the bathroom, you
5 were outside?

6 A. Yes.

7 Q. Okay. And was there anybody else in the
8 building?

9 A. No, ma'am.

10 Q. And all these items that were on your desk were
11 on your desk at that time?

12 A. Yes.

13 Q. Yes? Okay. I'll show you what's State's
14 Exhibit 6 so you can make sure what I'm talking
15 about. All those things were on your desk when the
16 person you were saying is Mr. Newton came up and
17 they were all there when he left?

18 A. Yeah.

19 Q. Yes?

20 A. Yes.

21 Q. Okay. And your purse was sitting in the
22 office?

23 A. Yes, ma'am.

24 Q. Okay. I believe I'm showing you what's marked
25 State's Exhibit 9. So where was your purse in

1 State's Exhibit 9?

2 A. In that corner there. (Indicating)

3 Q. Okay. I want to be clear now. So across from
4 your desk is a beige file cabinet?

5 A. Yes. And then on the other side is a little
6 black shelf.

7 Q. A little black shelf?

8 A. Yes. My purse was on the self.

9 Q. Okay. So your purse was open, out in the open?

10 A. Yes.

11 Q. Okay. Showing you what's marked as Defendant's
12 Exhibits 1 and 2. Do you recognize those?

13 A. That's the front door of the office. And
14 that's the office -- inside the office.

15 MS. ALVES: Okay. Your Honor, at this time I
16 move Defendant's Exhibit Nos. 1 and 2.

17 MR. MILLER: No objection.

18 (Defendant's Exhibit Nos. 1 and 2 marked and
19 admitted into evidence.)

20 BY MS. ALVES:

21 Q. I'm showing you Defendant's Exhibit 3. Do you
22 recognize that?

23 A. That's the monitor that's inside the office.

24 Q. It's actually a close-up of the monitors?

25 A. Yes.

1 MS. ALVES: At this time I'd move Defendant's
2 Exhibit 3.

3 MR. MILLER: No objection, Your Honor.

4 (Defendant's Exhibit No. 3 marked and admitted
5 into evidence.)

6 BY MS. ALVES:

7 Q. I'm going to ask you about Defendant's Exhibit
8 3. Now, it's showing different scenes from around
9 the business. And this business, Bryant's Auto
10 Sales, is actually equipped with multiple cameras.
11 Now, I don't know about any hidden cameras, but there
12 are multiple cameras that are openly visible to the
13 public.

14 A. Right.

15 Q. Not trying to hide that you got cameras; right?

16 A. Yes.

17 Q. And on this day, September 30th of 2014, those
18 cameras were there?

19 A. Yes.

20 Q. Outside the business?

21 A. Uh-huh.

22 Q. Inside the office?

23 A. Uh-huh.

24 Q. Inside the waiting room?

25 A. Uh-huh.

1 Q. Inside the garage?

2 A. Yes.

3 Q. And these monitors show the pictures that were
4 being viewed on -- through the cameras?

5 A. Yes.

6 Q. Okay. And the monitor was actually on that
7 day, wasn't it?

8 A. Yes.

9 Q. And it actually showed these scenes, didn't it?

10 A. Yes.

11 Q. So you thought the monitor was on?

12 A. Yes.

13 Q. Okay. The monitor was on, actually, but it was
14 not recording?

15 A. Correct.

16 Q. And now you're saying it wasn't recording why;
17 just wasn't working?

18 A. Correct.

19 Q. Okay. Do you remember telling the police
20 originally that you had forgotten to turn the
21 monitor on?

22 A. No.

23 Q. You never told the investigators that you
24 forgot to --

25 A. No.

1 Q. Is it part of your job to turn it on?

2 A. No, ma'am. It's already on.

3 Q. So you didn't tell Investigator Prince that
4 you're supposed to turn it on and that you hadn't
5 turned it on that day?

6 A. Nope. I don't do anything with the monitors.

7 Q. Okay. Now I'm showing you what's marked as
8 State's Exhibit No. 5 [sic]. Do you recognize that?

9 A. I guess that's on the mailbox.

10 Q. So is that a picture of the mailbox that's in
11 front of Bryant's Auto Sales?

12 A. I hadn't really noticed if that's it.

13 Q. Okay. Well, I'll show you another picture.

14 MS. ALVES: I'm sorry. That was Defendant's
15 Exhibit No. 5, Judge. I'm sorry.

16 (Defendant's Exhibit No. 7 marked for
17 identification.)

18 BY MS. ALVES:

19 Q. Showing you what's marked as Defendant's
20 Exhibit 7, do you recognize that?

21 A. Yes. That's the mailbox in front of the
22 office.

23 Q. So that's a picture of Bryant's Auto Sales?

24 A. Yes.

25 Q. Not how it looked October 30th [sic]; right?

1 A. No.

2 Q. Actually, it's how it looked about two weeks
3 ago; right?

4 A. Yes.

5 Q. But the mailbox has been there since you've
6 been there?

7 A. Yes.

8 Q. And that's the same mailbox that was there
9 October 30th?

10 A. Yes.

11 Q. Now I'm showing you Defendant's Exhibit 5. Do
12 you now recognize that as --

13 THE COURT: Are you saying October 30th or --

14 MS. ALVES: I'm sorry. I keep saying October.
15 It's September 30th.

16 BY MS. ALVES:

17 Q. Do you recognize Defendant's Exhibit No. 5?

18 A. Yes.

19 Q. And this is the mailbox that's in front of
20 Bryant's Auto Sales?

21 A. Yes.

22 Q. And is that how the mailbox looked last
23 September 30th?

24 A. Yes.

25 MS. ALVES: Your Honor, at this time I'd move

1 in Defendant's Exhibits 5 and 7.

2 MR. MILLER: No objection, Your Honor.

3 (Defendant's Exhibit Nos. 5 and 7 admitted into
4 evidence.)

5 BY MS. ALVES:

6 Q. I'm showing you Defendant's No. 4. Do you
7 recognize that?

8 A. It may be the -- I'm not sure.

9 Q. Okay. Well, let me show you what's in State's
10 No. 7. Do you recognize State's No. 7?

11 A. Yeah.

12 Q. It's a picture of the second desk in your
13 office.

14 A. Yes.

15 Q. And Defendant's No. 4 is just a close-up of
16 that picture?

17 A. Yes.

18 Q. All right. I just want to clarify, you're
19 saying you'd never met Mr. Newton before?

20 A. No, ma'am.

21 Q. Never had contact with him previously?

22 A. No, ma'am.

23 Q. Now I just want to be clear. You didn't know
24 your checks had been cashed until the police told
25 you?

1 A. Yes, ma'am.

2 Q. But you never told the police that you had
3 notified the bank?

4 A. They didn't ask me. I just knew that they were
5 stolen, so I went to the bank myself. So I didn't
6 try to tell them nothing.

7 MS. ALVES: I beg the Court's indulgence.

8 Judge, I want to clarify that all of Defense
9 Exhibits 1 through 7 are in evidence.

10 THE COURT: Who are you asking?

11 MS. ALVES: I just --

12 THE COURT: I've got 1, 2, 3, 4, 5, 6 and 7.

13 MS. ALVES: Thank you. No further questions.

14 (Defendant's Exhibit No. 4 admitted into
15 evidence.)

16 THE COURT: Mr. Miller, redirect?

17 REDIRECT EXAMINATION

18 BY MR. MILLER:

19 Q. You don't have any involvement with the
20 security system at all; correct?

21 A. No.

22 Q. You don't do anything for the business relating
23 to the security system?

24 A. No, sir.

25 Q. Okay. And when you're talking about this

1 shredder in this corner, can you point out which
2 corner you're talking about?

3 A. Behind that chair. (Indicating)

4 MR. MILLER: This is State's Exhibit 6, Your
5 Honor, the corner of the office behind where the
6 chair is in this photograph.

7 BY MR. MILLER:

8 Q. And there appears to be some kind of table or
9 something with a printer or something on top of it.
10 What is that?

11 A. That's what it is; it's a printer and all that
12 sitting on the table. But the shredder is down
13 blow.

14 Q. Okay. So it's back in this corner behind this
15 chair --

16 A. It's not under the table, it's out from under
17 the table.

18 Q. Okay. So I'm trying to understand the
19 testimony. As you're backing up, you can't back up
20 anymore, you go down onto this shredder --

21 A. Right.

22 Q. -- and that's the position you're in while he's
23 holding the knife to your throat?

24 A. Right.

25 Q. Okay. And he asks you for the business' money

1 first. And then after you tell him the business
2 doesn't have money, we don't keep money here, he
3 demands your money because the business doesn't have
4 any money.

5 A. Right.

6 Q. Tell me about that. What is that? This is
7 Defendant's Exhibit No. 4.

8 A. That's a paper towel that's on the floor.

9 Q. It's a roll of paper towels on the floor and
10 something red on the paper towels. Do you know what
11 it is?

12 A. I think it's blood.

13 Q. Do you know where the blood came from?

14 A. Probably mine.

15 Q. It's probably yours? Okay.

16 A. Because that's what I wrapped my hand with.

17 Q. That's what you had your hand on?

18 A. I wrapped my hand in the paper towel after.

19 Q. Okay. Was that while you were waiting to go in
20 the ambulance?

21 A. Right.

22 Q. Okay. Now, do you always keep paper towels on
23 the floor?

24 A. No.

25 Q. Where would that roll of paper towels have been

1 before?

2 A. With all the cleaners and everything.

3 Q. So it would have been sitting on this shelf
4 right here?

5 A. Right.

6 THE COURT: What exhibit, please?

7 MR. MILLER: I apologize, Your Honor. It's
8 State's Exhibit 8.

9 BY MR. MILLER

10 Q. Do you recall Investigator Prince telling you
11 at the hospital when he was talking to you that you
12 needed to go to the bank to cancel your credit card?
13 Do you remember him telling you that?

14 A. No.

15 Q. Okay. But the next morning you went and
16 cancelled your credit card?

17 A. Yes.

18 Q. And you closed your checking account?

19 A. Yes, sir, everything.

20 Q. Was this a stressful event for you?

21 A. Pretty much, yes, sir.

22 Q. Is it a stressful for you to sit up on the
23 stand and testify?

24 A. Yes, sir.

25 MR. MILLER: No further questions, Your Honor.

1 THE COURT: All right. Ma'am, you may step
2 down.

3 Ladies and gentlemen of the jury, we're going
4 to take our morning break. You need to select a
5 foreperson among the 12 of you. Please do not
6 discuss the case or deliberate, and we'll be right
7 back up in about 15 minutes.

8 (The jury exits the courtroom at 10:50 AM.)

9 THE COURT: Anything for the record before we
10 break by the State?

11 MR. MILLER: Your Honor, Ms. Alves and I did
12 agree to that stipulation we had discussed
13 yesterday. We actually broke it into two
14 stipulations. I would pass that up to the Court at
15 this time and would ask that we be allowed to
16 publish the stipulations to the jury as it comes up
17 during the course of the testimony.

18 THE COURT: Is that correct, Ms. Alves?

19 MS. ALVES: Yes, sir.

20 THE COURT: All right. Thank you.

21 Anything else?

22 MR. MILLER: No, sir.

23 THE COURT: Ms. Alves, anything?

24 MS. ALVES: No, sir.

25 THE COURT: All right. We'll take about a

1 15-minute break. We'll stand at ease.

2 (Short break.)

3 THE COURT: Anything by the State before we
4 start back?

5 MR. MILLER: Nothing, Your Honor.

6 THE COURT: Ms. Alves?

7 MS. ALVES: No, Your Honor.

8 THE COURT: Bring the jury in, please.

9 (The jury enters the courtroom at 11:08 AM.)

10 THE COURT: Did y'all pick a foreperson?

11 THE FOREMAN: Yes, sir.

12 THE COURT: Congratulations. First election
13 that you've won successfully?

14 THE FOREMAN: Yes, sir.

15 THE COURT: Thank you.

16 Mr. Miller.

17 MR. HARTE: The State calls Eric Bryant.

18 THE COURT: Mr. Bryant, come around, please.

19 ERIC BRYANT

20 being first duly sworn, testified as follows:

21 THE WITNESS: I do.

22 THE CLERK: Have a seat in the witness box.

23 State your full name for the Court and spell your
24 last.

25 THE WITNESS: Eric Bryant, B-R-Y-A-N-T.

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MR. HARTE:

4 Q. Good morning, Mr. Bryant.

5 A. Good morning.

6 Q. How are you today?

7 A. Just fine.

8 Q. What do you do for a living?

9 A. I'm a machine technician at
10 Bridgestone-Firestone and I am the owner of Bryant's
11 Auto Sales.

12 Q. How long have you been the owner of Bryant's?

13 A. I've been the owner for about four years.

14 Q. Do you have a surveillance system at Bryant's?

15 A. Yes, I do.

16 Q. Is it the same system that you were using in
17 September of 2014?

18 A. Yes, sir.

19 Q. Who at Bryant's is most familiar with that
20 system?

21 A. I am.

22 Q. Could you describe it for us?

23 A. It's basically just a ZSync system that has
24 eight cameras that monitors the whole area of the
25 car lot.

1 Q. Where are those cameras placed throughout the
2 building?

3 A. There's two of the outside corners, one in the
4 office, two in the lobby, there's one in the garage
5 and two on the out-back corners.

6 Q. Do you recall September 30th of last year?

7 A. Yes, I do.

8 Q. Why is that?

9 A. That was the day that I received a call that we
10 had been robbed.

11 Q. Were you asked by law enforcement to retrieve
12 surveillance recordings from that incident?

13 A. Yes.

14 Q. Were you able to do that?

15 A. No, I was not.

16 Q. Why not?

17 A. We'd -- in the past we'd -- we'd been having
18 problems with the breaker, which I notified the
19 landlord. We had weak breakers. When you use
20 certain things, like the printer, it would overload
21 and trip. And once it trips, I would have to go in
22 manually and start the recording over again,
23 which -- and normally -- I'm not there most of the
24 time, and it would have just the monitoring cameras
25 to show up and not the recording.

1 Q. Is anyone else at Bryant's familiar enough with
2 the system to restart the recordings like you?

3 A. It's password protected and I'm the only one
4 that can get in it.

5 MR. HARTE: No further questions.

6 THE COURT: Anything on cross?

7 MS. ALVES: Yes, sir.

8 CROSS-EXAMINATION

9 BY MS. ALVES:

10 Q. Do you recall talking with Investigator Prince
11 about getting the video from your system?

12 A. Yes, I do.

13 Q. And do you recall that you told him that nobody
14 had turned it on?

15 A. I don't -- I don't recall that.

16 Q. Okay. Do you remember if you told Investigator
17 Prince that you have to cut it off and on each day?

18 A. No.

19 Q. You didn't tell him that or you don't remember?

20 A. No. He asked me about it, and I explained to
21 him the same thing I just said.

22 Q. So when did you find that it was inoperable
23 because there had been a power surge?

24 A. Not a power surge. But we had a problem. The
25 landlord had to replace the whole breaker box system

1 in the back because all the -- the breaker in the
2 office kept tripping.

3 Q. Okay. Do you know how -- but you never checked
4 your security system?

5 A. I'm not -- I don't -- I work a swing-shift job
6 and I'm not there every day. Normally if it trips,
7 they would -- it would be reset from in the back.
8 And if I don't look at the screen and notice that
9 the recording is on, I would not know, they would
10 not know.

11 Q. So how were you able to tell if it's recording
12 or if it's just showing --

13 A. It shows -- it shows when it comes on
14 automatically. But it doesn't record until I go
15 in -- put my password in, go in, and start the
16 recording myself.

17 Q. So when you're not there, whose job is it to
18 start it?

19 A. No one does it but me.

20 Q. Okay. Is this every day that it's --

21 A. It's not every day it trips.

22 Q. Okay. So when the breaker box trips, then you
23 have to go in, put in your password, and restart the
24 recorder?

25 A. Right.

1 Q. But other than that, the recorder is supposed
2 to be just operational all day every day?

3 A. It just monitors.

4 Q. It just monitors?

5 A. It just shows every angle, but it doesn't
6 record that.

7 Q. Okay. It never records?

8 A. It records when I go in and I hit record.

9 Q. Okay.

10 A. But, like I said, that day, if the breaker trip
11 and the system is reset, I would have to go in, put
12 my password in and manually push record for it to
13 start back.

14 Q. Okay. How long has that been going on?

15 A. That was going on for maybe two or three weeks.
16 We actually had a problem where the breaker box
17 actually caught on fire on the side of the building,
18 so he just went on and replaced the whole thing
19 because it had weak breakers. It was a very old
20 breaker system that's in the back. And he just went
21 in and replaced everything. As you can see, there's
22 a new breaker box in there now.

23 Q. All right. So when was that replaced?

24 A. Replaced maybe a month after all this happened.

25 Q. So it was replaced sometime after September

1 30th?

2 A. After this incident happened.

3 Q. Okay. When did you find out that your system
4 was not recording?

5 A. I found out when he asked me to go in and look
6 at the recording.

7 Q. Okay. But you just testified that it had been
8 going on for a brief period before September 30th,
9 that you had to keep putting your password in.

10 A. Yes. But what I'm trying to tell you is, if
11 I'm not there and I don't know the breaker tripped,
12 that it would come on and it would look just like
13 it's recording; they would not know.

14 I would have to physically go in and check it
15 myself and start it back over. Unless they call me
16 and say, Eric, the breaker tripped, I have no idea
17 of knowing that it's not recording unless I look on
18 the screen.

19 Q. Okay. So showing you what's in Defense No. 3,
20 your screens would just look like this?

21 A. Yes.

22 Q. And everybody would think it's recording?

23 A. Right.

24 Q. So your employee, Ms. Herrin, would think it's
25 recording?

1 A. Right.

2 Q. Anyone else who comes in the business would
3 think it's recording?

4 A. Right.

5 Q. And you testified that you have eight cameras.
6 Where are the cameras?

7 A. There's two in the front, there's --

8 Q. Wait a minute. By the front, you mean the
9 front of your building?

10 A. Two on each corner of the building.

11 Q. Okay. I'm showing you what's State's No. 3.

12 A. Yes.

13 Q. So can you point out where the cameras are on
14 State's No. 3?

15 A. There's one in this corner, and you can
16 actually see this one here. (Indicating)

17 Q. Okay. So this little black spot right here
18 above the C --

19 A. Right. Right.

20 Q. -- is a camera?

21 A. Right.

22 Q. And there's one on the far end?

23 A. Right; on the other side.

24 Q. Okay. And where are the next set of cameras?

25 A. There's two in the lobby; one facing the door

1 as you walk in and another one that's facing the
2 couch.

3 Q. Okay. So I'm showing you the lobby area that's
4 in State's Exhibit 4.

5 A. Right. And the other camera would be, which is
6 not in the photo, right above the door. And it's
7 facing the main door as you come in.

8 Q. Okay. And it's visible?

9 A. Yes, it is. Well, I mean, you could miss it if
10 you don't pay close attention. But it is visible.

11 Q. But it's not -- it's not a hidden camera?

12 A. No, it's not hidden.

13 Q. Okay. And you said there's another camera that
14 would be --

15 A. There's another camera that's above the door as
16 you walk in, facing the couch.

17 Q. So it would be facing this couch that's shown
18 in State's No. 4?

19 A. Yes, right above by the exit sign.

20 Q. Okay. And then where's the next set of
21 cameras?

22 A. One in the office in the top corner, and that
23 would be right above where she said she was pinned
24 down in the corner.

25 Q. Okay.

1 A. There's one camera there. There's one in the
2 garage right on the opposite side of the door where
3 you walk into the garage where that white --

4 Q. Okay. I'll show you State's No. 3. Okay.
5 Actually, this is Defense No. 3. In the square with
6 nine squares, the square that's second down to
7 first, in the -- in the second row, first column,
8 that's actually a camera facing the garage door?

9 A. Right.

10 Q. Okay. So when the garage door is up, you can
11 see into the back of lobby. And also I want to ask
12 you, when you walk into the door that's shown in
13 State's Exhibit 4, this door leads to the garage;
14 correct?

15 A. Correct.

16 Q. So this door in State's No. 4 leads to the
17 garage. And it's the size of a one-car garage or
18 two-car garage?

19 A. A one-car garage.

20 Q. Okay. And then the bathroom is at the far end
21 of the garage?

22 A. Right.

23 Q. Right before you get to the set of garage
24 doors; is that right?

25 A. Yes.

1 Q. Okay. So the cameras show anybody going toward
2 that direction --

3 A. Yes.

4 Q. -- or it would show the back of them?

5 A. Right.

6 Q. Okay. So that makes six cameras.

7 A. Right. I think on there when those were taken,
8 I think two of them -- they were working at the time
9 or two of them were --

10 Q. But they were still -- but where were the
11 cameras actually physically located?

12 A. The two on the back. There's two more on the
13 back.

14 Q. In the back of the building?

15 A. On each corner of the building.

16 Q. In the back of the building?

17 A. Yes.

18 Q. Okay. And you had a sign on the door that's
19 shown in Defendant's Exhibit No. 1.

20 A. Yes. It says: Warning, these premises are
21 under 24-hour surveillance.

22 Q. All right. And there's a sign on your mailbox
23 that's shown in Defendant's Exhibit No. 5; is that
24 right?

25 A. Yes. This sign was there prior to me renting

1 the building.

2 Q. Okay.

3 A. I never took it down.

4 Q. Okay. But it's a sign showing a security
5 system or a security company?

6 A. Yes. That's actually for the door, not the
7 cameras.

8 Q. Okay.

9 A. Like an ADT security system.

10 Q. Okay. And I want to talk -- now, your business
11 is located on Whiskey Road?

12 A. That's correct.

13 Q. And it's actually on a -- I guess it's a --
14 there's two lanes in each direction and then a wide
15 median?

16 A. That's correct.

17 Q. And then --

18 A. Well, it's not a wide median.

19 Q. Well, a median?

20 A. Yes.

21 Q. Okay. And then there's -- across the street,
22 there's a convenience store?

23 A. Yes. That just recently opened.

24 Q. Was it open back in September?

25 A. Yes. Yes, it was.

1 Q. Okay. And it's pretty good traffic back and
2 forth?

3 A. At that hour of the day, yes, at 5:00 PM.

4 Q. But there would have been a lot of traffic?

5 A. Yes.

6 Q. And on that day and time, you had several --
7 you had a good many cars on your lot; is that
8 correct?

9 A. Yes.

10 Q. But at that time, you only had the one employee
11 working at the business, just Ms. Herrin at that
12 particular time?

13 A. Well, yes, because it was right at closing.

14 Q. Okay.

15 A. But normally, myself or my brother or the guy
16 that works on cars is normally there.

17 Q. Somebody else would be there. But on that this
18 particular day, it was -- Ms. Herrin was by herself?

19 A. Yes.

20 MS. ALVES: I don't have any further questions.

21 THE COURT: Redirect, if any.

22 MR. HARTE: Nothing from the State.

23 THE COURT: Thank you, Mr. Bryant. You're
24 excused from your subpoena, unless anybody needs him
25 further. Ms. Alves?

1 MS. ALVES: He's fine to be excused, Judge.

2 THE COURT: All right.

3 Sir, you're welcome to go or you're welcome to
4 stay.

5 Next witness.

6 MR. HARTE: The State calls Herald Craig.

7 HERALD CRAIG

8 being first duly sworn, testified as follows:

9 THE WITNESS: Yes.

10 THE CLERK: Have a seat in the witness box.
11 State your name for the Court and spell your last.

12 THE WITNESS: Herald Lee Craig, C-R-A-I-G.

13 DIRECT EXAMINATION

14 BY MR. HARTE:

15 Q. Good morning, Mr. Craig.

16 A. Good morning.

17 Q. How are you?

18 A. Good.

19 Q. What do you do for a living?

20 A. I'm the director of the water department in New
21 Ellenton.

22 Q. How long have you been in that position?

23 A. Eight years.

24 Q. Do you recall the morning of October 3rd, 2014?

25 A. Yes, sir.

1 Q. What were you doing?

2 A. I had went to Lowe's to pick up some parts and
3 I was headed back to my office.

4 Q. What road were you driving on that day?

5 A. Whiskey Road.

6 Q. Did anything happen unusual while you were
7 driving on Whiskey Road?

8 A. Yes, sir. When I went through the red light at
9 Chukker Creek, a black Chevy Trailblazer passed me
10 in the suicide lane travelling at a very high rate
11 of speed.

12 Q. What lane were you in?

13 A. I was in the fast lane, the left lane.

14 Q. And what happened after that?

15 A. I witnessed the vehicle taking a left on
16 Talatha Church Road where it wiped out and hit a big
17 pine tree.

18 Q. When you say wiped out, could you describe that
19 for us?

20 A. It rolled one time and the passenger back end
21 hit the pine tree and it spun the car all the way
22 back around where the front end was facing Highway
23 19.

24 Q. What did you do when you saw the Chevy wreck?

25 A. I pulled over onto the left-hand side of

1 Highway 19.

2 Q. Did you see anybody get out of the Chevy?

3 A. Yes, I did.

4 Q. Could you describe that man for us?

5 A. White male, bald, wearing a brown T-shirt and
6 Camo pants.

7 Q. What was he doing?

8 A. He was running away from the accident.

9 Q. In what direction was he running?

10 A. Through the pines towards the church off
11 Talatha Church Road.

12 Q. Do you see that man here today?

13 A. Yes, I do.

14 Q. Could you describe what he's wearing and where
15 he's seated?

16 A. He's seated right there beside the gentleman in
17 the suit with a white shirt on.

18 MR. HARTE: Your Honor, let the record reflect
19 he's properly identified the defendant.

20 THE COURT: Thank you.

21 (State Exhibit Nos. 12 and 13 marked for
22 identification.)

23 BY MR. HARTE:

24 Q. Mr. Craig, I'm handing you what has previously
25 been marked as State's 12 and 13 for identification

1 only. Could you please tell the jury what those two
2 things are.

3 A. That's the wrecked Chevy Trailblazer.

4 Q. What are they?

5 A. Pictures.

6 Q. Do they fairly and accurately represent the
7 wreck scene as you saw it that day?

8 A. Yes, sir.

9 MR. HARTE: Your Honor, at this time we'd enter
10 these two into evidence.

11 MS. ALVES: No objection.

12 (State Exhibit Nos. 12 and 13 admitted into
13 evidence.)

14 MR. HARTE: Nothing further.

15 THE COURT: Ms. Alves?

16 MS. ALVES: No questions.

17 THE COURT: Thank you.

18 Mr. Craig, you may step down and you're
19 released from your subpoena.

20 Next witness, please.

21 MR. MILLER: The State calls Investigator
22 Stacey Prince.

23 STACEY PRINCE

24 being first duly sworn, testified as follows:

25 THE WITNESS: I will.

1 THE CLERK: Have a seat in the witness box.
2 State your full name for the Court and spell your
3 last.

4 THE WITNESS: Stacey Prince, P-R-I-N-C-E.

5 DIRECT EXAMINATION

6 BY MR. MILLER:

7 Q. Good morning, Investigator Prince.

8 A. Good morning.

9 Q. Where do you work?

10 A. I'm employed with the Aiken County Sheriff's
11 Office.

12 Q. And how long have you worked for the sheriff's
13 office?

14 A. I've been employed with the Aiken County
15 Sheriff's Office since '96. I've been assigned to
16 the criminal investigations division since '03.

17 Q. So 12 years in criminal investigations?

18 A. Yes, sir.

19 Q. Okay. What was your involvement in the
20 investigation of the armed robbery that occurred at
21 Bryant's Auto Sales on September 30th, 2014?

22 A. September 30th, I was the investigator on-call.
23 When the sheriff's office received the initial call,
24 I was requested to respond by the uniform patrol.

25 Q. So does that make you lead investigator on it?

1 A. Lead investigator.

2 Q. Did you go to the scene of the robbery?

3 A. I did.

4 Q. When you got there, what kind of activity was
5 going on?

6 A. There was numerous uniformed deputies on the
7 scene already. They was conducting an area search
8 for the description of the vehicle. The -- I met
9 with the road supervisor, which was on scene which
10 gives us a brief description of what occurred. From
11 there, I met with the owner, Eric Bryant, spoke with
12 him for a moment. And from there, I left and went
13 to Aiken Regional Hospital.

14 Q. Okay. Why did you go to Aiken Regional?

15 A. Ms. Herrin had been transported by EMS, the
16 scene was already secured by the patrol; there was
17 nothing further for me to do at that location at the
18 time, and I needed to speak to the victim and
19 evaluate the extent of her injuries.

20 Q. Was there video surveillance that you noticed
21 at the location?

22 A. There was cameras available. I made contact
23 with Mr. Bryant and was informed that the video
24 needed to be reset or reactivated, but there was no
25 recordings or anything to secure it at that time.

1 Q. Did you ultimately interview the victim?

2 A. Yes, I did.

3 Q. Where did that interview take place?

4 A. Aiken Regional.

5 Q. Was the victim able to give you a description
6 of the person who robbed her?

7 A. Yes, sir.

8 Q. Did she indicate that she knew the robber or
9 had any familiarity with him prior to the incident?

10 A. No, she did not.

11 Q. Did you request that a photo array be produced
12 which included the image of the defendant, Waymon
13 Newton, to be shown to the victim in this case?

14 A. I did.

15 Q. So you asked for that lineup that's been
16 introduced as State's 17? I'll show it to you here.
17 You asked for this lineup to be created, State's 17?

18 A. Yes.

19 Q. Okay. Can you explain briefly to the jury how
20 that process works?

21 A. To request a lineup, SLED, South Carolina Law
22 Enforcement Division, we have a certain form we fill
23 out, and we'll e-mail that form to them. They'll
24 pull -- a lot of times they'll pull from the
25 driver's license database, and their analyst

1 compiles the lineup and will e-mail it back to us.

2 Q. And they compile these lineups based on similar
3 physical characteristics; race, build, that type of
4 thing?

5 A. Correct.

6 Q. Okay.

7 THE COURT: When was that done, Mr. Miller? I
8 missed that.

9 THE WITNESS: The lineup was requested on
10 October 3rd.

11 BY MR. MILLER:

12 Q. Okay. Let's get a little more specific. You
13 requested the photo lineup on October 3rd. When,
14 during the course of the day, did you request that
15 photo lineup?

16 A. The lineup was requested approximately around
17 11:00 -- 10:30, 11:00 that morning.

18 Q. Okay. What, specifically, led you to ask for
19 that photo lineup?

20 A. I responded -- well, I heard the call of a
21 vehicle accident that occurred right off of 19 on
22 Talatha Church Road which matched the description
23 of -- which I had earlier that week responding to
24 the robbery. The description of the individual
25 running from the vehicle matched the description I

1 received from Ms. Herrin, so we -- I, in turn,
2 responded to the vehicle accident.

3 Q. Did you contact the lieutenant that was in
4 charge of the road patrol at that time?

5 A. Yes, I did. It was actually Lieutenant
6 Padgett. He had also -- his shift was coming on and
7 he responded to the original call September 30th at
8 Bryant's Auto Sales. He was familiar with the
9 description and he had responded the bloodhound
10 tracking team to the accident as well.

11 Q. Okay. Once you got to the scene of the wreck
12 there at Whiskey Road and Talatha Church Road --
13 well, let me ask you from these -- this is State's
14 12 and 13. Looking at State's Exhibits 12 and 13,
15 was all that debris outside of the vehicle whenever
16 you came up?

17 A. Yes. That's a true and accurate picture of the
18 accident and the vehicle when I rolled up to the
19 screen. There was debris strewn a good ways around
20 the vehicle from the wreck.

21 Q. Okay. And when -- I want to show you what's
22 been marked for identification as State's Exhibit
23 14. Can you tell me what that is a photo of?

24 A. 14 is a photo of the rear part of the vehicle
25 located on the ground. There is a -- it is a birth

1 certificate with the victim's name on it.

2 Q. Okay.

3 MR. MILLER: Your Honor, at this time the State
4 would move to introduce State's Exhibit 14.

5 THE COURT: Any objection?

6 MS. ALVES: No, sir.

7 (State Exhibit No. 14 admitted into evidence.)

8 BY MR. MILLER:

9 Q. Were there other items -- I'll show you what's
10 been marked for identification as State's Exhibit
11 21, ask you to open it up and take a look at it
12 there, and ask if you can identify this.

13 A. State's Exhibit 21 is the South Carolina Health
14 Department county registration for Eartha Renee
15 Brown, which is located in State's Exhibit 14, the
16 photograph on the ground, of an ,
17 date of birth.

18 Q. Okay.

19 MR. MILLER: Your Honor, at this time I'd move
20 to introduce State's Exhibit 21.

21 MS. ALVES: No objection.

22 (State Exhibit No. 21 admitted into evidence.)

23 BY MR. MILLER:

24 Q. I'm also going to hand to you what's been
25 marked for identification as State's Exhibit 22 and

1 ask you if you can identify that.

2 A. This was a letter also located on the ground
3 addressed to a Waymon Newton of ,
4 Aiken, South Carolina.

5 Q. Okay.

6 MR. MILLER: Your Honor, we'd move to introduce
7 State's Exhibit 22 into evidence.

8 MS. ALVES: No objection.

9 (State Exhibit No. 22 admitted into evidence.)

10 BY MR. MILLER:

11 Q. And I believe when I went up there we had
12 gotten to the point that you had requested the photo
13 lineup. You said that whenever the vehicle wrecked,
14 Mr. Craig testified that the driver ran away and you
15 said that the driver ran away. Was he taken into
16 custody?

17 A. He was later taken into custody within a couple
18 pile miles of the accident scene.

19 Q. And what time, approximately, was he taken into
20 custody? Was it shortly after that?

21 A. It was within the next two and a half hours.

22 Q. Okay. After you requested the lineup, did you
23 ask anyone to show it to the victim after you got it
24 from SLED?

25 A. Yes, I did; Investigator Cain.

1 Q. Okay. After the defendant was arrested
2 following the wreck and had been identified by the
3 victim, did you continue to investigate this case?

4 A. Yes, we did.

5 Q. What did you do with the vehicle at the scene
6 there?

7 A. The vehicle was towed and secured at a secure
8 location. We obtained a search warrant for the
9 inside of the vehicle for contents, which we were
10 looking to identify anything as far as the owner or
11 any of the victim's information which could have
12 been located in the vehicle that was taken from her
13 on the day of the robbery.

14 Q. I'm going to show you what's been marked for
15 identification as State's Exhibit 16. Do you
16 recognize that?

17 A. Yes, I do.

18 Q. Can you look inside there and see what's
19 inside.

20 A. Okay. This was the search warrant from
21 execution of the search warrant that occurred on
22 October 6th. Located in the vehicle, we located one
23 photograph of two younger children -- at this point
24 we don't know who they were -- to a Bargain Blowout
25 Furniture business card, a Davis Appliance Furniture

1 card, photograph of a young black male by the name
2 of Timothy dated 2012 on it, an Aiken Regional
3 Library card with Eartha R. Herrin on the back, a
4 woman's monthly planner from 2013 with Aiken
5 Regional Medical Center with a number of different
6 names in it and different dates, a set of keys; we
7 also located an MVP card, a Bank of America
8 deposit -- just basically nothing but a deposit book
9 with Arthur N. Brown and Eartha R. Herrin, a Health
10 Connections with Trenton Herrin, a BI-LO card, two
11 receipts for Bryant's, and a business card -- well,
12 not a business card, but State Farm Insurance card
13 for Eartha and Wendell Herrin for a '97 Ford, and
14 football schedule for one of the local high schools.

15 Q. Okay. Are all of those items, items that you
16 seized pursuant to the search warrant when you
17 actually went inside the Trailblazer that wrecked?

18 A. Yes, it is.

19 MR. MILLER: Your Honor, at this time we'd move
20 to introduce State's Exhibit 16 into evidence.

21 MS. ALVES: No objection.

22 (State Exhibit No. 16 admitted into evidence.)

23 BY MR. MILLER:

24 Q. Did you do anything to follow up on the
25 investigation?

1 A. Yes. We received a number of checks written on
2 the victim's account.

3 Q. And who are those checks written to?

4 A. The defendant.

5 Q. I'll show you what's been marked for
6 identification as State's Exhibit 18 and ask if you
7 can identify these.

8 A. So we have one Bank of America check, Check No.
9 1432, written October 1st, 2014, for \$150 payable to
10 the defendant for home improvements. The second is
11 Check No. 1433, which is an SRP check written for
12 \$130 maid payable to the defendant; Check No. --

13 Q. Hold on. On that one, that's on Ms. Herrin's
14 account?

15 A. On Mrs. Eartha R. Herrin.

16 Q. And what's it for?

17 A. It's for a donation.

18 Check No. 1439 written on Eartha R. Herrin's
19 account to the defendant for \$152 for a home
20 improvement; Check No. 1440 made payable to the
21 defendant on Eartha R. Herrin's account for -- I
22 want to say it says car repairs; Check No. 1442 for
23 \$150, written on Eartha R. Herrin's account, payable
24 to the defendant for a donation, and Check No. 1441
25 for \$150 on Eartha R. Herrin's account, payable to

1 the defendant for car repairs. All these checks are
2 SRP bank checks.

3 MR. MILLER: Your Honor, we'd move to introduce
4 State's Exhibit 18 into evidence.

5 MS. ALVES: No objection.

6 (State Exhibit No. 18 admitted into evidence.)

7 (Court's Exhibit No. 1 marked for
8 identification.)

9 BY MR. MILLER:

10 Q. Investigator Prince, utilizing your resources
11 at Aiken County Sheriff's Office, were you able to
12 determine the exact time and date and place that
13 those checks were negotiated?

14 A. Yes, we were --

15 Q. Okay.

16 A. -- on several of them.

17 Q. I want to show you what's been marked as
18 Court's Exhibit No. 1. You can use that for
19 reference.

20 MR. MILLER: And, Your Honor, I would request
21 to publish Court's Exhibit No. 1 to the jury. It is
22 a stipulation that lists out the dates, times, and
23 locations that these six checks that are State's
24 Exhibits 18 were cashed, as well as the amounts of
25 those checks.

1 THE COURT: All right.

2 Mr. Foreman, ladies and gentlemen of the jury,
3 normally you are the finders of the facts when
4 people testify to determine the truth of the facts
5 being testified to. However, parties can stipulate
6 to certain facts; that means there's no disagreement
7 as to these particular facts. And instead of having
8 to call someone in from the bank to verify it,
9 they've talked about those and have come to an
10 agreement or a stipulation of facts that this
11 Court's Exhibit 1 represents a true recap of the
12 checks and where they were cashed without having to
13 call in the bank people. That is not evidence that
14 is controverted -- undisputed true facts in the
15 case.

16 BY MR. MILLER:

17 Q. Investigator Prince, after receiving the
18 information about the location and the times that
19 the checks were cashed, what did you do with that
20 information?

21 A. With the information, we -- once we received
22 the date and times of the check, the next step would
23 be to see if we could retrieve any video of the
24 checks being cashed.

25 Q. Okay. And you're talking about surveillance

1 video from, in this case, ATMs?

2 A. From ATMs, bank camera, whatever footage we
3 could get from the bank.

4 Q. Okay. And in response to your request, did you
5 get back any information from Bank of America with
6 any surveillance footage?

7 A. Yes, we did.

8 Q. I'll show you what's been marked for
9 identification a State's Exhibits 19 and 20. Are
10 those the images that were received in response to
11 your request for information from Bank of America?

12 A. Yes, they were. They were received from the --
13 at the request of when the checks were deposited.

14 Q. Okay. And do you know who the person is that's
15 in the driver's seat of that vehicle?

16 A. A.C. Cooper.

17 Q. Is it Cooper? Do you need to check a note?

18 A. Yes.

19 Q. I don't think that's the right last name. How
20 do you know this person?

21 A. By A.C.

22 Q. By A.C. Okay. We can do that.

23 MR. MILLER: Your Honor, at this time we'd move
24 to introduce State's 19 and 20.

25 MS. ALVES: No objection.

1 (State Exhibit Nos. 19 and 20 admitted into
2 evidence.)

3 BY MR. MILLER:

4 Q. Now, from those two exhibits, State's 19 and
5 20, can you identify what time and date those were
6 taken on?

7 A. State's Exhibit 20, it was taken on October
8 1st, 2014, at 15:37 hours.

9 Q. And 19?

10 A. And 19 was taken October 1st, 2014, at 15:33
11 hours.

12 Q. And does that date and time correspond to dates
13 and times in the stipulation that has been handed
14 up?

15 A. Yes, they do.

16 Q. Did you find out where the other checks had
17 been deposited besides those two that were at the --
18 well, what location were those two deposited at?

19 A. Aiken Mall.

20 Q. Okay. At an ATM or at an inside store?

21 A. At an ATM, Aiken Mall Drive.

22 Q. Okay. And where were the other checks
23 deposited?

24 A. At 1011 East Pine Log Road.

25 Q. Do you know where that is?

1 A. That's an ATM located on Pine Log Road there.

2 Q. Okay. Were you able to get any surveillance
3 from those?

4 A. No, I was not.

5 Q. And the location of this -- all of this
6 incident, the armed robbery that on September 30th,
7 that is in Aiken County, is it not?

8 A. Yes; located on Whiskey Road within Aiken
9 County.

10 MR. MILLER: Investigator Prince, please answer
11 any questions Ms. Alves has for you.

12 CROSS-EXAMINATION

13 BY MS. ALVES:

14 Q. Investigator Prince, you said that you were the
15 lead investigator for this case?

16 A. Yes, ma'am.

17 Q. Can you tell us, what does that mean?

18 A. Lead investigator is -- I basically compile the
19 majority of the information. I still get assistance
20 from different investigators and different entities
21 within the sheriff's office.

22 Q. But you're the investigator who is responsible
23 for handling the investigation of the case?

24 A. Yes. I was the one that -- the lead
25 investigator signs the warrants.

1 Q. You sign the warrants?

2 A. Yes.

3 Q. And as the lead investigator, the evidence
4 is -- you coordinate the evidence when it comes in
5 or you coordinate the keeping track of the records?

6 A. Yes, ma'am.

7 Q. And so when somebody else, like, say, the road
8 deputies, talk to a witness, you get the report and
9 then you keep a copy of that report?

10 A. Yes. If they talk to a witness or talk with
11 someone, their course of action is to do
12 supplemental report, which that supplemental report
13 is then forwarded through records to me.

14 Q. I'm sorry. I didn't --

15 A. It's forwarded through records to me.

16 Q. Okay. So they -- so whenever anybody else does
17 something in the case, they do supplemental report
18 and then they forward the records to you?

19 A. Yes, ma'am.

20 Q. Because you keep the records for the case where
21 you're the lead investigator?

22 A. Yes.

23 Q. And as the lead investigator of this case, were
24 you aware who was first on the scene when Ms. Herrin
25 called the police?

1 A. I'd have to look at the name on the initial
2 incident report.

3 Q. Do you have your report?

4 A. I do not have it with me.

5 Q. Would it refresh your memory to take a look at
6 it?

7 A. Yes, ma'am.

8 Q. Okay.

9 A. B.A. Turner was the responding deputy.

10 Q. And did Deputy Turner do a report?

11 A. He done the initial incident report.

12 Q. And that was made part of your records?

13 A. Yes. That's part of the initial case log.

14 Q. And have you reviewed those records?

15 A. Yes, ma'am.

16 Q. And Deputy Turner talked to Ms. Herrin?

17 A. Spoke with Ms. Herrin. And then when they
18 responded to the vehicle, what he done with his
19 initial report was basically got a brief statement
20 from her, which he wrote in his report what had
21 occurred there.

22 Q. Okay. And did you review that statement?

23 A. As far as the statement?

24 Q. No, the report. I'm sorry.

25 A. Yes, ma'am.

1 Q. And according to what Ms. Herrin told Deputy
2 Turner, there's no mention of anybody going to the
3 bathroom, is there?

4 A. No, ma'am.

5 Q. No?

6 A. No. When I reviewed the initial incident
7 report is the next day.

8 Q. Okay.

9 A. My investigation begins once I arrive on scene.
10 So I may not see this report until the next day.

11 Q. But you've seen it since September --

12 A. Yes.

13 Q. -- 30th -- okay.

14 And that is part of the ultimate case jacket
15 for this case?

16 A. Yes, ma'am.

17 Q. That you're the custodian of?

18 A. Yes, ma'am.

19 Q. Now, according to Deputy Turner's report, there
20 was a claim that money was taken from the business;
21 is that correct?

