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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

G. Thomas Cooper, Jr., Circuit Court Judge

WILLIAM COAXUM,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000572

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF CHARLESTON	)	COURT OF GENERAL SESSIONS
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 08-GS-10-2625 et al
	)	
William Coaxum,	)	
	)	
Defendant.	)	

TRANSCRIPT OF JURY TRIAL

The within Jury Trial was held on January 12-13, 2009, before The Honorable R. Markley Dennis, Jr. in Courtroom 4B of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Greg Voight, Assistant Solicitor
 Rutledge Durant, Assistant Solicitor
 9TH CIRCUIT SOLICITORS OFFICE
 100 Broad Street, 4th Floor
 Charleston, South Carolina 29401
 Appearing for State of South Carolina

Beattie Butler, Public Defender
 CHARLESTON COUNTY PUBLIC DEFENDER
 100 Broad Street, 5th Floor
 Charleston, South Carolina 29401
 Appearing for Defendant

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INDEX OF STATE'S EXHIBITS

No.	Description	Entered
1	Shotgun	

INDEX OF DEFENSE EXHIBITS

(None)

INDEX OF COURT'S EXHIBITS

No.	Description	Entered

9:40 A.M.

3 (DEFENDANT PRESENT)

5 DEFENDANT: Yes, sir.

9 DEFENDANT: (Affirmative nod).

12 DEFENDANT: (No verbal response).

17 DEFENDANT: (No verbal response).

19 DEFENDANT: I can't hear you, Judge
20 Dennis.

23 DEFENDANT: I'm deaf in my right ear.

25 DEFENDANT: (No verbal response),

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1 THE COURT: Do you understand the
2 charges against you?

3 DEFENDANT: Yes, sir, I understand
4 the charges.

5 THE COURT: Okay. That's fine.
6 Thank you. Are you ready to go to trial?

7 DEFENDANT: Yes, sir.

8 THE COURT: Thank you, sir.
9 Let's bring up our jury panel.

10 (JURY PANEL ENTERS COURTROOM)

11 THE COURT: Thank you very much,
12 Ladies and Gentlemen. Thank you for your
13 patience. There were some preliminary matters
14 that I had to take up before I could bring you
15 upstairs. I am well aware that it is past 12:00
16 and we're not going to -- I will try not to keep
17 you much longer. The panel we select then will
18 be adjourning for lunch once we have done. I
19 appreciate your being considerate of the process
20 and I am sorry for the imposition to you.

21 The first dispute that we have with
22 which we need your assistance is a dispute that
23 is captioned the State of South Carolina, who is
24 the party making the claim, and that will be
25 true of any criminal disputes that we have this

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1 week. The State is the party that makes a claim
2 against a person. In this case the State has
3 made a claim against, two claims really, Mr.
4 William Coaxum.

5 Mr. Coaxum is seated at the table to my
6 left. Mr. Coaxum, good afternoon. I would ask
7 you to please stand and face the jury panel.
8 This is Mr. William Coaxum, Sr. He is standing
9 with his lawyer, Mr. Butler. Thank you, you may
10 take your seat, sir.

11 Are there any members of the jury panel
12 related blood or marriage, socially or casually
13 connected with Mr. Coaxum, or that have any
14 business dealings, any connection whatsoever?
15 If so, please stand. (No response). There are
16 none.

17 Mr. Coaxum is, as I mentioned,
18 represented by Mr. Butler. Mr. Butler, if you
19 would, identify yourself, please, and your law
20 firm.

21 MR. BUTLER: Beattie Butler with the
22 Public Defender's Office.

23 THE COURT: Thank you, sir. Are
24 there any members of the jury panel related by
25 blood or marriage, have any business dealings

1 with, socially or casually acquainted with, ever
2 been represented by Mr. Butler? If so, please
3 stand. (No response). There are none.

4 Are there any members of the jury panel
5 who are related blood or marriage, socially or
6 casually connected with the -- or ever been
7 represented by Mr. Ashley Pennington, who is the
8 Circuit Public Defender for the Ninth Circuit?
9 (No response). Thank you. There are none.

10 Are there any members of the jury panel
11 related by blood or marriage, have any business
12 dealings with, socially or casually acquainted
13 with anyone employed with the Public Defender's
14 Office. They have offices -- the circuit has
15 offices in Charleston and in Moncks Corner in
16 Berkeley County. If so, please stand. (No
17 response). Thank you, there appear to be none.

18 The State is represented by Mr. Voight.
19 If you will, introduce yourself and anyone who
20 will be assisting you, please.

21 MR. VOIGHT: Thank you, Your Honor.
22 My name is Greg Voight, I am an assistant
23 solicitor here in the Ninth Circuit, Charleston
24 County. Assisting me today is Rutledge Durant,
25 who is also an assistant solicitor. You may see

1 my investigator, Jim NeSmith, in and out of the
2 courtroom as well.

3 THE COURT: Thank you, sir. Are
4 there any members of the jury panel who are
5 related by blood or marriage, have any business
6 dealings with, socially or casually acquainted
7 with Mr. Voight, Mr. Durant or Mr. NeSmith; ever
8 been represented by Mr. Voight or Mr. Durant; if
9 so, please stand. (No response). Thank you.
10 There are none.

11 Are there any members of the jury panel
12 who are related by blood or marriage, have any
13 business dealings with, socially or casually
14 acquainted with, ever been represented by the
15 Solicitor for the Ninth Circuit, Scarlett
16 Wilson? If so, please stand. (No response).
17 There are none.

18 Are there any members of the jury panel
19 related by blood or marriage, have any business
20 dealings with, socially or casually acquainted
21 with anyone employed with the Solicitor's
22 offices in -- she has offices in Charleston
23 County and Berkeley County, Moncks Corner. If
24 so, please stand.

25 JUROR NUMBER 135: Juror Number

1 135. I am a former employee of the Charleston
2 County Sheriff's Office, 2000 to 2006.

3 THE COURT: You have since retired
4 from that position?

5 JUROR NUMBER 135: Yes, sir.

6 THE COURT: Would that affect or
7 influence you in this dispute, sir?

8 JUROR NUMBER 135: No, sir.

9 THE COURT: Will you base your
10 decision on the evidence and the law and will
11 that decision be fair to the State and to Mr.
12 Coaxum?

13 JUROR NUMBER 135: Yes, sir, it
14 would.

15 THE COURT: And your number, again?

16 JUROR NUMBER 135: One-three-five.

17 THE COURT: Thank you so much, sir.
18 Yes?

19 JUROR NUMBER 133: My sister works
20 for the Solicitor's office here in Charleston.

21 THE COURT: She works in this office
22 here?

23 JUROR NUMBER 133: Yes.

24 THE COURT: How frequently do you see
25 your sister?

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1 JUROR NUMBER 133: Pretty
2 regularly.
3 THE COURT: Pretty regularly?
4 JUROR NUMBER 133: Yes.
5 THE COURT: Your number?
6 JUROR NUMBER 133: One-thirty-three.
7 THE COURT: 133?
8 JUROR NUMBER 133: (Affirmative
9 nod).
10 THE COURT: I am going to excuse 133
11 out of an abundance of caution. You are free to
12 leave. Call the number after 6:00 tonight,
13 please.
14 (JUROR NUMBER 133 EXCUSED)
15 THE COURT: Are there others? (No
16 response). Thank you, there appear to be none.
17 I am going to identify a number of
18 individuals, Ladies and Gentlemen. If you are
19 related by blood or marriage to any of these
20 persons, have any business dealings with them or
21 if you're socially or casually acquainted with
22 any of them, we need for you to please stand and
23 share that information:
24 Tamera Brown,
25 Keith Jennings,

1 Essile Smith,
2 Shawn Patrick with the North
3 Charleston Police Department
4 Scott Wyant with the North
5 Charleston Police Department;
6 Sean Bauer, and
7 Sergeant Al Hallman, and
8 Angie Bunkar, and
9 Jason Gamba, and
10 Sergeant David Singletary, and
11 Officer Andy Glover, and
12 Officer Schmidt, and
13 Sergeant Keys, and
14 Officer Steinburner and
15 Officer Daniel Pritchard, and
16 Officer Amon, and
17 Officer Javon Vasquez, and
18 Officer Thomas Wallace and
19 Officer Forsythe -- all of the
20 North Charleston Police Department; and
21 Marquine Benbow,
22 Brian Davis,
23 Charles Jones.
24 Any of those persons?
25 JUROR NUMBER 135: I did when I was

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13

1 employed with the Charleston County Sheriff's
2 Office.

3 THE COURT: But not ---

4 JUROR NUMBER 135: Sergeant Richard
5 Keys.

6 THE COURT: The fact that you had
7 that acquaintance with Sergeant Keys, would that
8 influence or affect you in this matter?

9 JUROR NUMBER 135: Sir, that
10 possibly could.

11 THE COURT: Very well, your number
12 again?

13 JUROR NUMBER 135: One-three-five.

14 THE COURT: Number 135 will be
15 excused from participating in this dispute.
16 Thank you, sir. If you will, call the number
17 after 6:00 tonight.

18 JUROR NUMBER 135: Sure.

19 THE COURT: Thank you. Have a good
20 day.

21 (JUROR NUMBER 135 EXCUSED)

22 THE COURT: Are there others? (No
23 response). Thank you. There appear to be none.

24 The dispute, Ladies and Gentlemen, is
25 basically framed or identified by these

1 documents that I hold in my hand. They are what
2 they appear to be, appear to you to be. They
3 are pieces of papers. They are called
4 indictments. "Indictment" is a term that merely
5 is used to describe how the parties come to
6 court. In other words, it is the instrument
7 that brings the parties here. In other words,
8 it contains the allegations or accusations by
9 the State against Mr. Coaxum.

10 I am going to share with you what has
11 been alleged, a synopsis of what has been
12 alleged. Please understand that what I am
13 sharing with you is not evidence. These
14 documents will not accompany you to the jury
15 room. They are not evidence. They are merely
16 allegations, but I need to ask you some
17 questions.

18 It is alleged in these documents that
19 Mr. Coaxum did, on November 27th, 2007, possess a
20 firearm, displayed what appeared to be a firearm
21 or displayed a knife during the commission of a
22 violent crime; the crime alleged is armed
23 robbery. It's alleged that he -- it is armed
24 robbery and that he allegedly robbed, while
25 armed with a deadly weapon, Tamera Brown.

1 It is also alleged that on November 28th
2 that he allegedly committed the offense of armed
3 robbery by robbing, taking monies or goods of
4 Essile Smith while he was armed with a deadly
5 weapon and that in committing that crimes he did
6 have in his possession a firearm or knife, which
7 would be a violation of the possession charges,
8 the charge of possession a firearm during the
9 commission of a violent crime.

10 He is charged with two occasions of
11 that; that is the alleged incident on the 27th
12 and the alleged incident on the 28th.

13 I share that with you, first of all,
14 to find out if any member of the panel has read
15 anything, heard anything, if you had any prior
16 knowledge of these allegations or these
17 accusations. If so, please stand. (No
18 response). Thank you, there appear to be none.

19 Is there anything about the nature of
20 this offense, that is someone being accused of
21 armed robbery, being armed with a firearm during
22 the commission of an armed robbery, that because
23 of some philosophy that you have, some past
24 experience that you have, some strong philosophy
25 that you have, something that may have happened

1 to you or to a close personal friend or family
2 member that would affect, or in any way
3 influence, your ability to fairly and
4 impartially consider the evidence, decide what
5 you believe to be the truth and then once
6 deciding that to take the law as I give it to
7 you and apply the law fairly and impartially
8 such that your decision would be fair to the
9 State and would be fair to Mr. Coaxum?

10 If you feel that there is anything that has
11 occurred or you have any feelings that you have
12 that would affect that, please stand. (No
13 response). Thank you, there appear to be none.

14 Are there any members of the jury
15 panel, members of your immediate family, that
16 are now for formerly employed in the occupation
17 of law enforcement? If so, please stand. Yes,
18 sir?

19 JUROR NUMBER 330: My wife in
20 '94, partially, and '96 was a Summerville police
21 officer.

22 THE COURT: Would that affect or
23 influence you in this matter, sir?

24 JUROR NUMBER 330: No.

25 THE COURT: So you would decide the

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1 case based on the evidence and the law, and
2 would that decision be fair to both sides?

3 JUROR NUMBER 330: Yes.

4 THE COURT: Your name and number,
5 please?

6 JUROR NUMBER 330: John Thompson,
7 330.

8 THE COURT: Thank you, Mr. Thompson.
9 Yes, sir?

10 JUROR NUMBER 325: I am a retired
11 police officer from New Jersey.

12 THE COURT: Would that affect or
13 influence you in any way in this dispute, sir?

14 JUROR NUMBER 325: No, sir.

15 THE COURT: Would you decide the
16 evidence based on the evidence and the law and
17 would that decision be fair to both the State
18 and to Mr. Coaxum?

19 JUROR NUMBER 325: I would.

20 THE COURT: Thank you, sir, you may
21 be seated.

22 COURT REPORTER: Name and number?

23 THE COURT: Your name and number?

24 JUROR NUMBER 325: I'm sorry, 325, Tom
25 Rogers.

1 THE COURT: Yes, ma'am?

2 JUROR NUMBER 198: Patricia Nelson,
3 Number 198. I have a cousin who is a police
4 officer.

5 THE COURT: Where is he?

6 JUROR NUMBER 198: Pardon?

7 THE COURT: What agency does he work
8 for?

9 JUROR NUMBER 198: North
10 Charleston.

11 THE COURT: North Charleston?

12 JUROR NUMBER 198: (Affirmative
13 nod), it's a she.

14 THE COURT: That is a lady?

15 JUROR NUMBER 198: (Affirmative
16 nod).

17 THE COURT: Would that affect or
18 influence you in this matter?

19 JUROR NUMBER 198: No, sir.

20 THE COURT: And I've not named her as
21 any of the persons working for North Charleston,
22 is that correct?

23 JUROR NUMBER 198: No, sir.

24 THE COURT: Would you decide the case
25 based on the evidence and the law and would that

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1 decision be fair to both Mr. Coaxum and to the
2 State?

3 JUROR NUMBER 198: Yes.

4 THE COURT: Your number, again?

5 JUROR NUMBER 198: One-ninety-
6 eight.

7 THE COURT: Thank you, ma'am. Are
8 there any others? (No response). There appear
9 to be none.

10 Are there any members of the jury panel
11 who are members of or contribute to any civic
12 organizations or groups dealing with matters
13 concerning criminal actions or criminal acts;
14 such as:

15 Mothers Against Drunk Driving, known
16 as MADD,

17 People Against Rape, known as PAR,

18 Citizens Advocating Decency and Return
19 to Ethics, known as CADRE,

20 Citizens Against Violent Crimes, known
21 as CAVC, or any similar organizations.

22 If so, please stand. (No response).

23 Thank you, there appear to be none.

24 Are there any members of the jury panel
25 who have either been accused of committing a

1 crime or been a victim of a crime or have
2 testified for anyone or been involved in cases
3 against anyone, either a family member or a
4 close personal friend, who was accused of
5 committing a criminal offense or who has been
6 the victim of an alleged criminal offense? If
7 so, please stand. (Number of jurors stand).
8 I will ask you'all to come forward, the
9 attorneys may approach as well.

10 SIDEBAR:

11 THE COURT: I will let you stand
12 here.

13 COURT REPORTER: Please tell me
14 your name and number.

15 JUROR NUMBER 39: I am 49, Rita
16 Carroll.

17 THE COURT: Ms. Carroll, what is
18 your situation?

19 JUROR NUMBER 39: I was a material
20 witness in a case against a defendant in 2007.

21 THE COURT: Was that here?

22 JUROR NUMBER 39: It was in
23 magistrate's court in North Charleston.

24 THE COURT: Magistrate's court.

25 Okay.

1 JUROR NUMBER 39: It was pretty --
2 a lot of perjury and it involved -- it was a
3 pretty nasty situation and I was called by the
4 plaintiff as a witness; blatant perjury, the
5 whole thing was so awful. I wouldn't feel good
6 about ---

7 THE COURT: So you feel you'd be
8 tainted by that trial?

9 JUROR NUMBER 49: Yeah, I do.

10 THE COURT: Okay. Your number
11 again?

12 JUROR NUMBER 49: Forty-nine.

13 (SIDEBAR CONCLUDED)

14 THE COURT: Number 49 will be excused
15 from participation in this dispute. Please call
16 the number after 6:00 tonight.

17 (JUROR NUMBER 49 EXCUSED)

18 THE COURT: Yes, ma'am?

19 SIDEBAR:

20 THE COURT: Your name and
21 number, please?

22 JUROR NUMBER 14: Illa Barnes,
23 Number 14.

24 THE COURT: Okay, Ms. Barnes.

25 JUROR NUMBER 14: My son has/was

1 charged and indicated for felony child abuse
2 when he was a teenager.

3 THE COURT: Where was that
4 indictment?

5 JUROR NUMBER 14: That was in
6 Randolph County, North Carolina.

7 THE COURT: Has the matter been
8 concluded?

9 JUROR NUMBER 14: Oh, yeah, that
10 was years ago. He's thirty years old now.

11 THE COURT: Would that affect or
12 influence you in any way ---

13 JUROR NUMBER 14: I don't think
14 so.

15 THE COURT: Would you be able to
16 make a commitment to both sides that you'd base
17 your decision on the evidence and the law and
18 that it would be fair to both sides?

19 JUROR NUMBER 14: Absolutely.

20 THE COURT: Thank you, ma'am,
21 Your number, again?

22 JUROR NUMBER 14: Fourteen.

23 (SIDEBAR CONCLUDED)

24 THE COURT: Number 14 will remain.
25 Yes, ma'am, your name and number, please.

1 SIDEBAR:

2 JUROR NUMBER 198: Patricia

3 Nelson, Number 198.

4 THE COURT: What happened?

5 JUROR NUMBER 198: I had

6 someone break into my home, twice.

7 THE COURT: You filed a

8 complaint against them?

9 JUROR NUMBER 198: I made a

10 police report.

11 THE COURT: Have those persons

12 been apprehended and prosecuted?

13 JUROR NUMBER 198: Yes, sir.

14 THE COURT: Would that affect

15 you in any way in this dispute?

16 JUROR NUMBER 198: It could.

17 Probably.

18 THE COURT: Your number again?

19 JUROR NUMBER 198: One-ninety-

20 eight, Patricia Nelson.

21 (SIDEBAR CONCLUDED)

22 THE COURT: Number 198 will be

23 excused from participation in this dispute. If

24 you will, call the number after 6:00 tonight.

25 (JUROR NUMBER 198 EXCUSED)

1 THE COURT: Any others?

2 SIDEBAR:

3 THE COURT: Your name and
4 number?

5 JUROR NUMBER 328: Julie
6 Smith, 328.

7 THE COURT: Yes, ma'am?

8 JUROR NUMBER 328: I was a
9 character witness for someone in a situation.

10 THE COURT: Was that handled
11 here in Charleston?

12 JUROR NUMBER 328: (Affirma-
13 tive nod), I was for the defense.

14 THE COURT: They were
15 prosecuted?

16 JUROR NUMBER 328: (Affirmative
17 nod).

18 THE COURT: Were you testifying
19 for the prosecution?

20 JUROR NUMBER: (No verbal
21 response).

22 THE COURT: Was it a prosecutor
23 from this office?

24 JUROR NUMBER 328: Yes, I worked
25 with them.

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1 THE COURT: Would that affect
2 you in any way in this dispute?

3 JUROR NUMBER 328: I don't believe
4 so.

5 THE COURT: Can you make a
6 promise that you would not be influenced by that
7 in analyzing the evidence and in applying the
8 law as I ---

9 JUROR NUMBER 328: Yes, I can.

10 THE COURT: And your decision
11 would then be based on the evidence and the law
12 and be fair to both sides?

13 JUROR NUMBER 328: Right.

14 THE COURT: Thank you. Your
15 name and number again?

16 JUROR NUMBER 328: Three-
17 twenty-eight.

18 (SIDEBAR CONCLUDED)

19 THE COURT: Juror Number 328 will
20 remain. Thank you.

21 SIDEBAR:

22 THE COURT: Your name and
23 number?

24 JUROR NUMBER 157: Jekera
25 Kornickey, Number 157. I don't think that I

1 should sit here because my boyfriend was robbed
2 and they never found out ---

3 THE COURT: And that would
4 affect you?

5 JUROR NUMBER 157: I think so,
6 (affirmative nod).

7 THE COURT: Your name and
8 number, again?

9 JUROR NUMBER 157: One-fifty-
10 seven, Jekera Kornickey.

11 (SIDEBAR CONCLUDED)

12 THE COURT: Number 157 will be
13 excused from participating in this dispute.
14 Thank you. Call the number after 6:00.

15 (JUROR NUMBER 157 EXCUSED)

16 THE COURT: Are there others?

17 SIDEBAR:

18 THE COURT: Yes, ma'am, your
19 name and number?

20 JUROR NUMBER 247: I've been
21 accused. I'm in PTI.

22 THE COURT: You've been accused?

23 JUROR NUMBER 247: Yeah.

24 (Affirmative nod).

25 THE COURT: That matter is

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1 pending right now?

2 JUROR NUMBER 247: I'm in

3 PTI.

4 THE COURT: Is that being

5 handled by this Solicitor's office?

6 JUROR NUMBER 247: Yeah.

7 THE COURT: I think out of an

8 abundance of caution I am going to excuse him

9 because of the PTI situation. I will keep you

10 out of that.

11 JUROR NUMBER 247: Okay.

12 THE COURT: Your number, please.

13 JUROR NUMBER 247: Two-forty-

14 seven.

15 (SIDEBAR CONCLUDED)

16 THE COURT: Number 247 will be

17 excused from participation in this dispute.

18 (JUROR NUMBER 247 EXCUSED)

19 THE COURT: Please call the number

20 after 6:00 tonight.

21 SIDEBAR:

22 COURT REPORTER: Your name and

23 number?

24 JUROR NUMBER 112: Allison

25 Gregory, 112.

1 THE COURT: Yes, ma'am?

2 JUROR NUMBER 112: About ten
3 years ago my sister was robbed and ---

4 THE COURT: Would you be
5 influenced by that in this case?

6 JUROR NUMBER 112: No, sir.

7 THE COURT: Would you base your
8 decision on the evidence and the law and would
9 it be fair to both the State and Mr. Coaxum?

10 JUROR NUMBER 112: Yes, sir.

11 THE COURT: Thank you, ma'am.

12 (SIDEBAR CONCLUDED)

13 THE COURT: Number 112 will remain.

14 SIDEBAR:

15 THE COURT: Yes, sir?

16 JUROR NUMBER 173: Robert
17 Marion, Number 173. I was represented by Debi
18 Herring-Lash in a case six or seven years.

19 THE COURT: That matter has been
20 completed?

21 JUROR NUMBER 173: Yes, sir.

22 THE COURT: Would that affect
23 you or influence you in any way in this dispute?

24 JUROR NUMBER 173: No, sir.

25 THE COURT: Would you base your

1 decision on the evidence and the law and would
2 it be fair to both sides?

3 JUROR NUMBER 173: Yes, sir.

4 THE COURT: Ms. Herring-Lash has
5 nothing to do with this case, does she?

6 MR. VOIGHT: No, sir.

7 THE COURT: Thank you so much.

8 (SIDEBAR CONCLUDED)

9 THE COURT: Juror (No. 173) will
10 remain.

11 SIDEBAR:

12 JUROR NUMBER 276: How, how
13 you doing?

14 THE COURT: Your name and
15 number, please?

16 JUROR NUMBER 276: Louis
17 Wachsmuth, Number 276.

18 THE COURT: Yes, sir?

19 JUROR NUMBER 276: We were
20 robbed, in North Carolina, a number of years
21 ago.

22 THE COURT: Would that affect or
23 influence you in this dispute?

24 JUROR NUMBER 276: No, it
25 would not.

1 THE COURT: You will decide the
2 case based on the evidence and the law and your
3 decision would be fair to both sides?

