

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Horry County

Paul M. Burch, Circuit Court Judge

MICHAEL TOMPAI,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001820

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
2013-GS-26-02087

THE STATE OF SOUTH CAROLINA,)
)
Plaintiff,)
-VS-)
)
MICHAEL JOHN TOMPAI, II,)
)
Defendant.)

TRANSCRIPT OF RECORD

June 10-11, 2013
Conway, South Carolina

B E F O R E:

HONORABLE LARRY B. HYMAN, JR., Judge.

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

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I N D E X

IN CAMERA HEARING:

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IN CAMERA - RICHARD CORRADO - DIRECT BY HUCKS

1 (ON JUNE 10, 2013, THE FOLLOWING TAKES PLACE OUTSIDE THE
2 PRESENCE OF THE JURY PANEL.)

3 THE COURT: All right.

4 MR. HUCKS: Yes, Your Honor. At this time the State
5 would call State of South Carolina versus Michael John
6 Tompai, Indictment 2013-GS-26-2887.

7 Your Honor, for purposes of pre-trial matters, I believe
8 we do have a line-up that is at the heart of the case, so we
9 would need to hold a Biggers hearing, and I think I would
10 have one more quick motion depending on what happens with the
11 Biggers hearing.

12 THE COURT: All right.

13 MR. HUCKS: We will proceed directly into the hearing,
14 Your Honor.

15 THE COURT: All right.

16 MR. HUCKS: At this time, Your Honor, the State would
17 call Mr. Richard Corrado, please.

18 RICHARD CORRADO, being first duly sworn, testifies
19 as follows:

20 DIRECT-EXAMINATION BY MR. HUCKS:

21 Q. Mr. Corrado, what do you do for a living right now?

22 A. Currently I'm unemployed.

23 Q. Okay. And what did you do back in September of 2012?

24 A. I was a gas station attendant.

25 Q. Okay. And what gas station?

IN CAMERA - RICHARD CORRADO - DIRECT BY HUCKS

1 A. The Kangaroo at the end of Forestbrook in Socastee.

2 Q. Okay. And is that how you had an occasion to come
3 into contact with the Defendant?

4 A. Yes sir.

5 Q. Okay. Now, walk us through what happened that day,
6 September the 9th, 2012, in relationship to this case.

7 A. Well, sir, I was preparing to start the cooler. I
8 noticed a white male, wearing a red hoodie and blue plaid
9 shorts, walk into the gas station from the right side of the
10 building, which is the forested side, struck me as a little
11 strange, so I paid attention to him. He headed directly to
12 the bathroom. About a minute later, he walked out and
13 entered back into the building a few moments later toting a
14 gun. He pointed it in my face and demanded that I put all
15 the money in a bag and give him a few cartons of cigarettes.

16 Q. Now, at some point in time did you know the fellow ---

17 A. No, sir.

18 Q. --- that robbed you?

19 A. No, sir.

20 Q. And at some point in time after that, did the police
21 come by and show you a line-up?

22 A. Yes sir.

23 Q. And I'm going to show it to you. Let me show you
24 what's been marked as State's Number 2, 1 and 2. Now, do you
25 recognize Number 2 there?

IN CAMERA - RICHARD CORRADO - DIRECT BY HUCKS

1 A. Number 2?
2 Q. Exhibit 2?
3 A. Yes sir.
4 Q. Okay. What is it?
5 A. It is the line-up that I was showed.
6 Q. Now, and did you pick somebody out of it?
7 A. Yes sir.
8 Q. And who did you pick out?
9 A. Number 6.
10 Q. Okay. Number 6, he's the Defendant?
11 A. Yes sir.
12 Q. Now, how -- how long would you say you had a chance to
13 look at the fellow that robbed you?
14 A. I'd say about three or four minutes.
15 Q. In three or four minutes, what degree of attention
16 would you say that you paid to the Defendant when he was
17 robbing you?
18 A. Very close. We're actually trained to look at their
19 face rather than anything else they're doing when they rob
20 us.
21 Q. Okay. And did you have an opportunity to give a
22 description of the person who robbed you to the police?
23 A. Yes sir.
24 Q. And do you remember what that description was or any
25 certain parts of that description?

IN CAMERA - RICHARD CORRADO - DIRECT BY HUCKS

1 A. Yes sir.

2 Q. What is it -- what are those?

3 A. I recall his hair color, his facial structure, what he
4 was wearing, about how tall he was.

5 Q. And you told that to the police?

6 A. Yes sir.

7 Q. And that matched the description of the Defendant ---

8 A. Yes sir.

9 Q. --- when you saw him?

10 A. Yes sir.

11 Q. And it matches the person in that picture?

12 A. Yes sir.

13 Q. And about seventeen days went by from the time of the
14 robbery to the time of the identification you made in the
15 line-up. Was that enough time for your memory to be cloudy
16 or unclear in any way, shape, or form?

17 A. No, sir.

18 Q. And when the police gave you this line-up and asked
19 you to pick -- asked you if the person was in it, did they do
20 anything unduly suggestive? Did they say -- or did they
21 point at Number 6 or tell you the person was in it, or
22 anything to that effect?

23 A. In no way, shape, or form.

24 Q. Okay. And look at the Number 6. There's a circle and
25 some initials. Whose initials are those?

IN CAMERA - RICHARD CORRADO - DIRECT BY HUCKS

1 A. Those are mine, sir.

2 Q. And what do they indicate?

3 A. That I sign- -- I'm signing off that I circled that
4 number.

5 Q. Okay. And why did you circle that number?

6 A. Because that's the guy that robbed me.

7 Q. Okay. Now, take a look at what's marked as State's
8 Exhibit Number 1 ---

9 THE COURT: Did you place the circle there?

10 A. Yes sir.

11 THE COURT: Okay.

12 Q. Take a look at what's marked as State's Exhibit 1. Do
13 you remember filling out this form in conjunction with
14 filling out this line-up form?

15 A. Yes sir.

16 Q. Now, whose signature is at the bottom of that form?

17 A. That would be mine.

18 Q. Okay. What did that form indicate?

19 A. That I'm signing that this is true and that I sign off
20 on it.

21 Q. Okay. And it says that you picked out photograph
22 number 6 as the person that robbed you, ---

23 A. Yes sir.

24 Q. --- correct?

25 MR. HUCKS: That's all, Your Honor.

IN CAMERA - RICHARD CORRADO - CROSS BY FLOYD

1 **THE COURT:** Mr. Floyd.

2 **CROSS-EXAMINATION BY MR. FLOYD:**

3 Q. Mr. Corrado, how many people -- well, first of all,
4 where did you view the line-up at?

5 A. At the store.

6 Q. All right. How many people came to show you the line-
7 up?

8 A. Just one.

9 Q. Just one. And who -- who came and showed you the
10 line-up?

11 A. The fellow right over there.

12 Q. On the end?

13 A. Yes sir.

14 Q. Okay. Now, you said y'all were trained to look at the
15 face. What kind of training have you had?

16 A. Just video training, the manager, one-on-one training.

17 Q. What training would that consist of?

18 A. I'm sorry. I'm not clear on the question, sir.

19 Q. What does the training consist of?

20 A. That we're supposed to look at their face when
21 something like that was going -- going on.

22 **MR. FLOYD:** Thank you.

23 **MR. HUCKS:** Nothing further, Your Honor.

24 **THE COURT:** You may step down.

25 **MR. HUCKS:** Your Honor, at this time we would call

IN CAMERA - JODI RIDGEWAY - DIRECT BY HUCKS

1 Officer Ridgeway to the stand.

2 JODI RIDGEWAY, being first duly sworn, testifies as
3 follows:

4 DIRECT-EXAMINATION BY MR. HUCKS:

5 Q. Ms. Ridgeway, what do you do for a living?

6 A. Patrol with the Horry County Police.

7 Q. All right. How long have you been a law enforcement
8 officer?

9 A. Eighteen and a half years.

10 Q. How long with Horry County?

11 A. A year and a half.

12 Q. Where were you before that?

13 A. Sumter P.D.

14 Q. And what did you do when you were in Sumter?

15 A. Well, when I left Sumter, I was a Lieutenant on
16 patrol, but I worked patrol. I worked through every aspect
17 of law enforcement.

18 Q. Have you had an occasion to come into contact with Mr.
19 Tompai before?

20 A. Yes sir, I have.

21 Q. And is that relevant in reference to this -- to the
22 robbery we're here for today?

23 A. Yes sir, it is.

24 Q. And how is that? How did you come into contact with
25 him initially?

IN CAMERA - JODI RIDGEWAY - DIRECT BY HUCKS

1 A. Probably six to eight weeks prior to this armed
2 robbery, I responded to a call over on Sea Oats and Strand
3 Village in reference to a civil dispute between Mr. Tompai
4 and his roommate. They were pretty angry with each other
5 over money, and Mr. Tompai was telling me then that he was
6 angry with his roommate over some money issues and that his
7 roommate had done prison time for armed robbery.

8 Q. And did that pique your interest in any way, shape, or
9 form?

10 A. Yes sir, it did when I heard this BOLO come out over
11 this armed robbery, they said be-on-the-lookout. As soon as
12 the victim calls 911, you know, and they're giving dispatch
13 all the information, dispatch is trying to get it out to us
14 immediately.

15 When they give the general physical description and
16 based on, you know, what I had -- my dealings with him prior,
17 you know, I thought about, you know, his physical description
18 and the conversation that we had had and kind of followed
19 that through with some of the guys I worked with.

20 Q. So did he match the physical description of the person
21 that you got the ---

22 A. Absolutely; absolutely.

23 Q. And you remembered he had spoken with you about an
24 armed robbery in the past?

25 A. Right.

IN CAMERA - JODI RIDGEWAY - DIRECT BY HUCKS
CROSS BY FLOYD

1 Q. Now, what did you do as a result of that coming to
2 your attention?

3 A. Talked to my partner about it and told him that, you
4 know, maybe we should go over to Strand Village sometime and
5 just kind of, I guess, do a follow-up so to speak. I had not
6 been in Horry County long enough to know which detective
7 would be handling the case, so when I talked to my partner
8 about it, he followed an e-mail up to the investigator that
9 would be handling the armed robbery in reference to what my
10 suspicions may be.

11 Q. And that's the extent of your knowledge about this
12 particular case?

13 A. Yes sir, it is.

14 Q. And as a result of that, you asked your partner to
15 relay that information to the detective ---

16 A. Well, I asked him who would I need to contact, but
17 while we were sitting there having that conversation, he sent
18 the e-mail up, you know, because I told him what the
19 individual's name was that I had dealt with prior over at
20 Strand Village and, you know, and that he fit the exact
21 physical description.

22 MR. HUCKS: Thank you.

23 I have nothing further.

24 CROSS-EXAMINATION BY MR. FLOYD:

25 Q. You were called over to the house six to eight months

IN CAMERA - JODI RIDGEWAY - CROSS BY FLOYD
TODD F. COX - DIRECT BY HUCKS

1 prior?

2 A. No, six to eight weeks prior.

3 Q. Weeks.

4 A. I'm sorry. If I said months, I apologize. It was six
5 to eight weeks. It was just a few weeks prior.

6 Q. And that was because Mr. Tompai was saying his
7 roommate had stole money from him?

8 A. No, no, no. His roommate wanted money from him. His
9 roommate -- they were arguing over money. His roommate said
10 that they -- that he had not paid the rent, when he said that
11 he had paid the rent, and they were fighting over money
12 basically.

13 Q. So two roommates were fighting over money?

14 A. Yes sir.

15 MR. FLOYD: Thank you.

16 TODD F. COX, being first duly sworn, testifies as
17 follows:

18 DIRECT-EXAMINATION BY MR. HUCKS:

19 Q. Detective Cox, what do you do for a living?

20 A. I'm a Senior Detective with the Major Crime Section of
21 the Horry County Police Department.

22 Q. And how long have you been with Horry County Police?

23 A. Going on -- this is my twentieth year.

24 Q. Okay. And did you have an occasion on or about
25 September the 9th of last year to work on this particular

IN CAMERA - TODD F. COX - DIRECT BY HUCKS

1 case?

2 A. Yes sir, I did. I was actually assigned this case for
3 follow-up investigation on the 10th of September of 2012.

4 Q. Now, tell us a little bit about your involvement in
5 this case and how you got to where you put Mr. Tompai in a
6 line-up.

7 A. As I said, I was assigned the case on September 10th.
8 There wasn't really any significant leads to go on for a
9 period of time until the 25th of September. I received an e-
10 mail from a patrolman at our police department, Brad Boggs,
11 saying that perhaps Michael Tompai would be worthy of at
12 least looking at, that he matched the physical description
13 and lived in close proximity to the incident location.

14 Pursuant to that, I pulled Mr. Tompai's driver's license
15 photo to confirm for myself that he was at least similar in
16 the physical description that had been given. Once I did
17 that, I called J. Reuben Long Detention Center and spoke with
18 Officer Calhoun in an effort to obtain a photo line-up.
19 That's -- typically we have two ways in which we as
20 investigators can obtain photo line-ups. One is through J.
21 Reuben Long through their bookings. The other is through
22 SLED.

23 Typically I -- at least I tend to go through the jail
24 because it's a faster turnaround time than dealing with SLED,
25 so as I said, I called and spoke with Officer Calhoun. He

IN CAMERA - TODD F. COX - DIRECT BY HUCKS

1 prepared a photo line-up containing Mr. Tompai's image and he
2 e-mailed it to me later that day. I handed it to my partner,
3 Detective Brian Wilson. He was going to be going down to the
4 Socastee area, so I asked him if in his travels, amongst the
5 other things that he was doing, if he would show that photo
6 -- show that line-up to the victim.

7 Q. And by the victim, you mean Mr. Corrado?

8 A. Mr. Corrado, yes.

9 Q. Now, were you aware of who Mr. Corrado picked out of
10 that line-up?

11 A. Yes.

12 Q. And who did he pick?

13 A. He picked the Defendant.

14 Q. And the Defendant was placed in the line-up because he
15 lived in close proximity and matched the physical
16 description? That was your initial reason?

17 A. Yes.

18 Q. And the suspicions of the road officer?

19 A. Right.

20 Q. And when you had a chance to review -- review the
21 line-up when it was e-mailed to you, did you believe it in
22 any way to be unduly suggestive or suggestive of a person who
23 would be reading it would pick?

24 A. No, sir. No. In my opinion, as I said, having done
25 this for twenty-something years and shown probably hundreds

IN CAMERA - TODD F. COX - DIRECT BY HUCKS
CROSS BY FLOYD
WAYNE CALHOUN - DIRECT BY HUCKS

18

1 of line-ups, I thought it was a fair line-up.

2 Q. Just pretty run of the mill?

3 A. Right. And let me say this also, because it's worth
4 mentioning, that if I felt that it wasn't, I certainly would
5 have never shown it to the victim or had it shown to him. I
6 would have requested another line-up.

7 MR. HUCKS: Nothing further.

8 CROSS-EXAMINATION BY MR. FLOYD:

9 Q. Detective, what was the description that you were
10 working on?

11 A. A white male, short brown hair, small frame. I
12 believe in the incident report it was something like five-
13 four or five-five, a hundred and twenty-five or a hundred and
14 thirty-five pounds.

15 MR. FLOYD: Judge, those are all the questions I have
16 for the purposes of this hearing.

17 THE COURT: All right.

18 You may step down. Thank you.

19 MR. HUCKS: We would call Deputy Calhoun to the stand,
20 please.

21 WAYNE CALHOUN, being first duly sworn, testifies as
22 follows:

23 DIRECT-EXAMINATION BY MR. HUCKS:

24 Q. Deputy Calhoun, what do you do for a living?

25 A. Work at J. Reuben Long as a photo i.d.

WAYNE CALHOUN - DIRECT BY HUCKS

1 Q. And part of your job is just making photo line-ups?

2 A. That is part of it, yes sir.

3 Q. So you do a fair amount of that?

4 A. Yes sir.

5 Q. What's your typical job as a photo i.d. person? What
6 does that consist of?

7 A. Photos and fingerprints.

8 Q. You take people's pictures when they come into jail?

9 A. Yes sir.

10 Q. All right. So that gives you a pretty big database of
11 pictures I would assume?

12 A. We have the access to all of offender track, which is
13 everybody that's been through the jail at J. Reuben Long.

14 Q. And how did you come into contact with this case in
15 particular, the case against Mr. Tompai?

16 A. Detective Cox called and asked for a photo line-up of
17 Mr. -- and used Mr. Tompai as the primary -- you know, as the
18 suspect, yes, sir.

19 Q. Let me ask you, because I don't know how all that
20 stuff works. Somebody calls you and asks you to put together
21 a line-up, they give you a name of a person they want to
22 include in the line-up, is that right?

23 A. Yes sir.

24 Q. And then how do you come about setting up that line-
25 up?

WAYNE CALHOUN - DIRECT BY HUCKS

1 A. I entered white male, and the computer generates a
2 list of approximately -- in this case almost six thousand
3 people.

4 Q. And then what do you do from there?

5 A. You go through and compare facial features, hair,
6 style of haircut, so that there are similarities between the
7 suspect and the other five people that you put in the line-
8 up.

9 Q. So you find people that are pretty close together ---

10 A. Yes sir.

11 Q. --- physically?

12 I want to show you this line-up. I'm going to ask you
13 to look at State's Number 2. What features were you looking
14 for when you picked out the folks to go along with this to
15 keep it from being unduly suggestive?

16 A. His hair was down his face, his sideburns. Had a
17 little bit of this -- a round look to his face, so I tried to
18 get similarities with that, and also his age.

19 Q. Now, did you take -- again, these are pictures. I'm
20 sure you didn't take height, and weight, that kind of stuff?

21 A. No, sir.

22 Q. And you purposely got people that you believed were
23 similar in appearance to Mr. Tompai?

24 A. I tried to get similarities with even eyebrows,
25 hairstyle, facial hair, and again similarities in the size of

IN CAMERA - WAYNE CALHOUN - DIRECT BY HUCKS
CROSS BY FLOYD

1 the picture in the line-up so that it wasn't a little tiny
2 picture and a big picture facially.

3 MR. HUCKS: Thank you, Your Honor. I have no further
4 questions.

5 CROSS-EXAMINATION BY MR. FLOYD:

6 Q. How are you doing today, Mr. Calhoun?

7 A. Good. How are you, sir?

8 Q. Doing good. So when you put together this line-up, if
9 I understood correctly, you were told they wanted a line-up
10 with Michael Tompai?

11 A. Yes sir.

12 Q. And from there you went through and six thousand
13 pictures popped up?

14 A. It -- the number -- not six thousand pictures, but a
15 number comes up telling you, and I think the number was like
16 five thousand, nine hundred, something, that you could scroll
17 down and look at and compare to.

18 Q. So five thousand, nine hundred. Did you look through
19 all five thousand, nine hundred pictures?

20 A. I looked through probably ten percent.

21 Q. And from that you put together this line-up?

22 A. Yes sir.

23 Q. And if I understood correctly, you weren't paying any
24 attention to -- have you got the line-up up there?

25 A. No sir, I don't.

IN CAMERA - WAYNE CALHOUN - CROSS BY FLOYD

1 Q. Number four in the line-up, he looks to be kind of
2 heavy there, doesn't he?

3 A. Yes sir, he does.

4 Q. But yet the description given, one twenty-five. Does
5 that look kind of heavy for a hundred and twenty-five pounds
6 to you?

7 A. I had no description of the suspect. All I had was a
8 name.

9 Q. He looks a little bit heavier than the rest in there,
10 doesn't he?

11 A. His hair was down his face. He had sideburns down to
12 the middle part of his ear, a little bit of growth.

13 Q. The neck is a lot thicker than the rest of them. He
14 doesn't have much of a neck, a thicker beard than the rest of
15 them?

16 THE COURT: That's not the Defendant you're speaking
17 of, is it?

18 MR. FLOYD: No sir. It's another person in the line-
19 up.

20 Q. And Number 2 on the line-up, he's got the uni-brow
21 thing going on there it looks like?

22 A. That could be a shadow. I'm not sure.

23 Q. Okay, but doesn't it look like that to you or am I
24 seeing things? It looks like it goes all the way across,
25 doesn't it?

IN CAMERA - WAYNE CALHOUN - CROSS BY FLOYD
REDIRECT BY HUCKS
THE COURT

23

1 A. I think it's a comb-over, but I under- --- I see what
2 you're looking at, yes, sir.

3 Q. And then Number 1, he's got a little bit of a goatee
4 going on. By the way, Number 6 is Mr. Tompai. Number 1 has
5 got a little bit of a goatee going on. Well, none of the
6 rest of them have a goatee. Would you agree with that, sir?

7 A. Yes sir.

8 MR. FLOYD: Thank you.

9 MR. HUCKS: A very brief follow-up, Your Honor.

10 REDIRECT-EXAMINATION BY MR. HUCKS:

11 Q. You had a particular description and you were trying
12 to find folks that looked close out of your database to go
13 with a ---

14 A. Yes sir.

15 MR. HUCKS: Nothing further.

16 THE COURT: Was that the only criteria selection,
17 someone's appearance, in your estimation?

18 A. Yes sir.

19 THE COURT: Were you there at the photo show-up or
20 line-up?

21 A. No, sir.

22 THE COURT: You were not present for that?

23 A. No, sir.

24 THE COURT: Thank you.

25 MR. HUCKS: Could I ask one more question, Your Honor?

IN CAMERA - WAYNE CALHOUN - REDIRECT BY HUCKS
RECROSS BY FLOYD
BRIAN WILSON - DIRECT BY HUCKS

24

1 **THE COURT:** Certainly.

2 **REDIRECT-EXAMINATION BY MR. HUCKS:**

3 Q. What Detective Cox sent you wasn't a picture, was it?

4 A. No, sir. I had a name only.

5 Q. So you went through a database with this guy's picture
6 in it and then just tried to match up as close as you could?

7 A. You place his picture in the line-up, and then you try
8 to find similarities between the database and the person
9 that's already placed in the line-up.

10 Q. And that's what you did in this case?

11 A. That's what I did in this case.

12 **MR. HUCKS:** Nothing further.

13 **MR. FLOYD:** I've just got one very, very short one.

14 **RECROSS-EXAMINATION BY MR. FLOYD:**

15 Q. We've got a six-picture line-up here, Mr. Calhoun, or
16 Officer Calhoun, excuse me. Is there a protocol for there to
17 be six pictures in the photo line-up?

18 A. Normally what is there, yes sir.

19 **MR. FLOYD:** Thank you.

20 **THE COURT:** You may step down, sir.

21 **MR. HUCKS:** We call Detective Wilson.

22 **BRIAN WILSON,** being first duly sworn, testifies as
23 follows:

24 **DIRECT-EXAMINATION BY MR. HUCKS:**

25 Q. Detective Wilson, what do you do for a living?

IN CAMERA - BRIAN WILSON - DIRECT BY HUCKS

1 A. I'm a detective in the Major Crime Section of the
2 Horry County Police Department.

3 Q. Okay. Did you -- how long have you been with the
4 Horry County Police Department?

5 A. Almost eight years.

6 Q. Almost eight years. So what did you do before that?

7 A. I was a supervisor in Patrol.

8 Q. Okay. Now, how long total have you been with the --
9 been policing?

10 A. Eight years.

11 Q. Okay. Now, Detective Cox testified, I guess you heard
12 it, that you were the one that delivered this line-up to Mr.
13 Corrado, is that correct?

14 A. Yes sir.

15 Q. Now, I'm going to show it to you, and walk me through
16 what you did after Detective Cox gave you this line-up. What
17 did you do?

18 A. I drove to the store where Mr. Corrado was working
19 that day and showed him this line-up.

20 Q. Okay. Now, and he picked somebody out of the line-up?

21 A. Yes, he did.

22 Q. He picked out who?

23 A. Number 6, the Defendant.

24 Q. The Defendant?

25 A. Yes sir.

IN CAMERA - BRIAN WILSON - DIRECT BY HUCKS

1 Q. He picked out the Defendant?

2 A. Yes sir.

3 Q. Now, what do you do -- how do you show them the line-
4 up? Do you read him something? Do you tell him something?
5 Do you say, hey, pick this guy out? I mean, how does that
6 work?

7 A. No. There's a form right here that I always read them
8 the first paragraph, which is -- basically says if you're not
9 a hundred percent sure, don't pick anybody. I usually -- I
10 don't even pull the photos out until we're -- I'm done
11 reading that and explaining, you know, the process.

12 Q. Read that for the record, please.

13 A. It says you'll be asked to look at several photos.
14 The fact that the photos are shown to you not influence your
15 judgment. You should not include nor guess that the photos
16 contain the picture of the person who committed the crime.
17 You are not obligated to identify anyone. It is just
18 important to be free, innocent -- oh, excuse me. It is just
19 as important to free innocent persons from suspicion to
20 identify a guilty party.

21 Q. And did you read that to Mr. Corrado?

22 A. Yes, I did.

23 Q. And after you did that, you showed him the pictures
24 and he picked out the Defendant?

25 A. Yes.

IN CAMERA - BRIAN WILSON - DIRECT BY HUCKS
CROSS BY FLOYD

1 Q. And the Defendant was a suspect in this case?

2 A. Yes sir.

3 Q. And how long did it take him to pick out this picture?

4 A. Less than a minute. He scanned through all six photos
5 and then picked Number 6.

6 Q. I mean, you give a lot of line-ups, right?

7 A. Yes sir.

8 Q. Is that pretty quick for showing somebody a line-up?

9 A. When you know who it is, yes.

10 Q. Now, about -- I believe it was seventeen days had
11 passed between the robbery and the time he did this
12 line-up, ---

13 A. Uh huh (**indicating positive**).

14 Q. --- and was -- did Mr. Corrado seem to be confused, or
15 mistaken, or anything that would lead you to believe that he
16 was not telling you the truth that day?

17 A. No, sir.

18 **MR. HUCKS:** Nothing further, Your Honor.

19 **CROSS-EXAMINATION BY MR. FLOYD:**

20 Q. Detective Wilson, you weren't involved in the
21 investigation of this case in any way other than just showing
22 the line-up?

23 A. No, sir.

24 **MR. FLOYD:** I've got no further questions for this
25 hearing, Judge.

IN CAMERA - BRIAN WILSON - BY THE COURT

1 **THE COURT:** Good morning, Detective Wilson. This line-
2 up that you had the victim participate in was when, now? Do
3 you remember the date and time?

4 A. I believe it was the 27th of September.

5 **THE COURT:** And what time of day was it?

6 A. It was in the afternoon sometime when Mr. Corrado had
7 just started his shift.

8 **THE COURT:** He had just started?

9 A. Yes sir.

10 **THE COURT:** And that was how long after the alleged
11 crime?

12 A. A little over two weeks.

13 **THE COURT:** About two weeks, and was there anyone there
14 with you when you conducted this photo line-up?

15 A. No, sir.

16 **THE COURT:** Just you and the victim?

17 A. Yes sir.

18 **THE COURT:** And was he told anything about the photos
19 before he was shown the photos?

20 A. No. I actually keep the photos separate when I even
21 read that.

22 **THE COURT:** And you didn't say anything like these are
23 photos of people we know that are engaged in crime or
24 anything like that?

25 A. No, sir.

IN CAMERA - BRIAN WILSON - BY THE COURT

1 **THE COURT:** Or make -- or did he make or did you make
2 any comment about the fact that they all seem to be wearing
3 orange shirts, ---

4 A. No, sir.

5 **THE COURT:** --- you and I know are from J. Reuben Long
6 Detention Center, but ---

7 A. No, I didn't.

8 **THE COURT:** --- or either Clemson, both being similar?

9 A. No, I did not.

10 **THE COURT:** And you didn't suggest anything about that?
11 You didn't say these people have been arrested or anything
12 like that?

13 A. No, sir.

14 **THE COURT:** And you showed him the six photos that you
15 have right there?

16 A. Yes sir.

17 **THE COURT:** Okay. And were they all displayed just as
18 I've seen them here ---

19 A. Uh huh (**indicating positive**).

20 **THE COURT:** --- in Court today?

21 A. Yes sir.

22 **THE COURT:** There was an array of six, numbered one
23 through six, nothing else marked on the sheet whatsoever?

24 A. No, sir.

25 **THE COURT:** Okay. And who was responsible for putting

IN CAMERA - BRIAN WILSON - BY THE COURT

1 -- putting them in that order? Was there any reason to put
2 them in that order?

3 A. Not that I'm aware.

4 **THE COURT:** Does it mean anything to you?

5 A. No, sir.

6 **THE COURT:** And was the victim shown any photograph of
7 the Defendant prior to being shown the line-up photos?

8 A. Not that I know of.

9 **THE COURT:** Earlier in the week did you take by a
10 photograph and say does this look familiar or anything like
11 that?

12 A. No. We didn't develop Mr. Tompai as a -- not we.
13 Detective Cox didn't develop him as a suspect until the 25th.

14 **THE COURT:** Okay. So as far as you know, no one took
15 by a photograph of the Defendant in this matter?

16 A. To my knowledge, no.

17 **THE COURT:** Okay. And did -- was it shown to any other
18 witnesses other than -- or is there any other witness other
19 than the victim in this case?

20 A. No, just the victim.

21 **THE COURT:** And you said it only took him about a
22 minute to scan the photos?

23 A. Maybe that.

24 **THE COURT:** And he selected the Defendant's photo,
25 which is Photo 6 here, is that correct?