22 A. Yes.

23 MR. MILLER: Your Honor, objection. She's
24 trying to impeach Ms. Herrin through the report of a
25 deputy who is not here.

1 MS. ALVES: Judge, it would not be hearsay;
2 it's a record kept in the ordinary course of
3 Investigator Prince's business. He just testified
4 that --

5 THE COURT: I'll allow it.

6 BY MS. ALVES:

7 Q. According to the report, it says there was
8 money taken that was owned by the business; is that
9 correct?

10 A. According to the report, there was \$110 as far
11 as stolen property.

12 Q. And doesn't it specifically say there was \$50
13 taken from the business?

14 A. He's got listed driver's license, money, purse.

15 Q. All right. On page 4 of 4 of the report,
16 doesn't it, in fact, say that Victim No. 2 listed
17 money, \$50?

18 A. On 4 of 4?

19 THE COURT: Show it to him, please.

20 Q. (Indicating)

21 A. Victim 2 listed \$50, yes.

22 Q. And Victim 2 is who?

23 A. According to the initial incident report,
24 Victim 2 is Bryant's Auto Sales.

25 Q. So according to Deputy Turner's report, there

1 was \$50 taken from the business?

2 A. According to the report, yes.

3 Q. Okay. And according to Deputy Turner's report
4 of what Ms. Herrin told him, it says that Ms. Herrin
5 turned around and there was a knife to her neck;
6 correct?

7 A. Correct.

8 Q. And the listed items were a purse, credit
9 cards, driver's license, and money as being missing;
10 right?

11 A. Yes.

12 Q. Okay. No mention of any checks?

13 A. No, ma'am.

14 Q. Okay. And you did a supplemental report about
15 this case after you spoke with Ms. Herrin; is that
16 correct?

17 A. Yes, ma'am.

18 Q. And why would you do a supplemental report?

19 A. It's basically a synopsis of our investigation.

20 Q. Okay. So it's a synopsis of your
21 investigation?

22 A. Yes.

23 Q. Okay. So it added a lot more details of what's
24 happened since Deputy Turner would have done his
25 initial report?

1 A. Yes, ma'am.

2 Q. Okay. And you talked about when you met -- in
3 your supplemental report, you talked about when you
4 met with Ms. Herrin at the hospital?

5 A. Yes, ma'am.

6 Q. And do you recall what you wrote in your
7 supplemental report about what she told you?

8 A. My report is I met with her at Aiken Regional,
9 obtained a recorded interview from her; and in
10 reference to the interview, I referred to it as See
11 Recorded Interview.

12 Q. Okay. But you put specific details about a
13 conversation that you had with Ms. Herrin, didn't
14 you?

15 A. Yes.

16 Q. Would it refresh your recollection to see what
17 you wrote in your report?

18 A. Yes.

19 Q. Okay. Here's the supplemental.

20 A. According to Ms. Herrin, when she was outside
21 the business rearranging vehicles on the car lot,
22 the suspect arrived in a black Chevy Trailblazer.
23 She described him as white male, mid-20s, and said
24 that the white male approached her and asked her
25 about her Dodge Durango which was displayed on the

1 lot; that the white male inspected the vehicle and
2 then inquired about obtaining an information sheet
3 to provide to the bank.

4 While she was printing out the information
5 sheet, the white male asked to use the restroom,
6 walked to the rear of the business --

7 Q. Before you go any further, according to your
8 supplemental, she told you that the white male asked
9 to use the restroom after she started printing out
10 the information?

11 A. She was -- he needed a sheet to provide to the
12 bank.

13 Q. Okay. Can you -- okay. Going into that
14 paragraph, it says that Herrin stated the white male
15 inspected the vehicle and then inquired about
16 obtaining an information sheet to provide to his
17 bank.

18 A. Correct.

19 Q. Then it says: Herrin said while she was
20 printing out the information sheet, the white male
21 asked to use the bathroom and walked to the rear of
22 the business.

23 A. Yes.

24 Q. So according to what you wrote in the
25 supplemental -- and that's based on a conversation

1 that you had with Ms. Herrin?

2 A. Yes.

3 Q. She told you that the white male asked to use
4 the bathroom while she was printing the information
5 sheet.

6 A. At the time she was printing the sheet.

7 Q. Okay. And then after -- going further down
8 your supplemental, it says that it was after she
9 finished printing the information sheet when she
10 turned around and saw the white male standing in
11 close proximity demanding her purse and credit
12 cards.

13 A. Yes.

14 Q. And then she says she refused to give a -- she
15 refused to comply. Is that what it says?

16 A. Right. She refused to comply, at which time
17 the white male produced a knife and attempted to
18 stab her.

19 Q. Okay. So from what you wrote here in your
20 supplemental, she was printing the information --
21 she had finished printing the sheet, and then she
22 saw the white male standing in close proximity, he
23 demanded her purse and credit cards, and then when
24 she refused, that's when he pulled a knife out and
25 tried to stab her.

1 A. Yes.

2 Q. Okay. And then your supplemental goes on to
3 say that there was a brief scuffle --

4 A. Yes, ma'am.

5 Q. -- during which time he placed a knife to her
6 neck.

7 A. Yes, ma'am, a knife placed at her neck.

8 Q. Okay. And that's when she told him where the
9 purse was and he left?

10 A. Yes.

11 Q. That's what you wrote in your supplemental
12 based on your conversation you had with Ms. Herrin?

13 A. Yes.

14 Q. Now, in addition to -- well, let me ask you
15 this: Before we get to that -- and when you talked
16 to Ms. Herrin -- and we heard what was on the tape
17 and what she told you on the tape -- did she ever
18 tell you that there were checks missing?

19 A. No, ma'am.

20 Q. Did you ever -- did you find out when you spoke
21 to Ms. Herrin back in October that she had gone to
22 the bank? Did you find out she had gone to the
23 bank?

24 A. I don't know, but it's something I tell all my
25 victims to do.

1 Q. Okay. But you didn't know whether Ms. Herrin
2 had actually followed that advice?

3 A. No, I didn't.

4 Q. And, in fact, you didn't find out about the
5 checks until late January of this year.

6 A. Correct.

7 Q. Would it have been important to you to know
8 about the checks?

9 A. It -- the sooner the better it would have. But
10 on October 3rd, it wouldn't have made much
11 difference.

12 Q. Okay. But it -- knowing about somebody cashing
13 someone else's checks would have been useful
14 information in an investigation such as yours?

15 A. Yes, it would have.

16 Q. And in addition to talking to Ms. Herrin, you
17 spoke with Mr. Bryant?

18 A. Yes, that day.

19 Q. Eric Bryant?

20 A. Yes, that day.

21 Q. Same gentleman who testified a short while ago?

22 A. Yes, ma'am.

23 Q. And you spoke with Mr. Bryant about the --
24 obtaining video from the security system?

25 A. Yes, briefly.

1 Q. And you found out that there wasn't any video
2 available?

3 A. Correct.

4 Q. And, in fact, the information that you had is
5 that they had to cut it off and on each day. Is
6 that the information you were able to gather from
7 him?

8 A. It had to be reset or something had to be done
9 to the system. It did not record.

10 Q. But weren't you actually told that it had to be
11 cut on and off every day?

12 A. I know I was told by Bryant that it had to be
13 reset.

14 Q. Okay. And you were told that the video system
15 had been down just that day.

16 A. It was down that day, yes.

17 Q. You weren't told it was down previously?

18 A. No, ma'am.

19 Q. And do you recall whether you were told that
20 nobody had turned it on?

21 A. No, ma'am. I don't recall that.

22 Q. Okay. Do you recall giving testimony about
23 this case in a preliminary hearing on January 7th?

24 A. Yes, ma'am.

25 Q. Would it help you to take a look at what you

1 said on that day to refresh your memory?

2 A. Sure.

3 Q. (Tenders document to the witness)

4 A. Video system down, the entire video is -- how
5 long it had been down --

6 Q. One moment. You were asked, did you check the
7 property to see if there were any cameras available.

8 A. Yes.

9 Q. And you said that the video system was down?

10 A. Yes.

11 Q. And you said the entire system was down?

12 A. Yes. And it says somebody had disabled it that
13 day.

14 Q. Okay. But then you clarified it and said that
15 it wasn't that it was disabled, it was that no one
16 had turned it on.

17 A. Yes.

18 Q. And --

19 A. Basically no one had cut it on.

20 Q. No one had cut it on?

21 A. Uh-huh.

22 Q. And down here you said -- start at they.

23 A. They have to cut it on and off every day --
24 essentially every day, from what I gathered from
25 Bryant in a brief conversation.

1 Q. Okay. So in that brief conversation -- I just
2 want to be clear on what you said. It says: They
3 have to cut it on and off evidently each day --

4 A. Each day --

5 Q. -- from what I gathered from Bryant.

6 A. Correct.

7 Q. And then you were asked: So it wasn't cut on?
8 And there's no response after that.

9 A. That -- I don't know if it was cut on or how
10 they operated it that day. I just know I didn't
11 have a video of that day.

12 Q. Okay. But this was -- you testified in January
13 based on information you had obtained from Mr. Eric
14 Bryant.

15 A. That day.

16 Q. On September 30th.

17 A. September 30th.

18 Q. Okay. Thank you.

19 Now, as the lead investigator, would it be your
20 responsibility to ask for forensic assistance?

21 A. Depends. If I need forensics there after I
22 respond to a scene, I'll request them. A lot of
23 times the uniform patrol will go on and request it,
24 basically to save time.

25 Q. Okay. But if the patrol hasn't requested for

1 forensics and forensic evidence needs to be
2 collected, whose responsibility is it to ask for
3 that?

4 A. We will, investigations.

5 Q. All right. And by forensic evidence to be
6 collected, I mean, things like DNA or --

7 A. DNA, fingerprints, photographs, anything to
8 that nature.

9 Q. Okay. And did you request any forensic
10 assistance?

11 A. The day of the robbery, actually the uniform
12 patrol had already requested forensics and they were
13 en route.

14 Q. En route?

15 A. They were already en route, yes.

16 Q. All right. And do you know what forensic
17 evidence was collected?

18 A. Photographs of the incident location along with
19 latent fingerprints from the black Durango.

20 Q. The black Durango that Ms. Herrin testified
21 that she showed to Mr. Newton?

22 A. Correct.

23 Q. All right. So is that all?

24 A. As far as Chris Johnson that day, yes.

25 Q. What about any other day?

1 A. As far as on October 3rd, yes.

2 Q. Okay. I'm not talking about from the car at
3 the scene. I'm talking about from this actual
4 business.

5 A. Only thing I have is latent fingerprints and
6 photographs.

7 Q. Okay. And so on the forensics that were taken
8 from the Bryant's Auto Sales business, it's just
9 fingerprints from the Durango?

10 A. I have fingerprints from the Durango and
11 photographs from Chris Johnson.

12 Q. Okay. And these are pretty much a lot of the
13 photographs that we've been looking at here today?

14 A. Correct.

15 Q. What about -- were there any fingerprints taken
16 from the front door?

17 A. There was a latent lift from the front door.
18 I'm not sure if anything come back as far as any
19 matchable latents or anything.

20 Q. Okay. Wait a minute. So you said there were
21 only fingerprints taken of the Durango and the -- of
22 the Durango in the picture. So when was the
23 fingerprint of the door taken?

24 A. The latent lift would have been made that day.

25 Q. Okay.

1 A. But I have nothing that matches anyone in this
2 case.

3 Q. Okay. What about -- were there fingerprints
4 taken of this door, the door in the lobby going into
5 the garage area?

6 A. I do not have a work order on that.

7 Q. Were they taken?

8 A. To my knowledge, no.

9 Q. No.

10 What about the door to the bathroom? Were
11 there any fingerprints taken of the door to the
12 bathroom?

13 A. To my knowledge, no.

14 Q. Did you ask for any to be taken?

15 A. As far as forensics, once they get there, they
16 get a brief description of what occurred there and
17 they process the scene. The only time that
18 investigations requests anything specific is if
19 anything, you know, stands out.

20 Q. Okay. Well, when Ms. Herrin told you -- didn't
21 she tell you at some point that he had gone to the
22 bathroom?

23 A. Yes; when I was at the hospital.

24 Q. Did you ask forensics to go back and check the
25 door?

1 A. When -- after I finished my interview, Chris
2 Johnson had completed his investigation of the
3 location. But, no, to my knowledge, I did not ask
4 them to check it.

5 Q. Okay. But you could have?

6 A. I could have.

7 Q. Okay. And I'm showing you what's marked as
8 State's Exhibit 8. Do you recognize that as being a
9 scene from the business?

10 A. I recognize it as far as the photograph. I
11 never entered the business that day.

12 Q. Okay. So you never -- do you know whether
13 there was any forensic evidence taken from the roll
14 of paper towels?

15 A. No. I have no report on that.

16 Q. Okay. Were any swabs done to determine whose
17 blood that is?

18 A. I don't have anything in the report to reflect
19 that.

20 Q. If there had been swabs taken to determine
21 whose blood was on the paper towels, would you have
22 a report of that?

23 A. Yes, I would have a report on that from SLED.

24 Q. Okay. And I'm showing you what is in -- there
25 were some blood drops found on the top of the desk.

1 Do you recall anything about that?

2 A. I'd have to look through the photographs. Like
3 I said, I never entered the business.

4 Q. I'm sorry. But you are familiar with the
5 photographs; you have seen them before today?

6 A. Yes.

7 Q. Okay. I'm showing you what's marked as State's
8 Exhibit 11. Have you seen that picture before?

9 A. Yes.

10 Q. Do you know if there were any swabs taken to
11 determine whose blood that is?

12 A. I have no report that indicates that any swabs
13 were taken.

14 Q. Okay. So as the lead investigator for this
15 case, it would have been your responsibility to
16 coordinate talking to witnesses, if there are any
17 witnesses to be spoken to?

18 A. Yes.

19 Q. And that if there was evidence or information
20 that came your way that might lead to evidence in
21 this case, that you would then look -- you'd then be
22 the one to follow up on that information; is that
23 correct?

24 A. Either me or any fellow investigator working --
25 would working with me. Yes.

1 Q. Okay. So if there was somebody that was
2 working with you, they would follow up?

3 A. Yes.

4 Q. And if there was nobody else working with you,
5 then you'd ultimately be the responsible person for
6 following up on information?

7 A. Correct.

8 Q. Okay. Now, in addition to talking with
9 Ms. Herrin and Mr. Bryant, you also talked to
10 Mr. Newton, didn't you?

11 A. Yes, I did.

12 Q. And Mr. Newton actually asked to speak to you.

13 A. Yes.

14 Q. In January?

15 A. Yes.

16 Q. And you met with Mr. Newton.

17 A. Yes, along with one of your investigators.

18 Q. Along with one of my investigators --

19 A. Yes.

20 Q. -- and another investigator from the sheriff's
21 department.

22 A. Yes.

23 Q. And Mr. Newman talked to you about what
24 happened on that particular day.

25 A. Yes.

1 Q. And he told you some details about some things
2 that had happened prior to that day regarding his
3 relationship with Ms. Herrin.

4 A. Yes.

5 Q. And, in fact, Mr. Newton told you that he knew
6 Ms. Herrin before this day.

7 A. He did.

8 Q. And he told you that he and Ms. Herrin had been
9 involved in a drug transaction.

10 A. According to Mr. Newman, yes.

11 Q. And Mr. Newman told you that he was actually
12 purchasing drugs from Ms. Herrin.

13 A. Correct.

14 Q. And Mr. Newman told you that he had gone to the
15 business --

16 MR. MILLER: Your Honor, Ms. Alves has gone
17 into five Mister-Newman-told-yous without asking a
18 question. If there's a question to be asked, I'd
19 ask that she get to it; otherwise, I'd object to her
20 continuing to say what her client said to
21 Investigator Prince.

22 THE COURT: Well, she's on cross. She can
23 lead. Overruled.

24 BY MS. ALVES:

25 Q. And Mr. Newman told you that he had gone to the

1 business on September 29th to speak with Ms. Herrin
2 regarding this drug traction, didn't he?

3 A. Yes, he did.

4 Q. And he told you that on September 29th he went
5 to talk to Ms. Herrin because there was a dispute
6 because he had paid her for some cocaine.

7 A. Yes, he did.

8 Q. And that Ms. Herrin actually gave him -- he --
9 didn't Mr. Newton tell you that Ms. Herrin had given
10 him the checks as collateral because she did not
11 have the cocaine that he had purchased?

12 A. Yes.

13 Q. That's what he told you?

14 A. Yes.

15 Q. Okay. And those would be the checks that he
16 cashed on the 30th and the 1st?

17 A. It was an odd number of checks. I can't say
18 exactly how many he said, but it was an odd number
19 of checks.

20 Q. Okay. And didn't Mr. Newton tell you that on
21 September 29th, he left the business with the checks
22 with Ms. Herrin's consent?

23 A. He left the business with her purse.

24 Q. On the 29th?

25 A. On the 29th.

1 Q. The day before.

2 A. The day before, no.

3 Q. When he received the checks.

4 A. He talked about the checks the day of the
5 incident.

6 Q. All right. So he told you that Ms. Herrin gave
7 him checks?

8 A. Yes.

9 Q. All right. And he told you that he went to the
10 business on September 30th.

11 A. September 30th, yes.

12 Q. And that's the day that Ms. Herrin says she was
13 robbed.

14 A. Yes.

15 Q. And Mr. Newton told you that he was actually
16 there.

17 A. Yes.

18 Q. And he told you that he was there to speak with
19 Ms. Herrin again regarding this drug traction.

20 A. Yes.

21 Q. And didn't Mr. Newton tell you that Ms. Herrin
22 and him got into a dispute because she wouldn't give
23 him the drugs?

24 A. Yes. There was a dispute.

25 Q. And didn't he tell you that she, in fact,

1 assaulted him and he defended himself against her?

2 A. As far as the assault, I do not recall that. I
3 know there was something about a letter opener or a
4 knife. And the defendant admitted that he took
5 out -- left out of there with the defendant's [sic]
6 purse.

7 Q. Okay. You said you recall something about a
8 letter opener or knife.

9 A. Yes.

10 Q. Who was supposed to have the letter opener or
11 the knife?

12 A. I -- it was at one point located on the desk
13 from --

14 Q. On Ms. Herrin's desk?

15 A. On one of the desks in the office.

16 Q. Okay. Can you tell us what exactly Mr. Newton
17 told you about that?

18 A. I can't recall his exact words. I know the
19 letter opener was produced, Ms. Herrin was cut, and
20 the defendant admitted that he had taken the purse
21 and fled the store.

22 Q. So he told you he took the purse and left?

23 A. Yes.

24 Q. But he did not tell you that he had threatened
25 her?

1 A. No.

2 Q. And when did you find out about the checks?

3 A. The checks were -- would have been end of
4 February, first of March.

5 Q. Didn't Mr. Newton tell you about those checks
6 when you met with him?

7 A. He told me about them, but I did not receive a
8 copy of them or anything until later.

9 Q. Okay. Who did you get the copies from?

10 A. The Solicitor's Office.

11 Q. And Mr. Newton actually showed you copies of
12 the checks, didn't he?

13 A. Your investigator, Investigator Williams, had a
14 copy of the paperwork and all that there that day.

15 Q. The checks?

16 A. Yes.

17 Q. And that would be consistent with the paperwork
18 that was in the exhibit showing the checks?

19 A. Yes.

20 Q. Okay. And that was paperwork that was shown to
21 you when you met with Mr. Newton --

22 A. In January.

23 Q. -- at the end of January of this year?

24 A. Correct.

25 Q. And when Mr. Newton told you about the checks,

1 that's the first information you had regarding any
2 checks from Ms. Herrin; isn't that right?

3 A. Yes.

4 Q. And when did you start investigating those
5 checks?

6 A. Once we received a copy of them, we followed up
7 on them.

8 Q. Once you got a copy of them?

9 A. Yes.

10 Q. Okay. Now -- so you went -- you investigated
11 them by contacting -- did you contact Mr. Newton's
12 bank?

13 A. We contacted Bank of America.

14 Q. Bank of America?

15 A. Yes.

16 Q. Would that have been the bank where Mr. Newton
17 had his account?

18 A. Where the checks were deposited, we followed
19 through the routing number of the deposits.

20 Q. Okay. Do you know whether that was
21 Mr. Newton's account?

22 A. As far as his account, no, I did not access his
23 account.

24 Q. Excuse me?

25 A. We did not access his account.

1 Q. Okay. Well, you just read the stipulation,
2 didn't you? Do you have it up there?

3 A. Yes, ma'am.

4 Q. Doesn't that stipulation say that the checks
5 were deposited into the Bank of America checking
6 account belonging to Waymon Newton?

7 A. Yes, ma'am.

8 Q. Okay. And, once again, that was information
9 obtained from Mr. Newton. Mr. Newton told you about
10 all those checks.

11 A. About the checks. But in order to obtain the
12 photographs and all, we didn't go through Newton's
13 account.

14 Q. Okay. Now, Mr. Newton, in addition to talking
15 with you at the end of January, he also wrote you a
16 letter in February, didn't he?

17 A. Yes.

18 Q. And in that letter, he was stating some of the
19 things he had told you in January?

20 A. Yes.

21 Q. That letter didn't come from me, did it?

22 A. No. It was mailed directly to us.

23 Q. Okay. And in his letter that he wrote to you,
24 he references the copies of the checks that he
25 showed you.

1 A. Yes.

2 Q. He references his banks statement, showing
3 checks, deposits, withdrawals, et cetera.

4 A. Yes.

5 Q. And he tells you that on his statement, you'll
6 see where somebody else used his card for fraudulent
7 purchases at Dollar General and through TD Bank.

8 A. Yes.

9 Q. He told you that in the letter?

10 A. Yes.

11 Q. Okay. Did you ever follow up to see who had
12 used Mr. Newton's debit card at TD Bank or at Dollar
13 General?

14 A. No followup has been done as of yet.

15 Q. No followup done?

16 A. No.

17 Q. Okay.

18 MS. ALVES: Your Honor, at this time, I'd like
19 to publish the stipulation for Court's
20 Exhibit No. 2.

21 (Court's Exhibit No. 2 marked for
22 identification.)

23 BY MS. ALVES:

24 Q. Do you recognize Court's Exhibit 2?

25 A. Yes.

1 Q. And this is a stipulation that shows
2 transactions posted to the Bank of America account
3 belonging to Waymon Newton on the dates and times
4 indicated.

5 A. Okay. Yes, ma'am.

6 Q. And it actually shows that there were transfers
7 made out of Mr. Newton's bank account on October
8 3rd. And what time is the first transfer made?

9 A. Transfer is October 3rd at 20:27 hours.

10 Q. That would be around 8:27 at night?

11 A. Right.

12 Q. And the second transfer is made what time?

13 A. Second one is 21:52 hours --

14 Q. No, the transfer.

15 A. Sorry. 22:08 hours on October 3rd.

16 Q. So what time would that be?

17 A. About 9:30 --

18 Q. 10:08?

19 A. 10:08, yes.

20 Q. But Mr. Newton was taken into custody at what
21 time?

22 A. That afternoon around 14:00 hours.

23 Q. So 2:00?

24 A. Around 2:30.

25 Q. Okay. So Mr. Newton was taken into custody by

1 police around 2:30 that afternoon on October 3rd?

2 A. Yes.

3 Q. So he wouldn't have been able to make these
4 transfers at 8:27 and at 10:08 at night, would he?

5 A. No, ma'am.

6 Q. And Mr. Newton -- according to the stipulation,
7 it says that Mr. Newton's debit card was used on
8 October 3rd, 2014 at Dollar General four times.

9 A. Yes, four times.

10 Q. And those times are 21:52?

11 A. 21:52, 21:54, 22:00 and 22:01.

12 Q. So that would be 9:52, 9:54, 10:00 and 10:01 at
13 night?

14 A. At night.

15 Q. So that wouldn't have been Mr. Newton using
16 that card.

17 A. No.

18 Q. Okay. But Mr. Newton told you about someone
19 using the card to withdraw the money from the
20 account on that day --

21 A. And also in the letter.

22 Q. And in the letter. Okay.

23 Now, you also had information, based on a
24 letter from Mr. Newton, that two other people were
25 possibly involved with him with having these checks

1 and spending this money on these credit cards,
2 didn't you?

3 A. In the last letter I received from him, I'd
4 have to refresh -- I do not -- I recall him
5 mentioning several people in the letter.

6 Q. You mean the letter he sent you on the 4th
7 or -- would it refresh your memory for me to show
8 you what I'm talking about?

9 A. Yes.

10 Q. I'm going to show you what I am talking about.
11 He talked to you specifically about --

12 THE COURT: Wait a minute. He's refreshing his
13 memory.

14 MS. ALVES: I'm sorry. Yes, sir.

15 MR. MILLER: Your Honor, may I take a look and
16 see what letter that is? I'm not clear.

17 THE COURT: Sure.

18 MS. ALVES: It's the February 4th one.

19 MR. MILLER: The February 4th one that was sent
20 to Investigator Prince?

21 MS. ALVES: Yes.

22 THE COURT: Now, this is a letter your client
23 wrote to the investigator; right?

24 MS. ALVES: Yes, sir.

25 THE WITNESS: Okay.

1 BY MS. ALVES:

2 Q. I'm actually only asking you about what's on
3 the first page.

4 THE COURT: And I think the question was, did
5 he tell you about some other people involved in the
6 check cashing?

7 THE WITNESS: Yes, sir. Lawrence Glover.

8 BY MS. ALVES:

9 Q. So he implicates Lawrence Glover as being
10 involved in using the money out of the checking
11 account?

12 A. Yes, ma'am.

13 Q. Okay. But you -- at this point, you don't know
14 who actually used the credit card at Dollar General?

15 A. No, I do not.

16 Q. And that would have been Mr. Newton's --
17 somebody used Mr. Newton's card at Dollar General --

18 A. Yes, ma'am.

19 Q. -- on his Bank of America account?

20 A. Was it Bank of America or TD Bank.

21 Q. Well --

22 A. Bank of America.

23 Q. -- according to the stipulation, it says that
24 this would have been transactions posted to the Bank
25 of America account belonging to Waymon Newton?

1 A. Yes, Bank of America.

2 Q. So we don't know who actually used the card?

3 A. No, we do not.

4 MS. ALVES: Thank you, Your Honor. No further
5 questions.

6 THE COURT: Go ahead, Mr. Miller.

7 REDIRECT EXAMINATION

8 BY MR. MILLER:

9 Q. Investigator Prince, do you still have your
10 report up there?

11 A. Yes.

12 Q. Okay. That whole line-by-line of Ms. Alves
13 going through saying Ms. Herrin stated, Ms. Herrin
14 stated, Ms. Herrin stated, that was your recap of
15 the conversation this jury heard, wasn't it?

16 A. Correct.

17 Q. So any discrepancies between what's on that
18 tape and what's in there are not because Ms. Herrin
19 said something differently, it's just because of the
20 fact that as you were writing it down, you sometimes
21 get the details confused; right?

22 A. Correct.

23 Q. And Deputy Turner, in his report, doesn't even
24 indicate who it was that told him \$50 was taken from
25 the business, does he?

1 A. No, he does not.

2 Q. So there's nothing to indicate Ms. Herrin is
3 the person who said that to him.

4 A. Right.

5 Q. Let's talk about Mr. Newton's statements.

6 MR. MILLER: Your Honor, we need to approach
7 briefly.

8 (Sidebar conference.)

9 BY MR. MILLER:

10 Q. I want to show you what's been marked for
11 identification as State's Exhibit 23. Do you
12 recognize that?

13 A. This is a phone plan for area code
14 (

15 Q. And were those records the records provided to
16 you by the Defense to support their claim that
17 Mr. Newton was friends with somebody named Lawrence
18 Glover, the person he said would have been a suspect
19 in using his ATM card after he was put in jail?

20 A. Yes.

21 Q. So to be clear, these are the Verizon records
22 from Mr. Newton's phone -- because it doesn't have
23 his name on it; it says Pearline Hayward. But this
24 is the phone Mr. Newton claims was his --

25 A. That's what was provided to us, yes.

1 Q. Provided by the Defense?

2 A. Correct.

3 MR. MILLER: Your Honor, at this time the State
4 would move to introduce State's Exhibit 23.

5 THE COURT: Any objection, ma'am?

6 MS. ALVES: Yes, sir. I don't believe they're
7 relevant to this case.

8 THE COURT: Tell me why.

9 MS. ALVES: Judge, those telephone records are
10 of no relevancy to this case. All they do is show
11 that Mr. Newton was -- that Mr. Newton had called
12 someone named Mr. Glover at some time prior to
13 September 30th. Mr. Glover is not a party to this
14 case other than Mr. Newton telling the police that
15 he believed that Mr. Glover was the one who had used
16 his --

17 THE COURT: Well, you brought Mr. Glover into
18 the mix, so I'm going to allow it --

19 MS. ALVES: Yes, sir.

20 THE COURT: -- as being relevant.

21 Move along.

22 MR. MILLER: Thank you, Your Honor.

23 (State's Exhibit No. 23 admitted into
24 evidence.)

25 BY MR. MILLER:

1 Q. Now, you, in fact, received this information
2 and followed up on it, and you received the
3 information -- State's 18, you received these
4 checks. You said you received them from a
5 solicitor. Do you know where the solicitor got them
6 from?

7 A. From the defendant.

8 Q. So you get these six checks by way of the
9 defense attorney and me, and you follow up on these
10 six checks?

11 A. Yes, sir.

12 Q. And Mr. Newton's story to you was Ms. Herrin's
13 lying and the reason I can prove she's lying is
14 because this check right here, Check No. 1433, was
15 written on September 29th of 2014, which is actually
16 the day before the robbery; correct?

17 A. Correct.

18 Q. This was his entire defense: She's lying about
19 what happened and here's the proof.

20 A. Correct.

21 Q. Now look at the stipulation. When was
22 Check No. 1433 actually cashed?

23 A. On October 1st, 2014 at 19:33 hours at 1011
24 East Pine Log Road.

25 Q. Two days after the robbery. How about the

1 other checks? You've gone through them already with
2 the times -- or, excuse me, the amounts. But here's
3 somebody that cashes six checks -- deposits six
4 checks into his checking account, his ATM account,
5 over the course of -- when does -- according to the
6 stipulation, when is the first check -- the first
7 one of these checks, when is it cashed?

8 A. On September 30th, 2014 at 18:54 hours.

9 Q. So this armed robbery happened at 4:30 in the
10 afternoon.

11 A. Yes.

12 Q. And you said 18:54, which is...

13 A. Right about 7:00.

14 Q. So two and a half hours after the armed
15 robbery?

16 A. Correct.

17 Q. And all of the checks were cashed between two
18 hours after the armed robbery and 24 hours after
19 that?

20 A. Correct.

21 Q. So Ms. Eartha Herrin is a drug dealer. How
22 much money did he say she owed him or he owed her?

23 A. Around 17- \$1,800.

24 Q. Okay. And what was that money supposed to be
25 for?

1 A. Owed -- a non-filled order.

2 Q. A non-filled order. Was Ms. Herrin supposed to
3 be filling the order?

4 A. Yes.

5 Q. Had Mr. Newton given her \$1,800 in cash to fill
6 his drug order?

7 A. According to the defendant, yes.

8 Q. And she didn't have his money?

9 A. No, sir.

10 Q. And she didn't have his drugs?

11 A. No, sir.

12 Q. So he goes -- on the 29th, he goes and gets all
13 these checks from her. And that's what he told you:
14 I got these checks on the 29th from Eartha Herrin --

15 A. He received the checks from her.

16 Q. And then on the 30th, he goes back and he gets
17 into an argument with her?

18 A. Yes.

19 Q. And at the end of that argument, without her
20 consent, he takes her purse from her and leaves;
21 correct? That's what he told you happened?

22 A. Correct..

23 Q. The only difference is between his story and
24 Ms. Herrin's story is Ms. Herrin says he had a knife
25 when all this happened, and he says she had a letter

1 opener.

2 A. Correct.

3 Q. But you follow up. Did you contact
4 Narcotics -- well, did he make any allegations about
5 Bryant's Auto Sales to you?

6 A. Narcotics was with me during the interview.

7 Q. And why was Narcotics with you during the
8 interview?

9 A. There was allegations of narcotics
10 distributions from Bryant's.

11 Q. And was that limited to Ms. Herrin or was the
12 whole dealership into the narcotics trade?

13 A. The whole dealership.

14 Q. Did Narcotics have any information, had they
15 ever had information --

16 MS. ALVES: Objection; calls for a hearsay
17 answer.

18 THE COURT: The investigator is there.

19 MS. ALVES: Yes, sir. But the solicitor is
20 asking him about what the narcotics investigator --
21 information that the narcotics investigator had.

22 THE COURT: Restate your question.

23 Ms. Alves, you're the one who opened this door
24 about all these narcotics on behalf of the victim.

25 MS. ALVES: Yes, sir.

1 BY MR. MILLER:

2 Q. Do you recall or were you told what this \$1,800
3 unfulfilled order was for? Was it for cocaine or
4 pills or what?

5 A. Cocaine.

6 Q. Okay. The guy here in the photograph, was he
7 ever a suspect in this armed robbery?

8 A. No, he was not.

9 Q. Why was he not a suspect in this armed robbery?

10 A. I had nothing to put him at the scene at the
11 time. And, you know, with the defendant's own
12 admission, I never followed up with him. He was the
13 only one there.

14 Q. Okay. So Mr. Newton was the only one there, he
15 was driving the black Trailblazer, he went in -- and
16 this is only his version -- and he came out with
17 Ms. Herrin's purse?

18 A. Correct.

19 MR. MILLER: That's all I have, Judge.

20 THE COURT: Okay. You may step down.

21 We're going to take our lunch break now. It's
22 12:40. We'll start back at 2:00.

23 MR. MILLER: Thank you, Your Honor.

24 THE COURT: Mr. Foreman, ladies and gentlemen,
25 they've delivered the lunch. You can eat in the

1 jury room or go outside under a tree or whatever you
2 want to do. If you want to eat back there and then
3 go downstairs, take a break or whatever, we'll start
4 back at 2:00. Please don't discuss the case, don't
5 deliberate, and if anyone tries to talk to you about
6 it, tell them you're on the jury. If they insist,
7 please get their name and we'll handle it from
8 there. So we'll be back at 2:00. Enjoy your lunch.
9 Thank you.

10 (Jury exits the courtroom at 12:36 PM.)

11 THE COURT: Anything for the record before we
12 break for lunch, Mr. Miller?

13 MR. MILLER: Your Honor -- no, sir, not at this
14 time.

15 THE COURT: Ms. Alves?

16 MS. ALVES: No, sir.

17 THE COURT: All right. How many more witnesses
18 do you have?

19 MR. MILLER: We're debating that now, Your
20 Honor. We have three on the list.

21 THE COURT: You'll be finished here in a little
22 bit.

23 MR. MILLER: I suspect we'll be finished before
24 3:00.

25 THE COURT: Ms. Alves, you ready to go?

1 MS. ALVES: Yes, sir.

2 THE COURT: All right. We'll stand at ease
3 until 2:00. Thank you very much.

4 (A luncheon recess transpired at 12:47 PM.)

5 MR. MILLER: By way of scheduling, we have two
6 very brief witnesses that we'd call. Our Verizon
7 records custodian will be here by 2:30. As soon as
8 she's here, they'll bring her up and she'll bring
9 the records with her. We may be able to stipulate
10 to the records coming in. They were given to us in
11 response to a subpoena, but we'd prefer to put her
12 on the stand if we could. So if it won't cause an
13 inconvenience, we'll call her; if it is, we'll --

14 THE COURT: How many witnesses do you have,
15 Ms. Alves?

16 MS. ALVES: One, Judge.

17 THE COURT: The defendant?

18 MS. ALVES: Yes, sir.

19 THE COURT: We can finish up -- do you want to
20 argue and charge today?

21 MR. MILLER: Depends on how long Ms. Alves is.
22 I'm ready to do it.

23 MS. ALVES: I could do that today, Judge.
24 Depends on the time when Mr. Newton finishes.

25 (The jury enters the courtroom at 2:02 PM.)

1 THE COURT: All right. I think the State has
2 two or three more short witnesses and then I think
3 the Defense is going to have one witness. That's
4 going to put us -- I don't know. We'll see where we
5 are when they finish up.

6 Mr. Harte, you may call your next witness.

7 MR. HARTE: The State calls Investigator Chuck
8 Cain.

9 CHUCK CAIN

10 being first duly sworn, testified as follows:

11 THE WITNESS: Yes, ma'am.

12 THE CLERK: Have a seat in the witness box.
13 State your full name for the Court and spell your
14 last.

15 THE WITNESS: Investigator Chuck Cain, C-A-I-N.

16 DIRECT EXAMINATION

17 BY MR. HARTE:

18 Q. Good afternoon, Investigator Cain.

19 A. Sir.

20 Q. Where are you employed?

21 A. Aiken County Sheriff's Office.

22 Q. How long have you been in with the sheriff's
23 office?

24 A. Twenty-five years.

25 Q. And what is your position there?

1 A. Investigator.

2 Q. How long have you been investigator?

3 A. Twelve years.

4 Q. What was your involvement with the
5 investigation of the armed robbery that occurred
6 September 30th of Bryant's Auto Sales?

7 A. I was assigned to assist Investigator Prince
8 after the incident had already occurred.

9 Q. And what did that assistance entail?

10 A. Initially it was to collect the photo lineup
11 from SLED and present it to the victim.

12 Q. I'm handing you what's previously been entered
13 into evidence as Exhibit 17. Could you describe
14 that is.

15 A. That's the photo lineup I received from SLED.

16 Q. Is it the same photo lineup that you used in
17 your assistance of Investigator Prince on September
18 30th -- on October 3rd?

19 A. Yes, it is.

20 Q. What did you do with that lineup?

21 A. I met with the victim at Fatz Cafe and
22 presented it to her.

23 Q. When did that occur?

24 A. That was on October 3rd around 12:30, 12:40 PM.

25 Q. Did you say anything to the victim about the

1 case prior to showing her that photo lineup?

2 A. No. I had spoke to her on the phone,
3 identified myself to her, and stated that I needed
4 to meet with her on behalf of Investigator Prince.

5 Q. Did you indicate to her in any way which
6 photograph she should pick?

7 A. No, sir.

8 Q. And what did the victim do when you showed her
9 the photo lineup?

10 A. Absent hesitation, she immediately placed her
11 finger on Photograph No. 4.

12 Q. Did you ask her any questions after that?

13 A. No, sir; just presented her the statement form
14 and the -- she signed the statement form indicating
15 her selection from the lineup.

16 Q. And how long did it take her to select number
17 4?

18 A. Half a second. She went straight to it.

19 Q. Okay. At any point -- well, Investigator, let
20 me show you what's previously been admitted into
21 evidence as Exhibits 19 and 20. Could you identify
22 these for the jury?

23 A. Yes, sir. Those are surveillance imagery from
24 an ATM.

25 Q. Who is the individual seated in the passenger's

1 seat of that car?

2 A. The passenger appears to me to be the
3 defendant.

4 Q. Did you become aware of the identity of the
5 driver of that vehicle?

6 A. Yes, sir, I did; Ernest Ashley Cole, also known
7 as A.C.

8 Q. Thank you. Investigator Cain, when Mr. Newton
9 was taken into custody on October 3rd, was he taken
10 immediately to the Aiken County Detention Center?

11 A. No, sir.

12 Q. Why not?

13 A. Due to his injuries from the car wreck, he was
14 taken to Aiken Hospital emergency room.

15 Q. Did you go see him at Aiken Regional Medical
16 Center?

17 A. I followed the ambulance to the emergency room.

18 Q. What were his injuries?

19 A. What I saw were injuries, bruising to the face
20 from the car wreck, and he had broken his neck.

21 Q. Thank you.

22 MR. HARTE: No further questions, Your Honor.

23 THE COURT: Ms. Alves.

24 MS. ALVES: Nothing further.

25 THE COURT: You may step down.

1 MR. MILLER: Your Honor, the State would recall
2 Eartha Herrin.

3 THE COURT: Ms. Herrin, you're still under
4 oath, please, ma'am.

5 THE WITNESS: Yes, sir.

6

7 REDIRECT EXAMINATION

8 (Continued)

9 BY MR. MILLER:

10 Q. Ms. Herrin, you were present in the courtroom
11 for Investigator Prince's testimony, weren't you?

12 A. Yes, sir.

13 Q. And you heard about the allegations Ms. Alves
14 was making as far as what her client had told
15 Investigator Prince?

16 A. Yes, sir.

17 Q. Have you ever used illegal drugs with the
18 defendant?

19 A. No, sir.

20 Q. Have you ever purchased illegal drugs from the
21 defendant?

22 A. No, sir.

23 Q. Have you ever sold illegal drugs to the
24 defendant?

25 A. No, sir.

1 Q. I'm sorry for asking you this, but how old are
2 you?

3 A. Forty-seven.

4 Q. Have you ever been arrested before?

5 A. No, sir.

6 Q. Ms. Herrin, I'm going to show you what's been
7 marked for identification as State's Exhibit 24, and
8 I'll ask you if you can identify this item.

9 A. Yes, sir, I can.

10 Q. What is that?

11 A. This is a business card from my business,
12 Bryant's Auto Sales.

13 Q. Okay. And what's written on the back?

14 A. On the back is my home number, my cell number,
15 my office number and my e-mail address.

16 Q. And why did you write those numbers and that
17 e-mail address on there?

18 A. You asked for this information so you could
19 contact me.

20 Q. Okay. And are those numbers correct?

21 A. Yes, sir.

22 Q. Have those numbers changed since September
23 30th, 2014?

24 A. No, sir.

25 MR. MILLER: Your Honor, at this time we'd move

1 State's Exhibit 24 into evidence.

2 THE COURT: Ms. Alves?

3 MS. ALVES: I do have an objection, Your Honor.

4 Judge, it appears that this exhibit was just
5 printed out. I don't know when this exhibit was
6 made, I don't know what the relevance of this
7 exhibit would have been to -- back in September of
8 2014. And so I would object to that, that I don't
9 believe there's any relevance to it.

10 THE COURT: How is it relevant, Mr. Miller?

11 MR. MILLER: Your Honor, it's relevant because
12 her client has made an allegation through
13 Investigator Prince that this is his drug dealer he
14 gave \$1,800 to and she had \$1,800. We're going to
15 establish that he's never phoned her at any of her
16 numbers, she's never called his phone. We have his
17 information in --

18 THE COURT: I'll allow it in.

19 MR. MILLER: Thank you, Your Honor.

20 (State's Exhibit No. 24 admitted into
21 evidence.)

22 BY MR. MILLER:

23 Q. And, Ms. Herrin, for the record, when did you
24 write all this stuff down for me?

25 A. I don't remember.

1 Q. Speak up, please.

2 A. I don't remember.

3 Q. Was it during one of the times that I talked to
4 you before the trial?

5 A. Yes, sir.

6 Q. Okay. When I had come to your office?

7 A. Yes, sir.

8 Q. Okay. Aside from those three numbers that you
9 wrote down, do you get calls on any other phone
10 numbers?

11 A. No, I do not.

12 Q. And you had mentioned -- and your husband --
13 you said you've been married for 27 years. What
14 does your husband do?

15 A. He drives trucks.

16 Q. He's a truck driver?

17 A. Yes.

18 Q. Okay. Thank you.

19 MR. MILLER: No further questions, Your Honor.

20 THE COURT: Anything on cross?

21 MS. ALVES: Yes, sir.

22 RECROSS-EXAMINATION

23 BY MS. ALVES:

24 Q. Are those the same numbers that you had last
25 year --

1 A. Yes.

2 Q. -- September 30th of --

3 A. Yes, ma'am.

4 Q. And before September?

5 A. Yes.

6 Q. Okay. And those --

7 MS. ALVES: Nothing further. Thank you.

8 THE COURT: All right. Ma'am, you may step
9 down.

10 Next witness, please.

11 MR. MILLER: Your Honor, our witness from
12 Verizon was scheduled for 2:30. She's still not
13 here yet. We'd ask that we be allowed to have her
14 testify as to the authenticity of the Verizon
15 Wireless phone records. And if we could take her
16 out of order, the State is prepared to rest at this
17 point.