4 JUROR NUMBER 276: Yes, sir.

5 THE COURT: Thank you, sir. You
6 may be seated.

7 (SIDEBAR CONCLUDED)

8 THE COURT: Juror will remain. Are
9 there others? Thank you -- okay. I didn't
10 specify the others but I think we've gone
11 through most of them, but is there any member of
12 the jury panel who, who you or a close personal
13 friend or family members, been victim(s) of a
14 crime of violence? If so, please stand.

15 If you have already come forward, you
16 don't need to respond any further. Thank you,
17 there appear to be no additional ---

18 COURT REPORTER: Lady on the left,
19 Your Honor.

20 THE COURT: Come forward, and the
21 attorneys may approach as well.

22 SIDEBAR:

23 THE COURT: Yes, ma'am, your
24 name and number?

25 JUROR NUMBER 312: 312, Judy Hunt.

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1 THE COURT: Yes, ma'am?

2 JUROR NUMBER 312: My father-
3 in-law was robbed and murdered about fifteen
4 years ago.

5 THE COURT: Were you involved in
6 any way?

7 JUROR NUMBER 312: Well, --
8 (negative gesture), I was not -- (pause).

9 THE COURT: Would that affect
10 you in any way in this case?

11 JUROR NUMBER 312: I do not
12 think so.

13 THE COURT: Could you make a
14 commitment that it would not influence you?

15 JUROR NUMBER 312: Yes.

16 THE COURT: And would you base
17 your decision on the evidence and the law?

18 JUROR NUMBER 312: I would.

19 THE COURT: Your number again?

20 JUROR NUMBER 312: Three-
21 twelve.

22 (SIDEBAR CONCLUDED)

23 THE COURT: Number 312 will remain.
24 Any others? (No verbal response).

25 Is there any member of the jury panel

1 or member(s) of your immediate family who have
2 ever been involved with any dispute with any law
3 enforcement agency? If so, please stand. (No
4 response). Thank you, there appear to be none.

5 There are a number of principles of law
6 that I will give you at the conclusion of this
7 case, one of which is that persons like Mr.
8 Coaxum here today who have been accused of
9 committing criminal offenses are never required
10 to prove or disprove anything at all.

11 The law says that the agency that makes
12 the allegation, in this case the State of South
13 Carolina, that is the party that has the sole
14 burden of proving.

15 Trials are very similar, the number of
16 jurors, who goes first, sometimes the -- the
17 defendant in a case doesn't have to disprove the
18 allegation. In a civil trial, there may be a
19 claim but one distinction in a criminal dispute
20 is that the defendant -- there are two major.
21 One is that never in a criminal dispute is a
22 defendant required prove anything at all. A
23 trial in a criminal dispute is simply that, and
24 that's what a guilty verdict means -- Guilty
25 means that that jury heard that case and they

1 saw the evidence and they were convinced beyond
2 a reasonable doubt -- and that term will be
3 defined for you, which is more than what a civil
4 trial -- in civil trials it is generally a
5 probability standard, called the preponderance
6 of the evidence or the greater weight of the
7 evidence. Beyond a reasonable doubt is more
8 than that, more than "probably".

9 But, basically, that jury has been
10 convinced by the evidence that the State has met
11 its burden by establishing each element of that
12 crime beyond a reasonable doubt, and they
13 therefore return a verdict of Guilty.

14 Not Guilty means that jury collectively
15 was not convinced beyond a reasonable doubt that
16 the State established each element of the crime.

17 If the State fails on one element, you
18 must return a verdict of Not Guilty. That's
19 what the law says.

20 Again, a person accused doesn't have
21 any responsibility whatsoever to explain
22 anything, to justify anything. He has no burden
23 at all.

24 Is there anything about your
25 philosophy, anything about your personal

1 experience that would give you any concern about
2 your ability to take the law, that law and any
3 other law that I give you, and apply that law
4 fairly and impartially to the facts that you
5 ultimately determine when you consider the
6 evidence in this case. If you feel that you
7 would have difficulty complying with my
8 instructions concerning the law, please stand.
9 (No response). Thank you. There appears to be
10 none.

11 You will promise to decide this case
12 based on the evidence and the law. Evidence,
13 I will instruct you once we begin the case,
14 consists of the testimony of witnesses and the
15 exhibits that are introduced through their
16 testimony, and nothing else. There will be
17 other things that you will hear during the trial
18 but it the evidence that you will ultimately
19 consider to decide the true facts. You've heard
20 me ask the question over and over of whether or
21 not that would influence you as a juror, if you
22 would base your decision on the evidence and the
23 law.

24 As I told you this morning, you're the
25 sole judges of the facts. It is my

1 responsibility to be the judge of the law. We
2 combine our efforts and decide the case based on
3 the evidence and the law.

4 Is there anything that you have heard
5 thus far that would give you any concern about
6 your ability to analyze the evidence fairly in
7 this case and decide from that evidence what you
8 believe to be the truth and then apply the law
9 fairly to those facts? If so, please stand.
10 (No response).

11 Any additional specific questions from
12 the State?

13 MR. VOIGHT: None, Your Honor.

14 THE COURT: Any additional specific
15 questions from Mr. Coaxum?

16 MR. BUTLER: No, sir.

17 THE COURT: Each of you will make an
18 oath -- take an oath, make a commitment to both
19 the State and Mr. Coaxum to be fair and
20 impartial. Is there anything that you've heard
21 now that gives you any concern or hesitancy to
22 be able to make that commitment? That is, to be
23 fair and impartial judges and decide the case
24 based on the evidence and the law. If so,
25 please stand. (No response). Thank you, there

1 are none.

2 What is going to happen now is that
3 each side can excuse jurors. The State in this
4 case has the right to excuse five and Mr. Coaxum
5 has the right to excuse ten.

6 What is going to happen is that your
7 names are going to be called by Mr. Callahan.
8 When your name is called, if you will, bring
9 with you your personal effects, come forward and
10 basically stand where I am standing here, facing
11 the parties, the State and Mr. Coaxum.

12 First the State will have an
13 opportunity -- they may say 'seat the juror',
14 'swear the juror' or they may say 'excuse the
15 juror.' If they say to seat or swear the juror,
16 then Mr. Butler will have the same opportunity.
17 He may say to seat the juror, swear the juror or
18 he may excuse the juror.

19 We will go through the process until
20 we've identified our twelve jurors and one
21 alternate. Please bear with us, we'll have that
22 jury selected very shortly. Thank you very
23 much.

24 Mr. Callahan, I will turn it over to
25 you.

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1 CLERK: Juror Number 203, Janet
2 Olliff.

3 (JUROR COMES FORWARD)

4 CLERK: What say you for the State?

5 MR. VOIGHT: The State asks that you
6 excuse this juror.

7 CLERK: Ms. Olliff, please have a seat
8 back in the audience. You've been excused from
9 the trial of this case.

10 (JUROR NUMBER 230 EXCUSED)

11 CLERK: Juror Number 196, Raeann
12 Nasatka.

13 (JUROR COMES FORWARD)

14 CLERK: What say you for the State?

15 MR. VOIGHT: Please seat the juror.

16 CLERK: What say you for the Defense?

17 MR. BUTLER: Please excuse Ms.
18 Nasatka.

19 CLERK: Ms. Nasatka, please have a
20 seat back in the audience. You've been excused
21 from the trial of this case.

22 (JUROR NUMBER 196 EXCUSED)

23 CLERK: Juror number 233, Adam Rohaly.
24 233.

25 (JUROR COMES FORWARD)

1 CLERK: What say you for the State?

2 MR. VOIGHT: Please present this
3 juror.

4 CLERK: What say you for the
5 Defendant?

6 MR. BUTLER: Please seat Mr. Rohaly.

7 CLERK: Mr. Rohaly, please have a seat
8 in the jury box. You have been selected as a
9 juror in this case.

10 (JUROR NUMBER 233 SEATED)

11 CLERK: Juror Number 89, Lovella
12 Flood.

13 (JUROR COMES FORWARD)

14 CLERK: What say you for the State?

15 MR. VOIGHT: Please excuse this juror.

16 CLERK: Ms. Flood, please have a seat
17 back in the audience. You've been excused from
18 the trial in this case.

19 (JUROR NUMBER 89 EXCUSED)

20 CLERK: Juror Number 150, John Jowers.

21 (JUROR COMES FORWARD)

22 CLERK: What say you for the State?

23 MR. VOIGHT: Please present this juror.

24 CLERK: What say you for the
25 Defendant?

1 MR. BUTLER: Please excuse Mr. Jowers.

2 CLERK: Mr. Jowers, please have a seat
3 back in the audience. You ahve been excused
4 from the trial in this case.

5 (JUROR NUMBER 150 EXCUSED)

6 CLERK: Juror Number 7, Pearl Alston.

7 (JUROR COMES FORWARD)

8 CLERK: What say you for the Sate?

9 MR. VOIGHT: Please seat this juror.

10 CLERK: What say you for the
11 Defendant?

12 MR. BUTLER: Please seat Ms. Alston.

13 CLERK: Ms. Alston, please have a seat
14 in the jury box. You've been selected for the
15 jury in this case.

16 (JUROR NUMBER 7 SEATED)

17 CLERK: Juror Number 110, John
18 Thompson.

19 (JUROR COMES FORWARD)

20 CLERK: What say you for the State?

21 MR. VOIGHT: Please present this
22 juror.

23 CLERK: What say you for the
24 Defendant?

25 MR. BUTLER: Please excuse Mr.

1 Thompson.

2 CLERK: Mr. Thompson, please have a
3 seat back in the audience. You've been excused
4 from the trial in this case.

5 (JUROR NUMBER 330 EXCUSED)

6 CLERK: Juror Number 243, Michael
7 Sharpe.

8 (JUROR COMES FORWARD)

9 CLERK: What say you for the State?

10 MR. VOIGHT: Please present this
11 juror.

12 CLERK: What say you for the
13 Defendant?

14 MR. BUTLER: Please seat Mr. Sharpe.

15 CLERK: Mr. Sharpe, please have a seat
16 in the jury box. You've been selected as a
17 juror in this case.

18 (JUROR NUMBER 243 SEATED)

19 CLERK: Juror Number 78, Jane Dowd.

20 (WITNESS COMES FORWARD)

21 CLERK: What say you for the State?

22 MR. VOIGHT: Please present this
23 juror.

24 CLERK: What say you for the
25 Defendant?

1 MR. BUTLER: Please seat Ms. Dowd.

2 CLERK: Ms. Dowd, please have a seat
3 in the jury box. You've been selected as a
4 juror in this case.

5 (JUROR NUMBER 78 SEATED)

6 CLERK: Juror Number 176, Tonya
7 Matthews.

8 (JUROR COMES FORWARD)

9 CLERK: What say you for the State?

10 MR. VOIGHT: Please seat Ms. Matthews.

11 CLERK: What say you for the
12 Defendant?

13 MR. BUTLER: Please seat Ms. Matthews.

14 CLERK: Ms. Matthews, please have a
15 seat in the jury box. You've been selected as
16 a juror in this case.

17 (JUROR NUMBER 176 SEATED)

18 CLERK: Juror Number 112, Allison
19 Gregroy.

20 (JUROR COMES FORWARD)

21 CLERK: What say you for the State?

22 MR. VOIGHT: Please present this
23 juror.

24 CLERK: What say you for the
25 Defendant?

1 MR. BUTLER: Please excuse Ms.
2 Gregory.

3 CLERK: Ms. Gregory, please have a
4 seat back in the audience. You've been excused
5 from the trial in this case.

6 (JUROR NUMBER 112 EXCUSED)

7 CLERK: That is four strikes for the
8 Defendant. Juror Number 296, Ronnie Wyatt.

9 (JUROR COMES FORWARD)

10 CLERK: What say you for the State?

11 MR. VOIGHT: Please present this
12 juror.

13 CLERK: What say you for the
14 Defendant?

15 MR. BUTLER: Please excuse Mr. Wyatt.

16 CLERK: Mr. Wyatt, please have a seat
17 back in the audience. You've been excused from
18 the trial in this case.

19 (JUROR NUMBER 296 EXCUSED)

20 CLERK: Juror Number 325, Thomas
21 Rogers.

22 (JUROR COMES FORWARD)

23 CLERK: What say you for the State?

24 MR. VOIGHT: Please present this
25 juror.

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1 CLERK: What say you for the
2 Defendant?

3 MR. BUTLER: Please excuse Mr. Rogers.

4 CLERK: Mr. Rogers, please have a seat
5 back in the audience. You've been excused from
6 the trial of this case.

7 (JUROR NUMBER 325 EXCUSED)

8 CLERK: That is six strikes for the
9 Defendant. Juror Number 323, Martha Morgan.

10 (JUROR COMES FORWARD)

11 CLERK: What say you for the State?

12 MR. VOIGHT: Please present this
13 juror.

14 CLERK: What say you for the
15 Defendant?

16 MR. BUTLER: Please seat Ms. Morgan.

17 CLERK: Ms. Morgan, please have a seat
18 in the jury box. You've been selected as a
19 juror in this case.

20 (JUROR NFUMBER 323 SEATED)

21 CLERK: Juror Number 14, Illa Barnes.

22 (JUROR COMES FORWARD)

23 CLERK: What say you for the State?

24 MR. VOIGHT: Please present this
25 juror.

1 CLERK: What say you for the
2 Defendant?

3 MR. BUTLER: Please seat Ms. Barnes.

4 CLERK: Ms. Barnes, please have a seat
5 in the juror box. You've been selected as a
6 juror in this case.

7 (JUROR NUMBER 14 SEATED)

8 CLERK: Juror Number 322, Memari
9 Kazem.

10 (JUROR COMES FORWARD)

11 CLERK: What say you for the State?

12 MR. VOIGHT: Please present this
13 juror.

14 CLERK: What say you for the
15 Defendant?

16 MR. BUTLER: Please excuse Mr. Kazem.

17 CLERK: Mr. Kazem, please have a seat
18 back in the audience. You've been excused from
19 the trial in this case.

20 (JUROR NUMBER 322 EXCUSED)

21 CLERK: Juror Number 229, Patrice
22 Robertson.

23 (JUROR COMES FORWARD)

24 CLERK: What say you for the State?

25 MR. VOIGHT: Please present this

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1 juror.

2 CLERK: What say you for the
3 Defendant?

4 MR. BUTLER: Please seat Ms.
5 Robertson.

6 CLERK: Ms. Robertson, please have a
7 seat in the jury box.

8 (JUROR NUMBER 229 SEATED)

9 CLERK: Juror Number 200, Patricia
10 Norlander.

11 (JUROR COMES FORWARD)

12 CLERK: What says the State?

13 MR. VOIGHT: Please present this
14 juror.

15 CLERK: What say you for the
16 Defendant?

17 MR. BUTLER: Please seat Ms.
18 Norlander.

19 CLERK: Ms. Norlander, please have a
20 seat in the jury box. You've been selected as a
21 juror in this case.

22 (JUROR NUMBER 200 SEATED)

23 CLERK: Juror Number 263, Suzanne
24 Taylor.

25 (JUROR COMES FORWARD)

1 CLERK: What say you for the State?

2 MR. VOIGHT: Please present this
3 juror.

4 CLERK: What say you for the
5 Defendant?

6 MR. BUTLER: Please excuse Ms. Taylor.

7 CLERK: Ms. Taylor, please have a seat
8 back in the audience. You've been excused from
9 the trial in this case.

10 (JUROR NUMBER 263 EXCUSED)

11 CLERK: Juror Number 70, Barbara
12 Davis.

13 (JUROR COMES FORWARD)

14 CLERK: What say you for the State?

15 MR. VOIGHT: Please present this
16 juror.

17 CLERK: What say you for the
18 Defendant?

19 MR. BUTLER: Please seat Ms. Davis.

20 CLERK: Ms. Davis, please have a seat
21 in the juror box, you've been selected as a
22 juror in this case.

23 (JUROR NUMBER 70 SEATED)

24 CLERK: Juror Number 73, Angienita
25 Deveaux.

1 (JUROR COMES FORWARD)

2 CLERK: What say you for the State?

3 MR. VOIGHT: Please present this
4 juror.

5 CLERK: What say you for the
6 Defendant?

7 MR. BUTLER: Please seat Ms. Deveau.

8 CLERK: Ms. Deveau please have a seat
9 in the jury box. You have been selected as a
10 juror in this case.

11 (JUROR NUMBER 73 SEATED)

12 CLERK: Juror Number 276, Louis
13 Wachsmuth.

14 (JUROR COMES FORWARD)

15 CLERK: What say you for the State?

16 MR. VOIGHT: Please present this
17 juror.

18 CLERK: What say you for the
19 Defendant?

20 MR. BUTLER: Please seat Mr.
21 Wachsmuth.

22 CLERK: Mr. Wachsmuth, please have a
23 seat in the jury box. You have been selected as
24 a juror in this case.

25 (JUROR NUMBER 276 SEATED)

1 CLERK: Now picking for the Alternate.

2 THE COURT: Yes, sir, strikes will be
3 one and two.

4 CLERK: Juror Number 209, Brooke
5 Pennell.

6 (JUROR COMES FORWARD)

7 CLERK: What say you for the State?

8 MR. VOIGHT: Please present the juror.

9 CLERK: What say you for the
10 Defendant?

11 MR. BUTLER: Please seat Ms. Pennell.

12 CLERK: Ms. Pennell, please have a
13 seat in the jury box. You've been selected as a
14 juror in this case.

15 (JUROR NUMBER 209 SEATED AS ALTERNATE)

16 CLERK: Your Honor, the seat has been
17 selected and are seated.

18 THE COURT: Thank you very much, Mr.
19 Callahan. Are there any Motions from the State
20 regarding the selection?

21 MR. VOIGHT: None from the State, Your
22 Honor.

23 THE COURT: Any Motions from Mr.
24 Coaxum?

25 MR. BUTLER: No, sir.

1 (JURY SEATED @ 12:52 P.M.)

2 THE COURT: Thank you very much,
3 Ladies and Gentlemen. I appreciate your
4 patience, those of you who were not selected.
5 You will be excused for the balance of the day.
6 Please call the number after 6:00 tonight and
7 follow that instruction. Have a good day, you
8 are free to leave.

9 (JURY PANEL EXCUSED)

10 THE COURT: Ladies and gentlemen,
11 those of you that were selected, thank you
12 very much for your patience as well. I
13 appreciate it. I know that it's almost 1:00
14 o'clock and we are going to recess for lunch.
15 I am going to let you go to lunch. Please
16 remember that you, of course, have not been
17 sworn yet but you have made a commitment to
18 the court, consistent with those questions
19 that I asked you, and you will be making a
20 commitment to decide this case based on the
21 evidence and the law when you return.
22 As you know, of course, the evidence is the
23 testimony of witnesses and the exhibits that
24 are introduced through that testimony.
25 Therefore, it would be very improper for

1 anyone to talk with you about this case or to
2 talk about this case in your presence outside
3 of this courtroom. Please do not let that
4 happen. During the trial, I will certainly be
5 reminding you of that throughout. Please do
6 not discuss this case with anyone outside the
7 courtroom or permit anyone to talk to you.
8 While it obviously may not influence you in
9 any way, the appearance of it could create a
10 problem and we have to guard against that as
11 well. If somebody should persist talking to
12 you at any time or try to talk to you or to
13 talk about the case in your presence, please
14 report that immediately upon your return so
15 that we can discuss that and deal with that as
16 we deem fit and proper.

17 Also do not begin your deliberations;
18 that is, talking among yourselves; and don't
19 make any decisions about it, don't speculate
20 because you have heard no evidence thus far so
21 there is not a lot to speculate about.

22 Have a good lunch. When you return,
23 we will bring you back -- before leaving, let
24 me just talk to you a little bit about the
25 seating. You will notice that there is one

1. extra chair. Ms. Pennell, you have been
2 selected as an alternate but that term really
3 does not have any significance at this point.
4 The only thing that means is that at the
5 conclusion of this case if the first twelve
6 jurors are able to participate, then you would
7 not participate in the final deliberations.
8 But since neither you nor I know the status of
9 those jurors at that time, you are very much a
10 part of this jury. I am sure that you will
11 follow in that fashion. While you are the
12 alternate, you may occupy either of those
13 chairs, those chairs are for you. I would ask
14 that the other jurors leave those chairs
15 vacate as you come into court because those
16 chairs are for our alternate juror.

17 The only other designated seat Ms.
18 Barnes is occupying at this point and she is
19 eligible, as are any of the first twelve of
20 you, to serve as your presiding juror.
21 Someone has to be identified and selected to
22 actually sign the verdict form on behalf of
23 the jury panel. If there are exhibits that
24 are introduced, it would their responsibility
25 as the presiding juror to receive the exhibits

1 and when the jury has completed it's
2 deliberations returning those exhibits to the
3 court. Really and truly, any of you are
4 eligible to serve.

5 The statute allows me to select that
6 person or for you to select them. I let the
7 jury pick their presiding juror. They are
8 called foreman, forelady, foreperson. That is
9 a term with which you may be more familiar but
10 basically it is the same principal and
11 function.

12 If I had to say what would be a
13 quality that you would look for, a presiding
14 juror would be someone who has good -- is a
15 good facilitator. How about that? Because
16 that's what a presiding juror ultimately will
17 have -- may have to do. Doesn't always, but
18 that's a quality that you may look for.
19 Once you get to know each other, you'all
20 decide. It doesn't have to be done right away
21 but once you do I'd simply that that person be
22 identified. Once you have selected the
23 person, I would ask that that person occupy
24 that seat. Until you have done so, you're
25 free to occupy any seat except the two

1 alternate chairs, and includes the seat that
2 Ms. Barnes is occupying as well. Once the
3 person has been selected, then that chair will
4 become the presiding juror's seat.

5 Have a good lunch. I'd ask that you
6 return to your jury room at 2:30. There are
7 some matters that we need to take up now so I
8 am going to give you a little bit longer -- I
9 would probably give you an hour and a half
10 anyway in Charleston, given trying to find a
11 place, get through, get served. Have a good
12 lunch, and I'll see you at 2:30. If you exit
13 through the door, they will show you where you
14 need to come after lunch.

15 (JURY OUT @ 1:15 P.M.)

16 THE COURT: Anything from the State
17 at this point?

18 MR. VOIGHT: No, Your Honor.

19 THE COURT: Anything from the
20 Defendant?

21 MR. BUTLER: No, sir.

22 THE COURT: Thank you. We will
23 be at-ease. Are there any matters, any
24 preliminary matters that we need to resolve
25 before we start the trial?

1 MR. BUTLER: We are going to have to
2 have a *Biggers* hearing, have to have a
3 *Bigger's* hearing.

4 THE COURT: All right, be prepared
5 to go forward with that and let's be back at,
6 say, 2:10. Thank you.

7 (LUNCH RECESS 1:15 - 2:10 P.M.)

8 (DEFENDANT PRESENT)

9 THE COURT: Ready for the *Biggers*
10 Hearing -- let the record reflect that the
11 Defendant is present.

12 THE COURT: You may call your first
13 witness.

14 MR. VOIGHT: May it please the
15 court?

16 THE COURT: Yes, sir.

17 MR. VOIGHT: Tamera Brown.

18 (WITNESS TAKES STAND)

19 TAMERA LYNN BROWN, being
20 duly sworn to tell the truth, the whole truth
21 and nothing but the truth, testified, as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. BUTLER:

25 Q. Ms. Brown, where are you employed?

1 A. Pizza Hut.

2 Q. And where is that location?

3 A. Dorchester Road at Leeds.

4 Q. Is that in Charleston County?

5 A. North Charleston, Charleston County,
6 yeah.

7 Q. Were you employed at that Pizza Hut
8 in November 27th, 2007?

9 A. Yes, sir.

10 Q. In what capacity were you employed
11 that day?

12 A. I'm a shift manager.

13 Q. And what shift were you working that
14 day?

15 A. The night shift. Closing shift.

16 Q. Did that -- was there an occurrence
17 that happened at the close of the night shift?

18 A. Yes, -- what happened to me?

19 Q. What happened?

20 A. It was closing time, it was like
21 11:00 and I was counting the money and you
22 know, making my deposit and everything, and
23 there was a knock on the front when the doors
24 were locked, so you know, we were closed. I
25 looked for a second and said we were closed.