IN CAMERA - BRIAN WILSON - BY THE COURT

1 A. Yes sir.

2 THE COURT: What -- what was his reaction when he --
3 when he saw it? Did he say that's the one, or did he get
4 excited about it, or anything like that, or did he seem sure?

5 A. He seemed a hundred percent sure, and I -- after he
6 picked it out, I made certain that he was one hundred percent
7 sure, and then he signed Number 6.

8 THE COURT: And you say there was no one else there
9 participating in the line-up whatsoever?

10 A. No, just myself and Mr. Corrado.

11 THE COURT: And there's no one else in this case who
12 was a witness to the event, so no one obviously had looked at
13 those photographs?

14 A. Yes sir, just Mr. Corrado at the store.

15 THE COURT: Now, I looked at the photographs and they
16 all appear to be caucasian men, I would say in their mid-
17 twenties. Is that about the age of the Defendant?

18 A. I believe so, yes.

19 THE COURT: Okay. And they all seem to have short
20 hair?

21 A. Yes sir.

22 THE COURT: Mr. Floyd did mention the fact that Number
23 4, I believe, -- is that Number 4 on the right-hand side of
24 the -- or left-hand side of the bottom row?

25 A. Yes sir.

IN CAMERA - BRIAN WILSON - BY THE COURT

1 **THE COURT:** Does appear to be perhaps a little
2 heavier ---

3 A. Perhaps. It seems like the camera might be a little
4 closer to him.

5 **THE COURT:** --- than the others?

6 A. Perhaps.

7 **THE COURT:** In your experience, do you see anything
8 about this line-up that might suggest that the Defendant
9 would be the subject that you were looking for, or is there
10 anything that makes him stand out in any way ---

11 A. No, sir.

12 **THE COURT:** --- that you can see based on your
13 experience?

14 A. Not as -- it's a pretty well-done line-up.

15 **THE COURT:** All right.

16 Any further questions, Mr. Floyd?

17 **MR. FLOYD:** Not for the purpose of this hearing, Judge.

18 **THE COURT:** Mr. Hucks?

19 **MR. HUCKS:** No, sir.

20 **THE COURT:** All right.

21 You may step down. Thank you very much.

22 **MR. HUCKS:** Your Honor, that would be the extent of it
23 for this hearing.

24 **THE COURT:** All right.

25 Mr. Floyd, I'll hear from you.

IN CAMERA - ON RECORD

1 **MR. FLOYD:** Judge, we believe that it is suggestive in
2 particular with the photos, and do you have that line-up in
3 front of you?

4 **THE COURT:** I think they just put it over in front of
5 the witness. I had it a moment ago.

6 **MR. FLOYD:** In particular in regards to Number 4, it
7 appears to be a good bit heavier than anybody else in the
8 line-up. In regards to Number 1, the goatee that nobody else
9 had on, and for lack of a better word to say it, Judge, in
10 regards to Number 2, he certainly appears to have a uni-brow
11 going on, which no one else in the line-up has.

12 **THE COURT:** And there again, I don't know whether
13 that's a shadow or what that is or not.

14 All right, Mr. Hucks.

15 **MR. HUCKS:** Yes sir, Your Honor, and as Your Honor is
16 aware, not to belabor any point, the test is whether the
17 line-up is unduly suggestive and if it is unduly suggestive,
18 whether or not it's a remedy -- if it could be remedied.

19 The State's position is it is not unduly suggestive.
20 They're all -- every picture here to me looks like they're
21 the same age group. Number 4 may be a little bigger.
22 They're in the same age group. They have similar haircuts.

23 They -- at least three of them have almost identical
24 skin tones, if not -- and all of them are -- five out of the
25 six are thinly-built white males with the same hairdo, and

IN CAMERA - ON RECORD
RULING OF THE COURT

1 Number 4, which is the object of contention, is -- looks to
2 be in the same age group, has a similar haircut, and I
3 believe that that would surpass in light of the standard set
4 forth, once combined with the fact that Mr. Corrado's
5 testimony so far has developed that he had sufficient time to
6 look at him and he paid sufficient attention to him.

7 He had a fairly accurate description of the Defendant.
8 His level of certainty, a hundred percent. The length of
9 time before the I.D. was about seventeen days, but as Mr.
10 Corrado testified just a few moments ago, he believed with a
11 hundred percent certainty that this line-up contained the
12 right person, and the State's position is it is not unduly
13 suggestive, particularly in light of what Officer Calhoun has
14 testified to and how he picks them out. He's looking for
15 people that looks as close as he can.

16 **THE COURT:** Of course, the -- it serves no purpose for
17 law enforcement to select six individuals who don't closely
18 resemble the alleged Defendant or the Defendant.

19 I've looked at these -- these six photographs, and I
20 think as I noted before, they're all caucasian males that
21 appear to be, I would say, in their mid-twenties. Their
22 basic facial features are very similar to the Defendant.

23 Their hairstyles are, again, similar to the Defendant.
24 They seem to have some forward hairstyle with, I guess you
25 would call them, bangs down towards their eyes.

IN CAMERA - RULING OF THE COURT

1 I don't find anything suggestive about -- about the
2 photo line-up. They are certainly similar in age,
3 appearance, and physical characteristics. There's nothing in
4 the photograph that identifies the Defendant in this case.
5 There's nothing to indicate that he is in a status any
6 different from the others. They are even wearing the same
7 clothes.

8 There was nothing about the line-up, from what I've
9 heard, that would suggest that the police expressly or
10 impliedly suggested to the witness or the victim which photo
11 was of the Defendant. The victim seems to have been very
12 certain in his selection of the Defendant in this matter.

13 It occurred in close proximity. I think about two weeks
14 was the passage of time. The Defendant also -- I mean the
15 witness also testified that he took the time to get a good
16 look of the Defendant during the process of the robbery. He
17 explained that he had been trained to do that very thing in
18 the event of a robbery.

19 I certainly find that this particular line-up is not
20 suggestive, that it is reliable, that it does meet the
21 Biggers' factors. I've considered things like the victim's
22 attention to the Defendant, the accuracy of his prior
23 description applied to this particular photograph, his level
24 of certainty, the length of time between the event and the
25 line-up, and the witness's opportunity to see the Defendant

IN CAMERA - ON RECORD

1 at the time the robbery took place, so I'm going to allow it.

2 MR. HUCKS: Your Honor, the only other pre-trial issues
3 that the State would like to get into is briefly just to
4 request a ruling from the Court on third-party guilt.

5 There's a -- we're dealing with an I.D. case. It's all
6 about identification, and we believe that it's -- it would be
7 inappropriate for -- and I don't know that Mr. Floyd intends
8 to do that by any stretch of the imagination, but just for
9 purposes of the record, to limit any -- to limit any argument
10 as to third-party guilt, that there's some third --
11 mysterious third party out there that must have committed it,
12 that looks just like Mr. Tompai.

13 THE COURT: Well, that's what his whole defense is,
14 isn't it, Mr. Floyd?

15 MR. FLOYD: According to Mr. Calhoun's testimony,
16 there's approximately five thousand and thirty out there.

17 THE COURT: I mean, we can't limit him in that regard.
18 His -- his defense is that his client didn't do it. I mean,
19 I'm not sure exactly where you're going. Could you be a
20 little more specific?

21 MR. HUCKS: Well, Judge ---

22 MR. FLOYD: If I can, I think I know what he's
23 referring to, and that's -- that's not going to come into
24 play. I think he's referring to me possibly going into the
25 S-O-D-D-I defense.

IN CAMERA/ON RECORD/JURY IN

1 **MR. HUCKS:** The what?

2 **MR. FLOYD:** Some other dude, and we are.

3 **MR. HUCKS:** Specifically claiming the name of some
4 other person that's not in Court today to say that person is
5 the one who did it to try -- and Mr. Floyd and I spoke about
6 it briefly the other day, and if he tells me we're good, I'm
7 completely okay.

8 **THE COURT:** If you're good, we're all good, okay?

9 Okay. Let's try to take a few minutes to get yourselves
10 ready. We're going to have the jury here at one o'clock.

11 All right. Let's take a brief break.

12 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE**
13 **PRESENCE OF THE JURY PANEL.)**

14 **THE COURT:** Okay. Bring the jury panel in -- anything
15 else we need to do before we do that?

16 **MR. HUCKS:** No, sir.

17 **MR. FLOYD:** Judge, just I missed the first little bit
18 of the roll call downstairs, so I may need to inquire of some
19 of the jurors about their work.

20 **THE COURT:** Okay.

21 Is it Tompai?

22 **MR. TOMPAI:** Yes sir.

23 **(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE JURY**
24 **PANEL.)**

25 **THE COURT:** It's good to see you all again. I think I

COURT TO JURY

1 helped you this morning at least understand a little bit
2 about how we go about selecting a jury. As I told you then,
3 we have sort of a two-phase jury qualifying process.

4 This morning, we determined whether or not you were
5 legally qualified to serve as jurors, and what we are going
6 to do this afternoon before we begin this trial is we're
7 going to find out whether or not there's any reason that you
8 should not serve on this particular jury.

9 In that regard, I need to tell you a little bit about
10 the case, but before I do that, let me tell you how we select
11 jurors in the General Sessions side of the Court. As I told
12 you this morning, we have two sides of the Court. One is for
13 civil matters. Those are disputes between individuals
14 usually involving money damages and things of that nature.
15 I'm sure you are all familiar with that.

16 And then we have General Sessions Court, which we call
17 criminal court, and that involves matters between the State
18 and individuals who have been accused of committing criminal
19 violations here in the State.

20 The main distinction in the two trials is how we go
21 about selecting the jury. If this were a civil case, we have
22 a very nice way of selecting a jury. We have all the jurors'
23 names put at random on a list and everybody is given a new
24 number so you don't even know who we are talking about when
25 we are selecting a jury. And the attorneys get it in advance

COURT TO JURY

1 and can go through the list, and then we ask them to strike,
2 and they strike using these new numbers, and so you don't
3 know if someone struck you or not. All you know is whether
4 or not you end up on the jury.

5 And on the criminal side, we do it differently. If you
6 are selected as a juror on the criminal side, your name is
7 called and you actually have to come forward, right down
8 here, and stand in front of me. Your names are called at
9 random, and I have a list here of just how that's done, but
10 you come up and you turn around, and you face the attorneys
11 and your fellow jurors and the parties to this matter.

12 We may ask you to repeat what you do for a living. Mr.
13 Floyd has asked that you do that. He had some other matters
14 that were pressing this morning and did not get to hear all
15 of the voir dire of the jury selection questions or jury
16 qualification questions that were asked you -- asked of you,
17 so we're going to ask you to repeat what you do for a living,
18 but you have to come up here to do it.

19 And at that time the State says either excuse the juror,
20 and if the State says excuse the juror, you can immediately
21 return to your seat. If the State says present the juror,
22 then the Defense has an opportunity to -- the Defendant's
23 attorney will say something like swear the juror. If he says
24 that, you end up coming around and getting in the jury box,
25 or he may say excuse the juror.

COURT TO JURY/VOIR DIRE

1 Some people find that process to be intimidating. Some
2 people find it to be embarrassing if they get struck, but let
3 me say this. I practiced law for forty years and one thing
4 that I learned for sure was this: All these attorneys look
5 very serious when they're going through this process, and
6 they're making notes and writing things down, and trying to
7 look very sincere about what they're doing.

8 I can tell you that they don't have a clue what they're
9 doing. There is nothing harder than selecting a jury, and
10 usually a juror is struck for no other reason than the
11 attorney might see someone down the list that he thinks he
12 might know, or someone that might be more sympathetic because
13 of their background to his or her position in the case, and
14 that's the only reason that you were struck. And that same
15 attorney would be more than happy to have you on the next
16 case that they try.

17 You know, I sit here and I tell you this because I don't
18 want you to have your feelings hurt if you're struck, and
19 you're probably all out there thinking I hope I don't get on
20 that jury, but we're all -- all very glad to have you here.

21 There's nothing more important than the jury when it
22 comes to our legal system, and you provide an invaluable
23 service. We could not function without the jury. But that's
24 how we -- we go about selecting a jury on the criminal side.

25 Now, the Defendant in this case, Mr. Tompai, Mr. Michael

VOIR DIRE

1 John Tompai, he's the young man who's seated here with the
2 green shirt on.

3 Mr. Tompai, stand up and let the jury see who you are.
4 (Mr. Tompai stands.) Mr. Tompai is accused of the offense --
5 you may sit down -- of armed robbery.

6 I have an indictment here. This indictment is not
7 evidence against this Defendant. It is nothing more than a
8 document which begins this process in this Court. Something
9 has to be filed. Something has to be recorded with the
10 Clerk's Office to get a case started, and this is one of
11 those documents.

12 And the law says that Mr. Tompai is entitled to know
13 what he is charged with, at least to the extent that he can
14 identify what offense he is alleged to have occurred, and
15 again, I remind you this is not evidence at all. It should
16 not be considered by you as evidence against him, but I'm
17 going to tell you what this indictment says generally.

18 This indictment says that on or about September the 9th
19 of 2012, Mr. Tompai, while armed with a deadly weapon, did
20 enter a Kangaroo gas station ---

21 Which station was that, Mr. -- Mr. Hucks?

22 **MR. HUCKS:** Your Honor, it's at the end of Forestbrook
23 Road and Dick Pond Road by the swing bridge in Socastee.

24 **THE COURT:** All right, at Forestbrook and Dick -- Dick
25 Pond Road. I think most of you that are from that area at

VOIR DIRE

1 least would know where that is.

2 It is alleged that he entered that while -- while armed
3 with a deadly weapon and that he did take through
4 intimidation property belonging to the Kangaroo store and did
5 thereby commit the offense of armed robbery. That is what is
6 alleged, and again, I tell you that that's merely an
7 allegation. We have heard no evidence in this case thus far.

8 The purpose in our voir dire or our jury selection is to
9 make sure that you know nothing about this particular case or
10 any of the parties that are involved in it. Now, to that end
11 I want to ask you some questions, and before I ask you some
12 questions, we're going to ask you to be placed under oath.

13 There's an awful lot of swearing that goes on in the
14 selection of a jury. If you get on a jury, you're going to
15 have to take another oath as well, but it is just so
16 important that what you tell me in regard to these questions
17 is truthful, because the selection of a fair and impartial
18 jury is just the foundation blocks of our judicial system,
19 and it's just the most important thing that we can do to make
20 sure that we have a fair and impartial jury, so I'm going to
21 ask you all to stand, and my Clerk, Heather, is going to
22 administer the oath.

23 (THE JURORS STAND, AND THE JURY PANEL IS PLACED UNDER
24 OATH BY THE DEPUTY CLERK OF COURT.)

25 THE COURT: All right. Is there any one of this jury

VOIR DIRE

1 panel who did not take that oath? And there is no response.

2 I have to keep saying there's no response because Ms.
3 Eubank, who is my Court Reporter, has to record everything
4 that's going on here, and that's the only way she can record
5 the fact that none of you refused to take the oath.

6 Has any one of you ever been related by blood or
7 marriage to the Defendant in this case, Mr. Tompai, who you
8 met just a moment ago? (No response.)

9 And have any one of you ever been related by blood or
10 marriage to Mr. Richard Corrado, C-O-R-R-A-D-O? Mr. Corrado
11 is in the courtroom.

12 Mr. Corrado, would you stand? (Mr. Corrado stands.)
13 Thank you, Mr. Corrado.

14 Mr. Corrado is the victim of this alleged offense. Have
15 any of you ever been related by blood or marriage to Mr.
16 Corrado? And there is no response.

17 Have any of you ever had a close personal friendship or
18 social relationship, or business relationship, or any kind of
19 relationship with either Mr. Corrado or Mr. Tompai? And
20 there is no response.

21 I'm going to read to you a list of potential witnesses
22 in this case. I say potential witnesses because I ask the
23 attorneys to tell me who might possibly testify in this case.
24 If you hear a name called and that person does not testify,
25 place no value on that fact at all, no evidentiary value.

VOIR DIRE

1 It's just a case where I ask that anyone who might be a
2 witness be identified just in case some of you may know some
3 of these persons.

4 We have Detective Todd Cox; Detective Brian Wilson;
5 Patrolman Bradley Boggs; Patrolman Joseph Cusick; Officer
6 Jodi Ridgeway; Officer Wayne Calhoun; of course, Mr. Richard
7 Corrado; Mr. Thomas Ham; Mr. Herman Coe; Mr. Oscar Rodriguez
8 Ayala; Amber Porter; and Stewart Porter.

9 Are any of you related by blood or marriage, do you have
10 a close personal relationship with or a social relationship,
11 business relationship, with any of these witnesses, these
12 potential witnesses that I have named? And there is no
13 response.

14 Now, the attorneys in this case are Scott Hucks. Mr.
15 Hucks is sitting here at the Plaintiff's -- or the State's
16 table. Would you stand up, Mr. Hucks, so they can see you.
17 (Mr. Hucks stands.) Mr. Hucks is a long-time resident of
18 Horry County. He is employed by the Horry County Office of
19 the Solicitor's Office for the Fifteenth Judicial Circuit.
20 Mr. Jimmy Richardson is his boss. Mr. Hucks's practice is
21 limited to the prosecution of criminal cases.

22 We have Mr. Thomas Floyd, who is representing the
23 Defense. Mr. Floyd is also a long-time resident, a life-long
24 resident, of Horry County. He has been with the Horry County
25 Public Defender for many, many years, and his practice is

VOIR DIRE

1 exclusively limited to the defense of criminal matters.

2 Is anyone related by blood or marriage or a close
3 personal friend of, do you have any social or business
4 relationship with either Mr. Floyd or Mr. Hucks? And there
5 is no response.

6 Have any of you ever been represented by Mr. Floyd or
7 Mr. Hucks in any matter? And there is no response.

8 Has any member of the jury panel formed or expressed an
9 opinion about any matter involved in this case? What I would
10 like to know is have you any knowledge at all about this
11 case? Have you discussed it with anyone? Do you recall this
12 occurring? As I said, it was back on September the 9th of
13 2012.

14 I don't know whether it was in the newspaper or was not,
15 or whether you may have lived in that neighborhood or that
16 area, you might be a patron of this particular store. If you
17 know anything about it or have discussed it with anyone, we
18 need to know. Is there anyone who would fall under that
19 category? And there is no response.

20 Is there any member of the jury panel that is aware of
21 any bias or prejudice he or she might have either against the
22 State or the Defendant in this particular case? And there is
23 no response.

24 Is there any member of the jury panel who is a member of
25 or contributor to any group which has as its primary concern

VOIR DIRE

1 the promotion of law enforcement or victims' rights, and
2 these groups would include things like MADD, SADD, CAV, which
3 is Citizens Against Violent Crime, things of that nature?
4 And there's no response.

5 Does any member of the jury panel know of any reason
6 whatsoever why he or she should not serve as a juror in this
7 case, with particular emphasis being placed on your ability
8 to be a fair and impartial juror, to give both the State and
9 the Defense a fair trial? And there is no response.

10 Does the State have any additional questions you would
11 like to have me ask?

12 **MR. HUCKS:** No, sir, Your Honor.

13 **THE COURT:** How about the Defense?

14 **MR. FLOYD:** Judge, I would ask you to inquire of the
15 jurors of any family member who has been the victim of a
16 violent crime.

17 **THE COURT:** All right. Has any member of the jury
18 panel or does any member of the jury panel have a family
19 member, or have you, been the victim of a violent crime?

20 All right. Ma'am, please stand and give us your number.

21 **JUROR 270:** 270.

22 **THE COURT:** All right. Don't tell us what, but let me
23 just ask you this: Would the fact that you have been the
24 victim of a crime, a violent crime, in any way affect your
25 ability to be a fair and impartial juror?

VOIR DIRE/JURY SELECTION

1 **JUROR 270:** No.

2 **THE COURT:** Could you give both the Defense and the
3 State a fair trial?

4 **JUROR 270:** Yes.

5 **THE COURT:** Thank you very much. And your number was?

6 **JUROR 270:** 270.

7 **THE COURT:** 270.

8 All right. Anyone else? (No response.)

9 All right. Thank you very much.

10 Madam Clerk, if you would give us a jury.

11 **THE DEPUTY CLERK:** When I call your name, if you will
12 please come to the front of the courtroom, stand at the
13 podium, and turn around and face the back of the courtroom,
14 and bring any belongings that you have, if you will bring
15 those with you, please.

16 253, Janice Pritchard. And would you turn around right
17 there.

18 What say the State?

19 **MR. HUCKS:** Please present the juror.

20 **THE DEPUTY CLERK:** Defense?

21 **MR. FLOYD:** Seat the juror.

22 **THE DEPUTY CLERK:** Please be seated in the jury box.

23 251, Jason Pippin.

24 What say the State?

25 **MR. HUCKS:** Please present the juror.

JURY SELECTION

1 **THE DEPUTY CLERK:** Defense?

2 **MR. FLOYD:** Seat the juror.

3 **THE DEPUTY CLERK:** Please be seated in the jury box.
4 255, Amy Queralt.

5 What say the State?

6 **MR. HUCKS:** Please present the juror.

7 **THE DEPUTY CLERK:** Defense?

8 **MR. FLOYD:** Seat the juror.

9 **THE DEPUTY CLERK:** Please be seated in the jury box.
10 179, Diana King.

11 What say the State?

12 **MR. HUCKS:** Please excuse Ms. King from the trial of
13 this particular case.

14 **THE DEPUTY CLERK:** You're excused from this particular
15 case.

16 244, Stephanie Parsons.

17 What say the State?

18 **MR. HUCKS:** Please present the juror.

19 **THE DEPUTY CLERK:** Defense?

20 **MR. FLOYD:** Please excuse the juror from the trial of
21 this case.

22 **THE DEPUTY CLERK:** You're excused from this particular
23 case.

24 228, Tena Nardin.

25 What say the State?

JURY SELECTION

1 **MR. HUCKS:** Please excuse Ms. Nardin from this
2 particular trial.

3 **THE DEPUTY CLERK:** You're excused from this particular
4 case.

5 215, Shenika McIntyre.

6 What say the State?

7 **MR. HUCKS:** Please present the juror.

8 **THE DEPUTY CLERK:** Defense?

9 **MR. FLOYD:** Please excuse the juror from the trial of
10 this case.

11 **THE DEPUTY CLERK:** You're excused from this particular
12 case.

13 152, George Hine, Jr.

14 What say the State?

15 **MR. HUCKS:** Please present the juror.

16 **THE DEPUTY CLERK:** Defense?

17 **MR. FLOYD:** Seat the juror.

18 **THE DEPUTY CLERK:** Please be seated in the jury box.

19 279, Richard Self.

20 What say the State?

21 **MR. HUCKS:** Please present the juror.

22 **THE DEPUTY CLERK:** Defense?

23 **MR. FLOYD:** Could I inquire as to the employment?

24 **THE COURT:** What do you do for a living, Mr. Self?

25 **JUROR 279:** Sales Manager at Carolina Home Security.

JURY SELECTION

1 **MR. FLOYD:** Thank you.

2 Excuse the juror from the trial of this case.

3 **THE DEPUTY CLERK:** You're excused from this particular
4 case.

5 51, Narcene Campbell.

6 What say the State?

7 **MR. HUCKS:** Please present the juror.

8 **THE DEPUTY CLERK:** Defense?

9 **MR. FLOYD:** Please excuse the juror from the trial of
10 this particular case.

11 **THE DEPUTY CLERK:** You're excused from this particular
12 case.

13 199, Jessica Macbay.

14 What say the State?

15 **MR. HUCKS:** Please present the juror.

16 **THE DEPUTY CLERK:** Defense?

17 **MR. FLOYD:** Seat the juror.

18 **THE DEPUTY CLERK:** Please be seated in the jury box.

19 120, Jennifer Gee.

20 What say the State?

21 **MR. HUCKS:** Please present the juror.

22 **THE DEPUTY CLERK:** Defense?

23 **MR. FLOYD:** Seat the juror.

24 **THE DEPUTY CLERK:** Please be seated in the jury box.

25 187, Deidre Laser.

JURY SELECTION

1 What say the State?

2 **MR. HUCKS:** Please present the juror.

3 **THE DEPUTY CLERK:** Defense?

4 **MR. FLOYD:** Please excuse the juror from the trial of
5 this case.

6 **THE DEPUTY CLERK:** You're excused from this particular
7 case.

8 297, Michael Stafford.

9 What say the State?

10 **MR. HUCKS:** Please present the juror.

11 **THE DEPUTY CLERK:** Defense?

12 **MR. FLOYD:** Seat the juror.

13 **THE DEPUTY CLERK:** Please be seated in the jury box.

14 262, Karen Reid.

15 What say the State?

16 **MR. HUCKS:** Please present the juror.

17 **THE DEPUTY CLERK:** Defense?

18 **MR. FLOYD:** Please excuse the juror from the trial of
19 this case.

20 **THE DEPUTY CLERK:** You're excused from this particular
21 case.

22 23, William Benson.

23 What say the State?

24 **MR. HUCKS:** Please present the juror.

25 **THE DEPUTY CLERK:** Defense?

JURY SELECTION

1 **MR. FLOYD:** Please excuse the juror from the trial of
2 this case.

3 **THE DEPUTY CLERK:** You're excused from this particular
4 case.

5 241, Stephen Panetti.

6 What say the State?

7 **MR. HUCKS:** Please present the juror.

8 **THE DEPUTY CLERK:** Defense?

9 **MR. FLOYD:** Seat the juror.

10 **THE DEPUTY CLERK:** Please be seated in the jury box.

11 190, Timothy Lawrence.

12 What say the State?

13 **MR. HUCKS:** Please present the juror.

14 **THE DEPUTY CLERK:** Defense?

15 **MR. FLOYD:** Seat the juror.

16 **THE DEPUTY CLERK:** Please be seated in the jury box.

17 77, Amy Dagostino.

18 What say the State?

19 **MR. HUCKS:** Please present the juror.

20 **THE DEPUTY CLERK:** Defense?

21 **MR. FLOYD:** Seat the juror.

22 **THE DEPUTY CLERK:** Please be seated in the jury box.

23 323, Lynn Venckus.

24 What say the State?

25 **MR. HUCKS:** Please present the juror.

JURY SELECTION

1 **THE DEPUTY CLERK:** Defense?

2 **MR. FLOYD:** Please excuse the juror from the trial of
3 this particular case.

4 **THE DEPUTY CLERK:** You're excused from this particular
5 case.

6 4, Amy Allen. (No response.)

7 **THE COURT:** All right. Make a record of that name.

8 **THE DEPUTY CLERK:** 177, Rebecca Katz-Hargis.

9 **MR. HUCKS:** Madam Clerk, may I ask that number again,
10 please?

11 **THE DEPUTY CLERK:** 177.

12 What say the State?

13 **MR. HUCKS:** Please excuse the juror from the trial of
14 this particular case.

15 **THE DEPUTY CLERK:** You're excused from this particular
16 case.

17 16, Heidi Beaty.

18 What say the State?

19 **MR. HUCKS:** Please present the juror.

20 **THE DEPUTY CLERK:** Defense?

21 **MR. FLOYD:** Could I inquire as to the employment?

22 **THE COURT:** Yes Ma'am?

23 **JUROR 16:** I am an R.N.

24 **MR. FLOYD:** Please excuse the juror from this case.

25 **THE DEPUTY CLERK:** You're excused from this particular

JURY SELECTION

1 case.

2 269, Michael Ritchie.

3 What say the State?

4 **MR. HUCKS:** Please present the juror.

5 **THE DEPUTY CLERK:** Defense?

6 **MR. FLOYD:** Seat the juror.

7 **THE DEPUTY CLERK:** Please be seated in the jury box.

8 198, Angela Mabry.

9 What say the State?

10 **MR. HUCKS:** Please present the juror.

11 **THE DEPUTY CLERK:** Defense?

12 **MR. FLOYD:** Please excuse the juror from the trial of
13 the case.

14 **THE DEPUTY CLERK:** You're excused from this particular
15 case.

16 233, Mary Oates.

17 What say the State?

18 **MR. HUCKS:** Please present the juror.

19 **THE DEPUTY CLERK:** Defense?

20 **MR. FLOYD:** Seat the juror.

21 **THE DEPUTY CLERK:** Please be seated in the jury box.

22 **THE COURT:** Two alternates, one and two.

23 **THE DEPUTY CLERK:** 329, Marie Washington.

24 What say the State?

25 **MR. HUCKS:** Please present the juror.

JURY SELECTION

1 **THE DEPUTY CLERK:** Defense?

2 **MR. FLOYD:** Please excuse the juror from the trial of
3 this case.

4 **THE DEPUTY CLERK:** You're excused from this particular
5 case.

6 306, Ronald Tatum.

7 **MR. FLOYD:** What was that number again?

8 **THE DEPUTY CLERK:** 306.

9 What say the State?

10 **MR. HUCKS:** Please present the juror.

11 **THE DEPUTY CLERK:** Defense?

12 **MR. FLOYD:** Seat the juror.

13 **THE DEPUTY CLERK:** Please be seated in the jury box.

14 46, Patricia Caffarello.

15 What say the State?

16 **MR. HUCKS:** Please present the juror.

17 **THE DEPUTY CLERK:** Defense?

18 **MR. FLOYD:** Please excuse the juror from the trial of
19 this case.

20 **THE DEPUTY CLERK:** You're excused from this particular
21 case.

22 143, Katie Harrison.

23 What say the State?

24 **MR. HUCKS:** Please excuse the juror from the trial of
25 this particular case.