18 THE COURT: Any objection, Ms. Alves?

19 MS. ALVES: Yes, sir. I'd object to her being
20 called behind my witness.

21 THE COURT: What's your objection?

22 MS. ALVES: Judge --

23 THE COURT: All she's going to do is
24 authenticate some records.

25 MS. ALVES: Judge, I'm willing to stipulate to

1 Mr. Newton's Verizon records.

2 MR. MILLER: We'll get the records up, Your
3 Honor, if she's going to stipulate to them. We'll
4 have them brought up and --

5 THE COURT: I think they're behind you.

6 MR. MILLER: Oh, I'm sorry.

7 THE COURT: Show Ms. Alves to make sure. That
8 will be Court's Exhibit 3; right?

9 MR. MILLER: Your Honor, we'd ask that these be
10 admitted as Exhibits 24A --

11 THE COURT: No. I thought they were
12 stipulation.

13 MR. MILLER: I'm sorry. 25A --

14 THE COURT: I thought they were a stipulation.

15 MR. MILLER: Not as to the Verizon records.

16 That was just to the Bank of America records, Your
17 Honor.

18 MS. ALVES: I have no objection to Mr. Newman's
19 cell phone records coming in from his Verizon cell
20 phone.

21 THE COURT: Very well. So do you have
22 everything in that you need?

23 MR. MILLER: For identification on the record,
24 Your Honor, the text message records from Verizon
25 are Exhibit 25A and the historical call detail from

1 Verizon is Exhibit 25B.

2 THE COURT: Any objection, ma'am? I think you
3 just said you didn't have any objection.

4 MS. ALVES: I don't have any objection.

5 THE COURT: Thank you. So that will void the
6 necessity of the Verizon lady, man, person; correct?

7 MR. MILLER: Yes, sir.

8 THE COURT: The State rests?

9 MR. MILLER: Yes, sir.

10 (State's Exhibit Nos. 25A and 25B admitted into
11 evidence.)

12 THE COURT: That concludes the State's case in
13 chief. I need to spend some time with the lawyers.
14 Step back in your jury room and don't discuss the
15 case.

16 (The jury exits the courtroom at 2:14 PM.)

17 THE COURT: Anything for the record,
18 Mr. Miller?

19 MR. MILLER: Nothing from the State, Your
20 Honor.

21 THE COURT: Ms. Alves, on behalf of the
22 defendant?

23 MS. ALVES: Yes, Your Honor.

24 Your Honor, taking the light most favorable to
25 the State, I would move for a directed verdict on

1 Mr. Waymon Newton's behalf on the charge of armed
2 robbery and kidnapping.

3 THE COURT: Thank you. Respectfully denied.
4 Obviously, if the jury believes Ms. Herrin and the
5 State's established all the elements of armed
6 robbery and kidnapping -- her testimony is replete
7 with evidence of taking her property by use of a
8 force, i.e., a knife, and that she was detained, so
9 there's ample evidence in the record to support it
10 to the jury. Respectfully denied.

11 Anything else?

12 MS. ALVES: I don't have any further motions,
13 Your Honor, just one particular issue: Mr. Newton
14 will be testifying.

15 THE COURT: Okay.

16 Mr. Newton, if you would stand for me, please,
17 and raise your right hand.

18 WAYMON NEWTON

19 being first duly sworn, testified as follows:

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You may sit down.

22 EXAMINATION

23 (In-Camera)

24 BY THE COURT:

25 Q. Mr. Newton, we're at the stage of the trial now

1 where you, obviously, can present your defense,
2 which means you can basically tell your side of the
3 story. You can do that by calling witnesses, by
4 introducing relevant exhibits, and you can testify
5 in your own defense. If you testify, obviously
6 you'll be subjected to the same rules as everyone
7 else, which means you'll be subject to
8 cross-examination as to relevant issues.

9 As I understand, you do have a prior record for
10 armed robbery.

11 A. Yes, sir.

12 Q. And that is a -- and you've been released
13 within the last ten years; is that correct?

14 A. Yes, sir.

15 Q. So that comes under the rule which would allow
16 it to be used solely for the purposes of impeaching
17 or attacking your credibility. I would tell the
18 jury that they could use it only for that purpose
19 and not in deciding your guilt or innocence in this
20 case, and that would only be after I made a
21 determination that it was more probative than
22 prejudicial under the analysis that I have to make.

23 On the other side of the coin, obviously you
24 have the constitutional right to remain silent. No
25 one who is charged with a criminal act will ever be

1 compelled to testify against themselves in the court
2 of law or when the case is being tried. You have
3 the absolute right to remain silent. If you
4 exercise that constitutional right to remain silent,
5 I will charge and instruct the jury that they cannot
6 hold the fact that you did not testify or that you
7 do not testify against you in any manner whatsoever,
8 and it cannot be even discussed when they deliberate
9 your guilt or innocence, and absolutely no inference
10 or any other -- anything else could be read into the
11 fact that you didn't testify; in other words, it
12 cannot be mentioned, it cannot be considered, that
13 you have the absolute right to remain silent.

14 Now, obviously, that right to remain silent is
15 your decision, your choice. You can discuss it with
16 your lawyer if you need to, but, obviously, you're
17 the one who has to make that decision in the end.
18 So my question to you is, do you understand your
19 right to testify and your right to remain silent?

20 A. Yes, sir.

21 Q. Do you have any questions you'd like to ask of
22 me?

23 A. No, sir.

24 Q. Anything you need to discuss with your lawyer?

25 A. No, sir.

1 Q. All right. I need to know if you intend to
2 testify.

3 A. Yes, sir.

4 THE COURT: Anything else, Ms. Alves?

5 MS. ALVES: Yes, Your Honor. I would object to
6 any use of the armed robbery conviction. I think
7 that the prejudice would clearly outweigh the
8 probative value to the State in using that
9 conviction. There is case law which specifically
10 says that an armed robbery is not a conviction that
11 is indicative of truthfulness, so the only reason
12 that the armed robbery conviction would be used -- I
13 think the only purpose that it would serve would be
14 to prejudice the jury if they were to find out that
15 Mr. Newton has a prior conviction for armed robbery.

16 THE COURT: Mr. Miller?

17 MR. MILLER: Your Honor, since Mr. Newton's
18 release from incarceration on a 20-year sentence, he
19 does not have any new offenses until these. Given
20 the Court of Appeals' holding in the unpublished
21 case of State vs. Stephon Robinson, we're not going
22 to try to get into any of his prior convictions.
23 All of his convictions that would be used for
24 impeachment as crimes of dishonesty are well outside
25 of the ten years -- excuse me, the not crimes of

1 dishonesty are well outside the ten-year range, and
2 we just don't need to have that appellate issue, so
3 we won't be asking him about his prior record.

4 THE COURT: Very well.

5 Your prior record will not be used.

6 THE DEFENDANT: Yes, sir.

7 MS. ALVES: Yes, Your Honor. I would object
8 to -- I will not be eliciting any testimony
9 regarding the burglary case. I would object to any
10 testimony being elicited from the State regarding
11 the pending burglary charge. I don't believe that I
12 opened the door to that when I elicited prior
13 testimony, but I would -- my concern would be that
14 the prejudice from that would outweigh any probative
15 value.

16 THE COURT: Well, we've had pretrial
17 discussions on that and we've agreed not to mention
18 that. And the only way it could possibly be allowed
19 to come into the trial of the case is that if
20 Mr. Miller can convince me that you've opened the
21 door with questioning him about his -- your client's
22 interview with the investigating officer, Mr.
23 Prince, or the letters that he sent to him.

24 So cautionary, Mr. Miller: If you intend to go
25 into that field or that area, just let me know so I

1 can send the jury out so we can do a proffer so I
2 can see how it plays out before I make a ruling on
3 it. Fair enough?

4 MR. MILLER: Certainly, Your Honor.

5 MS. ALVES: Judge, could I have just a few
6 minutes to talk with Mr. Newton and then we'll be
7 ready?

8 THE COURT: Go ahead.

9 MS. ALVES: Thank you.
10 We're ready.

11 THE COURT: I'm listening -- I'm sorry. You
12 said what?

13 MS. ALVES: We're ready to proceed.

14 THE COURT: Okay. Thank you.
15 Bring the jury in, please.

16 (Jury enters the courtroom at 2:25 PM.)

17 THE COURT: Ms. Alves, you may call your first
18 witness.

19 MS. ALVES: I call Waymon Newton.

20 WAYMON NEWTON

21 being first duly sworn, testified as follows:

22 THE DEFENDANT: I do.

23 THE CLERK: Have a seat in the witness box.
24 State your full name for the Court and spell your
25 last.

1 THE DEFENDANT: Waymon Eugene Newton,
2 N-E-W-T-O-N.

3 DIRECT EXAMINATION

4 BY MS. ALVES:

5 Q. Mr. Newton, how old are you?

6 A. Thirty-eight.

7 Q. I'm sorry?

8 A. Thirty-eight.

9 Q. And where did you grow up?

10 A. Greer, South Carolina, Spartanburg County.

11 Q. And do you have any children?

12 A. I've got one son, two months old; first child.

13 Q. Just born?

14 A. I know.

15 Q. And what type of work have you done?

16 A. I mainly do home improvement; remodeling,
17 roofing, drywall, basic construction, things of that
18 nature.

19 Q. Okay. And last September you were planning to
20 go to Aiken Technical College?

21 A. Yes, I was. I was trying to decide between
22 Aiken Tech and USC Aiken.

23 Q. And you actually made an application to Aiken
24 Tech?

25 A. Yes, ma'am.

1 Q. I believe that we saw that in one of the
2 exhibits. I think it's Exhibit No. 22. Is that the
3 letter that -- it was a letter from you talking
4 about your application to Aiken Technical College?

5 A. Yes, ma'am.

6 Q. Okay. And this letter was actually found in
7 your vehicle?

8 A. Yes, ma'am. I been on the roll for
9 blueprinting and diagraming for construction.

10 Q. Okay. Now I just want to be clear now, this
11 letter was found in your vehicle?

12 A. Yes, ma'am.

13 Q. Last October the 3rd?

14 A. Yes, ma'am.

15 Q. When you had a car accident?

16 A. Yes, ma'am.

17 Q. And your vehicle was the -- it was a black
18 Chevy --

19 A. Chevy Trailblazer.

20 Q. Okay. Now I want to ask you about what was
21 going on with you last fall, and we're going to get
22 up to September 30th. And then ultimately,
23 obviously, October 3rd, you were arrested?

24 A. Yes, ma'am.

25 Q. And on October 3rd you were arrested for

1 kidnapping and --

2 A. Kidnapping and armed robbery.

3 Q. Kidnapping and armed robbery of Ms. Herrin?

4 A. Yes, 'ma'am.

5 Q. Okay. Now, do you know Ms. Herrin?

6 A. I knew her by Nae Nae. I didn't know her
7 directly as far as her -- I didn't know her actual
8 name until I received the warrant with it on there.
9 I met her at a place in New Ellenton, a house I used
10 to purchase marijuana from. Some of the other --

11 THE COURT: You met in New Ellenton what?

12 THE DEFENDANT: In New Ellenton at a house I
13 used to purchase marijuana from. Some of the other
14 occupants there, they had known her, obviously, for
15 a degree of time. I was told that she's where the
16 cocaine and the pills were coming from. They said
17 that they believe that she sold for some guy named E
18 that she worked for that owned the car lot here in
19 New Ellenton. But they didn't say that he sells
20 drugs himself or anything concerning that car lot,
21 they just said that they believed that.

22 I seen her six or seven times at that house. I
23 formally met her at a place in North Augusta outside
24 of a little business. I spoke with her, blew the
25 horn, I stopped at a red light. I want to say it

1 may have been a bank, but I'm not sure because I'm
2 not familiar with that area. She acknowledged me, I
3 pulled in and waited on her to come out. I
4 approached her, she asked me what was I doing, she
5 commented on the car that I had been driving because
6 I was driving a Lexus at that time. She told me
7 where she worked at, we spoke about the different,
8 you know, features of the cars. She asked me what
9 was I doing, just riding around? And I got to the
10 point where I just told her, no, I'm actually
11 looking for some powder that ain't been cut all to
12 hell.

13 Q. When you say powder, what did you want?

14 A. Cocaine.

15 Q. Okay.

16 A. She told me -- she said, since I know you're
17 straight, I can probably hook you up, asked me what
18 I was looking for. I said, a gram. She said if I
19 got a gram it would be \$100, but if I get
20 three-and-a-halves, that I could get it for 250.
21 That's what we agreed upon. She told me it would
22 take about an hour to get it.

23 I asked her where she wanted me to meet her at.
24 She give me her phone number and she told me I
25 needed to get a prepaid phone, not to call her or

1 she wasn't going to be calling me on my direct
2 phone. I got one of them from Walmart, called her
3 about 45 minutes later at the number she gave me.
4 She asked if I knew where the Popeye's in New
5 Ellenton was. I told her yes. She told me to meet
6 her there. I pulled in, she came around to the side
7 of the vehicle. She told me to park at the back
8 right side. She around there and we handled the
9 transaction.

10 Q. When was that?

11 A. That one right there was probably about --
12 towards the end of August.

13 Q. Okay. What additional contact did you have?

14 A. We done about four or five other transactions.
15 I met her one time at a place called Big Mo's, I
16 think it's drive-in; a meat market, I'm not exactly
17 sure of the name of it. It's -- I don't even know
18 if it's in Aiken County. I had to GPS it to get to
19 it. I think it's Clyde, Cone's, something along
20 those lines, close to -- I want to say it's close to
21 Batesburg. I'm not sure.

22 Q. Okay. What else can you tell us regarding
23 contact?

24 A. As far as what? I don't understand.

25 Q. Did you have any further contact that you can

1 tell us about before September 29th?

2 A. Just the transactions we was doing and just
3 seeing her at the house down in New Ellenton. I
4 mean, we didn't socialize or anything like that. It
5 was basically just a business arrangement.

6 Q. Okay. Now, you had a cell phone?

7 A. Yeah. I had two cell phones of my own. I had
8 an iPhone 5 and I had a Droid.

9 Q. All right. Now, did you have -- what was your
10 phone number?

11 A.

12 Q. Okay. That was your actual cell phone that you
13 had a paid plan for?

14 A. Yeah. The phone itself was given to me by a
15 friend of mine, Mr. John Brown of Aiken South
16 Carolina. It had originally been his nephew's
17 grandson, Deondre Brown. He goes to US -- I think
18 it's South Carolina State in Orangeburg. The number
19 is originally a Hampton number. That's his --
20 Deondre's grandmother. He just switched the phone
21 over to me.

22 Q. All right. I'm showing you what's been marked
23 as State's Exhibit 23. Do you recognize this?

24 A. Yeah. That's my phone plan.

25 Q. That was the phone that you used?

1 A. Yes, ma'am.

2 Q. All right. In addition to this -- this was the
3 actual phone where you paid a monthly plan for and
4 had a contract?

5 A. Well, actually, Mr. Brown did because he had
6 the line set up on it, so he's the one that the
7 contract was through.

8 Q. Okay. Well, somebody had the contract?

9 A. Yes.

10 Q. Okay. And then you said you had additional
11 phones?

12 A. Yeah. I had a Droid, but when I -- I actually
13 broke the iPhone. And once I broke it, we just
14 switched the number over to this one.

15 Q. You said you also had a phone that you bought
16 from Walmart?

17 A. Yeah. It's a prepaid phone. I mean, they're
18 commonly used in I guess what you would refer to as
19 illicit activity, drug activity, whatever, because
20 they're not easily traced. You just use them a
21 couple times and just throw them away. I mean, it's
22 not as simple to go pull the records on them as it
23 is for one that's in a name that has an account set
24 up.

25 Q. Okay. Do you recall, after you were arrested

1 for these charges, you made -- you got in contact
2 with -- or, rather, you, through me, got in contact
3 with Investigator Prince?

4 A. Yes, ma'am.

5 Q. And you talked to Investigator Prince about
6 what you're telling us today?

7 A. Yes, ma'am.

8 Q. And do you recall telling him that you met
9 Ms. Herrin on the 29th of September?

10 A. Yeah. That was -- see, we done the original
11 transaction -- monetary transaction on -- I believe
12 it was the 23rd, because I know the 30th, which was
13 on a Tuesday, made the exact seven day -- made a
14 full week on it. The transaction that was done; it
15 was \$1,800 for an ounce and a half of cocaine.

16 She delivered a half ounce. I was mad. And,
17 basically, I was mad because she started making
18 excuses that her main source was out of town. After
19 the second day of nothing coming through, I asked
20 about her just reimbursing the money. She said the
21 money was tied up in an order, she didn't have no
22 available funds herself. It eventually just kept
23 carrying on.

24 One of the other individuals who was involved
25 in the monetary aspect on my end, he told me that

1 they had checked around and that basically it was
2 alleged that she messed an order up before; some
3 issue with the money, I don't have any details of
4 that. I told them I wanted to go speak to her.

5 So I actually went to the car lot and told
6 her -- she said, you know, you still waiting. I
7 told her, look, you need to come through with
8 something because these individuals are saying that
9 they've done asked around and said that you've done
10 this before. She said, ain't nothing like that ever
11 happened, we straight, we been doing good business.
12 I told her, look, this ain't going to keep getting
13 it, because I'm going back to constantly making
14 excuses for them; it's making me look bad at the
15 same point in time, I'm really just functioning as
16 an intermediary. So --

17 Q. Mr. Newton, I need you to slow down. Okay?

18 A. Okay. Sorry.

19 Q. Please continue with what you were telling us.

20 A. Okay. So I asked at that point in time -- I
21 said, do you have any kind of alternative, you know,
22 marijuana or whatever that I can just take to fill
23 this order or could you come into some money,
24 basically like a good-faith thing so I could go back
25 and be like, look, everything is straight with this

1 right here? And she was like, no, and she offered
2 her checkbook -- her purse and personal checkbook.

3 So I asked at that time, why don't you just
4 fill out a check for the remainder due? She said
5 something along the lines of didn't want somebody to
6 find out. And something was mentioned along the
7 lines of copies. She told me -- she said, look,
8 just hold these til tomorrow, I'm working on it, be
9 patient. I was like, okay, I'll do that.

10 So she had asked me again, what bank do y'all
11 use? So I went ahead and said Bank of America,
12 because I knew if anything had to be done with those
13 checks, they had to go in my account because --

14 Q. Okay. Let me ask you this: You had an account
15 at Bank of America?

16 A. Yes, ma'am.

17 Q. And you had a debit card, Visa --

18 A. I had a debit card, Bank of America debit card,
19 and a credit card.

20 Q. Okay. But you actually had a bank account
21 at --

22 A. Yes, ma'am.

23 Q. A savings and checking?

24 A. Savings and checking.

25 Q. Please continue on what you were saying.

1 A. Okay. I agreed, you know, to take it as a
2 good-faith. When I left, I wrote a check out myself
3 for \$130 dated September 29th. I had been waiting
4 on payment for some work I had done in the Woodside
5 community, so I was running low on money. But I
6 didn't cash it that day or deposit it because I
7 wanted to honor the agreement we made, which was to
8 hold it til the next day to give her an opportunity
9 to come through. She told me --

10 Q. You wrote the check out?

11 A. Yes, ma'am.

12 Q. Okay. Why didn't you ask her to write the
13 check out when she gave it to you?

14 A. Because when she first gave it to me and I was
15 like, why don't you just write the check out, she
16 was like, no, you know, I don't want to do that,
17 because she mentioned somebody finding out or
18 something about a copy, you know. I'm leaving from
19 there, I had to go to Waynesborro the next morning.
20 I had been running low on gas myself. I had a check
21 that I received off a job, but it hadn't been able
22 to clear, so I basically just needed some money.
23 But instead of breaking the agreement that we made,
24 I just went and got some more money from Mr. Brown
25 to hold me over.

1 Q. Then what happened?

2 A. The next day -- I been down in that area, I
3 wasn't staying far from there -- I stopped by
4 probably about 11:30 or 12:00. I had actually been
5 coming from Road. I had been dating a
6 lady that lived down there. We spoke briefly, she
7 told me it's looking better, I'll give you a call
8 later on, because I had to leave probably around
9 4:00 --

10 Q. Hold on. You spoke to who?

11 A. Ms. Herrin.

12 Q. How did you speak to Ms. Herrin?

13 A. At the lot.

14 Q. Huh?

15 A. At the lot. At the car lot.

16 Q. She said it was looking better?

17 A. Yeah.

18 Q. So --

19 A. Because I just pulled in asking her what's
20 happening, you heard anything yet? So she was like,
21 I'm checking on it, I'm asking around, it's looking
22 better.

23 Q. Okay. And then what happened?

24 A. She told me she'd give me a call later on.
25 Around 4:00, I hadn't heard nothing. I tried to

1 call, couldn't get in contact with her. I went to
2 the car lot, me and another individual. When I
3 pulled in, I pulled in on the far side from the New
4 Ellenton direction. She had been out around some
5 vehicles already.

6 When I got out, I was going over to her, I
7 spoke to her. She told me I couldn't just be
8 pulling in and leaving back out after a few minutes
9 because somebody might be watching from across the
10 road. There's a store or a house or something in
11 that area. She handed me a set of keys, because she
12 was she was moving cars. She said she had to move
13 some cars. She handed me a set of keys and said,
14 these for the Dodge, you might want to trade that
15 Blazer in on it, because they're basically the same
16 vehicle.

17 I asked her, you know, have you heard anything
18 yet? She said she got tied up at work, hadn't been
19 able to call nobody, but when she finished up with
20 moving the cars, she'd do that. I got in the
21 vehicle, you know, checked it out and everything.
22 She moved the car beside it. I got out, went up
23 under the hood and was looking at it. She had come
24 walking out from the direction of the building and
25 she was like, it was still nothing. I told her,

1 look, you know, this shit ain't going to get it --

2 Q. Try not to use any profanity, if you can.

3 Okay?

4 A. I'm sorry.

5 Q. That's okay.

6 A. She was like, let me finish what I'm doing. I
7 was like, look, we need to talk because you're
8 making excuses to me, this ain't all me, I'm having
9 to go make excuses to other people for you; I mean,
10 this is the seventh day, and each time we talk you
11 tell me, oh, it's looking better or something else
12 will come through. It's just excuse after excuse
13 after excuse.

14 She told me -- she said, just let me finish
15 what I'm doing. I wiped my face with a rag because
16 I sweat real bad. She told me I could wait inside
17 where it's cool. I went to hand her the keys back.
18 She had about two or three sets of keys in her hand.
19 She told me to put them on the desk in the office.
20 I went in, put the keys on the desk. There was some
21 more keys already on it.

22 I went and sat in the lounge area. She come in
23 a few minutes later, told me to step in the office
24 because she had to finish some paperwork, and
25 mentioned something about a key safe. I went in, we

1 got to talking, discussing alternatives or if
2 there's any other option. She's basically blowing
3 smoke. So we decided the checks would have to be
4 used.

5 So she asked me again, you say it's Bank of
6 America? I said, yeah, I'm pretty sure. She said,
7 I need you to make sure. So I'm like, okay, it's
8 definitely Bank of America. She said, that's good.
9 I went out to the vehicle to get the checks. The
10 checkbook wasn't in there, because I only had a few
11 checks left in it. It wasn't in there. I come back
12 in and told her, look, I got to go get checks, it
13 will be a few minutes. She was like, no, I'm trying
14 to finish up so I can leave, because it was getting
15 towards closing time. She said, you can just fill
16 them out, keep the checks, \$200, Bank of America
17 will pay on them automatically, which they did upon
18 depositing them.

19 I told her, look, I hope nothing don't come up
20 about these checks because your name and address is
21 on them; you know, some of these people already got
22 a issue with the latest that's been taking place
23 anyway. She was like, don't worry about it, we
24 straight, just make sure you only cover the
25 remainder that's owed, and keep the checks \$200 or

1 under. So I'm like, okay. I spoke to her a little
2 more --

3 Q. Mr. Newton, I need you to slow down.

4 A. Okay. I'm sorry. I talk real fast.

5 Q. All right. So you said that she told you to
6 keep the checks \$200 or under?

7 A. Yes, ma'am.

8 Q. Okay. And then what happened?

9 A. After that?

10 Q. Yes.

11 A. I spoke with her some more because my BS
12 detector is going off, so --

13 THE COURT: Your what?

14 THE DEFENDANT: I don't want to say it. They
15 said not to cuss. Just -- I felt she was being --
16 lying. I felt she was lying, so I asked her
17 directly: I said, you don't have any access to any
18 drugs, even marijuana, or any kind of cash now?
19 She's like, no, I don't, but she looks right beside
20 me to my left, and it's like the second or third
21 time she's done it.

22 So she's writing on a little notebook. I look
23 beside me and there was a little black bag in her
24 purse. I picked it up and I said, so you shouldn't
25 mind if I check your bag. I had it open, she looked

1 and come out the chair like a rocket. I don't know
2 what she's doing. She reached towards me, I took a
3 step to the right -- I was at the end of the desk.
4 I took a step to the right, turned at the angle.

5 So I'm holding the purse over here like this.
6 (Demonstrating). I'm trying to look through it, but
7 at the same time shifting my weight into her to keep
8 her from grabbing it. The contents of the purse is
9 holding it open because I'm holding it by the strap.
10 In the inside pocket, I see plastic in there that I
11 look -- assume to be a sandwich bag or a zip-up bag,
12 something along them lines. I pulled it out with my
13 left hand. It was full of pills. When she seen it,
14 she said, no, the cameras, the cameras. I look to
15 my left and see me and her on the monitor.

16 BY MS. ALVES:

17 Q. All right. Where are you saying that you were
18 at this time when this happened? Where were you
19 in --

20 A. The desks -- you want me to show you on the
21 pictures?

22 Q. Yes. I'm showing you what's marked as State's
23 Exhibit No. 7 and Defense No. 2.

24 A. Okay.

25 Q. All right. Which one shows where you were?

1 A. Initially I was standing right here.

2 (Indicating)

3 Q. Initially you were standing where?

4 A. I was standing right here at this end. She was
5 sitting down in the chairs behind the desk.

6 (Indicating)

7 Q. Okay. We're looking at Defense Exhibit No. 2?

8 A. Yes, ma'am.

9 Q. All right. And then when you're saying she --
10 when you picked up the purse, where was Ms. Herrin?

11 A. She was still in the chair.

12 Q. And where were you?

13 A. I was still standing in the same place because
14 the purse was right beside me on a black shelf on
15 the other side of the filing cabinet.

16 Q. Okay. Let me -- I'm showing you State's
17 Exhibit No. 9. Does it show where you were and
18 where the purse was?

19 A. I was right here. The purse was to my
20 immediate -- I was standing right here and the purse
21 was to my immediate left right here on the first
22 shelf on the little black thing. (Indicating)

23 Q. And where was Ms. Herrin?

24 A. She was sitting in the chair behind the desk.

25 Q. And what weapon did you have in your hand?

1 A. I didn't have no weapon. I ain't had nothing
2 in my hand but a purse.

3 Q. Okay. So you picked the purse up from the
4 little black shelf?

5 A. Yes.

6 Q. And then you said that she said what?

7 A. She was like, huh-uh, what you doing? She was
8 coming up out the chair like reaching for me. I
9 stepped to the right, which is more towards the end
10 of the desk. I was basically right here. This was
11 directly on my right, right here. This was on my
12 right. I stepped from right here over to the right.
13 And I turned, so I had this section right here
14 basically blocked off. So I'm turned at an angle
15 like this. So my left shoulder is facing back this
16 way and my right is more forward here. She's behind
17 me, behind my left, trying to reach for the purse.

18 (Demonstrating)

19 Q. Okay. And what did you do?

20 A. When I pulled the pills out or...

21 Q. So what did -- you said you were -- after you
22 grabbed the purse and she was reaching for the
23 purse, what happened next?

24 A. I was shifting my weight back just knocking her
25 off of me because she couldn't get it, because I

1 know now there's got to be something in this purse
2 that yo don't want me to see. So the contents was
3 holding it open. When I pulled them out, she
4 reached for it. She reached over my arm, I shoved
5 her back with my elbow. It probably knocked her
6 back about a step or something like that.

7 So I asked her, what kind of games you playing?
8 She said, these ain't mine. I said, they're mine
9 now. I look out of my peripheral, she had reached
10 for something on the desk. When I turned my head
11 fully to look at her, she had her hand raised back
12 and I saw something in it that I immediately
13 recognized as a weapon. It actually looked like a
14 small knife.

15 I dropped the bag and the purse and went to
16 reach for it like this. (Demonstrating). My foot
17 slipped and I got stabbed in the side of the hand
18 right here. (Indicating). I grabbed her hand with
19 my right hand and bent her hand in some around the
20 wrist area. She drops it on the desk, we reach for
21 it at the same time, my hand is kind of on top of
22 hers. I struck a glass case on the way down, so --
23 Q. So let me ask you this: Going back to how
24 you're saying this happened, you said that -- so you
25 and she are -- at this point, you have the purse in

1 your hand and she's behind you trying to get to it?

2 A. Yeah.

3 Q. And you pushed her back so that she would get
4 off of the back of you?

5 A. (Nods head).

6 Q. And then where are y'all at this point? Point
7 out where you're saying you were.

8 A. We're still up in this area right here. When
9 I -- I'm standing -- I mean, at this time I'm 216.
10 I was a little bit bigger than I am now. This is a
11 small space. She was, like, right here.
12 (Indicating).

13 When I caught her with the elbow to push her
14 backwards, she went back a little more. But I'm
15 kind of -- it's kind of hard to show you up here.
16 I'm up here, still in this area; I mean, I haven't
17 exceeded the outside limit of the desk yet, I'm
18 still right there with it. My right shoulder might
19 be a little bit past this part right here, and she
20 went back -- like I say, she went back, like, a
21 step. When she -- once I got stabbed in the hand
22 and I got ahold of it -- (Demonstrating)

23 Q. Wait a minute. Before you get to that part,
24 you said you went back, like, a step?

25 A. She went back a step.

1 Q. She went back a step. Okay. And now you're
2 skipping to you got stabbed in the hand. When did
3 you get stabbed in the hand?

4 A. Immediately -- once I pushed her back and she
5 went back a step, I seen her reach out of my
6 peripheral because I'm -- I'm at an angle. I'm like
7 this right here. I'm here. This is my right
8 side -- (Demonstrating)

9 Q. So -- so wait a minute. Are the TV cameras --
10 are you facing the TV cameras or are you facing away
11 from those?

12 A. Facing away from them. I'm looking -- if I was
13 to look straight ahead, I'd be looking this way.

14 Q. Okay. So you're kind of sideways to those TV
15 cameras?

16 A. Yes.

17 Q. Okay. Facing towards the corner of the desk?

18 A. Yes.

19 Q. Okay. So you're facing toward the corner of
20 the desk, but you said you saw her out of your
21 peripheral.

22 A. Yeah. I'm like this. I'm -- like I say, I'm
23 kind of catty-corner. I turn my head to look fully
24 because, as I say, I see her reach for something off
25 of the desk. She had her hand raised back. So when

1 I went in, grabbed ahold of her, my foot slipped, I
2 stuck on the side of the hand right here.

3 (Indicating)

4 Q. How did your foot slip?

5 A. There was a piece of paper that had been on the
6 floor. I don't know if that's the piece of paper or
7 what that is right there. I can't say to that. But
8 I know it was a piece of paper. She had handed me a
9 piece of paper when I went in there. It was like
10 a -- I didn't even look at the paper. I didn't
11 even -- I didn't have no concern with that. It
12 looked some kind of fax report on the desk. But I
13 think -- I'm not sure, but I want to say she made a
14 comment along the lines of, so you ain't just
15 standing there. But I'm not exactly sure.

16 Q. Okay. So then what happened after your foot
17 slipped?

18 A. I went to grab ahold of her wrist. As I say, I
19 got stuck right here. (Indicating)

20 Q. What did you get stuck with?

21 A. It looked like -- I mean, at first I assumed it
22 might have been a letter opener or something like
23 that. But what it actually looked like was a small
24 Samurai sword. If you've ever been to the flea
25 market, you probably seen them. They ain't but like

1 this big. They're kind of small. (Indicating)

2 Q. So who struck -- who cut you on the hand?

3 A. She did.

4 Q. By she you mean who?

5 A. Ms. Herrin.

6 Q. And where did you get cut?

7 A. Right here. (Indicating)

8 Q. And you still have a scar?

9 A. Yeah.

10 MS. ALVES: Your Honor, I'd ask that Mr. Newton
11 be allowed to get down to show the scar to the jury.

12 THE COURT: He can show it. Point it out.

13 THE DEFENDANT: (Indicating).

14 BY MS. ALVES:

15 Q. And is it the scar right here in the center of
16 the -- of the -- in the center on the outer edge of
17 your left hand.

18 A. Yeah. If you feel it, it's still dimpled.

19 Q. Okay. And you're saying it -- well, I can't
20 testify as to how it feels. But you're saying it
21 feels dimpled?

22 A. I mean, it is dimpled. It's scar tissue. It's
23 hard.

24 Q. Okay. And it's kind of like a V-shaped scar
25 right there?

1 THE COURT: Let me see.

2 Can y'all see it?

3 THE JURY: No.

4 THE COURT: All right. Step down there. Don't
5 say anything, just hold your hand up and walk down
6 in front of the jury slowly.

7 THE DEFENDANT: (Complies).

8 THE COURT: Thank you.

9 BY MS. ALVES:

10 Q. What happened after you got cut?

11 A. I went in, grabbed ahold of my hand with my
12 right hand. It's basically -- my hand was partially
13 on the wrist, partially on the back part of her
14 hand. We went around the desk a little bit, I bent
15 her hand in, and she dropped it on the desk.

16 Q. Dropped what on the desk?

17 A. The -- I don't know what to call it. I'll just
18 say the object, the weapon.

19 Q. Okay.

20 A. We reached for it, her hand had been kind of
21 trapped up under mine a little bit and, as I say, I
22 went down on top of a glass case that's on the desk.

23 Q. Okay. I'm showing you what's marked as State's
24 Exhibit No. 10. Is that the glass case that you're
25 referring to here in State's Exhibit 10?

1 A. Yes.

2 Q. And what did you do with that glass case?

3 A. My hand went down on top of it, I partially hit
4 it. Her hand was a little bit up under mine. I
5 had, like, maybe one of her fingers bent on the
6 handle as I had, like, two or three of mine. I
7 pulled it out from under my hand. I wanted to get
8 it off the desk and get it away from her. I went to
9 toss it back and she made contact with it again as I
10 was tossing it. But she wasn't able to grab ahold
11 of it fully.

12 At some point in time there she made the
13 comment about you hurt me, and I responded, you hurt
14 your damn self. Pardon me for cussing. I threw it
15 behind me. I didn't see where it landed at, but I
16 threw it toward the office door. I heard it hit. I
17 had -- I don't want to say struck her like as in
18 aggression, but I knocked the breath out of her with
19 my elbow, because it's basically like I want you off
20 of me because I ain't come down here for this. This
21 is -- I done got stabbed. You're the one who told
22 me to be down here. This has been going on for
23 seven days and doesn't have to continue to be like
24 this. I told --

25 Q. Let me ask you this: Do you know how

1 Ms. Herrin got her hand injured?

2 A. I mean, it didn't come from me attacking her
3 with no knife. I mean, that's the only thing I know
4 right there. I mean, I can't say -- like I say, at
5 some point in time when we was around the desk she
6 made the comment -- I want to say she said something
7 like, you hurt me or it hurts, something like that
8 right there. So it may have been from the object,
9 because like I say, I snatched it out from under her
10 hand when she had it because my hand was a little
11 bit on top of hers. But I wanted to get it away
12 from her and away from us because I done felt it one
13 time. And, as I say, she was grabbed for it again
14 once I had it up and she made contact with it. But
15 she wasn't able to grab ahold of it fully. I tossed
16 it.

17 Q. All right. Now, what happened -- so after you
18 slammed her hand down on the -- after you slammed
19 your hand down on the glasses case, what did you do?

20 A. That's when we got ahold of the knife. Once my
21 hand went down on top of the glass case, that's when
22 we had -- both was reaching for it, at that point in
23 time. So that's when I picked it up, snatched it
24 out from under her hand to get it way from the desk
25 because I was going to toss it, you know, back

1 behind us or off to the side.

2 She had reached for it again, as I say, at that
3 point in time. I tossed the knife, whatever it
4 was -- the object. I'll just say the object. I
5 heard it hit, but I didn't see where it went to. I
6 didn't see it again until after that.

7 Q. Okay. And then what happened?

8 A. I told her to stop, told her to stop the BS. I
9 went over and got the paper towels. She -- the
10 breath was knocked out of her a little bit because I
11 heard it leave her when my arm struck her. It was
12 just like, uh (demonstrating). She was still
13 standing, but she was bent forward a little bit. So
14 I went and got a couple paper towels, put them on my
15 hand. When I was coming back over --

16 Q. Wait a minute. You went and got paper towels
17 and put them on your hand?

18 A. Yes.

19 Q. Do you remember where you got the paper towels
20 from?

21 A. They was on top of the filing cabinet over
22 close to the window.

23 Q. I'm showing you State's Exhibit No. 8. Do you
24 recognize this -- see them in this picture?

25 A. Yeah. That's them right there. They was

1 sitting on top of there -- on top of the filing
2 cabinet.

3 Q. So you got the paper towels from on top of this
4 filing cabinet where the cleaning supplies are?

5 A. Yes.

6 Q. And what did you do with them?

7 A. I wrapped them around my hand because my hand
8 had been bleeding. Not to be vain, but I didn't
9 want to get it on my shirt. I had a new shirt on
10 and didn't want to get blood on my shirt.

11 Q. Okay. Showing you Defendant's Exhibit 4, is
12 that the roll of paper towels that you used?

13 A. Yes, it is.

14 Q. Do you know how it got on the floor?

15 A. Probably fell, because my thing was -- then was
16 to get back over there and get the stuff off the
17 floor before she could come around the desk and get
18 it.

19 Q. Do you know whose blood that is on the paper
20 towels?

21 A. That's my blood.

22 Q. Yours.

23 So what did you do after you wrapped your hand
24 up?

25 A. I went back towards the desk area to pick the

1 baggie up and see if there was anything else in the
2 purse. When I bent over, I heard her say no. I
3 immediately looked up because I didn't know if she
4 got ahold of something else or what. She was
5 starting to step around the desk again and she
6 pointed behind us. I look up and it's like -- in
7 the top corner, there's, like, a lens, a black spot
8 in that area. I just scoop the stuff up and run.

9 Q. Well -- so you scooped up what and ran?

10 A. The baggie and the purse. I took both of them.

11 Q. Why did you take the purse and not just take
12 the baggie?

13 A. Well, I was using one hand, so -- and to get
14 away from her, I didn't want no more confrontation
15 with her because it had already got out of hand,
16 like I say.

17 But, you know, at that point in time, to be
18 completely honest, I was thinking this right here is
19 in there, you may have something else in there. So,
20 you know, for the last week you been running around
21 playing -- I mean, the -- this is the breakdown:
22 \$1,800 for an ounce and a half of cocaine is \$600 a
23 half, so there's \$1,200 remaining on this right
24 here. So that was my thing right there. And I was
25 kind of -- I'm not going to say upset. It's just

1 frustrating. I mean, it was crazy.

2 Q. So you took the purse and the -- so what
3 happened then?

4 A. I left. We went -- I went to A.C.'s house. Me
5 and Damon Glover, we went through the purse. There
6 wasn't no more narcotics or any kind of drugs in
7 it --

8 Q. Let me ask you this: You said we left and went
9 to. Who is we?

10 A. Damon Glover.

11 Q. Where was he?

12 A. He had been in the vehicle.

13 Q. He was in the vehicle?

14 A. Yes.

15 Q. Okay. The whole time you were in there with
16 Ms. Herrin?

17 A. Yeah, because I come from picking him up.

18 Q. Okay. I'm sorry. Go ahead. After you left,
19 you --

20 A. Went down there, went through it, there wasn't
21 no more narcotics in it. I don't know where the
22 money thing came up at; there wasn't nothing but \$5
23 and change in her purse. There wasn't no checks or
24 nothing in it. There was, like, three billfold type
25 of items, keys, direct deposit booklet.

1 I didn't want the personal stuff. I mean, her
2 ID, bank cards or whatever, that's of no use to me.
3 I mean, I wasn't destitute. We was going to go back
4 and throw the purse in the parking lot. But when we
5 left out, probably about 15 or 20 minutes later --
6 A.C. was riding with us then; as I say, we went to
7 his house -- he got a text from Relay.net. It's an
8 app that monitors, like, highway patrol, sheriff's
9 department, whatever, it lets you know of any road
10 blocks or license checks or whatever. So A.C. -- 'he
11 calls me W -- he's like, W, possible checkpoint on
12 Whiskey Road in the direction we're headed. I had a
13 restricted license and neither one of them had a
14 license, so we turned around and went back to
15 A.C.'s.

16 Me and Glover, we went to Williston. We stayed
17 in Williston probably about, I don't know, an hour
18 maybe, because we went down that way to see a girl I
19 had been speaking with in Williston. She wasn't
20 home, so we come back. I dropped him off --

21 Q. Let me ask you this: You said that you and
22 A.C. and Damon went through the purse?

23 A. Well, me and Glover really went through the
24 purse. A.C. was there; he was a spectator, I guess
25 you could say.

1 Q. Okay. Now you do admit that you cashed
2 Ms. Herrin's checks?

3 A. Yeah, I cashed them.

4 Q. And you deposited them into your bank account?

5 A. Yeah, \$1,042 worth.

6 Q. All right. And -- but you just testified that
7 the checks did not come from the purse?

8 A. They didn't come from the purse. I already had
9 them prior to then.

10 Q. Okay.

11 A. I think I deposited a total of like -- I don't
12 know the exact number. I think it was, like, seven
13 or eight checks. The first one was deposited on --

14 Q. We have six checks that we have records of.

15 A. Yeah. Like I say, I didn't know the exact
16 number. I know the first one deposited was on the
17 30th for \$152.

18 Q. Okay. Now I'm showing you what's been marked
19 as Court's Exhibit No. 1 which is the stipulation of
20 counsel regarding the checks deposited into your
21 bank account, and it's showing six checks belonging
22 to Ms. Herrin deposited between September 30th and
23 October 1st; is that correct?

24 A. Yes, it is.

25 Q. And you admit that you did deposit these checks

1 into your account?

2 A. Yeah, I did.

3 Q. And I'm showing you State's Exhibits 19 and 20.

4 Okay?

5 A. Me and A.C.

6 Q. And who is shown in these two pictures?

7 A. That's me in the passenger's seat and that's

8 A.C. Cole driving.

9 Q. Okay. And these are when you were depositing
10 the checks into your account?

11 A. Yeah. I mean, I don't know if -- it was a
12 long --

13 Q. I'm just asking --

14 A. Yeah. Yeah, I was there.

15 Q. This is when the checks were being deposited
16 into your account?

17 A. Yes, it was; one of the occasions.

18 Q. Okay. And you don't deny that you deposited
19 these checks into your account and that -- and who
20 was involved with you in doing this?

21 A. Lawrence Glover and A.C. Cole.

22 Q. Okay. And, in fact, you told the police about
23 the checks when you met with Investigator Prince?

24 A. Yeah. You want me to explain my reasoning?

25 Q. No. I just need you to --

1 A. Yeah.

2 Q. -- just tell them that you told police about
3 the checks.

4 A. Yeah, I told the police.

5 Q. And, in fact, Investigator Prince did not know
6 anything about these checks until you brought it up.

7 A. He had no knowledge of it whatsoever. I asked
8 him and he said, no, there's nothing been said about
9 any checks at any point in time. He said right
10 then -- he give a -- he gave me a rundown of what
11 was in the purse and what was supposed to been
12 taken, and I confirmed for Investigator Prince that
13 everything she said was in that purse was in that
14 purse, from the keys to the direct deposit booklet
15 to pictures, credit cards, bank cards, license,
16 social security cards, birth certificate. There
17 wasn't no checks. I already had the checks; I got
18 them on the 29th. And I at that point in time
19 showed Investigator Prince copies of my checks that
20 I had obtained on my own from Bank of America.

21 Q. Okay. So nobody was looking for you for
22 depositing these checks?

23 A. No.

24 Q. Okay. And why did you think it was important
25 to tell Investigator Prince about these checks?

1 A. My thing was, I'm like, you done give me checks
2 and tell me to fill them out and let me deposit
3 them, but you ain't said nothing about these checks.
4 So I felt that they proved the actual point that, I
5 mean -- because the bank paid on them immediately
6 upon deposit. They let me withdraw the money, no
7 problem.