1 Then the next thing -- my driver was
2 leaving out the side door because he was going
3 -- he was going out the side door to leave for
4 the night. I turned because he was talking to
5 me and as he opened the door, and I was sort
6 of looking down at my credit card slips
7 everything and then something told me to look
8 up. I looked up and I saw Charles and the
9 driver coming in with their hands up like this
10 and the next thing I know I saw the man with a
11 shotgun pointed at him and then he came over
12 to me and he started screaming at me to give
13 him the money, to open the register, to open
14 the safe. I couldn't open the safe because it
15 was time-locked. He started getting angry
16 and started getting louder and finally the
17 driver was like, 'Man, she can't open the
18 safe.' So he wanted what was in the register
19 -- but he had the gun on me the whole time.

20 Q. Why was the lighting like there in
21 the store?

22 A. It was bright.

23 Q. What was he wearing?

24 A. He had like an army suit on, but he
25 had a hoodie over his head and all I could see

1 was like his eyes. I was basically looking at
2 his eyes and his face needed a shave.

3 Q. How long do you think that he was in
4 Pizza Hut?

5 A. It seemed like a long time but it was
6 probably about five or ten minutes.

7 Q. And during that time that he was
8 talking to you, yelling at you?

9 A. Yeah, full-time. Yeah.

10 Q. What ---

11 A. Huh?

12 Q. Did you hand him the cash drawer?

13 A. Well, he kept telling me to open he
14 safe and I was telling him, 'I can't open the
15 safe.' So then -- you know, he had the gun
16 pointed right at me and then Charles said,
17 'Man, she can't open the safe.' So he went to
18 the register and, you know, said the words
19 he's at like the register. I was so nervous
20 -- I finally got the register open but I was
21 making my deposit and there was not a lot of
22 money in there. Then as soon as the register
23 opened, he focused on the register and that
24 is like when I ran, I ran behind the driver.
25 That's what I did.

1 Q. Did you keep an eye out for what the
2 gunmen were doing?

3 A. Yeah, they had their -- there was
4 this other guy with him.

5 Q. What was he doing?

6 A. He was just standing there the whole
7 time. He was like watching Mikey and Chuckie.
8 He was focused on them while the other guy was
9 screaming at me to open up the safe, to give
10 him the money. Then after he got in the
11 register, you know, I guess he was more
12 focused on the money in the register and, so,
13 I like ran behind Mike and Chuckie.

14 After he got whatever he got out of
15 there, he pointed the gun at the three of us
16 and told us to go in the back. We all walked
17 in the back, stood back there by the
18 dishwasher. I was like crying and I was -- I
19 was crying. They ran out the side door.

20 Then as soon as we were sure that
21 they were gone, I called 9-1-1.

22 Q. Did there come a time when the North
23 Charleston Police Department responded to the
24 Pizza Hut?

25 A. Yes, they came right away.

1 Q. Did they take you anyplace?

2 A. Yeah. They were in there talking to
3 us for a little while and then I guess they
4 got a call saying that they had caught them or
5 something and then -- I remember them asking
6 who wanted to go identify them. Since I was
7 actually the one who was looking at them the
8 most, I said that I would. They put me in the
9 back of the car and I went and -- it was up by
10 Gerald's on Rivers Avenue. I stayed in the
11 back of the police car and they were
12 arresting, they was arresting him. He was
13 standing by a police car and they asked me if
14 that was him as we drove by. We sat there and
15 they like put a spotlight on him as we drove
16 past him.

17 Q. Approximately how long after you
18 called 9-1-1 were you taken out by Gerald's
19 Tires?

20 A. Probably about five or ten minutes.
21 It wasn't long that long at all, probably
22 about five to ten minutes.

23 Q. And how long did you sit in the back
24 of the patrol car when they shined the
25 spotlight.

1 A. It wasn't that long. They were, you
2 know, arresting him and he was standing by the
3 -- by the cruiser. It really didn't take
4 long, you know.

5 Q. The person that was standing by the
6 cruiser, was he the gunman or was he the other
7 one?

8 A. The person that was standing by
9 where?

10 Q. The cruiser.

11 A. That's the one that had -- that
12 focused on me.

13 Q. Is he the one who you spent most of
14 your focus on?

15 A. Yes.

16 Q. Did the North Charleston police
17 officers tell you that he was definitely the
18 gunman?

19 A. No, they did not tell me that. They
20 said that they had a suspect and they asked me
21 to ride with them to identify him. I couldn't
22 tell with the hood and all, you know, but he
23 was the one with the camouflage.

24 Q. Do you see the person in the court-
25 room today who was standing there by the

1 cruiser with the hoodie?

2 A. Yes.

3 Q. Would you point him out and describe
4 what he is wearing?

5 A. (Indicating Defendant).

6 Q. When you were out there in the back
7 of the cruiser, was there any doubt that was
8 the person who'd robbed you?

9 A. No, there was no doubt.

10 Q. Did the North Charleston police
11 officers offer you anything or in any way,
12 uh, promise you anything to make that
13 identification?

14 A. No.

15 MR. VOIGHT: One moment. Please
16 answer any questions that Mr. Butler may have
17 for you.

18 THE COURT: Cross-examine.

19 CROSS EXAMINATION

20 BY MR. BUTLER:

21 Q. Good afternoon, Ms. Brown.

22 A. Hello.

23 Q. I just need to ask you a few quick
24 questions.

25 A. All right.

1 Q. There were two guys?

2 A. Yes.

3 Q. One had on a camou with hoodie?

4 A. Um-humm.

5 THE COURT: Is that a "yes"?

6 THE WITNESS: (No verbal
7 response).

8 THE COURT: I need for you to
9 answer verbally.

10 THE WITNESS: Oh, "yes."

11 THE COURT: Thank you.

12 CROSS EXAMINATION CONTINUED

13 BY MR. BUTLER:

14 Q. And that was the person who had the
15 gun?

16 A. Yes.

17 Q. And the other person did not have on
18 a camouflage jacket?

19 A. No, I am not sure if he had a gun or
20 not. I really was not focused on him. He had
21 a hoodie on but -- I think it was white or
22 something. I'm not really sure what it was
23 but he did not have camouflage.

24 Q. Do you remember telling the officer
25 that the other person had on a gray sweat

1 shirt?

2 A. It was gray or white or something,
3 sure.

4 Q. Definitely not camouflage?

5 A. Right. Correct.

6 Q. When you go to where they had stopped
7 the suspect, they didn't tell you definitely
8 but they said -- can you tell me what you
9 recall that they said?

10 A. Well, I just seen the one. I didn't
11 see the other guy. They just asked me if that
12 was him. You know, when they picked me up
13 they asked me -- they said that they had a guy
14 who was a suspect and they wanted someone to
15 identify him. I said I would do it.

16 It was like -- when we got there, you
17 know, they asked me -- they put like a spot-
18 light on him and ask if that was him. I, you
19 know, I said 'yeah.'

20 Q. And the person that you identified at
21 the scene where they've got a suspect, you
22 identified the person that you recognized as
23 the gunman?

24 A. Yes. Correct.

25 Q. With the camouflage jacket?

1 A. Yes.

2 Q. Did they ask you to look at one or
3 two people?

4 A. I only saw one person.

5 Q. They didn't show you a second person?

6 A. No.

7 Q. Okay. Back at the Pizza Hut, did you
8 see the car?

9 A. No I didn't even -- after they left,
10 I didn't even open the door. I went straight
11 to the phone and I stayed there until the
12 police knocked on the door.

13 Q. And as far as you could tell there
14 were only two people involved?

15 A. That is all that I seen.

16 Q. Did they told you that they had two
17 suspects in custody and that they wanted you
18 to look -- to take a look at one of them or
19 both of them?

20 A. They really didn't tell me how many
21 people they had as suspects.

22 Q. Was he handcuffed?

23 A. Yes.

24 Q. By the police car?

25 A. (Affirmative nod), standing by the

1 police car.

2 Q. Ms. Brown, do you remember telling
3 the responding officer that you spoke to that
4 it was not the gunman with the camouflage
5 jacket but the other one, the one who was
6 wearing a gray G-Unit sweatshirt -- does that
7 sound familiar?

8 A. I am not sure -- like I said, my
9 focus was on the person who had the gun on me.
10 That was my focus.

11 Q. But the other person definitely did
12 not have on a camouflage jacket?

13 A. No.

14 MR. BUTLER: That's all that I have.

15 THE COURT: Redirect, Mr. Voight?

16 MR. VOIGHT: No redirect.

17 THE COURT: You may come down.

18 Thank you.

19 (WITNESS STEPS DOWN)

20 THE COURT: Any other witnesses?

21 MR. VOIGHT: Not on this case.

22 MR. BUTLER: I may have some. I
23 don't know if they are here. If we could just
24 take one minute.

25 THE COURT: Okay.

1 (BRIEF RECESS)

2 (DEFENDANT PRESENT)

3 MR. BUTLER: Judge, may we approach?

4 THE COURT: Sure.

5 BENCH CONFERENCE:

6 MR. BUTLER: I don't know if
7 they have a witness that can say this -- I
8 wasn't expecting her to say that. She's got
9 it backwards compared to what the police
10 reports say. It's the other guy, the
11 codefendant that's got on the camouflage
12 jacket, my guy has got the gray jacket. She's
13 got it backwards. I think that I have to get
14 them to bring in Vasquez.

15 MR. VOIGHT: I am not -- I mean, it
16 might be fun for a jury but I am not sure how
17 it validates ---

18 MR. BUTLER: Because she picked out
19 the wrong guy. She said that the gunman was
20 the guy with the camouflage jacket. Then when
21 they are at the stop she says that's the guy
22 that is the gunman and he doesn't have on a
23 camouflage jacket. It's the other guy.

24 THE COURT: I don't believe that it
25 creates ---

1 MR. BUTLER: It's one of the
2 elements in the ---

3 THE COURT: What is the prejudice?

4 MR. BUTLER: It is what she told
5 them, and I expect them to correct it. In her
6 initial statement to police she said that the
7 guy with the camouflage jacket is the guy that
8 had the gun. When they stopped them, my guy
9 does not have a camouflage jacket on. He had
10 on a gray sweatshirt, which may still make him
11 guilty as an accomplice but ---

12 THE COURT: Well, I understand but
13 the ---

14 MR. BUTLER: We are now just
15 litigating the ID question.

16 THE COURT: I understand that but,
17 again, -- what is the ---

18 MR. BUTLER: One of the issues under
19 *Neil v. Biggers* is the accuracy ---

20 THE COURT: Correct.

21 MR. BUTLER: --- between the initial
22 description and the person that she picks out.
23 She described the person as wearing a camou
24 jacket. It's not just a coincidence that one
25 of those two people is wearing a camou jacket,

1 but that's not the one that she picked out.

2 MR. VOIGHT: The jacket that he was
3 wearing could be described as a camouflage
4 jacket.

5 MR. BUTLER: She said the other one
6 had on a gray sweatshirt.

7 MR. VOIGHT: To a layperson it could
8 be ---

9 MR. BUTLER: That's a gray jacket, a
10 gray sweatshirt. It's not camouflage.

11 MR. VOIGHT: There are different
12 kinds of camouflage. They've got tan
13 camouflage, green camouflage, they've got the
14 brown, they have gray camouflage, they ---

15 MR. BUTLER: Yeah, except that
16 everybody all described him as having the
17 "gray sweatshirt" and the other guy as having
18 camouflage. Camouflage has some kind of
19 design.

20 THE COURT: I hear what you're
21 saying but I think she's accurate, she said
22 one had on camouflage and one had on a gray
23 sweatshirt.

24 MR. BUTLER: Thank you, Judge.

25 (BENCH CONFERENCE CONCLUDED)

1 MR. BUTLER: Judge, just so that my
2 position is clear for the record.

3 THE COURT: Certainly, I will be
4 glad to hear from you.

5 MR. BUTLER: Your Honor, from the
6 discovery, when the officers stopped the
7 suspect vehicle the passenger had on a
8 camouflage jacket and dreadlocks. That person
9 is not my client and is not the person that
10 was identified by the witness. I maintain
11 that she got it backwards and although with
12 respect to guilt that would be an issue for
13 the jury to decide, one of the factors of
14 *Biggers* is the accuracy between the actual
15 perpetrator, the description of the
16 perpetrator and the physical characteristics
17 of the defendant. If she described the
18 perpetrator as having on a camouflage jacket
19 and the codefendant had on the camouflage
20 jacket yet she picked out my client as being
21 the gunman, it goes to the inaccuracy and, I
22 submit, the unreliability of her ID. I think
23 she just got it backwards. Now, that doesn't
24 mean that perhaps Mr. Coaxum is not guilty as
25 an accomplice, but that's for the jury to

1 decide. We are just litigating now the issue
2 of identification and I think I have to move
3 that it be suppressed. I would like to make
4 as part of the record, if I could, -- my
5 understanding is that Officer Vasquez is not
6 here and I would like to make his report a
7 part of the record if I could, please.

8 THE COURT: Sure.

9 COURT REPORTER: Defendant's Exhibit
10 for the *Neil v. Biggers* Hearing.

11 MR. BUTLER: I guess that we should
12 also add that the witness in her testimony
13 described the other person as having a gray
14 sweatshirt and does not describe the person in
15 the camouflage jacket as having dreadlocks.

16 Officer Vasquez in his report, "the
17 subject wearing the camouflage jacket with
18 dreads in his hair", was described as the
19 person who fled from the vehicle on foot,
20 which was not my client.

21 That is all that I have, Judge.

22 THE COURT: Do you wish to respond?

23 MR. VOIGHT: Your Honor, as I
24 previously stated, *Biggers* concentrates on
25 the process as a substantial likelihood of

1 misidentification. I believe that this
2 witness was very clear that the person who she
3 identified as the person standing at the car
4 was the person who held the gun and that
5 person is the person present in court. I
6 don't believe that there is a substantial
7 likelihood of misidentification.

8 If there is some question about how
9 to characterize the jacket he wore being
10 camouflage or something else, I believe that's
11 a question for the jury and Mr. Butler can
12 argue that to them.

13 THE COURT: Response?

14 MR. BUTLER: Just briefly. I should
15 have said that under our case law show-ups are
16 presumptively suggestive and disfavored.

17 THE COURT: I agree with that.

18 MR. BUTLER: That is *State v.*
19 *Blassingame*, 525 S.E. 2nd 535.

20 I think this show-up was particularly
21 suggestive because she was told that they had
22 two suspects and was taken to the scene. I
23 also have to admit that you wouldn't have to
24 be any kind of genius to figure out that's why
25 they are taking you to a scene. For them to

1 tell them that, that just makes it all that
2 much more suggestive given that it is a show-
3 up that is presumptive and suggestive. And
4 given the discrepancy in her identification,
5 I move to suppress.

6 THE COURT: Thank you, sir. There
7 is no question that the witness testified that
8 had she had the opportunity to view the
9 defendant, that she was very focused on him.

10 Of the five areas, I will give you
11 just for the sake of discussion the accuracy
12 of the prior description. There is no
13 question of the certainty at the time
14 identification. The time between was a very
15 short period of time, which I think is
16 significant.

17 The issue, as I understand it is just
18 the reliability of it. There is no question
19 she did -- whether or not, having seen the
20 photograph which is not part of the evidence
21 here but everybody agrees that there is a
22 photograph that shows -- in part of that there
23 is clearly a gray sweatshirt and part of it I
24 don't know what you would describe it as.
25 Again, that goes to -- I don't know, what did

1 she mean the camouflage? What did he mean by
2 camouflage? She clearly testified that the
3 codefendant had on a gray sweatshirt.

4 I think her accuracy and the
5 certainty of her identification -- while I
6 agree with you totally that it is generally
7 disfavored, I -- given that there was nothing
8 other than 'we think we have somebody', which
9 certainly is -- you're right, what do they
10 think that they have when they go there.
11 But she was -- I mean, she didn't vacillate as
12 far as identification and I think all of that
13 allows it. Thank you very much.

14 Okay. Are we ready for the jury now?

15 MR. BUTLER: Judge, I have one quick
16 housekeeping matter.

17 THE COURT: Sure. And I -- I am
18 now doing this in every case where I receive
19 -- I received discovery as late as yesterday
20 afternoon. I know -- I don't think that Mr.
21 Voight did it on purpose, I -- I don't need a
22 continuance. However, I am at the point now
23 where I am going to bring this up in every
24 case, hoping that at some point something gets
25 done about it.

1 The witness statements, they were
2 already summarized and referenced in other
3 reports, I just now got them. I am not
4 prejudiced by that. But the photographs, I
5 had not seen, did not know about until I got
6 them yesterday.

7 THE COURT: Okay.

8 MR. BUTLER: No amount of time would
9 make a difference, I admit that. Nevertheless
10 there are deadlines. We have deadlines for a
11 reason. I have been doing this -- not nearly
12 as long as some people in the courtroom but
13 I've been doing it thirteen years and I
14 suspect that I've tried probably as many cases
15 as most people try cases and not once have I
16 ever had a prosecutor seek relief and say, 'My
17 thirty days are up, I need more time.' It's
18 just -- it is getting ignored. So I move to
19 exclude these photographs, having gotten them
20 less than twenty-four hours ago.

21 THE COURT: Do you wish to respond,
22 Mr. Voight?

23 MR. VOIGHT: Your Honor, we - when I
24 put this case together, uh, this case has been
25 for the most part, for the most of its history

1 a plea. I believe that Mr. Butler and I both
2 considered this case to be a plea. It was
3 only at the last minute when we prepared for
4 trial that I realized that there were certain
5 things that we hadn't given to the other
6 party. I never meant to disclose anything
7 late. I am not a big fan of how Rule 5
8 actually allows me to disclose witness state-
9 ments in the middle of trial. It's always my
10 practice to disclose them as early as I can.

11 THE COURT: I thought that we had
12 something else, too, that took effect. I
13 thought that I was -- because I was involved
14 a little bit in trying to formulate that.

15 MR. VOIGHT: Right.

16 THE COURT: And that is the
17 administrative Order that said you're to
18 deliver this. How long have you had the
19 photographs?

20 MR. VOIGHT: Well, this -- I
21 believe that we requested the photographs --
22 this ---

23 THE COURT: No. How long have you
24 had them?

25 MR. VOIGHT: How long have I had

1 them?

2 THE COURT: Yes.

3 MR. VOIGHT: That would tell me how
4 long I had them, because I didn't get them
5 with the initial ---

6 THE COURT: Therein lies the
7 problem.

8 MR. VOIGHT: Yeah. This case
9 actually predates the administrative Order
10 but that really doesn't change ---

11 THE COURT: It doesn't make any
12 difference.

13 MR. VOIGHT: I would estimate that
14 I've had those photographs in my possession
15 for months.

16 THE COURT: How long?

17 MR. VOIGHT: Months.

18 THE COURT: Motion is granted ---

19 MR. BUTLER: Thank you.

20 THE COURT: --- for failure to
21 comply with the administrative Order.

22 MR. VOIGHT: Your Honor, ---

23 THE COURT: Let me just -- let me
24 give you an analogy. It is analogous to what
25 happens every single day in civil court. We

1 have interrogatories and they are deemed to
2 continue. When there is something produced
3 that is significant and it's not, then there
4 are possible Motions. I am excluding them.
5 Thank you.

6 We've got to start somewhere. We
7 start here, January -- the first case I'm
8 trying in January.

9 MR. VOIGHT: Your Honor, ---

10 THE COURT: Yes, sir?

11 MR. VOIGHT: May I have a -- may I
12 approach? I may request a brief recess.

13 THE COURT: Sure.

14 MR. VOIGHT: May I approach?

15 THE COURT: Sure.

16 BENCH CONFERENCE:

17 MR. VOIGHT: May I have a few
18 minutes to consult with my office to determine
19 whether or not this is the kind of -- whether
20 or not I should take an appeal?

21 THE COURT: You can do whatever
22 you want.

23 MR. VOIGHT: I just -- I --
24 before I go and make a decision here that
25 impacts my entire office, I think I probably

1 ought to have a discussion with the people who
2 pay my check.

3 THE COURT: Do what you feel
4 like you have to do. I'll be happy to --
5 sooner or later somebody has got to -- there
6 have to be ramifications and repercussions
7 when the State doesn't comply with an
8 administrative order. I will be happy for you
9 to put it on there because I will be happy to
10 state for the record ---

11 MR. VOIGHT: That's fine.

12 THE COURT: --- my feelings
13 about it.

14 MR. VOIGHT: I am not sure which
15 way we are going to go but I ---

16 THE COURT: I'll give you five
17 minutes. That's it.

18 MR. VOIGHT: Thank you.

19 (BENCH CONFERENCE CONCLUDED)

20 (BRIEF RECESS)

21 (DEFENDANT PRESENT)

22 MR. VOIGHT: The State is ready to
23 proceed, Your Honor.

24 THE COURT: Very well. Let me say
25 this with respect to the pictures. I don't

1 know whether one of those pictures happens to
2 be a photograph that was shown to me -- but
3 that creates another issue, if you're
4 challenging something that was not -- whether
5 it is camouflage or not camouflage, and that
6 picture speaks -- if we are going to challenge
7 it, we are -- you have that picture?

8 MR. BUTLER: I understand, Judge.

9 THE COURT: And that would be one
10 that I could not -- I think not correct, just
11 for the sake of not complying.

12 MR. BUTLER: Well, I -- I know it's
13 a tough question to answer, but I have to ask
14 the court what would constitute challenge?

15 THE COURT: Well, if you use it to
16 challenge her description. I think that is a
17 legitimate argument, legitimate cross-
18 examination but the photograph itself would
19 allow the factfinder to say, 'weren't you
20 mistaken...' -- I am not saying whether it
21 could or couldn't. I am just saying that the
22 photograph addresses the possible mis-
23 description.

24 MR. BUTLER: I understand.

25 THE COURT: So that part of it --

1 and as you stated, you didn't -- I think I
2 heard you say that 'I didn't know this was
3 what she was going to say until' ---

4 MR. BUTLER: I knew that was what
5 her statement to the police was but I figured
6 that by the time it gets here that somebody
7 has figured it out and it gets straightened
8 out.

9 THE COURT: Given that, that one
10 picture I would allow, that shows -- I assume
11 that it was taken at the scene that night.

12 MR. BUTLER: Taken at the traffic
13 stop.

14 THE COURT: (Affirmative nod), if
15 it is challenged.

16 MR. BUTLER: (Affirmative nod), if
17 I challenge it.

18 THE COURT: Yeah. If it is not
19 challenged, that part of it is not challenged,
20 then I agree with you that it doesn't become
21 an issue ---

22 MR. BUTLER: If she describes the
23 clothes worn by the perpetrator on cross, is
24 that ---

25 THE COURT: I am just saying that

1 if you're saying -- if it is identified that
2 the person was wearing a gray sweatshirt and
3 not camouflage. If that approach is taken,
4 then -- unfortunately that photograph
5 describes both ways.

6 MR. BUTLER: It does.

7 THE COURT: So I think from that
8 standpoint -- only to say -- not to say that
9 it is camouflage but to say that it is what it
10 is.

11 MR. BUTLER: Yes, sir.

12 THE COURT: And that is where I
13 don't think that there is any -- unless the
14 picture is in some way doctored or changed, it
15 represents something which -- you could have
16 had it for years and it wouldn't have changed
17 anything insofar as that particular issue is
18 concerned.

19 MR. BUTLER: No, I agree. I
20 understand. I suspect that's -- that's a fine
21 line for me to walk. If I walk it and I cross
22 it, then we ---

23 THE COURT: We'll see where we go.

24 MR. BUTLER: --- will deal with it
25 then.

1 THE COURT: All right.

2 MR. BUTLER: Thank you, Judge.

3 THE COURT: All right. But until
4 that happens the State is not permitted to use
5 it. Bring in our jury.

6 (JURY IN @ 3:12 P.M.)