JURY SELECTION/JURY OUT/ON RECORD

1 **THE DEPUTY CLERK:** You're excused from this particular
2 case.

3 163, Lisa Jackson.

4 What say the State?

5 **MR. HUCKS:** Please present the juror.

6 **THE DEPUTY CLERK:** Defense?

7 **MR. FLOYD:** Seat the juror.

8 **THE DEPUTY CLERK:** Please be seated in the jury box.

9 **THE COURT:** All right. That will be our jury. I'm
10 going to let you go into the jury room and get familiar with
11 your surroundings there and give you an opportunity to
12 refresh yourself.

13 Mr. Pippin, if you would, always occupy that seat. Mr.
14 Tatum, Ms. Jackson, occupy those seats. You will be our
15 alternates. Mr. Pippin, you will be our foreperson.

16 Take them into the jury room and show them.

17 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
18 **JURY.)**

19 **THE COURT:** Mr. Hucks, challenge to the panel?

20 **MR. HUCKS:** No, sir.

21 **MR. FLOYD:** No.

22 **THE COURT:** All right. Very well.

23 The balance of the jury panel is excused for the day.

24 Thank you.

25 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE**

JURY OUT/ON RECORD
JURY IN/COURT TO JURY

1 **PRESENCE OF THE JURY.)**

2 **THE COURT:** All right. Are we ready for the jury?

3 **MR. HUCKS:** Yes sir, Your Honor.

4 **THE COURT:** Bring them in.

5 **(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE JURY.)**

6 **THE COURT:** Before we begin this trial, we need to take
7 care of a few matters, one of which is swearing you in as
8 jurors.

9 Madam Clerk.

10 **(THE JURY IS PLACED UNDER OATH BY THE DEPUTY CLERK OF**
11 **COURT.)**

12 **THE COURT:** During the course of this trial, Mr. Pippin
13 is going to act as your foreperson. If any issue arises that
14 you think that the Court should address, please have Mr.
15 Pippin notify Mr. Williams or Mr. Rock or any deputies that
16 might be outside your door helping you and they will bring
17 that immediately to my attention.

18 As I said earlier, Ms. Jackson and Mr. Tatum, I want you
19 to always occupy those two seats. You are our alternates,
20 and, Mr. Pippin, of course, you will always occupy that seat.

21 Mr. Pippin is the liaison between this jury and the
22 Court, and he also will preside over your deliberations
23 during this matter.

24 You noticed that just a moment ago you took an oath.
25 That oath is more than just a formality that we observe here

COURT TO JURY

1 in this courtroom. That oath is a solemn, important oath.
2 It describes your duty as jurors in this matter.

3 You know Mr. Hucks and Mr. Floyd here are charged with
4 the duty of representing their clients during this trial.
5 Mr. Hucks, of course, represents the State, and Mr. Floyd
6 obviously represents the Defendant in this matter.

7 These gentlemen will conduct themselves in a
8 professional and ethical manner. I can assure you that
9 because I've known both of them for many, many years, and
10 that's what I have come to expect from them, and it is
11 certainly what you, as jurors, can expect.

12 Likewise, I am required to conduct myself in a
13 professional, and ethical, and honorable manner, and I hope
14 that I will do that during this trial. It is my duty.

15 But, you know, you, as jurors, also have a duty, a duty
16 imposed upon you by that oath that you just took, a duty to
17 well and truly try this case, because there is nothing, as I
18 said, nothing more important in this case than you, the jury.

19 Everything we do in the next day or two is for you and
20 you alone. This trial involves nothing more than the
21 presentation of evidence for your consideration because at
22 the end of this trial, you're going to have to say whether or
23 not the State has proven its case against this Defendant,
24 whether or not this Defendant, Mr. Tompai, is guilty of this
25 offense that he is charged with.

COURT TO JURY

1 As I said earlier, he is charged with the offense of
2 armed robbery. He is charged by way of indictment, and as I
3 told you at the beginning of our jury selection, that
4 indictment is nothing more than a charge. It is nothing more
5 than an allegation. The fact that he has been indicted is
6 not for your consideration, nor is anything in the
7 indictment.

8 I will not even send this -- it is my practice not even
9 to send the indictment back with you. You must decide this
10 case from the evidence that you hear from this witness stand.

11 The Defendant in this case has entered a plea of not
12 guilty to this crime, and that places upon the burden -- upon
13 the State the burden of proving to you beyond a reasonable
14 doubt that he is guilty of this particular offense.

15 Now, later at the end of this trial, I will tell you
16 precisely what constitutes that offense. I will charge you
17 fully on the law that provides the elements of the offense of
18 armed robbery. I will also charge you precisely and
19 completely on the law as it pertains to the State's duty of
20 proving guilt beyond a reasonable doubt to you and what
21 reasonable doubt means.

22 It's your duty as jurors in this case, ladies and
23 gentlemen, to accept the law as I give it to you and apply
24 the law as I give it to you during this trial. You may say
25 apply the law to what. You may not agree with the law. You

COURT TO JURY

1 may think it ought to be or is something else. You may have
2 heard that it is something else at some time, but your oath
3 requires you to apply it precisely as I give it to you, and
4 you apply it to the facts as you find them.

5 If I say or intimate anything during this trial that I
6 have an opinion about the facts of this case, please ignore
7 it. It was unintentional. I had no intention of trying to
8 convey my opinions one way or the other about any of the
9 evidence in this case to you. That would be highly improper
10 for me to do that, for you, as jurors, are the sole judges of
11 the facts.

12 And at the end of this trial, you are going to be asked
13 to deliberate, and that deliberation process is essentially a
14 process by which you, as jurors, take the facts, and you take
15 the law as I give it to you, and you see if they fit. You
16 determine from that fit whether or not the State has proven
17 its case beyond a reasonable doubt, and that is your ultimate
18 duty in this matter.

19 Remember, you are the sole judges of the law in this
20 case -- I mean the facts in this case, and I am the sole
21 judge of the law.

22 Now, you may have some idea as how this case will
23 proceed, but let me take a moment and tell you how it will
24 proceed. In just a moment, the attorneys are going to have
25 the opportunity to present opening arguments.

COURT TO JURY

1 Opening arguments, like an indictment, are not facts --
2 I mean not evidence in the case. It's where each attorney
3 has an opportunity to explain to you his position in the
4 case.

5 I expect Mr. Hucks will get up and he will tell you
6 something about the evidence that he intends to present, may
7 even comment on the law. Remember what he says is not
8 evidence, nor is it the law, until I have confirmed it is the
9 law or you have confirmed that those evidentiary facts are,
10 in fact, what occurred. That's up to you to determine, but
11 you will hear him, and he will present those things to you in
12 a way that will help you understand why he feels that this
13 Defendant committed this offense.

14 Then the Defense has an opportunity to give an opening
15 statement, and just like Mr. Hucks's statement, Mr. Floyd's
16 statement is not evidence and it's not the law. It's his
17 perception of what may or may not be presented in this case.
18 His perception is what the law is and what the law -- what
19 law I will charge in this particular case, and he will give
20 you essentially his position.

21 You're going to know a whole lot more about this case
22 once you have heard from Mr. Hucks and Mr. Floyd in their
23 opening remarks. They're going to kind of lay the case out
24 for you.

25 Followed by that, Mr. Hucks is going to put up witnesses

COURT TO JURY

1 for the State. He's going to put up evidence on behalf of
2 the State. During that presentation, Mr. Floyd will have an
3 opportunity to challenge that evidence.

4 Following Mr. Hucks' presentation, the Defense, Mr.
5 Floyd, will have the opportunity to put up evidence, put up
6 witnesses, on behalf of the Defendant, but let me remind you
7 of this fact, the Defendant has absolutely no obligation to
8 put up any evidence or to put up any defense, and you will
9 draw no conclusion or inference from the fact that he does
10 not, if he chooses not to.

11 He does not have to prove himself innocent. The burden
12 is always on the State, but if the Defense puts up witnesses
13 and evidence, they will do so at that time. After that, we
14 will have what we call closing remarks, and again, the
15 attorneys will get an opportunity to sum up what you have
16 heard in the trial. Both the Defense and the State will sum
17 up and tell you what they -- or how they perceive the
18 evidence and the law to be.

19 Following that, I will charge you on the law. The last
20 thing you will hear will be me telling you what the law you
21 will apply in this case will be. You will be asked then to
22 go into your jury room, and you will deliberate, and you will
23 return a verdict.

24 At some time during this case, this trial, during the
25 presentation of the evidence, you might hear one of these

COURT TO JURY

1 attorneys stand and say something like this, Your Honor, we
2 have a matter that we need to take up outside the presence of
3 the jury, or, Your Honor, we have a matter or an objection
4 that needs to be taken up outside the presence of the jury,
5 and I will send you in to your jury room.

6 That is not because we're trying to keep anything from
7 you. No one is doing that. What that is about is usually
8 those types of objections will involve the manner in which a
9 piece of evidence is presented to you, and in ruling on that
10 I often have to express my opinion as to the weight, effect,
11 or value of that evidence, and for you to hear that would be
12 highly improper. It would convey to you what my opinion was
13 about the evidence, so that's why we send you out. It's not
14 because we're trying to keep that -- anything from you, and
15 you should not hold the fact that either party made an
16 objection against that party.

17 As I said, at the end of this case you're going to be
18 asked to deliberate. I ask you not to deliberate before
19 then. It's so easy to go back while you're hearing this case
20 into the jury room and say let's talk about this witness or
21 let's talk about that witness. There's always two sides to
22 every coin. There's two sides to every dispute that you will
23 hear in life.

24 Wait until you've heard both sides before you begin to
25 evaluate or analyze any of the evidence, which will be -- and

COURT TO JURY

1 wait until you have the law to -- to begin any type of
2 deliberations. I don't even want you discussing this case at
3 home when you retire for the evening.

4 I know it's hard to go in and your wife, or your
5 husband, or your significant other says what you been doing
6 today, and the last thing my wife wants to hear is when I say
7 I'm not telling, then she gets real interested in what I've
8 been doing, and I know it's hard to do that. Just tell them
9 the Judge asked us not to discuss it, and I'll tell you all
10 about it as soon as we have completed this -- this trial.

11 Also, we have had some problems of late, now that we
12 have gone into the cyber world, with jurors who decide that
13 they need some additional information and very innocently,
14 they'll go on-line, and they'll try to look up old newspaper
15 clippings. They'll look up what the law is. They'll look up
16 -- they'll Google the area and look for maps and things of
17 that nature, and that's just a natural thing to do.

18 I tell you that that is improper, folks, and I ask you
19 please don't go to Facebook and you ask if any of your
20 friends know about this case, or don't Google anything.
21 Don't try to look up maps. Just stay away from that.

22 The only thing that you may consider in this case, right
23 or wrong, is what comes from that witness stand. There may
24 be something that could have been put up that you think was
25 critical to you, but if it's not put up, you can't consider

COURT TO JURY
OPENING STATEMENT FOR THE STATE (HUCKS)

1 it. It just wasn't there. Okay?

2 Thank you again for listening to me. We're about to
3 begin with opening remarks. I hope this case will move along
4 quickly. Won't it, gentlemen?

5 MR. FLOYD: Yes sir.

6 MR. HUCKS: Yes sir.

7 THE COURT: They always tell me that. They tell me
8 that in every case.

9 All right. Mr. Hucks, your opening statement.

10 MR. HUCKS: Thank you, Your Honor.

11 Just by way of introduction, folks, my name is Scott
12 Hucks, and I'm an Assistant Solicitor with the Horry County
13 Solicitor's Office, and I've got a pretty interesting job,
14 that -- that today and probably into tomorrow, I'm going to
15 try to undertake here.

16 And my job and my duty as a prosecutor is to prove to
17 you beyond a reasonable doubt -- you heard the Judge talk
18 about a reasonable doubt just a little bit -- that Michael
19 Tompai, seated there at that table, committed a crime.
20 That's what I do, tell juries that people commit crimes, and
21 I prove it to them.

22 And in order to prove that to you, I'm going to have to
23 put up some evidence, to show you some witnesses, have some
24 witnesses come and tell you why we believe he committed the
25 crime, to talk to you a little bit about what happened, and

OPENING STATEMENT FOR THE STATE (HUCKS)

1 I'm going to talk with you just a little bit about what I
2 believe these witnesses are going to say.

3 In September of last year, Michael Tompai walked into
4 the Kangaroo gas station in the Socastee area of Horry
5 County, right at the end of Forestbrook Road and Dick Pond
6 Road by that swing bridge everybody cusses about all the
7 time, right, and he walks in. He goes to the bathroom.

8 You're going to get to hear from Mr. Corrado, the clerk
9 at the store. Mr. Corrado, I believe, is going to tell you
10 he was hanging out at the store. He stepped outside. He saw
11 the Defendant come in from a weird area. He came in from out
12 of the woods, kind of behind the store, instead of from the
13 road side or the parking lot side, and he came in and he went
14 to the bathroom.

15 He came straight back out of the bathroom, went out of
16 the store, turned around and came back in and stuck his gun
17 in Mr. Corrado's face. He took money and cigarettes, and
18 left.

19 The police come, take a statement, do a report. You
20 call the police. They come to make reports, right? That's
21 what they do. And they started an investigation, and what I
22 think is really neat about this case and particularly
23 interesting for me as a lawyer is that we grew up with a
24 bunch of police shows and that kind of stuff on television.

25 And what's interesting to me about this case is what

OPENING STATEMENT FOR THE STATE (HUCKS)

1 you're going to get to hear is about some good old-fashioned
2 police work, some kind of just good old-fashioned cops doing
3 good cop work, because what happened is they put a BOLO,
4 everybody calls it, be-on-the-lookout, for a description
5 given by Mr. Corrado about the robber. He doesn't know Mr.
6 Tompai. They don't hang out and play cards, right? He don't
7 know him.

8 So he -- they -- they put his description out. You're
9 going to get to hear from a couple of officers who recognized
10 that description, recognized the person who lives in the area
11 who matches that description, and for several reasons, they
12 recognize his build, a short, skinny guy. He was wearing
13 blue plaid shorts and an orange hoodie -- a red hoodie, and
14 they put him in what's called a line-up, like you guys have
15 probably seen on television.

16 It's not nearly as dramatic as that, but they take six
17 pictures. They pick a person they think may be involved in a
18 case. They take five other people that they know were
19 uninvolved in the case, but at random, their size, shape,
20 that kind of stuff, and they stick pictures of these people
21 on a sheet of paper.

22 And they went to Mr. Corrado, which you're going to get
23 to hear from the police, that Mr. Corrado, without
24 hesitation, said that's the guy. That's the guy that robbed
25 me. That's the guy that came in. That's the guy that stuck

OPENING STATEMENT FOR THE STATE (HUCKS)

1 a gun in my face. That's the guy that took money, and that's
2 the guy that took off.

3 I believe that's what you're going to get to hear.
4 You're going to get to hear a little bit about how Mr. Tompai
5 lives a mile or so from the store. He's a local. He lives
6 in the area, went in the store, robbed the place, and was
7 picked out of the line-up. It's just that straightforward.
8 That's what we're here for.

9 Now, he's charged with armed robbery, and the Judge is
10 going to tell you a lot about the law later. I'm not going
11 to get into it. I might get into it a little bit later, but
12 armed robbery, suffice it to say from my perspective for
13 purposes of this case, and I'm just a lawyer, he's a Judge,
14 so whatever he tells you goes, right, but a armed robbery,
15 when you take a weapon or a semblance of a weapon and you
16 take something that don't belong to you, right? You get
17 armed and you commit a robbery. That's what he's charged
18 with and that's what he did, and that's what the evidence
19 today is going to prove to you.

20 Now, I'm going to ask you now, just like what the Judge
21 said, don't make your mind up. Don't make your mind up after
22 any one witness. Don't make your mind up after any two
23 witnesses. Don't make your mind up after all these folks
24 testify and whether or not somebody else testifies, don't
25 make your mind up. Don't make your mind up until the minute

OPENING STATEMENT FOR THE STATE (HUCKS)
OPENING STATEMENT FOR THE DEFENDANT (FLOYD)

1 the Judge tells you to, because you don't have the tools.
2 You take the facts and mesh them with the law. Up until the
3 Judge tells you, that's what you do, right? Why? He's got
4 the robe, right?

5 So please sit back. Think about what you hear. Think
6 about what each and every one of these witnesses tells you,
7 even what they don't tell you, and know that at the end of
8 the day, I'm going to come back, today or tomorrow.

9 I'm going to come back and I'm going to ask you to find
10 him guilty, and the reason I'm going to ask you to find him
11 guilty is because he's robbed a store at gunpoint, and we're
12 going to prove it to you, and I thank you for your time and
13 your patience, and I look forward to working with you. Thank
14 you.

15 **THE COURT:** Mr. Floyd.

16 **MR. FLOYD:** May it please the Court.

17 **THE COURT:** Certainly.

18 **MR. FLOYD:** Ladies and gentlemen, again, my name is
19 Thomas Floyd and I'm here representing Michael today on this
20 charge of armed robbery.

21 Some of what Mr. Hucks has told you is very accurate.
22 You're going to hear about a photo line-up, but from that
23 point, you're going to hear some other things that wasn't
24 told to you just now, and I'm not going to go into a whole
25 lot of details, but you'll hear from this witness stand and

OPENING STATEMENT FOR THE DEFENDANT (FLOYD)
RICHARD CORRADO - DIRECT BY HUCKS

1 you'll go, whew, that wasn't told to me a minute ago, and
2 what you're going to find out at the end of this case, -- and
3 there is, I'm going to tell you right now, Mr. Corrado
4 pointed at Michael Tompai in that line-up. He pointed to
5 that picture.

6 You're going to hear a little bit about the photo line-
7 up, and then what else you're going to hear is not one piece
8 of evidence linking Michael Tompai to the Kangaroo store, to
9 the Kangaroo store on September 9th, to ever being in
10 possession of a weapon, you're not going to hear any evidence
11 to that fact.

12 This ain't going to be a long trial, but it's important
13 and it's important to everybody that's involved. Please pay
14 attention. Judge the case, and return a verdict that speaks
15 the truth, and I'm going to tell you just like Mr. Hucks at
16 the end, I believe a verdict that speaks the truth is going
17 to be a verdict of not guilty, but we're going to find out
18 now, because now is the time for us not to say what we think,
19 but for y'all to hear it from the witnesses. Thank you.

20 **THE COURT:** Mr. Hucks, your witness.

21 **MR. HUCKS:** Yes sir, Your Honor. Thank you.

22 The State would call Richard Corrado to the stand.

23 **RICHARD CORRADO,** being first duly sworn, testifies
24 as follows:

25 **DIRECT-EXAMINATION BY MR. HUCKS:**

RICHARD CORRADO - DIRECT BY HUCKS

- 1 Q. Mr. Corrado, what do you currently do for a living?
- 2 A. I'm unemployed now.
- 3 Q. What did you do prior to becoming unemployed?
- 4 A. I was a gas station -- a gas station attendant.
- 5 Q. Okay. And what gas station were you an attendant at?
- 6 A. I was at Store 3063, the Kangaroo at the end of
- 7 Forestbrook and Dick Pond Road.
- 8 Q. I know this is going to sound like a dumb question,
- 9 but do you know what county that's in?
- 10 A. Yes sir. It's Horry County.
- 11 Q. Horry County, and everything we're going to talk about
- 12 all happened in Horry County?
- 13 A. Yes sir.
- 14 Q. Now, what did you do for a living on or about
- 15 September the 9th of 2012?
- 16 A. I worked at the Kangaroo.
- 17 Q. And that day, did you have an occasion to come into
- 18 contact with this man, Mr. Tompai?
- 19 A. Yes sir.
- 20 Q. Tell us how that came about. Tell the jury.
- 21 A. Well, I was preparing to start the cooler. I noticed
- 22 a man enter the building from the forested side of the
- 23 establishment, which is kind of odd, so it made me pay
- 24 attention to him. He headed directly toward the restroom.
- 25 Maybe a minute later, he walked out of the restroom and then

RICHARD CORRADO - DIRECT BY HUCKS

1 re-entered the building moments later, toting a gun. He
2 demanded that I place the money in the bag, and before he
3 left with a couple of cartons of cigarettes.

4 Q. Now, you mentioned that it was odd that he came in
5 from the forested side of the building. What's -- what's odd
6 about that? Just explain that. Some of the jurors might not
7 know where we're talking about.

8 A. Well, that entire side of the building is forested.
9 There's no parking lot. There's no sidewalk. There's no
10 path. It's pretty blocked off in that area.

11 Q. Now, the -- you say he went into the bathroom. He
12 came in the store, went to the bathroom and left. How long
13 did you have to take a look at this person that was in that
14 store prior to you being robbed by him?

15 A. About three or four minutes.

16 Q. Okay. And how long would you say the robbery took?

17 A. About the same.

18 Q. So total, that would be about how long that you got to
19 look at the person who robbed you?

20 A. Six to eight minutes.

21 Q. Was that enough time for you to know what that person
22 looked like?

23 A. Yes sir.

24 Q. Now, why is that? Have you ever received any special
25 training or anything like that in reference to that?

RICHARD CORRADO - DIRECT BY HUCKS

1 A. Yes. When we are employed by the company, we receive
2 training to obviously in the event that we ever get robbed or
3 anything like that, to identify the person to help -- help
4 hold them accountable for what they've done.

5 Q. So you are specifically trained in what, now? I just
6 -- maybe I misheard you.

7 A. In the checking out of their hair color, their eye
8 color, their height, their weight, their build, their color,
9 everything that matched their physical description.

10 Q. And did you give this physical description to a
11 policeman at some point in time?

12 A. Yes sir.

13 Q. And that night, later, when?

14 A. Yes sir. It was about thirty minutes to an hour
15 later.

16 Q. So you called the police?

17 A. Yes sir.

18 Q. And did you give the description of this person to the
19 police?

20 A. Yes sir.

21 Q. And what was it that he took from the store?

22 A. He took money out of the register and a carton of
23 Marlboro Lights.

24 Q. And at any time did a detective speak with you about
25 this case?

RICHARD CORRADO - DIRECT BY HUCKS

1 A. Yes sir.

2 Q. Did the detective who spoke with you -- I'm going to
3 ask you to identify these two documents. What are these two
4 things right here?

5 A. Document Number 2 is the photo line-up, and Document
6 Number 1 is stating that I have accurately picked who I
7 believe committed this crime.

8 Q. Now, who showed you these?

9 A. It was Officer Wilson.

10 Q. Okay, Officer Wilson. And when you looked at these,
11 did you find a person in this line-up that was the person who
12 robbed you?

13 A. Yes sir.

14 Q. And who was that?

15 A. It was Number 6.

16 Q. And is Number 6 in the courtroom here today?

17 A. Yes sir. He's sitting right there.

18 Q. And you're talking about the Defendant?

19 A. Yes sir.

20 Q. Now, is the Defendant the person that robbed you in
21 that gas station?

22 A. Yes sir.

23 Q. Now, and on Document Number 1, is that your signature
24 at the bottom?

25 A. Yes sir, it is.

RICHARD CORRADO - DIRECT BY HUCKS

1 Q. And what does that indicate?

2 A. That I am approving that what I said was one hundred
3 percent true.

4 Q. Okay. And what is it that you said?

5 A. That Number 6, the Defendant, robbed me.

6 Q. Okay. And how -- how certain are you that this man
7 robbed you?

8 A. One hundred percent beyond a doubt.

9 Q. Now, some time passed in between the robbery and this
10 line-up. I believe it was seventeen days?

11 A. Yes sir.

12 Q. Was your mind clear?

13 A. Yes sir, absolutely.

14 Q. Did you remember who robbed you at that point in time?

15 A. Yes sir.

16 Q. And who was it?

17 A. The Defendant.

18 Q. All right.

19 MR. HUCKS: At this time the State would move State's
20 Exhibit Number 1 and Number 2 into evidence.

21 THE COURT: Mr. Floyd?

22 MR. FLOYD: The prior objection.

23 THE COURT: They're admitted as 1 and 2.

24 You may publish.

25 MR. HUCKS: Thank you, Your Honor.

RICHARD CORRADO - DIRECT BY HUCKS
CROSS BY FLOYD

1 (SIGNED FORM BY VICTIM CONCERNING LINE-UP INTRODUCED
2 INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 1.)

3 (PHOTO LINE-UP INTRODUCED INTO EVIDENCE AS STATE'S
4 EXHIBIT NUMBER 2.)

5 Q. Now, in the seventeen days that it took between the
6 time you were robbed and the time you picked Mr. Tompai out
7 of this line-up, did anything happen in your life to make you
8 forget or dull your perception of what happened that night?

9 A. No, sir.

10 Q. And how sure are you that this man stuck a gun in your
11 face and robbed you?

12 A. One hundred percent.

13 MR. HUCKS: Nothing further, Your Honor.

14 THE COURT: Mr. Floyd.

15 CROSS-EXAMINATION BY MR. FLOYD:

16 Q. Mr. Corrado, you said he was in your store for six to
17 eight minutes?

18 A. Yes sir, about.

19 Q. Well, let me back up. He walked in the store and went
20 to the bathroom?

21 A. Yes sir.

22 Q. Then he walked back out of the store?

23 A. Yes sir.

24 Q. Then he allegedly came back again?

25 A. Yes sir.

RICHARD CORRADO - CROSS BY FLOYD

1 Q. I'm a little bit confused on the time frame here. So
2 after he went in the bathroom, he was in the store for
3 another five to seven minutes?

4 A. No, sir.

5 Q. All right. Thank you, sir. Now, also in the story,
6 you made a comment to Mr. Hucks you were trained to observed,
7 to look him in the face?

8 A. Yes sir.

9 Q. Well, when you talked to the police that night -- I'm
10 looking at the description you gave, you never mentioned
11 anything about eye color. Is there a reason for that?

12 A. I -- I mean, it was a very frustrating thing, sir. I
13 -- it probably just slipped my mind.

14 Q. It was a frustrating event?

15 A. It was frustrating.

16 Q. Frustrating, excuse me. And at the time that you gave
17 that description, your description was five foot, four
18 inches, and one hundred, twenty-five pounds, with brown hair?

19 A. Yes sir.

20 Q. All right, sir. Now, the Kangaroo store there, is it
21 equipped with a video?

22 A. Yes sir.

23 Q. All right. And was there video taken of this
24 incident?

25 A. To the extent of my knowledge, yes.

RICHARD CORRADO - CROSS BY FLOYD
REDIRECT BY HUCKS

1 Q. What happened to it?

2 A. I'm not in control of the video, sir.

3 Q. Did you turn it over to the police?

4 A. Again, I'm not in control of that.

5 Q. Who was in control of the video?

6 A. My manager at the time.

7 Q. All right. Now, and you stated when Mr. Hucks asked
8 you that you were unemployed now. Why did you leave the
9 Kangaroo?

10 A. It was just a conflict of interest. I don't really
11 feel like discussing that at this point in time.

12 Q. I don't blame you.

13 MR. FLOYD: Thank you, sir. I don't think I have any
14 further questions.

15 MR. HUCKS: Very, very briefly, Your Honor, just one,
16 directly on point to what Mr. Floyd just asked.

17 Can I borrow those from the jury for one moment and I'll
18 give them right back.

19 REDIRECT-EXAMINATION BY MR. HUCKS:

20 Q. Now, you gave a height and a weight description to the
21 police?

22 A. Yes sir.

23 Q. Does this sign-up show you how tall or how much
24 anybody weighs on here? Does it say that?

25 A. No, sir.

RICHARD CORRADO - REDIRECT BY HUCKS
JOSEPH PETER CUSICK - DIRECT BY HUCKS

1 Q. So you picked him out by his face?

2 A. Yes sir.

3 Q. But he did match the description?

4 A. Yes sir.

5 Q. Okay.

6 MR. HUCKS: Nothing further.

7 THE COURT: Mr. Floyd?

8 MR. FLOYD: No Recross, Judge.

9 THE COURT: All right.

10 You may step down, Mr. Corrado. Thank you.

11 MR. HUCKS: We call Officer Cusick to the stand, Your
12 Honor.

13 JOSEPH PETER CUSICK, being first duly sworn,
14 testifies as follows:

15 DIRECT-EXAMINATION BY MR. HUCKS:

16 Q. Officer Cusick, what do you do for a living?

17 A. I'm an officer in the Horry County Police Department.

18 Q. How long have you done it?

19 A. Approximately going on four years.

20 Q. And what do you do as -- what's your job description?
21 What do you do as a policeman?

22 A. General road patrol.

23 Q. Okay. What does that mean, general road patrol?

24 A. Generally I respond to calls that people call in for
25 distress, for whatever reason they contact us. I would be

JOSEPH PETER CUSICK - DIRECT BY HUCKS

1 what we consider as a first responder. I would go out, take
2 the reports, do the investigation as I can.

3 Q. People call 911 and you come?

4 A. Yes.

5 Q. And is that how you managed to get involved in the
6 robbery at the Kangaroo?

7 A. Yes sir.

8 Q. And would you tell us how that came about. Tell us --
9 tell us how you got that call once you did.

10 A. As per the usual, I believe the victim contacted
11 Dispatch. Dispatch advised us that an armed robbery, what we
12 know as a signal four, had just occurred at the Kangaroo gas
13 station at the corner of Forestbrook and Dick Pond Road. We
14 responded to the area, several officers did.