8 I had -- as I said, I received my warrants once
9 I was charged, but I didn't receive any kind of
10 charges relating to the checks. So I felt, at that
11 point in time, there's almost something that was
12 being kind of kept in the dark based upon the fact
13 that she knew there was another individual that had
14 been involved with it and that I told her that same
15 day before I left, look, I hope nothing don't come
16 up about these checks because your name and address
17 is on them and these people already have an issue
18 with you.

19 Q. Well, I'm going back to what you told us that
20 happened on the -- beforehand. I'm showing you
21 State's Exhibit No. 24. You see that business card?

22 A. Yes, I do.

23 Q. And these phone numbers on the back?

24 A. I don't recognize none of them.

25 Q. You don't recognize them?

- 1 A. No.
- 2 Q. Okay. Do you recall the number that you
- 3 contacted Ms. Herrin on?
- 4 A. I keep them stored in a phone. I want to say
- 5 it's --
- 6 Q. Do you remember the number; yes or no?
- 7 A. No.
- 8 Q. Okay. And you keep your numbers stored in your
- 9 phone?
- 10 A. Yes.
- 11 Q. And what phone did you use to make the drug
- 12 transactions on?
- 13 A. The prepaid phone that I purchased from
- 14 Walmart.
- 15 Q. Okay. That's just a throw-away phone?
- 16 A. Yeah. That's basically what they call them.
- 17 Q. Okay. And when you went to the car lot on
- 18 September 30th, what was your reason for going
- 19 there?
- 20 A. On the 30th?
- 21 Q. Yes.
- 22 A. She told me the day before to check back with
- 23 her the next day, that she was going to check on
- 24 something and something could possibly through.
- 25 Q. Okay.

1 A. I went down there just to ultimately finalize
2 the deal or bring a conclusion to it.

3 Q. All right. Well, you're telling us this: When
4 she -- after you got cut on your hand, why didn't
5 you just leave?

6 A. Right now I would be happy to -- I mean, my
7 thing was -- I mean, I don't know the best way to
8 describe it. I done been around the block a time or
9 two. I mean, I ain't no, as they say, shrinking
10 violet when it comes to some form or something like
11 that. But my thing was, I want this over with. I
12 mean, there's got to be something. I mean, in my
13 mind I'm like, okay, this here done took place, so
14 let me get this over with. That was it. I mean, I
15 can't -- that's just something I can't give a
16 definite answer to because, as I say, once I seen
17 the pills was in the purse and got them out, I knew
18 then, okay, for the last however many days I've been
19 being lied to, I'm being run all over the place, I'm
20 missing work trying to take care of this right here.
21 That was it.

22 But I didn't -- it wasn't like no anger type
23 thing even at that point in time or whatever. Like
24 I say, I knocked the breath out of her, so -- but I
25 told her then, once I got the paper towels for

1 myself, I told her to stand up straight, stand up
2 straight and take the air through your nose.

3 But once I picked the bag up -- the baggie up
4 and the purse again and she started coming out,
5 that's when I left out because, as I say, she was
6 coming back around the desk towards me.

7 Q. Okay. And you told us that your plan was to
8 throw the purse back into the parking lot, but then
9 y'all changed your mind about going because of a
10 possibility of a checkpoint?

11 A. Yeah. I ain't --

12 Q. All right. Now, you said that you had a
13 restricted license?

14 A. Yeah.

15 Q. Okay. And A.C. didn't have a license?

16 A. No. Neither one of them had a license.

17 Q. But A.C. still drove you to the bank?

18 A. Yeah.

19 Q. Okay. And what happened to the contents of the
20 purse; do you know?

21 A. It got stolen out of my vehicle that night. I
22 went back to A.C.'s. When I come back from
23 Williston, I dropped Glover off at his house. I
24 went to A.C.'s. Me and him, we sat around, drank a
25 few beers.

1 I left the purse in my vehicle. I don't carry
2 my personal stuff in A.C.'s. Most of the time I'll
3 leave my billfold or wallet or whatever in the
4 console of my vehicle. The next morning when I wake
5 up -- I stayed at A.C.'s that night. He comes
6 inside and says, W, I got some bad news, somebody
7 done went inside your truck. So I went running
8 outside and I'm like, what are you talking about,
9 man, because I didn't see nothing wrong with the
10 window or anything like that.

11 As soon as I opened the door, I knew somebody
12 had been in the vehicle because the stuff from the
13 console and from the glove compartment had been
14 spilled out. The purse was gone, my billfold was
15 gone, four credit cards of mine was gone, numerous
16 other articles of mine.

17 Q. And you don't have any proof positive of who
18 did that?

19 A. No, but I know who did it.

20 Q. Okay. But you don't have any proof of who did
21 it?

22 A. No.

23 Q. Okay.

24 THE COURT: You said you know who did it?

25 THE DEFENDANT: I know who did it.

1 THE COURT: Okay.

2 BY MS. ALVES:

3 Q. All right. Now, what do you say about whether
4 or not you committed an armed robbery?

5 A. I wasn't armed. I ain't never at no point in
6 time had no weapon on me in that building, period.
7 I do not carry no weapon on me. I don't carry no
8 knives on me, I don't carry no pistol, I don't
9 nothing on me, period.

10 Q. What do you say about whether or not you took
11 her purse by force or intimidation?

12 A. I mean, I don't know what the legal definition
13 of force or intimidation is. I mean, I wasn't, I
14 guess you'd say, trying to act like a gorilla
15 towards her or nothing. I'm just --

16 THE COURT: Like what?

17 THE DEFENDANT: I mean, like, I guess you'd say
18 aggressive towards her or nothing like that. I
19 just -- it's -- my way of thinking is, if me and you
20 got something going -- that's like -- I can give an
21 example.

22 Like if a kid, you know, used to shoot marbles
23 and you're like, you took my marbles. No, you
24 don't. Well, let me see your box. If you ain't got
25 my marbles, let me see it; but if you're going to

1 keep that box, then, obviously, you got my marbles
2 in it or you make me believe you do.

3 BY MS. ALVES:

4 Q. Okay. What threats did you make in order to
5 take the purse?

6 A. Hell, I ain't make no -- I didn't make no
7 threats.

8 Q. Okay. And what weapons did you have on that
9 day again?

10 A. I didn't have nothing on me. The only thing on
11 my person was the phone and some money, and that was
12 it. I didn't even have a belt on.

13 Q. And tell me what -- when did you confine her or
14 hold her against her will in any way?

15 A. At no point in time. I ain't never put my
16 hands on her like holding her somewhere or telling
17 her to stay somewhere verbally or none of that right
18 there. I mean, it wasn't but like
19 (demonstrating) -- it may sound long in describing
20 it, but it wasn't but a matter of seconds and it's
21 over with. I never at no point in time had full
22 control of her, period.

23 Q. So you're telling us that you did not kidnap
24 Ms. Herrin?

25 A. No.

1 Q. And you did not commit an armed robbery?

2 A. No. I definitely did not do that, period.

3 Q. Okay.

4 MS. ALVES: Thank you for answering my
5 questions. The solicitor is now going to ask you
6 some questions.

7 CROSS-EXAMINATION

8 BY MR. MILLER:

9 Q. October 3rd you rolled over the Trailblazer?

10 A. It didn't roll, sir. I had it coming. I had
11 the key fab. The key fab -- I had been leaving the
12 Whiskey Trader. I took some goods up there for an
13 associate of mine. I had a '66 Chevelle show car.
14 The keychain that I had with it, it was going off.
15 I was trying to get back to the destination where it
16 was.

17 The Trailblazer I had, it had an aftermarket
18 Paxton supercharger on it. I was moving it a good,
19 clever speed. When I veered off Whiskey Road onto
20 Talatha, the accelerator, it kind of stuck. The
21 highway patrol said they believed that the
22 supercharger had opened up. I impacted the tree
23 sideways. I never rolled though. I hit the tree.
24 I turned, hit the tree sideways, and I hit it with
25 enough force where it knocked the vehicle a 180,

1 knocking it all the way back around.

2 Q. You ran away?

3 A. Yeah. I -- I didn't --

4 Q. When you --

5 A. -- exactly run --

6 Q. I'm not your lawyer. I'm not going to let you
7 sit up here and talk until you get tired.

8 A. That's fine.

9 Q. When you went to the hospital after you were
10 taken into custody, what injuries did you have from
11 the wreck?

12 A. My neck was broken in two places, C-2 and C-6
13 vertebrae, right earlobe would have been severed at
14 the bottom, I been completely split from the bottom
15 of my right nostril all the way through to the
16 teeth, gashes on my head, forehead; I believe they
17 mentioned something about a possible concussion. I
18 didn't have a full list of injuries I had. I know
19 those though.

20 MR. MILLER: No further questions, Your Honor.

21 MS. ALVES: No further questions.

22 THE COURT: You may step down.

23 Next witness, please.

24 MS. ALVES: At this time, the Defense rests.

25 THE COURT: Anything in reply by the State?

1 MR. MILLER: Just one, Your Honor. The State
2 would call Investigator Stacey Prince.

3 REBUTTAL EXAMINATION

4 BY MR. MILLER:

5 Q. Investigator Prince, when you talked to the
6 defendant along with the investigator from the
7 defense attorney's office, did he ever mention this
8 prepaid phone that all of a sudden we heard about
9 today?

10 A. Nothing about a prepaid phone. Nothing in
11 regards to a prepaid phone.

12 Q. He did tell you about a phone though, didn't
13 he?

14 A. Yes, sir.

15 Q. Because he told you about the phone that's
16 State's Exhibit 23.

17 A. Correct.

18 Q. Did he tell you about his long history of drug
19 transactions back and forth between him and Ms. Nae
20 Nae?

21 A. As far as -- I don't recall no name as Nae Nae.
22 But the \$1,800 transaction he went into in regards
23 to the cocaine and what he was getting the checks
24 and all for.

25 Q. So the weeks leading up to that transaction, he

1 didn't talk about it, he just started off with the I
2 had given her the \$1,800?

3 A. I wouldn't say weeks; I'd say, you know, within
4 a week he had received -- paid \$1,800 and was
5 receiving checks in regards to it.

6 MR. MILLER: No further questions.

7 SURREBUTTAL EXAMINATION

8 BY MS. ALVES:

9 Q. Did he say that he contacted Ms. Herrin with
10 that Verizon cell phone?

11 A. He indicated he had spoken with her on the
12 phone and the number was not recorded at the time.
13 Your investigator is the one that had the number,
14 which means getting that from him.

15 Q. Okay. But you can't say whether or not he said
16 he contacted her on that Verizon phone or not?

17 A. I did not have that number at the time. No,
18 ma'am.

19 Q. Okay. And did you ask him about prior
20 dealings that he had -- prior drug dealings that
21 he'd had with Ms. Herrin?

22 A. Did I? No.

23 Q. You did not ask?

24 A. No, ma'am.

25 Q. But he only told you about that one that he had

1 had, the one that he testified here today?

2 A. The one with the \$1,800 transaction to where he
3 was getting the checks from and where he met up with
4 her looking for his partner.

5 Q. Okay. Thank you.

6 MS. ALVES: No further questions.

7 MR. MILLER: The State rests, Your Honor.

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

9 Mr. Foreman, ladies and gentlemen, that
10 concludes all of the testimony in the case. It's
11 almost 3:30. I've got about 20 or 25 minutes I have
12 to spend with the lawyers on the charge and so forth
13 and so on. That would put us at about 4:00. Then,
14 obviously, they would argue and charges; that would
15 put us about quarter to five, 5:15. Why don't we
16 just come back in the morning and finish it up?
17 We'll walk in, argue and charge and then y'all can
18 start deliberating. If you go through lunch, I'll
19 buy you lunch. And I will excuse you for the
20 balance of the week and won't make you come back
21 with the jury panel. How does that sound?

22 THE FOREMAN: That's fine.

23 THE COURT: All right. Now, do you want to
24 start at 9:30 or 10:00?

25 THE FOREMAN: 9:30.

1 THE COURT: Okay. We'll start at 9:30. Be
2 here before 9:30 so we can start right at 9:30.
3 Please don't discuss the case tonight with anyone
4 and don't let anyone discuss it with you. Don't
5 start any deliberations. I think we have some press
6 here. I would ask that you just not read the
7 newspaper article in the morning. You can read it
8 tomorrow night when you get home. We're trying the
9 case right here in the courtroom.

10 We'll get started right at 9:30 and then it
11 will be to y'all midmorning, depending on how long
12 you deliberate. If it gets into the lunch hour,
13 we'll order you some lunch.

14 Thank you. Y'all have all paid wonderful
15 attention and I appreciate it. I've enjoyed working
16 with you. I'll see you bright and early in the
17 morning.

18 Everyone else remain seated.

19 (Jury excused for the evening at 3:19 PM.)

20 THE COURT: Anything for the record by the
21 State before we break?

22 MR. MILLER: No, Your Honor.

23 THE COURT: Ms. Alves?

24 MS. ALVES: Yes, sir.

25 Your Honor, in taking the evidence in the light

1 most favorable to the State, I would move for a
2 directed verdict on behalf of Mr. Newton for the
3 charges of armed robbery and kidnapping.

4 THE COURT: As earlier ruled, respectfully
5 denied. Obviously it's -- if the jury believes your
6 client, there may be an acquittal or, you know, they
7 may believe that it was a strong-arm robbery. I
8 don't know. But, obviously, it's a factual dispute.
9 And there is evidence in the record to support the
10 verdict for or against your client, so I
11 respectfully deny your motion.

12 All right. As far as the charge goes, anything
13 in particular you want besides my regular charge and
14 the charge of armed robbery and kidnapping?

15 MS. ALVES: Your Honor, I'd ask for lesser
16 included offenses of strong-arm robbery and petit
17 larceny.

18 MR. MILLER: The State is fine with the Court's
19 ruling on the charge.

20 THE COURT: How about the lesser included?

21 MR. MILLER: Judge, if the jury believes him, I
22 guess we need to charge the strong-arm robbery. But
23 petit larceny...

24 THE COURT: I'm not going to charge petit
25 larceny.

1 MS. ALVES: Judge, there's a case from 2014,
2 Abney vs. State, which is from a PCR. And I have
3 two other cases which say that petit larceny is a
4 lesser included of both armed robbery and strong-arm
5 robbery.

6 The testimony from Mr. Newton was that he took
7 the purse after the incident was over, that there
8 wasn't any threat, force or intimidation of her,
9 that they were in a scuffle over the purse and he
10 was just trying to push him off of her, if the jury
11 were to believe that he was not armed with a weapon
12 and that he did not threaten, force or intimidate
13 her to take the purse, they could find that he did
14 just commit larceny of the purse.

15 And I have the two other cases that
16 specifically say that larceny is a lesser included
17 offense. They exclude grand larceny, but they say
18 that petit larceny is a lesser included of both
19 robbery and strong-arm. And those would be State
20 vs. Moore, which is 3 --

21 THE COURT: Hand those to me and I'll be glad
22 to look at them tonight.

23 MS. ALVES: Yes, sir.

24 MR. MILLER: Judge, we'll leave it in the
25 Court's discretion.

1 THE COURT: Anything else?

2 MR. MILLER: Nothing from the State, Your
3 Honor.

4 THE COURT: Okay. We'll stand at ease. Be
5 here at 9:15 in the morning to go over a decision on
6 the charge, and we'll start right at 9:30 with
7 opening by the State --

8 MR. MILLER: Your Honor, the State would waive
9 the opening closing argument.

10 THE COURT: Opening and closing?

11 MR. MILLER: The opening closing argument. We
12 reserve to make the last closing argument.

13 THE COURT: Very well.

14 Anything else from anyone before we break?

15 MS. ALVES: Nothing from the Defense.

16 MR. MILLER: No, sir.

17 THE COURT: Thank you very much. Have a
18 pleasant evening.

19 (Court in recess for the evening at 3:24 PM.)

20 MR. MILLER: The State is ready to proceed,
21 Your Honor.

22 THE COURT: All right. Mr. Miller and
23 Ms. Alves, on the armed robbery, I'm going to do a
24 lesser included of strong-arm robbery; lesser
25 included, petit larceny.

1 MS. ALVES: Thank you, Your Honor.

2 THE COURT: Bring the jury in, please.

3 (Jury enters the courtroom at 9:28 AM.)

4 THE COURT: Mr. Foreman, ladies and gentlemen,
5 good morning. I hope you had a pleasant evening.

6 THE JURY: Thank you.

7 THE COURT: Thank y'all so much. I appreciate
8 everything you're doing.

9 Here's where we are: We got a good bit
10 completed after you left yesterday afternoon, and
11 what we have left are the final arguments.
12 Ms. Alves will go first, followed by Mr. Miller.
13 Please bear in mind that the final arguments, like
14 the opening statements, those are not evidence in
15 the case. You've already heard all of the evidence
16 and, obviously, you'll be making your decision based
17 on what you' heard.

18 The lawyers represent their respective sides
19 and, obviously, their argument will be how they sort
20 of see them. But you heard it and you'll make your
21 decision based on what you heard. Please give close
22 attention to the final arguments, and then once they
23 complete their final arguments, my charge or
24 instructions are not that long and then you'll be in
25 a position to start deliberating and see where we go

1 from there to see if we need to order you some
2 lunch.

3 So, Ms. Alves, you may make your closing
4 argument.

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

7 THE COURT: Yes, ma'am.

8 MS. ALVES: Good morning.

9 THE JURY: Good morning.

10 MS. ALVES: Now, as I've been going through
11 this case and all of yesterday after I heard
12 Mr. Newton's testimony here in the courtroom and
13 started thinking, wow, I know that there's two sides
14 to every story, and this story is so drastically
15 different, I was thinking, wow, how are you going to
16 decide who was the credible person here?

17 And you know what? That made me think of a
18 lady who was in the news a lot, all over the news,
19 named Anna Gristina. Now you're going to say, who
20 is Anna Gristina? You might not remember her, but I
21 know you remember her situation. She was a soccer
22 mom who was charged with prostitution. She was
23 running a prostitution ring for 15 years. The lady
24 has four children, went to church, was in the PTA,
25 ran the bake sales, went to every game for her kids,

1 yet what was she doing on the side? Running a
2 prostitution ring, multimillion dollars.

3 She was all over the news everywhere
4 threatening to tell on football players and
5 politicians. And you know what the news does
6 whenever they hear about these stories; you hear
7 about it every day. Politicians or somebody famous
8 or ven regular people getting in trouble for
9 something and, you know, the news cameras all run
10 out. And what does everybody say? The neighbors
11 all say, they were so nice; my kids played with
12 them; I couldn't believe this, I sit next to her in
13 church; she's on the PTA; I can't believe this
14 person would be doing this; no, I can't believe it:
15 Yet, it's true, happens every day.

16 And that brings us to this case. Mr. Newton
17 testified and told you about his relationship with
18 Eartha Herrin, the person that he knows as Nae Nae.
19 And you're like, oh, that's crazy, why would he say
20 that her name is Nae Nae and that she's a drug
21 dealer? Well, I don't know why Ms. Eartha Renee
22 Herrin, born as Eartha Renee Brown would be known as
23 Nae Nae, but it seems to me that is a reasonable
24 nickname for the name Renee. And is it possible
25 that she was actually going by that name? Of course

1 it is. And is it possible that she was selling
2 drugs? It definitely is. Because just like that
3 soccer mom was being a prostitute for 15 years and
4 nobody had any clue, isn't it a realistic
5 possibility that what Mr. Newton told you is true?
6 Of course it is.

7 Now, I know the solicitor brought out -- she
8 brought out testimony that she is married 27 years,
9 has a son, works at the auto sales lot, but is it
10 possible that Mr. Newton is telling the truth? I
11 think it is.

12 Now we're going to go through the testimony and
13 what the evidence showed. The first thing I want to
14 talk about is what she told us and what she told the
15 police. Now, on September 30th when she called the
16 police, the first person that arrived was Deputy
17 Turner. And you heard what Deputy Turner wrote in
18 his report. She told Deputy Turner that they
19 entered into the business together to get more
20 information, that she went to print out the
21 information, and then she turned around and found
22 Mr. Newton with a knife stuck to her neck and he
23 demanded the money and took the purse. So that's
24 important. She said she turned around and he had
25 the knife to her back. There was never any mention

1 of anybody going to the bathroom when she talked to
2 Deputy Turner. And somebody told Deputy Turner that
3 \$50 of the business' money had been taken, yet
4 there's testimony that actually no money from the
5 business was taken.

6 Now, the second story is the story that she
7 told Investigator Prince. Now I know Investigator
8 Prince testified what he wrote in his report was --
9 he might have made an error on some of the details.
10 And we're not going to worry about what he wrote in
11 his report. We're going to talk about what he said
12 on the audiotape that is in evidence. And if you
13 want to listen to it again, you can. She told
14 Investigator Prince that he wanted to try out the
15 Durango, so she went to get the keys. He was
16 checking out the vehicle. After he checked out the
17 vehicle, he asked to use the bathroom. She says she
18 stayed outside, and then he asked for more
19 information. She went inside to the computer, gave
20 him the information, and then he pulled a knife and
21 put it to her neck.

22 So that's different from what she told Deputy
23 Turner because, at first, she didn't tell Deputy
24 Turner about the bathroom and staying outside, and
25 the order in which she says it happened is a little

1 different. She also, on the tape, says that she
2 grabbed his hand to push him away and that he said,
3 don't move, I'll kill you. None of that was
4 mentioned to Deputy Turner, but that's what she told
5 Investigator Prince.

6 Now we get to what she testified to yesterday.
7 She said he asked to try the Durango, then went to
8 the bathroom; while he was in the bathroom, she went
9 inside to get the keys and then she came back out.
10 She said, he came out from the bathroom, then he
11 looked at the vehicle and then he asked for
12 information, and they went inside together. She
13 said she never got to pull any information because
14 he immediately came at her from the front with a
15 knife.

16 Now, this is different from what she said
17 before, because before she said from the back. She
18 said her back was never to him when she testified
19 yesterday, and then she said that when he was
20 threatening her with a knife, she was trying to push
21 him back by holding her hands up. And then she says
22 she fell over the shredder that was behind the
23 chair. Now, we can see where the chair is. The
24 shredder is -- you can kind of see it a little bit
25 right there in several of the pictures. I'm showing

1 you right now what's marked as State's Exhibit 9.

2 So you can kind of see it.

3 But she says that she fell over -- or she kind
4 of stumbled back over the shredder and was, like,
5 kind of sitting. And at first she said she was
6 standing, and then she said she was sitting, but she
7 says she was sitting on the shredder.

8 I know you're saying, oh, well, picky details.
9 And I don't know what the solicitor is going to say
10 because, obviously, he's going to be talking to you
11 after me. But I anticipate he'll be saying, oh, she
12 was nervous, she was scared, she's missed -- you
13 know, she can't get all the details right. But
14 here's the thing: When it's the truth, you can get
15 the details right. And some of these details --
16 now, what happened in what order, little minor
17 stuff, maybe; but whether somebody came at you with
18 a knife from the front or the back, that's kind of
19 important; whether or not you fell over a shredder,
20 that's kind of important -- not kinda, very. You
21 would remember that.

22 You would have told the police on the day
23 you're saying this happened; you would have
24 remembered that you stumbled back over that shredder
25 and not just say, oh, yeah, hey, yesterday. And she

1 didn't even tell the solicitor that; she told it to
2 me on cross-examination. So if she's embellishing
3 the little details, is she embellishing the bigger
4 ones? Who's being truthful?

5 Now, we have to talk about what's credibility
6 and common sense. You do not leave your common
7 sense -- we're not asking you to just sit in here
8 and just throw all common sense away, throw all of
9 your previous knowledge away. Now, you are asked to
10 decide this case based on the evidence and the
11 testimony that you heard and the law the Judge will
12 tell you. But you come in here with common sense.

13 And let's be realistic. Mr. Newton is accused
14 of armed robbery and kidnapping. Let's look at this
15 with some common sense. This is a busy road between
16 4:30 and 5:00, Whiskey Road. We all live here in
17 Aiken County, we all know what Whiskey Road is like
18 around 5:00. That is one busy treat. There was
19 testimony from Mr. Bryant about it's a four-lane
20 street -- and we all know Whiskey Road. Let's be
21 real. I'm not asking you to throw away your
22 knowledge of Aiken County. It's a four-lane road,
23 and there was a median. I asked him, was it a large
24 median? He said, no, it's a pretty small, just one
25 median right there in front of his business with a

1 convenience store across the street.

2 So you're telling me that somebody would rob a
3 business, a business which you would not expect to
4 have any money in it, on a Tuesday at around 5:00 in
5 the afternoon off of Whiskey Road? How are you
6 going to get out in a hurry with all the cars that
7 would be coming up and down? Why would you expect
8 to rob that particular business? Why would you rob
9 a business that has cameras? Now, I'm showing you
10 now what's marked as Defendant's No. 7. You heard
11 from Mr. Bryant that there are eight cameras in his
12 business; two at the front -- and he showed you
13 where the cameras were. They're clearly visible in
14 the pictures. There's one there, the little black
15 mark right there, and there's one on this side. He
16 told you about one camera in the back, the camera in
17 the garage, in the office, the camera in the sitting
18 area, in this area here, obvious cameras.

19 They have obvious signs. They have this sign
20 on the mailbox that says that they have a security
21 system, they have signs on the doors saying they're
22 being monitored, they have cameras visible. And,
23 more importantly, they have this: A camera system,
24 monitors showing that these cameras are monitoring
25 the business.

1 Now, we heard testimony that the cameras
2 weren't working. And for whatever reason, whether
3 they were turned off, whether they were turned on
4 that day or whether there was a power outage at the
5 breaker box doesn't matter. These cameras look to
6 be on. Mr. Bryant even testified the only way to
7 know that these cameras aren't recording is that he
8 has to go in and enter his password and figure it
9 out. The employees don't even know. He said that
10 Ms. Herrin wouldn't have known the cameras weren't
11 recording because it looks like they're recording.
12 So how would Mr. Newton know those cameras are off
13 today, it's safe to rob this place? Why would he
14 rob a place with such open security system, open
15 cameras? According to Ms. Herrin's story, he was
16 out on their lot and in their business for a few
17 minutes, for enough time to have gotten his image
18 captured by a recording system that she didn't know
19 was off.

20 He was not trying to hide himself, he was not
21 trying to cover himself from the cameras looking at
22 a car that was right in front of where one of these
23 cameras is. Why would he do this? Doesn't make any
24 sense. He didn't make any attempt to hide his
25 presence. In all three of her stories, he was there

1 the same amount of time. And if he wasn't there to
2 rob -- she told you where her purse was. It was
3 sitting in the office, on the shelf right next to
4 where her desk is. He was in the office by himself
5 for a period of time right here. It's shown in the
6 pictures. I'm showing you what's State's Exhibit
7 No. 9 again. You can see it. It was sitting right
8 there by the desk open; it wasn't in the file
9 cabinet or anywhere else.

10 If he was there to rob when he was in the
11 business by himself, according to her story, why
12 didn't he just snag the purse? Even better, there's
13 keys on the desk. And you can see in the pictures.
14 Why didn't he grab some of the keys, put them in his
15 pocket, wait til later and come back and steal the
16 cars? That would have been the easy thing to do
17 because according to -- depending on which one of
18 her stories, she was outside the whole time and he
19 was inside the business going to the bathroom. So
20 why not just grab a couple of the keys that she said
21 were sitting on the desk? That's because he didn't
22 go to rob the business.

23 Another thing: If his goal there was to rob
24 the business -- he told you he got the purse. But,
25 you know, one thing you didn't hear -- you heard

1 about him cashing the checks. And we'll get to the
2 checks. But you know what you didn't hear about?
3 Nobody attempted to use her credit cards. She
4 testified that there were credit cards in the purse.
5 So if you're going to rob somebody and you snag
6 their purse, why not even try to use the credit
7 cards? She told you she didn't go to the bank until
8 the next morning and she said she cancelled cards,
9 credit cards, checking account, everything. No
10 attempt to use her credit cards that night.

11 Now, common sense tells you, you're going to
12 steal the purse, you're going to at least try the
13 credit cards; you make a small purchase, see if it
14 goes through and then try to clean somebody out.
15 But that's not what happened here.

16 And, in fact, when the checks were written,
17 they weren't even written for high amounts. They
18 were written for \$200 or less, and Mr. Newton
19 explained to you why. He said that she had told
20 him, keep the checks under \$200 so the banks would
21 cash them, no questions asked, and he did.

22 Now, Mr. Newton's story is that he admitted
23 taking the purse. But he told you he did not take
24 the purse by threatening her with any kind of
25 weapon. In fact, he says that during their

1 discussion -- during their -- when they were having
2 their dispute about the purse and he grabbed at her
3 purse, she came at him. And he showed you the scar
4 he has from that time on his hand. She is the
5 person.

6 Now, he did say that they did scuffle over the
7 weapon. Whatever it was, he wasn't sure;
8 letter-opener, knife, some kind of novelty Samurai
9 sword. Whatever it was, they scuffled over it. And
10 at some point in that, she did get cut, and he said
11 he threw it. Now, where is it? I don't know.

12 The police didn't -- they didn't do a thorough
13 and forensic investigation, they didn't pick up
14 everything, they didn't test the paper towels, they
15 didn't test -- didn't check for fingerprints on
16 doorknobs, they didn't look around real hard for
17 whatever this object was, or maybe she didn't tell
18 them about it. We know she didn't tell the whole
19 story. She didn't tell about the checks.

20 Now, if I'm missing a checkbook -- I know
21 what's in my purse. I may not know every little
22 piece of paper and every tissue I got in there, but
23 I know I got a checkbook. And when I'm telling the
24 police, I'm sure going to tell them about the
25 checkbook, especially if I got to the bank the next,

1 morning.

2 Now, like I said, once again, I can't
3 anticipate what the solicitor is going to tell you.
4 But I'm sure he's going to tell you, oh, she was
5 traumatized, it was in her purse, she said
6 everything in her purse, you know, that covers
7 checkbook. But the police told you it would have
8 been important to know about the checks because then
9 they would have had an idea to look -- of something
10 to look for. Nobody tried to use the credit cards,
11 but maybe somebody would have tried to cash the
12 checks. And why wouldn't she have said anything
13 about them?

14 Mr. Newton told you about these checks. How
15 did these checks come to light? Mr. Newton
16 contacted the police in January and said he wanted
17 to give a statement about what happened. And the
18 statement he told about the checks -- they didn't
19 even know about it. He told about who he thought
20 had used -- and, in fact, he told the police that
21 somebody was even using his debit card to access the
22 money that he had put in by the checks. He told
23 them who. And there's testimony he gave them his
24 cell records to show that he did actually know the
25 person who he told you was using his debit card to

1 access the checks. And, in fact, we have evidence
2 by stipulation, Court's Exhibit No. 2, that somebody
3 was actually using Mr. Newton's debit card after
4 Mr. Newton was arrested on October 3rd. So
5 Mr. Newton told on himself.

6 Now I want to talk about his story. Now, he
7 says he knew her from a house in New Ellenton and he
8 told you where; someplace that he used to buy
9 marijuana from. Now, I'm not going to sit up here
10 and tell you Mr. Newton is an upstanding citizen,
11 because he told you about all his drug use and he
12 was involved in this large transaction. He was the
13 middle man for this drug transaction. I'm not
14 standing here telling you that my client is a
15 standup guy, I'm telling you he's not guilty of
16 armed robbery, no matter what kind of person he is.
17 He's not guilty of kidnapping, regardless if he's a
18 drug user or if he's the middle man in a drug
19 transaction. That's not what we're here for today.

20 Now, Mr. Newton told you that he knew this
21 lady. It wasn't a year's long relationship, it had
22 been about a month or so that he made small
23 transactions from her, getting bigger and bigger
24 until you can lead up to a bigger one. I mean, you
25 bring your common sense with you. Drug dealers

1 aren't just going to say, oh, come on in and buy
2 \$1,700 worth of drugs. They're going to start you
3 out small, you show that you're trustworthy, you
4 show that you can come up with your money, you show
5 that you're not the police, and then they work it
6 out to get you a bigger deal.

7 Now, she picked him out of a lineup. Sure she
8 did. Look at the lineup. Remember what
9 Investigator Cain said? She picked him out with no
10 hesitation; one, two, three, bam, no hesitation. Of
11 course she did. I'm pretty sure people I've been
12 associating with for a couple of months or making
13 multiple drug deals with could pick me out if they
14 knew me before October the 3rd. No hesitation.
15 Look at this lineup. He said, how long was it
16 before she picked him out? Seconds. Of course it
17 does, you know the man, that's why you picked him
18 out so fast, didn't have time to study it. Look at
19 the lineup. Could she really have picked him out so
20 fast if she didn't know him already? Seconds.

21 Mr. Newton told you that on the 29th, the day
22 before this happened, she gave him checks as
23 collateral because it's been a week, she hadn't come
24 up with the drugs. He told you that he was supposed
25 to hold the checks as good faith until the next day

1 when she was coming with the money or the drugs and
2 that she needed the money because she already had it
3 into other transactions and she didn't have the
4 money to pay him back right then. I guess that's
5 reasonable. I'm not a drug dealer, but I guess that
6 sounds reasonable.

7 Then he told you on the 30th what happened. He
8 goes in there again, she doesn't want him to act
9 all -- he's acting suspicious because he's been
10 there, from his testimony, about three times, if I
11 recall; that he'd been to the shop and she didn't
12 have the drugs, so he was supposed to just be
13 pretending to be looking at something, so he looked
14 at the vehicle. Big deal. He's sitting there
15 looking at a vehicle, that should cover it. Then
16 they go inside.

17 And then, while they're talking, he sees her
18 purse. And he grabbed up the purse and she says,
19 no, no. And he's rooting through the purse and what
20 does he find? Drugs. He told you, cocaine and
21 pills he found in the purse. So at this point, he's
22 hit the jackpot. He's got what he's owed and he's
23 got what she had in that purse, the cocaine and the
24 drugs. And then he -- then she said, no. Now, why
25 would she be saying no? If somebody is taking your

1 purse and you were in danger, they can take it.
2 There's nothing in my purse that I'm going to risk
3 my life or any injury over. But she's sitting there
4 fighting. Why? Because there are somebody else's
5 drugs besides just Mr. Newton's in that purse and
6 she has to -- says she's trying to get it from him.

7 Now, this is where we have to say, what
8 happened? Did Mr. Newton threaten her with a
9 weapon? Did he threaten her, intimidate her or
10 force her to turn over the purse? They're
11 struggling and tells you he's, like, elbowing her
12 back, pushing her back to get off him because she's
13 basically on his back or right at his back trying to
14 get around him to get the purse and he's keeping it
15 away from her. He sees her pick something up and he
16 gets cut in his hand. Now, how did he get cut in
17 his hand? He told you, she stabbed him with
18 whatever that was and he got cut in the hand by her
19 at the same time when he was taking it away from
20 her.

21 From what Mr. Newton told you, the paper towels
22 that are shown in the pictures here were where he
23 wiped his hand. You can see the paper towels right
24 there on the floor and they're even shown -- there's
25 a close-up of them here on the floor. He told you

1 this is his blood. Now, we don't know whose blood
2 it was because it wasn't tested and we don't have
3 any DNA records, but Mr. Newton testified that blood
4 on the paper towels was his. He said -- and that's
5 across the office. You can see in the pictures that
6 that is across the office from her desk. He said
7 she was at the desk, he's at the table or the other
8 desk where the cleaning supplies is.

9 Then he decides to go and grab the purse up.
10 Now you're saying, why did he take the purse? He
11 told you, there'd already been one physical
12 confrontation and he wasn't trying to have another,
13 he was just trying to get out. Why didn't he just
14 grab the drugs and sort -- what was he supposed to
15 do, sort through the purse, grab the drugs, sort out
16 what is owed to him after this woman has already
17 attacked him? No. It's just time to go. So he
18 admits to you that he did take her purse. But now
19 get to the question of, what is this?

20 Now, Mr. Newton has been charged with armed
21 robbery. Armed robbery is taking another person's
22 property while armed with a deadly weapon. And in
23 this case, the allegation is that Mr. Newton had a
24 knife. Now, if you find that Mr. Newton took
25 Ms. Herrin's purse while he was armed with a deadly

1 weapon and threatening her with that weapon, then
2 you have to find Mr. Newton guilty of armed robbery.

3 But if you find that Mr. Newton was not
4 threatening her with a deadly weapon and that he was
5 threatening her, forcing her, or intimidating her
6 into giving up the purse then that would be guilty
7 of strong-arm robbery. But if you find that he was
8 just -- that he just took her purse without her
9 consent with the intent to deprive her of that
10 property, then that's larceny. That's not
11 strong-arm robbery, that's not armed robbery, that's
12 larceny. So it's up to you to decide if that
13 happened or if -- but if you find that Mr. Newton
14 was entitled to the purse and the contents of the
15 purse, then he's got guilty. So it's up to you to
16 decide what's to be done.

17 Now, the State has the burden of proof here.
18 They have to prove to you, beyond a reasonable
19 doubt, that Mr. Newton is guilty. And they have
20 told you that they believe Mr. Newton is guilty of
21 armed robbery and kidnapping. Now, we didn't hear
22 any testimony from -- that Mr. Newton -- except for
23 what she told us on cross-examination yesterday that
24 Mr. Newton confined her in any way whatsoever. And
25 let me also submit to you that I don't think the

1 State has established that Mr. Newton is guilty of
2 kidnapping.

3 Now, the Judge is going to tell you what a
4 reasonable doubt is. And a reasonable doubt is a
5 doubt that would cause a reasonable person to
6 hesitate before taking action. I can't really
7 explain what that means, but another way to say it
8 is that you must be firmly convinced that Mr. Newton
9 is guilty before you can say that he is guilty. As
10 I told you yesterday, he sits over there an innocent
11 man because, under our principles of law, he's
12 innocent until proven guilty. And he's not proven
13 guilty unless you, the jury, decides that the State
14 has met their burden and found him guilty.

15 Now, in -- in making your decision, of course
16 you have to look at everything and decide
17 credibility, but I just want to point out that what
18 Mr. Newton told the police in January, a lot of that
19 is true -- excuse me, all of it is true, and a lot
20 of it was proven. Now, it's Mr. Newton's word
21 against Ms. Herrin's about what happened in that
22 business. But he told the police that he cashed her
23 checks. They didn't know about that beforehand.
24 And here we have a stipulation he cashed her checks.
25 In fact, he told you it might even be more than this

1 six. But we know about these six checks.

2 He told the police and even wrote the police a
3 letter saying, don't forget I told you about
4 Mr. Glover using my ATM card and getting the money
5 out. And here we have a stipulation somebody used
6 his debit card after he went to jail. So
7 Mr. Newton's story has been proven true. And if
8 Mr. Newton is truthful about the details that are
9 going to get him in potentially even more trouble
10 than this because he's sat there and admitted to
11 forging the checks, then why can't we believe the
12 rest of his story? Because just like that soccer
13 mom, isn't it possible that this married lady of 27
14 years, mother of teenage sons, could be doing
15 something that she's not supposed to?

16 Now, all I'm asking you to do is look at the
17 evidence, look at all of the evidence. We have the
18 pictures, we have stipulations; you have the
19 physical evidence, you have the card showing -- the
20 actual birth certificate card, pictures of the birth
21 certificate card. Look at all of the evidence and
22 make your decision.

23 Now, we also have -- I want to point out one
24 other thing too. We have the cell phone records.
25 Now, the police told -- Investigator Prince told you

1 that those cell phone records were because he wanted
2 to show that he knows Lawrence Glover, the person he
3 accused of using the debit card.

4 Now, yesterday we got testimony from Ms. Herrin
5 that she had put her number on the back of this
6 business card, and that these numbers are not on
7 Mr. Newton's records. Of course not. Let's look at
8 the records. This is a Verizon bill. It's in
9 somebody else's name, but you know that's not a big
10 deal to have multiple phones on the same account.
11 And he explained that. But this is his cell phone
12 records for Verizon, the account he has a contract
13 with and pays every month.

14 But he told you for doing the drug deals, you
15 don't use your own cell phone, you don't use the one
16 that the numbers can be traced back to you. What do
17 you use? You use a throwaway phone, those phones
18 you buy at Walmart. You got common sense now. You
19 know what they call them: Burner phones. Those are
20 the ones you use for your drug deals. You're not
21 going to be using your real phone.

22 Now, let's be real. Nobody is going to be
23 having their drug transactions at their office
24 number, even if your boss isn't there most of the
25 time; you're not going to be using your real cell

1 phone number on the account you might share with
2 your husband and your son, you're not going to be
3 using your home number, that's for certain; you're
4 going to be using your own burner phone. And
5 Mr. Newton testified to you he had two or three
6 phones.

7 The police never asked him what numbers he was
8 calling her on. They just assumed it was the burner
9 phone, I guess. I don't know. Or, excuse me, they
10 just assumed it was her Verizon phone, perhaps. But
11 they -- Investigator Prince told you he never asked
12 about the burner phones. He never asked him if he
13 was calling her off of this. And Mr. Newton never
14 told him that, yes, I was using my Verizon phone.
15 So we got the phone records.

16 Now, once again I'm going to have to assume
17 what the solicitor is going to say. And I know he's
18 going to say that, oh, well, Mr. Newton conformed
19 his story to the evidence. But then how did he make
20 up somebody using the credit card after he went to
21 jail? How could he have made that up and why would
22 he even tell them?

23 I know they're going to say, well, why would
24 she call the police if she was a drug dealer and
25 this all happened? Why wouldn't she just either

1 use, I don't know, street justice or not say
2 anything? Because he had just taken not just what
3 was owed to him, but all the drugs in the purse.
4 That's why you got to call the police. You got to
5 at least show some good faith to your people that
6 you're not the one cheating somebody else, because I
7 don't know what happens when you cheat drug dealers.
8 I don't know. I watch TV, but this is real life, so
9 I can't comment on what happens on The Wire.

10 Ladies and gentlemen, all I'm asking you to do
11 is use your common sense; look at the evidence,
12 weight the story and see who is the credible person.
13 Which is the more credible story here? Because I'm
14 confident that when you do that, you'll find that
15 the State has not met their burden that -- of
16 finding Mr. Newton guilty of kidnapping or armed
17 robbery. I'm confident that you will find that
18 Mr. Newton's actions were far below armed robbery,
19 and I'm asking you to find him not guilty of
20 kidnapping. Thank you.

21 THE COURT: Mr. Miller.

22 MR. MILLER: Thank you, Your Honor. May it
23 please the Court. Ms. Alves.

24 Ladies and gentlemen of the jury, good morning.

25 THE JURY: Good morning.

1 MR. MILLER: I'd like for everybody to think
2 that I make a closing argument off the cuff, I just
3 stand up and talk to you. But, actually, I prepare
4 for a closing argument and I actually try to sketch
5 out some of the things I want to talk to the jury
6 about in my closing argument. And I don't know why
7 I even do it, because every single time I do that,
8 the Defense gets up and gives their closing argument
9 and I can't go with my outline because I have to
10 respond to some things that they said first.

11 The first thing that I'm going to respond to is
12 kind of a dismay. Yesterday, that drug dealer, as
13 he describes himself, got up on this stand and
14 called Ms. Eartha Herrin a drug dealer. He'll say
15 anything that he has to say to get himself out of
16 the trouble that he is in. But today his attorney
17 got up and compared her to a prostitute. It's
18 unbelievable. She goes in and starts off by saying,
19 after I heard Mr. Newton's testimony yesterday --
20 she didn't even know what he was going to say when
21 he got up on the stand yesterday because he was
22 making it up as he went along.

23 These phone records don't mean anything. He
24 saved you a lot of time. Yesterday, whenever they
25 were objecting to the fact that these records

1 weren't relevant to anything, I had to explain why
2 the records were relevant before they could be
3 admitted into evidence. I said, well, Judge, these
4 are the records that go back from August 25th all
5 the way up to the day of his arrest and he never
6 called or texted his drug dealer. But when gets on
7 the stand, he goes, of course my phone number
8 isn't -- her phone number isn't on these records,
9 because I used a burner phone, I bought it at
10 Walmart.

11 Ladies and gentlemen, I could still be up here
12 asking Waymon Newton questions, and he'd still be
13 making excuses because he's got an answer for
14 everything. Ms. Alves claims that if he wanted to
15 steal something, if he went over there to steal
16 something, he could have just done it when he was
17 inside the business without her, two minutes after
18 she said she lied about the fact that he went into
19 the bathroom.