7 THE COURT: Thank you very much,
8 Ladies and Gentlemen. Thank you for your
9 patience. There were some preliminary matters
10 that I thought we could conclude in about
11 twenty minutes and they ran a little longer
12 than I anticipated; for that, I am sorry.
13 That happens from time to time. There are
14 matters that I have to hear before and outside
15 of your presence, just as when you decide this
16 case it will be outside of our presence. So
17 thank you for your patience.

18 Ms. Norlander, as I understand, the
19 jury has selected you as their presiding
20 juror.

21 JUROR NUMBER 200: I volunteered.

22 THE COURT: Given the statements
23 earlier, that does not surprise me. Thank
24 you, Ladies and Gentlemen. That of course
25 will be your seat for the balance of the

1 trial. I hope you had a good lunch. We are
2 ready to continue now. Please give your
3 attention to Mr. Callahan as he administers
4 your oath.

5 (WHEREUPON JURY SWORN)

6 THE COURT: Thank you, sir. Thank
7 you, ladies and gentlemen. Now, by virtue of
8 that oath you have become a judge with me and
9 now we will work together to resolve this
10 dispute, much along the lines of what we
11 talked about earlier when I qualified you this
12 morning.

13 You now have promised to do something
14 that, as I mentioned, you are extremely
15 qualified to do. What you have promised to do
16 is use your sense of logic and reason
17 basically as you have done throughout your
18 life. You have promised that you will apply
19 that sense, that sense of logic and reasoning
20 in analyzing the evidence that you hear during
21 this trial or that you see.

22 Evidence, as I will remind you, is
23 the testimony of witnesses and the exhibits
24 that are introduced through that testimony.
25 You will at the appropriate time make that

1 analysis and reach a determination after
2 considering the evidence of what you believe
3 to be the true facts. Part of that oath you
4 heard confirms what we talked about, having
5 two judges working together because you said
6 you will make your decision and a true
7 deliverance make based on the evidence and the
8 law.

9 At the conclusion of this trial, I
10 will give you the law that you have promised
11 to accept and to apply fairly and impartially
12 to those facts as you determine them.

13 I have nothing to do with the facts.
14 No one in this room has that job for you.

15 You have nothing to do with the law,
16 that is my responsibility.

17 You have promised this court, you
18 promised the State and you promised the
19 defendant in this matter that you would take
20 the law and apply it fairly and impartially,
21 and I am confident you will do that.

22 You brought with you your common
23 sense, you sense of logic, and you brought
24 with you something else that I would suggest
25 to you is very, very important in performing

1 the task that you have just accepted; and,
2 that is an open mind.

3 Each one of you, either by answering
4 the question or not answering the question
5 stated that you, number one, knew nothing
6 about the dispute; number two, that there was
7 nothing about what was alleged that would give
8 you any concern about your ability to not
9 predetermine any issue. In other words, you
10 have not reached any determination, that you
11 have an open mind.

12 Now you have promised that you are
13 not going to change that until you have heard
14 all the evidence. And I would suggest to you
15 something else, because in order for you to
16 comply with that oath, that is making that
17 determination, a verdict that speaks the truth
18 based on the evidence and the law, that you
19 also have to take the law -- because part of
20 the instruction that I will give to you, in
21 fact the last thing that I will tell you
22 before you leave this courtroom to begin your
23 deliberations, is to tell you when you may
24 begin your deliberations. Until then, until
25 the court gives you the okay, so to speak, the

1 go-ahead, you have promised everyone in this
2 courtroom, including yourselves, that you
3 would not -- you would not deliberate or
4 determine anything until then.

5 It is very important to this process
6 that you honor that oath, and I will tell you
7 why. There are four distinct parts to this
8 process. In just a moment the attorneys will
9 have their first opportunity to speak to you.
10 They speak to you twice, once before you hear
11 the evidence and lastly after you have heard
12 all the evidence.

13 The first time that they speak to you
14 we call "opening statements". They will
15 outline for you what is going to happen, give
16 you an overview of the dispute. You haven't
17 heard anything about it, so they will give you
18 a broad picture. It will be helpful to you as
19 we move through the evidentiary portion.

20 Following the opening statement, we
21 will go through the evidentiary portion and I
22 will come back to that in just a moment.

23 At the conclusion of the evidentiary
24 portion, the attorneys then will speak to you
25 and at that time they will discuss with you

1 the evidence and suggest reasonable inferences
2 that you may draw from that evidence.

3 Now, I am very confident that you
4 will find the attorneys' remarks very helpful
5 to you when you begin the process of analyzing
6 this case. So obviously that is very
7 important, a very important part of this
8 process of dispute resolution.

9 Their remarks are extremely important
10 and they will be very helpful to you, you
11 should give them your undivided attention,
12 they are officers of this court; but please
13 remember something, that their remarks should
14 never be considered evidence, because the
15 evidence will come through the testimony of
16 the witnesses; just as my remarks should never
17 be considered evidence.

18 The last portion of this proceeding,
19 the final stage is when I will give you the
20 law. At that time, I will discuss with you
21 the various principles of law that apply to
22 this dispute. I will outline for you the
23 various elements that are required for the
24 State to be entitled to a verdict on armed
25 robbery and to possession of a firearm during

1 the commission of a violent offense; which
2 armed robbery is. I will define all of those
3 terms.

4 I will define those terms for you and
5 I will discuss the elements, and then you will
6 go back and analyze the evidence. Let's talk
7 about that. The evidence that you will hear
8 of course will come through the testimony of
9 witnesses. The first party from which you
10 will hear is the State. Why is that? Because
11 as I mentioned to you, the State is the only
12 party in this room, the only party at all,
13 that has a burden of proof.

14 The Defendant has no responsibility
15 at all, he has nothing to prove, nothing at
16 all, he does not have to explain anything, he
17 doesn't have to answer anything because this
18 whole process is to determine, by applying the
19 law and by applying your analysis to the
20 evidence in an effort to determine whether or
21 that the State meets its burden of proof and
22 proves each element beyond a reasonable doubt.

23 Now, that's the standard that you
24 will apply and that is the standard that I
25 will define for you during my charge.

1 I would tell you now that a
2 reasonable doubt is that doubt which would
3 make a honest, conscientious and sincere juror
4 searching for the truth in a case to hesitate
5 to act or take some action. That's the
6 standard that you will apply. That is what
7 you will be doing when you analyze the
8 evidence. You will be saying as to each
9 element, 'Am I convinced, am I firmly
10 convinced as that element that the State has
11 established that element?'

12 If the answer is 'yes', then you go
13 to the next one and so on. If at the end your
14 answer is 'yes' to each of those elements,
15 then you must return a verdict of Guilty.
16 Why? Because the State met its burden of
17 proving each element.

18 If your answer is 'no' as to any one
19 element, and that's the collective response,
20 just as the collective would be that it had
21 met its burden, then you would have -- if you
22 fail -- if the State fails to prove, then you
23 must return a verdict of Not Guilty. The law
24 says that the State has to prove each element
25 to that requisite standard.

1 Now, at the conclusion of the State's
2 case, while the Defendant has nothing to prove
3 the Defendant will still have the right to
4 present evidence for your consideration should
5 he choose to. You won't hear that until
6 you've heard all the State's evidence; so,
7 again, another very logical reason why you
8 shouldn't make any conclusions.

9 But most of all, and the most
10 compelling reason is that it would be against
11 the law for you to do so. So please keep that
12 open mind. Remember that no matter what --
13 and we are different, and that difference is
14 wonderful. Some of us are people that listen
15 to everything, methodically listen to it and
16 process it and make a decision. Some of us,
17 and I've been accused of this, have a tendency
18 of not listening but going to the bottomline.
19 Sometimes you get it right, sometimes you
20 might not get it right. This is a case when
21 you have to be the first, you have to never be
22 second because -- if you do, you will have
23 violated the commitment that you just made.
24 So please remember that.

25 I look forward to trying this case

1 with you. It is an honor to serve with each
2 one of you as a judge. Thank you very much
3 for your attention to my remarks. I am now
4 going to ask that you give that same attention
5 to the attorneys as they give their opening
6 statements. Mr. Voight?

7 MR. VOIGHT: Thank you, Your Honor.
8 Ladies and Gentlemen of the jury, thank you
9 very much for your attention.

10 After Judge Dennis goes through his
11 opening remarks, he sometimes steals some of
12 our thunder. A lot of those things I would
13 have discussed but I'm going to skip through
14 that because I don't want to be redundant.

15 As the judge has told you and as you
16 will hear over and over again, as you should,
17 the burden is on the State. I have to prove
18 each and every element of the four things that
19 I have charged Mr. Coaxum of doing. I have to
20 prove beyond a reasonable doubt each and every
21 element of the four things that I have
22 charged. I welcome the burden.

23 This case is rather simple, it is
24 what it is and that is armed robberies.
25 During the course of the two armed robberies,

1 it should not come as a shock to you that
2 there is a weapons charge that Mr. Coaxum is
3 charged with, as well. It is my job to prove
4 that to you, it really is that simple.

5 Mr. Butler doesn't have to do any-
6 thing at all. He may, but he doesn't have to.

7 You are going to hear, you are going
8 to see certain things -- and you'll see we
9 have boxes of stuff back there, but more
10 importantly you're going to hear certain that
11 that are going to come from here (knocking on
12 witness stand). People will speak up loudly
13 and you will hear everything, and it is going
14 to be the direct testimony of witnesses,
15 evidence.

16 What you are going to hear about is
17 that on November 27th, 2007, two men went into
18 the North Charleston Inn on West Montague
19 Street in North Charleston and they robbed the
20 night cashier, and they got away. You are
21 going to hear that William Coaxum had a
22 shotgun during that robbery.

23 Then you are going to hear that the
24 same two men, that night, went to the Pizza
25 Hut in the 4300 block of Dorchester Road in

1 North Charleston; forced their way through the
2 back door, came in and robbed the Pizza Hut of
3 their cash drawer.

4 But this time they didn't get away
5 very far. They were driving probably the
6 world's most recognizable get-away car, a
7 coppery/brown/orange car. The car got
8 involved in a police chase, the chase ended
9 badly -- there was a wreck, involved a fire
10 hydrant, water everywhere, and that's where
11 Mr. Coaxum was caught. The money was there,
12 the gun was there and I have that to present
13 to you.

14 I think by the end of the day or so
15 you will see everything that we have. Thank
16 you, Your Honor.

17 THE COURT: Thank you, Mr. Voight.
18 Mr. Butler?

19 MR. BUTLER: May it please the
20 court, ---

21 THE COURT: Yes, sir.

22 MR. BUTLER: Oftentimes when I stand
23 up in front of juries at this point in a
24 trial, I say that all of our jobs are
25 difficult but that yours is the hardest. I

1 might not say that in this case, I think it
2 might be a photo finish between me and you.
3 That's okay, I wouldn't have it any other way.

4 The reason that my job is so
5 difficult is because William was caught by the
6 police in a car that has money in it and a
7 shotgun in it and at least one, for certain,
8 armed robber in it -- but it wasn't William.

9 If there is any room on the planet
10 Earth where the principle "it is what it is"
11 doesn't apply, it is here. Things are almost
12 never what they seem at first glance here.
13 Otherwise we wouldn't need juries to decide
14 what happens, we wouldn't need lawyers to
15 represent sides or parties, we wouldn't need
16 judges to make decisions about issues of law.
17 Quite the contrary, things are very rarely
18 what they appear to be at first glance.

19 Whoever said that "no good deed goes
20 unpunished" probably wasn't talking about
21 William Coaxum. William used to have a
22 friend, who is no longer his friend, named
23 Marquine Benbow. He is an armed robber, he
24 committed the crime of armed robbery on this
25 date and he asked William to pick him up and

1 William did, not knowing what he had gotten
2 himself involved in. That is why when the car
3 was pulled over, Marquine Benbow ran away.

4 What you will hear from that witness
5 stand are people who will say that it is
6 exactly what it is, but you will hear no
7 evidence of physical evidence -- no
8 fingerprints, no fingerprints from the crime
9 scene that belong to William, no fingerprints
10 on the shotgun that was found in the car that
11 belong to William, no hairs, no fibers, no
12 DNA. That's because it didn't happen the way
13 that they say it happened.

14 So at the end of the day, this is a
15 difficult job, a difficult job for all of us.
16 That's why the process is so important, and
17 your involvement, all of our involvement, is
18 critical because in clear-cut cases where it
19 is easy, it never gets this far. Where by all
20 outward appearances the outcome is clear, we
21 don't need you. But we do when it is not.

22 When this is over, I am going to ask
23 you to find William not guilty. Thank you.

24 THE COURT: Thank you, Mr. Butler.
25 Mr. Voight, you may call your first witness,

1 sir.

2 MR. VOIGHT: The State calls Charles
3 Jones.

4 (WITNESS TAKES STAND)

5 CHARLES JONES, being duly sworn to
6 tell the truth, the whole truth and nothing
7 but the truth, testified, as follows:

8 DIRECT EXAMINATION

9 BY MR. VOIGHT:

10 Q. Mr. Jones, how are you?

11 A. All right.

12 Q. If you could, pull your chair up and lean
13 into that microphone.

14 A. (Complies)

15 Q. Everybody in this jury box needs to hear
16 everything that you are going to say. All
17 right?

18 A. All right.

19 Q. Where do you work, Mr. Jones?

20 A. At Pizza Hut.

21 Q. Where is that Pizza Hut located?

22 A. In North Charleston on Dorchester at Leeds
23 Avenue.

24 Q. Is that in Charleston County?

25 A. Yes.

1 Q. How long have you worked at Pizza Hut?

2 A. Seven years now.

3 Q. What do you do there?

4 A. Cook.

5 Q. Were you a cook there on November the
6 27th, 2007?

7 A. Yes, I was.

8 Q. What shift did you work that day?

9 A. Night shift.

10 Q. Is that your normal shift?

11 A. Yes.

12 Q. Can you tell the ladies and gentlemen of
13 the jury what happened around closing time --
14 what time is closing time?

15 A. 11:00 p.m.

16 Q. What happened about closing time on
17 November 27th?

18 A. At closing time, I was washing the dishes
19 and getting the trash ready to go out,
20 whatever, and all of a sudden I heard a knock
21 at the front door. We have the doors locked
22 at night, and we had them locked. So I was
23 telling them, you know, to go through the
24 drive-thru or whatever and that's when they
25 went to the side door. I didn't open the side

1 door, I looked out the window. I was kind of
2 looking through the window to see who it was.

3 We had a driver there at the time and
4 he was leaving, so he and my manger, they were
5 having a conversation -- with him not knowing
6 what was going on, he had, you know, his head
7 turned toward her. He was going out the door
8 as I was looking out. About the time he
9 opened the door that's when he stucked the gun
10 in the door.

11 Q. What kind of gun was it?

12 A. Looked like a shotgun or something.

13 Q. What happened next, what did you do next?

14 A. I put my hands up. I mean, I wasn't
15 trying to do nothing stupid. There was a lot
16 of people in there and so I just put my hands
17 up and went back in the store, or whatever.

18 Q. How many people were at that door when it
19 opened up?

20 A. At the time it was just one with the gun.

21 Q. Could you tell what the person was
22 wearing?

23 A. It looked like he had on a black hoodie.

24 Q. Did that person come in the store?

25 A. Yes.

1 Q. Did anyone else come in the store with
2 him?

3 A. He had another person with him.

4 Q. How tall was the person with the gun, do
5 you recall?

6 A. About my height, something like that. I
7 know he wasn't a short fellow.

8 Q. How tall are you?

9 A. Like 6'3".

10 Q. And what happened next?

11 A. And after that, he demanded the money
12 whatever and I told my manager, you know, to
13 just give him what he wants, you know. They
14 got it and they left.

15 Q. How long -- how many of them were there?

16 A. There were two.

17 Q. Did they get have guns or did only one
18 person have a gun?

19 A. I just saw one.

20 Q. How long do you think it was from the time
21 that they came in until the time that they
22 left, how much time elapsed, do you think?

23 A. It would probably be around, I'd say,
24 close to around ten minutes. I guess.

25 Q. How many employees were in the store with

1 you?

2 A. There was three of us, three of us in
3 there.

4 Q. What were the other person's names?

5 A. Tamera Brown and a guy named Mike.

6 Q. Were you scared?

7 A. Yes, sir, that was the first time that
8 happened to me, sir.

9 Q. What did they take?

10 A. They just took the money in the cash
11 register, that was it.

12 Q. Did they ask you to get into the safe?

13 A. Yes, they did but the -- it was a time-
14 locked safe and it was closed. They kept
15 telling her to get in the safe but I told them
16 that she couldn't get in the safe.

17 Q. Did the man with a gun say anything while
18 he was in there?

19 A. He was saying just "give up the money."
20 Basically that was said, "just give up the
21 money."

22 Q. Was he a white guy or a black guy?

23 A. He was a black guy.

24 Q. The other guy, was he a white guy or a
25 black guy?

1 A. I really couldn't tell you about the other
2 guy because he had like a mask over his face
3 and I really couldn't tell.

4 Q. Did you ever get a good look at the
5 gunman?

6 A. I saw his face. I really can't say that's
7 him, there, whatever.

8 Q. Were you ever asked to make an
9 identification of the gunman by the North
10 Charleston Police Department?

11 A. Yes, sir, they asked me but I told them
12 that I really could not tell you how he
13 looked, I could tell them was that he was a
14 black guy and that he had a gun.

15 Q. And that he was tall?

16 A. Yeah.

17 Q. Mr. Jones, do you see anybody in the
18 courtroom who was involved in that robbery on
19 November 17th, 2007?

20 A. Yes, sir, I think so.

21 Q. Looks like him?

22 A. Yes, sir.

23 MR. VOIGHT: Thank you.

24 THE COURT: Cross examine?

25 MR. BUTLER: May it please the

1 court.

2 THE COURT: Yes, sir.

3 CROSS EXAMINATION

4 BY MR. BUTLER:

5 Q. Good afternoon, Mr. Jones, how are you
6 today?

7 A. Pretty good.

8 Q. Good. I just have a couple of questions
9 for you. This was over a year and two months
10 ago?

11 A. Um-humm.

12 Q. And you told the police that you could not
13 really give any more accurate description than
14 you've given today, right?

15 A. Yes.

16 Q. And they asked you would you like to come
17 to this other location and see if you can
18 identify the person who you saw; right?

19 A. Um-humm.

20 Q. And you said 'no', ---

21 THE COURT: Was that a "yes"?

22 Excuse me, but you need to answer 'yes' or
23 'no' so that we can make sure of your
24 response.

25 THE WITNESS: Okay.

1 CROSS EXAMINATION CONTINUED

2 BY MR. BUTLER:

3 Q. They asked you if you wanted to go see if
4 you could pick out the person and you said
5 'no'; is that right?

6 A. Yes.

7 Q. And that's because you didn't get a good
8 look at the guy?

9 A. (Affirmative nod) -- No, sir.

10 Q. This was a year and two months ago?

11 A. Yes, sir.

12 Q. And in that intervening time no one has
13 shown you any photographs?

14 A. No, sir.

15 Q. Any lineups?

16 A. No, sir.

17 Q. And for the first time in a year and two
18 months someone asked you if anybody in the
19 courtroom looks like that person and you said
20 that this (indicating Defendant) could be the
21 guy?

22 A. Yes, sir.

23 Q. Well, I mean -- he is sitting at the
24 defense table, right?

25 A. Yes, sir.

1 Q. Are you sure that it was not me?

2 A. No, sir, you're not black.

3 Q. All right. I am not black. Are there any
4 other black males in the courtroom that it
5 could be?

6 A. (No verbal response).

7 Q. Besides yourself -- and, excuse me, one
8 deputy?

9 A. (No verbal response).

10 Q. Is there?

11 A. No.

12 MR. BUTLER: Beg the court's
13 indulgence.

14 THE COURT: Yes, sir.

15 CROSS EXAMINATION CONTINUED

16 BY MR. BUTLER:

17 Q. The person that you saw, he wasn't wearing
18 gloves, was he?

19 A. Not that I remember.

20 MR. BUTLER: That's all that I
21 have. Thank you, Mr. Jones.

22 THE COURT: Redirect?

23 MR. VOIGHT: Mr. Jones, I have
24 nothing further.

25 THE COURT: Thank you. Mr. Jones

1 you may step down.

2 (WITNESS STEPS DOWN)

3 THE COURT: A request has been
4 made that the jurors would like to have
5 notepads. If you do, please hold up your
6 hands and we will make sure that you have
7 that.

8 Let me just talk to you briefly about
9 notes. Some judges don't like for you to take
10 notes but I would like you to make that
11 determination. I remind you that these are
12 your notes. If you do take a notepad, I would
13 ask that you open the notebook and write your
14 name on the front sheet so -- then that pad,
15 at the end of the day will be left with the
16 bailiff. In the morning when you return they
17 will be handed back to you.

18 Please remember when you're taking
19 notes that we also have here someone that has
20 been -- as I told you this morning when she
21 was typing that she wasn't searching the net.
22 Ms. Garrison (court reporter) has the duty and
23 responsibility of keeping a verbatim record of
24 what's taking place in this courtroom.

25 At the end of the trial and when you

1 begin your deliberation, should you have a
2 disagreement about what a witness said or
3 didn't say, we have the capability of
4 replaying that testimony for you should that
5 become necessary. So your notes are really
6 for your purpose, to help you, to assist you
7 by jotting down those things that are
8 significant to you. That's fine.

9 The only other thing I would caution
10 you is that some are better note-takers than
11 others. In fact, sometimes in some trials I
12 will type it rather than write it because I
13 can look at and watch the witness at the same
14 time that I am typing it. We all know that
15 sometimes it is not only what someone says but
16 how they said it. And if you happened to be
17 looking down in writing a note you might miss
18 that very important body language that would
19 assist you in analyzing the case.

20 Having said that, please feel free to
21 take notes. I would remind you that please do
22 not take them from this courthouse with you.
23 Make sure that when we recess that you leave
24 them in your jury room and at the close of
25 day I would ask the foreperson to please

1 collect them and get them to the bailiff.

2 Thank you very much, Mr. Callahan.

3 Solicitor, you can call your next
4 witness, sir.

5 MR. VOIGHT: Thank you, Your
6 Honor, the State calls Tamera Brown.

7 (WITNESS TAKES STAND)

8 TAMERA BROWN, being duly sworn
9 to tell the truth, the whole truth and nothing
10 but the truth, testified, as follows:

11 DIRECT EXAMINATION

12 BY MR. VOIGHT:

13 Q. Where do you work, Ms. Brown?

14 A. At the Dorchester-Leeds Avenue Pizza Hut.

15 Q. How long have you worked there?

16 A. I worked there for about a total of six
17 years but I've been a shift manager for a
18 couple.

19 Q. Did you work there on November 27th, 2007?

20 A. Yes.

21 Q. What was your role then?

22 A. I was the shift manager.

23 Q. Were you the shift manager for the night
24 shift on November 27th, 2007?

25 A. Yes.

1 Q. And what time does that shift normally
2 start?

3 A. It starts at 5:00 until we close about
4 11:00.

5 Q. At what point do you close the front door
6 into the facility?

7 A. Between 7:30 and 8:00 o'clock, when it
8 starts getting dark.

9 Q. Why do you do that?

10 A. Because it is not the safest area and it
11 is just that we have a drive-thru, so we just
12 lock the front door and let everybody go
13 through the drive-thru.

14 Q. At 11:00 on the 27th, what were you doing?

15 A. I was closing out the register, running my
16 credit cards, dropping the money in the safe,
17 getting ready to leave.

18 Q. Do you have access to the safe?

19 A. It has a time-lock on it at 10:00
20 (phonetic).

21 Q. Can you open it after that time?

22 A. No, we have the little envelope slot that
23 we drop the money in.

24 Q. About how much cash was in the Pizza Hut
25 that night?

1 A. In the drawer there was like a little over
2 \$150.

3 Q. What happened to that drawer?

4 A. What happened to it?

5 Q. Yeah. Did it stay in the Pizza Hut the
6 whole night?

7 A. No. When the guy -- when the guys came
8 in, they -- when the guy come in, he told me
9 to open the safe as he pointed the gun at me
10 and I told him that I couldn't open the safe.
11 He just kept yelling at me, "Open the safe,
12 open the safe, open the safe." Then the cook
13 told him, 'Man, she can't open the safe.'