15 Initially we searched the area with the description we
16 had, which was given to dispatch, which, I believe, was the
17 white male, red hoodie, and blue plaid shorts. We weren't
18 able to locate anything, and then I responded to the store to
19 meet Mr. Corrado, I did not know at the time, took his
20 information, and observed a video of the incident, and I
21 completed my investigation as far as I could there.

22 Q. All right. Now, what was the description that came --
23 what was the description of the person you were looking for?

24 A. I believe we were looking for a white male. He had a
25 red sweatshirt or hoodie on, and I believe -- and this may

JOSEPH PETER CUSICK - DIRECT BY HUCKS

1 not be initially from that -- I may have gotten that later
2 from Mr. Corrado, but I believe we were looking for blue
3 plaid shorts. I'm pretty sure that came out across Dispatch
4 as well.

5 Q. Okay. And you say -- Mr. Floyd mentioned a video a
6 little while ago. Was -- did you have a chance to view that
7 video?

8 A. Absolutely.

9 Q. Now, what did you personally view with your eyeballs
10 on that video?

11 A. The part of the video that I viewed was a person
12 matching the description that we were given, a white male,
13 could be short in stature, a very small frame, from what I
14 could tell, wearing a red hoodie.

15 I believe he had a hat on, which I believe -- it was
16 hard to tell the color, but the design of the pants did seem
17 to indicate plaid, and some dark-colored shoes, and I could
18 tell that he was a white male as well. Approached the
19 counter, point the gun at Mr. Corrado. There was an exchange
20 of money and I think a carton of cigarettes, and then the
21 subject left the store.

22 Q. And you saw that with your eyes?

23 A. Absolutely.

24 Q. Now, that video is not here today. Can you explain to
25 the jury why? Do you have any idea?

JOSEPH PETER CUSICK - DIRECT BY HUCKS

1 A. From what I understand, when that call came out and by
2 the time we got done, we work -- I would have had the next
3 two days off. It happened on a Sunday. I would have had
4 Monday and Tuesday off.

5 So the arrangement was that the next shift would get the
6 video from the manager in the morning or in the afternoon,
7 whenever the video became available, so I would not have been
8 back until Wednesday, which is why we had that arrangement
9 where the next shift was supposed to pick it up.

10 Why the video was not picked up, I do not know, and I
11 had no further involvement there.

12 Q. So you don't if it was -- I mean, you don't know what
13 would have ever happened to it? You just know that you saw
14 it with your own two eyes?

15 A. Yes. For all I know, it could have been picked up,
16 but I don't know any more than that.

17 Q. And did the Defendant, Mr. Tompai, match the
18 description of the person you saw on the video robbing that
19 store?

20 A. Yes. That description I was given matched what I saw
21 on the video.

22 Q. And does that match him?

23 A. Yes, as far as I can tell.

24 MR. HUCKS: Nothing further, Your Honor.

25 MR. FLOYD: I've got no questions for Officer Cusick.

JODI RIDGEWAY - DIRECT BY HUCKS

1 **THE COURT:** You may step down, Mr. Cusick.

2 **MR. HUCKS:** Your Honor, could Officer Cusick please be
3 released from his subpoena? He's supposed to work tonight,
4 Mr. Floyd.

5 **MR. FLOYD:** No objection.

6 **THE COURT:** No objection.

7 You may be released from your subpoena.

8 **MR. HUCKS:** Officer Jodi Ridgeway from the Horry County
9 Police Department.

10 **JODI RIDGEWAY,** being first duly sworn, testifies as
11 follows:

12 **DIRECT-EXAMINATION BY MR. HUCKS:**

13 Q. Officer Ridgeway, what do you do for a living?

14 A. I'm a patrol officer with Horry County Police.

15 Q. And have you always been a patrol officer with Horry
16 County Police?

17 A. No. I've only been with Horry County a year and a
18 half.

19 Q. Where were you before that?

20 A. I was at Sumter P.D. for a little over sixteen years.

21 Q. That's Sumter, South Carolina?

22 A. Yes, a hundred miles away from here.

23 Q. Now, what did you do when you were in Sumter?

24 A. I worked and was raised to Lieutenant, and I was a
25 Lieutenant of a full shift there.

JODI RIDGEWAY - DIRECT BY HUCKS

1 Q. So you've done about everything there is to do in
2 police work?

3 A. Yes, everything.

4 Q. And now you are a patrol officer?

5 A. I retired and came here.

6 Q. A good place to come?

7 A. Right.

8 Q. Everybody else does. Now, I want to ask you how did
9 you -- your first interaction with Michael Tompai, how did
10 that come about?

11 A. Several weeks prior to the armed robbery I responded
12 to a residence over on Sea Oats in Strand Village Mobile Home
13 Park in reference to a civil dispute. The dispute was Mr.
14 Tompai and his roommate, and it was a dispute over rent
15 money, and that's why I actually had the chance to have a
16 conversation with him.

17 Q. And did you have a conversation with him?

18 A. I did have a conversation with him. He was very
19 upset. His roommate was very upset. They were arguing over
20 who owed who money and, you know, he pretty much threw his
21 roommate under the bus and started talking about some armed
22 robbery issues.

23 Q. They talked about what?

24 A. He had mentioned armed robbery about his roommate of
25 some sort.

JODI RIDGEWAY - DIRECT BY HUCKS

1 Q. And that piqued your interest, I guess, right?

2 A. Well, yes, it did.

3 Q. Now, when the call about this robbery came out, what
4 made you think of Mr. Tompai, if anything?

5 A. The conversation that I had had with him prior to this
6 armed robbery, his physical description, and, you know, the
7 fact it was in close proximity of Strand Village, I got to
8 talking with some of the other guys about it and some other
9 issues that we had been having, and I felt like he may be a
10 good candidate to interview or talk to.

11 Q. So your prior interaction with him, combined with the
12 physical description, made you believe that he may be a
13 suspect?

14 A. Yes sir.

15 Q. And what did you do with that information?

16 A. I started talking to my co-workers about it, my
17 partner in particular, we started discussing it. I asked him
18 who handled violent crimes in our investigative division
19 because at that point I really hadn't been with Horry County
20 long enough to stir up a General Sessions case.

21 Officer Boggs, while we were actually sitting there
22 talking about it, shot an e-mail to the investigator, senior,
23 that handled the case and told him what my concerns were.

24 Q. And you had a genuine concern that he may be a
25 suspect?

JODI RIDGEWAY - DIRECT BY HUCKS

- 1 A. Yes sir.
- 2 Q. And you told your partner, ---
- 3 A. Yes sir.
- 4 Q. --- Officer Boggs?
- 5 A. Right.
- 6 Q. And that's about the extent of your involvement?
- 7 A. That's it.
- 8 Q. Okay. I want to show you something ---
- 9 A. Okay.
- 10 Q. --- being that you have dealt with everybody involved
- 11 before. I'm going to show it to the jury here, but would you
- 12 explain this, what this map shows you, and point it this way.
- 13 A. Right here is 544, where the new overpass is at ---
- 14 **THE COURT:** Mr. Hucks, step her around so the jury
- 15 can ---
- 16 **MR. HUCKS:** Well, I've not put it in evidence yet, Your
- 17 Honor. I was trying to ---
- 18 **THE COURT:** Well, even so, she needs -- if she's going
- 19 to be indicating for the record, she needs to do it in such a
- 20 fashion -- why don't you have her identify the document.
- 21 **MR. HUCKS:** Yes sir, Your Honor.
- 22 Q. What is this?
- 23 A. It looks like a Google map.
- 24 Q. Okay.
- 25 A. 544, Dick Pond Road, Highway 707, and Socastee

JODI RIDGEWAY - DIRECT BY HUCKS

1 Boulevard.

2 Q. And is it a true and accurate reflection of the area
3 that it shows?

4 A. Yes, it is.

5 Q. That's a true and accurate -- you work that area?

6 A. Yes.

7 Q. So you know these roads?

8 A. Right.

9 Q. And it is a true and accurate representation of that
10 area?

11 A. Yes, it is.

12 Q. Okay. Now, I want to show you these two previously
13 marked stars here. Are you aware of what's at 62 -- 6326
14 Dick Pond Road?

15 A. Right. That's the Kangaroo Convenience Store.

16 Q. That's the one we're here for today?

17 A. Right; yes sir.

18 Q. Okay. I'm looking at this star here. It's

19 What does that represent?

20 A. That's at Strand Village where my original interaction
21 with Mr. Tompai.

22 Q. Okay. That's Mr. Tompai's house?

23 A. Right -- well, it was at the time.

24 Q. Okay. Now, it's true and accurate? Everything that's
25 marked on here is where it is?

JODI RIDGEWAY - DIRECT BY HUCKS

1 A. Yes.

2 MR. HUCKS: Your Honor, at this time we would like to
3 move State's Number 3 into evidence.

4 MR. FLOYD: No objection.

5 THE COURT: Without objection.

6 (AERIAL MAP INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
7 NUMBER 3.)

8 Q. Now, I want to ask you -- I'm going to ask you are you
9 aware as a person who patrols this area about how much
10 distance there is between Mr. Tompai's residence and the gas
11 station that was robbed?

12 A. That was like the long way, but it's actually three-
13 quarters of a mile to a mile. It's no further than a mile at
14 the most. This should be closer to Socastee Boulevard in my
15 opinion. It's where the Strand Village is at.

16 Q. But you've had the opportunity to look at this map,
17 and you do recall that these things are where they are?

18 A. Yes, they are.

19 Q. And this is a true and accurate reflection of his
20 home, ---

21 A. Right.

22 Q. --- three-quarters of a mile to a mile from the store
23 that was robbed?

24 A. Yes, it is.

25 MR. HUCKS: Thank you very much.

JODI RIDGEWAY - CROSS BY FLOYD

1 I've got nothing further, Your Honor.

2 **THE COURT:** Mr. Floyd?

3 **CROSS-EXAMINATION BY MR. FLOYD:**

4 Q. Officer Ridgeway, so you testified here several weeks
5 earlier, I believe you said six to seven weeks, ---

6 A. Right.

7 Q. --- prior? I'm just trying to clear it up, several
8 weeks, six or seven weeks?

9 A. Well, several is more than two. Six or seven weeks is
10 what I had discussed earlier, yes sir.

11 Q. That much time had passed before this Kangaroo ---

12 A. Before that particular armed robbery, yes sir.

13 Q. And you were over there because Michael and his
14 roommate were having an argument about the money?

15 A. Yes sir.

16 Q. And what was his roommate's name?

17 A. I don't recall his roommate's name, sir.

18 Q. And that and his physical description was what
19 triggered your thought, if I understood your testimony to Mr.
20 Hucks?

21 A. That, the content of our conversation, and his
22 physical description, yes sir.

23 **MR. FLOYD:** Thank you.

24 I've got no further questions.

25 **MR. HUCKS:** Nothing, Your Honor.

BRADLEY BOGGS - DIRECT BY HUCKS

1 **THE COURT:** You may step down. Thank you.

2 **MR. HUCKS:** Your Honor, we would call Officer Bradley
3 Boggs to the stand, please.

4 **BRADLEY BOGGS**, being first duly sworn, testifies as
5 follows:

6 **DIRECT-EXAMINATION BY MR. HUCKS:**

7 Q. Officer Boggs, I just have a couple of questions for
8 you. Did you hear what Officer Ridgeway was just talking
9 about? Were you involved in that conversation with her?

10 A. Yes.

11 Q. And what did you do as a result of the conversation
12 the two of you had about Mr. Tompai and his involvement in
13 this armed robbery?

14 A. Due to her not knowing many of the detectives, and I
15 knew Mr. -- or Detective Cox was involved in the Violent
16 Crime Section, I sent him an e-mail.

17 Q. And it was in reference to what?

18 A. That he may want to look at Michael Tompai from the
19 information that Officer Ridgeway had given me.

20 Q. That he was a potential suspect?

21 A. Yes.

22 Q. Now, did Mr. Tompai match the physical description
23 that you were given when Officer Ridgeway was having a
24 discussion with you about who they were looking for for this
25 armed robbery? Does he match -- did he match the physical

BRADLEY BOGGS - DIRECT BY HUCKS
CROSS BY FLOYD
TODD F. COX - DIRECT BY HUCKS

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1 description?

2 A. I wasn't there on the call, the original call.

3 Q. Okay.

4 A. The original call occurred at 2:10. I had signed off-
5 duty at 2:00 A.M.

6 Q. So all you know is you guys discussed it and you sent
7 an e-mail?

8 A. At a later -- at a later date, yes.

9 Q. Okay.

10 MR. HUCKS: Thank you so much.

11 Nothing further.

12 THE COURT: Mr. Floyd?

13 CROSS-EXAMINATION BY MR. FLOYD:

14 Q. You basically just forwarded information?

15 A. Yes sir.

16 MR. FLOYD: Thank you.

17 THE COURT: You may step down. Thank you.

18 MR. HUCKS: We call Detective Todd Cox to the stand,
19 Your Honor.

20 THE COURT: Detective Cox, come around, please.

21 TODD F. COX, being first duly sworn, testifies as
22 follows:

23 DIRECT-EXAMINATION BY MR. HUCKS:

24 Q. Detective Cox, what do you do for a living?

25 A. I'm a Senior Detective assigned to the Major Crime

TODD F. COX - DIRECT BY HUCKS

1 Section of the Horry County Police Department.

2 Q. It sounds fancy. What do you do?

3 A. I investigate really violent crimes, death
4 investigations, anything that's of a suspicious nature as far
5 as deaths, criminal sexual conducts, really all sex crimes,
6 and armed robberies, any robbery of a violent nature.

7 Q. Armed robberies, you consider -- that falls in your
8 purview?

9 A. It does. It falls -- yeah, into the violent crime
10 purview, yes sir.

11 Q. Now, what did you do on or about September 9th of last
12 year?

13 A. I was assigned this case that you've heard the
14 testimony on today. I was assigned that case by my
15 supervisor, and really after reading through it, I think I
16 made a phone call to Mr. Corrado, had no leads at that time
17 initially.

18 Q. And what was your first lead on this case?

19 A. The first lead was an e-mail that I got from Officer
20 Boggs that was really simple, short, and sweet. It said
21 based on the ---

22 Q. Don't say what it said. Just tell us what you did as
23 a result of it.

24 A. Oh, it -- okay. That's fine.

25 As a result of that e-mail from Officer Boggs, I

TODD F. COX - DIRECT BY HUCKS

1 called the J. Reuben Long Detention Center to their Photo
2 I.D. Section. That is one of the two places that we get
3 photo line-ups from. We don't generate those in-house. We
4 have two options available to us at the County Police
5 Department. We can either call the jail, or we can call
6 SLED.

7 Given that this case had already been at least two weeks
8 old, there's a quicker turnaround time if we deal with J.
9 Reuben Long Detention Center, so in the interest of time, I
10 decided to call J. Reuben Long to try to get a photo line-up
11 with the Defendant's photo.

12 Q. And did you do that?

13 A. I did.

14 Q. And who did you contact at J. Reuben Long?

15 A. Officer Calhoun.

16 Q. And Officer Calhoun, did he give you a line-up?

17 A. He did. It was maybe an hour or two later I received
18 an e-mail.

19 Q. I show you what's already been entered as State's
20 Number 1 -- Number 2, pardon me. Now, what's that?

21 A. That's a photo line-up. That's the photo line-up.

22 Q. That's the photo line-up at issue in this particular
23 case?

24 A. Correct.

25 Q. Now, did you do anything with it after you got it back

TODD F. COX - DIRECT BY HUCKS

1 from Officer Calhoun?

2 A. I did. I gave it to my partner, Detective Wilson. He
3 was going to be going down to the Socastee area on some
4 unrelated matters and I asked him if he would get up with Mr.
5 Corrado and see if he would view this line-up.

6 Q. Now, did you investigate Mr. Tompai before putting him
7 in this line-up? Did you look him up, where he lived, what
8 he did, any of that?

9 A. I did.

10 Q. And what were you able to decipher about him through
11 your investigation?

12 A. I determined a couple of things that were of interest
13 to me as an investigator, first of all that he lived within
14 what I would consider close proximity to that store,
15 certainly within a distance that he could reach on foot,
16 didn't require a vehicle to get there.

17 The second thing, and equally as important if not more
18 important to me, was the fact that he matched the physical
19 description, height, weight, race, hair color. He matched
20 the physical description that we had been provided.

21 Q. So you didn't just go off what Officer Boggs told you?
22 I mean, you conducted your own individual investigation prior
23 to adding him to the line-up?

24 A. Correct.

25 Q. And your own individual investigation, combined with

TODD F. COX - DIRECT BY HUCKS

1 what Officer Boggs discussed with you, led you to ask Officer
2 Calhoun to put him in a line-up?

3 A. That's correct.

4 Q. Now, what did you do with that line-up once you got
5 it?

6 A. As I said, I gave it to Detective Wilson, who was
7 going to Socastee anyway, and asked him if he would try to
8 make contact with Mr. Corrado and show him the line-up.

9 Q. Now, was Detective Wilson involved in this particular
10 case outside -- outside of that?

11 A. No, sir. No, he wasn't.

12 Q. So he wouldn't have really had any personal knowledge
13 of what was going on?

14 A. That's correct. That's correct.

15 Q. Now, in looking at that line-up, doing what you're
16 doing, doing a line-up, who did -- are you aware of who Mr.
17 Corrado picked out of that line-up?

18 A. Yes. He picked out the Defendant.

19 Q. And the Defendant was your only suspect in this case,
20 is that right?

21 A. That's correct.

22 Q. And he picked him out?

23 A. He did.

24 **MR. HUCKS:** I don't have any further questions.

25 **THE COURT:** Mr. Floyd?

TODD F. COX - CROSS BY FLOYD

1 **CROSS-EXAMINATION BY MR. FLOYD:**

2 Q. Detective Cox, how many people live within a mile
3 radius of the Kangaroo store?

4 A. I don't have any idea, sir.

5 Q. Well, that would make my question about how many that
6 would be approximately five foot, four inches, and a hundred
7 and twenty-five pounds irrelevant, wouldn't it?

8 A. Yes sir, it would.

9 Q. Well, it looks like -- it looks like there are homes
10 over here, homes over here, homes -- is that homes right
11 there?

12 A. No, sir. Those are businesses.

13 Q. Those are businesses up there?

14 A. Yes sir.

15 Q. Some people work right there. Homes all over here. A
16 lot of homes around that area, isn't there, and businesses?

17 A. Was that a question, sir?

18 Q. Yes sir. A lot of homes and ---

19 A. There is homes and businesses within that area, yes
20 sir.

21 Q. People work at those businesses, correct?

22 A. I would assume so, yes sir.

23 Q. And what time of the day did this Kangaroo happen?
24 What time of the day ---

25 A. Did it occur?

TODD F. COX - CROSS BY FLOYD

1 Q. Yes sir.

2 A. It was at nighttime. The exact time, I don't recall,
3 but it was during the nighttime hours.

4 Q. All right, sir. I looked at the wrong time. I looked
5 at the time that it was date verified on your report. My
6 apology. So it was in the nighttime.

7 Now, following up on what you did, you served a search
8 warrant on Mr. Tompai's house, didn't you?

9 A. I did.

10 Q. Did you find any plaid shorts?

11 A. No, sir.

12 Q. Did you find a red hoodie?

13 A. No, sir, I did not.

14 Q. Did you find a gun?

15 A. No, sir, I did not.

16 Q. Did you find any ammunition?

17 A. No, sir.

18 Q. Did you find any blue shoes?

19 A. No, sir. Nothing -- nothing was seized pursuant to
20 that search warrant, sir.

21 Q. Not a single thing that matched him to the Kangaroo
22 that night?

23 A. That's correct.

24 MR. FLOYD: Just one second, Detective Cox.

25 Thank you, sir.

WAYNE CALHOUN - DIRECT BY HUCKS

1 **MR. HUCKS:** Nothing further.

2 **THE COURT:** Detective Cox, you may step down.

3 **MR. HUCKS:** The State would call Officer Wayne Calhoun
4 to the stand, Your Honor.

5 **WAYNE CALHOUN,** being first duly sworn, testifies as
6 follows:

7 **DIRECT-EXAMINATION BY MR. HUCKS:**

8 Q. Deputy Calhoun, is that right?

9 A. Detention Officer.

10 Q. Okay, Detention Officer Calhoun. What do you do for a
11 living, sir?

12 A. Work at J. Reuben Long as a Detention Officer in Photo
13 I.D.

14 Q. Okay. What does that mean, you work in Photo I.D.?
15 What do you do when you work in Photo I.D.?

16 A. We photograph everybody that comes in that has a
17 charge and fingerprint those with charges also.

18 Q. Now, at any point in time, did you have any contact
19 from Detective Cox in reference to this particular case?

20 A. Detective Cox called and asked for a photo line-up
21 with Mr. Tompai.

22 Q. And did you make one?

23 A. Yes sir, I did.

24 Q. How do you go about making a photo line-up? That
25 sounds pretty complicated.

WAYNE CALHOUN - DIRECT BY HUCKS

1 A. A finger track, which is the database that we use ---

2 Q. Okay. Hang on for me. You have a database?

3 A. Yes sir.

4 Q. All right. And you go through that database?

5 A. Right.

6 Q. And tell us how you go through that.

7 A. I typed in -- or filled in white male, and it gave me
8 approximately six thousand white males to choose from.

9 Q. How many of those did you look at in picking out this
10 particular line-up here?

11 A. Approximately six hundred.

12 Q. So you went through six hundred pictures, and who is
13 the person that was the suspect that you had in the line-up?

14 A. Mr. Tompai, Number 6.

15 Q. Number 6. So he's the only one that you knew to put
16 in there?

17 A. Yes sir.

18 Q. So how do you go about picking everybody else to put
19 in there?

20 A. You just keep looking at pictures with similar
21 features, hair, nose, facial, ears, anything that you can
22 come up with that's close.

23 MR. HUCKS: Your Honor, may I ask him to step down just
24 to show the jury ---

25 THE COURT: Certainly.

WAYNE CALHOUN - DIRECT BY HUCKS

1 **MR. HUCKS:** --- what he was looking at in these
2 particular ---

3 **THE COURT:** You certainly may.

4 **Q.** Show the jury for us, Officer Calhoun, what types of
5 things were you looking for to add to this line-up to make
6 sure everybody looked close as you could get them?

7 **A.** Mr. Tompai's hair is down in front, sort of like
8 bangs. All five of the others have bangs. His eyebrows.
9 There are some differences, but their facial features, the
10 type haircut, sideburns were all relatively close to Mr.
11 Tompai.

12 **Q.** So you picked the folks that looked as close as you
13 could get to him ---

14 **A.** Yes sir.

15 **Q.** --- out of your database?

16 **A.** Yes sir.

17 **Q.** Now, did you -- you didn't highlight him, or circle
18 him, or anything like that?

19 **A.** No, sir.

20 **Q.** Okay. So you picked these people at random ---

21 **A.** Yes sir.

22 **Q.** --- or to get them as close as you could get them, ---

23 **A.** Yes sir.

24 **Q.** --- except for Mr. Tompai?

25 **A.** Yes sir.

WAYNE CALHOUN - DIRECT BY HUCKS
CROSS BY FLOYD

1 Q. And those were the closest -- that's the closest
2 matches you could get?

3 A. Yes sir.

4 Q. Now, what did you do with it once you made it?

5 A. I printed out a copy for Detective Cox, and also I
6 think I e-mailed him a copy.

7 Q. Now, what number is Mr. Tompai?

8 A. Six.

9 Q. And who is the person on that line-up that Detective
10 Cox asked you to put in that line-up because they were the
11 only suspect on the case?

12 A. Mr. Tompai.

13 Q. Number 6?

14 A. Number 6.

15 MR. HUCKS: Nothing further.

16 CROSS-EXAMINATION BY MR. FLOYD:

17 Q. When you entered the information you were looking for
18 in your database, how many hits did you have?

19 A. Approximately five thousand, nine hundred.

20 Q. And out of those approximately five thousand, nine
21 hundred, you looked at six hundred to put in to this -- or
22 went through six hundred in making this line-up?

23 A. I probably went through more, but some of them -- a
24 bald-headed person just doesn't fit the line-up.

25 Q. Now, how many hits do you think your database would

WAYNE CALHOUN - CROSS BY FLOYD

1 have given you on the description of five foot, four inches,
2 a hundred and twenty-five pounds, and brown hair? Have you
3 got any idea?

4 A. Probably one.

5 Q. One?

6 A. Probably one.

7 Q. Now, in looking at the photo line-up you put together,
8 which one?

9 A. Number 6.

10 Q. He's five, seven. I just asked you about five, four.
11 Now, on your photo line-up here, Number 2 kind of looks like
12 his eyebrow has grown together. Would you agree with that?

13 A. It appears to me to be a shadow, but I understand what
14 you're talking about.

15 Q. All right. Well, the jury is going to have this to
16 look at. And also on Number 1, he appears to have a goatee,
17 and no one else in the line-up appears to have a goatee.
18 Would you agree with that?

19 A. Yes sir.

20 Q. And on Number 4, you included him in there. His neck
21 is kind of thick, grows up, and his face is a little wider
22 than everybody else. He looks like he would be more than a
23 hundred and twenty-five or a hundred and thirty pounds?

24 A. I wasn't given any information about height or weight.

25 Q. Well, does he look like he would be ---

WAYNE CALHOUN - CROSS BY FLOYD
REDIRECT BY HUCKS
BRIAN WILSON - DIRECT BY HUCKS

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1 A. He has similar facial features to Mr. Tompai, yes sir.

2 Q. Does he look like he weighs more than everybody else
3 in the line-up, and you answered it a little while ago yes.
4 Does he look like he weighs more than the other people in the
5 line-up?

6 A. I don't remember answering that he weighs more than
7 the others.

8 Q. Does he appear to?

9 A. I have no way of telling. I don't have his height.

10 Q. The jury will have it in there to look at. So ---

11 MR. FLOYD: I've got no further questions.

12 REDIRECT-EXAMINATION BY MR. HUCKS:

13 Q. What information did you get before you put Michael
14 Tompai in this line-up? Did you get his height and weight?

15 A. I was told that Mr. Tompai was the subject and to pick
16 a line-up from that.

17 Q. So all you saw was his face?

18 A. All I saw was his face.

19 MR. HUCKS: Nothing further.

20 THE COURT: You may step down, Mr. Calhoun. Thank you.

21 MR. HUCKS: The State would call Detective Brian Wilson
22 to the stand.

23 BRIAN WILSON, being first duly sworn, testifies as
24 follows:

25 DIRECT-EXAMINATION BY MR. HUCKS:

BRIAN WILSON - DIRECT BY HUCKS

1 Q. What do you do for a living?

2 A. I'm a detective with the Horry County Police
3 Department.

4 Q. How long have you been a detective with the Horry
5 County Police Department?

6 A. I've been a detective for a year.

7 Q. How long have you been with the Horry County Police
8 Department?

9 A. Almost eight years.

10 Q. During that time, did you receive any special training
11 whatsoever in identification, and line-ups, and all that
12 fancy stuff?

13 A. At the Criminal Justice Academy and through my field-
14 training program.

15 Q. Your field-training program tells you how to give
16 somebody a line-up, correct?

17 A. Yes.

18 Q. Now, what did you do for a living on or about
19 September the 27th of last year, 2012?

20 A. I was a detective with the Major Crime Section.

21 Q. So you work with Detective Cox?

22 A. Yes sir.

23 Q. And are you guys partners or something? I mean, are
24 y'all -- how does that work?

25 A. Yeah. We actually share an office.

BRIAN WILSON - DIRECT BY HUCKS

1 Q. Now, did you have -- how did you have an occasion to
2 become involved in the case of the robbery of the Kangaroo
3 gas station on September the 9th?

4 A. I believe on the 27th of September I was investigating
5 other -- two other cases of my own, ---

6 Q. Okay.

7 A. --- and I was heading to the Socastee area. Detective
8 Cox give me the photo line-up and asked me since I was going
9 that way to run by the store because Mr. Corrado would be
10 there, his normal shift, and I presented it to him.

11 Q. And you went down there doing a solid for Detective
12 Cox?

13 A. Yes sir.

14 Q. Now, I'm going to show you State's Exhibit 1 and 2.
15 What are those?

16 A. Number 1 is our Photo Line-up Identification Form.

17 Q. And what is Number 2?

18 A. A photo line-up.

19 Q. It's the photo line-up?

20 A. Yes sir.

21 Q. Now, I want you to explain to this jury what you do
22 when you give somebody a photo line-up. How do you do that?
23 How do you go about it?

24 A. What I -- I do every time is there's a little
25 paragraph at the top of the -- I read to them that explains

BRIAN WILSON - DIRECT BY HUCKS

1 that if you're not one hundred percent certain and if you
2 don't know anybody in this line-up, to not pick anybody, and
3 if you do pick somebody, to circle which one you pick, and
4 sign the form.

5 Q. Read it to them.

6 A. The form says you'll be asked to look at several
7 photographs. The fact that the photographs are shown to you
8 should not influence your judgment. You should not conclude
9 nor guess that the photographs contain the picture of the
10 person who committed a crime. You are not obligated to
11 identify anyone. It is just as important to free innocent
12 persons from suspicion as to identify guilty parties.

13 Q. And did you read that to Mr. Corrado?

14 A. Yes. I put it in front of him and I read it to him
15 and made sure he understood what he was about to do.

16 Q. And did he seem to understand what was going on?

17 A. Yes sir.

18 Q. He seemed to have a grip on it?

19 A. Yes.

20 Q. Now, what did you do after you read that to him?

21 A. I always put a piece of paper over the photo line-up
22 so that he still can't see it until he's ready. I told him
23 if he was ready for it, I'd remove the piece of paper, which
24 I did. He said he was ready, and he scanned over the six
25 photos in it.