20 The only time that there was ever an
21 opportunity with him inside the building without
22 Ms. Herrin is when she says he went to the bathroom.
23 Well, that was his opportunity to take anything if
24 he wanted to. But she's lying because she didn't
25 tell Deputy Turner that he went to the bathroom.

1 Really? That's the inconsistency that they want to
2 focus on? How about this inconsistency: How about
3 the inconsistency of I've known this woman all this
4 time and I have her personal checks in my hand that,
5 by the way, she didn't fill out. She trusts me so
6 much she's going to give me blank checks, I can
7 write whatever amount I want on them and I can make
8 them payable to whoever I want. But I didn't know
9 what her real name was until I got served with the
10 warrant. Her real name is printed on her checks. I
11 didn't know what her real name was until I got
12 served with the warrant.

13 Ladies and gentlemen, Waymon Newton was
14 arrested on October 3rd, 2014. Shortly thereafter,
15 his attorney requested what's called discovery from
16 our office, and we had to send them everything we've
17 got on the case. When his attorney gets it, he's
18 got it. He found out one thing that was important
19 from that discovery: There's no surveillance
20 footage, because it says so in the report. There's
21 no surveillance footage. So his task, his only
22 objective is to come up with a story that fits all
23 of the evidence that the State has and still makes
24 him not guilty of the crimes that he's charged with.

25 So he's got a plan. All right.

1 Here we go: I'm going to tell them that she's a
2 drug dealer. And I'm going to prove my truthfulness
3 by telling them that I do some bad stuff too; that
4 will make it look like I'm being straightforward.
5 But I got to establish that she's not telling the
6 truth. So how will I do that? Okay, I'm going to
7 tell them about the checks because one of the checks
8 was actually dated the day before the robbery
9 occurred. Right here, State's 18, Check No. 1433,
10 dated September 29th. The robbery happened on the
11 30th. Ha, got her. How is she writing this check
12 to me on the 29th if she said she didn't know me on
13 the 30th? Well, he didn't count on Investigator
14 Prince and Investigator Cain following up. But they
15 did, and we find out he didn't actually put that
16 check into the bank until 7:30 in the evening on the
17 day after the robbery.

18 In fact, none of these six checks that he gave
19 to the investigators through his attorney, not a
20 single one of them was presented to the bank before
21 the robbery. Remember, he took the purse and he
22 didn't have time to go through it and figure out how
23 much of the drugs were his and how much of the drugs
24 weren't his and what had value and what was not
25 valuable. But then he decided two hours after that

1 that he was going to go out and he was going to
2 start writing those checks to himself and put them
3 in the bank? That's what the bank records show.

4 First check deposited at 18:54, that's
5 6:54 p.m., on September 30th, 2014. You know what's
6 significant about that -- and I know that the volume
7 was real loud when you heard Ms. Herrin's statement
8 she gave to Stacey Prince -- half an hour before
9 that, Ms. Herrin is in the hospital getting her hand
10 sewn up and she's giving that recorded statement to
11 Investigator Prince. He's already trying to
12 capitalize on what's in her purse. Don't try to use
13 the credit cards, all it takes is a phone call to
14 shut down the credit cards; but write the checks, it
15 takes a couple days for that to catch up. That's
16 why the credit cards weren't used. You call an 800
17 number and your credit card gets cut off just like
18 that. Somebody is going to be seen somewhere trying
19 to use the credit card that had been stolen within
20 hours. So that was his first attempt; she knew me
21 because I have these checks. No, Waymon, it wasn't.
22 Hmm, what else can I do?

23 What about video from one of these other days
24 that he supposedly was at Bryant's Auto Sales?
25 Nope, no video. Okay. What about the phone that

1 she made me purchase so that I could call her? Now,
2 he doesn't have a burden of proof. The burden of
3 proof is entirely on the State. But he's the one
4 that's giving up this information. All his story
5 hinges, every single bit of his story hinges, on the
6 fact that he and Ms. Herrin knew each other before
7 September 30th.

8 He testified yesterday that he had a phone from
9 Walmart that he had used to repeatedly contact her,
10 that's how he gets in touch with his drug dealer.
11 Where is that phone? Where are the records from
12 that phone? What is the phone number from that
13 phone so that somebody can go to Ms. Herrin's
14 records and see where she got incoming and outgoing
15 calls on? It doesn't exist. It doesn't exist
16 because he made it up sitting in that chair over
17 there right before he got up and testified, when we
18 found out that for the entire period, he testified,
19 he knew Ms. Herrin about a month before the
20 incident. We had every single call he had made or
21 received and every single text he had received or
22 sent.

23 So now the burner phone mysteriously appears.
24 Oh, yeah, it was a burner phone. Why did you have a
25 burner phone? Well, she made me get one because she

1 wouldn't take calls on it. This is somebody who's
2 supposed to be so cunning, this is somebody who's
3 supposed to be so discreet that she won't allow you
4 to phone her unless it's from a special phone. But
5 she gave you six of her checks that weren't even
6 filled out the day before this incident occurred?
7 Really? That's who's supposed to do this?

8 Ms. Alves can talk -- and I don't even dispute.
9 Ms. Alves can talk about someone was using Waymon's
10 ATM card after he was arrested. So? It doesn't
11 have anything to do with the fact that he robbed Ms.
12 Herrin on the 30th. That's what she says: You got
13 proof his story is true because you've got this.
14 This doesn't have anything to do with Ms. Herrin,
15 this doesn't have anything to do with the robbery.
16 This is who is using his ATM card. Well, maybe
17 somebody else deposited the money into his account.
18 Maybe that's what it is. But there he is sitting in
19 the car with his buddy A.C. He told you who A.C.
20 was. He got A.C. to drive him to the ATM so they
21 could put her checks into his account.

22 Within 24 and a half, give or take some time --
23 let's call it 25. Within 25 hours of the robbery,
24 he had deposited six checks; one at what they call
25 the Kangaroo Express, which is at the intersection

1 of Pine Log and Banks Mill Road. There's a Bank of
2 America ATM right there. Did that the night of the
3 robbery. The next afternoon at about 3:30, two get
4 deposited -- you got the photos of it -- at the
5 Aiken Mall Bank of America ATM. And then later on
6 that night, back at the ATM over by Citizens Park,
7 Banks Mill and Pine Log, he deposits three more
8 checks. Six checks in a little over 24 hours. But
9 he had those checks and they weren't filled out on
10 the 29th, he just didn't bother to deposit any of
11 them.

12 I've worked around a lot of lawyers, and
13 lawyers are big on expressions and sayings. And one
14 of my favorite ones is, when you're talking about a
15 lawyer or talking about a case, if the law is on
16 your side, you argue the law; and if the facts are
17 on your side, you argue the facts; and if neither
18 one of them is on your side, you just argue.

19 Waymon Newton just made up facts. He made up
20 facts that would deal with every single thing that
21 he thought we had. Because he thought once he tells
22 his side of the story and throws these six checks
23 out there, it's over, they're going to believe she's
24 a liar.

25 This 47-year-old lady who has been called a

1 drug dealer and compared to a prostitute in the last
2 two days, who has lived at home with her husband and
3 her children, two of whom are adults and out of the
4 house, one of them still at home; this lady who
5 lives in but somehow every time Waymon
6 Newton goes over to this house in Edgefield, she's
7 there selling drugs. We're not going to believe
8 her, that will be the end of it. You gave us a
9 check that has September 29th on it, whoa, I guess
10 you're telling the truth, Waymon. No, he's not.
11 This whole story about the burner phone, nothing.

12 At the end of the day, ladies and gentlemen,
13 absolutely nothing confirms Waymon Newton's story
14 except Waymon Newton's testimony. That's it.
15 There's no physical evidence that confirms his
16 story.

17 Now, we said it -- I said at the beginning,
18 this entire case is about credibility, it's about
19 believability. How do you determine credibility?
20 In law enforcement, when they're talking about
21 credibility, a lot of times they'll say it's a gut
22 instinct. I think we've all heard that before.
23 Yesterday on the stand, Mr. Newton said, my BS meter
24 was going off or my BS detector was going off.
25 Doesn't matter what you call it.

1 You know how you evaluate credibility. Look at
2 what you can prove outside of the statement, look at
3 the way the statement is given to you, the way it is
4 delivered; consider what the person has to gain or
5 what the person has to lose by their statement.
6 Mr. Newton admits to a whole bunch of things, none
7 of which he's on trial for. Oh, yeah, I'm buying
8 cocaine by ounce-and-a-half increments, I'm sitting
9 there running the numbers on getting a half of
10 a whatever he was talking about. I don't know.
11 Apparently he's got a lot more drug-dealing
12 experience. But he's admitting to all of these
13 things. And all of that is designed for the jury,
14 for even law enforcement before y'all could hear the
15 case, to go, man, he's told us about some pretty bad
16 stuff. But his own attorney said, he told you about
17 his drug use and being the middle man in this drug
18 deal, but we're not here about that. That's right;
19 we're not here about that. So he gets no -- there's
20 no downside to him talking about it, because we're
21 not here about that.

22 When he's trying to figure out how to make a
23 story that fits with the evidence, there's one thing
24 he does know: He does know he can't deny having the
25 purse. He had the purse. I mean, there's the

1 vehicle wreck, all of the stuff that's in the
2 vehicle that belonged to Ms. Herrin, he's been
3 cashing her checks for the last two -- two of the
4 last three days before that. So he's got to say, I
5 had the purse. So what does he do? He comes up
6 with a story of how he gets the purse in his hand.

7 Ms. Alves puts a lot of emphasis and spends a
8 lot of time talking about the signs. Oh, look,
9 security sign over there and then the big sign on
10 the door about video surveillance. Here we go:
11 Warning, these premises are under 24-hour video
12 surveillance. And she said, who's going to go to a
13 place like that and commit a robbery? Ladies and
14 gentlemen, the same person who's going to go to a
15 place like that and confront somebody over a drug
16 deal that hasn't gone right; the same kind of person
17 with two broken vertebra in his neck, his earlobe is
18 served, his face split open, would run to get away
19 from the police from a car and hide for two hours.
20 That's the kind of person that would do that.

21 Mr. Newton went to that car lot; for what
22 reason initially, I don't know. Maybe he really was
23 just there to look at the Durango. Maybe that's why
24 he went. But at some point late in that day, at
25 some point he realized that Ms. Herrin was there by

1 herself. He asked to go to the bathroom. Why? He
2 asked to go to the bathroom so he could go check out
3 the building, he could check out the area as he was
4 walking through.

5 He goes in, nobody in the office, walks right
6 past the office door and goes right to the door that
7 opens up to the garage, opens up that door, there's
8 the garage, the bathroom is on the left, nobody in
9 the garage, nobody in the bathroom. When he comes
10 back out, he knows she's all alone. It was a target
11 of opportunity, and that's all it was. He was going
12 to take her stuff.

13 Why would you rob a car dealership? Why would
14 they have any money? Even if they don't, she does.
15 She's got something that he can take. Why would a
16 car dealership have money? This is the day of the
17 robbery. There's a big sign hanging right here:
18 Buy here, pay here. Who knows how many car payments
19 they accept in the course of a day or a weekend or
20 how often they make their deposits. Maybe there's
21 some money there. But, truthfully, I don't even
22 think he was doing that calculation.

23 He saw that he could rob her, so he was going
24 to rob her and take her stuff. And he knew he was
25 going to get caught for it sooner or later. He

1 didn't care about putting the checks in his account.
2 He put the checks in there. But nobody ever
3 reported the checks. Nobody knew. Ms. Herrin
4 closed her checking account. So the money never
5 came out of her account at SRP. How would she know
6 that he was depositing these checks? Nobody knew
7 that the checks were being cashed.

8 When she gets to the bank the next day to
9 cancel all of her credit cards -- you know from your
10 own common sense, if somebody comes into the bank
11 and says, I need to cancel all my credit cards, my
12 purse got stolen yesterday, the bank's going to go,
13 well, what about your checkbook, you got a checking
14 account with us. Yeah, close that too. She didn't
15 go to the police and update her incident report and
16 tell them her checkbook was in there. Okay.

17 Mr. Newton knew that he was going to be
18 arrested for the armed robbery of Eartha Herrin when
19 that black Chevy Trailblazer hit that pine tree at
20 the intersection of Whiskey and Talatha. He knew
21 because he knew what he did and he knew bald guy,
22 medium build, driving a black Chevy Trailblazer
23 about his height, it was not going to take Sherlock
24 Holmes to go, hey, wait a minute you're going to get
25 put into a photo lineup because we've got to see if

1 you're the person that robbed this lady. That's why
2 he ran. What would motivate somebody to run with
3 two broken bones in their neck and all the injuries
4 he described to you? What would motivate someone to
5 run other than that wreck was the least of their
6 worries?

7 Ladies and gentlemen, there is no credible
8 evidence, not one bit, that Waymon Newton knew or
9 had ever met Eartha Herrin prior to September 30th
10 of 2014, there's not. If it was up here, then the
11 Defense would be showing it to you. It's not. It
12 comes down to his word. What's his motivation to be
13 untruthful? He's facing charges of armed robbery
14 and kidnapping, that's his motivation to be
15 untruthful.

16 What's Ms. Herrin's motivation for being
17 untruthful? Well, Ms. Alves says, well, if she's
18 the drug dealer, she's got to justify the fact that
19 she lost the drugs. Really? The drug dealer is
20 going to call the police and bring all that heat to
21 the place she's distributing drugs from? That's a
22 reasonable thought, if she's a drug dealer. Well,
23 she's gotten herself too far into it now, so she's
24 got to keep on going with it. Really?

25 How easy would it have been on October 3rd, if

1 the only thing that she needs to accomplish, the
2 only possible explanation that the Defense can come
3 up with as to why a drug dealer would call the
4 police and get the police to come is, she's got to
5 have a story for whoever's drugs got stolen so that
6 she can say, hey, look, I got legit robbed and it's
7 some other guy that did it to you. If that is the
8 case, she's already done that by October 3rd.

9 When Investigator Cain goes and shows her the
10 photo lineup, why wouldn't she pick out somebody
11 else or say, I can't identify the person? No. She
12 identified Waymon Newton. She's been going through
13 this since September 30th and she is still here
14 today sitting in this courtroom. She called the
15 police because she did what a law-abiding citizen
16 would do when they've just been robbed. It never
17 occurred to her to do anything but call law
18 enforcement. So she did; she called law
19 enforcement.

20 She went to the hospital. She had to get
21 stitches in her hand. Oh, the hand. Well, Waymon
22 Newton said, I got stabbed in the hand, here's the
23 scar. Stabbed in the hand by the invisible Samurai
24 letter opener, whatever it is. He can't identify
25 it, he'll just have to call it an object because he

1 can't identify it. What he can do is he can stand,
2 tell you how his body was facing, where he was
3 leaning, how he elbowed her in the chest. He can
4 remember all those details, but what the actual
5 object was that he fought with her over and,
6 ultimately, by his story, ended up in his hand, he
7 can't remember what that looked like. It's kind of
8 like a Samurai sort of thing. Really? He got
9 stabbed in the hand with it, or maybe, whenever that
10 vehicle was plowing into that pine tree three days
11 later, he cut his hand along with his face and his
12 ear and God only knows what else on his body.

13 Without believing his story, without believing
14 his story, there is absolutely nothing credible that
15 he said. And before you can get to the point of
16 believing his story, you have to start off on the
17 premise that he and Ms. Herrin knew each other. And
18 that's simply not the case.

19 Ms. Herrin's story, Ms. Alves talks about the
20 order things came in and, oh, she didn't mention
21 this to Deputy Turner, although we don't know that.
22 We know that Deputy Turner didn't write it in his
23 report. And Investigator Prince has a lot of law
24 enforcement experience, but he told you what he
25 wrote in his report was based on the recorded

1 statement.

2 And we know that there were some discrepancies
3 between what he said Ms. Herrin said and what was on
4 the recorded statement. Those discrepancies are
5 nothing. They're the discrepancies that you would
6 get when a somebody tells a story an hour after some
7 event, they have perceived some event, they tell the
8 story and then eight months later they're asked to
9 tell the story again. Ms. Herrin was completely
10 forthright. She knew that she had given a recorded
11 statement, and as Ms. Alves is over there saying,
12 well, you didn't say this or you did say this, she
13 was saying, I don't remember exactly what I told
14 them. Here's what has never changed, ever: I don't
15 know Waymon Newton, he came into the store, he tried
16 to rob me with a knife, he made off with my purse.

17 Ladies and gentlemen, that's armed robbery.
18 Waymon Newton's story: I went into the store, I
19 took her purse, he claims -- from the stand he
20 claims, oh, I don't know what intimidation or force
21 means, 30 seconds after he just told you he elbowed
22 her in the chest because he was behind him, that's
23 force and intimidation, you're using it to get out
24 with the purse. The question is, did he have a
25 knife or not? Did he have a knife or did that lady

1 attack him with a letter opener?

2 He told you yesterday he was bigger than he is
3 now. He was 216. I was 216 back then, that's what
4 he said. So here's this guy, 216 pounds, mad
5 because of the drug deal, according to him, and
6 Ms. Herrin attacked him with a letter opener, that's
7 his story. It's not credible. It's not credible
8 and there's nothing to support it besides more of
9 his story.

10 MS. ALVES: Objection; burden shifting. I
11 don't believe the Defense has to present evidence;
12 the State does.

13 THE COURT: Overruled.

14 MR. MILLER: Take the evidence that's been
15 presented to you, look at the evidence, decide which
16 person is credible and which person is not. If you
17 determine that Eartha Herrin is credible, then
18 Waymon Newton is guilty of armed robbery. Because
19 while he did what he said he did, he had a knife, he
20 took the purse by force or intimidation from her.

21 If you decide that Ms. Herrin is credible, when
22 he's got her pushed up against the paper shredder
23 with the knife, she can't leave; that's confinement.
24 Kidnapping doesn't mean you send a ransom note in
25 South Carolina, it doesn't require that you send a

1 ransom note in South Carolina. Kidnapping means
2 that someone unlawfully and without just cause
3 confines or seizes someone. The Judge will explain
4 that to you. He confined her, he seized her, he
5 would not let her go until she told him where her
6 money was in that purse. Get it. I can't get it,
7 you're on me. He grabs it and he runs out the door.
8 That's kidnapping.

9 There are two investigators that you heard from
10 in this case. Between the two of them, they have 50
11 years of law enforcement experience, nearly 30 of
12 that as major case investigators; Investigator Cain
13 and Investigator Prince. They have what Mr. Newton
14 would call a BS detector. They've seen it all.
15 They know a drug dealer when they see one. They
16 know when someone is trying to pull the wool over
17 their eyes, they know when somebody is trying to get
18 over.

19 Ladies and gentlemen, y'all have listened to
20 all of the testimony, you've heard all of the
21 evidence. And I'm going to sit down, but I want to
22 leave you with this : The word verdict is derived
23 from a Latin word, veredicto. Veredicto means to
24 speak the truth. What I'm going to ask you to do,
25 ladies and gentlemen, is I'm going to ask you to go

1 into that jury room, consider what the truth is,
2 apply the truth to the facts that the Judge -- or,
3 excuse me, apply the truth to the law that the Judge
4 is going to tell you. And when you do that, your
5 verdict is going to be guilty of armed robbery and
6 guilty of kidnapping, because that is the truth.

7 Eartha Herrin is no drug dealer. Eartha Herrin
8 is no criminal mastermind. Eartha Herrin is a lady
9 who was doing her job and got robbed. Thank you.

10 THE COURT: Mr. Foreman, ladies and gentlemen
11 of the jury, my charge is 15 minutes. Anybody need
12 a bathroom break?

13 THE FOREMAN: No, sir.

14 THE COURT: Okay.

15 Mr. Foreman, ladies and gentlemen of the jury,
16 let me remind you once again that the fact that the
17 defendant in this case was arrested, charged, and
18 indicted in the case is not evidence in the case
19 and, as I told you earlier, cannot be considered by
20 you as evidence in the case or evidence of guilt in
21 the case, nor does it create any presumption or
22 inference of guilt.

23 The indictments are simply the formal documents
24 which contains the charges made against the
25 defendant. It's the formal document that brings

1 this case into the courtroom. So let's start off
2 with that: The fact that he's indicted creates no
3 presumptions or inferences, it's just the formal way
4 we come into the courtroom. There are two
5 indictments in this case; one for armed robbery and
6 one for kidnapping. Each indictment charges a
7 separate and distinct crime, and you must decide
8 each indictment separately on the evidence and law
9 applicable to it uninfluenced by your decision as to
10 any other indictment; in other words, he may be
11 convicted or found not guilty on any or all of the
12 offenses charged. You'll be asked to write a
13 separate verdict of guilty or not guilty for each
14 indictment, so you consider them separate and apart
15 from each other. Even though the facts apply to
16 each one, you consider each indictment separately.

17 To these two indictments, this defendant has
18 pled not guilty, and that plea of not guilty puts
19 the burden on the State to prove the defendant
20 guilty to you beyond a reasonable doubt. A person
21 charged with committing a criminal offense in our
22 state and in the United States is never required to
23 prove himself innocent; that burden is on the State.
24 So I charge and instruct you that it is an important
25 constitutional rule of law that a defendant in a

1 criminal trial, no matter how serious the charges
2 may be, will always be presumed to be innocent of
3 the crimes for which the indictments were issued
4 unless guilt has been proven by evidence satisfying
5 you of that guilt beyond a reasonable doubt.

6 The presumption of innocence does not end when
7 you start your deliberations, but it stays with a
8 defendant throughout the trial until you reach a
9 verdict of guilty based on evidence satisfying you
10 of that guilt beyond a reasonable doubt. I tell you
11 that the presumption of innocence is not a mere
12 legal theory and it is not just a legal phrase; as I
13 said, it is a substantial constitutional right that
14 every defendant is entitled, unless you the jury are
15 satisfied from the evidence of the defendant's guilt
16 beyond a reasonable doubt.

17 I gave you an illustration at the opening
18 statements about what a reasonable doubt is and the
19 type of burden of proof in a criminal case. Our
20 Supreme Court has defined it in this language: A
21 reasonable doubt is the kind of doubt that would
22 cause a reasonable person to hesitate to act. It's
23 the kind of doubt that would cause a reasonable
24 person to hesitate to act.

25 Our Supreme Courts have also defined it in this

1 manner: Proof beyond a reasonable doubt is proof
2 that leaves you firmly convinced of the defendant's
3 guilt. It leaves you firmly convinced of the
4 defendant's guilty. There are very few things in
5 this world that we know with absolute certainty, and
6 in criminal cases the law does not require proof
7 that overcomes every possible doubt. If, based on
8 your consideration of the evidence, you are firmly
9 convinced that the defendant is guilty of the crimes
10 charged, then you must find the defendant guilty;
11 however, on the other hand, if you think that
12 there's a real possibility that he is not guilty,
13 then you must give him the benefit of the doubt and
14 find him not guilty.

15 Let me remind you that I told you at the
16 beginning of the case that you and I have distinct
17 functions to perform. My position as Judge makes me
18 the judge of the law in the case. So you've taken
19 an oath to accept the law as I give it to you.
20 Therefore, if you think the law is something other
21 than I say or think it should be something other
22 than I say, please set aside that preconceived idea
23 and accept the law as it is in our state and apply
24 it to these particular cases.

25 My other role and responsibility is to rule on

1 the admissibility of the evidence. And, as I told
2 you in the opening statements, oftentimes you'll
3 hear different sides of the story. And I think this
4 case is an excellent example of two widely divergent
5 factual patterns. Now, in dealing with the facts
6 and in dealing with admissibility, please bear in
7 mind that since I'm the judge of the law, I have
8 absolutely no responsibility nor do I have any
9 opinion about the facts of the case. The law
10 doesn't allow me to do that. So at any time during
11 the trial of the case I have raised my eyebrow,
12 smiled, frowned, chewed on my glasses, looked like I
13 was bored or happy or whatever, don't read anything
14 into that, because I can't have an opinion about the
15 facts; the law does not allow me.

16 However, on the other hand, you are the most
17 important judge in this case. You are 12
18 collectively acting as one, you are the judges of
19 the facts in the case. And it's your sole
20 responsibility to analyze the evidence and determine
21 what evidence convinces you of its truth. Now, in
22 doing and carrying out your duty as the judge of the
23 facts, obviously, without saying it, you have to
24 determine and it is your responsibility as the
25 judges of the facts to determine the credibility of

1 the witnesses who have testified in this case.

2 You've heard the word credibility used by a lot of
3 people in the trial of this case, and credibility
4 simply means believability. Who do you believe?

5 So it becomes your duty as jurors to analyze
6 and to evaluate the testimony from the witnesses and
7 determine which evidence convinces you of its truth;
8 in other words, you have to determine who is telling
9 the truth. You have to determine the credibility of
10 the witnesses. Which story do you believe?

11 Now, in determining the credibility or
12 believability of the witnesses who have testified in
13 this case, you have the right and the discretion to
14 believe one witness over several, several witnesses
15 over one; you can believe part of what a witness
16 says and disbelieve the other part; you can believe
17 everything a witness says or you can reject
18 everything a witness says; you may consider whether
19 any witness has exhibited to you any interest, bias,
20 prejudice or other motive in the case, and you can
21 also consider the appearance and the manner of the
22 witness while on the witness stand.

23 You all have, in life, had the opportunity to
24 deal with husbands, wives, friends, children,
25 employees, employers, people on the street, and

1 people in your everyday life. You know how to
2 determine, by using your own common sense, who is
3 telling the truth. You know how to judge the
4 credibility of witnesses. Please use that common
5 sense and those experiences that you've had in life
6 and carry that with you into the jury room to
7 determine who in this case is the credible witness
8 and what credible witnesses are and who the credible
9 witnesses are. And once you determine that and
10 those are the true facts in the case, then,
11 obviously, you'll take those true facts and apply it
12 to the law as we've been discussing.

13 Now, Mr. Foreman, ladies and gentlemen, that's
14 sort of general law we charge in all criminal cases;
15 burden of proof and what reasonable doubt is and my
16 job and your job and the presumption of innocence
17 and how you judge believability. I tell jurors that
18 in every case.

19 Now let's talk about what the defendant is
20 indicted for in this case. He's charged, number
21 one, with armed robbery. In order to prove this
22 offense, the State must prove beyond a reasonable
23 doubt that the defendant took personal property from
24 the person or presence of another person. The first
25 thing they have to prove beyond a reasonable doubt

1 is that he took personal property from the person or
2 from the presence of another person. And we say
3 property is in the presence of a person if it is
4 within that person's reach, inspection, observation,
5 or control so that the person could, not overcome by
6 violence or prevented by fear, keep possession of
7 the property. First thing you have to prove beyond
8 a reasonable doubt is that he took personal property
9 from the other or from the presence of another.

10 The State must also prove beyond a reasonable
11 doubt that the defendant carried the property away,
12 intending to permanently deprive the owner of the
13 property and to keep the property for the
14 defendant's own use. The slightest removal of the
15 property or the complete possession of the property,
16 even for a moment, by the defendant is sufficient to
17 show a taking and carrying away of the property.
18 And the taking and carrying away of the property
19 must have been done with violence or by putting the
20 owner of the property in fear of violence. And,
21 finally, the State must prove beyond a reasonable
22 doubt that at the time the property was taken and at
23 the time of the violence or putting the person in
24 violence, that the defendant was armed with a deadly
25 weapon during the robbery.

1 Of course a deadly weapon is any instrument or
2 article which is likely to cause death or great
3 bodily harm. Whether an instrument has been used as
4 a deadly weapon obviously depends on the facts and
5 circumstances of each case, and our Courts have held
6 that a dagger or a knife or that type of situation
7 is considered a deadly weapon.

8 Now, under the armed robbery indictment, we
9 have a concept of law. Armed robbery is the highest
10 level of robbery. It's the taking away of property
11 with violence while armed with a weapon. There are
12 what we call lesser included offenses under armed
13 robbery, and the first one below that is what we
14 call just common law robbery or strong-arm robbery.
15 And in this case I will ask you that if you find
16 that the State has failed to prove that the
17 defendant was armed with a deadly weapon, then you
18 may consider whether or not the State has proven to
19 you beyond a reasonable doubt that the defendant
20 committed the offense of what we call common law
21 robbery or strong-arm robbery, and that has all the
22 elements of armed robbery except in that case the
23 defendant was not armed with a deadly weapon; in
24 other words, he's taken personal property from a
25 person without that person's consent and carried it

1 away and, while taking and carrying it away, it must
2 have been done with violence or by putting the owner
3 of the property in fear of violence. It has all of
4 the elements of armed robbery except for the
5 requirement that at the time of the taking, the
6 defendant is armed with a deadly weapon. That's
7 what it's called strong-arm or common law robbery.

8 Now, also included as a lesser offense to the
9 armed robbery and a lesser included offense to the
10 strong-arm robbery is something we call larceny,
11 which is stealing. If you find that the State has
12 failed to prove that he was armed or that they
13 failed to prove that it was taken away with violence
14 and if you find he was, in fact, taking away the
15 property without consent and deprived the owner of
16 it, then that would be the larceny charge. In other
17 words, that's the stealing absent the violence and
18 absent the weapon, the deadly weapon. So there's
19 three levels, and you'll be asked to -- if you find
20 him guilty of armed robbery, that's the end of it;
21 if you find him not guilty of armed robbery, then
22 you consider whether it's strong-arm robbery. If
23 you find him guilty of that, that's the end of it;
24 if you find him not guilty, then you have to
25 determine whether or not it's simple larceny. So

1 you have three levels there. You start off at the
2 top. You understand how that works.

3 Now, the last or the second indictment is an
4 indictment for kidnapping. He's charged with the
5 crime of kidnapping. The State must prove to you
6 beyond a reasonable doubt that the defendant
7 knowingly and unlawfully either seized, confined,
8 inveigled, kidnapped, abducted or carried away
9 another person without authority of law. So it's
10 any one of those things or a combination. You have
11 to prove that he knowingly and unlawfully either
12 seized and/or confined and/or decoyed and/or
13 kidnapped and/or abducted and/or carried away
14 another person without authority of law.

15 To do something unlawfully is to do it
16 willfully against the law. To do something
17 knowingly means that you're consciously doing it,
18 not accidentally. And the words that we talked
19 about that you have to prove that he either seized
20 and/or confined and/or decoyed, kidnapped, these
21 words are defined as follows: Under our law, seize
22 means to take hold of suddenly or forcibly; confine
23 means to limit, restrict or enclose within bounds or
24 to imprison or shut or keep in; inveigle means to
25 lure entice or lead astray by false representations,

1 promises or other deceitful means; decoy means to
2 lure; kidnap is to remove a person against their
3 will by unlawful force or by fraud; and abduct means
4 to carry off secretly by force or for an illegal
5 purpose; carry away means to remove.

6 The State does not have to prove that the
7 defendant did all of these things; instead, if you
8 find beyond a reasonable doubt that the defendant
9 did any one of these things or a combination of
10 these things, you may find the defendant guilty of
11 kidnapping. Kidnapping does not have to be for any
12 personal or monetary gain or any illegal purpose,
13 but it may be any reason whatsoever.

14 Now, Mr. Foreman, ladies and gentlemen of the
15 jury, you'll have two verdict forms in the jury
16 room; one for the kidnapping. And there's no lesser
17 included offense in that, so you'll have to decide
18 whether or not the State has proven to you beyond a
19 reasonable doubt that he the seized, confined,
20 decoyed, inveigled, kidnapped. If you find that the
21 State has proven to you beyond a reasonable doubt
22 that he did seize or confine, then it would -- you
23 got a guilty or a not guilty, whichever one you
24 decide by unanimous vote. Okay? There's one on
25 that one. Consider it separate and apart from the

1 armed robbery.

2 The armed robbery is a little more
3 complicated -- not really -- because you've got
4 three exercises you go through. First of all, you
5 have to decide whether or not the State proven to
6 you beyond a reasonable doubt all the elements of
7 armed robbery. If you find they have and find him
8 guilty, that's the end of it. If you find that they
9 haven't done that, then you have to consider whether
10 the property was taken with violence without the
11 deadly weapon. And if you find him not guilty of
12 that, then you would go down to the last one, which
13 is what we call petit larceny. And that's just
14 simply the taking and carrying away, and it doesn't
15 have a weapon and it doesn't have any violence or
16 intimidation or force. So if you find him guilty of
17 armed robbery, you stop; if you find him not guilty,
18 you consider robbery. If you find him guilty of
19 that, you stop; if you find him not guilty, then you
20 go down to the petit larceny, find him guilty of
21 that or not guilty, whatever your decision is.

22 Now, obviously, your decision, all of you have
23 to unanimously agree as to both indictments. You're
24 not here to punish any enemies or to reward any
25 friends, you're here to give careful consideration

1 and deliberation of the evidence. Your job is just
2 like jurors who sit all throughout the nation.
3 You're required and you're asked to determine what
4 the true facts are in this case. In this case
5 you've got, obviously, two factual scenarios that
6 are about as far apart as you can get, and you're
7 asked to determine which one you believe, which one
8 the State has proven to you beyond a reasonable
9 doubt or have they proven their side to you beyond a
10 reasonable doubt. The defendant has nothing to
11 prove, he has no burden of proof.

12 If you have any questions during your
13 deliberation, the protocol, the way to handle that,
14 is tho simply write it out on a piece of paper,
15 Mr. Foreman, knock on the door, and the bailiff will
16 bring it to me. Sometimes I can answer it,
17 sometimes I can't, depending on what the question
18 is.

19 Once you have reach a verdict -- obviously, it
20 has to be unanimous, all 12 of you have to agree --
21 check the appropriate, not guilty or guilty, sign
22 your name, once you've done that on both of them,
23 let us know. It's 11:00. If you think that we're
24 going to go later -- and I'll let you decide what
25 later is -- if you want me to order you some lunch,

1 I'll be more than happy to do so. You're now the
2 boss along with the 11 others.

3 I'll ask you to retire to your jury room now.
4 Do not start deliberating yet. I have to ask the
5 lawyers if I need to add anything. It will take us
6 a few minutes to get all of the evidence, make sure
7 we got it all here, and that evidence will be given
8 to you in the jury room for you to look at. So
9 don't deliberate until I send the verdict forms back
10 and the evidence, which will be about five minutes.

11 THE FOREMAN: Yes, sir.

12 (The jury retires to their jury room at 11:00
13 AM.)

14 THE COURT: Mr. Miller, any objections,
15 requested deletions, additions, modifications or
16 objections to the charge?

17 MR. MILLER: None from the State, Your Honor.

18 THE COURT: Ms. Alves, same question.

19 MS. ALVES: Yes, sir.

20 THE COURT: Yes, ma'am?

21 MS. ALVES: Judge, I'd ask that you recharge
22 them on the burden of proof; in particular, that the
23 State has the burden to prove it beyond a reasonable
24 doubt, that they have not met their burden, that he
25 be found not guilty.

1 The reason I'm asking for this is that when you
2 were going over the verdict forms of kidnapping, you
3 told the jury that if the State has proven, then
4 they have to decide not guilty or guilty; you didn't
5 tell them specifically that if the State has not met
6 their burden to prove the defendant guilty beyond a
7 reasonable doubt, they must find him guilty. You
8 just said if the State has proven it, then they have
9 to decide.

10 You also -- when you were going over the
11 verdict form of armed robbery, you told the jury
12 that -- you talked to them about -- obviously about
13 the different levels, but then you said that if
14 the -- when you got to petit larceny, you said that
15 if the State has found him -- you have to decide if
16 the State has found him guilty or not -- they found
17 him guilty of the larceny; you didn't specifically
18 say that they could find him not guilty altogether
19 if the State has not met their burden together at
20 all that he had taken away the property. I know
21 that Mr. Newton did admit it, but the State -- they
22 were not clearly charged on that burden.

23 Also, when you were talking to them at the end
24 in your final remarks, you specifically told them
25 that they had to decide which story the State had

1 proven to them beyond a reasonable doubt. You did
2 not tell them specifically -- I mean, and then you
3 went on to say that the defendant did not have to
4 prove anything. But you didn't specifically tell
5 the jury that the State has to prove him guilty
6 beyond a reasonable doubt and if the State hasn't
7 met their burden, that they have to find him not
8 guilty.

9 THE COURT: I'm going to stand by my charge.
10 I've charged the reasonable doubt charge that I've
11 been charging for 11 years. It's the standard
12 charge we always charge, and that includes: If, on
13 the other hand, you think there's a real possibility
14 that he is not guilty, you must give him the benefit
15 of the doubt and find him not guilty, which is the
16 overriding charge on all of the various choices that
17 they have to choose. I'll stand by my charge.
18 You're protected. Thank you.

19 MS. ALVES: Yes, sir.

20 THE COURT: Anything else?

21 MR. MILLER: Nothing from the State, Your
22 Honor.

23 THE COURT: All right. Please come and confirm
24 that we have all of the evidence and review the
25 verdict form so we can send it back to the jury.

1 All right. Mr. Miller, Ms. Alves, have you
2 confirmed that we have all the exhibits in order and
3 accounted for?

4 MR. MILLER: Yes, sir.

5 MS. ALVES: Yes, sir.

6 THE COURT: And you've both reviewed the
7 verdict form and everything is in order?

8 MR. MILLER: Yes, sir.

9 MS. ALVES: Yes, sir.

10 THE COURT: All right. It's 11:08. Please
11 present it to the jury so they can commence their
12 deliberations.

13 (The jury begins their deliberations at 11:08
14 AM.)

15 (Trial in recess at 11:05 AM until 1:01 PM.)

16 (The jury enters courtroom at 1:02 PM.)

17 (Court's Exhibit No. 3 marked for
18 identification.)

19 THE COURT: Okay. Mr. Foreman, I got a note
20 that says: If during the commission of a larceny an
21 altercation breaks out, is this considered
22 strong-arm robbery?

23 Well, I can't answer that because that would be
24 me sort of commenting on the facts. But what I can
25 do is once again charge you or instruct you on what

1 armed robbery is, what strong-arm robbery is, and
2 grand larceny. Is that fair?

3 THE FOREMAN: Yes, sir.

4 THE COURT: All right. Armed robbery: The
5 State has to prove beyond a reasonable doubt that
6 the defendant took personal property from the
7 presence of another, took the property from her or
8 him. Property is in the presence of a person if it
9 is within that person's reach, observation, or
10 control. The State also must prove that the
11 defendant carried the property away, intending to
12 permanently deprive the owner of his or her
13 ownership, and in taking away that property, it must
14 have been done with violence or by putting the owner
15 of the property in fear of violence. So it's taking
16 away, carrying it away, depriving them of it with
17 violence.

18 And then armed robbery: The State has to prove
19 beyond a reasonable doubt that the defendant was
20 armed with a deadly weapon during the robbery.

21 Now, common law or strong-arm robbery is
22 everything that armed robbery is, except for they
23 don't have to have to prove he was involved with a
24 deadly weapon; in other words, the State has to
25 prove that he took the property away with intent to

1 deprive the person thereof, accompanied by violence
2 or -- everything except for the deadly weapon.

3 Okay?

4 In other words, it's the taking of the property
5 accompanied by -- and having been done with violence
6 or putting the owner of the property in fear of
7 violence. It's everything except being armed with a
8 deadly weapon. That's armed robbery, robbery.

9 Now, petit larceny is simply taking away and
10 depriving the owner of the property without any
11 violence or without any use of a deadly weapon.
12 It's stealing. Okay?

13 Any objection to that by the State?

14 MR. MILLER: No, Your Honor.

15 THE COURT: Ms. Alves?

16 MS. ALVES: Jude, I have a matter that I need
17 to address.

18 THE COURT: All right. Thank you.

19 Before you walk out, let me tell you one more
20 thing: Obviously, all those elements have to have
21 been proven to you by the State beyond a reasonable
22 doubt. Okay? If they failed to prove it to you
23 beyond a reasonable doubt, obviously, it would be
24 not guilty.

25 THE FOREMAN: Okay.

1 (The jury exits the courtroom at 1:06 PM.)

2 THE COURT: All right. Ms. Alves, what
3 objection do you have?

4 MS. ALVES: Your Honor, my objection was -- and
5 I would just put this on the record, that I did
6 object previously to your charging them on armed
7 robbery again as well as strong-arm and larceny,
8 because the jury did not ask for the definition of
9 armed robbery, just for the other two.

10 Also, in -- I think that in your definition --
11 in your discussion of strong-arm robbery, I think
12 that it was probably too much emphasis on violence,
13 whereas it talked about it has to be accompanied by
14 violence. But their question specifically was, if
15 the purse was already taken and -- in the course of
16 the -- in the -- I'm sorry. I don't remember the
17 exact question. I believe it was in the course of
18 the larceny. It indicated to me that they believed
19 the larceny already occurred. If there was violence
20 after that, would that be strong-arm robbery.

21 And I believe the answer to that question would
22 be, no; that once the purse has already been taken,
23 it's not been taken by any violence or the threat of
24 violence, then that would not be strong-arm robbery
25 for that. I don't think that is clear to the jury.

1 And in your charge, you emphasized violence or
2 threat of violence to the jury. And I think that
3 might lead them to believe that if there's a larceny
4 already been committed and the violence occurs after
5 the larceny was committed, that they could find that
6 there would be strong-arm robbery.

7 THE COURT: Well, I don't think I emphasized
8 anything. I charged the law exactly as it's
9 written. I'll stand by my charge. Thank you.

10 MS. ALVES: Yes, sir.

11 THE COURT: All right. We'll stand at ease
12 again.

13 (Trial in recess at 1:08 PM until 1:33 PM.)

14 (Court's Exhibit No. 4 marked for
15 identification.)

16 THE COURT: Get your client please, Ms. Alves.

17 MS. ALVES: Yes, sir.

18 THE COURT: Is the State ready to receive the
19 verdict?

20 MR. MILLER: Yes, sir.

21 THE COURT: Ms. Alves, is your client ready?

22 MS. ALVES: Yes, sir.

23 THE COURT: Mr. Foreman, have y'all reached a
24 verdict?

25 THE FOREMAN: Yes, sir.

1 THE COURT: Please pass it up.

2 THE CLERK: Your Honor, we have State of South
3 Carolina, County of Aiken, State vs. Waymon Eugene
4 Newton, Indictment No. 2015-GS-02-00441. As to the
5 offense of kidnapping, we the jury find the
6 defendant not guilty. We unanimously agree, June
7 17th, 2015, Foreperson L. L. Lucius Walker.

8 Your Honor, we have State of South Carolina,
9 County of Aiken, State vs. Waymon Eugene Newton.
10 Indictment No. 2015-GS-02-00442. As to the offense
11 of armed robbery, we the jury find the defendant not
12 guilty.

13 As to the offense of strong-arm robbery, we the
14 jury find the defendant guilty. As to the offense
15 of petit larceny, we the jury find the defendant not
16 guilty. We unanimously agree June 17th, 2015,
17 Foreperson Lucius Walker.

18 Ladies and gentlemen of the petit jury, if this
19 is your verdict, please indicate by raising your
20 right hand. All hands are raised, Your Honor.

21 THE COURT: Anything for the jury before I
22 dismiss them by the State?

23 MR. MILLER: Nothing from the State, Your
24 Honor.

25 THE COURT: Ms. Alves.

1 MS. ALVES: No, Your Honor.

2 THE COURT: All right. Ladies and gentlemen of
3 the jury panel, that concludes your service this
4 week. You've performed admirably. Thank you for
5 your service.

6 If anyone needs a work excuse, if you'll wait
7 in the jury room, I'll have one brought to you in a
8 few minutes. Checks will be mailed to you for your
9 service. And I thank you for your service.

10 (Jury excused.)

11 THE COURT: Ms. Alves?

12 MS. ALVES: Your Honor, may it please the
13 Court.

14 Before I begin mitigation on behalf of
15 Mr. Newton, I would make a motion for a new trial on
16 behalf of Mr. Newton. Taking the evidence in the
17 light most favorable to the State, I don't believe
18 that there was any evidence that supported a
19 conviction of strong-arm robbery over armed robbery.
20 I base that on all the testimony and my prior
21 objection in response to their question.

22 THE COURT: I respectfully disagree. I thought
23 the evidence was overwhelming and I thought that his
24 testimony was most incredible. But, anyway, the
25 jury made a decision and I respect their decision.