14 Q. Who was the cook that night?

15 A. Charles.

16 Q. What is Charles' last name?

17 A. Jones.

18 Q. Let me ask you, what were you -- how did
19 the men get into your Pizza Hut?

20 A. Well, I heard a knock at the door but I
21 had my head down counting the, you know, the
22 credit card slips and I was like right there
23 on the side of the front door. I heard a
24 knock on the door and I told the driver to
25 tell them to go around. We didn't have any

1 more orders on the screen, so the driver, he
2 was getting ready to leave.

3 Q. Was he leaving for the night or was he
4 going ---

5 A. Leave for the night. He was done
6 cleaning, he'd had to clean. We have a side
7 door that he went out of. Well, he -- I had
8 my head down and he was like, 'all right, all
9 right' to the -- then I looked up. Something
10 told me to look up and two men had come in
11 behind Charles and Mike, they had their hands
12 like this. First I noticed that they had
13 their hands and then I saw the man with the
14 gun. He came over to me and started yelling
15 at me.

16 Q. Was the guy with the gun behind Charles
17 and Mike or was he to the side, the front?
18 Where was he in relation to them?

19 A. One guy was in front of them, then there
20 was Charles and Mike -- they were kind of
21 walking like that (gesturing) and then there
22 was a guy behind them.

23 Then when they got to where I was, he had
24 the other guy stand by them and he come up
25 close to where I was.

1 Q. What kind of gun was it?

2 A. Huh?

3 Q. What kind of gun was it?

4 A. It was a long shotgun, it was real long --
5 it wasn't real long, more like a sawed-off
6 shotgun.

7 Q. Did it scare you?

8 A. Yes.

9 Q. Why were you scared?

10 A. I had a gun on me and I was terrified.

11 Q. You said that the guy was yelling at you?

12 A. (Affirmative nod).

13 Q. What was he yelling?

14 A. He was just screaming, 'open the safe.' He
15 was just yelling and cursing at me to open the
16 safe. I was like, 'I can't open the safe.'
17 He kept screaming at me to 'open the safe,
18 man', -- I'm not using his words. Then
19 Charles was like, 'Man, she can't open the
20 safe.' Then he was like, 'Well, open the
21 register.' He said it in other words.

22 I was so nervous I -- but I finally got
23 the register to where it popped open and then
24 he put his gun like down to the side. He
25 didn't drop the gun but like he just didn't

1 point it at me any more. So I ran behind
2 Chuckie and Mike and I stood behind them. He
3 like tore out the register and took the money
4 out and put the drawer on the top of the
5 counter.

6 Q. How many guys were there?

7 A. It was two -- it was two, it was three of
8 them.

9 Q. There were three employees ---

10 A. (Affirmative nod).

11 Q. --- of the Pizza Hut in there?

12 A. Yes.

13 Q. How many men came into the store that
14 night?

15 A. Oh, -- two.

16 Q. Do you know if they were black or white?

17 A. They were black.

18 Q. They were both black?

19 A. (Affirmative nod).

20 Q. Were they tall, short or somewhere
21 inbetween?

22 A. The guy with the gun -- the one that stood
23 over in the corner, he was like medium, he
24 wasn't too tall. But the one with the gun, he
25 was a tall man. I was looking up at him, he

1 was tall.

2 Q. Was he -- did you get a -- what was that
3 light like there in the Pizza Hut?

4 A. It was bright in there, all the lights
5 were on.

6 Q. How long do you think that the man with
7 the gun was in the Pizza Hut?

8 A. Probably five or ten minutes. It seemed
9 like a long time but probably only about five
10 minutes or so.

11 Q. What happened after they both left?

12 A. Well, after he got in the drawer and took
13 all the money out then he pointed the gun at
14 me again, told us to go in the back. So we
15 went in the back, and I stayed behind, you
16 know, the guys. Then they went out the side
17 door.

18 You know, we ran to the door -- I think I
19 ran to the door to make sure that it was shut
20 good and then I went to the phone and called
21 9-1-1. We didn't open the door or anything
22 until -- I just waited on the police to come
23 to the front door and then, when I seen them,
24 I went and unlocked the front door.

25 Q. About how long after you called 9-1-1 did

1 the police arrive?

2 A. Only a few minutes. They are right down
3 Dorchester, right on the corner the police
4 station is right there. You know, so, -- not
5 even just the few minutes, just -- (pause).

6 Q. The police came. How long did you talk to
7 the police there?

8 A. Well, I was talking to them -- we was
9 talking to them, giving our statement about
10 everything that had happened and then I guess
11 and probably about five or ten minutes they
12 got a call saying that they had gotten a
13 suspect up the street. The police asked one
14 of us to go and identify them.

15 Q. Did you drive your own vehicle?

16 A. No, I rode in the police car.

17 Q. Did you get in the front or the back seat?

18 A. Back.

19 Q. Where were you driven?

20 A. Up on Rivers Avenue.

21 Q. About how far from the Pizza Hut were you
22 at that point?

23 A. It was just probably about a mile, about
24 a half mile, couple of miles, not too far.

25 Q. And what did you see when you got there?

1 A. There was a lot of police cars, there was
2 a car that had wrecked into like a fire
3 hydrant and there -- something.

4 Q. What color was the car?

5 A. On orangish color. It was a real small
6 car.

7 Q. And it broke the fire hydrant?

8 A. I think, (affirmative nod). I'm not for
9 sure.

10 Q. What did the police ask you to do?

11 A. They asked me if I could identify the
12 suspect or if I could identify anybody. And
13 the guy ---

14 MR. BUTLER: Please note our
15 pretrial objection, *Neil v. Biggers*.

16 THE COURT: Thank you. Your
17 objection is noted and the record supports the
18 position for that objection. Subject to the
19 objection, you may continue the line of
20 question.

21 MR. VOIGHT: Thank you, Your Honor.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. VOIGHT:

24 Q. Did the police have anyone in custody out
25 there?

1 A. Yeah. He had a guy standing by the car
2 and he had handcuffs on him and he was
3 standing by the car.

4 Q. Were you asked to take a look at the guy?

5 A. Yeah. They put a spotlight on him and
6 they asked me did I recognize him.

7 Q. What did you say?

8 A. I recognized him as the man who had the
9 gun on me.

10 Q. Did it take any time for you to make up
11 your mind?

12 A. No, not really. It had just happened and
13 it was like really fresh in my mind and I knew
14 exactly what he was wearing. And I knew -- I
15 knew it was him because it was, like, it had
16 just happened.

17 Q. So the person that the police had on the
18 car, was he wearing the same thing that the
19 gunman was wearing?

20 A. Yes.

21 Q. Was he the same height as the gunman?

22 A. Yes.

23 MR. BUTLER: Objection to leading
24 at this point.

25 THE COURT: Sustained.

1 DIRECT EXAMINATION CONTINUED

2 BY MR. VOIGHT:

3 Q. How would you compare the height of the
4 person with the gun and the height of the
5 person that the police had on the car that
6 night?

7 A. They were the same height.

8 Q. Were you certain that it was the same
9 person?

10 A. Yes, sir. Yes.

11 Q. How long after you called 9-1-1 were you
12 out there with the police cars and the orange
13 car, how long?

14 A. Probably within ten minutes, it did not
15 take long at all.

16 Q. After you told the police what you thought
17 that you saw, what did you do next?

18 A. After I -- they showed me him and we --
19 then we went back to the Pizza Hut. Then all
20 I can remember is going home. I mean, my
21 husband was -- you know, he went with me. I
22 called him as soon as it happened and he came
23 right away and I drove home with him.

24 Q. Did the police ever return any items to
25 you at all?

1 A. They returned the cash drawer to the Pizza
2 Hut a couple of days later -- I'm not positive
3 but probably a couple weeks later.

4 Q. Were you present when that was returned?

5 A. No, but I seen the bag in which it was
6 returned, I seen it laying on the desk.

7 Q. Do you see in the courtroom the person who
8 held the gun to you and robbed you on November
9 27?

10 A. Yes.

11 Q. You see that person?

12 A. Yes.

13 Q. Can you point out to the ladies and
14 gentlemen of the jury where that person is and
15 what he is wearing?

16 A. He is right there in the green suit
17 (indicating William Coaxum at counsel table).

18 MR. VOIGHT: One moment.

19 THE COURT: Certainly.

20 MR. VOIGHT: The State would
21 tender this witness.

22 THE COURT: You may cross-examine.

23 CROSS EXAMINATION

24 BY MR. BUTLER:

25 Q. Good afternoon, Ms. Brown. I just have a

1 few quick questions for you.

2 A. All right.

3 Q. As the shift manager, did you ever learn
4 the specific amount of money that was taken?

5 A. I think that it was like one thirty.

6 Q. And when the police got there, the first
7 officer that arrived, was he a uniformed
8 officer?

9 A. Yes.

10 Q. Any he calmed you down, right?

11 A. Yes.

12 Q. Is this was a startling event?

13 A. Yes.

14 Q. Any you said that you were scared, as
15 anybody would be; right?

16 A. Yes.

17 Q. And you got a really good look at the
18 shotgun, right?

19 A. Yes.

20 Q. Would it be fair to say that your
21 attention was focused on the shotgun?

22 A. Yeah, it was. There at the incident, yes.

23 Q. And for that reason you got somewhat of a
24 look at the person's face but not a great
25 look; is that fair?

1 A. The eyes, the mouth -- because I was
2 looking at the shotgun. But he had a hoodie
3 on, so -- (pause).

4 Q. And a hoodie is a hooded sweatshirt?

5 A. Yeah, under a camouflage jacket but one of
6 those type things.

7 Q. And when the uniformed officer arrived, he
8 calmed you down; right?

9 A. Yes.

10 Q. And he wanted you to tell him what had
11 happened?

12 A. Yes.

13 Q. And he wanted you to give a description
14 of the people who had robbed you?

15 A. Yes.

16 Q. And you described the person as wearing
17 that day a camouflage sweatshirt?

18 A. He was tall, had on camouflage, had the
19 shotgun but I saw his eyes and mouth.

20 Q. I understand. But you specifically told
21 the officer a camouflage hoodie, by that
22 meaning a hoodie sweatshirt?

23 A. Hooded sweatshirt, yes.

24 Q. And you told him that the other person had
25 a gray sweatshirt, right?

1 A. I am not really sure because I really
2 wasn't focused on the other guy because he
3 just -- he just stood over in the corner and
4 he was like really quiet. He was more like
5 focused on Mike and Charles and I was more
6 focused on the one that was on me.

7 Q. Do you remember telling the officer that
8 it was a gray G-Unit sweatshirt?

9 A. I'm not sure.

10 Q. And when you went to where they had
11 stopped the car they told you, when you were
12 going over there, 'we stopped some suspects'.
13 Right?

14 A. Yes.

15 Q. So you knew that they have stopped the car
16 that they thought was involved in the robbery?

17 A. Yes.

18 Q. And when they had William outside of the
19 car he was handcuffed; right?

20 A. (No verbal response).

21 Q. Standing next to the police car?

22 A. Yes.

23 Q. And it's not like you see on TV where you
24 are asked to pick one person out of five or
25 six people. He was the only one there?

1 A. Yes.

2 Q. And they didn't ask you to look at the
3 other person?

4 A. No. No, I don't understand -- (pause).

5 Q. And you said that you knew him primarily
6 by what he was wearing; is that right?

7 A. Yes.

8 MR. BUTLER: Beg the court's
9 indulgence.

10 THE COURT: Certainly.

11 MR. BUTLER: That's all that I have.
12 Thank you, Ms. Brown.

13 THE COURT: Redirect, Mr. Voight?

14 REDIRECT EXAMINATION

15 BY MR. VOIGHT:

16 Q. Ms. Brown, when you went out to where the
17 orange car was ---

18 A. Yes, sir.

19 Q. --- was the person who the police showed
20 you wearing the same clothing as the person
21 who held the gun on you at the Pizza Hut?

22 A. Yes.

23 Q. Does this person sitting right here at
24 this table have the same eyes and mouth as the
25 person that you said ---

1 MR. BUTLER: I'm sorry. I have to
2 object. Objection, not in scope of cross.

3 THE COURT: I think you inquired of her
4 about the identity. I will allow it.
5 Overruled.

6 REDIRECT EXAMINATION CONTINUED

7 BY MR. VOIGHT:

8 Q. Does this person have the same eyes and
9 mouth as the person that you said held the
10 gun?

11 A. Yes.

12 MR. VOIGHT: That's all that I have
13 at this time.

14 THE COURT: Recross?

15 MR. BUTLER: No, sir.

16 THE COURT: All right, you may come
17 down.

18 (WITNESS STEPS DOWN)

19 THE COURT: Ladies and Gentlemen, I
20 know you have only been here a little over a
21 hour but we have been in here a little longer.
22 To give everyone else an opportunity to have a
23 break, I am going to go ahead and take our
24 break at this point and let you go to your
25 jury room. Please do not begin your

1 deliberations, don't discuss the case among
2 yourselves. We will be with you in probably
3 about ten minutes. Thank you.

4 (JURY OUT @ 4:04 P.M.)

5 (OFF RECORD DISCUSSION RE SCHEDULE)

6 (BRIEF RECESS)

7 (DEFENDANT PRESENT)

8 THE COURT: Invite the jury to
9 return. Let the record reflect that Mr.
10 Coaxum is present.

11 (JURY IN @ 4:25 P.M.)

12 THE COURT: Thank you very much,
13 Ladies and Gentlemen. We are ready to
14 continue, call your next witness.

15 MR. VOIGHT: The State calls
16 Marquine Benbow.

17 (WITNESS TAKES STAND)

18 MARQUINE BENBOW, being duly
19 sworn to tell the truth, the whole truth and
20 nothing but the truth, testified, as follows:

21 DIRECT EXAMINATION

22 BY MR. VOIGHT:

23 Q. Marquine Benbow, is that right?

24 A. (No verbal response).

25 Q. Mr. Benbow, I want you to speak loudly

1 enough that the jury can heard you. Okay?

2 A. (No verbal response).

3 Q. Do you know William Coaxum?

4 A. No, sir.

5 Q. You've never seen William Coaxum?

6 A. (No verbal response).

7 Q. Were you arrested on November the 27th by
8 the North Charleston Police Department?

9 A. Yes, sir.

10 Q. Were you charged with the robbery of the
11 Pizza Hut and the North Charleston Inn on that
12 day?

13 A. Yes, sir.

14 Q. Did you also plead guilty to armed robbery
15 of those ---

16 A. Yes, sir.

17 Q. And are you serving time in SCDC for both
18 of those armed robberies?

19 A. Yes, sir.

20 Q. Do you remember being in court when you
21 pled guilty?

22 A. Yes, sir.

23 Q. And the judge asked you what you did that
24 made you guilty?

25 A. (No verbal response).

1 Q. Do you remember that?

2 A. Yes, sir.

3 Q. Do you remember telling the judge?

4 A. Yes, sir.

5 Q. Do you remember giving a statement to the
6 North Charleston Police Department?

7 MR. BUTLER: Judge, I have to
8 object. May we approach?

9 THE COURT: Sure. I will come down
10 there.

11 (OFF RECORD SIDEBAR)

12 DIRECT EXAMINATION CONTINUED

13 BY MR. VOIGHT:

14 Q. You pled guilty. When did you plead
15 guilty, do you recall?

16 A. It was -- when I went to court?

17 Q. Yes?

18 A. I believe that it was November the 18th.

19 Q. Of last year?

20 A. Yes, sir?

21 Q. And when you pled guilty, you waived your
22 rights.

23 A. (No verbal response).

24 Q. One of the rights that you waived was your
25 Fifth Amendment right to remain silent. Did

1 the judge talk to you about that right?

2 A. (No verbal response).

3 Q. Do you recall?

4 A. Um-humm.

5 THE COURT: You need to answer with
6 words, please. Was that a "yes"?

7 THE WITNESS: Yes, sir.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. VOIGHT:

10 Q. And you told the judge what you did at
11 the North Charleston Inn and at the Pizza Hut,
12 right?

13 A. Um-humm.

14 THE COURT: You need to answer with
15 words, please. Was that a "yes" or a "no"?

16 THE WITNESS: Yes, sir.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. VOIGHT:

19 Q. Did you tell the judge that you held a gun
20 to anyone?

21 A. No, sir.

22 Q. Did you hold a gun to anyone?

23 A. No, sir.

24 Q. Somebody else held the gun, didn't they?

25 A. I don't remember.

1 Q. You remember what you did, right?

2 A. Yes.

3 Q. You went into the North charleston Inn --
4 were you by yourself?

5 A. No.

6 Q. Were you with somebody else?

7 A. Uh -- I don't recall.

8 Q. Do you suffer from amnesia?

9 A. No, sir.

10 Q. Do you suffer from any mental defect(s)
11 that would cause you not to remember what you
12 did when you held up the North Charleston Inn
13 or the Pizza Hut?

14 A. No, sir.

15 Q. You remember very clearly going into the
16 North Charleston Inn, don't you?

17 A. Yeah. Yes, sir.

18 Q. You remember going into the Pizza Hut,
19 don't you?

20 A. Yes, sir.

21 Q. You remember William holding the shotgun,
22 don't you?

23 A. No, I don't remember that.

24 Q. Did you hold the shotgun?

25 A. No, sir.

- 1 Q. A shotgun was held, wasn't it?
- 2 A. I don't remember that.
- 3 Q. You don't remember?
- 4 A. (No verbal response).
- 5 Q. You -- just to be clear, you don't know
- 6 this man at all?
- 7 A. (No verbal response).
- 8 Q. This gentleman sitting at this table? But
- 9 you don't know this gentleman, do you?
- 10 A. I don't remember seeing him.
- 11 Q. Are you afraid of him?
- 12 A. No, sir.
- 13 Q. Are you afraid of being a rat?
- 14 A. No, sir.
- 15 Q. Are you afraid of being a snitch?
- 16 A. No, sir.
- 17 Q. Are you afraid of punking out a friend?
- 18 A. No, sir.
- 19 Q. Did you rob the Pizza Hut all by yourself?
- 20 A. No, sir.
- 21 Q. Was somebody with you?
- 22 A. Uh -- yeah.
- 23 Q. Who was that person?
- 24 A. I don't recall his name.
- 25 Q. How did you get to the Pizza Hut?

- 1 A. His car.
- 2 Q. Whose car?
- 3 A. The person's that I was with.
- 4 Q. What color car was it?
- 5 A. I don't recall.
- 6 Q. Was it blue?
- 7 A. I don't think so.
- 8 Q. This other person who you don't remember,
- 9 did he hold the gun?
- 10 A. I don't recall.
- 11 Q. Did you hold the gun?
- 12 A. No, sir.
- 13 Q. Was a gun held?
- 14 Q. I don't recall.
- 15 Q. The lady at the North Charleston Inn, she
- 16 didn't give up the money without there being a
- 17 gun used; did she?
- 18 A. No, sir.
- 19 Q. The lady at the Pizza Hut, she didn't give
- 20 up her cash drawer without there being a gun
- 21 used; did she?
- 22 A. I was not inside the Pizza Hut.
- 23 Q. You were not inside the Pizza Hut?
- 24 A. No, sir.
- 25 Q. You never went inside?

- 1 A. No, sir.
- 2 Q. But you pled guilty for robbing the Pizza
3 Hut?
- 4 A. Because I was part of the crime.
- 5 Q. You were a part of the crime?
- 6 A. Yes, sir.
- 7 Q. What part?
- 8 A. Standing outside, sir.
- 9 Q. Standing outside?
- 10 A. (Affirmative nod).
- 11 Q. How many people went in the Pizza Hut?
- 12 A. One.
- 13 Q. Do you remember talking to Detective Shawn
14 Patrick with the North Charleston Police
15 Department?
- 16 A. No, sir.
- 17 Q. Do you remember giving a statement to him?
- 18 A. Yes, sir.
- 19 Q. Do you remember telling him that "William
20 got the shotgun from the back floorboard", did
21 you ever tell him that?
- 22 A. I don't remember telling him no names,
23 sir.
- 24 Q. Do you remember telling him that "William
25 told me to follow him and we went inside,

1 William pointed the gun at the clerk and told
2 her to give him the money"?

3 A. (No verbal response).

4 Q. Do you remember that?

5 A. I remember -- I don't remember saying no
6 names, sir.

7 Q. Do you remember saying "after she emptied
8 the register, William told her to get the
9 money out of the safe." Do you remember that?

10 A. I don't remember saying no names at all,
11 sir.

12 Q. Do you remember saying, "William said
13 'come on' and we ran to the car and went
14 towards Dorchester Road on Montague. William
15 pulled the money out of his left pocket and
16 said, 'this ain't enough' -- do you remember
17 saying that?

18 A. No, sir.

19 Q. Do you remember saying, "William drove to
20 Dorchester Road and then made a left onto
21 Dorchester and the Pizza Hut was on the right-
22 hand side and I told William that I thought it
23 was open." Do you recall that, saying that?

24 A. No, sir.

25 Q. You remember going to the Pizza Hut and

1 thinking it was open, right?

2 A. Yes, sir.

3 Q. Do you remember knocking on the front
4 door?

5 A. No, I never knocked on the front door.

6 Q. Do you remember saying, "We parked the car
7 at Checkers and walked over to the Pizza Hut",
8 do you remember saying that?

9 A. No, sir.

10 Q. Do you remember saying, "William was
11 standing along the side of the building and
12 told me to go to the front door, that it was
13 open." Do you remember saying that?

14 A. No, sir.

15 Q. Do you remember saying, "I checked the
16 front door and it was locked."

17 A. (No verbal response).

18 Q. Do you remember telling Detective Patrick
19 that?

20 A. No, sir.

21 Q. Do you remember telling Detective Patrick,
22 "I walked in the back door and William must
23 have already opened it. William pulled the
24 gun out on one black male and another black
25 male was walking away." Do you remember

1 saying that?

2 A. No, sir.

3 Q. Do you remember saying that, "William told
4 me to 'get him', that he might call the
5 police?"

6 A. No, sir.

7 Q. Do you remember saying, "I told the guy to
8 get inside and he walked back in"?

9 A. No, sir.

10 Q. So when you were at the Pizza Hut, did you
11 round up people back into the Pizza Hut so
12 they wouldn't get away and tell the police?
13 Is that what you did?

14 A. No, sir, I was standing outside.

15 Q. And nobody tried to get away?

16 A. Not that I saw.

17 Q. Do you remember telling the judge all of
18 this when you pled guilty?

19 A. No, sir.

20 Q. Because you did remember it back then,
21 didn't you?

22 A. Yeah. Yes, sir.

23 Q. You didn't tell the judge that you didn't
24 remember, did you?

25 A. No, sir.

1 Q. You told the judge that you walked inside,
2 didn't you?

3 A. No, sir.

4 Q. Do you remember telling Detective Patrick
5 that "William made the white (sic) female to
6 set the money out on the register and my job
7 was to watch the other two black guys." Do
8 you remember saying that?

9 A. No, sir.

10 Q. Do you remember telling Detective Patrick
11 that, "she gave him the money and (he) told
12 her to get the money out of the safe. She told
13 him that she couldn't open the safe. William
14 told them all to get in the back of the store,
15 then me and William ran out the back and got
16 into the car." Do you remember telling
17 Detective Patrick that?