BRIAN WILSON - DIRECT BY HUCKS

1 Q. Did he pick one out?

2 A. Yeah. He picked Number 6, which is the Defendant.

3 Q. He was the only suspect in the crime?

4 A. Yes.

5 Q. Now, how long did it take Richard Corrado to pick
6 Michael Tompai out of that line-up? You were standing there
7 with him. How long did it take?

8 A. Probably less than a minute, right around a minute.

9 Q. And did he, you know, seem confused at all ---

10 A. No. He ---

11 Q. --- or sidetracked?

12 A. No, sir. He was pretty -- one hundred percent.

13 Q. He seemed confident?

14 A. Yes, he did.

15 Q. Now, what did you -- what did he do to indicate that
16 he picked Number 6?

17 A. He pointed to Number 6.

18 Q. Okay. And what are these things here?

19 A. When he pointed to him, I asked him if he was a
20 hundred percent sure he had robbed him, and he said yes.

21 Q. Don't tell us what he said. Just tell us what he did.

22 A. He circled Number 6. Then he initialed and dated it.

23 Q. Okay. And why did you have him initial and date it?

24 A. So that there would be no discrepancy that he circled
25 Number 6.

BRIAN WILSON - DIRECT BY HUCKS
CROSS BY FLOYD

1 Q. Okay. And then what did you have him do on this form
2 over here?

3 A. I went over the form one more time and that if --
4 since he picked Number 6, I told him to initial on the form
5 Number 6 and to sign and date it.

6 Q. Okay. And did he do that?

7 A. Yes, he did.

8 Q. And did that in- -- what did that indicate to you?

9 A. That the Number 6 was the man that robbed him.

10 Q. Number 6, the only suspect in the case?

11 A. Yes sir.

12 MR. HUCKS: No further questions. Thank you.

13 THE COURT: Mr. Floyd?

14 CROSS-EXAMINATION BY MR. FLOYD:

15 Q. What was the date on the line-up again?

16 A. I showed it to him on the 27th of September.

17 Q. And he picked the Number 6 out of that line-up?

18 A. Yes, he did.

19 MR. FLOYD: Thank you, sir.

20 MR. HUCKS: Nothing further.

21 THE COURT: You may step down.

22 MR. HUCKS: Can Mr. Floyd and I approach very briefly,
23 Your Honor?

24 THE COURT: Yes.

25 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

THE STATE RESTS/JURY OUT/ON RECORD

1 **MR. HUCKS:** Your Honor, at this time the State would
2 rest. That's would be the State's case.

3 **THE COURT:** Ladies and gentlemen of the jury, the State
4 has now rested. This case has moved along very quickly, and
5 that is the State's case.

6 There are some matters that I have to take up in the
7 normal routine of things, and there's some things that we
8 have to do now before the Defense puts up its case, so I'm
9 going to let you go and I ask you to be back here at 9:30 in
10 the morning in your jury room. Bobby will tell you how to
11 get in and where to come in the morning.

12 I caution you now, don't talk about it when you get
13 home.

14 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
15 **JURY.)**

16 **THE COURT:** Mr. Floyd, you have a motion?

17 **MR. FLOYD:** Yes sir, Judge. We would move at this time
18 for a directed verdict based upon we don't feel the evidence
19 submitted in a light most favorable to the State carries
20 their burden of proof beyond a reasonable doubt.

21 We also would renew our motion as to the suggestive
22 nature of the photo line-up under Biggers.

23 **THE COURT:** All right, sir. I find that there is
24 substantial evidence in this case and it should go to the
25 jury, and I would again deny your motion as to the photo

JURY OUT/COURT TO DEFENDANT

1 line-up.

2 Mr. Floyd, what I'd like to do is go ahead and this
3 afternoon give your client his rights as far as testifying is
4 concerned so he would have the evening to think about it. I
5 know you don't know at this point whether you're going to put
6 up a case or not, so I'm going to go ahead and just advise
7 him of his rights, okay?

8 MR. FLOYD: Yes sir.

9 THE COURT: If you would, please stand, Mr. Tompai, and
10 be placed under oath.

11 MICHAEL JOHN TOMPAI, II, is placed under oath by
12 the Deputy Clerk of Court.

13 THE COURT: Mr. Tompai, at this time I'm going to
14 explain to you certain rights that you have. If you don't
15 understand anything that I say, I want you to let me know.

16 MR. TOMPAI: Yes sir.

17 THE COURT: And if you wish me to explain anything in a
18 more detailed fashion, please tell me and I will be happy to
19 do so. Do you understand what I'm saying?

20 MR. TOMPAI: Yes sir.

21 THE COURT: All right. Now, we've reached the stage in
22 the case where you may present your defense, and you have the
23 right to claim the protections given you by the Fifth
24 Amendment to the Constitution of the United States, which in
25 part says no person shall be compelled in a criminal case to

JURY OUT/COURT TO DEFENDANT

1 be a witness against himself. We sometimes refer to that as
2 taking the Fifth or exercising your right to remain silent.

3 **MR. TOMPAI:** Yes.

4 **THE COURT:** This means that you cannot be required to
5 testify in a case. You have the right to testify on your own
6 behalf if you wish. However, no one can make you testify,
7 and this is a personal right you have and no one except you
8 can waive that right or give it up.

9 You -- if you decide to testify, though, let me warn you
10 that you will be subject to the same rules that concern other
11 witnesses and you may be examined and cross-examined. That
12 means Mr. Floyd can ask questions. Then Mr. Hucks can ask
13 you questions on any relevant issue in the case.

14 In addition, if you have any convictions involving
15 dishonesty or false statement, or for a crime punishable by
16 imprisonment for more than one year and this Court determines
17 that the probative value of admitting this evidence outweighs
18 its prejudicial effect to you, the Solicitor will be able to
19 introduce your record and attack your credibility or
20 believability by doing so.

21 If you decide to testify, this decision on your part
22 must be freely, voluntarily, and intelligently made with
23 knowledge of the protections given you or afforded you by the
24 Fifth Amendment, and the consequences of your decision to
25 testify.

JURY OUT/COURT TO DEFENDANT

1 If you decide not to testify, I will instruct, that
2 means I will tell, the jury that they cannot give that fact
3 any consideration whatsoever and that there is to be
4 absolutely no prejudice to you because you did not testify.

5 **MR. TOMPAI:** Yes sir.

6 **THE COURT:** That is entirely up to you whether or not
7 you testify, and you can talk with your attorney over the
8 evening about that, talk to your family, your friends, or
9 anyone else, but the final decision will be left entirely up
10 to you, and I'm going to ask you to tell me do you understand
11 what I've explained to you?

12 **MR. TOMPAI:** Yes sir, I do.

13 **THE COURT:** All right. Do you have any questions about
14 what I've explained to you?

15 **MR. TOMPAI:** No, sir.

16 **THE COURT:** All right. Now, I'm not going to ask you
17 tonight. What I'm going to do is I'm going to wait until in
18 the morning to give you every opportunity to discuss this
19 with your attorney or anyone else, and I am going to ask you
20 in the morning if you wish to testify.

21 Please understand that until your attorney rests, that
22 is until he tells me that his case -- your case has ended, I
23 will allow you to change your mind. Do you understand?

24 **MR. TOMPAI:** Yes sir.

25 **THE COURT:** If you tell me first thing in the morning

JURY OUT/COURT TO DEFENDANT

1 that you do not wish to testify, that's fine, but as long as
2 your case is open, if you change your mind, I will let you
3 testify. Do you understand that? I want that clear.

4 **MR. TOMPAI:** Yes sir.

5 **THE COURT:** All right. Now, we're going to break for
6 this evening. I'm not going to keep you in custody.

7 Mr. Floyd, I'm going to ask you to make sure that he is
8 here in the morning. If you do not show up in the morning,
9 if you're not here for your trial, I will proceed in your
10 absence. I will continue your trial in your absence. I will
11 issue a bench warrant for your arrest. That will go
12 nationwide, and I promise you you will not be able to outrun
13 it. Do you understand?

14 **MR. TOMPAI:** Yes sir, I understand.

15 **THE COURT:** Very well. Okay.

16 We're at ease until tomorrow morning.

17 Mr. Hucks, you've got a question?

18 **MR. HUCKS:** Your Honor, we would ask that the Horry
19 County officers be released from their subpoenas.

20 **THE COURT:** Mr. Floyd, you don't have any need for
21 those Horry County officers, do you?

22 **MR. FLOYD:** I don't think so.

23 **THE COURT:** Ms. Ridgeway, Mr. Cox, Mr. Calhoun, you're
24 all released.

25 (End Day)

JURY OUT/THE DEFENDANT RESTS/ON RECORD

1 (ON JUNE 11, 2013, THE FOLLOWING TAKES PLACE OUTSIDE THE
2 PRESENCE OF THE JURY.)

3 THE COURT: All right.

4 MR. FLOYD: Judge, the Defense at this time would rest.

5 THE COURT: All right. I want to ask your client,
6 though.

7 Would you stand, please.

8 Do you recall my instructions yesterday concerning your
9 right to testify?

10 MR. TOMPAI: Yes sir.

11 THE COURT: Okay. Do you need those again?

12 MR. TOMPAI: No, sir.

13 THE COURT: Your attorney tells me that the Defense
14 rests, but I want to make sure that you understand that you
15 have the right to testify and even at this stage, you can
16 testify. Do you understand that?

17 MR. TOMPAI: Yes sir.

18 THE COURT: But you cannot once I let him rest. Do you
19 understand that?

20 MR. TOMPAI: Yes sir.

21 THE COURT: Okay. All right. But you do not wish to
22 testify?

23 MR. TOMPAI: No.

24 THE COURT: All right. Thank you.

25 All right, Mr. Floyd, I'll hear you.

JURY OUT/ON RECORD/JURY IN
COURT TO JURY

1 **MR. FLOYD:** Judge, we would renew our motion for a
2 directed verdict based upon the sufficiency of the evidence.
3 We don't believe the State has met their burden of proof in
4 this case.

5 We would also renew our motions in regards to the photo
6 line-up under the Biggers' standards.

7 **THE COURT:** All right. And I would again deny those
8 motions. I think there's ample evidence to take this to the
9 jury, and as I have already ruled, I believe that we do meet
10 the Biggers' standard.

11 I have prepared, as is my practice, written copies of
12 the instructions for each of you. They are right here. You
13 might peruse them while the other is doing his closing. Let
14 me know before I charge if there are any additions or
15 deletions and we can address that, because I will be giving
16 the jury copies of the instructions.

17 All right, the jury.

18 **(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE JURY.)**

19 **THE COURT:** All right. Ladies and gentlemen of the
20 jury, it's good to see you back. I hope that Bobby had some
21 refreshments for you this morning. We're ready to proceed in
22 this case.

23 I've been informed by the Defense that the Defense
24 rests, so we're about to go directly into closing arguments.
25 Please let me remind you that you are to draw no inference

COURT TO JURY
CLOSING STATEMENT FOR THE STATE (HUCKS)

1 whatsoever from the fact that the Defendant has chosen not to
2 testify and that the Defense has chosen not to put up any
3 witnesses.

4 That is absolutely the right of the Defendant, and the
5 Defendant is under no burden to prove himself innocent in
6 this case, so I don't even want that discussed in your jury
7 room.

8 All right. Yes sir.

9 **MR. HUCKS:** Thank you, Your Honor.

10 Folks, I told you at the outset this wasn't going to be
11 a long case. It's not one that we had a hundred witnesses
12 that come in and you spend a whole week staring -- staring at
13 that box, but we've moved at a pretty record pace.

14 Here we are in the morning of the second day, and Mr.
15 Floyd and I are out here giving you our closing arguments,
16 and closing arguments are -- it is our opportunity to speak
17 with you about what we believe the witnesses that you saw and
18 the evidence that you got to see and hear means. What does
19 it mean?

20 Your duty as a jury, as per that oath that you had to
21 take when you first -- when you first got in here is to seek
22 the truth, to find the truth, the truth meaning faithfully to
23 try the issues at hand, to render a just verdict. Justice is
24 one of those big words that everybody wants to understand and
25 few people ever do, right? Well, this is justice right here.

CLOSING STATEMENT FOR THE STATE (HUCKS)

1 Where we are sitting today is justice.

2 The beauty of the American legal system is that when a
3 person commits a crime, when he's charged with a crime, that
4 they get to come in here and stand in front of twelve of
5 y'all and say I didn't do it. It forces the State to prove
6 they did it, and that's my job. That's what I do.

7 I prove that people did things. I prove that people,
8 through evidence and talking a lot, I prove that -- my job
9 and my duty is to prove to you beyond a reasonable doubt, to
10 leave you firmly convinced that Michael Tompai robbed the
11 Kangaroo gas station.

12 Do you know why? Because he did it. That's why we're
13 up here proving this to you. You heard all these -- you
14 heard all these witnesses, all these cops. You heard Mr.
15 Corrado come in here and tell you that Michael Tompai did it.

16 We're going to talk a little bit about the testimony. I
17 know it gets a little tedious because you've heard it. Some
18 of it you heard four and five times yesterday, but think
19 about it.

20 The first person you got to hear from is Richard
21 Corrado. Mr. Corrado stepped right here. He looked at this
22 line-up. He talked with you about it, and Mr. Corrado said
23 on September the 9th of last year, that man -- he pointed him
24 out. He said that man came into the store where I worked,
25 and he stuck a gun in my face, and he took money and

CLOSING STATEMENT FOR THE STATE (HUCKS)

1 cigarettes. Money and cigarettes. He used a weapon.

2 Armed robbery is what he's charged with. Let me talk
3 for just a second about armed robbery. What does armed
4 robbery mean? I talked to you a little bit on the front end.
5 The Judge is going to give you the law in its entirety. I'm
6 going to just tell you about the portions that I think apply
7 to the case.

8 Armed robbery means to use a weapon or a semblance of a
9 weapon, or to threaten the use of a weapon, and through
10 intimidation you took something that didn't belong to you
11 from the person in whose custody it was. I come to your
12 house and stick a gun in your face, I take your stuff, I
13 armed-robbed you, or a weapon, or a stick, or anything. In
14 this case, it's a gun or a semblance of a gun.

15 Mr. Corrado told you he had training with the store he
16 worked at to recognize people that robbed the store. He had
17 to go through training for that. He was working the night
18 shift at the Kangaroo store. He saw who robbed him.

19 He told you he had several minutes, several minutes to
20 watch Michael Tompai come in from the wrong side of the
21 store, watched him come in from the wrong side of the store
22 from the woods, walked into the store, go to the bathroom,
23 come back out of the bathroom, walk out the front door, back
24 toward the woods, turn around and come directly back in and
25 stick a gun in his face and take money and cigarettes.

CLOSING STATEMENT FOR THE STATE (HUCKS)

1 That's a robbery, folks. That's what it is. He told
2 you that fifteen or seventeen days later when the police
3 showed up with that line-up, that man's face was still fresh
4 in his mind, because that's the man that he watched for
5 several minutes and who stuck a gun in his face and took what
6 he was in charge of, the stuff that was in his custody and
7 his control, through violence and intimidation.

8 You heard officers get up here and testify, a lot of
9 them, and they told you how this line-up came about. You
10 heard the Sheriff's deputy get up, Wayne get up and tell you
11 I went through -- I pulled up six thousand or fifty-nine
12 hundred pictures.

13 He was pretty adamant about fifty-nine hundred, and I
14 pulled up fifty-nine hundred pictures and I went through over
15 six hundred of them, and I looked through and I tried to find
16 folks with similar hairstyles, close facial features, and I
17 sent it to Detective Cox, who sent it on down the line until
18 it got to Mr. Corrado.

19 You heard that Mr. Corrado took less than one minute,
20 less than one minute to look at this thing and pick out the
21 face that was etched in his mind after having a gun shoved in
22 his face. Mr. Corrado signed off on it one hundred percent
23 sure this is the man who stuck a gun in my face and took what
24 was in my custody and control.

25 Another neat element of this case, it's very interesting

CLOSING STATEMENT FOR THE STATE (HUCKS)

1 to me as a lawyer, is police work. If you'll think about it,
2 stop and think about it just a minute, you'll think there's
3 some pretty serious police work going on in this case. It
4 seems like it's kind of jumbled up when I call these
5 witnesses up and get them to say stuff, but if you'll think
6 about it, what did you have?

7 You heard from all those officers. You had a robbery, a
8 short, skinny white guy, hair in his face, wearing a hoodie.
9 You then heard that Officer Ridgeway, the lady who testified
10 yesterday, she tells you, well, I knew that guy. He lives
11 right down the road. He lives a mile away. That sounds
12 awful like -- an awful lot like the Defendant, so think about
13 how she said she knew him.

14 She went to a dispute, a civil dispute, between
15 roommates where the Defendant didn't have the money to pay
16 his rent a few weeks before. He doesn't have the money to
17 pay his rent. He's fighting with his roommate, and what
18 subject of conversation comes up? What does she say? She
19 said armed robbery came up, and that was enough to put her --
20 put him in her mind, and when weeks later a be-on-the-
21 lookout, a BOLO comes out, looking for an armed robber who
22 matches his physical description that robbed the store right
23 down the road from his house, it piques her interest.

24 She talks to her partner or her boss, Officer Boggs, who
25 then gets on the horn with Detective Cox, who then goes to

CLOSING STATEMENT FOR THE STATE (HUCKS)

1 Detective Wilson that put him in a line-up, just one suspect,
2 just one in the whole case, one lead and one suspect, and lo
3 and behold, who gets picked out of this line-up? The one
4 person who is a suspect in the case.

5 Now, if you'll look at this line-up, you'll see
6 something. What does it show? Does it show how tall he is,
7 show how much he weighs? Does it show his physical stature?
8 No, not at all. It shows his face. That's all it shows. It
9 shows these fellows' faces.

10 Now, if you'll think about it for just a minute, Mr.
11 Corrado gives a description to the police of a short, skinny
12 white fellow, right? He gives a more descrip- -- you know, a
13 more detailed description, but for purposes of what I'm
14 trying to get at, not only does his face match, his physical
15 description matches. He's the guy. There's no way around
16 it.

17 Either he's the guy or all the stars in the sky aligned
18 and lightning struck this guy. There's an old saying. My
19 grandma used to say it, that one circumstance is bad luck,
20 right? Two circumstances is really bad luck. When you've
21 got three circumstances, you've got a pattern, and for
22 purposes of the legal system, when you've got four, or five,
23 or six circumstances that match up, you're guilty, that's
24 why. You don't get there by accident.

25 After a while, the circumstances add up. The Judge is

CLOSING STATEMENT FOR THE STATE (HUCKS)

1 going to tell you the difference in direct evidence and
2 circumstantial evidence. Direct evidence is stuff you can
3 hold, stuff you can see. This line-up is direct evidence. A
4 fingerprint would be a piece of direct evidence.

5 Then you have circumstantial evidence. The old saying
6 for circumstantial evidence is you come out of the house and
7 there's some raindrops on your windshield. You realize we
8 got a little drizzle last night, right? You know it
9 drizzled. You don't have to see the rain falling to know
10 that the drizzle got on top of your car. You know that the
11 dew fell on your car because you've got a couple of drops on
12 your car. And those are the circumstances I'm talking about.

13 Let's think just a little bit about all of the
14 circumstances. Think about it. You really have two separate
15 identifications or really three separate identifications of
16 this Defendant by Mr. Corrado. You have his face from the
17 line-up. You have his build from the description. It just
18 so happens the face matches the build, right? That's two
19 circumstances. Then the guy lived in the neighborhood, which
20 is three circumstances.

21 Then you have him talking to a policeman about an armed
22 robbery a month or so before this happened, four
23 circumstances. Five circumstances, he needs money. He
24 obviously needs money. He can't pay his rent. I'm out of
25 figures. I mean, how many circumstances are there? There's

CLOSING STATEMENT FOR THE STATE (HUCKS)

1 a pile.

2 When you start dissecting this thing, and think about it
3 critically, I want you to think about it critically, because
4 that's your job. You're the finders of facts. Think about
5 it, because only your critical thinking has got to be where
6 justice comes from. He's the guy that did it, folks, did it.
7 It's time for him to be accountable for this.

8 Now, you heard a little bit about -- when Detective Cox
9 was on the stand, you heard Mr. Floyd ask him a few things
10 about a search warrant. He went and served a search warrant
11 on this man's house. He didn't find anything related to the
12 crime.

13 Several weeks later, after an armed robbery that a man
14 committed, where they got cigarettes and money, they didn't
15 find any cigarettes and money in his house. They didn't find
16 a gun and the shorts because what self-respecting armed
17 robber would keep the money and the shorts -- I mean, keep
18 the gun and the shorts, right? I mean, that's a pretty
19 futile argument.

20 But if we think about it just a little bit, it all lines
21 up. After a while the scale is pegged, folks. When you get
22 four, five, six, seven circumstances that match, not just
23 that, the face, Richard Corrado sitting up here and pointing
24 his finger at that man and saying that's the man that robbed
25 me, it's not by accident. It's because he robbed him. He

CLOSING STATEMENT FOR THE STATE (HUCKS)

1 committed a robbery. He committed a crime.

2 And your duty is to justice and to truth and to
3 basically try this case. When you get back there, there's
4 only one verdict that's going to speak the truth and that's
5 to find him guilty, to hold him responsible for the action
6 that he has committed and that the State has proven he has
7 committed, and that good police work and honest observation
8 have proven that he committed it.

9 I'm not going to ask you to trust me on this one.
10 Lawyers come up here and talk to y'all and they try to get
11 you to trust them. I don't want you to trust me. I'm a
12 lawyer, right? What I want you to do is think real hard,
13 dissect this thing one piece at a time and trust you because
14 you are the finders of the facts, and you are the one that
15 can cut through all the smoke and all the mirrors, or all the
16 whatever.

17 And think about the testimony, think about the evidence,
18 think about the man that lives three-quarters of a mile from
19 the place who matches the physical description, whose face
20 matches and whose body matches, and who talks to the police
21 about armed robbery. Think about that, dissect that and put
22 it together.

23 Treat it like building blocks. Build your walk out of
24 it, because at the end of the day, the reasonable doubt
25 standard is a standard that leaves you firmly convinced. Are

CLOSING STATEMENT FOR THE STATE (HUCKS)
CLOSING STATEMENT FOR THE DEFENDANT (FLOYD)

1 you firmly convinced that this man did it? He did it. The
2 evidence shows he did it. The circumstances show he did it,
3 but the rest -- and the circumstantial evidence shows that it
4 is him.

5 Mr. Corrado didn't pick him out of that line-up
6 accidentally. He didn't say which one of these fellows is
7 short and skinny. He couldn't tell which ones are short and
8 skinny. But what he did is tell the truth. He got up there,
9 he swore to take an oath and tell the truth, he told it, and
10 now it's your turn. Go back in the jury room and speak the
11 truth.

12 Come back out with a verdict that's true, and that is
13 just, and that is honest, and that's all I can ask you to do
14 as a prosecutor, and that's all this cat over here deserves
15 is the truth, so come back and speak the truth and find him
16 guilty because he did it. Thank you.

17 **THE COURT:** Mr. Floyd.

18 **MR. FLOYD:** May it please the Court.

19 The truth is what we're here for and to look at crooked
20 lines and mistakes, and we're going to start off with Officer
21 Ridgeway, I believe is her name, who responded to a civil
22 dispute over money between Mr. Tompai and his roommate.

23 Now, I disagree. Y'all heard the testimony. If I say
24 something wrong, don't listen to me. Trust your own ears
25 from right there. I thought she said it was the roommate,

CLOSING STATEMENT FOR THE DEFENDANT (FLOYD)

1 but I don't know. I know that she responded to Michael
2 Tompai's house. I know a search warrant was served on
3 Michael Tompai's house, so the roommate, but it was a
4 disagreement over money, several weeks, up to six weeks,
5 couldn't exactly peg it down, because it wasn't even
6 important enough for her to bring the police report. Six
7 weeks prior, a disagreement over money.

8 Now, he lives about a mile, three-quarters. He's way
9 down here. It's up here. The Intracoastal Waterway is
10 between. That was what got him involved in this case, those
11 two things.

12 Now, I told you at the start of the trial, gave it up,
13 Mr. Corrado -- Mr. Corrado picked Mike's picture out of a
14 line-up, a six-picture line-up, but that there was absolutely
15 no evidence beyond that linking Mike to the Kangaroo or to
16 that robbery, and there hadn't been.

17 Now, the search warrant, it wasn't just that he didn't
18 find cigarettes, and money, and a gun. He didn't find a red
19 hoodie with a marking on the front. That's what Officer
20 Cusick testified to. He didn't find blue plaid shorts, and
21 he didn't find blue shoes. He found nothing that matched
22 that individual that night at the Kangaroo store. That was
23 what he saw on the video from the store that night, the
24 magical video that disappeared.

25 Now, let's get back to Mr. Corrado. He sat up here.

CLOSING STATEMENT FOR THE DEFENDANT (FLOYD)

1 Mr. Corrado, you aren't working at Kangaroo anymore. Why
2 not? That's a disagreement. I don't want to talk about it.
3 That's a conflict of interest. Those were his words from
4 right there.

5 Let's talk about six to eight minutes. Those were his
6 words up there, the time that he had to observe this person
7 in the store while this person walked in the door directly to
8 a bathroom, walked directly out of the store, walked directly
9 back in, demanded money, left. Six to eight minutes? I
10 didn't hear him talking about any kind of conversation they
11 had. Was he mistaken about the time?

12 Now, let's talk about the iden- -- or the I.D. that he
13 gave that particular night, six (sic), four, a hundred and
14 twenty-five pounds, brown hair. Now, after being trained,
15 that seems to be a very generic identification. But then --
16 well, in there, well, he looks kind of brown hair, but
17 anyway, that's for you to decide.

18 Was he mistaken about the I.D. that he gave to the
19 police that night, that very night, the second that it
20 happened? Was he mistaken about that? Was he mistaken about
21 the brown hair?

22 So now we come up with the line-up, which he after three
23 weeks -- we've got two mistakes now after -- well, three if
24 you count the time -- he picks out somebody with black hair.
25 Has he been mistaken again? That's the issue. He's been

CLOSING STATEMENT FOR THE DEFENDANT (FLOYD)

1 mistaken somewhere along the line. Was he mistaken again
2 after three weeks? That's why a photo line-up and
3 identification is evidence in a case, but it doesn't slam the
4 door.

5 You look for things that are tied in. You look for
6 something that will show more than that, because you heard
7 thousands of hits from the database that he could have put in
8 that photo line-up.

9 He picked Number 6, but was he mistaken? Was he
10 mistaken about the time that elapsed that night? Was he
11 mistaken about the brown hair that night? And was he
12 mistaken when he initialed right there?

13 Because Officer Cusick testified that he's the only
14 person that saw that video before it magically disappeared.
15 He didn't testify it was six to eight minutes. He actually
16 -- I don't believe he even gave the time. He just said I
17 observed his kind of clothing. I said at the start of this
18 case that they're wrong about Michael Tompai being at the
19 Kangaroo store that night. There's no straight line here,
20 none at all. It criss-crosses.

21 The Judge is going to charge you on the law on photo
22 line-up and what is a standard of proof, and again, we're
23 standing here before you and the burden of proof is not just
24 on that photo line-up, but on the whole case here, on the
25 whole charge.

CLOSING STATEMENT FOR THE DEFENDANT (FLOYD)

1 It's on the State of South Carolina to prove beyond a
2 reasonable doubt, that Michael Tompai at the start of the
3 trial says I didn't do it, I'm not guilty. I was never at
4 the Kangaroo. I was never at the Kangaroo that night.

5 Now, and again, Mr. Corrado, he doesn't know Michael
6 Tompai, according to him never seen him before in his life,
7 and we go back to just a fleeting moment in the store, I.D.s
8 that don't match, time frames that don't match, and three
9 weeks later he comes in, and says no question, and does it
10 that quick. Does anything else add up, anything else to put
11 Michael Tompai at that Kangaroo store? Nothing. One piece
12 of clothing, a shoe? No, not one other thing.

13 I believe that's about everything. It looks like
14 everything I have written down. This trial was fast, and as
15 I told you yesterday afternoon when we started what it was
16 going to be about. And you have to firmly believe Corrado
17 after his testimony, after his time frame, after his original
18 identification.

19 People can be wrong. The mind is a wonderful thing, and
20 as much as I hate to admit it, I've been wrong, but I believe
21 Mr. Corrado is wrong. I know he was basically telling you
22 certain things from that witness stand. I know that six to
23 eight minutes didn't pass, and he had been wrong again
24 because there's absolutely no other evidence. This is scary,
25 no other evidence, even remotely, that Michael Tompai, --

CLOSING STATEMENT FOR THE DEFENDANT (FLOYD)
CHARGE BY THE COURT

1 none.

2 I ask you to return a verdict that speaks the truth,
3 that speaks it very loudly, not guilty. Thank you.

4 **THE COURT:** Thank you, Mr. Floyd.

5 Ladies and gentlemen of the jury, I am about to charge
6 you on the law. I do something that is a little different
7 from most Judges. In fact, I don't know any other Judge that
8 does it.