1 There's ample evidence in the record to support it.
2 I respectfully deny your motion.

3 MS. ALVES: Yes, sir.

4 Your Honor, Mr. Newman is 38 years old. He
5 grew up in Greer, South Carolina. As he testified
6 to, he has one child who was born in . That
7 child was conceived after he was -- obviously after
8 he was released from the department of corrections
9 by somebody he met with right after he got out.

10 He was -- after he got out of jail, he had
11 some -- he started working doing home improvement
12 construction and he worked doing pressure-washing
13 and roofing. He didn't really have ties to Aiken,
14 but during the time he was incarcerated, he was
15 mentored by John Brown who is retired law
16 enforcement and he works at SRS, and he basically
17 befriended Mr. Newton and looked out for Mr. Newton.
18 Mr. Newton lived with him for a period of time.

19 Mr. Newton came down here, started working --
20 that's when he started working for the home
21 improvement construction firm that he worked for.
22 And, obviously, he was planning to go to Aiken
23 Technical College. I believe there was a letter
24 entered into evidence showing that he was trying to
25 apply there and was working towards getting into

1 that program.

2 Unfortunately, Mr. Newton, at some point -- and
3 I know he wasn't out of prison for very long before
4 he got in trouble again. But, unfortunately at some
5 point, from his testimony, he got involved with some
6 people who were doing --

7 THE COURT: When was he released from
8 incarceration?

9 MR. MILLER: July 1st of 2014. He made it 90
10 days before this.

11 THE COURT: Thank you.

12 MS. ALVES: But, unfortunately, he got into
13 trouble, and this is where we are.

14 Mr. Newton would like to address you on his own
15 behalf as well. He's been incarcerated since
16 October 3rd of 2014. Judge, in the car accident --
17 he told you what his injuries were. He was in the
18 hospital for a period of time; I got his medical
19 records from there. And while he's been in the
20 jail, he's been getting medical care for the injury
21 that he had to his neck and vertebrae.

22 I'd also note that when he was out -- he did
23 make some positive steps. He didn't just get into
24 trouble. He signed up to go to Aiken Tech and he
25 also did sign up to start at voc rehab. He was

1 trying to do something for himself but,
2 unfortunately, this is where we found ourselves.

3 THE COURT: Mr. Newton.

4 THE DEFENDANT: First of all, I'd like to
5 apologize to Ms. Herrin, your family and any harm or
6 offense I caused. Mr. Bryant, I apologize for that.
7 I'd also like to extend my gratitude to Solicitor
8 Miller, Investigator Prince, for the leniency they
9 extended to me. Some of the things they didn't
10 bring up.

11 I've never had a problem excepting
12 accountability for my actions, Your Honor. It's
13 true, I have an extensive criminal history. One
14 thing that I can say, I don't blame nothing on my
15 childhood or whatever, but I grew up in and out of
16 foster homes. It's kind of hard.

17 THE COURT: Sure. I understand. I think I
18 know what you're trying to tell me.

19 MS. ALVES: Judge, in addition to that, let me
20 just tell you, while he was incarcerated -- it's not
21 clear on the records how long he spent. But a lot
22 of his time incarcerated he did spend somewhat
23 solitary. And for the last two years prior to his
24 release, he was --

25 THE DEFENDANT: Four years.

1 MS. ALVES: Was it four years in solitary?

2 THE COURT: You mean, on the other charge?

3 MS. ALVES: When he was incarcerated -- when he
4 was in prison.

5 THE DEFENDANT: They had a thing come through
6 one time if you had certain tattoos or whatever,
7 they gang-swept you, no charges, whatever. I
8 remained on solitary confinement -- complete
9 solitary confinement, showers in the room, no
10 contact -- from October 26th, 2010 to my release
11 July 1st.

12 MS. ALVES: In the past year, year and a half,
13 prior to his release, he was under mental health
14 care, and one of their concerns was the length of
15 time he had spent in solitary.

16 THE DEFENDANT: Coming out, I met Mr. Brown
17 through prison ministry. As I say, he's a retired
18 Highway Patrol for South Carolina. He's currently
19 the director of security at Savannah River Site.

20 I was making good progress, for the most part.
21 But, like, with employment, due to the fact of the
22 length of my sentence I served and for the offense,
23 I went through the unemployment office, nobody would
24 hire me. I mean, Amick Farms wouldn't even hire me.
25 Next, we tried some of the fast-food restaurants,

1 they wouldn't take me. Went through voc rehab,
2 couldn't find job placement for me.

3 I eventually obtained employment, like, my
4 second week out with Dreamweaver Home improvement
5 and Remodeling out of Waynesborro, Georgia making a
6 decent wage, \$18 an hour. I had to quit the job
7 because the Department of Probation, Parole and
8 Pardon Services in Aiken County wouldn't give me a
9 travel permit because they say that they have to
10 know where I'm going to be every day. But I was
11 actually a crew foreman. I didn't know where I'd be
12 at every day as a crew foreman.

13 After that, I basically done home repairs
14 around the area. I stayed in Sandstone, Woodside,
15 you know, pressure-washing, things along those
16 lines. I applied for FAFSA and I got approved for
17 it, because I knew I'd have to get an education,
18 some kind of certification to maybe facilitate
19 getting a job.

20 THE COURT: How far did you go to school?

21 THE DEFENDANT: I got my GED and I obtained a
22 Bachelor's of Psychology in the department of
23 corrections. But with that field there, they ain't
24 too keen on hiring convicted felons.

25 You know, the thing is, this right here, the

1 day that they served the notice of life without
2 parole, they could have released me ten minutes
3 later and I feel it safe to say my criminal
4 inclination was gone. But at 38 years old, I've
5 served a total, juvenile and adult, 23 years and
6 nine months of my life incarcerated.

7 For me, when I went back to society, it is just
8 extremely hard to adapt to, all the way around,
9 because your thought patterns from when you're in
10 there, because regardless of what's promulgated to
11 the public, there's nothing rehabilitating about the
12 South Carolina Department of Corrections whatsoever.
13 It's just a place that breeds animosity in you or
14 hatred. I mean, a lot of the deceitfulness, we
15 learn in there because if you go to them with a
16 problem, telling the truth really don't work, so you
17 have to lie and scheme or whatever. And over years
18 and years -- my last incarceration was 17 years
19 straight -- it become engrained. I fought against
20 it when I got out, you know, but I didn't make it.

21 I've never been held accountable to anyone
22 else. I've always been, you know, only accountable
23 to myself. But I have a son and, you know, he's two
24 months old. And to just think about it, it's a
25 vicious circle, and it's got to break. You know,

1 I'm wrong. I stand before you now saying I'm wrong.
2 I said that from the beginning. But, you know, I
3 was in error for putting myself in this situation.

4 But at 38 years old, to go back to prison for a
5 lengthy period, it's not a solution. And I've never
6 asked for mercy before in front of the Court, but at
7 the same time I've never had a break, it's always
8 lock him up. And I know what it's like to grow up
9 without a father, and I don't want that for my
10 child.

11 THE COURT: Thank you.

12 Mr. Miller?

13 MR. MILLER: Your Honor, Mr. Newton's record
14 starts back in 1993 with unlawful use of telephone
15 and unlawful carrying of a club. He then was
16 convicted of burglary in the second degree and grand
17 larceny in 1993; shoplifting times two in 1994; went
18 and did a YOA in January of '94.

19 By December of '94, he got arrested for
20 disorderly conduct; '95, driving under suspension
21 and failure to stop for blue lights; purse snatching
22 in May of 1995; forgery, less than \$5,000 in 1997,
23 and a second count of forgery less than 5,000 in
24 1997.

25 June 8th, 1998, he was convicted of two counts

1 of armed robbery with a deadly weapon and sentenced
2 to 20 years and, as the Court has heard, he was
3 released from that sentence July 1st, 2014, and made
4 it 90 days. He's got a pending burglary first
5 charge. I'll be serving another life notice on him
6 for that charge.

7 The State would request that the Court give him
8 the 15 years that he so richly deserves.

9 THE COURT: All right. Anything else from
10 anyone?

11 The sentence of the Court is that you be
12 committed to the state department of corrections for
13 a period of 15 years. Good luck.

14 MS. ALVES: Your Honor, as to the new burglary
15 charge, I did put the solicitor on notice that we'd
16 be asking for a speedy trial on that case. I would
17 ask that a date be set for us to try that case as
18 well.

19 THE COURT: You ready to hear that or do you
20 want to hold off until I'm back here again?

21 MR. MILLER: We can hear the motion later on,
22 Your Honor. I got to find out how long it's going
23 to take to get those witnesses together.

24 THE COURT: I'll hear it the next term I'm
25 here.

1 MS. ALVES: Yes, sir.

2 PROBATION AGENT: Your Honor, the defendant is
3 on community supervision and this would revoke his
4 CSP, I believe, a total of one year.

5 THE COURT: Well, let's get that all -- when I
6 come back and hear the motion for speedy trial, I'll
7 hear that at the same time.

8 PROBATION AGENT: Thank you, Your Honor.

9 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Aiken County, South Carolina, on the 16th and 17th of June, 2015.

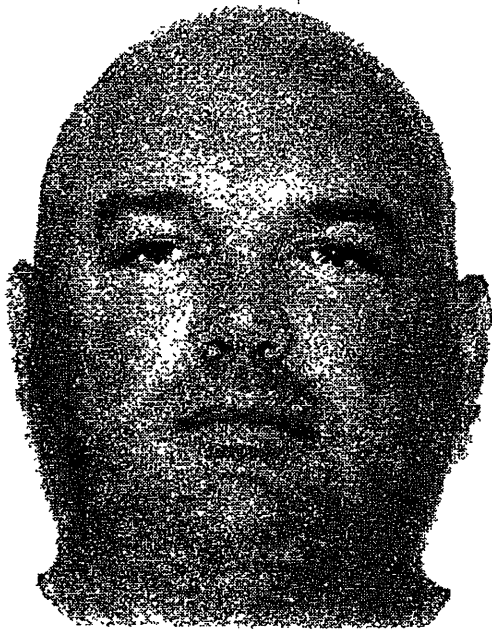
I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 22, 2015

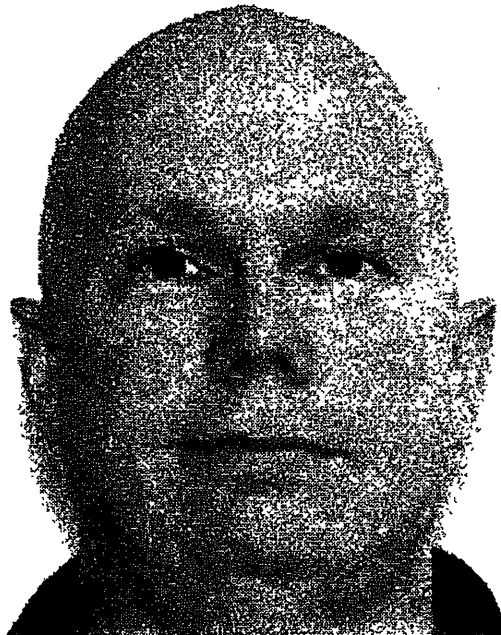
s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

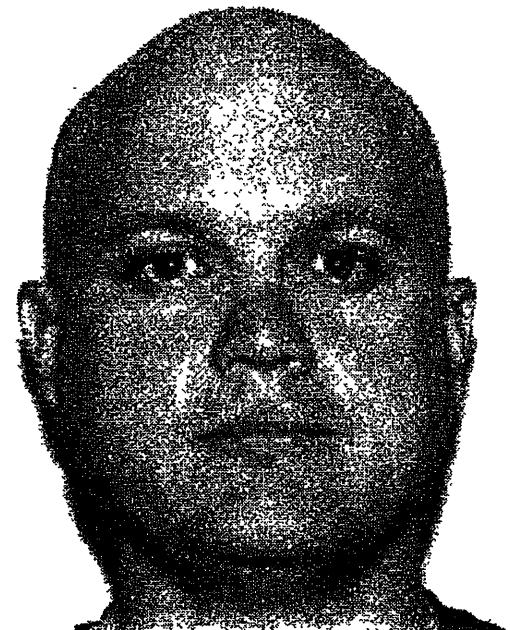
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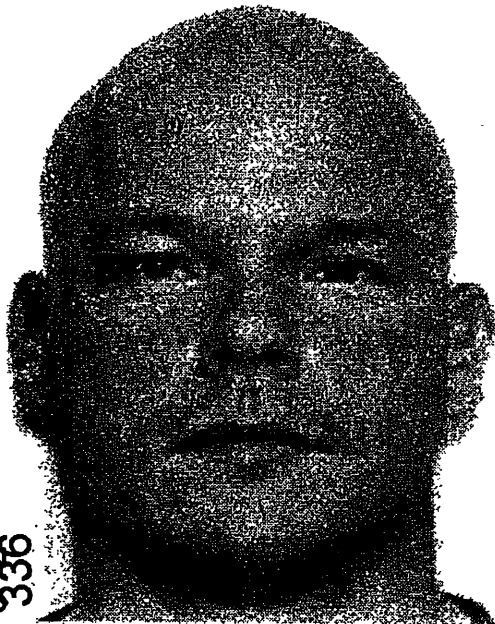
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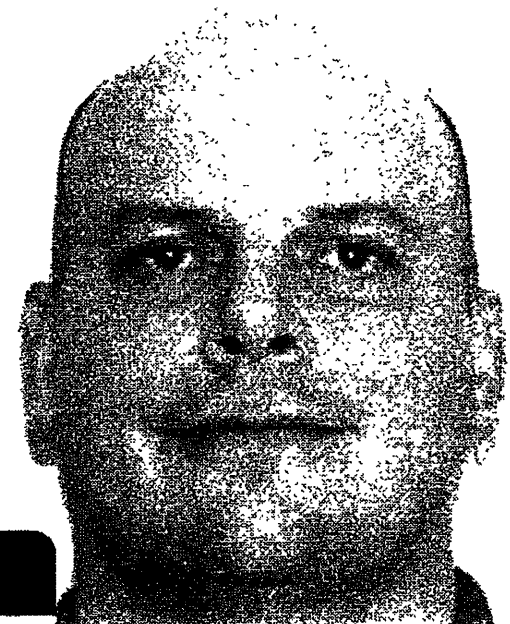
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4



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6

STATE'S
EXHIBIT

17

3426
336



AIKEN COUNTY SHERIFF'S OFFICE
CRIMINAL INVESTIGATIONS DIVISION

Case # 14-061183

I, EMOTHA HEERIN, after careful consideration of all
the photographs shown to me in lineup # A, have
identified the subject in photograph # 4 as being the person who ROBBED
ME & STABBED ME W/ A KNIFE ON
on SEPT. 30, 2014

x Catha Lind
Signature

Witness: AKS CJ

Date: 10-3-14

Time: 1244

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

STATE OF SOUTH CAROLINA,

v.

WAYMON EUGENE NEWTON,

Defendant.

IN THE GENERAL SESSIONS COURT

SECOND JUDICIAL CIRCUIT

STIPULATION OF COUNSEL

2015-GS-02-00441

2015-GS-02-00442

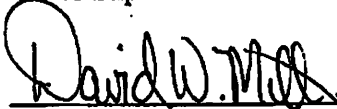
The State and the Defense hereby stipulate to the following summary of financial records in the trial of the above captioned matter.

The checks payable to Waymon Newton on the SRP checking account of Eartha R. Herrin were deposited into the Bank of America checking account belonging to Waymon Newton as follows:

<u>Check No.</u>	<u>Date/Time Deposited</u>	<u>Location Deposited</u>	<u>Amount</u>
1439	09/30/2014 @ 18:54	1011 E. Pine Log	\$152.00
1441	10/1/2014 @ 15:33	150 Aiken Mall Dr.	\$150.00
1440	10/1/2014 @ 15:37	150 Aiken Mall Dr.	\$150.00
1442	10/1/2014 @ 19:33	1011 E. Pine Log	\$150.00
1432	10/1/2014 @ 19:33	1011 E. Pine Log	\$150.00
1433	10/1/2014 @ 19:33	1011 E. Pine Log	\$130.00

The summary of the transactions listed above was created based upon the records of the Bank of America checking account of Waymon Newton. The State and the Defense stipulate to the accuracy of those records without further testimony from any custodian of records for Bank of America.

We so Stipulate:



David W. Miller,
Deputy Solicitor
Second Judicial Circuit



Wallis A. Alves,
Attorney for the Defendant,
Waymon Eugene Newton

COURT'S
EXHIBIT
1

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

STATE OF SOUTH CAROLINA,

v.

WAYMON EUGENE NEWTON,

Defendant.

IN THE GENERAL SESSIONS COURT

SECOND JUDICIAL CIRCUIT

STIPULATION OF COUNSEL

2015-GS-02-00441

2015-GS-02-00442

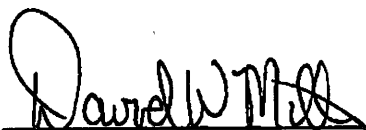
The State and the Defense hereby stipulate to the following summary of financial records in the trial of the above captioned matter.

The following transactions posted to the Bank of America account belonging to Waymon Newton on the time and date indicated:

<u>Trans. Type</u>	<u>Date/Time of Transaction</u>	<u>Location of Transaction</u>	<u>Amount</u>
Transfer	10/3/2014 @ 20:27	TD Bank ATM	\$ 200.00
Debit Card	10/3/2014 @ 21:52	Dollar General	\$ 51.70
Debit Card	10/3/2014 @ 21:54	Dollar General	\$ 48.96
Debit Card	10/3/2014 @ 22:00	Dollar General	\$ 60.56
Debit Card	10/3/2014 @ 22:01	Dollar General	\$ 41.75
Transfer	10/3/2014 @ 22:08	TD Bank ATM	\$ 75.00

The summary of the transactions listed above was created based upon the records of the Bank of America checking account of Waymon Newton and the State and the Defense stipulate to the accuracy of those records without further testimony from any custodian of records for Bank of America.

We so Stipulate:



David W. Miller,
Deputy Solicitor
Second Judicial Circuit



Wallis A. Alves,
Attorney for the Defendant,
Waymon Eugene Newton

COURT'S
EXHIBIT

2

WITNESSES

Aiken County Sheriff

Stacey Prince

Law Enforcement Case #: 14-061185

DOCKET NO. 2015GS0200441

The State of South Carolina

County of Aiken

DWM

ARREST WARRANT NUMBER

2014A0210700480

ACTION OF GRAND JURY

True

April 9 2015
Bill Hubbard
CCCP, S.C.
Cheryl S. Webster
Clerk

Foreperson of Grand Jury

Date: April 9, 2015, *Darryl Quattlebaum*

VERDICT

Foreperson of Petit Jury

Date:

COURT OF GENERAL SESSIONS

APRIL TERM 2015

THE STATE

vs.

WAYMON EUGENE NEWTON

CDR #: 0095

Indictment for

KIDNAPPING

§ 16-03-0910

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

I, *L. Hubbard*, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

21 day of *March* 20*16*

L. Hubbard
CCCP & G.S., Aiken County, S.C.

Deputy Clerk
Deputy Clerk

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

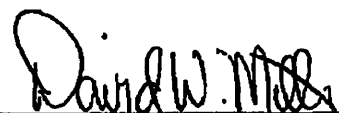
INDICTMENT FOR
KIDNAPPING

§ 16-03-0910

At a Court of General Sessions, convened on April 13, 2015, the Grand Jurors of Aiken County present upon their oath:

That **WAYMON EUGENE NEWTON** did in Aiken County on or about September 30, 2014, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away Eartha Herrin without authority of law, all in violation of §16-3-910 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.


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Stacey Prince

Law Enforcement Case #: 14-061185

DOCKET NO. 2015GS0200442

The State of South Carolina

County of Aiken

ARREST WARRANT NUMBER

2014A0210700481

ACTION OF GRAND JURY

True

Bill

Foreperson of Grand Jury

Date: April 9, 2015

VERDICT

Foreperson of Petit Jury

Date:

COURT OF GENERAL SESSIONS

APRIL TERM 2015

THE STATE

VS.

WAYMON EUGENE NEWTON

CDR #: 0139

Indictment for

ARMED ROBBERY

§ 16-11-0330(A)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

24 day of June 2015

Liz Godard

Deputy Clerk

348
342

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

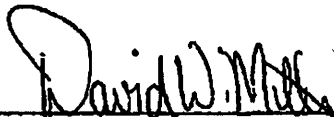
INDICTMENT FOR
ARMED ROBBERY

§ 16-11-0330(A)

At a Court of General Sessions, convened on April 13, 2015, the Grand Jurors of Aiken County present upon their oath:

That **WAYMON EUGENE NEWTON** did in Aiken County on or about September 30, 2014, while armed with a deadly weapon, to wit: a knife, feloniously take from the person or presence of Eartha Herrin by means of force or intimidation goods or monies of Eartha Herrin and Bryant's Auto Sales, such goods or monies being described as follows: a quantity of United States Currency, and a purse containing miscellaneous items including a wallet, credit cards, personal identification and checks, all in violation of §16-11-330, 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.



J. STROM THURMOND, SOLICITOR

350
344

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Aiken

VS.

Waymon Eugene Newton

AKA:

Race: White Sex: M Age:

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#: SC00925466

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒

In disposition of the said indictment comes now the Defendant who was

TO: Robbery / Common law robbery, strong arm robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS0200442

A/W#: 2014A0210700481

Date of Offense: 9/30/2014

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

0-15 years

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0325 of the S.C. Code of Laws, bearing CDR Code # 0137

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted. ☒ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Miller, David Warren

SC Bar# 69553

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years of ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca
Proviso 90.5 (SCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, _____, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina, do hereby certify that the foregoing constitutes a true and correct copy of the original document which has been filed in my office this _____ day of _____, 2015.

Clerk of Court

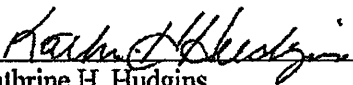
T. P. Early Jr.
June 17, 2015

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 30th, 2016


Kathrine H. Hudgins
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WAYMON EUGENE NEWTON

APPELLANT

APPELLANT CASE NO. 2015-001399

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge's instruction to the jury dilute the State's burden of proof beyond a reasonable doubt?

STATEMENT OF THE CASE

In April of 2015, the Aiken County Grand Jury indicted Appellant Newton for kidnapping and armed robbery, indictments #2015-GS-02-441, 442. On June 16, 2015, Newton proceeded to jury trial before the Honorable Doyet A. Early, III. Wallis Alves represented Newton at trial. David Miller and Wilder Harte prosecuted the case. The jury found Newton not guilty of kidnapping. The jury found Newton guilty of the lesser included offense of strong arm robbery. Judge Early sentenced Newton to fifteen (15) years. A timely notice of intent to appeal was served on June 25, 2015. This appeal follows.

ARGUMENT

The trial judge's instruction to the jury diluted the State's burden of proof beyond a reasonable doubt.

The jury found Newton guilty of taking Eartha Herrin's purse on September 30, 2014. The incident took place at Bryant's Auto Sales where Herrin worked. A police report listed a purse, credit cards, driver's license and money as being stolen but no mention of any checks missing. (Tr. p. 97, lines 3-13). When Investigator Prince with the Aiken County Sheriff's Department interviewed Herrin she did not tell him that any checks were missing. (Tr. p. 101, lines 14-19). Appellant Newton was the one who told the investigator that Herrin had given him the checks as collateral for a drug purchase she was unable to complete. (Tr. p. 112, line 1 – p. 113, lines 1-19). Herrin denied knowing Newton and denied any drug dealing. (Tr. p. 25, lines 22-24; p. 138, lines 10-25).

A few days later on October 3, 2014, a vehicle and an individual who matched the description given by Herrin were involved in an accident. (Tr. p. 81, line 20 – p. 82, lines 1-2). Items belonging to Herrin and the Appellant were found at the scene of the accident. (Tr. p. 82, line 17 – p. 83, 84 lines 1-10). Herrin identified Appellant from a six person line-up as the person who took her purse. (Tr. pp. 135-136).

At trial Appellant admitted cashing the checks but testified that Herrin had given him the checks on September 29, 2014, the day before she reported her purse being stolen. (Tr. p. 185, lines 5-23). Appellant testified that he met Herrin at a drug house in New Ellenton and knew her as Nae Nae. (Tr. p. 153, lines 5-25). Appellant eventually began to purchase powder cocaine from Herrin. (Tr. pp. 154-155). Appellant testified that the checks were collateral for a drug deal Herrin had not been able to complete. (Tr. pp. 158-165). Appellant testified that when he returned to Bryant's Auto Sales on September 30,

2014, Herrin claimed that she still did not have the drugs and the checks would have to be used. (Tr. p. 165, line 1 – p. 166, lines 1-12). Appellant did not believe Herrin, grabbed her purse and found a bag of pills inside. (Tr. pp. 166-167). Appellant and Herrin had a physical confrontation and Appellant admitted taking the purse. (Tr. pp. 168-181).

The judge instructed the jury:

In this case you've got, obviously, two factual scenarios that are about as far apart as you can get, and you're asked to determine which one you believe, which one the State has proven to you beyond a reasonable doubt or have they proven their side to you beyond a reasonable doubt. The defendant has nothing to prove, he has no burden of proof.

(Tr. p. 259, lines 4-11). Trial counsel objected and asked the judge to recharge the jury of the burden of proof. (Tr. p. 260, lines 21-25). Trial counsel argued:

Also, when you were talking to them at the end in your final remarks, you specifically told them that they had to decide which story the State had proven to them beyond a reasonable doubt. You did not tell them specifically – I mean, and then you went on to say that the defendant did not have to prove anything. But you didn't specifically tell the jury that the State has to prove him guilty beyond a reasonable doubt and if the State hasn't met their burden, that they have to find him not guilty.

(Tr. p. 261, lines 22 – p. 262, lines 1-8). The judge declined to recharge the jury stating:

I'm going to stand by my charge. I've charged the reasonable doubt charge that I've been charging for 11 years. It's the standard charge we always charge, and that includes: If, on the other hand, you think there's a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty, which is the overriding charge on all of the various choices that they have to choose. I'll stand by my charge. You're protected. Thank you.

(Tr. p. 262, lines 9-18). The trial judge erred. The instruction to the jury diluted the State's burden of proof beyond a reasonable doubt.

Instructing the jurors to determine which factual scenario they believe is analogous to instructing the jury to seek the truth because both suggest a preponderance of the

evidence standard rather than proof beyond a reasonable doubt. In State v. Aleksey, 343 S.C. 20, 26-27, 538 S.E.2d 248, 251 (2000)(footnote omitted) the South Carolina Supreme Court wrote:

Jury instructions on reasonable doubt which charge the jury to "seek the truth" are disfavored because they "[run] the risk of unconstitutionally shifting the burden of proof to a defendant." State v. Needs, 333 S.C. 134, 155, 508 S.E.2d 857, 867-68 (1998). However, jury instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error. State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994). The standard for review of an ambiguous jury instruction is whether there is a reasonable likelihood that the jury applied the challenged instruction in a way that violates the Constitution. Estelle v. McGuire, 502 U.S. 62, 112 S.Ct. 475, 116 L.Ed.2d 385 (1991); Boyde v. California, 494 U.S. 370, 110 S.Ct. 1190, 108 L.Ed.2d 316 (1990).

In United States v. Gonzalez-Balderas, 11 F.3d 1218, 1223 (5th Cir.1994), the appellant argued instructing the jury that its "sole interest is to seek the truth" dilutes the reasonable doubt standard of proof. The Fifth Circuit Court of Appeals held:

As an abstract concept, "seeking the truth" suggests determining whose version of events is more likely true, the government's or the defendant's, and thereby intimates a preponderance of evidence standard. Such an instruction would be error if used in the explanation of the concept of proof beyond a reasonable doubt. The district court, however, did not use it in this way. Rather, the trial court began its instructions with a clear definition of the government's burden of proof in which it repeatedly stated that the defendant could not be convicted unless the jury found that the government had proven him guilty beyond a reasonable doubt. It correctly defined proof beyond a reasonable doubt as "proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs." There is no reasonable likelihood that the jury inferred that the single reference at the end of the charge to "seeking the truth," rendered as it was in the context of an admonition to "not give up your honest beliefs," modified the reasonable doubt burden of proof.

Finding the reasoning of the Fifth Circuit in Gonzalez-Balderas persuasive, the South Carolina Supreme Court in Aleksey, reviewing a single instruction to the jury that its

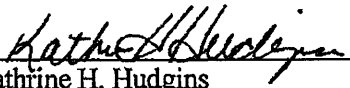
“one single objective” was “to seek the truth,” found there was no reasonable likelihood that the jury applied the challenged instruction in a way that violates the Constitution. Importantly, in upholding the challenged instruction in Aleksey, the Court noted that the challenged “seek the truth” instruction was given in the context of the jury’s role in determining the credibility of the witnesses.

In the present case the challenged instruction was not given in the context of the jury’s role in determining the credibility of witnesses. Although earlier the trial judge properly instructed the jury on reasonable doubt and within the challenged instruction told the jury that the defendant had no burden of proof, instructing the jury that, “In this case you’ve got, obviously, two factual scenarios that are about as far apart as you can get, and you’re asked to determine which one you believe . . .” suggests a preponderance of the evidence standard rather than a proof beyond a reasonable doubt standard. There is a reasonable likelihood that the jury applied the challenged instruction in a way that violates the Constitution.

CONCLUSION

Based on the above argument, Appellant's conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of March, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WAYMON EUGENE NEWTON

APPELLANT

APPELLANT CASE NO. 2015-001399

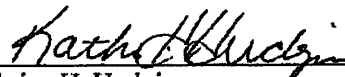
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Waymon Eugene Newton states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Doyet A. Early, III, which was held on June 17, 2015, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Waymon Eugene Newton.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of March, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WAYMON EUGENE NEWTON

APPELLANT

APPELLANT CASE NO. 2015-001399

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments and sentencing sheets, 2015-GS-02-441, 442;
- (2) June 15, 2015, transcript;
- (3) June 16-17, 2015, transcript;
- (4) State's Exhibit #17 – Photo line-up and statement;
- (5) Court's Exhibit #1 – Stipulation;
- (6) Court's Exhibit #2 – Stipulation.

I certify that this designation contains no matter which is irrelevant to this appeal.

March 30th, 2016


Kathrine H. Hudgins
Appellate Defender

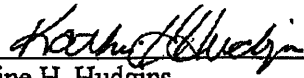
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 30, 2016


Kathrine H. Hudgins
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

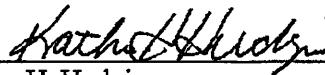
WAYMON EUGENE NEWTON

APPELLANT

APPELLANT CASE NO. 2015-001399

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Waymon Eugene Newton, #250888 at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 30th day of March, 2016.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of March, 2016.



(L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023..

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Waymon Eugene Newton, Appellant.

Appellate Case No. 2015-001399

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2017-UP-056
Submitted December 1, 2016 – Filed January 25, 2017

APPEAL DISMISSED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General John Benjamin Aplin,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

WILLIAMS, THOMAS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 10, 2017

The Honorable Robert J. Harte
P.O. Box 583
Aiken, SC 29802

REMITTITUR

Re: The State v. Waymon E. Newton
Lower Court Case No. 2015GS0200442
Appellate Case No. 2015-001399

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

J. A. Kitchings
CLERK

Enclosure

cc: Waymon Eugene Newton, 250888
Alan McCrory Wilson, Esquire
Kathrine Haggard Hudgins, Esquire
John Benjamin Aplin, Esquire

RECEIVED
FEB 10 2017
APPELLATE DEFENSE

2014A0210700481 FORM 5

2017CP0202138

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Aiken South Carolina)WAYMON EUGENE NEWTON #250888)

Full name and prison number (if any) of Applicant)

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kershaw Corr. Inst - 4848 Goldmine Hwy,
Kershaw, S.C 29067 (currently) (Pretrial) Aiken County Det.
2. Name and location of Court which imposed sentence Aiken County Gene-
ral Sessions, Aiken, S.C.
3. Name(s) of co-defendant(s) (if any) Not Any
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015GS0200442 - Armed Robbery * Convicted
 - (b) of lesser included offense - Common law / Strong Arm

- (c) Robbery
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) June, 17, 2015, 0-15yrs, Non-Violent
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓, found guilty at trial
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. State of South Carolina, Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed - S.C. Court of Appeals
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January, 25, 2017 (approx)
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Not known
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of Counsel
- (b) Misleading reply by Judge to Jury question led to ^{cont'd →}
- (c) Judge Wrongfully gave jury a choice to convict ^{cont'd →}
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel grossly erred by not objecting to States' Waiving ^{cont'd →}
- (b) Judges' emphasizing/reflecting "if accompanied by violence"
- (c) During Judges' final charge to jury he shifted burden ^{cont'd}
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes, Direct Appeal
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Unknown - Never spoke with Appellate Attorney regarding
- ii. this.
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Court of Appeals - Columbia, S.C.
- ii. _____
- iii. _____
- iv. _____

10(B) - Conviction on strong-arm robbery.
 (C) by using a preponderant standard of evidence.

cont'd

11 (a) opening closing argument, State being allowed final argument violation
 standard due process afforded to defendants at trial.

(B) - that's strong-arm robbery "Petit larceny is without any violence"
 confused the jury to my detriment

(C) burden of proof to me.

(c) the disposition thereof:

- i. Dismissed / Denied
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. January, 25, 2017 (approx)
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Unknown
- 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?

Not by me. Not to my knowledge. Don't know
grounds presented to S.C. Court of Appeals.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) I received notice from Katherine Hudgins (Appellate
 (b) Attorney) stating she found no legal merit and asking to
 (c) be relieved as Counsel. I was never able to contact

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
 (b) your trial, if any? Yes
 (c) your sentencing? 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?

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. Wallis Alves - Aiken/Barnwell Public Defenders'
Office,
 ii. Barry Thompson - Aiken Public Defenders Office
 iii. Katherine Hudgins - Div. of Appellate Defense,
1330 Lady Street, Suite 401 Columbia, S.C. 29201
 (b) the proceedings at which each such attorney represented you:
 i. Wallis Alves - Trial and Sentencing
 ii. Barry Thompson - Trial and Sentencing
 iii. Katherine Hudgins - Appeal

16. Counsel by Phone. No reply to mail. Any ground(s) which are presented in this PCR are due to my study, any ground(s) not previously presented are result of counsels ineffectiveness and incompetence.

375

ELECTRONICALLY FILED - 2017 Sep 05 12:35 PM - AIKEN - COMMON PLEAS - CASE#2017CP0202138

19. State clearly the relief you seek in filing this application:

To have Sentence for Strong Arm/Common Law Robbery
Conviction Vacated, set aside, Corrected or Reduced by
Means of new trial or Plea agreement

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Aiken S.C.)

VERIFICATION

I, WAYMON EUGENE NEWTON #250888, 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.

Waymon Eugene Newton #250888

SWORN to and subscribed before me this 8th
 day of August, 2017.

Catharine A. Orrison (L.S.)
 Notary Public

My Commission Expires: December 22, 2018

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, WAYMON EUGENE NEWTON 250888, 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.

Waymon Eugene Newton 250888
Applicant

SWORN or affirmed to and subscribed before me this
8th day of August, 2017.

Catharine A. Orner
Notary Public

My Commission Expires: December 23, 2018

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Waymon Eugene Newton, # 250888,
Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2017-CP-02-02138

**RETURN AND PARTIAL
MOTION TO DISMISS**

In response to the Application for post-conviction relief (PCR) filed by Waymon Eugene Newton (Applicant) on September 5, 2017, Respondent would respectfully show this Court:

I.

Applicant was indicted at the April 2015 term of the Aiken County Grand Jury for kidnapping (2015-GS-02-00441) and armed robbery (2015-GS-02-00442). The charge arose from a robbery at a car dealership on September 30, 2014. The victim, who worked at the dealership, was showing a car to Applicant, and as they were discussing details of the sale, Applicant pulled a knife on the victim. ROA 75. Applicant told the victim to give him all her money, and tried to stab her with the knife. ROA 76. The victim attempted to take the knife away, but Applicant held it to her throat. ROA 76. When the victim told Applicant she did not have any money, he took her purse and ran out the door. ROA 77. The victim suffered cuts on the insides of her hand that required stitches. ROA 77. Months later, the victim discovered multiple checks had been written from her checking account, and the checks were made out to "Waymon Newton," the applicant. ROA 83-84.

Applicant proceeded to trial on June 15, 2015 before the Honorable Doyet A. Early, III. Applicant was represented by Wallis A. Alves, Esquire. David W. Miller, Esquire, and Wilder

Harte, Esquire, prosecuted the case. Applicant was found guilty of the lesser included offense of strong armed robbery, and found not guilty of kidnapping. Judge Early sentenced Applicant to imprisonment for fifteen years.

A timely Notice of Appeal was filed and an appeal was perfected. Kathrine H. Hudgins, Esquire, of the South Carolina Commission on Indigent Defense, filed an Anders¹ brief on Applicant's behalf. By written opinion filed January 25, 2017, the South Carolina Court of Appeals dismissed the appeal. State v. Waymon Eugene Newton, Up. No. 2017-UP-056. The Remittitur was issued February 10, 2017.

Attached to this Return and incorporated by reference are the records of the Aiken County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the record on appeal, 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 unconstitutionally for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Counsel grossly erred by not objecting to State's waiving opening closing argument, State being allowed final argument violated standard due process afforded to defendants at trial.
2. "Misleading reply by judge to jury question led to conviction on strong-arm robbery."
 - a. "Judge's emphasizing/repeating 'if accompanied by violence that's strong-arm robbery,' 'Petit larceny is without any violence' confused the jury to my detriment."
3. "During judge's final charge to jury he shifted the burden of proof to me."

¹ Anders v. California, 386 U.S. 738 (1967).

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, 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. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged

errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

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).

IV.

Applicant's second and third allegations raise a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised these issues at trial or on appeal, and the third allegation of the judge's jury instructing shifting the burden of proof was indeed raised and ruled upon during Applicant's direct appeal. His failure to raise the issues on appeal has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss these allegations.

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), SCRCF. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only

individual authorized to file amendments to this application. See Rule 11, SCRCF. 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), SCRCF.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

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.

VII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

[signature page to follow]

VIII.

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

JULIE A. COLEMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

December 29 2017

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

2017-CP-02-02138

WAYMON E. NEWTON, #250888,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

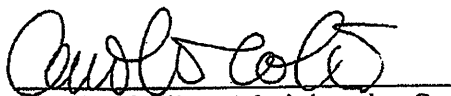
STATE OF SOUTH CAROLINA,)

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 and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
 The Boozer Law Firm, LLC
 1400 Laurel Street, Suite 4A
 Columbia, South Carolina 29201

DATED this the 29th day of December, 2017.



Caroline Collins, Administrative Coordinator
 For Respondent

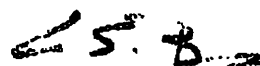
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	C/A NO: 2017-CP-02-2138
	)	
Waymon Newton, #250888,	)	
	)	
Applicant,	)	
	)	AMENDMENT TO PCR APPLICATION
v.	)	
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

The Applicant, through appointed counsel below, makes the following additional claims and amendments to his prior application for post-conviction relief:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Applicant believes counsel was ineffective for failing to consult with him and/or explain to him a request for a jury charge on lesser-included offenses. Applicant did not wish to have the jury consider the lesser-included offenses. Applicant further alleges counsel was ineffective for requesting that the jury be allowed to consider the lesser-included charges.

Respectfully submitted,



Lance S. Boozer
Attorney for Applicant
1400 Laurel Street, Suite 4A
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

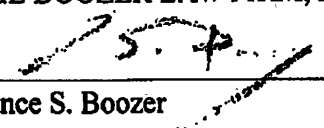
Columbia, South Carolina
April 2, 2018

AFFIDAVIT OF SERVICE

I, the undersigned, of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Amendment to Prior PCR Application upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Julie Coleman
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
Attorney for Applicant
1400 Laurel Street, Suite 4A
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
April 2, 2018

State of South Carolina)	In the Court of Common Pleas
County of Aiken)	Second Judicial Circuit
	2017-CP-02-2138

Waymon, Eugene Newton,	)	
	)	
Applicant,	)	
	)	
vs.	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

August 27, 2018
Aiken, South Carolina

B E F O R E:

The Honorable Larry B. Hyman, Jr., Judge

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

Lance S. Boozer, Esquire
Attorney for Applicant

Julie A. Coleman, Assistant Attorney General
Attorney for Respondent

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>

No exhibits were marked during proceedings.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 1:10 p.m.)

THE COURT: All right.

MS. COLEMAN: All right.

THE COURT: Mr. Boozer, Ms. Coleman?

MS. COLEMAN: Yes. Your Honor, we've got Waymon Newton.

THE COURT: All right.

MS. COLEMAN: He's our last case for the day. And if Your Honor likes, I'll read the procedural history.

THE COURT: (Nodded head up and down.)

MS. COLEMAN: This is *Waymon Eugene Newton v. the State of South Carolina*, Docket No. 2017-CP-02-2138. Applicant was indicted at the April 2015 term of the Aiken County Grand Jury for kidnapping and armed robbery. Applicant proceeded to trial on June 15th, 2015, before the Honorable Doyet A. Early, III, and he was represented by Wallis A. Alves, Esq. David W. Miller and Wilder Harte prosecuted the case from the solicitor's office.

Applicant was found guilty on the lesser-included offense of strong-arm robbery and found not guilty of kidnapping. Judge Early sentenced applicant to 15 years' imprisonment.

A timely notice of appeal was filed, and an appeal was perfected. And an *Anders* brief was filed on his behalf.

1 The Court of Appeals dismissed the appeal, and the
2 remittitur was issued February 10th, 2017.

3 Applicant filed this timely application for
4 postconviction relief on September 5th, 2017, alleging
5 ineffective assistance of counsel and trial-court error.
6 The state filed its return and partial motion to dismiss on
7 December 29th, 2017. Applicant filed an amended
8 application on April 2nd, 2018. And he's present today and
9 represented by Mr. Lance Boozer.

10 And, Your Honor, at this time, the state, would renew
11 its motion to -- partial motion to dismiss all of the
12 direct-appeal allegations about trial-court error, as
13 they're improper for postconviction relief.

14 THE COURT: What do you say about that, Mr. Boozer?
15 Isn't that correct?

16 MR. BOOZER: That -- that's absolutely correct, Judge.
17 There's an allegation -- we're not going forward on
18 anything that's a direct-appeal issue. I've amended the
19 application to reflect additional claims he has.

20 THE COURT: All right. As I understand it, then, you
21 do not challenge in this proceeding the correctness of the
22 charge on strong-arm robbery; judge charged correctly; is
23 -- or -- or that's not an issue here. The issue is whether
24 or not the attorney should have requested a strong-arm
25 charge.

1 MR. BOOZER: That is one of the issues, Your Honor ---

2 THE COURT: Okay.

3 MR. BOOZER: --- is whether counsel was ineffective
4 for requesting the strong-arm-robbery charge of the lesser-
5 included.

6 Additionally, part of his original claim that I know
7 he's going to testify about a focus a little bit on is what
8 he believes to be some burden-shifting language in the
9 jurors -- in jury instructions that he believes his lawyer
10 should have objected to. There was no objection made, so
11 it wouldn't be preserved for appellate review.

12 THE COURT: Uh-huh.

13 MR. BOOZER: But anything else, as far as any direct-
14 appeal issues, we won't be addressing those.

15 THE COURT: Okay. All right.

16 MR. BOOZER: Your Honor, at this time, we'd go ahead
17 and go forward and call Mr. Newton to the stand.

18 THE COURT: Yes, sir.

19 (Off the record briefly.)

20 (Whereupon, the witness came forward.)

21 WAYMON NEWTON, having been first duly sworn,
22 testified as follows:

23 DEPUTY CLERK OF COURT: Please have a seat on the
24 witness stand and state your full name for the record.

25 THE WITNESS: Waymon Newton.

DIRECT EXAMINATION BY MR. BOOZER - WAYMON NEWTON

7

DIRECT EXAMINATION

BY MR. BOOZER:

Q Mr. -- Mr. Newton, how you doing today?

A All right.

Q All right. Mr. Newton, do you know what it is that we're doing here today?

A Yes, sir.

Q And what is that? Why are we here?

A Allegation made for me in my postconviction relief.

Q Okay. So obviously, you filed what's called an application for postconviction relief?

A Yes, sir.

Q All right. Now, let's step back a little bit. Were you convicted at a trial?

A Yes, sir.

Q What -- what were you convicted of?