18 A. No, sir.

19 Q. Do you remember telling Detective Patrick
20 where you had the same shotgun during this
21 robbery?

22 A. (No verbal response).

23 Q. You don't remember any of that?

24 A. No, sir.

25 Q. You don't know who William Coaxum is?

1 A. No, sir.

2 Q. You didn't rob the Pizza Hut on November
3 27th, 2007, with William Coaxum?

4 A. No, sir.

5 Q. You did it by yourself?

6 A. No, sir.

7 Q. Did you rob the North Charleston Inn on
8 the 26th of November, 2007, with William
9 Coaxum?

10 A. No, sir.

11 Q. Did you do it by yourself?

12 A. No, sir.

13 Q. Who did you do it with?

14 A. I don't recall his name.

15 MR. VOIGHT: Thank you. I have no
16 further questions.

17 THE COURT: You may cross-examine.

18 MR. BUTLER: Thank you.

19 CROSS EXAMINATION

20 BY MR. BUTLER:

21 Q. Mr. Benbow, you've never met me, have you?

22 A. (No verbal response).

23 Q. You and I have never talked? Right?

24 A. (No verbal response).

25 THE COURT: You need to answer.

1 Was that a "yes" or a "no"?

2 THE WITNESS: Uh, -- no, sir.

3 THE COURT: Thank you.

4 CROSS EXAMINATION CONTINUED

5 BY MR. BUTLER:

6 Q. And nobody from my office has ever come
7 and talked with you?

8 A. No, sir.

9 Q. This statement that you Mr. Voight was
10 asking you about. You never wrote out a
11 statement, did you? The detective wrote out
12 the statement?

13 A. Yes, sir.

14 MR. BUTLER: That's all that I have.

15 THE COURT: Redirect, Mr. Voight?

16 MR. VOIGHT: No redirect, Your
17 Honor.

18 THE COURT: Thank you. You may
19 come down, sir.

20 (WITNESS STEPS DOWN)

21 THE COURT: Call you next witness.

22 MR. VOIGHT: The State calls
23 Detective Shawn Patrick.

24 (WITNESS TAKES STAND)

25 SHAWN PATRICK, being duly

1 sworn to tell the truth, the whole truth and
2 nothing but the truth, testified, as follows:

3 DIRECT EXAMINATION

4 BY MR. VOIGHT:

5 Q. Detective, how are you currently assigned.

6 A. I am a person's crime detective on the
7 Charleston Police Department.

8 Q. What is person's crimes?

9 A. We work anything from homicide to armed
10 robberies, anything involving a person being
11 armed.

12 Q. What was your assignment on November 27th,
13 2007?

14 A. I was called and asked to come to the
15 station and speak with a codefendant, Marquine
16 Benbow, with reference to a recent armed
17 robbery.

18 Q. Did you have a conversation with Mr.
19 Benbow?

20 A. Yes, I did.

21 Q. Did that conversation with Mr. Benbow
22 reference any other suspects to this armed
23 robbery?

24 A. Yes, it did.

25 Q. Who was that?

1 A. Mr. Coaxum.

2 Q. Was Mr. Benbow cooperative with you?

3 A. Yes, he was.

4 Q. Did he -- did you write the statement in
5 your own hand or did you allow him to write it
6 in his hand?

7 A. I wrote his statement.

8 Q. Why did you write his statement?

9 A. Clarification. Some people can't write
10 very well and I like to ask questions as I go
11 along.

12 Q. About how long did you spend with Mr.
13 Benbow?

14 A. To be honest, I don't recall. I'd say no
15 more than an hour-and-a-half or two.

16 Q. Did you read him his rights before you
17 questioned him?

18 A. Yes, I did.

19 Q. Did he appear to understand his rights?

20 A. Yes, he did. He initialed next to each
21 line as I read it to him. As I finished each
22 line I read it to him and asked him, "Do you
23 understand this right?" He answered, "Yes, I
24 do." He initialed as each right was read to
25 him.

1 Q. Did Mr. Benbow appear to be of at least
2 ordinary intelligence to you?

3 A. Yes.

4 Q. Had good comprehension?

5 A. Yes.

6 Q. Did he appear to be under the influence of
7 any drugs, alcohol or be suffering any mental
8 defects?

9 A. No, he did not.

10 Q. Did you have a pleasant conversation with
11 him?

12 A. Yes.

13 Q. Did you threaten him in any way?

14 A. No.

15 Q. Did you promise him anything to make the
16 statement?

17 A. No.

18 Q. Did you question him about William
19 Coaxum's involvement in the robberies of the
20 North Charleston Inn and of the Pizza Hut?

21 A. Yes, I did.

22 Q. Did he answer those questions?

23 A. Yes.

24 Q. What did he tell you that William had
25 done?

1 A. He said that he'd picked him up from his
2 house in an orange hatchback-type car, they
3 were -- he told him that he was looking for a
4 place to rob, they drove down the street,
5 observed the first business, went into -- he
6 took the gun out of the back of his car and
7 they both went inside. Mr. Benbow was more or
8 less the lookout, at Mr. Coaxum's direction.
9 They go in, get the money from the register at
10 the North Charleston Inn. The clerk sees an
11 opportunity to run and he tells her to go get
12 the money out of the register. So they both
13 -- when she turns to run, they both flee the
14 business, get in the car and begin to drive
15 away from the business.

16 Q. Did he tell you what happened at the Pizza
17 Inn?

18 A. Yes. Mr. Benbow observed the Pizza Hut,
19 thought it was open. Mr. Coaxum, they both go
20 back -- they parked at Checkers, I believe,
21 and walked to the Pizza Hut. Mr. Coaxum had
22 the shotgun again and he tells Mr. Benbow to
23 go to the front door, but it's locked. So Mr.
24 Benbow goes to the back door of the business
25 and he sees Mr. Coaxum with the gun out and he

1 is walking the employees, one employee, back
2 into the business. Mr. Coaxum tells Mr.
3 Benbow 'get that guy, he might call the
4 police.' Mr. Benbow tells the guy to go back
5 into the business. Then they all go in and he
6 demands the clerk to open the safe. The clerk
7 says that she can't open the safe and they
8 take off and leave the business. They get
9 back in their car parked at Checkers and get
10 back out on Dorchester Road, I believe
11 Dorchester and Rivers Avenue is where a police
12 officer apprehended -- got behind the vehicle.

13 Q. How long after his apprehension did you
14 talk to Mr. Benbow? Was it days?

15 A. No, it was that same night. I'd say
16 within thirty minutes, thirty to forty-five
17 minutes.

18 Q. And what was your role as the detective
19 assigned to this case?

20 A. My role was to ascertain the facts from
21 Mr. Benbow, take a statement from him. That
22 was pretty much it.

23 Q. Were you the primary detective in this
24 armed robberies investigation?

25 A. Yes.

1 Q. So -- was there anybody else responsible
2 for the general supervision of this
3 investigation besides you?

4 A. Uh, general supervision? The street
5 sergeants would have been.

6 Q. When you first got to the scene where did
7 you report?

8 A. I went straight to the station, the police
9 station, where Mr. Benbow was waiting.

10 Q. Did you ever go out to where the car was
11 on Rivers Avenue?

12 A. I did not.

13 Q. If you know, Detective, in your role as
14 chief detective in this investigation, were
15 fingerprints ever attempted to be lifted from
16 either the North Charleston Inn or the Pizza
17 Hut location?

18 A. Both places were processed.

19 Q Is that standard procedure in an
20 investigation of this sort?

21 A. Yes.

22 Q. And, if you know, Detective, were any
23 prints able to be identified?

24 A. No.

25 Q. Is that unusual?

1 A. No.

2 Q. Did you ever attempt to talk to Mr.
3 Coaxum?

4 A. No, I didn't.

5 Q. Did you ever obtain search warrants for
6 the residences of Mr. Coaxum or Mr. Benbow?

7 A. I did.

8 Q. Was any evidence ever located as a result
9 of search warrants?

10 A. No.

11 Q. When were those search warrants served, if
12 you recall? Would that have been after you
13 talked to Mr. Benbow?

14 A. Yes, within a day or two.

15 MR. VOIGHT: Thank you, no further
16 questions at this time.

17 THE COURT: Thank you. You may
18 cross examine.

19 MR. BUTLER: May it please the
20 court.

21 CROSS EXAMINATION

22 BY MR. BUTLER:

23 Q. Good afternoon, Detective, how are you?

24 A. Good. How are you?

25 Q. Fine. Thank you. I want to talk to you

1 just a little bit about what it means to be a
2 detective, first. Detective is the same thing
3 as an investigator?

4 A. Yes, sir.

5 Q. An investigation is going out into the
6 field, going out to crime scenes; right?

7 A. (Affirmative nod).

8 Q. Talking to witnesses?

9 A. (Affirmative nod).

10 Q. Talking to suspects?

11 A. (Affirmative nod).

12 COURT REPORTER: Please answer
13 verbally.

14 THE WITNESS: Right.

15 CROSS EXAMINATION CONTINUED

16 BY MR. BUTLER:

17 Q. And you could say collecting information?

18 A. Yes.

19 Q. That's what a detective does, collects
20 information?

21 A. Right.

22 Q. And then you document the information that
23 you collect?

24 A. Right.

25 Q. Oftentimes in a report?

1 A. (No verbal response).

2 Q. You get witnesses to write statements?

3 A. (No verbal response).

4 Q. In this case you got the suspect to write
5 a statement.

6 A. (No verbal response).

7 Q. Well, you wrote the statement for him but
8 that was more docketing of information?

9 A. (No verbal response).

10 Q. Right?

11 A. Right.

12 Q. Photographs are often taken ---

13 A. (No verbal response).

14 Q. --- to document, for example this is the
15 way that the crime scene looked on the night
16 of the crime?

17 A. It's part of what a crime scene does when
18 they process the scene.

19 Q. And we know 'this' because that's what the
20 picture shows?

21 A. (No verbal response).

22 Q. That, too, is just a part of being an
23 investigator, documenting the information
24 that you've collected?

25 A. Right, but I don't take photographs.

1 That would be done by the crime scene
2 investigators.

3 Q. Right. But you would have all of that in
4 your file and as the lead investigation, if
5 something wasn't documented as you thought it
6 was, you could direct that take place?

7 A. Sure.

8 Q. And all of this is because you've got to
9 come back into court some time, sometimes
10 years, later and say 'here is all the
11 information that I collected.'

12 A. Right.

13 Q. And 'I know that because I documented it.'

14 A. Right.

15 Q. With respect to interviewing a suspect in
16 a crime, that's not the same as interviewing a
17 witness, is it?

18 A. Pretty much, yeah. There's the advice of
19 rights and ---

20 Q. That is what I am getting at. When you
21 interview just a witness you don't read them
22 their rights and tell them that they don't
23 have to talk.

24 A. Right.

25 Q. And there are classes that teach you how

1 to interview a suspect that is different than
2 how you do a witness; right?

3 A. Yes.

4 Q. You are familiar with the Rea technique?

5 A. Yeah, that's one.

6 Q. And that's because it is just a fact of
7 life that suspects don't always want to talk
8 in the same way witnesses do?

9 A. Right.

10 Q. Suspects are sometime reluctant to talk?

11 A. (No verbal response).

12 Q. But you want them to talk because you are
13 an information collector?

14 A. (No verbal response).

15 Q. Right?

16 A. Um-humm.

17 COURT REPORTER: Please answer
18 verbally.

19 CROSS EXAMINATION CONTINUED

20 BY MR. BUTLER:

21 Q. And if they don't talk you can't collect
22 information?

23 A. Right.

24 Q. Also when you take a statement from a
25 suspect -- and in this case I am talking about

1 Mr. Benbow.

2 A. Um-humm.

3 Q. If his case were to have gone to trial,
4 just like with any suspect you have to first
5 satisfy the court that certain things were
6 done properly, right?

7 A. (No verbal response).

8 Q. That you read him his rights?

9 A. Yes.

10 Q. That he understood those rights and he
11 waived them?

12 A. Yes.

13 Q. That in fact the statement was in fact
14 made?

15 A. Right.

16 Q. And if you don't satisfy the court that in
17 fact all those steps were properly taken, then
18 you might not get to talk about the statement?

19 A. Right.

20 Q. All right. So you make sure that you
21 document the fact that he says these things?

22 A. (No verbal response).

23 Q. You have to show that 'I didn't promise
24 him anything'.

25 A. (No verbal response).

1 Q. Right?

2 A. Right.

3 Q. 'I didn't threaten him in any way'?

4 A. Right.

5 Q. 'I didn't keep him from food, water, going
6 to the restroom', right?

7 A. Right.

8 Q. All of these things are things that you
9 have to prove before you can talk about the
10 statement in court?

11 A. Right.

12 Q. And you know that sometimes subjects will
13 then say, 'I didn't say that at all'; right?

14 A. Right.

15 Q. Talking about this case in general,
16 another reason that you document is -- you are
17 familiar with the concept of "he said/she
18 said"; right?

19 A. Yes.

20 Q. That's where one person says one thing and
21 another person says the exact opposite?

22 A. (No verbal response).

23 Q. You are also familiar with the concept of
24 corroboration?

25 A. Right.

1 Q. Corroboration is when there is some other
2 fact that proves what he said or she said and
3 it's not just a he said/she said; right?

4 A. Right.

5 Q. And as an investigator you would rather
6 have corroboration other than he said/she
7 said?

8 A. Right.

9 Q. For example if a person says, 'I couldn't
10 have done that, I was at work.' You go talk
11 to his boss and there would be some
12 corroboration or a failure to corroborate and
13 that, too, would be significant?

14 A. Right.

15 Q. There is no audio of this conversation
16 with this conversation of Mr. Benbow?
17 Audiotape?

18 A. No.

19 Q. And if there was audio, we could hear you
20 read him his rights?

21 A. Right.

22 Q. We could hear him say, 'yes, I understand
23 all of that.' We could hear him make a
24 statement. Right?

25 A. Yes.

1 Q. And that would be corroboration?

2 A. Yes.

3 Q. We don't have it?

4 A. No.

5 Q. Also a video would allow us to hear and
6 see all of those things, right?

7 A. That's correct.

8 Q. And if a lawyer were to say, 'Well, he
9 said that he didn't say it' and you said that
10 he did, you could say, 'I've got the video,
11 watch it for yourself.' Right?

12 A. Right.

13 Q. We don't have that?

14 A. No.

15 Q. Then you write the statement out for him?

16 A. Um-humm.

17 Q. It is not in his handwriting?

18 A. But he signs off on the bottom of the
19 statement after it is read back to him.

20 Q. But the content of the statement, you
21 write it?

22 A. Right.

23 Q. That would be one more way to corroborate
24 it?

25 A. He signs off on the statement.

1 Q. And at the time that he gives you this
2 statement you are interviewing him about two
3 armed robberies, right?

4 A. Yes.

5 Q. Okay. And he knew that he was looking at
6 serious time; right?

7 A. Yes.

8 Q. He knew that he was looking at a minimum
9 of ten years and a maximum of thirty years?

10 A. (No verbal response).

11 Q. Right?

12 A. (No verbal response).

13 Q. And he knew that if you tried him on one
14 and got a conviction and then you tried him on
15 the second it would be Life without the
16 possibility of parole; right?

17 A. I don't know if he knew that or not.

18 Q. But he knew that he was looking at serious
19 time?

20 A. Yes.

21 Q. If I understand you correctly he basically
22 said, 'yeah, I did it but it was really the
23 other guy, he was really the main person, I
24 was just -- kinda got wrapped up in it.'
25 Right?

1 A. Yes.

2 Q. That doesn't surprise you, does it?

3 A. No.

4 Q. It happens all the time, doesn't it?

5 A. Yes.

6 Q. A person who is looking at a lot of prison
7 time, you come to him and you say, 'hey, look,
8 this doesn't look good for you.' You said
9 something like that to him, likely; didn't
10 you?

11 A. No.

12 Q. You did not?

13 A. I don't really recall what I said to him
14 but I don't know that I said that.

15 Q. But it is not at all uncommon for someone
16 who is in the hot seat to say, 'Okay, I might
17 have done a little something but the other guy
18 is much, much, much more guilty than I am.'

19 A. Yes, sometimes it works that way.

20 Q. 'It was all his idea and he was the person
21 who had the gun, he was the person who had the
22 money and I just was in the wrong place at the
23 wrong place.' That happens, doesn't it?

24 A. It has happened, yes.

25 Q. You met with him for two hours?

1 A. Roughly.

2 Q. And in the two hours -- the two hours
3 generated the three-page statement that you've
4 summarized?

5 A. Right.

6 Q. Was there anything else that was going on
7 in those two hours?

8 A. No.

9 Q. So ---

10 MR. VOIGHT: Objection.

11 THE COURT: What is your objection?

12 MR. VOIGHT: Perhaps ---

13 THE COURT: Approach.

14 BENCH CONFERENCE:

15 MR. VOIGHT: He is talking about
16 another armed robbery during that statement.
17 I've stayed away from it.

18 MR. BUTLER: I think I could ask
19 him about it but I won't.

20 THE COURT: I think you can,
21 too.

22 MR. BUTLER: I'm not going to.

23 (BENCH CONFERENCE CONCLUDED)

24 CROSS EXAMINATION RESUMED

25 BY MR. BUTLER:

1 Q. Why wouldn't the North Charleston Police
2 Department have audio or video so that when --
3 so that when lawyers question you that you can
4 say, 'here is the corroboration.'

5 A. I don't know.

6 Q. I mean, I am just curious why ---

7 MR. VOIGHT: Objection, calls for
8 speculation.

9 THE COURT: I will allow it.
10 Overruled.

11 CROSS EXAMINATION CONTINUED

12 BY MR. BUTLER:

13 Q. Do you know why they do not do that?

14 A. I don't know.

15 Q. You talk about the attempt to process the
16 scene for fingerprints. The shotgun was also
17 processed, was it not?

18 A. If I am not mistaken, it should have been.
19 Crime scene usually handles that part of it.

20 Q. Okay. If there are any fingerprints that
21 belonged to William Coaxum on the shotgun, you
22 would know about it?

23 A. Yes.

24 Q. And there were none.

25 A. No.

1 MR. BUTLER: Beg the court's
2 indulgence.

3 THE COURT: Certainly.

4 MR. BUTLER: That's all that I have,
5 Detective. Thank you.

6 THE COURT: Redirect, Mr. Voight?

7 MR. VOIGHT: Yes, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. VOIGHT:

10 Q. Detective, I am just going to ask you a
11 couple of questions about the things that he
12 asked you. Was Marquine Benbow reluctant to
13 talk to you?

14 A. No.

15 Q. And you've had people in your experience
16 be reluctant to talk to you, haven't you?

17 A. Yes.

18 Q. And you've actually had people refuse to
19 talk to you?

20 A. Yes.

21 MR. BUTLER: I have to object to
22 leading at this point.

23 THE COURT: Sustained.

24 MR. VOIGHT: Thank you.

25 REDIRECT EXAMINATION CONTINUED

1 BY MR. VOIGHT:

2 Q. Did you read back Mr. Benbow's statement
3 to him?

4 A. Yes.

5 Q. Was he given the opportunity to correct
6 any errors that you may have made in
7 transcription or in writing down what ---

8 A. Yes.

9 Q. Did he in fact make any corrections?

10 A. Yes, he did.

11 Q. Do you recall what he corrected?

12 A. Grammatical errors. Generally I ask them
13 to read through it and if they find something
14 to initial next to the error, as will I.

15 Q. Did you do that on that document?

16 A. Yes.

17 Q. Did anywhere in there did Mr. Benbow say
18 that he was in the wrong place at the wrong
19 time?

20 A. No.

21 Q. Did Mr. Benbow admit to going into both
22 the North Charleston Inn and the Pizza Hut?

23 A. Yes.

24 Q. Did he admit to assisting Mr. Coaxum with
25 these robberies?

1 A. Yes.

2 MR. BUTLER: Judge, I have to
3 object. Asked and answered on direct.

4 THE COURT: Sustained.

5 MR. VOIGHT: Thank you, Your Honor.

6 REDIRECT EXAMINATION CONTINUED

7 BY MR. VOIGHT:

8 Q. Mr. Butler asked you if William Coaxum's
9 fingerprints were on the shotgun, if as the
10 lead investigator would you know that?

11 A. Yes.

12 Q. If Marquine Benbow's fingerprints were on
13 the shotgun, again as the lead detective would
14 you know that?

15 A. Yes.

16 Q. Were his fingerprints on that shotgun?

17 A. No.

18 MR. VOIGHT: Thank you. At this
19 time, Your Honor ---

20 THE COURT: Hold on just a second.
21 Recross?

22 MR. BUTLER: No, sir.

23 THE COURT: You may come down.

24 (WITNESS STEPS DOWN)

25 THE COURT: At this point, Ladies

1 and Gentlemen, we will recess for the evening.
2 Please remember that you are not at liberty to
3 talk about this case among yourselves or to
4 talk about this case outside of the courtroom.

5 So if tonight when you go home there
6 is somebody there, I imagine a question is
7 going to be 'what's going on, what are you
8 doing?' There certainly would be a tendency
9 to want to talk about it. If you did, if you
10 do that you would have started your
11 deliberations. So please talk about something
12 else. We will finish this case maybe
13 tomorrow, certainly by Wednesday. If you then
14 want to talk about it, you'll be free to talk
15 about it. Certainly don't permit anyone to
16 talk with you about it or talk about it in
17 your presence.

18 Tomorrow I've scheduled a matter
19 unrelated to this case at 9:15. There is also
20 another matter that is going to prevent us
21 from starting early. So you'll get a little
22 bit later start tomorrow. Be in your jury
23 room at 10:00 o'clock, please. Do not -- and
24 of course come directly to your jury room.

25 Have a good evening, see you tomorrow

1 at 10:00. Make sure that you collect all of
2 the notebooks. We will give them to you when
3 you return.

4 (JURY OUT @ 5:00 P.M.)

5 THE COURT: Anything further from
6 the State, Mr. Voight?

7 MR. VOIGHT: No, sir.

8 THE COURT: Anything further, Mr.
9 Coaxum?

10 MR. BUTLER: No, sir.

11 THE COURT: Thank you.

12 (COURT IN RECESS)

13 (TRANSCRIPT CONTINUED NEXT PAGE)

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1 JANUARY 13, 2009 10:10 A.M.

2 (DEFENDANT PRESENT)

3 (JURY NOT PRESENT)

4 THE COURT: At this time are you
5 ready to go forward with some of the
6 witnesses?

7 MR. VOIGHT: Yes, Your Honor. At
8 this time the State would call Keith Jennings.

9 (WITNESS TAKES STAND)

10 KEITH JENNINGS, being duly
11 sworn to tell the truth, the whole truth and
12 nothing but the truth, testified, as follows:

13 Q. Mr. Jennings, where do you work?

14 A. I work at Trident Security.

15 Q. Did you work for Trident Security on
16 November 27th?

17 A. Yes, I did.

18 Q. On that date were you assigned to the
19 North Charleston Inn in North Charleston?

20 A. Yes, I was.

21 Q. What time did your shift begin that
22 night?

23 A. Started at 10:00 o'clock.

24 Q. Did you have the occasion to call the
25 police that evening?

1 A. Yes, I did.

2 Q. What prompted you to call the police?

3 A. I had been making my rounds, came
4 around the front of the motel, noticed two
5 black gentlemen standing there, one with a gun
6 to the auditor's, Ms. Smith's, head. As soon
7 as I seen that, I went and got behind one of
8 the pillars and called the police.

9 Q. Did you see them leave the North
10 Charleston Inn?

11 A. Yes, sir. They left in an orange
12 Suzuki. I reckon -- I'm pretty sure it was
13 orange. Suzuki.

14 Q. When was the first time that you saw
15 that orange Suzuki?

16 A. When I started my rounds I noticed it
17 drive up and ---

18 Q. Did you notice anybody inside the
19 car?

20 A. It was two black gentlemen.

21 Q. Then what did you do when you first
22 noticed the orange Suzuki?

23 A. I just continued my rounds because
24 you know there are people checking in that
25 late at night, so I didn't think too much of

1 it.