9 I understand how complex the law can be, and we bring
10 you here from your daily routines and we expect you to
11 understand everything that we tell you, and most Judges
12 expect you to absorb the law and apply the law as they read
13 it to you one time at the end of the trial.

14 I have a policy, and have for many years, of making a
15 transcript in advance of my charge, and I will give you that
16 transcript for your use during your deliberations. It will
17 be a verbatim transcript of the charge that I am about to
18 give you, and hopefully that will assist you in your
19 deliberations, but that doesn't mean you don't have to listen
20 while I am instructing you on the law.

21 I remind you that during this trial you and I have
22 certain duties to perform, and as the Trial Judge, it is my
23 duty and responsibility to preside over the trial of this
24 case, and I also have the duty to rule on the admissibility
25 of the evidence offered during the trial. You are to

CHARGE BY THE COURT

1 consider only the competent evidence before you.

2 If there was any testimony ordered stricken from the
3 record in this case during this trial, you must disregard
4 that testimony. You are to consider only the testimony which
5 has been presented to you from this witness stand, any
6 exhibits which may have been made a part of the record in
7 this case, and any stipulations or agreements of counsel.

8 I have the additional duty to charge you the law
9 applicable to this case. As Presiding Judge, I am the sole
10 judge of the law of this case, and it is your duty as jurors
11 to accept and apply the law as I now state it to you.

12 If you already have any ideas to what the law is or what
13 the law ought to be and it does not agree with what I now
14 tell you the law is, you must abandon this idea because you
15 were sworn to accept the law and apply the law exactly as I
16 state it to you.

17 In every case tried in this Court before a jury, the
18 jury becomes the sole and exclusive judge of the facts in the
19 case. A trial judge cannot intimate, state, comment on, or
20 make any statement to a trial jury about the facts in a case.

21 Since you, the jury, are the sole judges of the facts in
22 this case, you are not to infer from what I have said during
23 the progress of this trial in ruling on the admissibility of
24 the evidence or otherwise, or anything that I say now during
25 the course of this instruction to you that I have any opinion

CHARGE BY THE COURT

1 about the facts in this case. The law does not allow me to
2 have an opinion about the facts in the case.

3 This is a matter solely for you, the jury, to determine.
4 As jurors, it is your duty to determine the effect, the
5 value, weight, and truth of the evidence presented during the
6 trial.

7 The indictment charges the Defendant with armed robbery.
8 I remind you that the fact that the Defendant was arrested,
9 charged, and indicted in this case is not evidence in the
10 case and cannot be considered by you as evidence of guilt in
11 this case, nor does it create any presumption or inference of
12 guilt.

13 These documents, or this document, is simply the formal
14 written instrument which contains the charges made against
15 the Defendant. They are -- or it is the formal document by
16 which the case is brought into the Court.

17 The Defendant has pled not guilty to this indictment,
18 and that plea puts the burden on the State to prove the
19 Defendant guilty. A person charged with committing a crime
20 -- a criminal offense in South Carolina is never required to
21 prove himself innocent.

22 I charge you that it is an important rule of law that
23 the defendant in a criminal case, no matter what the
24 seriousness of the charge may be, will always be presumed to
25 be innocent of the crime for which the indictment was issued

CHARGE BY THE COURT

1 unless guilt has been proved by evidence satisfying you of
2 that guilt beyond a reasonable doubt.

3 This presumption of innocence does not end when you
4 begin your deliberations, but it accompanies the Defendant
5 throughout the trial until you reach a verdict of guilt based
6 on the evidence satisfying you of that guilt beyond a
7 reasonable doubt.

8 The presumption of innocence is like a robe of
9 righteousness placed about the shoulders of the Defendant
10 which remains with the Defendant until it has been stripped
11 from the Defendant by evidence satisfying you of the
12 Defendant's guilt beyond a reasonable doubt.

13 The presumption of innocence is not mere theory, not
14 mere legal theory. It is not just a legal phrase. It is a
15 substantial right to which every Defendant is entitled unless
16 you, the jury, are satisfied from the evidence of the
17 Defendant's guilt beyond a reasonable doubt.

18 Reasonable doubt. The State has the burden of proving
19 the Defendant, like I have said, guilty beyond a reasonable
20 doubt.

21 Some of you may have served as jurors in civil cases
22 where you were told that it's only necessary to prove that a
23 fact is more likely true than not true, such as by the
24 greater weight or preponderance of the evidence.

25 In criminal cases, the State's burden of proof must be

CHARGE BY THE COURT

1 more powerful than that. It must be beyond a reasonable
2 doubt. Proof beyond a reasonable doubt is proof that leaves
3 you firmly convinced of the Defendant's guilt.

4 There are very few things in this world that we know
5 with absolute certainty, and in criminal cases the law does
6 not require proof that overcomes every possible doubt. If,
7 based on your consideration of the evidence, you are firmly
8 convinced that the Defendant is guilty of the crime charged,
9 you must find the Defendant guilty.

10 If, on the other hand, you think there is a real
11 possibility that the Defendant is not guilty, you must give
12 the Defendant the benefit of that doubt and find him not
13 guilty.

14 What is a reasonable doubt in the law? A reasonable
15 doubt is the kind of doubt that would cause a reasonable
16 person to hesitate to act.

17 Now, there are two types of evidence which are generally
18 presented during a trial, direct evidence and circumstantial
19 evidence. Direct evidence is the testimony of a person who
20 claims to have actual knowledge of a fact, such as an eye
21 witness. It is evidence which immediately establishes the
22 main fact to be proved.

23 Circumstantial evidence is proof of a chain of facts and
24 circumstances indicating the existence of a fact. It is
25 evidence which immediately establishes collateral facts from

CHARGE BY THE COURT

1 which the main fact may be inferred.

2 Circumstantial evidence is based on inference and not on
3 personal knowledge or observation. The law makes absolutely
4 no distinction between the weight or value to be given to
5 either direct or circumstantial evidence, nor is a greater
6 degree of certainty required of circumstantial evidence than
7 of direct evidence.

8 You should weigh all the evidence in the case. After
9 weighing all the evidence, if you are not convinced of the
10 guilt of the Defendant beyond a reasonable doubt, you must
11 find the Defendant not guilty.

12 Necessarily, you must determine the credibility of
13 witnesses that have testified in this case. Credibility
14 simply means believability. It becomes your duty as jurors
15 to analyze and to evaluate the evidence and determine which
16 evidence convinces you of its truth.

17 In determining the believability of witnesses who have
18 testified in this case, you may believe one witness over
19 several witnesses, several witnesses over one witness. You
20 may believe a part of the testimony of a witness and reject
21 the remaining part of the testimony of that same witness.

22 You may believe the testimony of a witness in its
23 entirety or you may reject the testimony of a witness in its
24 entirety. You may consider whether any witness has exhibited
25 to you any interest, prejudice, bias, or other motive in the

CHARGE BY THE COURT

1 case. You may also consider the appearance and manner of a
2 witness while on the witness stand.

3 As you have been informed, the Defendant is charged with
4 armed robbery. In order to prove this offense, the State
5 must first prove beyond a reasonable doubt that the Defendant
6 took personal property from the person or presence of
7 another.

8 Property is in the presence of a person if it is within
9 the person's reach, inspection, observation, or control so
10 that the person could, if not overcome with violence or
11 prevented by fear, keep possession of the property.

12 The State must also prove beyond a reasonable doubt that
13 the Defendant carried the property away intending to
14 permanently deprive the owner of the property and to keep the
15 property from the Defendant -- for the Defendant's own use.

16 The slightest removal of the property or the complete
17 possession of the property, even for an instant, by the
18 Defendant is sufficient to show a taking and carrying away of
19 the property. The taking and carrying away of the property
20 must have been done with violence or by putting the owner of
21 the property in fear of violence.

22 Finally, the State must prove beyond a reasonable doubt
23 that the Defendant was armed with a deadly weapon during the
24 robbery or while alleging either by action or words that he
25 was armed while using a representation of a deadly weapon or

CHARGE BY THE COURT

1 any object which the person present -- which a person present
2 during the commission of the robbery reasonably believed to
3 be a deadly weapon.

4 Put another way, the State must prove beyond a
5 reasonable doubt that during the robbery the Defendant was
6 either armed with a deadly weapon or was in possession of an
7 object which he alleged by words or action to be a deadly
8 weapon and which the victim reasonably believed to have been
9 a deadly weapon. However, words alone are not sufficient to
10 establish the Defendant was armed with a deadly weapon.

11 The State must show evidence corroborating the
12 allegation of being armed, for example, the use of a
13 physical representation of a deadly weapon to establish armed
14 robbery.

15 A deadly weapon is any article, instrument, or substance
16 which is likely to cause death or great bodily harm. Whether
17 an instrument has been used as a deadly weapon depends on the
18 facts and circumstances of each case.

19 The following are examples of instruments which may be
20 deadly weapons, a pistol, a shotgun, a rifle, a dirk, a
21 dagger, a knife, a slingshot, metal knuckles, a razor,
22 gasoline, a fire bomb, a Molotov cocktail, and lighter fluid.
23 A gun may be a deadly weapon even if it is not operating.

24 An issue in this case is the identification of the
25 Defendant as the person who committed the crime charged. The

CHARGE BY THE COURT

1 State has the burden of proving identity beyond a reasonable
2 doubt. You must be satisfied beyond a reasonable doubt of
3 the accuracy of the identification of the Defendant before
4 you may convict the Defendant.

5 Identification testimony is an expression, or belief, or
6 impression by a witness. You must determine the accuracy of
7 the identification of the Defendant. You must consider the
8 believability of each identification witness in the same way
9 as any other witness.

10 You may consider whether the witness had an adequate
11 opportunity to observe the offender at the time of the
12 offense. This will be affected by things like how long or
13 short a time was available, how far or close the Defendant
14 was to the witness, the lighting conditions, and whether the
15 witness had the chance to see or know the person in the past.

16 Once again, I instruct you the burden of proof is on the
17 -- on the State, extends to every element of the crime
18 charged, and this is specific -- and this specifically
19 includes the burden of proving beyond a reasonable doubt the
20 identity of the Defendant as the person who committed the
21 crime. If after examining the testimony you have a
22 reasonable doubt as to the accuracy of the identification,
23 you must find the Defendant not guilty.

24 I instruct you and emphasize that the fact that the
25 Defendant did not testify is not a factor to be considered by

CHARGE BY THE COURT

1 you in any way in your deliberation and in your consideration
2 on the question of guilt or innocence of the Defendant. It
3 must not be considered by you in any manner whatsoever.

4 A Defendant has the constitutional right to remain
5 silent and the assertion of this right must not be considered
6 by you in your deliberations. I repeat, under your oath you
7 are to draw no conclusion whatsoever from the fact that the
8 Defendant in this case did not testify.

9 The fact that the Defendant did not testify should not
10 even be discussed in the jury room. The burden of proof, as
11 I have stated to you, is on the State, and the Defendant is
12 not required to prove his innocence. The burden of proof
13 remains on the State to prove guilt beyond a reasonable
14 doubt.

15 Now, there are two possible jury verdicts which you may
16 find on each indictment -- or on the indictment in this case,
17 guilty or not guilty. There is no significance whatsoever in
18 the order in which I have stated these possible verdicts. It
19 simply means that one must be stated first, one before the
20 other.

21 Ladies and gentlemen, your verdict must be a unanimous
22 verdict. Mr. Foreperson, when the jury agrees on a verdict,
23 I want you to write the verdict on the verdict form and sign
24 your name as the foreperson. Then knock on the jury room
25 door and inform the Bailiff that you have reached a verdict.

CHARGE BY THE COURT
JURY OUT/ON RECORD

1 At that time, we'll receive you back in the courtroom.

2 Now, I'm going to ask that you return to your jury room,
3 but do not begin your deliberations until you are told to do
4 so by either the Clerk or the Bailiff.

5 I might bring you back out and supplement these
6 instructions. If I do that, I will give you further
7 instructions as to when you are to begin your deliberations,
8 but if further instructions are not needed, what I will do is
9 I will send in the exhibits that have been introduced in this
10 case, with a copy or a transcript of my charge that I have
11 just given to you, and your verdict form. If I send these in
12 to you, that is your signal to begin your deliberations.

13 Mr. Rock, if you would, take the jury to the jury room.

14 (AT 10:40 A.M., THE FOLLOWING TAKES PLACE OUTSIDE THE
15 PRESENCE OF THE JURY.)

16 THE COURT: Mr. Floyd, any additions or deletions?

17 MR. FLOYD: No, sir, Judge.

18 THE COURT: Mr. Hucks?

19 MR. HUCKS: No, sir.

20 THE COURT: Okay. If you would, gentlemen, come down
21 and get together your exhibits. Make sure we have all the
22 exhibits that are marked and introduced.

23 (AT THIS TIME THE EXHIBITS WERE REVIEWED AMONG THE COURT
24 REPORTER AND COUNSEL FOR THE STATE AND COUNSEL FOR THE
25 DEFENSE. THE EXHIBITS WERE APPROVED BY ALL.)

JURY OUT/ON RECORD

1 (AT 10:45 A.M., THE EXHIBITS, THE JURY CHARGE, AND THE
2 VERDICT FORM WERE THEN TAKEN TO THE JURY ROOM BY THE
3 BAILIFF.)

4 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
5 JURY.)

6 THE COURT: Dixie, if you would, mark the jury
7 instruction as Court's 1.

8 (JURY CHARGE BY THE COURT IS MARKED AS COURT'S EXHIBIT
9 NUMBER 1.)

10 (JURY DELIBERATING.)

11 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
12 JURY.)

13 THE COURT: Okay. We've got a note that says where was
14 Corrado when he witnessed the Defendant coming out of the
15 woods. What I intend to do is to write on this note, send it
16 back, that they may only consider the evidence and reasonable
17 inferences drawn from the same, okay?

18 MR. HUCKS: Yes sir.

19 THE COURT: You may consider only the evidence
20 presented during the trial and the reasonable inferences that
21 may be drawn from the same. Okay?

22 MR. HUCKS: Yes sir.

23 THE COURT: Let's mark it, Dixie, and we will have Sam
24 take it back to them.

25 THE REPORTER: Court's Number 2.

JURY OUT/ON RECORD/JURY IN
COURT TO JURY

1 **(NOTE FROM JURY AND RESPONSE BY THE COURT MARKED AS**
2 **COURT'S EXHIBIT NUMBER 2.)**

3 **THE COURT:** Thank you.

4 Sam, would you take that and give it to the foreperson.

5 All right. We are at ease again.

6 (JURY DELIBERATING.)

7 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
8 **JURY.)**

9 **THE COURT:** Mr. Foreman, ladies and gentlemen, I have
10 your questions, and, of course, you're asking could we --
11 could I please clarify reasonable doubt to you, and let me
12 tell you, that is a term of the law of this country that has
13 often given jurors, judges, and attorneys great difficulty in
14 understanding and coming to terms with. Let me just rephrase
15 the instruction that I have given you and perhaps that will
16 help you.

17 In this courtroom, we have two levels of proof that are
18 customarily encountered. One is like in a civil trial, and
19 we call that proof by a preponderance of the evidence. If
20 this was a dispute between individuals over money or
21 something of that nature, the moving party, or the Plaintiff,
22 would only have to prove his case by what we call a
23 preponderance of the evidence.

24 And oftentimes when we have a civil jury, we'll give an
25 illustration of the scales of justice and we will say the

COURT TO JURY

1 scales are even when the parties come into Court, and you put
2 each party's evidence on the scale and the Plaintiff must tip
3 those scales ever so lightly, fifty-one percent, just a tiny
4 bit in its favor, and that makes the question resolve itself
5 in favor of the Plaintiff.

6 The Plaintiff has proved by a preponderance of the
7 evidence or he has proved that something is just slightly
8 more likely true than not true, and that's all they have to
9 do.

10 But in the criminal courts, the degree of proof is much
11 greater than that, much heavier, as I told you earlier. The
12 State has the burden of proving the Defendant is guilty by a
13 preponderance of the evidence. Again, that is a much
14 stronger burden. It's much more that they have to prove.

15 They don't have to prove that beyond any possible doubt.
16 We could doubt that the sun is going to come up tomorrow
17 morning, but that would not be a reasonable doubt. It would
18 not be one based on reason that any reasonable person would
19 entertain. That's just not going to happen.

20 What we describe as a reasonable doubt is one which
21 would cause a reasonable person, a person in his normal
22 dealings in life, to hesitate to act, to have some hesitancy.
23 A reasonable doubt is a doubt that leaves you firmly
24 convinced that you have reached the right conclusion, and the
25 State must get you to that point, that point that you don't

COURT TO JURY

1 have any conviction at all that the Defendant is not guilty.
2 As long as you have some doubt based in reason that the
3 Defendant is not guilty, you must return a verdict of not
4 guilty.

5 But if you are firmly convinced in your mind, or if you
6 are satisfied that you have reached a verdict that goes
7 beyond any reasonable doubt that the Defendant may not be
8 guilty, then you should return a verdict that says this
9 Defendant is guilty.

10 I don't know how to explain it any better to you. Those
11 are the terms that our courts have adopted, the one being
12 hesitancy to act and being firmly convinced. Those are the
13 terms that we associate with reasonable doubt and being able
14 to determine whether or not we have reached a point where the
15 State has proven guilt beyond a reasonable doubt or if they
16 have failed in that burden.

17 You know, I wish that instead of using the verdicts
18 guilty or not guilty, we do it by tradition, but I wish that
19 instead of that, that we would use in our criminal courts the
20 verdicts of proven or not proven, because I think that would
21 help jurors understand what they are doing.

22 What you are asked to do as a juror is to do just that,
23 to determine whether or not the State has proven guilt beyond
24 a reasonable doubt or if they have fallen short of that, and
25 I think if you kind of think of the verdicts of guilty and

COURT TO JURY/JURY OUT

1 not guilty and the terms of proven and not proven, it will
2 help you to get through this.

3 Now, I also have a question here which says what happens
4 if a jury is hung. Do you feel, Mr. Foreperson, that you are
5 hung at this point in time?

6 **THE FOREMAN:** Not at this point, no.

7 **THE COURT:** Okay. If you become hung, I will give you
8 a charge, what we call an Allen charge. That's a little
9 further instruction as to what you should do if you become
10 hung.

11 Let me just tell you as simplistically as I can. If
12 this jury should become hung, you've asked me what would
13 happen. What would happen is this case would just be tried
14 before twelve other people. They would hear the same
15 witnesses. They would have the same lawyers. They might
16 have me or some other Judge, but they would have someone
17 presiding over it, and they would hear the same testimony,
18 the same evidence that they've heard in this case, and twelve
19 more people would have to go through this same thing again.
20 That's what happens if a jury is hung, okay?

21 Now, if you become hung, you think you're hung, let me
22 know and I will give you an Allen charge, okay?

23 **THE FOREMAN:** Okay. Thank you, Your Honor.

24 **THE COURT:** Take the jury back to their jury room.

25 **(AT 2:10 P.M., THE FOLLOWING TAKES PLACE OUTSIDE THE**

JURY OUT/ON RECORD
JURY IN/COURT TO JURY

1 **PRESENCE OF THE JURY.)**

2 **THE COURT:** Anything further, Mr. Floyd?

3 **MR. FLOYD:** Judge, after you moved on in explaining
4 civil and preponderance of the evidence, when you went into
5 explaining criminal, you referred to it again at that point
6 as a preponderance of the evidence, not as beyond a
7 reasonable doubt, at the very start after you left the civil
8 and started explaining the criminal.

9 **THE COURT:** Okay. I didn't recall that.

10 **MR. HUCKS:** You did say that, Judge, and then you fixed
11 it a little further down.

12 **THE COURT:** Well, let's bring them back in for just a
13 minute.

14 **(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE JURY.)**

15 **THE COURT:** And I hate to keep bringing you back and
16 forth, but I asked the attorneys if they had any problem with
17 the additional charge I gave you, and they reminded me, both
18 of them, that after I explained to you how reasonable doubt
19 is used in civil trials, I went into criminal trials and
20 explaining how reasonable doubt was used there instead of --
21 or beyond a reasonable doubt rather than preponderance of the
22 evidence, and then I used the term preponderance of the
23 evidence once when I was doing that. I didn't mean to.

24 I want you to be very, very clear this is a criminal
25 case. This case requires for a conviction a finding by you

COURT TO JURY
JURY OUT/ON RECORD
JURY IN/VERDICT

147

1 that the State has met its burden of proof beyond a
2 reasonable doubt that the Defendant is guilty of this charge.
3 If it has not, if it has not proven its case beyond a
4 reasonable doubt, he's entitled to a verdict of not guilty.

5 Mr. Floyd?

6 **MR. FLOYD:** Yes sir.

7 **THE COURT:** All right. Thank you.

8 **MR. HUCKS:** Thank you, Your Honor.

9 **THE COURT:** Dixie, would you mark this.

10 **(NOTE FROM JURY MARKED AS COURT'S EXHIBIT NUMBER 3.)**

11 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
12 **JURY.)**

13 **THE COURT:** Okay. Very good. Bring them in.

14 **(AT 3:00 P.M., THE FOLLOWING TAKES PLACE IN THE PRESENCE**
15 **OF THE JURY.)**

16 **THE COURT:** All right. Mr. Foreperson, have you
17 reached a verdict?

18 **THE FOREMAN:** We have, Your Honor.

19 **THE COURT:** And was it a unanimous verdict?

20 **THE FOREMAN:** It was.

21 **THE COURT:** All right.

22 Madam Clerk, if you would, take the verdict.

23 All right. Madam Clerk, would you please publish the
24 verdict.

25 **THE DEPUTY CLERK:** Indictment Number 2013-GS-26-287,

VERDICT
POLLING OF THE JURY

1 State of South Carolina, County of Horry, versus Michael John
2 Tompai, as to the charge of armed robbery, we, the jury,
3 unanimously find the Defendant guilty. Dated June 11, 2013.
4 Signed by Foreperson, Jason Pippin.

5 Ladies and gentlemen of the jury, if this is your
6 verdict, so signify by raising your right hand.

7 **THE COURT:** May the record reflect that each juror has
8 responded affirmatively.

9 Mr. Floyd, would there be a request for a individual
10 voir dire ---

11 **MR. FLOYD:** I would request polling, Judge.

12 **THE COURT:** --- or individual polling?
13 Individually poll, please.

14 **THE DEPUTY CLERK:** Okay.

15 When I call your juror number, if you will please stand.
16 Juror Number 253. Is this your verdict?

17 **JUROR NUMBER 253:** Yes Ma'am.

18 **THE DEPUTY CLERK:** Is it still your verdict?

19 **JUROR NUMBER 253:** Yes Ma'am.

20 **THE DEPUTY CLERK:** Thank you.

21 251, Jason Pippin. Is this your verdict?

22 **JUROR NUMBER 251:** Yes Ma'am.

23 **THE DEPUTY CLERK:** Is it still your verdict?

24 **JUROR NUMBER 251:** Yes Ma'am.

25 **THE DEPUTY CLERK:** Thank you.

POLLING OF THE JURY

1 255. Is this your verdict?
2 JUROR NUMBER 255: Yes Ma'am.
3 THE DEPUTY CLERK: Is it still your verdict?
4 JUROR NUMBER 255: Yes Ma'am.
5 THE DEPUTY CLERK: Thank you.
6 152. Is this your verdict?
7 JUROR NUMBER 152: Yes Ma'am.
8 THE DEPUTY CLERK: Is it still your verdict?
9 JUROR NUMBER 152: Yes Ma'am.
10 THE DEPUTY CLERK: Thank you.
11 199. Is this your verdict?
12 JUROR NUMBER 199: Yes.
13 THE DEPUTY CLERK: Is it still your verdict?
14 JUROR NUMBER 199: Yes.
15 THE DEPUTY CLERK: Thank you.
16 120. Is this your verdict?
17 JUROR NUMBER 120: Yes.
18 THE DEPUTY CLERK: Is it still your verdict?
19 JUROR NUMBER 120: Yes.
20 THE DEPUTY CLERK: Thank you.
21 297. Is this your verdict?
22 JUROR NUMBER 297: Yes Ma'am.
23 THE DEPUTY CLERK: Is it still your verdict?
24 JUROR NUMBER 297: Yes Ma'am.
25 THE DEPUTY CLERK: Thank you.

POLLING OF THE JURY

1 241. Is this your verdict?
2 JUROR NUMBER 241: Yes, it is.
3 THE DEPUTY CLERK: Is it still your verdict?
4 JUROR NUMBER 241: Yes, it is.
5 THE DEPUTY CLERK: Thank you.
6 190. Is this your verdict?
7 JUROR NUMBER 190: Yes Ma'am.
8 THE DEPUTY CLERK: Is it still your verdict?
9 JUROR NUMBER 190: Yes Ma'am.
10 THE DEPUTY CLERK: Thank you.
11 77. Is this your verdict?
12 JUROR NUMBER 77: Yes Ma'am.
13 THE DEPUTY CLERK: Is it still your verdict?
14 JUROR NUMBER 77: Yes Ma'am.
15 THE DEPUTY CLERK: Thank you.
16 269. Is this your verdict?
17 JUROR NUMBER 269: Yes Ma'am.
18 THE DEPUTY CLERK: Is it still your verdict?
19 JUROR NUMBER 269: Yes Ma'am.
20 THE DEPUTY CLERK: Thank you.
21 233. Is this your verdict?
22 JUROR NUMBER 233: Yes Ma'am.
23 THE DEPUTY CLERK: Is it still your verdict?
24 JUROR NUMBER 233: Yes Ma'am.
25 THE DEPUTY CLERK: Thank you.

MOTIONS

1 **THE COURT:** All right. Mr. Floyd, I'll hear from you.

2 **MR. FLOYD:** Judge, Michael is twenty years old now. He
3 was nineteen years old at the time of this incident.

4 **THE COURT:** If you have any motions.

5 **MR. FLOYD:** You want me to make them now?

6 **THE COURT:** Yes.

7 **MR. FLOYD:** We would renew our motions that were made
8 at the close of the State's case, as well as the close of the
9 Defense case, in particular, we didn't feel the evidence was
10 sufficient to carry the burden, in moving for a directed
11 verdict.

12 We are moving now for a judgment notwithstanding the
13 verdict. We also would renew our motions as to the
14 photographic line-up in response to the Biggers' case, and,
15 Judge, we would also move for a new trial.

16 **THE COURT:** All right.

17 And I will hear from you, Mr. Hucks.

18 **MR. HUCKS:** Your Honor, it's the State's position that
19 the evidence is what the Court and what the jury decided,
20 that the evidence is clear and convincing, and that the State
21 has met its burden as to reasonable doubt.

22 We have twelve jurors here that were picked and which
23 were agreed upon by both sides, and we believe that the
24 verdict of the jury is a true and just verdict. We do not
25 believe that a judgment notwithstanding the verdict or a new

MOTIONS
SENTENCING PROCEEDINGS

1 trial would be appropriate in this particular matter.

2 **THE COURT:** Of course, the issue here is whether or not
3 the verdict is supported by the evidence that we have heard
4 in this case. I believe that it is. We have an eye witness
5 who was able to identify Mr. Tompai. He was very concise and
6 clear with his identification, and I think the verdict should
7 stand. I would respectfully deny your motion, Mr. Floyd.

8 Any reason why the Defendant should not be sentenced at
9 this time?

10 **MR. FLOYD:** Judge, no.

11 **THE COURT:** All right. I'll hear from you, Mr. Floyd.

12 **MR. FLOYD:** Judge, Michael is twenty years old. He was
13 nineteen when this happened. He has grown up around here,
14 attended school, was actually working two jobs when this was
15 alleged to go down.

16 His mother is standing here with him. We believe there
17 were certain -- certainly facts that needed to be tried,
18 needed to be put before this jury. We would ask Your Honor
19 to consider in sentencing his prior record. He has nothing
20 but a simple possession of marijuana.

21 **THE COURT:** All right. And, Mr. Floyd, do you agree
22 that the sentence range is no less than ten years, no more
23 than thirty?

24 **MR. FLOYD:** That is correct, sir, yes.

25 **THE COURT:** All right. I'll hear from your client or

SENTENCING PROCEEDINGS

1 his mother, if you wish.

2 **MOTHER OF MR. TOMPAI:** I'm just pleading with the Court
3 to have some lenience on him, for my son. He's always been a
4 good, upstanding boy, and always been there for me and kept
5 me from being in trouble. He's always been there for his
6 friends. Everybody that knows him know that he is a good,
7 upstanding boy, and the way this is happening is not -- is
8 almost unreal, because he was doing so good at the time. He
9 had a job. He was working.

10 Him and his roommate fight all the time because they've
11 grown up together pretty much, and I don't feel like it's
12 right that his name is put into something. There's so many
13 people out there looking alike just like him. I've got two
14 more people that look just like him in Court with me today,
15 and I feel like this is wrong.

16 **THE COURT:** Well, the jury has spoken.

17 I'll hear from you, Mr. Tompai.

18 **MR. TOMPAI:** Sir, I -- I honestly don't know how I got
19 brought into this other than what had got told over there,
20 something that was not mentioned. I don't know if it means
21 anything now, was the night of this robbery when the store
22 got robbed at 2:11, I had to be up five hours later. I would
23 have never had time. For one, I had to --there's only two
24 ways back to my house. One is across the swing bridge and
25 one is across that big bridge, and I think they would have

SENTENCING PROCEEDINGS

1 saw somebody, I mean, walking or something, wouldn't you
2 think they would have said something, at two something in the
3 morning?