A Strong-arm robbery.

Q And what type of sentence did you receive?

A Fifteen years, which ---

Q Okay.

A --- was the max.

Q All right. What is your max-out date from SCDC?

A As of right now, I believe it's January 2023.

Q Okay. 2023?

Are you parole-eligible or no?

1 A I go up for parole in, I believe, March of next year.
2 However, due to a -- a -- community supervision that
3 extends from a previous 20-year commitment due to armed
4 robbery, I will -- it's -- my parole hearing is basically
5 just perfunctory.

6 Q Okay.

7 A I'll just ---

8 Q So you ---

9 A --- go up ---

10 Q --- don't think ---

11 A --- for this ---

12 Q --- you'll -- you don't think you'll have any shot at
13 making ---

14 A Oh, I'll ---

15 Q --- parole?

16 A --- not -- no. I'll not be granted parole.

17 Q All right. And, Mr. Newton, just for the -- the
18 record and so that we have an understanding that you have
19 an understanding, do you understand that the only thing
20 this Court can do is give you a new trial on what you were
21 convicted of at trial?

22 A Yes, sir.

23 Q Meaning strong-arm robbery?

24 A Yes.

25 Q And -- and is it your desire to have that new trial?

DIRECT EXAMINATION BY MR. BOOZER - WAYMON NEWTON

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1 A No, sir.

2 Q Okay. You understand that this Court can't reduce
3 your sentence or modify your time or anything like that?

4 A Yes.

5 Q All right. So who was your trial lawyer?

6 A Ms. Alves.

7 Q All right. Now, let's go through -- let me ask you
8 this: How long did Ms. Alves represent you?

9 A Approximately eight months -- seven to eight months.

10 Q All right. Was there any -- were there any sort of
11 plea offers prior to your trial?

12 A There was one made to where, I believe, if I pled
13 guilty to 30 years on armed robbery, all other charges
14 would've been dropped. If I didn't accept that plea, a
15 notice of a life sentence -- notice of intent to seek life
16 sentence would've been served on me, which it ultimately
17 was. And if I conceded to the plea after the notice of
18 intent to seek life was served on me, the only concession
19 to be made by the state was they would remove the offer
20 from -- offer from life off the table but recommend that I
21 be sentenced to the max and consecutive on each charge.

22 Q Okay. And obviously, you declined any sort of plea
23 offers?

24 A Yes, sir.

25 Q Was it your desire to have a trial?

1 A Yes, it was.

2 Q All right. Now, you've got a couple -- in your
3 original application that you filed -- and I want you to
4 walk through these with me. You've got that you believe
5 that your lawyer should've objected to the state waiving
6 what you describe as the opening and closing argument and
7 that the state being allowed to have the final argument
8 violated your due process.

9 A Yes.

10 Q What -- what do you mean by that?

11 A It was basically my contention with that right there
12 was Mr. Miller was able to frame his closing statement
13 coming directed behind Ms. Alves's, you know, basically in
14 a way to make -- so where it could fit the scenario that he
15 was shooting for. And then, that pretty much is what took
16 place. Because throughout the trial and, you know, leading
17 up to the trial, he was adamant that I committed the
18 offenses of armed robbery.

19 But once he -- as Ms. Alves gave her closing argument
20 and he gave his, at that point in time, there were some
21 statements that he made to whereas it's almost like he was
22 just 'pot-shot and think, you know, Well, based off some of
23 the testimony, I can probably get a conviction of a strong-
24 arm on him. And that was just something that I was -- you
25 know, I spoke out against it. Because I felt that he

1 should've took his original place ---

2 Q Okay.

3 A --- to prevent him from being able to kind of frame
4 his closing argument based off of Ms. Alves.

5 Q And -- and let's -- let's move forward and talk about,
6 in just a second, those -- the lesser-included, as you just
7 referenced. You've also got an allegation that you feel
8 like there was a misleading reply by the trial judge to a
9 -- a jury question.

10 MR. BOOZER: And, Your Honor, just for the Court's
11 reference, I'm looking at page 263 of the trial transcript.

12 Q Mr. Newton, do you recall on page 263 that there was a
13 question that was asked by the jury about -- about larceny
14 and if something is considered a strong-arm robbery?

15 A Yes.

16 Q Okay. And the Court addressed the jury's question.
17 Do you recall that?

18 A Yes, I do.

19 Q All right. What is it about the -- the judge's
20 response to that question that you feel like your lawyer
21 should've objected to?

22 A Pretty much, the way that he was saying, you know,
23 like, accompanied by -- if -- you know, if it was
24 accompanied by. Accompanied can mean before, during, or
25 after, you know, if it takes place. He said, you know, if

1 it was accompanied by violence, which Ms. Alves, she did
2 object to the fact that she felt that there was an emphasis
3 placed on the violence with him going back and recharging
4 on all of them, because it -- it's almost like he evaded
5 the direct question that was asked, which was if, during
6 the course of a larceny, an altercation breaks out, is that
7 strong-arm robbery.

8 And when he said that he couldn't comment on it
9 because that would be, like, kind of him commenting on the
10 facts, you know, I'm not versed in law. But it seems that
11 if he could've had a more direct or forthright response
12 than the one that he was giving on there, because, again,
13 my testimony was I'd already had control of the property.
14 I was stabbed, attacked with a letter opener.

15 Therefore, in time a altercation occurred, I already
16 had control of the property. And that's what the jury also
17 -- I was led to believe, by their question, they believed
18 that I already had control of it. The altercation occurred
19 once I was attacked with the letter opener.

20 And I just don't -- I just feel that the way he
21 recharged it or the way he addressed it right there, it
22 didn't clarify that for the jury; that they was led to
23 believe, by him saying accompanied by -- and I believe he
24 repeated that two or three times, you know, if it was
25 accompanied by violence -- that led them to go for the

DIRECT EXAMINATION BY MR. BOOZER - WAYMON NEWTON

13

1 conviction on the strong-arm robbery.

2 Q Okay. And your lawyer made a -- a somewhat similar
3 objection. Do you -- do you recall that?

4 A Yes, I do.

5 Q Okay. Do you feel like she should've objected in
6 another way?

7 A I -- I feel that there was a -- you know, a more
8 adequate way or maybe a -- a better way of, you know, her
9 being able to object to it for -- you know, for clarity in
10 point of it.

11 Q Well, let's talk about how you believe -- one of your
12 allegations is that you feel like the judge -- the trial
13 judge shifted the burden of proof to you. If -- if you
14 could, if you could describe that.

15 A I think, if I'm not mistaken, with the burden-
16 shifting, that come in part of Solicitor Miller's closing
17 argument to whereas he was -- said that my story -- and the
18 only thing that there was to support my story was more of
19 my story. But as far as the judge, I don't recall if I had
20 actually had -- because I don't have a copy of my original
21 PCR.

22 THE COURT: Well, excuse me. Are -- are we talking
23 about the closing argument or the judge's charge here?

24 MR. BOOZER: Judge, I think he has it framed in his
25 PCR application as the judge's charge -- the jury charge as

DIRECT EXAMINATION BY MR. BOOZER - WAYMON NEWTON

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1 being burden-shifting. He's -- he's sort of going off a
2 little bit on Solicitor Miller's closing argument. But --
3 but that would all -- be all I have on that particular
4 claim, Your Honor.

5 THE COURT: Okay. Okay. But the -- the -- the issue
6 concerning the charge -- the issue concerning the charge,
7 that was not raised on direct appeal. But it would seem to
8 me that it was certainly preserved by the trial counsel.
9 Wasn't it?

10 MR. BOOZER: Your Honor, it was, as far as -- as he
11 agreed that his lawyer did make an objection based on that
12 accompaniment-of-violence language that was used or what's
13 -- he believed was the emphasis used on those particular
14 ---

15 THE COURT: Right.

16 MR. BOOZER: --- words. So that would've been
17 preserved. Of course, he did have an Anders appeal, which,
18 of course, the Court is supposed to look at everything.
19 And that was not one of the issues that was raised.

20 I think his -- his position is there should've been a
21 different type of objection or a stronger objection made by
22 his lawyer. I think that's where he was going with that
23 ---

24 THE WITNESS: Yeah.

25 MR. BOOZER: --- Your Honor.

DIRECT EXAMINATION BY MR. BOOZER - WAYMON NEWTON 15

1 THE COURT: But you -- you -- all she's got to do is
2 preserve it and then the Court looks at it, right?

3 MR. BOOZER: I agree.

4 THE COURT: Okay. All right.

5 Q But, Mr. Newton, back to the -- the burden-shifting
6 that you believe the judge made. And we're not talking
7 specifically about Solicitor Miller or the state. But do
8 you believe that there was a burden-shifting in the judge's
9 instructions?

10 A I do. And I don't know exactly where it was in the
11 transcript. But it was something that he had -- he had
12 expressed it verbally.

13 Q Okay.

14 A Because, as I say, I'm not -- I don't know exactly
15 where it is in the transcript to pinpoint it.

16 THE COURT: Well -- well, what did he say, then? I --
17 I'm -- I need to know what he said, or you need to point it
18 out to me in the transcript. Because otherwise, I'd have
19 no way of knowing.

20 Q Mr. Newton, do you have a copy of the trial transcript
21 with you?

22 A Yes. I have one in front of me.

23 Q Okay. Do you understand that the jury instructions
24 begin on page 2 -- 246?

25 A Yes. My -- as I say, as far as the burden-shifting of

1 the judge, I don't -- I can't really recall myself of my
2 contention or whatever to it. As far as the charge that
3 the judge made to the jury that I had the issue with was
4 when he was saying armed robbery -- "If you find him not
5 guilty of armed robbery, then you go to the next one, which
6 will be strong-arm robbery. And if you find him not guilty
7 of that, then you go to the next one, which would be petit
8 larceny, which is simply stealing."

9 So there you had three levels. He didn't tell them at
10 that point in time or you can just find him not guilty of
11 them.

12 But when he went to the kidnapping, he said: "Now,
13 with kidnapping, of course, there's no lesser-included
14 offense with that. So either you find him guilty or not
15 guilty."

16 Q You -- you're talking about on page 255 through ---

17 A Yeah.

18 Q --- 256 ---

19 A That's where -- yeah.

20 Q --- of the trial transcript?

21 A But as far as myself, I do not recall the -- the
22 burden-shifting issue.

23 Q Okay.

24 THE COURT: But if -- if we look at -- do you have
25 your transcript?

DIRECT EXAMINATION BY MR. BOOZER - WAYMON NEWTON 17

1 THE WITNESS: Yes, sir.

2 THE COURT: 265? See down there at line 18? Didn't
3 the judge tell them: "Before you walk out, let me tell you
4 one more thing. Obviously, all those elements have to be
5 proven to you by the state beyond a reasonable doubt.
6 Okay. If they fail to prove it to you beyond a reasonable
7 doubt, obviously, it would be not guilty."

8 I mean -- and the foreman says: "Okay."

9 I mean, didn't he very clearly tell that if the state
10 could not meet its burden of proving every element of armed
11 robbery, strong-arm robbery, or petit larceny, that they
12 must return a verdict of not guilty? I mean, wasn't that
13 the last thing he said to the jury?

14 THE WITNESS: That -- that was said. But it's a ways
15 on down there, Your Honor. I mean, I just look at it from,
16 you know, just a common person's point of view. Because
17 when it was initially said, they had done stepped out of
18 the courtroom before they come back in.

19 THE COURT: All right.

20 THE WITNESS: So once again, you know, when he's --
21 and again, just looking at it as I would look at it or for
22 some of numerous people who I've spoken to since the time
23 of the trial would look, you know, perceive -- or took it,
24 from his point of view is that basically he has got to be
25 guilty of one of these three things right here. Because

DIRECT EXAMINATION BY MR. BOOZER - WAYMON NEWTON 18

1 you have these choices. But over here, he say he's either
2 guilty of kidnapping or not guilty of kidnapping ---

3 THE COURT: Okay.

4 THE WITNESS: --- because there is no other option in
5 between there. There's nothing lesser than that
6 kidnapping.

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

8 THE WITNESS: Uh-huh.

9 MR. BOOZER: Thank you, Judge.

10 Q All right. Mr. Newton, let's move on to an -- an
11 allegation that I assisted you in -- in raising. And that
12 is you believe your lawyer was ineffective for failing to
13 consult with you or explain to you a request for a jury
14 charge on lesser-included offenses. Do you understand what
15 I'm -- what we're talking about?

16 A Yes, sir.

17 Q Okay. On page 199 of the transcript, your lawyer
18 actually moved for a directed verdict on the armed robbery
19 and the kidnapping. Do you recall that?

20 A Yes, I do.

21 Q All right. And then, the Court says: "As earlier
22 ruled, respectfully denied. If the jury believes your
23 client, there may be an acquittal or, you know, they may
24 believe that it was a strong-arm robbery. I don't know.
25 But obviously, that's a factual dispute. And there is

DIRECT EXAMINATION BY MR. BOOZER - WAYMON NEWTON 19

1 evidence in the record to support the verdict for or
2 against your client, so I'll deny your motion."

3 And then, your attorney requests: "I'd like for
4 lesser-included offense of strong-arm robbery and petit
5 larceny," which the state says they're fine with.

6 And the judge says: "Well, I'm not going to charge
7 petit larceny."

8 But then, eventually, do they end up charging the
9 strong-arm robbery and the petit larceny?

10 A Say that again?

11 Q Yes, sir. Eventually, does the trial court end up
12 charging the jury with those lesser-included offenses of
13 strong-arm robbery and petit larceny?

14 A Yes.

15 Q Okay. What discussion did you have with your lawyer
16 about -- if you had a discussion, about requesting those
17 lesser-included charges?

18 A I didn't want them. I knew, from before the judge
19 even said -- he made the comment one time, "It's obvious
20 the jury is with the defendant, so you may want to discuss
21 a lesser-included."

22 Ms. Alves, when she mentioned it to me, I didn't want
23 it. Because I knew the jury would not want to convict on
24 the armed robbery. They laughed at the solicitor. You
25 know ---

1 Q Okay.

2 A --- I'm up -- I was up here for the armed robbery --
3 charges of armed robbery and kidnapping. The solicitor
4 asked me two questions. Neither one of them had to do with
5 the armed robbery or the kidnapping. I knew that I had the
6 jury.

7 And when Ms. Alves -- when she brought it up, I told
8 her -- I was, like, "No. I don't want it." I said, "They
9 indicted me. They served notice of intent for the life on
10 armed robbery and on kidnapping. That's what I want to be
11 judged on."

12 Q Did you have a specific discussion with her, either in
13 the courtroom or outside of the courtroom, where she said,
14 "Hey, we can ask for a lesser-included like strong-arm
15 robbery"? Did y'all have that discussion?

16 A Yeah. She mentioned it. She mentioned it sitting
17 right there at the table.

18 Q And what was your response, then? And was it what you
19 just recounted ---

20 A I didn't ---

21 Q --- to us?

22 A --- want it.

23 Q Okay.

24 A No. I did not want it.

25 Q So is it your testimony and was it your position at

DIRECT EXAMINATION BY MR. BOOZER - WAYMON NEWTON 21

1 trial that all you wanted the jury to be able to consider
2 was whether you were guilty of the original charge of the
3 armed robbery and kidnapping or whether you were guilty of
4 nothing? Is that what you wanted?

5 A Exactly. That -- that was my take from the -- the
6 beginning of it. You know, I explained it with Ms. Alves
7 to when there was no possibility of even having another
8 plea come across that table. It was all or nothing.
9 That's ---

10 Q All right.

11 A --- what I wanted to go for. It was either going to
12 be life or it was going to be not guilty.

13 Q So when you expressed that to her, what was her
14 response to you?

15 A She was, like, "Are you sure this is what you want to
16 do?"

17 I'm, like, "Yeah. This is -- I'm sure this is what I
18 want to do."

19 When we discussed it again in here and I think she had
20 a cochair that was with me -- Barry Thompson, I believe his
21 name was -- how I'd even discussed it with him. I was
22 talking about it a minute. He said -- he said, "You have
23 that jury." He said, "That jury is on your side."

24 I said, "Man, them people do not want to convict me of
25 no armed robbery."

1 When the strong-arm come up and it was mentioned by
2 one of them, you know, something to put their hat on the
3 case or they want to convict, but I was adamantly against
4 any lesser-included charges. When I come off this stand,
5 when Judge Early, who was the first one that made mention
6 of a possible lesser-included of strong-arm robbery, I
7 spoke against it.

8 You know, from the outset, when I first gotten
9 arrested, coming on through, when I was giving Ms. Alves,
10 you know, things that I would've pled to or whatever, I
11 would've pled -- and I told her several time, "Look, tell
12 him I will plead to a strong-arm robbery and will take the
13 max on it." Because I had just come out of the Department
14 of Corrections after doing a 20-year sentence for armed
15 robberies. So, of course, I would've taken a plea at that
16 point in time on a strong-arm robbery to avoid the
17 potential of getting a life sentence.

18 But once we come in here and the trial got going and
19 the second day of that trial and seeing the reactions of
20 the jury and how the jury has been, there's no way I -- in
21 the world I would've took that lesser-included of strong-
22 arm. I did not want it.

23 Q Well, let me ask you this: After she made the request
24 for those lesser-included charges, did you have any
25 discussion, saying, "Well, wait a second. I -- I don't

DIRECT EXAMINATION BY MR. BOOZER - WAYMON NEWTON 23

1 want that"? Did you have any further discussion with her
2 about it?

3 A The only thing that was said after that, I told her --
4 I said, "I don't want it."

5 And she said, "You know, we said, when we started
6 this, that" -- something along the lines that I control
7 strategy or something.

8 Q Okay. Mr. Newton, this is obviously your day in
9 court. You've waited quite a while for this day. And I --
10 I -- I believe we've covered all of your issues. Of
11 course, your former attorney is going to have to testify
12 here shortly. Is there anything we've not covered as it
13 relates to your issues in the PCR application?

14 A It's just something else, you know, I feel is in
15 support of my -- one of my contentions. Far as me not
16 wanting a lesser-included in that -- about how I feel it
17 was inappropriate, is once I'm convicted of strong-arm
18 robbery, she -- you know, she made a request for a new
19 trial to the judge, stating that she didn't feel that there
20 was evidence to support a conviction of strong-arm robbery
21 over armed robbery. If you didn't feel that there was
22 evidence, why did you request that lesser-included offense?

23 Q Mr. Newton, please answer any questions that Ms.
24 Coleman may have for you.

25 A All right.

1 THE COURT: Ms. Coleman?

2 MS. COLEMAN: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. COLEMAN:

5 Q How many times did you meet with your attorney before
6 trial?

7 A Probably about -- I want to say about six or seven.

8 Q Okay. And did she review all the discovery with you
9 of ---

10 A Yes, ma'am.

11 Q --- the state's evidence?

12 Okay. And had y'all discussed your trial strategy
13 before the trial started?

14 A No.

15 Q Okay. So did ---

16 A Not really.

17 Q --- you have this discussion about requesting the
18 lesser-included of strong-arm robbery before your trial
19 started?

20 A No, ma'am. It ---

21 Q All right.

22 A --- the lesser-included, as far as in the trial, that
23 was actually before they started the deliberations ---

24 Q Uh-huh.

25 A --- or when they requested. That -- that's it. I

CROSS-EXAMINATION BY MS. COLEMAN - WAYMON NEWTON 25

1 mean, as I say, prior to then, when I was trying to get her
2 to go to Solicitor Miller with a plea, I was saying, you
3 know, I would've pled to a strong-arm robbery and taken a
4 max at that point in time. But once the trial come up,
5 there was nothing else said about it till then.

6 Q Okay. So she never explained to you before the trial
7 started that she thought it would be a good idea to ask for
8 the lesser-includedes?

9 A No.

10 Q Okay. You testified at trial, didn't you?

11 A Yes, ma'am.

12 Q And you got to tell your version of the facts, and you
13 thought the jury was on your side at that point?

14 A Oh, yeah.

15 Q Okay. Nothing further. Thank you.

16 MR. BOOZER: That's all, Mr. Newton, Your Honor.

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

18 (Whereupon, the witness exited the witness stand.)

19 MR. BOOZER: Your Honor, we call Ms. Alves to the
20 stand.

21 (Off the record briefly.)

22 (Whereupon, the witness came forward.)

23 WALLIS ALVES, having been first duly sworn,
24 testified as follows:

25 DEPUTY CLERK OF COURT: Please have a seat in the

1 witness box and state your full name for the Court.

2 THE WITNESS: Wallis Alves, W-a-l-l-i-s; last name
3 Alves, A-l-v-e-s.

4 DIRECT EXAMINATION

5 BY MR. BOOZER:

6 Q Ms. Alves, good afternoon. How are you?

7 A Fine. Thank you. And yourself?

8 Q I'm doing fine. Thank you.

9 Ms. Alves, did you represent Mr. Newton for this trial
10 that we're here on for the PCR?

11 A I did.

12 Q Okay. How long did you represent Mr. Newton?

13 THE WITNESS: Judge, I'm not playing with my phone. I
14 have, actually, the -- our electronic records are on here.

15 THE COURT: Okay.

16 THE WITNESS: And so I can actually -- I pulled up ---

17 THE COURT: That's all right.

18 THE WITNESS: --- some of my notes on the case.

19 THE COURT: That's fine.

20 THE WITNESS: I wasn't able to get them on the iPad.

21 A It looks like I was appointed to represent him
22 sometime in October of 2014. And then I represented him
23 through the trial. I continued to represent him after the
24 trial on another charge, until I was transferred to the
25 Barnwell office. And then his case was transferred to

1 another attorney.

2 Q Okay. Let -- let me ask you some pretty specific
3 questions. Do -- have you reviewed the trial transcript
4 prior to today?

5 A I have.

6 Q All right. Well, the -- what I want to ask you is
7 there was a point where, on page 199 of the transcript of
8 the trial, you asked for lesser-included offenses to be
9 included, strong-arm robbery and petit larceny. Do you
10 recall that?

11 A I do.

12 Q Okay. And in -- in your request to the judge, you
13 actually cited a case, which was *Abney v. State*. Do you
14 recall that?

15 A I see it in the transcript.

16 Q Okay. And what was your motivation for trying -- for
17 requesting these lesser-included offenses?

18 A The defendant and I had discussed it.

19 Q I'm sorry?

20 A We discussed it.

21 Q You and Mr. Newton?

22 A We did.

23 Q What was that discussion?

24 A I don't know. Unfortunately, I don't have my file
25 with any specific discussions and details. But I pulled up

1 our case-management records. I was able to get those on my
2 phone.

3 And I've pulled them up. And there was a -- there's
4 some notes in there, where I forgot a legal pad, so I took
5 notes on the computer. And the notes specifically say that
6 he and I discussed lesser-included offenses. It does not
7 say -- and actually, I put it -- I -- I wrote it down
8 wrong. I put lesser-included evidence. It has detailed
9 notes about what we were going to -- about what he told me
10 about the incidents and that was clearly our trial
11 preparation, is what it looks like.

12 I also, a few days after that, have in -- saved in my
13 -- in the -- in the notes, I have a trial outline saved of
14 how we were going to present Mr. Newton's case: the
15 witnesses we were going to use, what we were going to get
16 out of each witness. And specifically, it talked about
17 lesser-included offenses and the case law.

18 I can't say what we discussed more about it. I don't
19 remember. All I have is in those two notes: in my trial
20 outline, which was done on the 16th of June of 2015, and
21 the notes that, when I talked to him, was on the 12th of
22 June, 2015. I made reference to lesser-included offenses.

23 Q Is -- is that something you have with you today, or is
24 that something ---

25 A It's something that I have on my phone. I can e-mail

DIRECT EXAMINATION BY MR. BOOZER - WALLIS ALVES 29

1 it to you and the -- or you can just come ---

2 MR. BOOZER: Your Honor ---

3 A --- look at ---

4 MR. BOOZER: --- may I ---

5 A --- if you want ---

6 MR. BOOZER: --- approach the witness and with ---

7 A --- you can ---

8 MR. BOOZER: --- counsel for the state ---

9 THE COURT: Certainly ---

10 MR. BOOZER: --- so that I can review what she's
11 looking at?

12 THE WITNESS: Yeah. I'm sorry.

13 MR. BOOZER: Can we go off the record for a moment
14 while we review it? Is that fine, Your Honor?

15 THE COURT: Certainly.

16 THE WITNESS: Okay.

17 (Off the record from 1:39 p.m. until 1:42 p.m.)

18 MR. BOOZER: Back on the record, Your Honor?

19 THE COURT: Yes.

20 A And I can ---

21 Q The ---

22 A --- e-mail -- I can e-mail them to both of you if you
23 give me your e-mail addresses.

24 Q Ms. Alves, for now, you ---

25 A Okay.

1 Q --- you've allowed me -- and I appreciate this -- the
2 opportunity to review a trial outline you said you prepared
3 prior to trial, as well as some notes for what you believe
4 reflects your meetings with Mr. Newton prior to trial? Is
5 that right?

6 A They do reflect it. And ---

7 Q Okay.

8 A --- that is ---

9 Q Well ---

10 A --- what I prepared. I mean, the dates that -- the
11 dates that I saved them are on the computer.

12 Q Sure.

13 A They can't be -- they can't be -- the -- that can't be
14 altered ---

15 Q Correct.

16 A --- as far as ---

17 Q And again ---

18 A --- I know.

19 Q I understand. But it -- in your trial outline, you
20 reference lesser-included offenses or charges ---

21 A Yes.

22 Q --- right?

23 And in your notes reflecting your meetings with Mr.
24 Newton, you have "discuss" -- and -- and tell me how you
25 have it phrased in that ---

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1 A It says ---

2 Q --- in your notes?

3 A --- "Discussed lesser-included evidence."

4 Q Okay. But do you have -- and -- and you say you don't
5 have any independent recollection of having that discussion
6 with Mr. Newton?

7 A No.

8 Q Okay. And there's nothing in your notes that reflects
9 "I did have this discussion and he said it was okay for me
10 to ask this"?

11 A Nothing specifically says that. But in my trial
12 outline, it looks like I -- I mean, obviously, I did
13 research on it. And I mentioned the -- asking for the
14 lesser-included offenses. And I made reference to the case
15 law. So ---

16 Q Okay.

17 A --- I -- I mean, I did discuss it with him on that one
18 day, the 12th of June of 2015. And then, the trial -- the
19 trial outline was actually saved in the computer on June
20 16th, after our discussion.

21 Q Let me ask you this: On page 260 -- so let me ask:
22 Your testimony is you had some sort of discussion with him
23 about it; you have it in your notes where you would have
24 discussed it with him; but you don't have an independent
25 recollection of the actual discussion?

1 A I don't.

2 Q Okay. How about during the trial? Did you have any
3 feelings one way or the other as y'all were getting to the
4 point where you were going to request lesser-included,
5 where you talked to your client and said, "Hey, I think
6 this thing is going really well for you; we should just
7 have to -- we should just ask that it -- the jury be
8 charged with armed robbery"? Do you recall that?

9 A I don't recall any specific conversations.

10 Q Okay. One way or the other, you don't require --
11 recall any specific conversation?

12 A No.

13 Q Okay.

14 A I can't say we had a conversation or didn't. Most
15 likely we did, because in every single trial I've tried, if
16 I'm asking for a lesser offense -- included offense, the
17 defendant and I discuss it, because it's their life; it's
18 their decision ultimately whether they want to go all or
19 nothing or whether they want to make sure the jury has
20 something lesser to consider, depending on what the
21 evidence is.

22 Q Following the trial, did you make -- do you recall
23 making a motion for a new trial? And this will be on the
24 trial transcript, number -- page 269. And do you have a
25 copy of the transcript? I'm sorry.

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1 A I do. I see where I made it.

2 Q Okay. And -- and in -- you've had a chance to read
3 that?

4 A Yes.

5 Q Beginning with line 12 through 21?

6 You indicate to the Court: "I make a motion for a new
7 trial on behalf of Mr. Newton. Taking the evidence in the
8 light most favorable -- favorable to the state, I don't
9 believe that there was any evidence that supported a
10 conviction of strong-arm robbery over armed robbery. I
11 base all that on the testimony and my prior objection in
12 response to their question."

13 Are you -- are you stating you didn't think there was
14 evidence to support the strong-arm robbery conviction?

15 A I think there was potentially. Of course, I'd argued
16 harder for petit larceny. And I can't -- I mean, this is
17 inconsistent with what I told the judge previously. I
18 can't explain that, other than the fact that I was arguing
19 on behalf of my client.

20 And based on the -- honestly, based on the jury's
21 question when they came out and the length of time they
22 were back there trying to decide, I think really -- I
23 really believe that they should've come back with petit
24 larceny, rather than strong-arm robbery. And I did,
25 obviously, make the objection to the judge's charge to the

1 jury. And I think that's probably what swayed them toward
2 petit larceny, is the -- the reference to the -- I think it
3 was a heavy reference to violence. But I can't explain why
4 my statements here are inconsistent with my statements
5 previously, other than the fact that I was zealously
6 arguing on behalf of my client.

7 Q But if -- if -- if that's your belief, that there's no
8 evidence to support a strong-arm robbery, then why would
9 you ask for a strong-arm-robbery charge? Because wouldn't
10 you agree with me, the only -- if there's no evidence of
11 that, there would be no evidence of armed robbery. So why
12 put that one on the table for the jury to consider?

13 A Oh, I think there was evidence of strong-arm robbery
14 if the jury believed that Mr. Newton -- that Mr. Newton was
15 stealing this lady's purse and they didn't believe him
16 about the -- the drug deals and all that. I think the
17 argument would've been that the only thing he did was take
18 the purse by force. Because his testimony was that he --
19 that she got cut after he took the purse.

20 So that means that there wouldn't have been any
21 evidence that he took the purse with a threat of harm,
22 based on what she said. Going with what Mr. Newton said,
23 it would've been strong-arm robbery if they didn't believe
24 of -- if they didn't believe him about the drug deal and
25 that he was just trying to get the drugs back from this

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35

1 lady. And I don't remember her name.

2 Q Okay. Do you -- do you still today believe you
3 should've made a request for lesser-included ---

4 A Yes.

5 Q --- charges?

6 A Yes, I do.

7 Q Okay. Even with them coming back with a strong-arm
8 robbery, even with you, on the record, stating there was no
9 evidence of a strong-arm robbery?

10 A In hindsight, perhaps I should've just asked for petit
11 larceny and they might've come back with that. But the
12 reality was, based on the testimony, based on the -- I
13 remember this lady testifying. And I remember Mr. Newton
14 testifying. And they both had pretty good demeanors
15 testifying. They both seemed very credible to the jury and
16 -- and to me.

17 But if they believed her, that she wasn't a drug
18 dealer and that this man just came in and tried to rob her,
19 there was a real risk that they could've convicted him of
20 armed robbery and kidnapping and -- or armed robbery, at
21 least, and that they could have -- and if he got convicted
22 of armed robbery, he was looking at life in prison.

23 Q Okay. But wasn't that still on the table, if -- if
24 you requested the strong-arm robbery? I mean, is -- they
25 still could've found him guilty of armed robbery, right?

1 A They could've.

2 Q Okay.

3 A But they didn't. I mean, I figured, if they believed
4 Mr. Newton, and they believed that he took the purse from
5 her after -- I mean, before he picked up the -- before --
6 before anybody picked up the -- the letter opener or
7 whatever she was cut with, then that could've -- that
8 could've back to strong -- that would've been an argument
9 for strong-arm robbery. And if they believed him that he
10 didn't do it by force -- if they totally believed Mr.
11 Newton, that he didn't do anything by force to her, and
12 only -- the force only came in well after when he was
13 trying to leave, then they can come back with petit
14 larceny. So the jury could've found on either.

15 Q Well, couldn't you have argued that to the jury:
16 "Look, this wasn't an armed robbery"? Even if you think it
17 was strong-arm robbery or petit larceny, which this is what
18 petit larceny is, they could've found him not guilty on the
19 armed robbery without you requesting a lesser-included?

20 A It might have.

21 Q Okay. I mean, is that a strategy that you could've
22 employed, you think?

23 A It is.

24 Q Okay. Did you discuss that with Mr. Newton?

25 A Don't remember.

CROSS-EXAMINATION BY MS. COLEMAN - WALLIS ALVES 37

1 Q Do your notes reflect any discussion of that sort of
2 strategy?

3 A I don't have any notes taken during the trial. And I
4 don't have any notes that reflect that. The only notes I
5 have are the ones I showed you.

6 Q Okay.

7 MR. BOOZER: Beg the Court's indulgence, Your Honor.

8 (Off the record briefly.)

9 Q Thank you, Ms. Alves. That's all the questions I have
10 for the moment.

11 CROSS-EXAMINATION

12 BY MS. COLEMAN:

13 Q Ms. Alves, he's covered most of that, so I'll just
14 kind of go over some background information. How long have
15 you been practicing law?

16 A Since November of 1992.

17 Q Okay. And about how many times did you meet with the
18 applicant before his trial?

19 A A lot. I couldn't say. He said six. I firmly
20 believe it was more than that.

21 Q Okay. Did the applicant cooperate with you during
22 your representation?

23 A Yes.

24 Q Okay. And did you review all the discovery materials
25 with him?

1 A Yes.

2 Q Okay. What was the state alleging he had done?

3 A They're alleging he went into a -- a car lot and took
4 a purse from the lady who was the -- I believe she was the
5 -- the office manager. She was the only one in there.

6 They said when he came there, he took a purse from
7 her; used a sharp object, which cut her on her hand; and
8 left with her bag ---

9 Q Uh-huh.

10 A --- and then later -- I believe he used her -- cash --
11 tried to cash her checks or something like that.

12 Q Uh-huh. And was he found three days later in a car
13 accident? Is that how they discovered him: with the
14 victim's purse in -- in the car?

15 A I don't remember exactly how many days it was. But he
16 was in a car accident, where he got injured. And the
17 police were tracking him. They found her purse -- well,
18 no. They found items from her purse, including -- I
19 believe it was a -- a -- a little laminated card -- a copy
20 of her birth certificate ---

21 Q Uh-huh.

22 A --- in the -- in the -- in the car.

23 Q Okay. So they tied the items from her purse back to
24 him?

25 A Yes.

CROSS-EXAMINATION BY MS. COLEMAN - WALLIS ALVES

39

1 Q Okay. And the victim testified at trial, right?

2 A She did.

3 Q Okay. And did Mr. Newton testify at trial?

4 A He did.

5 Q What was his version of the events that he told the
6 jury?

7 A He told -- I don't remember the exact -- what he said.

8 But ---

9 Q Uh-huh.

10 A --- the gist was that Ms. -- he and Ms. Newton had
11 known each other -- excuse me; I'm sorry -- he and the --
12 I'm sorry; I've forgotten her name.

13 Q Ms. Herron.

14 A Ms. Herron? Thank you.

15 Q Uh-huh.

16 A They had known each other prior to the incident; that
17 she sold drugs; that he was working a drug deal with her
18 for another person; that she kept putting him off whenever
19 he kept going back to her to try to either get the drugs or
20 the money; she never had the money for what she had take --
21 had gotten; and that when he went in there that day, she
22 was supposed to have the money for him or the drugs and she
23 didn't give up either.

24 So he went to check her purse. When he went to grab
25 the purse, she went to grab him. He had already had the

1 purse. They struggled. I don't remember who he said
2 picked up the -- the sharp object. I don't -- I -- I think
3 it was letter opener. But she wound up getting cut on her
4 hand and he left.

5 Q Okay. Was this consistent with his version of the
6 facts that he had told you before the trial?

7 A Yes.

8 Q Okay. Did you believe that his testimony was credible
9 or believable to the jury?

10 A I think he testified credibly to the jury. He was
11 very calm. He was very clear about what he had to say.

12 Q Okay.

13 A I mean, he -- you just -- it was -- just stated it
14 like it was facts.

15 Q Okay. You've testified that you don't have a specific
16 recollection of your discussions before the trial or during
17 the trial. Do you have any specific memory of the
18 strategies that you were considering when you were making
19 your trial outline or -- or preparing for this trial?

20 A Everything that I -- everything that I would've
21 considered is in the trial outline. I don't have any
22 specific -- I mean, I remember, like, the facts -- the
23 basic facts of the case. But I don't remember anything
24 really specific.

25 Q Uh-huh.

CROSS-EXAMINATION BY MS. COLEMAN - WALLIS ALVES 41

1 A I mean, that, unfortunately, would be in my notes. I
2 know I had a large folder on this. But we can't find the
3 file.

4 Q Yeah.

5 A So all I have is what's on the computer.

6 Q Yeah.

7 A And based on the trial outline, which it's pretty
8 detailed, we -- I was considering lesser-included and
9 arguing that this wasn't an armed robbery ---

10 Q Uh-huh.

11 A --- because, based on what he said, the cut on the
12 hand came well after he had possession of the purse.

13 Q Okay. Is requesting lesser-included offenses -- is
14 that a trial strategy that you use often or you have used
15 before?

16 A I've used it when it's -- when it's obvious, from the
17 evidence that comes out at trial, that that's what you need
18 to do.

19 Q Okay. What's your strategic reasoning behind that?
20 Why would you choose -- choose to request that?

21 A If the client doesn't want to take their chances that
22 the jury is going to say, "Oh, this is -- this is armed
23 robbery that's the end of it" -- just -- just to use that
24 as an example ---

25 Q Uh-huh.

1 A --- then you might want to ask for a lesser-included
2 offense so that the jury does have something else to
3 consider so that they have something else to compare the
4 more serious charge to ---

5 Q Uh-huh.

6 A --- and that -- and especially if the client's
7 admitting that they did something, you want the jury to
8 consider the lesser charge, rather than the more serious
9 one.

10 Q Okay.

11 A And in a situation where somebody is looking at life,
12 you would definitely consider that.

13 Q Okay. Is that the specific reasoning you used in this
14 case or would have used in this case?

15 A I have no idea what I used in this case. But in this
16 case, Mr. Newton had to get up and admit to something.

17 Q Uh-huh.

18 A He had to -- he had to admit to a lot. He had to
19 admit to being, you know, involved in a drug deal, in a
20 conspiracy to do a drug deal.

21 Q Uh-huh.

22 A He had to admit that he actually took this woman's
23 purse; that he struggled with her. So I was -- I -- I was
24 -- would have probably been -- I remember being concerned
25 that she might come off as sympathetic because, you know,

1 she was the one cut and we didn't have any evidence that
2 this was actually a drug deal. We'd had nobody else that
3 testified that they were involved in a drug deal.

4 So that might've been a strategy that I would've used.
5 I mean, and looking at my notes, it even talks about the
6 fact that we have no witnesses to the drug deal. We had no
7 witnesses to some conversations that he said he had with
8 some other people.

9 Q Okay.

10 A And that's going on the trial outline.

11 Q Okay. So based on your notes from your trial outline
12 and the fact that his testimony would've had to admit some
13 wrongdoing and based on the evidence presented at trial, do
14 you believe that that was your strategic reasoning behind
15 requesting the lesser-included?

16 A Yes.

17 Q Okay. Thank you. Did you discuss with the applicant
18 the elements of all the charges and what the state was
19 required to prove?

20 A In my notes it says that we discussed lesser-included
21 -- I put evidence, but obviously I believe I meant offenses
22 ---

23 Q Uh-huh.

24 A --- because that would've been the only thing that
25 makes sense when I was -- when I was typing. But if we

1 discussed it, I would've definitely told him what the
2 elements were of each of the charges that we could've
3 pursued. And we would've talked about it during the trial
4 when it was time to do the directed verdict motion and then
5 when it -- when it was time to do the closing and when it's
6 time to ask for the -- for the charges.

7 Q Uh-huh.

8 A I don't normally do that -- I've never done it, as far
9 as I know, as far as I can remember, without discussing it
10 with the client first.

11 Q Okay.

12 A And sometimes clients want to go all or nothing ---

13 Q Uh-huh.

14 A --- and say, you know, just -- just take your chances
15 on that. And sometimes they want to hedge their bets and
16 make sure that the jury has a lesser to -- to -- to
17 consider.

18 Q Uh-huh. Based on your -- your practice in general, if
19 a client told you that they wanted to go all or nothing
20 with no lesser-includes, would you respect that decision?

21 A Yes.

22 Q Okay. Do you have any specific recollection of the
23 applicant telling you he didn't understand anything or
24 needed clarification on anything?

25 A Do I have any -- during the trial?

CROSS-EXAMINATION BY MS. COLEMAN - WALLIS ALVES 45

1 Q Or -- or ---

2 A Whenever he didn't understand something, he would call
3 the office. There's a lot of messages where he called the
4 office.

5 Q Uh-huh.

6 A He would call and ask about it. He and I would talk
7 about it. I met with him a lot.

8 Q Okay.

9 A So, I mean, I don't remember any specific discussion
10 about something he didn't specifically understand.

11 Q Uh-huh.

12 A But he and I thought we had a pretty good relationship
13 during the entire time I was representing him.

14 Q Okay.

15 A And he had no -- no -- no hesitation in asking me a
16 lot of questions about a lot of different things. And some
17 of the messages he reflect -- left even reflect that --
18 that we had a lot of discussion about -- I mean, he would
19 leave -- he would leave questions and then I would go to
20 the jail and talk to him.

21 Q Okay. So as the applicant alleged earlier during his
22 testimony, he claims that he specifically told you he did
23 not want to request lesser-included. If he had told you
24 that, would you have not requested the lesser-included?

25 A If he had told me that, I would not have.

1 Q Okay. Okay. How would you characterize the state's
2 evidence in this case?

3 A Pretty strong. But once he told his story, I mean ---

4 Q But his ---

5 A --- it was ---

6 Q --- story ---

7 A --- once he told his story and explained his story, I
8 mean, it -- it ---

9 THE COURT: It -- it was ---

10 A --- it ---

11 THE COURT: --- was just a "he said -- said/she said,"
12 right?

13 THE WITNESS: That's all it was.

14 THE COURT: I mean, that -- that's what it boiled down
15 to. If the jury believed her, he's gone.

16 THE WITNESS: Yes.

17 THE COURT: If they believed him, he's going to walk,
18 right?

19 THE WITNESS: Well, if they believed him and we had
20 gone all or nothing, he would've walked on that charge.

21 THE COURT: Uh-huh. Well ---

22 THE WITNESS: But ---

23 THE COURT: --- let me ---

24 THE WITNESS: --- or on the ---

25 THE COURT: --- let me ask ---

CROSS-EXAMINATION BY MS. COLEMAN - WALLIS ALVES 47

1 THE WITNESS: --- lesser-included.

2 THE COURT: --- you this: Had the state moved for a
3 charge on strong-arm robbery, what would your reaction have
4 been? Could you have -- could you have responded to that,
5 based on his testimony?

6 THE WITNESS: If they had moved for lesser-included --
7 lesser-included and he didn't want that, I could've
8 objected to it ---

9 THE COURT: Yeah. But what ---

10 THE WITNESS: --- and argued -- on ---

11 THE COURT: How --- how ---

12 THE WITNESS: --- what grounds ---

13 THE COURT: --- successful would you have been,
14 considering his testimony?

15 THE WITNESS: Not very, I mean ---

16 THE COURT: Well ---

17 THE WITNESS: --- realistically.

18 THE COURT: --- didn't they do just that in response
19 to Judge Early's question on page 20 of 255 (as read):

20 THE COURT: How about the lesser-
21 included?

22 MR. MILLER: Judge, if the jury
23 believes him -- if the jury believes
24 him -- and certainly, that's what you
25 wanted them to do -- I guess we need to

1 charge the strong-arm robbery.

2 THE COURT: But then, he questions the petit larceny.
3 I mean, isn't the state, they're saying, based on his
4 testimony, "We need to charge strong-arm robbery"?