2 Q. About how long did your rounds take?

3 A. A little bit less than ten minutes.

4 Q. And when was the next time that you
5 saw the orange Suzuki?

6 A. Was when I came around the corner and
7 I noticed them just sitting at the end of the
8 hotel.

9 Q. Did you go into the hotel lobby?

10 A. No, I didn't.

11 Q. How close did you get to the hotel
12 lobby?

13 A. About from here to where you are
14 sitting.

15 Q. What was the lighting like in the
16 lobby?

17 A. It's where the cars pull in to check
18 in at, so it was pretty well-lit. Lit up
19 pretty good.

20 Q. Was there anything obstructing your
21 view of the front desk or Ms. Smith?

22 A. No, there wasn't.

23 Q. Had you talked to Ms. Smith?

24 A. Not at all.

25 Q. Had you talked to her when you first

1 checked on, checked in?

2 A. When I check in, you know, I usually
3 come let her know that I am there and where I
4 am going to be at; that way if she needs me,
5 she can call me.

6 Q. When you looked into the hotel lobby,
7 please tell the court what you saw?

8 A. Well, I seen two black gentlemen.
9 One was holding a shotgun to her head and
10 there was another black young gentlemen
11 standing off the guy's, with the gun, left.
12 I reckon he was looking like a lookout or
13 whatever.

14 Q. Was there a difference in the age
15 of the two gentlemen that you saw?

16 A. Well, the one on the left was a young
17 fellow and then there was an older gentleman.

18 Q. Which one had the gun?

19 A. The older gentleman.

20 Q. Did you get a good look at him?

21 A. I got a look at him coming out the
22 door. I don't think he noticed me, I was
23 standing behind the pillars, but he looked
24 right at me.

25 Q. Did you look him square in the face?

1 A. Right in the face.

2 Q. What happened after you called 9-1-1?

3 A. Well, I stayed hid and they had
4 gotten in their car and took off and went
5 right on Montague. When they did that, that's
6 right when the police showed up.

7 Q. What time of night did you ---

8 A. I'd say right around between 10:30
9 and 10:45, somewhere in that area.

10 Q. Did there come a time when you left
11 the North Charleston Inn with some police
12 officers?

13 A. Yes. They had took the young lady
14 first down there first, at first. They
15 dropped her off and come and got me.

16 Q. So you didn't go down there with Ms.
17 Smith?

18 A. No, they took her separate.

19 Q. Did you take your own car or did they
20 drive you?

21 A. They drove me.

22 Q. Did you sit in the back of the police
23 vehicle?

24 A. No, he let me sit in the front.

25 Q. What happened when they -- where did

1 they take you?

2 A. Took me down there to Rivers. They
3 had run off the road and they had hit a fire
4 hydrant. That's ---

5 Q. Did you see a car there?

6 A. Yeah, an orange Suzuki.

7 Q. Was that the car that you had seen at
8 the North Charleston Inn?

9 A. Yes, sir.

10 Q. Did they show you -- what did they
11 tell you that they were taking you to the
12 scene for?

13 A. They wanted me to identify the two
14 guys.

15 Q. Did they promise you anything?

16 A. Not a thing.

17 Q. Did they -- well, when you first
18 pulled up did you see anybody out there?

19 A. No, not at first. There was police
20 cars and everything there and then they pulled
21 one of the gentleman out and asked me if that
22 was him and I said 'yes, sir.'

23 Q. Did they shine the light on him?

24 A. No, he was just standing out up under
25 a street light.

1 Q. Did they have their automobile lights
2 trained toward him?

3 A. No. The only lights that were on
4 were the policeman's that I was riding with,
5 he had his lights on.

6 Q. Did he have like a side light?

7 A. Yeah, I think he shined it at him but
8 I can't remember.

9 Q. Did you get a good look at the person
10 that they were showing you?

11 A. Yes, sir.

12 Q. Was he in handcuffs?

13 A. Yeah, he was in cuffs.

14 Q. Was he with other -- was he with
15 police officers?

16 A. Yeah, two other officers.

17 Q. How much time did you get -- how much
18 time did you take looking at him before you
19 told the police that ---

20 A. I wanted to make sure that it was
21 him. I kind of waited a few minutes and
22 looked at him real good to make sure it was
23 him.

24 Q. And the person that you were looking
25 at, which one of the two gentlemen was it that

1 you ---

2 A. It was the older gentleman.

3 Q. Was he the one with the gun?

4 A. Yes, sir.

5 Q. Did they show you somebody else?

6 A. They showed me the younger gentleman
7 but I didn't really get that much of a look at
8 him because he kind of looked down. I don't
9 know if he was out there or not.

10 Q. The older gentleman, what was he
11 wearing if you recall?"

12 A. It looked like a gray-and-white
13 jacket that -- I'm ex-Army and it looked kinda
14 like camouflage, but I'm not sure. Everything
15 happened so fast. All I know is that it was
16 gray-and-white. That's all that I know.

17 Q. The person with the gun, was he
18 clean-shaven, did he have facial hair?

19 A. He had like a little beard, a goatee.

20 Q. Were you certain that he was the
21 gunman?

22 A. I'm sure, (affirmative nod).

23 Q. Do you see the person who you
24 identified as the gunman in the court today?

25 A. Yes, sir.

1 Q. Could you point him out and describe
2 what he is wearing?

3 A. The young gentleman right there in
4 the gray suit (indicating Defendant).

5 MR. VOIGHT: I tender this witness.

6 THE COURT: Very well, you may
7 cross examine.

8 CROSS EXAMINATION

9 BY MR. BUTLER:

10 Q. Mr. Jennings, let me ask you
11 questions about -- I didn't get the distance
12 that you were?

13 A. I was about from here to where he is
14 sitting.

15 Q. Who is "he"?

16 A. The, uh, young ---

17 Q. The young guy here?

18 A. Yes, sir.

19 Q. What is that, about thirty feet?

20 A. I am not sure.

21 Q. Twenty-five feet?

22 A. Yeah, something like that.

23 Q. And are you looking through -- are
24 you outside and they are inside?

25 A. Yeah, I am outside. Where you come

1 in at there are three pillars there.

2 Q. Yes, sir.

3 A. And I was standing at the front
4 pillar, hid behind that. It's pretty close.
5 I don't know if you have been down there to
6 see the place but it's about that distance
7 from the front door.

8 Q. And what are you looking through?

9 A. I am just looking around, around the
10 pillar when he come out of the lobby.

11 Q. You are not watching inside, you saw
12 him when he come out?

13 A. I seen him when he was inside and
14 that's why I was hiding between the pillars so
15 that he wouldn't see me.

16 Q. What were you looking through when
17 you saw him inside?

18 A. There's big windows, great big
19 windows.

20 Q. Then when he leaves that is when you
21 get a better look at his face?

22 A. Yes. I don't think he knew that I
23 was standing there. I think he was just
24 looking around to see if anybody was around
25 and he looked directly at me.

1 Q. How close were you at that point?

2 A. About from the ---

3 Q. Same distance?

4 A. Yeah, same distance because I didn't
5 move. I didn't want to come out. I was on
6 the phone with the police at the time.

7 Q. When he came out you were on the
8 phone with the police?

9 A. Yes.

10 Q. Okay. If the distance that we have
11 talked about here was roughly twenty-five feet
12 and that is when he comes out and passes you,
13 how far -- what would you estimate the
14 distance to be when he was inside and you were
15 outside and you saw him.

16 A. From where the young lady is sitting
17 there.

18 Q. Okay -- in the back of the room?

19 A. Yeah.

20 Q. The description that you have given
21 today of the person that you saw, was that the
22 same? Did you give any description to the
23 police when they came and talked to you?

24 A. I just told them that it was an older
25 gentleman and a young guy, a young gentleman..

1 One was wearing camouflage, it was gray-and-
2 white. Everything just happened so fast, I
3 just kind of -- just was hoping they'd hurry
4 and get out. I called the police and then --
5 then after they left, I ran in to make sure
6 that the young lady was alright.

7 Q. So your description of the
8 perpetrators to the police before you went to
9 where they had the people stopped was an older
10 and a younger gentleman ---

11 A. The older gentleman wearing gray-and-
12 white.

13 Q. The older gentleman was wearing gray-
14 and-white?

15 A. Yeah. Like I said, again I didn't
16 get much of a look at the young guy.

17 Q. I understand. Did you tell them that
18 they were black males?

19 A. Yes, they were black males.

20 Q. Anything else?

21 A. Other than that, I said that they got
22 into an orange Suzuki and left.

23 Q. Did you tell them an orange Suzuki or
24 an orange Neon?

25 A. I don't know that much about cars, so

1 I just guessed at it.

2 Q. Were you told later that it was a
3 Suzuki?

4 A. No, I wasn't ever told. I just
5 glanced it, I'm not much for cars.

6 MR. BUTLER: Beg the court's
7 indulgence.

8 THE COURT: Certainly.

9 CROSS EXAMINATION CONTINUED

10 BY MR. BUTLER:

11 Q. When did start to call 9-1-1?

12 A. From the time I seen it. When I seen
13 him holding the gun to the young lady's head,
14 I called them then and they told me to just
15 stay hid and not to let them see me; you know,
16 'don't try anything.' They got there pretty
17 quick. They hadn't even been gone a minute
18 before they showed up.

19 Q. Say again, sir?

20 A. They hadn't even been gone two or
21 three minutes before they showed up.

22 MR. BUTLER: Beg the court's
23 indulgence?

24 THE COURT: Yes, sir.

25 MR. BUTLER: That's all that I have.

1 Thank you.

2 THE COURT: Redirect?

3 MR. VOIGHT: No redirect.

4 THE COURT: You may come down, Mr.
5 Jennings. Thank you.

6 (WITNESS STEPS DOWN)

7 THE COURT: You may call your next
8 witness.

9 MR. VOIGHT: I am going to submit
10 it, Your Honor, to ---

11 THE COURT: Do you have any
12 witnesses?

13 MR. BUTLER: No, sir, but I have a
14 Motion.

15 THE COURT: Sure.

16 MR. BUTLER: Judge, I would move
17 that witness' identification be excluded
18 pursuant to *Neil v. Biggers*, specifically
19 citing *State v. Moore*, 540 S.E. 445 and *In the*
20 *Interest of Jamal Rashad*, 418 S.E. 2nd 326
21 (phonetic). Both are show-up identification
22 where just general descriptions of race,
23 gender and clothing and relative height were
24 not sufficient to ensure reliability of the
25 identification.

1 Again, on the topic of show-ups,
2 we're beginning with the premise that it was
3 suggestive and now it is whether it was
4 reliable.

5 I actually questioned this witness
6 the way that I did because when Mr. Voight
7 asked him to describe the person, we don't
8 know if he is describing him as he remembers
9 after he's been to the show-up or the
10 description prior to the show-up. That's the
11 key factor. That's why I asked him, 'What did
12 you tell police before you saw him (sic)?'
13 All he said was that one was older and one was
14 younger -- I don't know that there is any
15 testimony in the record as to the relative age
16 of these people -- and that one had gray that
17 sort of looked camouflage and that they were
18 black. So I believe that I have to move that
19 it be excluded.

20 THE COURT: Thank you. You have to
21 consider the totality of the circumstances
22 here.

23 MR. BUTLER: I understand.

24 THE COURT: That's the key. You've
25 got two black gentlemen, one older and

1 younger. You've got them wearing similar
2 clothing.

3 Probably the most -- the most
4 reliable aspect of it is the vehicle. They
5 are in an orange vehicle. Whether it is was a
6 Neon or whether it was a whatever, it was an
7 orange vehicle.

8 Then you've got a man who by his own
9 job, his own responsibility is a security
10 person. He has called the police, the guy
11 walks out and he is looking at him face-to-
12 face and he says -- drives up, 'That's the
13 man.' There is no question that it is
14 reliable. Thank you, sir. Your Motion is
15 noted and denied.

16 MR. BUTLER: Thank you.

17 THE COURT: All right. We have a
18 note from our foreperson that Juror Number 7,
19 who is Pearl Alston, has indicated that she
20 knows the family of the Defendant but not the
21 Defendant himself. This is will be Court's
22 Exhibit 1. She states that the juror would
23 like to speak to me.

24 Do you'all want me to speak to her
25 here first or speak to her first to find out

1 what she wants to say and then bring her in
2 for an examination. What is your pleasure?
3 Typically what I do is I talk to them -- I
4 don't know what she is going to say, whether
5 it is affecting her or not. If she says that
6 it is, then I will bring her out immediately
7 and we will inquire as to whether she has had
8 any discussion with anyone. If she says that
9 she is not, then I will bring her out and let
10 -- however you want to proceed.

11 MR. VOIGHT: I would like to proceed
12 in the manner that the court has indicated.

13 THE COURT: I've found -- at least
14 -- the first one -- if I bring her out first
15 -- I'm not trying to control anything but she
16 may be more likely to disclose that to the
17 court.

18 MR. BUTLER: That's fine. Thank you,
19 Judge.

20 THE COURT: Mr. Coaxum has no
21 objection to my doing it that way?

22 MR. BUTLER: No.

23 THE COURT: If anyone would like to
24 read this, it is Court's Exhibit 1.

25 (SO ENTERED AS COURT'S EXHIBIT 1)

1 (OFF RECORD DISCUSSION WITH JUROR)

2 (JUROR NUMBER 7 ENTERS COURTROOM)

3 THE COURT: Let me report that --
4 Ms. Alston, you can stand here. I've just
5 told Ms. Alston, thanked her for doing that.
6 That's one of the reasons is that I have such
7 faith in the jury system.

8 The statement was, as I understand,
9 Ms. Alston, when you came in that you still do
10 not know the Defendant but you recognize
11 family members; one of them, you worked with.

12 JUROR NUMBER 7: Um-humm.

13 THE COURT: And one of -- and that
14 person, you say, that -- she claims that
15 you'all are distant cousins but you are not
16 sure of that?

17 JUROR NUMBER 7: Right.

18 THE COURT: And I believe that you
19 indicated to me that you wanted that to be
20 known and didn't want that to be something
21 that somebody found out later, but that it
22 would not influence you is what you indicated?

23 JUROR NUMBER 7: Yes.

24 THE COURT: Any additional
25 questions that the State would have of Ms.

1 Alston?

2 MR. VOIGHT: Just briefly.

3 THE COURT: Sure.

4 MR. VOIGHT: Ms. Alston, ---

5 JUROR NUMBER 7: Yes?

6 MR. VOIGHT: --- are you able when
7 you're considering the evidence from the
8 witness stand and the other evidence that
9 you're presented, are you able to put out of
10 your mind those relationships, whether they be
11 working relationships, family relationships,
12 and consider just the evidence that comes from
13 the witness stand?

14 JUROR NUMBER 7: Yes, sir.

15 MR. VOIGHT: Do you believe that
16 your knowing anybody from the Defendant's
17 family would have, in any way, any influence
18 your decision? Make you deliberate longer?
19 Make you view evidence in any different light
20 than you would have had you not been -- not at
21 all?

22 JUROR NUMBER 7: No, it wouldn't.

23 THE COURT: Mr. Butler, any
24 questions?

25 MR. BUTLER: No, sir.

1 THE COURT: Ms. Alston also
2 indicated to me that the only person that she
3 has disclosed this to was the foreperson. Do
4 you wish for me to talk with her as well to
5 find out if that would influence her at all?

6 MR. VOIGHT: I don't know that that
7 is necessary.

8 MR. BUTLER: No, sir.

9 THE COURT: Ms. Alston, I am going
10 to ask that you step out -- not to return to
11 the jury room just yet. We will be with you
12 in just a moment. If you would let her just
13 stand right outside, Mr. Williams. Thank you
14 so much.

15 (JUROR NUMBER 7 EXITS COURTROOM)

16 THE COURT: What is the State's
17 request?

18 MR. VOIGHT: Out of an abundance of
19 caution, Your Honor, we would request that she
20 be excused. These types of relationships,
21 despite the fact that it appears she answered
22 my questions honestly, these types of
23 relationships actually -- I believe that it
24 would be most difficult and ultimately she may
25 not be able to put it out of her mind, and out

1 of an abundance of caution I would ask that
2 she be excused.

3 MR. BUTLER: Your Honor, I would
4 have to oppose his Motion.

5 THE COURT: I understand. Had you
6 known this information, would you have
7 exercised a peremptory challenge?

8 MR. VOIGHT: Yes, Your Honor.

9 THE COURT: I think that's the key.
10 Had the information been disclosed, then a
11 challenge would have been exercised. While
12 she has expressed that, uh, -- well, pull up
13 *State v. Stone*. Just one second, I think
14 that's one of the issues that I was reversed
15 on -- let me look at that.

16 COURT REPORTER: 350 SC 442.

17 THE COURT: Thanks. (Upon review),
18 that's it. All right. In *Stone* the Court
19 reversed on some other issues in the
20 sentencing phase because I discharged a juror
21 who basically announced to the court when a
22 person testified in the sentencing phase that
23 she was acquainted with the person. The State
24 made the same argument that you did. The
25 record is not clear whether we delved into the

1 challenge of the peremptory challenge or not.

2 It says basically that when a juror
3 conceals information -- conceals information
4 -- that a new trial is required only when the
5 court finds a juror intentionally concealed
6 information and that the information concealed
7 would have supported a challenge for cause and
8 would have been a material factor for use in
9 the party's peremptory challenge.

10 An interesting decision. The Court
11 says, (reading): "Although the present case
12 does not involved a new trial, it is..." --
13 another case, *State v. Woods* -- (reading,
14 continued): "It is clear that the juror's
15 failure to disclose acquaintance with...was
16 innocent", which it was -- just as we have
17 here.

18 (Reading): "Moreover, we find her
19 scant acquaintance would neither have
20 supported a challenge for cause..." -- which I
21 don't disagree with -- "...nor would it have
22 been a material factor in the State's exercise
23 of its peremptory challenge."

24 I don't know how you would conclude
25 that. That is something that is from the

1 perspective of the attorney trying the case,
2 I would think. I know -- and they never
3 appealed that but I had to declare a mistrial
4 in a case and Steven John, who is now a judge,
5 was the second chair and we found out in the
6 sentencing phase that one of the jurors had
7 gone to school with the defendant's brother.
8 They said they would have removed him -- which
9 I thought was a little bit ludicrous. Why
10 wouldn't you want somebody who knew the
11 defendant? Why wouldn't you want that person?

12 But he also said, 'I would have used
13 a peremptory challenge had I known that.'
14 That's the case law and I don't have that case
15 before me. The Court is referencing that and
16 maybe *Woods* addresses that.

17 According to what I have for the
18 strikes exercised, the State had a peremptory
19 challenge available to it and could have used
20 it.

21 MR. VOIGHT: (Affirmative nod).

22 THE COURT: Not only is she an
23 acquaintance -- she denies the relationship
24 but she said that a person claims to be some
25 relation to her. I think that those are

1 compelling reasons and I think that I can't
2 argue with the State's position that they
3 would have used that as a peremptory
4 challenge. If you want to do that. I am
5 citing that for you, Solicitor, so that you
6 can make the call as to whether you want to
7 have this go up on that issue.

8 MR. VOIGHT: I understand, Your
9 Honor, the trap -- the facts as you have laid
10 them out for me. For the record, I think I am
11 going to step right into it. I used my, to my
12 recollection two peremptory challenges.

13 THE COURT: Two, (affirmative nod).

14 MR. VOIGHT: When ---

15 THE COURT: Ms. Alston would have
16 actually been -- you used one just preceding
17 Ms. Alston. She was followed by John Jowers,
18 who you excused -- no, excuse me. The
19 Defendant excused -- you had previously the
20 juror before -- Ms. Flood, you had excused,
21 and then the Defendant excused Mr. Jowers,
22 Juror Number 150. The next person that was
23 drawn was Ms. Alston and -- you would have had
24 ---

25 MR. VOIGHT: I ---

1 THE COURT: At that point you had
2 used two peremptory challenges.

3 MR. VOIGHT: I believe two of the
4 four.

5 THE COURT: You did.

6 MR. VOIGHT: When I -- every case is
7 different but I do tend to have general types
8 of people that I exclude, and I normally don't
9 go into my reasoning for doing so but in this
10 case I feel that it is necessary. I look for
11 ties to the community and longstanding
12 employment history when I am on this side, as
13 a prosecutor. That was the reason for my
14 striking Ms. Flood, because she was not
15 employed and did not appear to have been
16 employed for some time previously. The very
17 first juror that I struck, I struck because
18 of her socialwork background.

19 A third factor that I always look to
20 when I am striking jurors and those reasons
21 don't rise to the level of a challenge for
22 cause is ties to the defendant or a key
23 defense witness.

24 I believe that those are the kinds of
25 connections, as this juror has disclosed, that

1 are exactly the kinds of things that I am
2 looking for to exclude by peremptory
3 challenge.

4 THE COURT: Okay. Thank you, sir.
5 Anything that you wish to add, Mr. Butler?

6 MR. BUTLER: Judge, just to try to
7 make sense out of the Stone case and why that
8 holding would be that way, I am not sure that
9 it is completely appropriate to try to put
10 ourselves back in the shoes -- our own shoes,
11 to figure out what we would have done before
12 the trial. Here's -- the reason is because
13 there is a strong policy reason not to want to
14 have to replace jurors in the middle of trial.

15 THE COURT: Right.

16 MR. BUTLER: No matter what we tell
17 the alternate, we can't help but be worried
18 that the alternate does to pay attention in
19 the same way that the other twelve jurors who
20 are likely to have to decide the case. They
21 told us that this was not going to be a long
22 case and I think we're at least halfway
23 through it. You don't have that concern
24 before you start a trial but you do now, so I
25 can see why there would be a more compelling

1 standard -- that the standard would be higher
2 when ---

3 THE COURT: Right.

4 MR. BUTLER: --- you are replacing a
5 juror with an alternate mid-trial than you
6 would before you start a trial. I think that
7 is probably the reason part of that rule says
8 "intentionally conceals". I don't think
9 anybody thinks that the information that has
10 come forward was intentionally concealed by
11 Ms. Alston. If I understood Your Honor
12 correctly, that was ---

13 THE COURT: Well, that is certainly
14 -- intentionally concealed, then the person
15 would have violated the court's instruction
16 and that would support a basis for removal.

17 The *Wood* case, I am just looking at
18 it quickly. The cite -- in that case it is
19 interesting because a juror did intentionally
20 conceal the information.

21 I think the key here to me, and it is
22 a key, I believe that it is, and notwithstand-
23 ing the Court's statement, that is why we ask
24 the question -- for instance, -- just to draw
25 an analogy, that's why you ask about law

1 enforcement connection.

2 MR. BUTLER: Sure.

3 THE COURT: Not that it is a
4 challenge for cause but it is a basis to say,
5 'I don't know if I want that philosophy or
6 that mindset on my jury.' It just changes
7 everything, how we view it.

8 I think that is why the court has
9 recognized those as being legitimate
10 peremptory challenges that meet the *Batson*
11 standard. Clearly this would meet the *Batson*
12 standard. I think that there is a rational
13 reason -- I think that there is a basis for
14 it, even notwithstanding some -- even an
15 acquaintance, but clearly where you have
16 someone that is a close friend, I think that's
17 a legitimate basis?

18 MR. BUTLER: Certainly, but ---

19 THE COURT: And I understand your
20 concern about being midstream.

21 MR. BUTLER: Yes, sir.

22 THE COURT: I am not concerned
23 about that because that would always been the
24 case any time we put an alternate juror on.
25 That's one of the reasons that I make the

1 little statement that I make, hopefully to
2 trigger that 'you're very much a part of the
3 jury.'

4 I understand your concern and that is
5 certainly a basis for me to deny it but I
6 would not -- that would not persuade to me do
7 that. I am going to grant the State's Motion
8 notwithstanding *Stone*. I think that there is
9 -- I think this one is distinguishable by
10 what's on the record.

11 MR. BUTLER: Note my objection.

12 THE COURT: You absolutely are
13 protected.

14 MR. BUTLER: Thank you.

15 THE COURT: Excuse me one moment.
16 Well, I am going to do this in your presence,
17 discharging Ms. Alston.

18 (JUROR NUMBER 7 ENTERS COURTROOM)

19 THE COURT: Ms. Alston, first of
20 all, thank you and I applaud you for what you
21 did in bringing this to the court's attention.
22 We have heard what you said. I don't know if
23 you heard when we dismissed some jurors
24 previously.