4 **THE COURT:** The jury has determined that you're guilty
5 of this ---

6 **MR. TOMPAI:** I know, sir. I just -- I've never really
7 done anything bad other than when I was in school, and this
8 is really ---

9 **MOTHER OF MR. TOMPAI:** You just don't understand.

10 **THE COURT:** All right.

11 **THOMAS HAM:** Thomas Ham.

12 **THE COURT:** All right, sir.

13 **THOMAS HAM:** I -- Michael was living with me at the
14 time when this all occurred. After -- right after he was
15 locked up, there was information that was given to the police
16 department along with signed affidavits stating who the
17 actual person was, along with the location of the handgun and
18 the hoodies. All that information was supposed to have been
19 turned over to Detective Cox.

20 **THE COURT:** I haven't heard any of that in this trial,
21 Mr. Ham, and the jury has spoken.

22 **MR. HAM:** I understand that. It's just -- other than
23 that, he's been able to -- we worked from eight-thirty to six
24 Monday through Saturday, and after that, he was usually with
25 me, so I don't know -- I understand the jury has spoken, so

SENTENCING PROCEEDINGS

1 that, I doubt, is going to have any effect, but as far as
2 like financial problems, that wasn't -- the date that they
3 called -- that the one officer spoke about where we were in a
4 dispute, that was over his father. That wasn't a financial
5 issue for him, and so ...

6 **THE COURT:** All right.

7 Let me hear from the State ---

8 **MR. HUCKS:** Yes sir, Your Honor.

9 **THE COURT:** --- as to prior criminal record, anything
10 of that nature.

11 **MR. HUCKS:** Your Honor, his only prior criminal history
12 is simple possession of marijuana, but he still does have two
13 other armed robberies related to a rash of armed robberies
14 that occurred at this exact same time pending with our
15 office, where the folks involved in those armed robberies
16 picked him out of the exact same line-up that was at question
17 here today. We believe -- we ask that the Court ---

18 **THE COURT:** He was identified two other times?

19 **MR. HUCKS:** He was identified one other time, and
20 inconclusive on the other -- on the third. He was identified
21 as robbing the Turtle Market just after this by another clerk
22 at another gas station who picked him out of the exact same
23 line-up, and that charge, it is the State's intention to ask
24 Your Honor to take into consideration his ability to re-
25 offend in light of the fact that he does have multiple

SENTENCING PROCEEDINGS

1 charges pending and related to this exact same crime wave,
2 this series of armed robberies, and the minute he got
3 arrested, these armed robberies stopped happening in
4 Socastee.

5 **MR. FLOYD:** Just in response, when you mentioned the
6 Turtle Mart robbery, that was what was being referred to by
7 Mr. Ham when he came forward and provided the police with
8 information about a person they thought was involved and as
9 well as where he knew the hoodies to be, as well as the gun
10 that was used.

11 **THE COURT:** Does your client have something else to
12 say?

13 **MR. TOMPAI:** I kind of just lost my train of thought.
14 I was going to say what was just said a second ago. I'm
15 trying to think what was just said. I'm trying to get my
16 mind together. It wasn't the Turtle Mart robbery. It was
17 just -- after I was arrested, my roommate and my mom came up
18 to me and told me there was still robberies going around the
19 area.

20 **THE COURT:** I'm not concerned about any other
21 robberies, Mr. Tompai. I'm only concerned about this one ---

22 **MR. TOMPAI:** Yes sir.

23 **THE COURT:** --- and the fact that you were convicted of
24 it.

25 **MR. TOMPAI:** Yes sir.

SENTENCING PROCEEDINGS
JURY OUT

1 **THE COURT:** Now, if you want to tell me anything in
2 mitigation of your sentence, I'll be happy to hear from you.

3 **MR. TOMPAI:** I just -- I pray lenience on me, I guess,
4 I hope. I really have never been through something like this
5 before.

6 **THE COURT:** All right. Mr. Tompai, I'm going to take
7 into consideration your youth and the fact that you have a
8 very limited record, but I also have to be somewhat cognizant
9 of the fact that there's other matters pending, which I doubt
10 they'll ever be prosecuted, I don't know, or not.

11 The sentence of the Court is you be confined to the
12 State Department of Corrections for a period of seventeen
13 years.

14 Ladies and gentlemen of the jury, thank you so much for
15 your service. We cannot resolve these matters without your
16 willingness to be here.

17 Please don't forget to call in at six o'clock tonight to
18 find out if we're going to need anyone tomorrow. Thank you
19 very much.

20 All right. We are at ease for the balance of the
21 evening.

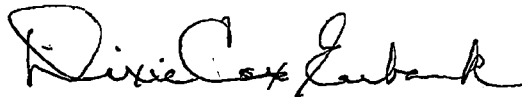
22 (Conclusion of Transcript of Record.)
23
24
25

C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 10th and 11th day of June, 2013.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

August 19, 2013


DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL TOMPAI,

APPELLANT

APPELLATE CASE NO. 2013-001319

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
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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<u>United States v. Johnson</u> , 610 F.2d 194 (4 th Cir.1979)	6

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in allowing Detective Cox to testify how he put together the photo line-up in this case because it placed appellant's character into issue by suggesting there was a mug shot of him?

STATEMENT OF THE CASE

Appellant was convicted of armed robbery after a jury trial held before the Honorable Larry B. Hyman, Jr., on June 10 – 11, 2013, in Horry County. A seventeen (17) year sentence was imposed. W. Thomas Floyd, Esquire, was trial counsel. Scott Hucks, Esquire, was the assistant solicitor.

This appeal follows.

ARGUMENT

The trial court erred in allowing Detective Cox to testify how he put together the photo line-up in this case because it placed appellant's character in issue by suggesting there was a mug shot of him.

Richard Corrado testified that he was a gas station attendant at Kangaroo Store 3063 at the end of Forestbrook and Dick Pond Road in Horry County. On September 9, 2012, he was preparing to start the cooler. He noticed a man entering the forested side of the building, which was kind of odd, so he paid attention to him. He headed directly toward the restroom. About a minute later, he walked out of the building. He re-entered moments later with a gun. He demanded that money be placed in a bag and he took a couple cartons of cigarettes. (R. 71, line 5 – R. 72, line 3). Mr. Corrado said he called the police and gave them a description of the robber. (R. 73, lines 16 – 19). He identified a photo line-up he looked at in which he picked out number six who was the appellant. (R. 74, lines 2 – 22).

Detective Cox said he was assigned to this case. He called J. Reuben Long Detention Center to their Photo I.D. Section. He testified that they can get photos at the jail or at SLED. Since the case was two weeks old, he decided to use the jail to get a photo line-up with appellant's photo. (R. 92, line 13 – R. 93, line 13).

This testimony should not have been allowed because it let the jury know that appellant had a prior record since the jail had a mug shot of him. This placed appellant's character into issue. In Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989), the Court wrote:

In a criminal case, the State cannot attack the character of the defendant unless the defendant herself first places her character in issue. State v. McElveen, 280 S.C. 325, 313 S.E.2d 298 (1984); State v. Swords, 279 S.C. 554, 309 S.E.2d

750 (1983); *189*State v. Gamble*, 247 S.C. 214, 146 S.E.2d 709 (1966). Further, evidence of prior bad acts is inadmissible to show criminal propensity or to demonstrate that the accused is a bad person.

In *State v. Ross*, 272 S.C. 56, 249 S.E.2d 159 (1978), the Court noted: "Character evidence is so highly prejudicial that it is usually excluded under hard and fast rules." (citation omitted). The mug shot also suggested prior bad acts. In *State v. Johnson*, 293 S.C. 321, 360 S.E.2d 317 (1987), the Court elaborated on the subject:

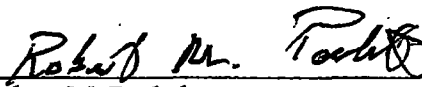
[3] It is well established that evidence of other crimes or prior bad acts is inadmissible to show criminal propensity or to demonstrate the accused is a bad individual. See, e.g., *State v. Gregory*, 191 S.C. 212, 4 S.E.2d 1 (1939). Evidence of other crimes is never admissible unless necessary to establish a material fact or element of the crime charged. See, *United States v. Johnson*, 610 F.2d 194 (4th Cir.1979); *State v. Byers*, 277 S.C. 176, 284 S.E.2d 360 (1981); *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923). Even if evidence of other crimes is deemed relevant and admissible, the evidence may still be excluded if its probative value is substantially outweighed by the danger of undue prejudice or misleading the jury. See, *State v. Wilson*, 274 S.C. 635, 266 S.E.2d 426 (1980). Implicit in the rules of evidence *325 which permit the introduction of prior bad acts or crimes into evidence is the prerequisite that they establish some element, i.e., intent or motive, of the crime charged. See, e.g., *State v. Lyle, supra*; *State v. South*, 285 S.C. 529, 331 S.E.2d 775 (1985); and *State v. Huggins*, 285 S.C. 361, 329 S.E.2d 759 (1985).

293 S.C. at 324-325, 360 S.E.2d at 319.

CONCLUSION

Because appellant's mug shot was introduced into evidence, his conviction should be reversed.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of October, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL TOMPAI,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael Tompai states:

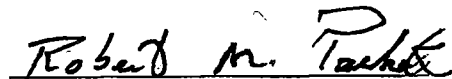
1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge Larry B. Hyman, Jr., which was held on June 11, 2013, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He 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, he asks the Court to relieve him as counsel for Michael Tompai.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of October, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL TOMPAI,

APPELLANT

APPELLATE CASE NO. 2013-001319

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript (June 10 – 11, 2013)

I certify that this designation contains no matter which is irrelevant to this appeal.

October 18th, 2013



Robert M. Pachak
Appellate Defender

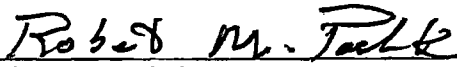
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 18, 2013


Robert M. Pachak
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 Horry County
Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

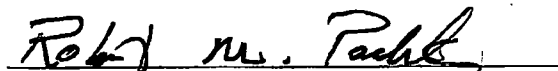
V.

MICHAEL TOMPAL,

APPELLANT

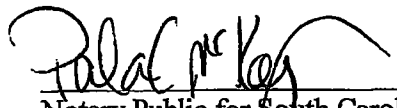
CERTIFICATE OF SERVICE

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 Salley W. Elliott, 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 Michael Tompai, #355763 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 18th day of October, 2013.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of October, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

**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.

Michael Tompai, Appellant.

Appellate Case No. 2013-001319

REHEARING? _____

(date due 7-15-14)

CLOSE? RMA _____

CERT? _____

Appeal From Horry County
Larry B. Hyman, Jr., Circuit Court Judge

Unpublished Opinion No. 2014-UP-276
Submitted March 1, 2014 – Filed June 30, 2014

APPEAL DISMISSED

Appellate Defender Robert M. Pachak, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

13-330

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.

FEW, C.J., and HUFF and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



CLOSING LETTER SENT ¹⁷³
ON 6-30-14

Attorney initials rmp

The South Carolina Court of Appeals Assistant initials [signature]

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 16, 2014

The Honorable Melanie Huggins-Ward
PO Box 677
Conway SC 29528-0677

REMITTITUR

Re: The State v. Michael Tompai
Lower Court Case No. 2013GS2602087
Appellate Case No. 2013-001319

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,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Michael Tompai, 355763
Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire
Robert M. Pachak, Esquire
The Honorable Larry B. Hyman, Jr.

RECEIVED

JUL 16 2014

SC OFFICE OF
APPELLATE DEFENSE

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF HORRYMichael John Toupai # 355763
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

15
3502
APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution, Bishopville, SC.
2. Name and location of Court which imposed sentence General Sessions, Horry County
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-26-02087 - S.C. Code Ann. § 16-11-0330(A), Armed Robbery
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) June 11, 2013 (17 years)
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty **XX** _____
- (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. **South Carolina Court of Appeals** _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. **Appeal Dismissed** _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. **June 30, 2014** _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. **Unpublished Opinion No: 2014-UP-276** _____
- 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) Review: Applicant's Attachment to this Application
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Review: Applicant's Attachment to this Application
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Not appropriate for Direct Review
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? 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? This Application filed Pro Se
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. W. Thomas Floyd, Esq. (Horry County Public Defender, Conway, S.C.)
- ii. Robert M. Pachak (Appellate Defense, Columbia, S.C.)
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial and Sentencing
- ii. Direct Appeal
- iii. _____
19. State clearly the relief you seek in filing this application:
- Vacated Conviction and Sentence and remand to the Court of General Sessions for a New Trial.
20. Are you now under sentence from any other court that you have not challenged?
- No

ATTACHMENT TO SECTION 10

A: My Attorney Thomas Floyd was ineffective for failing to object to officer Joseph Cusick testifying that he observed a video of the armed robbery at the Kangaroo gas station at the end of Forestbrook and Dick Pond Road, and to what he said he viewed on that video. (See page 80, section 20 and page 81, sections 11-21 of trial transcript for more information).

B: My Attorney Thomas Floyd was ineffective for failing to present character witnesses, and witnesses that were at my house with me Michael Tompai, when they said I armed robbed the Kangaroo gas station at the end of Forestbrook and Dick Pond Road. (See witness list in my discovery).

C: My Attorney Thomas Floyd was ineffective for failing to investigate into my mental health background, mental state, and to request a psychiatric report be done.

D: The state failed to disclose the video of the armed robbery at the Kangaroo gas station at the end of Forestbrook and Dick Pond Road, that they said I, Michael Tompai robbed, which was potentially exculpatory evidence, regardless if they didn't have actual possession of the video, because it was known by officer Joseph Cusick who was acting on the government's behalf and said he observed the video. (See page 80, section 20 of trial transcript).

E: The trial court judge Larry Hyman violated my right to due process of law when the jury asked for him to clarify reasonable doubt for them and during that stated that if they have reached a verdict that goes beyond any reasonable doubt that the defendant may not be guilty, then you should return a verdict that say's this defendant is guilty. (See page 144, section's 5-9 of trial transcript).

ATTACHMENT TO SECTION 11

A: Rule 602 state's that a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has a personal knowledge of the matter and in my case there is no video of the armed robbery at the end of Forestbrook and Dick Pond Road that was introduced into evidence, which officer Joseph Cusick said he observed. So if my Attorney Thomas Floyd would have objected to officer Joseph Cusick testifying to observing, and to what he said he viewed on the video of the armed robbery at the end of Forestbrook and Dick Pond Road, that it would have been reasonable to believe that judge Larry Hymen could have dismissed officer Joseph Cusick' testimony, which could have changed the outcome of the trial. (See Rule 602).

B: I brought four witnesses with me to trial, one being Thomas Hamm who was my roommate, that was at my house with me when they said that I, Michael Tompai robbed the Kangaroo gas station at the end of Forestbrook and Dick Pond road with a gun. The other three were my mother Cindy Tompai, Staiert Porter and Amber Porter, which were character witnesses, which makes it reasonable to believe that had the jury had a chance to hear their testimony, they would have had more to deliberate, which could have changed the outcome of the trial.

C: I Michael Tompai have been in and out of Mental Health since I was 12 or 13 years old, that after my arrest on September 29, 2012, I started seeing Mental Health because I wasn't in my right state of mind, and that I was not in good health. So, if my Attorney Thomas Floyd would have investigated my Mental Health background, he would have requested that a psychiatric evaluation be conducted which would have said if I was competent to stand trial or not, which

would have stopped the trial if I was incompetent, at least until I was competent, but since it didn't happen it is reasonable that my conviction should be vacated, and there should be a psychiatric report done.

D: Brady Disclosure rule states that it extends to evidence that is not in actual possession of the prosecution but known by others acting on the governments behalf, which means by officer Joseph Cusick knowing about the video of the armed robbery at the end of Forestbrook and Dick Pond Road, and it not being at trial is a Brady violation. (See Criminal Law 700[7]) (See Const. Amends 5, 14) See page 215, 503 2nd series SER). So it is reasonable to believe that had the video of the armed robbery at the end of Forestbrook and Dick Pond Road that they said I, Michael Tompai robbed, and officer Joseph Cusick said he observed been present at trial, I could have proved to the jury that I was not the one who robbed the Kangaroo gas station at the end of Forestbrook and Dick Pond Road, which would have changed the outcome of the trial.

E: That state judge's are bound as are federal by the due process clause of the fourteenth amendment, and judge Larry Hymen's governmental act that injured my chance for a fair trial that was also not consonant with due process of law. (See Const. Amend. 14). So by judge Larry Hymen stating to the jury that if they have reached a verdict that goes beyond any reasonable doubt that the defendant may not be guilty, then you should return a verdict that say's this defendant is guilty, which by doing so prejudiced me to the jury, and violated my right to due process of law, makes it reasonable to believe that my conviction should be vacated and remand to the court of general sessions for a new trial. (See page 144, section's 5-9 of trial transcript).

STATE OF SOUTH CAROLINA

County of Horry

VERIFICATION

Michael J. Tompai

I, Michael J. Tompai II, 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.

Michael J. Tompai II
 Michael J. Tompai SCDC No: 355763

APPLICANT

SWORN to and subscribed before me this 23
 day of April, 2015

Delma Surles (L.S.)
 Notary Public

My Commission Expires:

11-4-2015

HORRY COUNTY
 2015 MAY 11 PM 2:32
 CLERK OF COURT

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Michael J. Toupai

I, Michael J. Toupai, 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.

Michael J. Toupai II
Applicant

SWORN or affirmed to and subscribed before me this
23 day of April, 2015.

Debra Surles
Notary Public

My Commission Expires: 11-4-2015

HORRY COUNTY
2015 MAY 11 PM 2:32
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Michael Tompai, #355763,

) Case No. 2015-CP-26-3502
)

Applicant,

)

v.

)

RETURN

State of South Carolina,

)

Respondent.

)

)

Respondent, making its Return to the Application for Post-Conviction Relief filed May 11, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In May 2013, the Horry County Grand Jury indicted Applicant for armed robbery (2013-GS-61-2087). W. Thomas Floyd, Esquire, represented Applicant. On June 10, 2013, Applicant proceeded to trial before the Honorable Larry B. Hyman, Jr. and a jury. The jury found Applicant guilty as indicted. Judge Hyman sentenced Applicant to seventeen (17) years' imprisonment.

Applicant filed a timely notice of appeal. Robert M. Pachak, Esquire, of the Office of Appellate Defense perfected the appeal with the filing of an Anders¹ brief. The South Carolina Court of Appeals dismissed Applicant's appeal after review on June 30, 2014. State v. Tompai, Op. No. 2014-UP-276 (S.C. Ct. App. filed June 30, 2014).

¹ Anders v. California, 386 U.S. 738 (1967).

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. "[trial counsel] failing to object to officer testifying"
 - b. "[trial counsel] failing to present character [and alibi] witnesses [sic]"
 - c. "[trial counsel] failing to investigate into my mental health background [sic]"
2. Rule 5/Brady Violation
 - a. "state failed to disclose the video of the armed robbery"
3. 14th Amendment due process violation
 - a. "judge Larry Hyman violated my right to due process when the jury asked for him to clarify reasonable doubt"

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the Application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this Return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing

Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact 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.

The Applicant also alleges a Brady/Rule 5 violation; stating that the State failed to disclose video of the robbery. The Brady disclosure rule requires the prosecution to provide to a defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment. State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Brady v. Maryland, 373 U.S. 83, 87 (1963)). Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. United States v. Bagley, 473 U.S. 667, 676 (1985). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). The Respondent submits that the Applicant cannot demonstrate a Brady violation, however, the allegation of a Brady violation by the State probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Finally, the Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under the 14th amendment to the United States Constitution. A due process violation only occurs "when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice." State v. Hornsby, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997) (citing 21 Am.Jur.2d, Criminal Law § 640 (1981)). The Respondent submits that the Applicant has failed to demonstrate due process violation, and requests that this allegation should be dismissed.

VI.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VII.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General

By: Jessica E. Kinard
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
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Telephone: (803) 734-3737

Feb. 2, 201⁶

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2015-CP-26-3502
MICHAEL TOMPAI, #355763	)	
	)	
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** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
38 Broad St., Suite 350
Charleston, SC 29401

DATED this 2ND day of February, 2016.


 Norma Bigbee, Legal Assistant
 For Respondent

1 State of South Carolina) Court of Common Pleas
2 County of Horry) 2015-CP-26-03502

3
4 Michael John Tompai)
5 vs.) Transcript of Record
6 State of South Carolina)
7

8 May 11, 2016
9 Conway, South Carolina

10 ORIGINAL

11 BEFORE:

12 Honorable Paul M. Burch, Judge.

13 APPEARANCES:

14 James K. Falk, Esq.
15 Attorney for the Applicant

16 Jessica E. Kinard, Esq.
17 Attorney for the State

18
19
20
21 Teresa J. F. Bautz, RPR
22 Official Court Reporter
23
24
25

I N D E X

WITNESS

DIRECT CROSS REDIRECT RECROSS

William Thomas Floyd

Mr. Falk

6

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Ms. Kinard

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17

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E X H I B I T S

NO. DESCRIPTION

ID EV

No exhibits submitted.

Exhibits retained by Clerk of Court.

1 (The hearing commenced at approximately
2 10:38 a.m.)

3 MS. KINARD: Thank you, Your Honor. May it please
4 the Court, this is the matter of Michael Tompai versus
5 the State of South Carolina, Case No. 2015-CP-26-3502.
6 The Applicant is presently confined in the South
7 Carolina Department of Corrections pursuant to orders
8 of commitment of the Horry County Clerk of the Court.

9 In May of 2013 the Horry County Grand Jury
10 indicted him for armed robbery. Mr. W. Thomas Floyd
11 represented him, and on June 10th, 2013, proceeded to
12 trial before the Honorable Larry B. Hyman, Jr., and a
13 jury. He was found guilty as indicted and sentenced to
14 17 years imprisonment.

15 The Applicant filed a timely notice of appeal
16 which was perfected by the Office of Appellate Defense
17 by the filing of an Anders brief. The South Carolina
18 Court of Appeals dismissed his appeal after review on
19 June 30th, 2014 and remittitur was returned to the
20 Circuit Court July 16th, 2014.

21 On May 11th, 2015, the Applicant filed the current
22 application for post conviction relief. The State is
23 present and ready to proceed. The Applicant is present
24 and represented by James K. Falk.

25 THE COURT: Mr. Tompai?

1 THE APPLICANT: Yes, sir.

2 THE COURT: Good morning.

3 THE APPLICANT: Good morning.

4 THE COURT: I was looking over your return, and I
5 know counsel has talked with you about this, but I
6 would like to take the time in cases like yours to
7 explain a few of the pitfalls. A lot of times
8 misinformation is given within the Department of
9 Corrections by other inmates that's incorrect.

10 There's only limited relief that the post
11 conviction relief judge can give in these matters. And
12 one of the prevalent mis-advisements that goes around
13 is that we have the authority to reduce the sentence.
14 We do not have that authority. So if your petition
15 involves any request for reduction in sentence, that is
16 not possible.

17 THE APPLICANT: No, sir, it doesn't.

18 THE COURT: Okay. And the other thing that I need
19 to speak with you, and I'm sure counsel has mentioned
20 this to you, is if you were to be granted relief and
21 granted a new trial, for instance in this case, you
22 would go back to what we commonly call ground zero, you
23 can be retried and you could face the maximum sentence.

24 THE APPLICANT: I understand that.

25 THE COURT: I can give you an example. Several

1 years ago an individual was tried in Darlington County
2 and received a sentence of 20 years, voluntary
3 manslaughter. He prevailed on his PCR petition, was
4 brought back to Darlington, was again found guilty by
5 the jury, and he received a 30-year sentence.

6 THE APPLICANT: I understand that.

7 THE COURT: So that is one of the major pitfalls.
8 And of course the other thing that has popped up from
9 time to time is about credit for time served that could
10 be in jeopardy should you be granted a retrial and
11 adjudicated guilty. So there's some serious
12 ramifications that you need to think about.

13 I in no way indicate to you as to what you should
14 do in this matter. That's strictly up to you, and your
15 decision would need to be, of course, voluntarily and
16 intelligently --

17 THE APPLICANT: I understand that.

18 THE COURT: -- rendered on this. With that advice
19 to you, do you need a minute or two to talk to counsel?

20 THE APPLICANT: No, sir.

21 THE COURT: Okay. All right.

22 MR. FALK: Your Honor, since you had obviously
23 reviewed his application, I just wanted to clarify a
24 couple of points that we were going forward on. I sent
25 an e-mail to the solicitor on the 6th. And so what

W. THOMAS FLOYD-DIRECT BY MR. FALK

1 we're sort of flushing out are client's ineffective
2 assistance of counsel. We were arguing that trial
3 counsel should have objected to Officer Cusick's
4 testimony regarding his view of the in-store video,
5 that trial counsel should have objected to Jody
6 Ridgeway's testimony regarding prior armed robbery
7 discussions that she heard my client talk about, and
8 that Officer Wilson's testimony on page 107 was
9 impermissibly bolstering Mr. Coronado's prior photo
10 pack ID.

11 So in addition to the claims that he's raised in
12 there, I would just like to make sure what we're going
13 forward with.

14 THE COURT: Very good.

15 MR. FALK: At this time, I would like to call
16 Mr. Floyd to the stand.

17 W. THOMAS FLOYD, after being duly sworn, testified
18 as follows:

19 THE CLERK: Have a seat and state your name for
20 the Court.

21 THE WITNESS: Thomas Floyd.

22 DIRECT EXAMINATION

23 BY MR. FALK:

24 Q Good afternoon -- good morning, Mr. Floyd. Can
25 you tell me how you came to represent my client.

1 A I was appointed to represent him.

2 Q Okay. Are you with the public defender's office,
3 or is that a contract appointment?

4 A I'm with the public defender's office, yes.

5 Q Thank you. Had you had an opportunity to review
6 the discovery in this case?

7 A Yes, sir.

8 Q Did you have an opportunity to review a video from
9 the, I'll call it a Kangaroo store, whatever the store,
10 where the robbery took place?

11 A I did not.

12 Q And why is that?

13 A Nobody knew where the video was.

14 Q Okay. So prior to trial you knew that the video
15 was missing?

16 A Yes.

17 Q Okay. Now, the State called Mr. Coronado to the
18 stand?

19 A Yes, sir.

20 Q And he was the victim in the case, or he was the
21 guy in the store at the time?

22 A I believe that's correct, yes, sir.

23 Q Okay, okay. Do you recall, do you have a copy of
24 the transcript?

25 A I do.

W. THOMAS FLOYD-DIRECT BY MR. FALK

1 Q Okay. Could you look at page 73, please, starting
2 with line one.

3 A Yes, sir.

4 Q If you could just sort of read through lines one
5 through nine, not out loud, just to yourself.

6 A Yes, sir.

7 Q Okay. So is it fair to say that the State was
8 offering Mr. Coronado up as an eye witness in this
9 case?

10 A Yes.

11 Q Is it also safe to say that the State was trying
12 to say that he was somehow an expert in eye witness
13 identification?

14 A It could be interpreted in that fashion.

15 Q Because didn't he say, I received special
16 training, to that effect?

17 A Yes, sir.

18 Q Did you have any concern that the jury would
19 possibly draw the wrong conclusion from that?

20 A Until you pointed that out to me, I had not read
21 it that way.

22 Q Okay. So the fact that you did not object to the
23 testimony, that's not necessarily a trial strategy?

24 A No. I think I probably should have objected
25 there.

1 Q Okay. You practiced obviously a long time?

2 A Yes, sir.

3 Q And I've done some criminal defense cases myself.

4 The worse cases to try are the ones with an eye witness
5 identification; aren't they?

6 A They are difficult.

7 Q Juries love an eye witness identification; don't
8 they?

9 A They do.

10 Q And we all know that they can very often be
11 unreliable?

12 A That's correct.

13 Q Okay. And here's another point. If you would
14 look at page 78.

15 A Yes, sir.

16 Q And I believe this is on redirect -- no, wait,
17 this is on your cross, when you were cross-examining
18 Mr. Coronado, you had asked him about his current
19 unemployment?

20 A Yes, sir.

21 Q Okay. And he said that it was a conflict of
22 interest is why he was no longer working there, and he
23 didn't want to work there anymore, or he doesn't work
24 there anymore; is that correct?

25 A Yes.

W. THOMAS FLOYD-DIRECT BY MR. FALK

1 Q Did you have an opportunity to find out what he
2 was talking about?

3 A I didn't. I knew that he had left the Kangaroo
4 under unfavorable circumstances, but I don't remember
5 what they were.

6 Q Certainly had he left because of an employee theft
7 issue, that would have been certainly an issue going
8 towards credibility?

9 A Yes, sir.

10 Q And getting fired from the Kangaroo, only so many
11 things you can do to get fired?

12 A That's correct.

13 Q Did you have -- did the public defender's office
14 allow you funds for an investigator in this case?

15 A We did have an investigator. I actually think I
16 sent him out and see if he could get a copy of the
17 video. I did not have him look into Mr. Coronado.

18 Q Okay. All right, let's talk about the video,
19 that's really what I kind of want to focus on. So
20 there was testimony that actually on your redirect is
21 when you had asked Mr. Coronado whether or not there
22 was a video, I think?

23 A Yes.

24 Q And then at some point Officer Hucks takes the
25 stand and talks about the video; is that correct?

1 A Officer...

2 Q Isn't that right? Oh, I'm sorry, Officer Cusick.

3 A Yes.

4 Q Yes, okay. And officer -- if you would look on
5 page 81, and I'm talking about lines 9 through 21, just
6 so you have a chance to look through that.