5 THE WITNESS: The solicitor did say that. Well, he --
6 that's ---

7 THE COURT: Okay.

8 THE WITNESS: --- what he said. I think ---

9 THE COURT: All right.

10 THE WITNESS: --- they agreed with it. They didn't
11 ask for it. But had they asked for it ---

12 THE COURT: Well, I don't ---

13 THE WITNESS: --- he ---

14 THE COURT: --- know. Is he asking for it there or
15 not? Is he tell telling ---

16 THE WITNESS: I ---

17 THE COURT: --- the Court that -- that it needs to be
18 charged?

19 THE WITNESS: He is telling him that. Yes, sir.

20 THE COURT: Okay. All right.

21 Sorry to interrupt you, Ms. Coleman.

22 MS. COLEMAN: You're fine.

23 Q I have nothing further. Thank you.

24 THE COURT: Mr. Boozer?

25 MR. BOOZER: Just briefly, Your Honor.

REDIRECT EXAMINATION BY MR. BOOZER - WALLIS ALVES

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REDIRECT EXAMINATION

1
2 BY MR. BOOZER:

3 Q Ms. Alves, obviously, you read the case of *Abney v.*
4 *State*, because you cite it in the trial transcript.

5 A Yes.

6 Q Right?

7 Did -- do you have a recollection of what *Abney* stands
8 for and why you cited that?

9 A I don't. The only thing I can say is I -- I think I
10 -- I think I explained the case more. It -- I just said
11 here it was a PCR case. I don't remember if I explained
12 it. I thought I did ---

13 Q Well, let me ask you ---

14 A --- in here.

15 Q --- this.

16 A But that would be it.

17 Q You -- you -- you've handled a number of criminal
18 cases, correct?

19 A Yes.

20 Q Okay. Is it up to -- can the Court, on its own,
21 interject and say, "I'm going to charge -- I'm going to
22 give the jury instructions on lesser-included offenses"?
23 Can the Court do that, or does it require you prompting the
24 Court and requesting that that be done?

25 A It'll require me to -- to make a motion for it.

1 Q That's right. And I -- I think what His Honor was
2 asking -- if -- if the state -- can the state, on its own,
3 ask for lesser-included? Or again, is that something that
4 you, as -- as defense counsel and the defendant, have to
5 affirmatively ask for?

6 A The state can ask for it. I can object to it.

7 Q Okay.

8 A I mean, they -- they would have to ask for it, based
9 on the testimony of Mr. Newton, which, of course, they
10 would've had no idea about before he got on the stand.

11 Q What's -- what's your position on that? What would
12 your objection be? When he's not charged with that, so you
13 can't bring that before the jury. You're the one that's
14 electing what he was charged with, right?

15 A That's what I would argue, if that was our -- if our
16 strategy was all or nothing, I would've argued against it
17 ---

18 Q Okay.

19 A --- if they have asked for it.

20 Q Okay. Thank you, Ms. Alves.

21 MS. COLEMAN: Nothing further. Thank you.

22 THE COURT: You may step down. Thank you.

23 (Whereupon, the witness exited the witness stand.)

24 (Off the record briefly.)

25 MS. COLEMAN: The state has no further witnesses, Your

1 Honor.

2 THE COURT: Mr. Boozer?

3 MS. COLEMAN: Oh. That was your -- I'm sorry.

4 MR. BOOZER: No further witnesses on behalf of the
5 applicant, Your Honor.

6 THE COURT: Well, do ---

7 MS. COLEMAN: That was his witness.

8 THE COURT: Who called ---

9 MS. COLEMAN: I'm sorry.

10 MR. BOOZER: I did, Judge.

11 THE COURT: Mr. Boozer called her? Okay.

12 MR. BOOZER: I did, Your Honor.

13 MS. COLEMAN: The state has no witnesses.

14 THE COURT: I couldn't remember whether Mr. Boozer did
15 or not. Usually, the state would.

16 MS. COLEMAN: Okay.

17 THE COURT: Well, you -- talk to me about this. Talk
18 to me about this colloquy that occurred between the Court
19 and the attorneys, both the state and the defense, on page
20 199 of the -- of the transcript. I mean, doesn't the judge
21 properly there ask the attorneys about the charge?

22 MS. COLEMAN: Uh-huh.

23 THE COURT: And based on Mr. Newton's testimony, Mr.
24 Miller says "I think we need to charge -- I guess we need
25 to charge strong-arm robbery."

1 MR. BOOZER: May I go ahead and jump in, Your Honor?

2 THE COURT: Yeah. Just hop right in.

3 MR. BOOZER: Thank you, Judge. Yes. Mr. Miller does
4 state that. But looking on further at page 200, what it
5 looks like happens is the Court wants to hear Ms. Alves's
6 argument and says: "Hand me up some of that stuff and I'll
7 look at it night."

8 And then, Mr. Miller says: "Judge, we'll leave it"

9 ---

10 THE COURT: Well, I -- isn't that -- isn't that --
11 that argument on 200 about whether or not she believes he
12 should also charge petit larceny after the Court had said,
13 at the end of page 99, "I'm not going to charge petit
14 larceny"? Isn't that what she's talking about in the *Abney*
15 case: that petit larceny is a lesser-included of both
16 armed robbery and strong-arm robbery? Isn't that what
17 *Abney* stood for? Isn't that why she argued *Abney*?

18 MR. BOOZER: Judge, she did argue *Abney* for that --
19 for that reason. Our -- our argument is -- of course, this
20 kind of goes back to, I guess, what the original trial was:
21 Who do you believe? If you believe Mr. Newton and that he
22 said he did not want this, or do you believe Ms. Alves, who
23 -- she does not have a specific recollection about what the
24 discussion was. All she can go is on her notes, which Ms.
25 Coleman and I reviewed, reflects that she does have two

1 notations in the trial outline and notes that reflect a
2 meeting with Mr. Newton. All it says is lesser-included
3 offense -- or lesser-included charge and lesser-included
4 evidence. We don't have any discussion of whether -- and
5 there's nothing on the record -- "Well, Mr. Defendant, I
6 don't have to give this. Are you sure that you want this"

7 ---

8 THE COURT: Yeah. Well ---

9 MR. BOOZER: --- "charged?"

10 THE COURT: --- but, you know, Mr. Boozer, if you look
11 at Mr. Newton's testimony, doesn't that sound like the
12 testimony of someone who's going to ask for a lesser-
13 included on an armed robbery?

14 MR. BOOZER: Or it sounds like someone that is trying
15 to explain away the armed robbery.

16 THE COURT: Uh-huh.

17 MR. BOOZER: And this ---

18 THE COURT: Uh-huh.

19 MR. BOOZER: --- doesn't ---

20 THE COURT: And he -- and he -- and he essentially
21 convicts himself of strong-arm robbery or petit larceny,
22 some lesser-included?

23 MR. BOOZER: As long as the lesser is given does he
24 convict ---

25 THE COURT: Uh-huh.

1 MR. BOOZER: --- himself. Otherwise, if ---

2 THE COURT: But -- but ---

3 MR. BOOZER: --- the jury ---

4 THE COURT: --- but ---

5 MR. BOOZER: --- believes ---

6 THE COURT: --- I -- I mean, if you were trying this
7 case, Mr. Boozer, honestly, and you had that testimony,
8 wouldn't you expect -- whether it came from the state or
9 from you, wouldn't you expect to hear a lesser-included
10 charge? I mean ---

11 MR. BOOZER: I ---

12 THE COURT: --- wouldn't it just be obvious that
13 that's going to happen? First of all, I'm going to have
14 him testify to this and I'm going to ask for it to avoid
15 him looking at the consequences of another armed robbery;
16 or I know the state's going to step up and do it, one or
17 the other. I mean ---

18 MR. BOOZER: All ---

19 THE COURT: --- that ---

20 MR. BOOZER: --- only if he wanted it. I don't think
21 that's my decision to make. And I think, Your Honor ---

22 THE COURT: Well, he ---

23 MR. BOOZER: --- as far as ---

24 THE COURT: --- doesn't get to control it. The state
25 could make it. And I -- and it seems to me ---

1 MR. BOOZER: And then ---

2 THE COURT: --- that that's ---

3 MR. BOOZER: --- it'd be ---

4 THE COURT: --- exactly what Mr. Miller was doing.

5 MR. BOOZER: Then, it would be an appellate issue.

6 And I think, from looking at *Abney* and looking at the
7 concurring opinion in *Abney*, where they discuss at length
8 that it's the defendant's decision -- and he was not
9 originally charged with X, Y, and Z -- that it kind of
10 equated to a guilty plea. It's up to you whether you want
11 to go in and plead guilty to something that you ---

12 THE COURT: Uh-huh.

13 MR. BOOZER: --- weren't originally charged with as
14 part of a plea deal. It should be up to ---

15 THE COURT: Okay.

16 MR. BOOZER: --- you whether ---

17 THE COURT: All right. Well ---

18 MR. BOOZER: --- you want to ---

19 THE COURT: --- well ---

20 MR. BOOZER: --- accept a lesser-included ---

21 THE COURT: --- well, let me -- let me just ask this:
22 Are -- are you taking the position, then, that it would've
23 been improper for the state to have asked for a lesser-
24 included under the circumstances of this case?

25 MR. BOOZER: Well, I think that they could -- they

1 could certainly make a request. Whether ---

2 THE COURT: Okay.

3 MR. BOOZER: --- it's improper or not is up to the
4 judge and the appellate court.

5 THE COURT: Okay.

6 MR. BOOZER: I think, if they make it, then it's
7 incumbent upon me, if my client ---

8 THE COURT: Well ---

9 MR. BOOZER: --- does not ---

10 THE COURT: --- obviously ---

11 MR. BOOZER: --- want that ---

12 THE COURT: --- the judge felt that it was, and the
13 jury felt that it was an appropriate charge. So looking at
14 that, does it really make any difference whether Ms. Alves
15 objected to it or not if -- if it was going to be argued,
16 did it really make any difference in the outcome of -- of
17 this case?

18 MR. BOOZER: Could -- could've -- it could've. If --
19 if -- if she had not requested that lesser-included. And
20 let's say the state said, "You know what? We want it. We
21 want something else to hang" ---

22 THE COURT: Okay.

23 MR. BOOZER: --- "our hat on" ---

24 THE COURT: And let -- let's take that scenario in
25 hand. Do you -- can you make any argument on behalf of Mr.

1 Newton that would've kept the state from getting that
2 charge?

3 MR. BOOZER: I don't -- if -- if -- if Ms. Alves
4 would've objected and if the trial court, in its
5 discretion, said, "No. I'm not -- I'm going to let that
6 stand," I think then, at that time, if he were convicted of
7 a strong-arm robbery, he would've then, as he did, filed an
8 appeal. And I think that would've been an appellate issue,
9 because Ms. Alves would've objected to that. That would've
10 been something that would've been taken up on appeal.

11 Unfortunately, that wasn't done in this case. So
12 we're not sure what the appellate court would have done.
13 But I think the argument would've been, if you're handling
14 the appeal, is that the state cannot -- cannot be the one
15 that does that; that it would have to be ---

16 THE COURT: So -- so the jeopardy -- the jeopardy that
17 he has in this matter is that he did not have the
18 opportunity to challenge that charge on appeal? I mean,
19 isn't that the bottom line?

20 MR. BOOZER: I don't think so, Your Honor. I think,
21 in -- in this context ---

22 THE COURT: I -- I mean, think about everything else.
23 That's what it all goes to. She should have objected --
24 you're saying she should have objected to having that
25 charge. One of two things could've happened: The Court

1 could've said, "No. I think it's appropriate." And in
2 that case, the Supreme Court would've upheld his
3 conviction. The other thing that could've possibly
4 happened is the Supreme Court or the Court of Appeals
5 could've said, "No. It was in -- it was improper to charge
6 it, based on the facts of this particular case."

7 I mean, that's what it comes down to. Right?

8 MR. BOOZER: In that context. But that's not what
9 happened. So if that -- if that's how it would've played
10 out in court, yes. We would be in that scenario.

11 But in -- but we're in sort of the opposite of that,
12 where she did affirmatively request for it. So then, we
13 can't then raise that on appeal. It would have to be
14 raised in this context ---

15 THE COURT: Well -- well, that ---

16 MR. BOOZER: --- as to whether ---

17 THE COURT: --- that's what ---

18 MR. BOOZER: --- she was ineffective.

19 THE COURT: --- I'm saying. Again, it's -- it simply
20 boils down to whether she made it or she didn't object to
21 it. It -- it -- it still has the same end: that is,
22 whether or not he could have raised it on an appeal.

23 I mean, I -- I -- I'm missing where -- where else you
24 could be going. On the one hand, you're saying she asked
25 for it and she shouldn't have asked for it. And because

1 she did ask for it, it got charged and he got convicted of
2 it. Okay?

3 MR. BOOZER: Correct.

4 THE COURT: And we can't appeal that now because she
5 didn't object to it. If we had the reverse and the state
6 moved for it -- and I think the state did, quite frankly.
7 I think Mr. Miller tells the Court, "Yes. We need to have
8 strong-arm robbery."

9 But let's give that to you. Let's -- let's just say
10 that she should've objected to it. If the Court decided
11 *sua sponte* to do it and did it, she should've still
12 objected to it. In either case, what it boils down to is
13 he didn't have an opportunity to challenge the charge on
14 appeal.

15 Would you agree with that, Ms. Coleman? I mean, is --
16 isn't that the bottom line?

17 MS. COLEMAN: I can -- I think ---

18 THE COURT: And whether ---

19 MS. COLEMAN: --- that's ---

20 THE COURT: --- or not that has prejudiced him,
21 whether or not the evidence ---

22 MS. COLEMAN: Uh-huh.

23 THE COURT: --- is such that it ---

24 MS. COLEMAN: I don't ---

25 THE COURT: --- would affect the outcome of this

1 trial?

2 MS. COLEMAN: 'I can -- I understand that argument. I
3 don't think that that's the way the applicant has framed
4 this issue. So I would probably ---

5 THE COURT: Well, help me here.

6 MS. COLEMAN: Yeah. I would -- I would probably
7 object to that -- first of all, I would assert that it
8 would be upheld on appeal. I think it is proper, based on
9 ---

10 THE COURT: And -- and ---

11 MS. COLEMAN: --- the facts of ---

12 THE COURT: --- I don't ---

13 MS. COLEMAN: --- this case.

14 THE COURT: --- and I -- I don't mean to suggest that
15 it would not be upheld on appeal.

16 MS. COLEMAN: Right.

17 THE COURT: I personally, looking at it, think that it
18 was a proper charge.

19 MS. COLEMAN: Uh-huh.

20 THE COURT: That the -- the evidence in this case,
21 when he took the stand and testified as he did, the door
22 was opened for that charge.

23 MS. COLEMAN: Uh-huh.

24 THE COURT: I think it was an appropriate charge.

25 MS. COLEMAN: Uh-huh.

1 THE COURT: Okay? I mean, that's just my opinion.

2 MS. COLEMAN: Right.

3 THE COURT: But what were the consequences -- what
4 were the consequences? First of all, Ms. Alves made a
5 strategic decision.

6 MS. COLEMAN: Uh-huh.

7 THE COURT: Should she have shared it with him? I
8 don't -- she says she did.

9 MS. COLEMAN: Uh-huh.

10 THE COURT: You know, that ---

11 MS. COLEMAN: Right.

12 THE COURT: --- that -- that's a question to be -- of
13 -- of fact in ---

14 MS. COLEMAN: Uh-huh.

15 THE COURT: --- this matter. But ---

16 MS. COLEMAN: And that's my position, Your Honor, is
17 that this was a strategic decision she made and the case
18 law says she can't be ineffective if the -- this was a
19 valid trial strategy.

20 THE COURT: And -- and based -- Mr. -- Mr. Boozer,
21 based on your client's testimony, I mean, how -- how could
22 that not be some sort of strategic decision? Are you
23 saying: Yeah. It was strategic, but even a strategic
24 decision, she's got to discuss it with him? And what that
25 -- does that do to the concept of the attorney controlling

1 the case?

2 MR. BOOZER: Well, Judge, I think, to make an almost
3 extreme example, but -- but to make an example nonetheless
4 is if you have a client and your client's offered a guilty
5 plea. And you think, My client is guilty is sin; if he
6 goes to trial, he's going to get convicted. But you know
7 what? I'm going to enter this guilty plea for him to
8 something else.

9 Obviously, the lawyer cannot do that.

10 THE COURT: I never have taken one of those pleas, but
11 go ahead. I understand what you're saying.

12 MR. BOOZER: I have not seen that PCR filed yet.

13 Judge, the -- obviously, that cannot happen. I think
14 I equate it, again, in this one where the state is the one
15 who brought these charges. The state is the one who
16 decides how to charge the case or the officer or however
17 you want to frame it.

18 They could've charged it that way, had they chose to.
19 But now, when you bring it into that context, then ---

20 THE COURT: But then, they would've given up the
21 possibility of -- of a -- an armory -- armed robbery.
22 That's just not how it works. You know ---

23 MR. BOOZER: It's ---

24 THE COURT: --- we kind of slip down the tree. We
25 don't go up. You cannot be convicted of a greater offense

1 than you were indicted for. It's impossible; it cannot
2 happen. You can't charge -- no judge can charge -- basic
3 law -- cannot charge a greater-included offense. It can't
4 be done. Absolutely reversible error.

5 MS. COLEMAN: And the state probably would not have
6 been aware of his version of the facts until he testified
7 at trial ---

8 THE COURT: Absolutely.

9 MS. COLEMAN: --- which, at that point, if he had
10 testified the way he had -- well, he did -- then the state
11 could request it, and I think it would be upheld by the
12 trial court and on appeal. You know, there -- I think
13 there are several layers of speculation you could go
14 through. If this had not been her strategic decision to
15 request it, maybe he would've testified differently. But I
16 think everything -- all the testimony we've heard today,
17 coupled with the trial transcript, I think, shows that both
18 of them, at some point, agreed that ---

19 THE COURT: I think ---

20 MS. COLEMAN: --- their strategy ---

21 THE COURT: --- after his testimony, it was going to
22 get charged ---

23 MS. COLEMAN: Uh-huh.

24 THE COURT: --- whether she offered it, the state
25 offered it, she objected to it. I think what -- my -- my

1 point is it all boils down to one thing: It was going to
2 be charged regardless ---

3 MS. COLEMAN: Uh-huh.

4 THE COURT: --- of -- of the -- of -- of who requested
5 it or who failed to -- to object to it. It was going to be
6 charged.

7 Okay. Anyway, I -- I -- I got off on a tangent there
8 and interrupted you. I'm -- Mr. Boozer, go ahead. I --
9 I'm sure you weren't done.

10 MR. BOOZER: Judge, I -- I think that -- I -- I hope
11 that I've captured our -- my argument and my client's
12 position. It -- I understand your -- Your Honor's
13 assertion about it all boiling down to it being an
14 appellate issue. But in this context, what we're focused
15 on is not an appellate issue, but whether his attorney
16 should have consulted with him about requested a lesser-
17 included. He says that they did talk about it and he was
18 adamant against it.

19 So I guess that's where we sort of are, is if that is
20 the case, then she should not have requested the lesser-
21 included. Now ---

22 THE COURT: And I think you maybe missed me. It --
23 what I was saying is it really makes no difference whether
24 she discussed it with him or not. It was going to get
25 charged.

1 MR. BOOZER: Correct. But I -- but he'd be in a
2 totally different scenario. We -- he would not be in PCR
3 world. He would be in the appellate arena, where, then,
4 the appellate court would have to decide can the state, on
5 its own, request a lesser-included or can the Court, on its
6 own, instruct the jury on a lesser-included.

7 And I think there is some of that discussion in the
8 Abney case, which I'm happy to hand up. But it's in the --
9 the -- the -- the -- the concurring opinion where that's
10 discussed. It's not really discussed in the majority
11 opinion. But there is a -- a lengthy discussion about
12 whether courts can do that or cannot do that.

13 So that would be our position. We would say no; the
14 Court can't do that. It's up to the defense whether to
15 make that request.

16 THE COURT: I know -- I've seen it happen many times
17 in practice and otherwise. The judge is in a -- in a
18 charge conference. And he says, "Okay. I think this is
19 what we ought to charge." And he rattles off lesser-
20 includeds. They haven't -- there hadn't been a motion made
21 by anyone.

22 It just becomes obvious that this is what it's going
23 to be. You know? And you may have someone object to it;
24 may have someone say, "Yeah. Judge, we agree with it."
25 You work it out sooner or later.

1 But sometimes it just becomes so obvious. And I think
2 this is one of these cases where it's just obvious. I
3 mean, what is the standard, when it comes to granting PCR
4 relief, is what is -- what do the case law -- what does the
5 case law say about prejudice to the defendant?

6 MS. COLEMAN: Uh-huh.

7 THE COURT: Did it ---

8 MS. COLEMAN: It asks ---

9 THE COURT: --- have ---

10 MS. COLEMAN: Uh-huh.

11 THE COURT: --- any effect on the outcome of the case?

12 MR. BOOZER: Judge, it -- I think, in -- in this
13 particular instance, we have -- it -- if -- if the position
14 is established that she should have either consulted with
15 her client about requesting the lesser-included and if he
16 ---

17 THE COURT: And, of course ---

18 MR. BOOZER: --- did not ---

19 THE COURT: --- she said she did.

20 MR. BOOZER: She said he did -- she -- she said she
21 did. He says -- he says she did also. But he says, "I
22 didn't want it," and told her so.

23 So if Your Honor believes that, then I think the next
24 leap is prejudice is proven because she did what he asked
25 her not to do and the -- and the jury came back with a

1 lesser-included ---

2 THE COURT: Well ---

3 MR. BOOZER: --- offense.

4 THE COURT: --- is -- isn't it appropriate sometimes
5 for attorneys to do that?

6 MR. BOOZER: To overrule their client's request?

7 THE COURT: Uh-huh.

8 MR. BOOZER: Judge, sure. I -- I think there are
9 certain items, such as making an objection; you can't have
10 your client browbeating you the entire time and telling you
11 what to do. That -- that -- it can't happen or it would be
12 impossible to practice or try a case.

13 But I think certain things require your client -- such
14 as testifying. You can advise your client not to testify.
15 You can say, "I don't think it's a good idea for you to
16 testify."

17 But if he says, "I want to get on the stand and
18 testify," you can't hold him down and say, "That's not
19 happening, buddy." He -- he's going to have a right to
20 testify.

21 And I think I would argue, in that particular
22 instance, on the jury instructions that he should have a
23 say in that. If he says, "I don't want to do that," then
24 she should take a back seat to that request.

25 THE COURT: Okay.

1 MS. COLEMAN: And, of course, my position is her
2 testimony shows she did consult with him; he -- although
3 she has no specific recollection of it, if he had said,
4 "No. I don't want to requested the lesser-included," then
5 she wouldn't have done so.

6 So we argue it's a valid strategic reasoning and she
7 can't be ineffective for it.

8 THE COURT: Okay. Well ---

9 MS. COLEMAN: And frankly, as far as prejudice goes,
10 there's a good argument, too, that he could've been
11 convicted of -- of armed robbery, if she had not requested
12 the lesser ---

13 THE COURT: Well, that's usually ---

14 MS. COLEMAN: --- included ---

15 THE COURT: --- why we want a lesser-included.

16 MS. COLEMAN: Right. So I don't know if he can
17 automatically prove prejudice just because he was convicted
18 of the lesser-included. That might've been doing him a
19 favor. It could've been life in prison, based on the --
20 his second strike that he has.

21 THE COURT: And -- and, you know, if I grant relief
22 here, Mr. Boozer, what's going to change? If -- if I grant
23 relief here, he's going to go back and be tried for strong-
24 arm and guess what they're going to charge? Strong-arm.

25 MR. BOOZER: That is the unique problem with this

1 case, Your Honor, is -- is he will go back and face the
2 strong-arm robbery.

3 THE COURT: Exactly the same charge that Judge Early
4 gave him on the same testimony in the previous case,
5 exactly. Nothing changes.

6 All right. I'll -- I'll notify you both. I -- give
7 me about a week. I -- let me think about this case.

8 MR. BOOZER: Your Honor, may I hand up Abney?

9 THE COURT: Oh. Certainly.

10 (Off the record briefly.)

11 THE COURT: I -- I would ask you -- I would ask you to
12 do this: I would -- I would ask you, in the next ten days
13 or so, to submit anything to me that you would like within
14 a -- any authorities that would elevate this particular
15 question -- and I'm not saying I'm making any kind of
16 finding Ms. Alves did not discuss it fully with her client
17 -- but just for the sake of argument, at what point does an
18 attorney's right to control the case -- what -- at point is
19 it overcome by the client's decision concerning the control
20 of the case? Specifically, on this particular issue, see
21 if you can find anything for me.

22 You know, if -- I -- and if you can find something,
23 please submit it to me in the next 15 days. Make a note of
24 that, okay?

25 And -- and just on that, it doesn't have to be

1 something real formal. If you got some cases and want to
2 do a little memo, just that it -- it would help me on this
3 particular case.

4 MS. COLEMAN: Do you mean just -- and I don't know if
5 there is anything specifically on this issue of lesser-
6 included offenses or just in general.

7 THE COURT: Lesser-included offenses.

8 MS. COLEMAN: Okay.

9 THE COURT: And -- and if you have some general case
10 law as it -- it -- that would say at what level ---

11 MS. COLEMAN: Uh-huh.

12 THE COURT: --- at what level does trial strategy
13 overwhelm the will of -- of the -- of the defendant, you
14 know, that's an interesting question. It -- it would --
15 those are two conflicting -- conflicting concepts there.
16 And there's been times in my practice when I had a client
17 that I thought wanted me to do something absolutely crazy,
18 as far as his defense was concerned, something that I
19 absolutely did not agree with. And usually, we were able
20 to work it out. Sometimes we couldn't. But thank
21 goodness, in -- in -- in most cases, anything serious we
22 were able to work out.

23 MS. COLEMAN: Uh-huh.

24 THE COURT: But if you find -- if you got anything on
25 that, let me -- let me hear it in the next fifteen days,

1 okay?

2 MS. COLEMAN: Thank you, Your Honor.

3 THE COURT: All right.

4 MR. BOOZER: Thank you, Your Honor.

5 THE COURT: Thank you.

6 (Whereupon, the proceeding was concluded at 2:24 p.m.)

7 --- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR AIKEN COUNTY, SOUTH CAROLINA, ON THE 27TH
DAY OF AUGUST, 2018.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JANUARY 15, 2019

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Waymon Eugene Newton, # 250888,
Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2017-CP-02-02138

ORDER OF DISMISSAL

This matter comes before the Court on an application for post-conviction relief (PCR) filed by Waymon Eugene Newton (Applicant) on September 5, 2017. Respondent made its Return and Partial Motion to Dismiss on December 29, 2017. An evidentiary hearing was held on August 27, 2018, at the Aiken County Courthouse. Applicant was present and represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office. At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Wallis Alves, Esquire ("Trial Counsel").

Before the Court were the records of the Aiken County Clerk of Court regarding the subject convictions, Applicants' records from the South Carolina Department of Corrections, the record on appeal, appellate records, and the pleadings. At the conclusion of the hearing, both parties submitted memoranda. After considering the arguments and evidence presented, this Court finds it necessary to deny post-conviction relief. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was indicted at the April 2015 term of the Aiken County Grand Jury for kidnapping (2015-GS-02-00441) and armed robbery (2015-GS-02-00442). Applicant was

represented by Wallis A. Alves, Esquire ("Trial Counsel"). David W. Miller, Esquire, and Wilder Harte, Esquire, prosecuted the case. Applicant proceeded to a jury trial on June 15, 2015 before the Honorable Doyet A. Early, III, and was found guilty of the lesser included offense of strong armed robbery, and found not guilty of kidnapping. Judge Early sentenced Applicant to imprisonment for fifteen years.

A timely Notice of Appeal was filed and an appeal was perfected. Kathrine H. Hudgins, Esquire, of the South Carolina Commission on Indigent Defense, filed an Anders¹ brief on Applicant's behalf. By written opinion filed January 25, 2017, the South Carolina Court of Appeals dismissed the appeal. State v. Waymon Eugene Newton, Up. No. 2017-UP-056. The Remittitur was issued February 10, 2017.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Counsel grossly erred by not objecting to State's waiving opening closing argument, State being allowed final argument violated standard due process afforded to defendants at trial.
2. "Misleading reply by judge to jury question led to conviction on strong-arm robbery."
 - a. "Judge's emphasizing/repeating 'if accompanied by violence that's strong-arm robbery,' 'Petit larceny is without any violence' confused the jury to my detriment."
3. "During judge's final charge to jury he shifted the burden of proof to me."

Applicant filed an amended application on April 2, 2018, adding the following allegation:

- (a) Applicant believes counsel was ineffective for failing to consult with him and/or explain to him a request for a jury charge on lesser-included offenses. Applicant did not wish to have the jury consider the lesser-included offenses. Applicant further alleges counsel was ineffective for requesting that the jury be allowed to consider the lesser-included charges.

¹ Anders v. California, 386 U.S. 738 (1967).

III. RELEVANT TESTIMONY PRESENTED AT EVIDENTIARY HEARING

Applicant's testimony

At the evidentiary hearing, Applicant testified that Trial Counsel represented him for seven or eight months before the trial. He stated he rejected prior plea offers from the State. He asserted that Trial Counsel should have objected to the State having the last closing argument at trial because it prejudiced him to have to argue first. He stated counsel should have objected to the judge's response to the jury question, and the judge should have had a direct answer to the question.

Applicant testified that Trial Counsel chose to request the lesser-included offense of strong-armed robbery at trial rather than only going to trial for armed robbery. He testified that he did not want to request the lesser-included offense. Applicant stated he thought the jury believed his testimony at trial and the jury was going to find him not guilty of armed robbery. He testified that he told Trial Counsel during the trial that he did not want to request the lesser-included offense and that he wanted to go forward on an "all or nothing" strategy. Applicant testified that Trial Counsel told him that she controls the trial strategy, and she chose to request the lesser-included offense of strong-armed robbery.

Trial Counsel's testimony

In contrast, Trial Counsel testified that she discussed requesting the lesser-included offense with Applicant before the trial and that Applicant chose to request the lesser-included offense of strong-armed robbery. Trial Counsel testified that she no longer has access to her defense file for this case and had no specific recollection of any conversations with Applicant before or during the trial. However, she stated that she was able to access digital notes from her online case-management system, and the digital notes she created indicate that she met with

Applicant before the trial to discuss their trial strategy. Trial Counsel testified that her notes specifically stated that she discussed the lesser-included offense with Applicant during their trial preparation. She stated that she also has an outline of how they were going to present Applicant's case, witnesses, and case law. She testified that her note from June 12, 2015 stated that they "discussed lesser-included evidence," which she explained was probably supposed to mean "discussed lesser-included offense." Trial Counsel testified that there was evidence presented at trial to warrant an instruction on the lesser-included offense, because some testimony showed the victim was not cut until after Applicant took her purse.

Trial Counsel testified that she always discusses the decision to request a lesser-included offense with her clients as a matter of general practice, because she believes that is their decision to make, not hers. Although Trial Counsel did not have a specific recollection of her conversation with Applicant, she opined that, based on her general practice, if she discussed this decision with Applicant and she later requested the lesser-included offense, it would have been because Applicant made or agreed with this decision, because she always leaves the choice to her client. She testified that she would have objected to a jury charge on the lesser-included offense if their strategy had been "all or nothing." Trial Counsel testified that she still today thinks she should have requested strong-armed robbery.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

DIRECT APPEAL ALLEGATIONS

Applicant's second and third allegations raise a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised these issues at trial or on appeal, and the third allegation of the judge's jury instructing shifting the burden of proof was indeed raised and ruled upon during Applicant's direct appeal. His failure to raise the issues on appeal has waived this allegation as a ground for relief. Therefore, these allegations are denied and dismissed with prejudice.

INEFFECTIVE ASSISTANCE OF COUNSEL

This Court finds Applicant has failed to meet his burden of proving any of his allegations of ineffective assistance of counsel.

Failure to object to State having last closing argument

Applicant's allegation of ineffective assistance of counsel for failing to object to the State having the last closing argument at trial is denied. At trial, Applicant introduced into evidence six photographs and a CD of an audio interview. ROA 101; 106; 107; 111; 112. Applicant also chose to testify on his own behalf at trial. ROA 206-250. Because Applicant chose to present a defense, he lost the opportunity to have the last closing argument. The State waived its opportunity to give an opening statement on the law before its closing argument. ROA 257. Applicant further alleges Trial Counsel should have objected to the State waiving its opening statement on the law.

Where the defense puts in evidence at trial, the State gets the final closing argument. State v. Gellis, 158 S.C. 471, 485-86, 155 S.E. 849, 855 (1930) (“if a defendant offers *any* evidence on trial of the case, the state is not deprived of its general right to the opening and concluding arguments”). “A solicitor is no longer required to make an opening argument to the jury on issues of fact” even where requested by defense counsel.” State v. Lee, 255 S.C. 309, 318, 178 S.E.2d 652, 656 (1971); Rule 37, SCRCrimP (“where no provision is made by statute or these rules, the procedure shall be according to the practice as it has heretofore existed in the courts of the State”).

Although a recent South Carolina Supreme Court opinion called the constitutionality of this rule into question, the order of closing argument has not been changed by either judicial opinion or a change in the rules of procedure. State v. Beaty, 423 S.C. 26, 41, 813 S.E.2d 502, 510 (2018). The recent opinion in Beaty did not alter the practice or procedure of closing arguments in a criminal trial.² Id. (“Absent authority to formally adopt procedural rules, our authority—and the authority of the trial court—is but to address due process considerations as they arise.”). Instead, the Beaty court stressed “trial judges must, on a case-by-case basis, ensure that a defendant’s due process rights are not violated during the closing argument stage.” Id.

² Our current closing argument rules consist of the following patchwork: Pursuant to the common law rule pronounced in *Brisbane* and as clarified in *Garlington*, in cases in which no defendant introduces evidence, the defendant(s) have the right to open and close, but may waive the right to both or may waive opening and present full argument after the State’s closing argument. Pursuant to the common law rule set forth in *Huckie*, if two or more defendants are jointly tried, if any one defendant introduces evidence, the State has the final closing argument. Pursuant to the common law rule as clarified in *Gellis*, in cases in which a defendant introduces evidence of any kind, even through a prosecution witness, the State has the final closing argument. However, in cases in which the State is entitled to the reply argument, there is no common law or codified rule as to whether the State must open in full on the law, or the facts, or both, or neither, and there is no rule governing the content of the State’s reply argument.

813 S.E.2d at 510 (internal citations omitted).

While making a plea for the adoption of a procedural rule to address the issue before it, Beaty ultimately held:

... In cases in which a defendant introduces evidence, trial judges clearly have the authority to require the State to open in full on the facts and the law and have the authority to restrict the State's reply argument to matters raised by the defense in closing. This authority remains in keeping with the trial judge's authority to ensure that a defendant's due process rights are not violated during a criminal trial.

Id. (also holding the appellant in that case, who had introduced evidence and lost the right to the last argument, was not prejudiced by the State's closing).

In the context of a PCR action, our courts have "never required an attorney to be clairvoyant or anticipate changes in the law." Teamer v. State, 416 S.C. 171, 183, 786 S.E.2d 109, 115 (2016). Even if the edict in Beaty could be construed as a change in the law, trial counsel in this case is not ineffective for failing to request the last argument before the jury. Beaty does not authorize the right to final closing in this case even if trial counsel had requested it. Trial Counsel put in evidence and waived Applicant's right to last closing. Not even today's precedent allows Applicant the last closing argument after he introduces evidence at trial. Id. at 510 (citing Gellis, *supra*). Accordingly, there is no deficiency or prejudice, and this allegation is denied.

Failure to consult with Applicant on requesting lesser-included offense

Applicant has failed to meet his burden of proving Trial Counsel was ineffective for failing to consult with him about the strategic decision to request the lesser-included offense at trial. Applicant was initially indicted for armed robbery. At trial, Trial Counsel requested a jury instruction on the lesser-included offenses of strong armed robbery and petit larceny.

The South Carolina Code defines armed robbery as the commission of a robbery "while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while

alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon.” S.C.Code Ann. § 16-11-330 (2003). Strong armed robbery is defined under common law “as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear.” State v. Rosemond, 356 S.C. 426, 430, 589 S.E.2d 757, 758 (2003). Strong armed robbery, also referred to in common law simply as robbery, is a lesser-included offense of armed robbery. State v. Mitchell, 382 S.C. 1, 4, 675 S.E.2d 435, 437 (2009).

The trial court is required to charge a jury on a lesser-included offense “if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed.” State v. Gourdine, 322 S.C. 396, 398, 472 S.E.2d 241, 241 (1996). However, the trial court is only required to include this jury charge when the parties request it. A trial court does not have a duty to *sua sponte* provide a charge of a less-included offense where it is warranted by the evidence. State v. Parker, 315 S.C. 230, 236-37, 433 S.E.2d 831, 834 (1993) (finding the trial court did not err by failing to charge the jury on a lesser included offense because such charge was not requested; “there was no duty on the court to *sua sponte* provide the charge,” and the evidence did not warrant the charge).

In the present case, the evidence warranted an instruction on the lesser-included offense because, as Trial Counsel testified at the evidentiary hearing, there was testimony presented at trial that Applicant did not cut the victim until after he had taken her purse, so if the jury believed Applicant took her purse by force without a weapon, it could find him guilty of strong armed robbery—which it ultimately did. Trial Counsel requested the jury charge on the lesser-included

offense, and the State agreed that the evidence supported the charge and it must be charged to the jury. ROA 255, line 12-23. The trial court, appropriately, charged strong armed robbery.

Trial Counsel cannot be ineffective for requesting the lesser-included offense because she made a calculated, strategic decision to do so. While there is no published South Carolina case law directly on point, persuasive authority supports the notion that the decision to request or reject a charge on a lesser-included offense is a tactical decision to be made by trial counsel, not the defendant.

This specific issue was discussed at length in Judge Pieper's concurring opinion in Abney v. State, 408 S.C. 41, 757 S.E.2d 544 (Ct. App. 2014). After reviewing the history of various courts' and the ABA's opinions on the issue, Judge Pieper reached the conclusion that, "[w]hile trial counsel should consult with his client, the final decision on strategy belongs to counsel" because "the decision to request a lesser included offense is a matter of strategy requiring the legal expertise of trial counsel." Id. at 51, 757 S.E.2d at 549. Pieper explained that other state courts had formerly held that the decision to request a lesser included offense was "analogous to the decision of what plea to enter, and that the two decisions should be treated the same" because "in both instances the decisions directly relate to the potential loss of liberty on an initially uncharged offense." Id. at 49, 757 S.E.2d at 548 (citing People v. Brocksmith, 162 Ill.2d 224, 205 Ill.Dec.113, 642 N.E.2d 1230, 1232 (1994)). However, Pieper rejected this argument and agreed with the Colorado Supreme Court's reasoning in Arko v. People, 183 P3d 555, 558 (Colo.2008), which explained:

When a defendant pleads guilty, he waives all rights attendant to a jury trial. On the other hand, a defendant retains all of his trial rights when he requests that a jury consider a lesser offense instruction. He also retains the opportunity to advocate for outright acquittal. Thus, this decision is not analogous to the decision whether to plead guilty. Because the defendant retains these fundamental trial rights, we conclude that the decision to request a lesser offense instruction is

strategic and tactical in nature, and is therefore reserved for defense counsel. This tactical decision requires sophisticated training and skill which attorneys possess and defendants do not....

Id. at 558–59 (internal citation omitted).

This Court agrees with Pieper's conclusions based on the above reasoning, as the decision is a tactical one which should be made based on the expertise and experience of trained counsel and the particular facts of each of each case. While counsel should consult with their client during this decision making process, the decision to request lesser-included offenses should ultimately be made by counsel. This particular decision does not waive any of the defendant's constitutional rights, nor does it necessarily admit any guilt. It simply allows counsel to develop a strategical tactic to help his client either be convicted of all or nothing, or risk a conviction on a lesser offense with a lesser punishment rather than serving a longer sentence for the indicted crime. Because this is a tactical decision, and not a decision to waive constitutional rights or admit guilt, it should be made by counsel, not the defendant.

Although Pieper's conclusions were made in a concurring opinion, which is not binding authority upon this Court, the Court notes the majority opinion in Abney requires some sort of adoption of Pieper's reasoning for the denial of post-conviction relief, so this conclusion ultimately is binding upon lower courts. In Abney, the applicant alleged ineffective assistance of counsel, claiming his attorney was deficient in failing to request a lesser-included offense after he was convicted of armed robbery. However, the Court of Appeals found trial counsel was not ineffective because counsel was able to articulate a valid trial strategy in choosing not to request the lesser-included offense, as "trial counsel did not feel it was in his client's best interests to ask for a jury instruction on strong arm robbery." Abney at 47, 757 S.E.2d at 547. Because Abney held that counsel could not be ineffective for failing to request a lesser included offense where he

offered a valid trial strategy in choosing not to do so, it *must* follow that this specific decision is a strategic decision for trial counsel, not his client, to make. If the decision were one the defendant on his own must make, then any strategy articulated by defense counsel would have no bearing on a finding of ineffective assistance of counsel.

In applying this argument to the case at hand, the decision to request the lesser-included offense of strong armed robbery was Trial Counsel's call to make, not Newton's. Trial Counsel clearly articulated a valid strategic reasoning for requesting the lesser-included offense, so she cannot, therefore, be ineffective for choosing to do so. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

Regardless of whose decision it was to make, Trial Counsel credibly testified at the evidentiary hearing that she discussed this decision with Applicant and Applicant agreed with the decision to request the lesser-included offense. She testified that she, as a matter of routine practice, always consults with her clients on this specific issue and allows *them* to make the final decision, as she personally believes it is the client's decision to make, not hers. Although Trial Counsel could not specifically recall any conversation with Applicant about the decision, she credibly testified that she spoke with him, as indicated by her notes, and because they chose to request the lesser-included offense, Applicant *must* have made the decision to do so, or else she would not have done so.

Accordingly, because Trial Counsel did discuss this decision with Applicant, and because she made a valid strategic decision to request the lesser-included offenses, this Court finds Trial Counsel was not ineffective for doing so. Trial Counsel's choice was not deficient under the circumstances of this case. Further, there likely is no resulting prejudice, as it is very likely that the instruction on the lesser-included offense prevented Applicant from being convicted of the principal charge of armed robbery. Therefore, neither prong of the Strickland test is met, at this allegation is denied and dismissed with prejudice.

VI. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

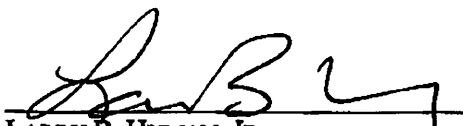
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

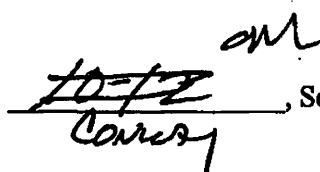
[signature page to follow]

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 12 day of Oct, 2018.


LARRY B. HYMAN, JR.
Presiding Judge
Second Judicial Circuit


10-12, South Carolina
Cheryl

WITNESSES

Aiken County Sheriff

Stacey Prince

Law Enforcement Case #: 14-061185

DOCKET NO. 2015GS0200442

The State of South Carolina

County of Aiken

ARREST WARRANT NUMBER

2014A0210700481

ACTION OF GRAND JURY

True

Bill

[Signature]
Foreperson of Grand Jury

Date: April 9, 2015

Anny

Quattlebaum

VERDICT

Foreperson of Petit Jury

Date:

COURT OF GENERAL SESSIONS

APRIL TERM 2015

THE STATE

vs.

WAYMON EUGENE NEWTON

CDR #: 0139

Indictment for

ARMED ROBBERY

§ 16-11-0330(A)

J. STROM THURMOND, SOLICITOR

April 9, 2015
DWM
Stacey Prince
CCP & G.S.
Cheryl E. Hester
Register Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
ARMED ROBBERY

§ 16-11-0330(A)

At a Court of General Sessions, convened on April 13, 2015, the Grand Jurors of Aiken County present upon their oath:

That **WAYMON EUGENE NEWTON** did in Aiken County on or about September 30, 2014, while armed with a deadly weapon, to wit: a knife, feloniously take from the person or presence of [REDACTED] by means of force or intimidation goods or monies of [REDACTED] Bryant's Auto Sales, such goods or monies being described as follows: a quantity of United States Currency, and a purse containing miscellaneous items including a wallet, credit cards, personal identification and checks, all in violation of §16-11-330, 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.



J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Aiken
STATE VS.Waymon Eugene Newton

AKA:

Race: White Sex: M Age: 38DOB: [REDACTED]Address: Early CtCity, State, Zip: Aiken, SC 29803-7920DL#: [REDACTED]*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Common law robbery, strong arm robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS0200442A/W#: 2014A0210700481Date of Offense: 9/30/2014S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

0-15 years☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0325 of the S.C. Code of Laws, bearing CDR Code # 0137☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: David Warren 69553

Miller, David Warren

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 0134Sentence Date: June 17, 2015