7 A 9 through 21. Yes, sir.

8 Q Okay. So in effect, is it fair to say that
9 Officer Cusick was saying that he witnessed the video?

10 A Yes, sir.

11 Q And he told -- and he was able to tell the jury
12 what he saw in the video; is that correct?

13 A Yes.

14 Q Now, you knew going into the trial that this video
15 would not be offered into evidence; is that correct?

16 A Yes.

17 Q Okay. Did you think about trying to object to the
18 testimony?

19 A I should have objected.

20 Q So that wasn't a trial strategy?

21 A No, sir.

22 Q Okay. And, again, this in effect is another eye
23 witness identification; is it not?

24 A In effect, it is, yes, sir.

25 Q But you really had no opportunity to, in effect,

W. THOMAS FLOYD-DIRECT BY MR. FALK

1 cross-examine the video?

2 A No, sir.

3 Q And the video would probably -- would constitute
4 the best evidence of what the video said; is that
5 correct?

6 A Yes, sir.

7 Q So what somebody's impression of what the video
8 says is secondary evidence?

9 A Yes, sir.

10 Q And the State had never proven that the video was
11 lost; is that correct?

12 A I don't really know how to answer that. Nobody
13 knew where the video was.

14 Q Because if you just look at page 82, line 10.

15 A Yes, sir. Yes, sir.

16 Q So they were talking about somebody said, yes,
17 somebody else's job was to go pick up the video, and I
18 don't know where it is now?

19 A That's correct.

20 Q Okay. So the State never offered any kind of
21 foundation of using Mr. Cusick's testimony in lieu of
22 the video; is that right?

23 A Correct.

24 Q Okay. Do you think that in an eye witness
25 identification case, again, this was corroborating

1 evidence of Mr. Coronado's testimony?

2 A Yes, sir.

3 Q And it's really -- Mr. Coronado's testimony is the
4 only thing that convicts my client?

5 A That is the only.

6 Q Okay. Now, if we could just look at page 84, and
7 I'm looking at lines 11 through 16, and this, I
8 believe, is testimony from Jody Ridgeway?

9 A Yes, sir.

10 Q There's a discussion there with Jody Ridgeway,
11 says that she had a prior conversation or interaction
12 with my client where there was a discussion of an armed
13 robbery?

14 A That's not exactly what she said. It was a civil
15 dispute over money, over rent money.

16 Q Well, then wait a minute. Then I've got to find
17 the other -- all right, let me come back around to
18 that.

19 A I think you're looking at line 24.

20 Q I know we said several -- oh, I'm sorry. Oh,
21 yeah, okay, I'm sorry, you're correct. So there is
22 some kind of discussion about he and a roommate and an
23 armed robbery?

24 A Yes, sir.

25 Q And Mr. Tompai was never indicted for that armed

W. THOMAS FLOYD-DIRECT BY MR. FALK

1 robbery?

2 A No, sir.

3 Q In the prior armed robbery?

4 A No, sir.

5 Q And he is on the stand for an armed robbery?

6 A Yes, sir.

7 Q Did you consider trying to exclude that evidence
8 under possibly 44(B) or 403?

9 A Until I got the transcript and reviewed it, I
10 didn't realize that in her response she said armed
11 robbery.

12 Q Okay.

13 A I would have objected to that, I would have been
14 standing up screaming.

15 Q Sure. You would agree that that's --
16 prejudicial --

17 A Yes.

18 Q -- under these facts?

19 A No question.

20 Q Okay. If we could then move to page 95.

21 A Yes, sir.

22 Q If you could look at lines 15 through 18.

23 A Yes, sir.

24 Q Now, what's your recollection of Officer Cox's
25 involvement in the photo pack lineup?

1 A I think if I remember correctly, he just took the
2 photo lineup to Mr. Coronado.

3 Q Okay. And the prosecutor was able to slip in the
4 question, are you aware of who Mr. Coronado picked out
5 of the lineup, yes, he picked out the Defendant?

6 A Yes, sir.

7 Q Did you think about objecting to that?

8 A I should have put an objection in there.

9 Q Because that's certainly bolstering?

10 A Yes, sir.

11 Q And he had really no firsthand personal knowledge
12 of who he picked out because he wasn't there when the
13 pick-out happened?

14 A I believe that's correct.

15 Q Okay. And I think it happens again on page 107,
16 and now we're talking about Brian Wilson. And if you
17 look at lines 15 through 20 --

18 A What page was that again?

19 Q I'm sorry, page 107, lines 15 through 20.

20 A Yes, sir.

21 Q And, again, this is now Mr. Wilson, in effect,
22 bolstering Mr. Coronado's testimony about the pick-out;
23 is that correct?

24 A Yes, sir.

25 Q When he says he picked it out right away?

W. THOMAS FLOYD-DIRECT BY MR. FALK

1 A Yes, sir.

2 Q And it's my same question, possible objection
3 there?

4 A Possible objection. That wouldn't jump out as
5 much to me as some of the other ones that I feel I
6 missed.

7 Q Okay. Then let me get -- and then really the last
8 thing I want to talk to you about is the judge's
9 charge. I would like you to look at page 143 of the
10 transcript and maybe just sort of familiarize yourself
11 with where we stand in this trial between pages 142 and
12 143.

13 A Yes, sir.

14 Q So is it fair to say that the jury has already
15 been charged originally, and a note came back?

16 A Yes.

17 Q And they wanted an explanation of reasonable
18 doubt?

19 A Yes, sir.

20 Q Okay. If you look at lines 6 through 17, do you
21 think the judge accurately explained reasonable doubt?
22 And I'm specifically looking at lines 11 through 13
23 where it says the Defendant is guilty by a
24 preponderance of the evidence.

25 A No. A preponderance of the evidence isn't the

1 standard of proof.

2 Q Exactly. Do you think there's a possibility that
3 the jury could -- some people on the jury are now
4 concerned about what reasonable doubt means, and there
5 was an inaccuracy in the judge's charge?

6 A Yes, sir.

7 Q And I don't see where you asked for them to be
8 recharged or objected to the judge's charge.

9 A No, sir. Until you pointed that out to me, I did
10 not realize it.

11 Q And if you would just look at page 144, lines five
12 through nine. I think he may have gotten caught up in
13 a double negative there, but I don't think that's
14 accurate either?

15 A He certainly did. It plainly says, the Defendant
16 may not be guilty, then you should return a verdict
17 that says this Defendant is guilty.

18 MR. FALK: I have no further questions.

19 CROSS-EXAMINATION

20 BY MS. KINARD:

21 Q Thank you for being here, Mr. Floyd. You stated
22 you've been practicing law for quite a while, I believe
23 1988?

24 A Yes, ma'am.

25 Q What was your first impression of this case?

W. THOMAS FLOYD-CROSS BY MS. KINARD

1 A It was a very weak case on the State's part.

2 Q How did you go about handling those facts to
3 support your client?

4 A Well, the only thing really to attack was the
5 identification. There was no other evidence at all.
6 They served a search warrant on his house, they didn't
7 find any clothing that matched, they didn't find any
8 weapon, they didn't find any kind of ammunition. There
9 were no fingerprints, there was no DNA, there was
10 nothing other than that photo lineup.

11 Q Do you recall the Biggers hearing in this matter?

12 A Yes, ma'am.

13 Q How do you remember that going?

14 A Well, the judge allowed it in.

15 Q At that point what could you do during trial to
16 attack the lineup?

17 A I guess try to show that it wasn't him, that they
18 were wrong.

19 Q Okay. Let's step back a bit. How many times did
20 you meet with Mr. Tompai to discuss these charges --
21 excuse me, this charge?

22 A Three times that I documented. I've got another
23 note in here where I called his bondsman and got his
24 phone number and left a message for him to come in and
25 see me. But then there's not a note that he did come

1 in and see me. So three times that I've got
2 documented.

3 Q Did you review the discovery that was from the
4 State?

5 A Yes, ma'am.

6 Q Did you believe that everything was provided to
7 you that should have been?

8 A Everything but the missing video.

9 Q And could you describe it in your understanding of
10 why that was not available.

11 A Nobody knows.

12 Q Your understanding is that it was supposed to be
13 picked up and just got lost in the shuffle or something
14 to that effect?

15 A Yes, ma'am.

16 Q Did you discuss the elements of the offenses and
17 what the State would have to prove with Mr. Tompai?

18 A Yes, ma'am.

19 Q Did you review the possible punishment for this
20 charge?

21 A I'm sure I did. But to specifically say -- I'm
22 sure I did, but...

23 Q Did you understand -- or did you discuss with him
24 the State's burden of reasonable doubt?

25 A Yes, ma'am.

W. THOMAS FLOYD-CROSS BY MS. KINARD

1 Q Did he ever indicate that he did not understand
2 your discussions about the charges or about his rights?

3 A No, ma'am.

4 Q Did you indicate to him or discuss with him his
5 constitutional rights such as a jury trial, right to
6 testify, right to confront witnesses and right to call
7 his own witnesses?

8 A Yes, ma'am.

9 Q Did you learn of any fact witnesses from
10 Mr. Tompai?

11 A We did not put up any witnesses at trial.

12 Q Did he provide any to you to investigate?

13 A I don't believe he did, but I do have some names
14 in here that weren't called to the witness stand.

15 Q Did you speak with those individuals?

16 A I did not. They wrote me letters.

17 Q Did Mr. Tompai testify in this case?

18 A No, ma'am.

19 Q Can you explain to me the discussions you had or
20 your decision making process with him regarding his
21 testifying.

22 A I don't recall.

23 Q Okay. Was it a decision you made together not to
24 present a defense?

25 A I believe so, yes, ma'am.

1 Q Did you discuss any other possible defenses?

2 A I don't believe so.

3 Q So you were running on the theory that the State
4 couldn't tie him to it?

5 A Yes, ma'am.

6 Q Did you enter into any plea negotiations on his
7 behalf?

8 A There was a plea offer, I believe it was for ten
9 years, that was turned down. There was actually a
10 hearing held where the plea offer was for ten years for
11 penalty -- potential penalty was 10 to 30 years, and he
12 declined the plea offer.

13 Q Do you recall any reasons surrounding that?

14 A He wanted a trial.

15 Q Fair enough. Do you recall any discussion with
16 Mr. Tompai about his mental health and his competency?

17 A No, ma'am.

18 MS. KINARD: Beg the Court's indulgence one
19 moment.

20 Q Mr. Falk asked you about the second reasonable
21 doubt charge --

22 A Yes, ma'am.

23 Q -- from your earlier description. He testified
24 that these potential misstatements by the judge, they
25 were not egregious enough for you to notice them at

W. THOMAS FLOYD-CROSS BY MS. KINARD

1 trial; is that correct?

2 A I did not pick up on them, no, ma'am.

3 Q Do you think by that account perhaps the jury
4 didn't pick up on them either?

5 MR. FALK: Objection. I don't think that's a fair
6 question. I mean, did he not -- first of all, he
7 didn't testify that, I don't think these were egregious
8 enough, he just testified that he missed it. There
9 would be a lot of reasons why he missed it, and now to
10 speculate what the jury thought, I think that's sort of
11 above and beyond.

12 THE COURT: You're probably right on that,
13 sustained.

14 MS. KINARD: I'll move on then.

15 Q Mr. Falk actually questioned or pointed out a
16 point where the judge referred to it as a preponderance
17 of the evidence; do you recall that?

18 A Yes, ma'am.

19 Q All right. I'll turn the Court's attention now to
20 page 146, lines three through eight, if you review that
21 silently, please, sir. And, actually, if you keep
22 glancing over until page 147, line 4. Can you describe
23 what happens in this portion of the transcript, please.

24 A It appears that I did bring to the Court's
25 attention that he used preponderance of the evidence.

1 And then it looks like the judge went forward and
2 explained his charge a little bit more.

3 Q So he went to the effort of bringing the jury back
4 in to make sure they understood that it was beyond a
5 reasonable doubt?

6 A Yes, ma'am.

7 MS. KINARD: Thank you. I have no further
8 questions at this time.

9 MR. FALK: I have no further questions.

10 THE COURT: You may step down, thank you.

11 (Witness excused.)

12 MR. FALK: We would rest. I'd like to summarize
13 my points.

14 THE COURT: Anything from the State?

15 MS. KINARD: No, Your Honor. We have no further
16 witnesses.

17 THE COURT: Summarize.

18 MR. FALK: Your Honor, as we talked and I think
19 trial counsel admitted that a witness identification
20 case, when that is the only evidence linking somebody
21 to a crime, are always very tenuous cases in that the
22 juries love eye witness identifications. But they can
23 often be unreliable.

24 So I think any opportunity that is missed to
25 challenge the credibility of the eye witness is always

1 going to be highly prejudicial. And on top of that,
2 any opportunity that the State has to improperly
3 bolster his testimony is also going to be highly
4 prejudicial.

5 I think -- what I think is the biggest problem in
6 this case is the admission of Officer Cusick's
7 testimony by what he saw in the video. I think that
8 the case law is that -- I mean, under SCRE 10 -- you
9 know, 1002 and 1004 under the best evidence rule, the
10 best evidence of what the video shows is the video
11 itself and not a secondary account.

12 If you're going to try and come in under 104 when
13 you don't need the original, you have to have some
14 proof that the thing was lost or stolen. There is
15 no -- first of all, there was no foundation laid at
16 all, so we don't know. Nobody gave any sworn testimony
17 that it was in fact lost. The only testimony we hear
18 was, I don't know where it is, somebody else was
19 supposed to pick it up. There could be a lot of
20 reasons.

21 But even, I think, if you get past the best
22 evidence question, I still think the testimony is
23 hearsay because he is -- in effect, the video is the
24 witness, and he is saying what the witness in effect
25 tells him. I think it's hearsay. And if it's not,

1 certainly the video itself is testimonial. The only
2 reason why the store keeps that video is probably for
3 security purposes, either employee theft or whatever,
4 or robberies.

5 And, again, you've got a Crawford issue, because
6 trial counsel has no -- would have had no opportunity
7 to look at the video, see if it was grainy, see how
8 good the images were, how -- whether Officer Cusick was
9 reasonable in saying that, yeah, that was the person
10 who identified.

11 And I'm not sure that that wouldn't in itself call
12 for some type of expert opinion as to whether or not he
13 is qualified to identify somebody off of the video. I
14 mean, again, I don't know how big the picture was, was
15 it this big (indicating), was it black and white, was
16 it grainy.

17 So I do think that that is extremely prejudicial
18 evidence that's going to go to the jury that they're
19 going to find out that, well, it's okay we don't have
20 it, I got a police officer, he's wearing a uniform and
21 he's saying, yeah, I saw it, and you can rely on me,
22 that that's good enough. I think that's the biggest
23 problem.

24 You add to it a miss, I think, on the testimony of
25 Jody Ridgeway, which I don't think should have come

1 before the jury. It's 404(B), it's prior conversation
2 regarding an armed robbery of which he wasn't charged.
3 And the whole reason for 404(B) is to make sure that
4 the Defendant is only charged on -- is only presented
5 with evidence -- that the jury is only presented with
6 evidence for which the victim is charged. And a
7 discussion about a prior armed robbery, it's certainly
8 going to paint he and his roommate -- I don't -- it
9 certainly paints him in a prejudicial light, and that's
10 another opportunity, I think, they should have missed.

11 I mean, I can't prove any prejudice regarding not
12 following up on what this conflict of interest was as
13 to why the kid in the store was no longer working at
14 the Kangaroo, we can only speculate on that. But
15 letting the jury hear that this Richard Coronado had
16 somehow been specially trained in witness
17 identification without that going before them
18 unchallenged, again, that's bolstering the one witness
19 that goes in this case.

20 Then you have two police officers who come in
21 behind, who were then allowed to bolster that witness'
22 ID by saying, yeah, that's what he did, that's what he
23 did. And Officer Williams, I think, was the worse in
24 fact that, yeah, he picked it out right away. The best
25 evidence of that, I mean, that would all be, I think,

1 irrelevant under 403. You already had the witness
2 testify what he said. We don't need the jury hearing
3 that somebody else witnessed the guy as he picked it
4 out.

5 The Court can draw its own conclusions about the
6 reasonable doubt, whether or not that was fixed enough.
7 But it does seem like the jury had some concerns about
8 what reasonable doubt means, and I don't think that
9 Judge -- excuse me, who was our -- Judge Hyman's
10 discussion about reasonable doubt was entirely accurate
11 or right out of the book.

12 You know, I think this is a case that, you know,
13 all of a sudden the innocence project gets this down
14 the road because we've got somebody who was being
15 convicted on eye witness testimony that was -- that
16 should have been challenged more aggressively and
17 shouldn't have been allowed to be bolstered as much as
18 it was.

19 THE COURT: Okay.

20 MS. KINARD: Briefly, Your Honor, thank you. My
21 understanding of Mr. Falk's reasoning is that regarding
22 the video, perhaps we need an independent expert
23 qualification to identify somebody from a video. While
24 I understand his allegations that -- or his conjecture
25 that perhaps the video should be treated as a witness

1 and therefore be able to be cross-examined, so to
2 speak, at the same time you do have a second eye
3 witness statement in a sense because the officer was
4 able to view the video and see who was within it.

5 Regarding the potential 404(B) violation of
6 Officer Ridgeway testifying that she knew or thought of
7 Mr. Tompai because of a discussion during a civil
8 unrest situation she visited, that's not testimony
9 necessarily regarding the Defendant, but it's more of
10 why Officer Ridgeway took action.

11 Something was sparked in her mind when she heard
12 about his description and about the fact it was an
13 armed robbery. That led her to take action, and that's
14 the only reason the testimony was presented. So that's
15 really not something that could have an effective
16 objection from trial counsel.

17 Mr. Falk also mentioned that perhaps Mr. Tompai --
18 or excuse me, Mr. Coronado had special training and
19 could be -- or perhaps was presented as an expert
20 without qualification. I think that's just way off
21 base. Essentially all he said was that when we are
22 trained to do our jobs, they tell us to look at
23 people's faces if we're ever robbed. That's part of
24 any training when you go into retail basically. And
25 that's certainly not something that would qualify him

1 as an expert, it's -- I would argues it's common sense.

2 Regarding Officer Wilson, whether his testimony
3 was bolstering, he's the officer that actually
4 presented the lineup. So if anything else, he's the
5 one that should be able to testify to exactly how long
6 it took Mr. Coronado to pick the picture out and to
7 make that identification.

8 And then lastly, regarding the reasonable doubt
9 instruction, the State maintains that not only did
10 Judge Hyman fix it within that second reasonable doubt
11 charge, when he called the jury back in for a third
12 time to charge them, it was certainly cured by that
13 point in time.

14 So for all these reasons the State argues that not
15 only was Mr. Floyd not deficient in his representation,
16 it certainly wasn't to the point of causing prejudice
17 to the Applicant, and we would respectfully request
18 that you deny his relief.

19 MR. FALK: Your Honor, if I could just make one
20 more point. Had the video been there and had the video
21 been shown, Officer Cusick would have somehow
22 identified the video as being, that's the one I looked
23 at. He's not able to testify before the jury saying,
24 yeah, that's the guy.

25 I mean, either the video testifies who it is, had

1 the video been here Officer Cusick could not have
2 testified saying, yeah, that's the person. So the fact
3 that he can come in now and say, that's the person, it
4 just doesn't seem just.

5 THE COURT: All right. I need proposed orders
6 from both sides on this within 30 days.

7 MR. FALK: Thank you, Your Honor.

8 THE COURT: If you'll e-mail that to my law clerk,
9 Brian Matir.

10 MR. FALK: You want them in Word?

11 THE COURT: Please. Thank you very much.

12 MS. KINARD: Thank you, Your Honor.

13 MR. FALK: Thank you.

14 (The hearing concluded at approximately
15 11:14 a.m.)

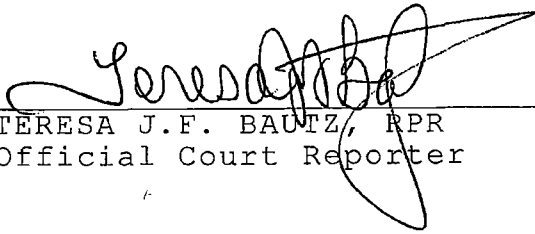
16 (End of Transcript of Record.)
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1 CERTIFICATE OF REPORTER

2
3
4 STATE OF SOUTH CAROLINA)
5)
6 COUNTY OF HORRY)
7
8

9 I, TERESA J.F. BAUTZ, Official Court
10 Reporter for the Fifteenth Judicial Circuit of the
11 State of South Carolina, do hereby certify that the
12 foregoing is a true, accurate and complete Transcript
13 of Record of the proceedings had and evidence
14 introduced in the trial of the captioned case, relative
15 to appeal, in the Court of Common Pleas for Horry
16 County, South Carolina, on the 18th day of November,
17 2016.
18

19 I FURTHER CERTIFY that I am neither of
20 kin, counsel nor interest to any party hereto.
21
22

23
24 
25 TERESA J.F. BAUTZ, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Michael Tompai, #355763,

) Case No. 2015-CP-26-3502

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

SEP 06 2016

S.C. SUPREME COURT

This matter came before the Court by way of an Application for Post-Conviction Relief (“PCR”) filed May 11, 2015. Respondent filed a return on or about February 2, 2016. The Court convened an evidentiary hearing into the matter on May 11, 2016 at the Horry County Courthouse. Applicant was present and represented by James K. Falk, Esquire. Jessica E. Kinard, Esquire, of the South Carolina Attorney General’s Office, represented respondent.

Applicant's trial counsel, W. Thomas Floyd, Esquire, testified at the hearing. The Court had before it a copy of the trial transcript, the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings.

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In May 2013, the Horry County Grand Jury indicted Applicant for armed robbery (2013-GS-61-2087). W. Thomas Floyd, Esquire, represented Applicant. On June 10, 2013, Applicant proceeded to trial before the Honorable Larry B. Hyman, Jr. and a jury. The jury found Applicant guilty as indicted. Judge Hyman sentenced Applicant to seventeen (17) years' imprisonment.

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Applicant filed a timely notice of appeal. Robert M. Pachak, Esquire, of the Office of Appellate Defense perfected the appeal with the filing of an Anders¹ brief. The South Carolina Court of Appeals dismissed Applicant's appeal after review on June 30, 2014. State v. Tompai, Op. No. 2014-UP-276 (S.C. Ct. App. filed June 30, 2014).

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. "[trial counsel] failing to object to officer testifying"
 - b. "[trial counsel] failing to present character [and alibi] witnesses [sic]"
 - c. "[trial counsel] failing to investigate into my mental health background [sic]"
2. Rule 5/Brady Violation
 - a. "state failed to disclose the video of the armed robbery"
3. 14th Amendment due process violation
 - a. "judge Larry Hyman violated my right to due process when the jury asked for him to clarify reasonable doubt"

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe the witness who testified at the hearing, and to closely pass upon his credibility. This Court finds Counsel's testimony credible, and has not given any weight to the fact that Applicant did not testify. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80

¹ Anders v. California, 386 U.S. 738 (1967).

(2003). Furthermore, this Court finds that Applicant abandoned all allegations except for those specifically addressed below.

A. Summary of Testimony

Trial counsel began by testifying to the basics of his representation of the Applicant, which was through an appointment in the course of his employment with the Public Defender's Office. He testified that he received and reviewed the discovery, and also went over it with the Applicant. Trial counsel was aware before trial that a surveillance video of the crime had been obtained by law enforcement, watched by one officer, but had since gone missing. He testified that he did not know of any way to produce or recreate the video, and that he had an investigator look into the issue without any success. However, trial counsel believed it was to the Applicant's advantage that the video was unavailable. With the video missing, the only evidence tying the Applicant to the crime was the victim's testimony.

During the direct examination of trial counsel, PCR counsel questioned trial counsel on regarding several potential interpretations of evidence and testimony from trial in order to question trial counsel about his motivations. For example, PCR counsel questioned trial counsel if he was concerned about the jury viewing the victim as an expert in eyewitness identification because he testified that his employee training included information on how to behave in a robbery, which included focusing on the assailant. Trial counsel testified that he never considered this to be expert testimony. Similarly, PCR counsel asked why trial counsel did not investigate the victim's testimony that he left the job due to a conflict of interest, and raised the question of whether the victim could have stolen from the store. Trial counsel testified that he did not believe it was a worthwhile investigation.

Trial counsel admitted that he should have objected to testimony from Officer Cusick who viewed the surveillance video, as it effectively served as another eyewitness statement.

When questioned about Officer Ridgeway's testimony that she thought of the Applicant when she heard about the crime, trial counsel admitted that he had not heard her say testify to a mention of a prior armed robbery in connection to the Applicant. Similarly, trial counsel admitted to not hearing the trial judge get caught in a double negative during charges. However, trial counsel did catch a misstatement by the trial judge when he referred to the incorrect standard of evidence. This led to the jury returning to the courtroom to clarify the charge.

On cross examination by the State, trial counsel testified that he met with the Applicant at least three (3) times, and had another note in his file that he tried to get in touch with Applicant. Trial counsel further testified that he asked Applicant for a list of potential witnesses that could benefit his case, but decided not to call any witnesses after reviewing the letters that they had written. The defense theory was simply that the State could not tie the Applicant to the crime. Trial counsel and the Applicant decided together that not presenting a case was the best option. Regarding plea negotiations, trial counsel testified that Applicant was offered a ten (10) year sentence, but turned it down. Trial counsel also testified that he did not believe that Applicant had any need for a mental health or competency evaluation.

B. Ineffective Assistance of Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial 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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

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The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

This Court finds Applicant has failed to show Counsel's performance fell below an objective standard of reasonableness. Counsel's testimony indicated he was extremely familiar with the facts of Applicant's case. This Court finds Counsel met with Applicant an adequate number of times and was familiar with the discovery materials. Counsel indicated he explained Applicant's constitutional rights, and he explained the differences between going to trial and entering a guilty plea, especially in light of the favorable plea that was placed on the record. Counsel indicated he never had trouble communicating with Applicant, and he never had any concern that Applicant did not fully understand their conversations.

Counsel refuted the allegations that Applicant made in his application including, but not limited to, issues regarding Applicant's mental status, character witnesses, the existence of the

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surveillance video, and any potential prejudice or confusion that arose out of jury instructions. Though the failure of trial counsel to object to Officer Cusick's testimony regarding the surveillance video could be interpreted as deficient performance as it allowed in some information that may not have otherwise been introduced, this Court does not find that this was ultimately prejudicial. This Court finds that, through the presentation of evidence at the post-conviction relief hearing, Applicant has failed to demonstrate both deficiency by trial counsel, as well as any prejudice caused by trial counsel's actions. Therefore, this allegation is denied and dismissed with prejudice.

C. Discovery Violations

This Court finds Applicant's allegation that the solicitor failed to turn over the surveillance video is without merit. An individual asserting a Brady violation must demonstrate that evidence: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence or was impeaching. Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555 (1995). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Id.*, 434 S.E.2d at 268. This Court finds Applicant failed to prove that the State violated Brady v. Maryland, 373 U.S. 83 (1963), by failing to disclose exculpatory material that would indicate that Applicant was not guilty of the crimes with which he was charged. In fact, Applicant failed to produce any evidence tending to show that that prosecution withheld information that may have helped him or change the outcome of the case. It was established by the testimony of trial counsel that the prosecutor's office was not at fault in

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the disappearance of the surveillance video and, therefore, cannot be viewed as having withheld evidence. Therefore, this allegation is denied and dismissed with prejudice.

D. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes 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.

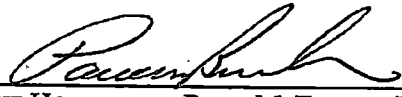
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

Remainder of page intentionally left blank.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice;
and
2. The Applicant shall be remanded to the custody of the South Carolina Department of Corrections for service of the remainder of his term of imprisonment.

AND IT IS SO ORDERED this 11th day of August, 2016.


THE HONORABLE PAUL M. BURCH, JR.
Presiding Judge
Fifteenth Judicial Circuit

Pageland, South Carolina

WITNESSES

Todd Cox Horry County Police Department

ARREST WARRANT NUMBER

2013GS2602087

CDR: 0139 18-11-0330(A)

DOA: 9/29/2012

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

MAY 3 1 2013

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-26- 02087

The State of South Carolina

County of Horry

J. Scott Hucks

12H04573

COURT OF GENERAL SESSIONS

May, 2013 TERM

THE STATE

vs.

Michael John Tompal II

W/ M

ATTORNEY: Floyd, W. Thomas

Indictment for

ARMED ROBBERY

ORIGINAL

Jimmy A. Richardson, II, Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on May 30, 2013, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Michael John Tompai II did in Horry County on or about September 9, 2012, while armed with a deadly weapon, did take and carry away personal property of Kangaroo Gas Station from or in the immediate presence of Kangaroo Employees with intent to deprive Kangaroo and its employees, of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF HorrySTATE VS.AKA: Michael John Tompai IIRace: WHITE Sex: M Age: 20

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2013-65-26-2087A/W#: M974851Date of Offense: 9/22/2012S.C. Code §: 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Armed Robbery 10-30☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC 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:

SCB76948

Hucks, J. Scott

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 11 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/ea	\$
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 \$ 25.00 beginning 07/11/2030

\$ _____ 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: 2157Sentence Date: 6-11-13