25 JUROR NUMBER 7: Yes.

1 THE COURT: But out of an abundance
2 of caution, I am going to take the position
3 and remove you from that -- one side has asked
4 that be done.

5 JUROR NUMBER 7: (Affirmative nod),
6 okay.

7 THE COURT: Not because they didn't
8 believe you but just simply it keeps it from
9 -- thank you so much, I hope that you we have
10 a chance to work together again this week. If
11 you will, call the number after 6:00 tonight
12 and follow the instruction.

13 JUROR NUMBER 7: Thank you.

14 (JUROR NUMBER 7 EXCUSED)

15 THE COURT: Anything further from
16 the State?

17 MR. VOIGHT: No, Your Honor.

18 THE COURT: Anything further from
19 the Defendant?

20 MR. BUTLER: No, sir.

21 THE COURT: As I understand, you do
22 not wish me to talk with the forelady about
23 this?

24 MR. BUTLER: I don't see any reason
25 to.

1 MR. VOIGHT: (Negative gesture).

2 THE COURT: Very well. Is the
3 State ready to proceed?

4 MR. VOIGHT: Yes, sir.

5 THE COURT: Is Mr. Coaxum ready to
6 proceed?

7 MR. BUTLER: Yes, sir.

8 THE COURT: Thank you. Bring in
9 the jury.

10 (JURY IN @ 10:48 A.M.)

11 THE COURT: Thank you, Ladies and
12 Gentlemen. We have addressed -- Ms. Alston
13 has properly done -- she's been excused from
14 further participation. Ms. Pennell, as I
15 mentioned yesterday, that we didn't know the
16 status -- and now you understand why it is so
17 essential that you pay attention. Thank you
18 for the attention you've given before and now
19 you are very much a part of the jury. Those
20 two chairs will now remain vacate, because you
21 are no longer the alternate.

22 Thank you, Ladies and Gentlemen. I
23 hope that you had a good evening. We are
24 ready to continue in the matter that we
25 started yesterday. I ask that you give your

1 attention to the next witness.

2 Please call your next witness,
3 Solicitor.

4 MR. VOIGHT: Thank you, Your Honor.
5 The State calls Keith Jennings.

6 (WITNESS TAKES STAND)

7 KEITH JENNINGS, being duly
8 sworn to tell the truth, the whole truth and
9 nothing but the truth, testified, as follows:

10 DIRECT EXAMINATION

11 BY MR. VOIGHT:

12 Q. Mr. Jennings, where do you work?

13 A. I work for Trident Security.

14 Q. How long have you worked security?

15 A. I have been doing it for right at eight
16 years.

17 Q. Were you working for Trident Security on
18 November the 27th, 2007?

19 A. Yes, I was.

20 Q. Where were you assigned that night?

21 A. North Charleston Inn.

22 Q. What shift were you working that night?

23 A. I was working the 10:00 to 6:00.

24 Q. If you know, who was working as the night
25 clerk at the North Charleston Inn that night?

1 A. All I know is her last name is "Smith". I
2 didn't know her first name.

3 Q. Did you have a chance to talk with her at
4 all when you checked in?

5 A. Well, that's what we do when we come in.
6 We've got to check in with them first.

7 Q. What are your duties as a security guard
8 when you are assigned to the Charleston Inn?

9 A. Mainly just walk around the parking lot to
10 make sure that none of the cars are broken
11 into, and walk around on the inside over by
12 where the bar is and everything's at to make
13 sure that everything is going all right inside
14 the bar; watching out for -- (pause).

15 Q. Did you have occasion on the night of the
16 27th to call 9-1-1?

17 A. Yes, sir.

18 Q. Why did you call 9-1-1?

19 A. Well, I was making my rounds and when I
20 came around to the front of the building where
21 the lobby is at I noticed two black gentlemen,
22 one with a gun and another standing off to his
23 left. That's when I called. I was standing
24 behind one of the three pillars that were
25 standing there, I stood behind them and called

1 9-1-1.

2 Q. What did the gentlemen do next?

3 A. Well, he had the gun to the young lady's
4 head. The guy to his left was kinda of, I
5 reckon, looking like a lookout or whatever.
6 When she -- after they did what they did, she
7 ran in the back door (sic), which it
8 automatically locks for certain reasons just
9 for that.

10 He come -- they come running out and
11 I was standing behind the pillar. The young
12 guy kind of had his head down and the older
13 gentleman looked right at me. I don't think
14 he realized that I was standing there.

15 Q. Did they leave on foot, did they catch a
16 bus, what did they do ---

17 A. No, sir. They got into an orange -- I
18 thought it was a Suzuki. I'm not much for
19 cars, so I don't know ---

20 Q. But you know the color was orange?

21 A. Yeah, it was orange.

22 Q. Do you know which one of them got in the
23 driver's seat?

24 A. I didn't really see who got in the -- it
25 happened so fast and all I was thinking about,

1 was worrying about her in the motel.

2 Q. Was that the first time that you had seen
3 the orange car?

4 A. No, I had seen it earlier when I was just
5 starting my rounds. I seen it pull up to the
6 motel. That late at night it's not unusual
7 for people to check in.

8 Q. Did you see anybody in the car when it was
9 pulling ---

10 A. There was two gentlemen in the car.

11 Q. What did you do after you first saw the
12 car?

13 A. I didn't think too much about it. I just
14 kinda looked at them and then just walked/
15 continued my rounds. You know, the ---

16 Q. About how long did your round take?

17 A. A little less than ten minutes.

18 Q. And how far away from the gentlemen were
19 you the next time that you saw them?

20 A. I was from about here to where you are
21 standing at, probably, in that area.

22 A. Was there anything obstructing your view,
23 anything between you and the gentlemen?

24 A. No, there wasn't.

25 Q. Did you see Ms. Smith?

1 A. Yes, she was standing behind the counter
2 when the guy was holding the gun to her and
3 then after -- apparently he -- I don't know if
4 he got anything, I didn't see him get
5 anything, but she ran into the back room where
6 the back door automatically locks for security
7 reasons.

8 Q. Is that front desk area well lit?

9 A. Yes, very well lit.

10 Q. About how long did you look at them from
11 that distance?

12 A. Probably two or three minutes, maybe.
13 Because once they did that, they we went --
14 they went pretty quick and I noticed that when
15 they came out that the older gentleman -- I
16 don't know if he was just looking around to
17 see if anybody was around or anything but I
18 looked right at him.

19 Q. Did you get a good look at his face?

20 A. Yes, I did.

21 Q. You describe him as the older gentleman?

22 A. Yes.

23 Q. Was there a discrepancy in the ages of the
24 two men?

25 A. Yeah, the other guy looked like he was in

1 his teens, he was a younger fellow.

2 Q. Did you see the younger fellow with a gun?

3 A. No.

4 Q. When you got a good look at the older
5 gentleman, what was the lighting like?

6 A. It's pretty lit up. It -- where they
7 were, they pull up to the motel where they
8 check in, so they -- we've got to keep it
9 pretty well lit up so that they can -- so we
10 can see in or out. That way we can see
11 anybody who comes in or out.

12 Q. Was the older gentleman clean-shaven or
13 did he have facial hair?

14 A. He had like a little goatee-like thing,
15 but it -- it wasn't really bad looking, it was
16 just a little goatee-like type thing.

17 Q. What was the older gentleman wearing?

18 A. I thought that it was a gray-and-white
19 jacket, I thought it was camouflage. All I
20 know is that it looked camouflage to me.

21 Q. Did you called 9-1-1 before the gentlemen
22 left or after the gentlemen left?

23 A. Before he (sic) left. I was standing
24 behind that pillar calling them when he came
25 out. That is when I told the police that they

1 were coming out and that they'd gotten into
2 that orange car and took a right on Montague.

3 Q. You told the police about the orange car?

4 A. Yes, sir.

5 Q. What did you do after the gentlemen left?

6 A. I went in and checked on the young lady.

7 Q. How did she appear to you?

8 A. She was scared, crying and upset.

9 Q. How long after the gentlemen left did it
10 take for the police to get there?

11 A. Not very long, three to five minutes.

12 Q. Did there come a time when the police
13 asked you to go with them?

14 A. Yes, they did.

15 Q. Did you go with the young lady or did you
16 go separately?

17 A. We went separately.

18 Q. Did you take your car or did they drive
19 you?

20 A. No, I rode with the policeman.

21 Q. Were you in the front seat or the back
22 seat?

23 A. Front seat.

24 Q. Where did they take you?

25 A. Took me to Rivers Avenue.

1 Q. What did you see when you got to Rivers
2 Avenue?

3 A. I noticed a lot of police cars and an
4 orange car that had hit a fire hydrant off to
5 the right.

6 Q. Was it the same orange car that you had
7 seen at the North Charleston Inn?

8 A. Yes, it was.

9 Q. Did they show you anybody out there, did
10 the police show you anybody?

11 A. Yes, they showed me the older gentleman.

12 Q. The gentleman that they showed you, did
13 you tell them what if any role in the armed
14 robbery that he had?

15 A. Yes. He had asked me was he one of them
16 and I just -- I thought for a few minutes
17 because I wanted to make sure that I got it
18 right and I -- after I looked at him, I said
19 'yeah', that that was him, that he was the one
20 that was holding the gun.

21 Q. Do you see the man who was holding the
22 gun, in the courtroom today?

23 A. Yes, I do.

24 MR. BUTLER: Please note my previous
25 objection.

1 THE COURT: Objection is noted and
2 protected. The rulings are on the record and
3 those rulings remain. You may answer the
4 question.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. VOIGHT:

7 Q. Would you point -- would you describe
8 where he is and what he is wearing?

9 A. He is wearing a gray suit over to the
10 left.

11 Q. Are you certain that that was the man with
12 the gun?

13 A. Yes, I am.

14 MR. VOIGHT: Thank you, I have no
15 further questions.

16 THE COURT: You may cross examine.

17 MR. BUTLER: May it please the
18 Court.

19 THE COURT: Yes, sir.

20 CROSS EXAMINATION

21 BY MR. BUTLER:

22 Q. Good morning, Mr. Jennings.

23 A. How you doing?

24 Q. I'm fine. Thank you for asking. I just
25 have a few questions. When you first see the

1 two men -- you recall the area that they were
2 in was in the lobby?

3 A. Yes, sir, they were in the lobby ---

4 Q. And you were outside?

5 A. Yes, I am outside by the pillars where the
6 driveway is, where they come to check in at.

7 Q. And you are seeing what is going on inside
8 through a window?

9 A. Yes, sir.

10 Q. And -- because you talked about seeing
11 them two separate times, I want to make sure
12 that we get the distances right. When you see
13 them and you are outside, how far away are
14 you?

15 A. When I am outside and he's inside, he is
16 probably to the double doors.

17 Q. Back here (indicating doors into
18 courtroom)?

19 A. Yeah.

20 Q. Then when the two men exit, that's when
21 you are about this far away?

22 A. Yeah. Yes, sir.

23 Q. From where you are to the prosecutor's
24 table?

25 A. Yes, sir.

1 Q. And you described the car as a Suzuki.
2 Did you tell the police that it was a Dodge
3 Neon?

4 A. No, I really don't know exactly what it
5 was. It was just an orange car. I just kinda
6 guessed at what it was, I didn't see exactly.
7 All I know is that it was orange.

8 Q. Yes, sir.

9 MR. BUTLER: Beg the court's
10 indulgence.

11 THE COURT: Yes, sir, take your
12 time.

13 MR. BUTLER: Thank you, Mr.
14 Jennings, that is all that I have.

15 THE COURT: Redirect?

16 MR. VOIGHT: No redirect at this
17 time.

18 THE COURT: Thank you, Mr.
19 Jennings, you may step down.

20 (WITNESS STEPS DOWN)

21 THE COURT: Call your next witness
22 please.

23 MR. VOIGHT: Officer Jason Gamba.

24 (WITNESS TAKES STAND)

25 JASON GAMBA, being duly sworn

1 to tell the truth, the whole truth and nothing
2 but the truth, testified, as follows:

3 DIRECT EXAMINATION

4 BY MR. VOIGHT:

5 Q. Officer Gamba, where are you employed?

6 A. City of North Charleston Police
7 Department.

8 Q. How are you assigned?

9 A. I am a police officer.

10 Q. Is there any specific assignment that you
11 have?

12 A. I work for the canine unit.

13 Q. How were you assigned on November 27th,
14 2007?

15 A. I was working that night.

16 Q. Did you have occasion on that day to
17 respond to a call?

18 A. Yes, sir.

19 Q. Do you recall what time that was?

20 A. I believe it was around 10:45 that night.

21 Q. And what in response to that call, what
22 did you do -- what type of the call was it?

23 A. It was an armed robbery that occurred at
24 Dorchester and Leeds. I was on the way there
25 and I heard officers get behind a vehicle

1 matching the description of the vehicle used
2 in the robbery. A vehicle pursuit ensued and
3 I responded to assist with the pursuit.

4 Q. Where did you ultimately respond, what
5 location?

6 A. Ultimately the pursuit ended at Rivers
7 Avenue near Bolton Street after the vehicle
8 that we were pursuing crashed.

9 Q. Were you part of the pursuit?

10 A. I was at the time attempting to take over
11 as primary unit. As canine officers, anytime
12 that there is a pursuit in the city we take
13 over as primary. I did not have the
14 opportunity to make it to the primary
15 position, the vehicle actually wrecked out
16 before I was able to.

17 Q. Did you see the vehicle while it was
18 traveling?

19 A. Yes, sir.

20 Q. What did it look like?

21 A. It was kind of orange in color.

22 Q. Were you able then to get behind it and
23 pursue it along with the other police
24 vehicles?

25 A. I was about three or four cruisers back.

1 I was about the third or fourth cruiser in the
2 pursuit at the time it ended.

3 Q. Did you see the vehicle crash?

4 A. No, sir, I saw the aftermath when I came
5 around the corner.

6 Q. What was the aftermath that you saw?

7 A. It struck a fire hydrant and water was
8 spewing everywhere.

9 Q. When you got to the scene, what was your
10 job? What did you do?

11 A. I assisted a couple of officers that were
12 pursuing -- two people had jumped out of the
13 vehicle to flee on foot. When I came around
14 the corner I saw a couple of officers
15 attempting to detain Mr. Coaxum. I assisted
16 them with that.

17 Q. Were you -- how did you assist the
18 officers in the detention of Mr. Coaxum?

19 A. I assisted -- they got the handcuffs on
20 him. I assisted in getting him to his feet
21 and by walking him back to the police cruiser.

22 Q. Could you tell when you got to the scene
23 which side of the vehicle that he was on?

24 A. No, sir, I could not.

25 Q. You could not tell if he was the driver or

1 the passenger?

2 A. No, sir.

3 Q. Did you -- were you able at any time to
4 search Mr. Coaxum's person?

5 A. Yes, sir. I conducted a search incident
6 to arrest, of his person.

7 Q. What did you find?

8 A. In his left front pants pocket he had an
9 amount of loose currency. I believe that it
10 was \$396, to be exact.

11 In his right front pocket he had a black
12 in color wallet with another \$622 and also his
13 driver's license, Social Security card and his
14 birth certificate.

15 Q. And what did you do with the money that
16 you took out of his pocket and wallet?

17 A. It was placed into evidence.

18 Q. Did you search the car at all?

19 A. No, sir. I did not.

20 Q. Did you take any statements from anyone?

21 A. No, sir.

22 MR. VOIGHT: That's all that I
23 have.

24 THE COURT: Cross-examine?

25 CROSS EXAMINATION

1 BY MR. BUTLER:

2 Q. Officer Gamba, just briefly, when you --
3 when you get there the only suspect near the
4 car is Mr. Coaxum?

5 A. That's correct.

6 Q. And the other suspect had fled?

7 A. Yes, sir.

8 Q. When you were there he was not in sight?

9 A. No, sir.

10 Q. And Mr. Coaxum was still at the car?

11 A. He was near the vehicles. I believe that
12 he had been struck by a police cruiser that
13 hydroplaned.

14 MR. BUTLER: Thank you very much.

15 THE COURT: Redirect?

16 MR. VOIGHT: No redirect.

17 THE COURT: You may come down,

18 Officer Gamba.

19 (WITNESS STEPS DOWN)

20 THE COURT: Call your next witness.

21 MR. VOIGHT: The State calls Thomas
22 Wallace -- (not present).

23 Mr. Wallace is not available, so we
24 will call Officer Pritchard -- (not present).

25 All right, we will call Officer

1 Singletary.

2 (WITNESS TAKES STAND)

3 DAVID SINGLETARY, being duly
4 sworn to tell the truth, the whole truth and
5 nothing but the truth, testified, as follows:

6 DIRECT EXAMINATION

7 BY MR. VOIGHT:

8 Q. You are Sergeant Singletary, right?

9 A. Yes, sir.

10 Q. How are you employed, sir?

11 A. With the North Charleston Police
12 Department as a sergeant of the Saturation
13 Patrol Unit.

14 Q. And how long have you been with North
15 Charleston?

16 A. Since September of 1993?

17 Q. And on November 27th, 2007, did you have
18 occasion to respond to an armed robbery call?

19 A. Yes, sir, I did.

20 Q. What was your assignment on that day?

21 A. I was the Uniform Patrol sergeant working
22 that evening.

23 Q. As the Uniform Patrol sergeant, what were
24 your duties?

25 A. To supervise the unit that I was assigned

1 to.

2 Q. Describe so that the jury will know, how
3 is the North Charleston Police Department
4 divided? Is there a distinction between
5 patrol and detectives, the crime scene unit
6 and other ---

7 A. Yes, sir. There is -- it is separated
8 into different units, detective units, crime
9 scene, patrol units.

10 Q. What do patrol units typically do?

11 A. We respond to calls for service that come
12 in through our dispatch center.

13 Q. And you were the supervisor that evening
14 over the patrol unit?

15 A. Right.

16 Q. And did you respond to -- where did you
17 respond when you responded to the armed
18 robbery call?

19 A. That evening we got a call to an armed
20 robbery that had just occurred at the Pizza
21 Hut located at 4397 Dorchester Road. While I
22 was en route to the call I heard dispatch
23 communicate to us that the vehicle involved in
24 the armed robbery was an orange Dodge Neon. I
25 turned onto Dorchester from Rivers, crossed

1 over Meeting Street, crossed over the tracks,
2 got to just about -- I believe that it was
3 almost to I-26 at Dorchester Road when I
4 observed a small orange vehicle traveling in
5 the opposite direction. I turned around on
6 it, verified -- or asked dispatch if the car
7 could have been a Suzuki Reno, which they are
8 similar in style, size and that type of thing.
9 She said that the people at the robbery said
10 it was a Neon. I then tried to traffic stop
11 it to field -- for a field interview. Based
12 on the ---

13 Q. What was your purpose for the stop on the
14 orange car?

15 A. It closely matched the description of the
16 armed robbers vehicle.

17 Q. What happened when you attempted to pull
18 the vehicle over?

19 A. They ran.

20 Q. And what did you observe next?

21 A. We got into a vehicle pursuit. Went up
22 Rivers Avenue and he tried to -- I believe the
23 vehicle tried to turn onto Olsen Avenue, which
24 is right in the Ferndale subdivision. As they
25 were making the turn they had a little bit too

1 much speed and crashed into a fire hydrant.

2 After they crashed the driver got out and
3 due to all the water that was coming onto the
4 road from the fire hydrant, one of the patrol
5 cars that was coming in hydroplaned in the
6 water and collided with the driver of the
7 vehicle who had tried to run on foot. I
8 then -- after he was knocked down by the
9 police car, I apprehended him and handcuffed
10 him.

11 Q. Do you see the person that you
12 apprehended, in the courtroom today?

13 A. Yes, sir.

14 Q. Would you point him out and describe what
15 he ---

16 A. That's him (indicating Defendant).

17 Q. --- is wearing?

18 A. That's him, (indicating Defendant).
19 William Coaxum.

20 Q. What other role did you play in the
21 investigation of these armed robberies. What
22 did you do next?

23 A. I secured the driver in the patrol
24 vehicle. I believe that Patrolman Pritchard
25 has responded to -- I can't remember if it was

1 the Pizza Hut or the North Charleston Inn, I
2 can't remember which one -- to get the -- I
3 can't remember which one that he responded to
4 to pick up the victims and brought them to the
5 scene; they positively identified the driver,
6 Mr. Coaxum.

7 Q. Were you present when Tamera Brown, the
8 manager of the Pizza Hut, was brought to view
9 Mr. ---

10 A. I don't recall.

11 Q. Were you present when anybody from the
12 North Charleston Inn was brought to view Mr.
13 Coaxum?

14 A. I was present when someone was brought
15 there. I was standing at the patrol vehicle.
16 I don't know who was inside the other patrol
17 vehicle, doing the observation.

18 Q. Did you have any occasion to go inside and
19 look at the contents of the orange vehicle?

20 A. I looked in it and I noticed a shotgun
21 laying in the front seat of the car.

22 Q. Who ultimately collected that shotgun?

23 A. I assume one of our crime scene units.
24 I don't recall.

25 Q. Is that a function of the patrol, to take

1 that into evidence at that time?

2 A. On a case like that -- on a big, what we
3 call a big case like that we would normally
4 call in crime scene to collect all the
5 evidence.

6 Q. Was crime scene called in?

7 A. Yes, sir.

8 MR. VOIGHT: One moment.

9 THE COURT: Certainly.

10 MR. VOIGHT: The State would tender
11 this witness.

12 THE COURT: You may cross examine.

13 MR. BUTLER: May it please the
14 Court.

15 THE COURT: Yes, sir.

16 CROSS EXAMINATION

17 BY MR. BUTLER:

18 Q. Good morning, Sergeant?

19 A. Good morning.

20 Q. The patrol cars, are they equipped with
21 video cameras?

22 A. They are, some of them are.

23 Q. The ones involved in this pursuit?

24 A. I don't recall. I don't recall, sir.

25 Q. In any case it was not a long high-speed

1 chase?

2 A. Maybe two miles, if it was that long. I
3 am not exactly sure.

4 Q. And the ---

5 A. Something like from Rivers and Cosgrove to
6 Ferndale, if I -- maybe two-and-a-half miles.

7 Q. Do you recall if the shotgun, when you
8 looked inside the vehicle, was on the
9 passenger side?

10 A. I believe that it was tucked -- it was
11 like leaning on the passenger side, if I
12 recall correctly.

13 Q. And do you recall loose cash on the
14 floorboard, passenger side?

15 A. I don't really remember. I don't
16 remember.

17 Q. Thank you very much.

18 A. You're welcome. Thank you.

19 THE COURT: Redirect?

20 MR. VOIGHT: No redirect, Your
21 Honor.

22 THE COURT: You may come down.

23 (WITNESS STEPS DOWN)

24 THE COURT: Call your next witness,
25 please.

1 MR. VOIGHT: The State calls Angie
2 Bunkar.

3 (WITNESS TAKES STAND)

4 ANGELA BUNKAR, being duly sworn
5 to tell the truth, the whole truth and nothing
6 but the truth, testified, as follows:

7 DIRECT EXAMINATION

8 BY MR. VOIGHT:

9 Q. Ms. Bunkar, how are you employed?

10 A. (No verbal response).

11 Q. How are you employed?

12 A. Uh, -- with the Forensics Unit of the City
13 of North Charleston.

14 Q. Forensics Unit, is that what we sometimes
15 call a crime scene unit?

16 A. Yes, sir.

17 Q. Were you so employed on the 27th of
18 November, 2007?

19 A. Yes, sir.

20 Q. On that day did you have an occasion to
21 respond to an armed robbery call?

22 A. Yes, sir.

23 Q. And -- where did you go?

24 A. I responded to the accident that occurred
25 at Rivers near Montague in reference to the

1 accident that occurred with the suspect
2 vehicle.

3 Q. Do you recall what color vehicle that was?

4 A. Orange.

5 Q. What was your job when you got to the
6 crime scene, what was your role?

7 A. I was acting as the secondary forensics
8 unit and my role was pretty much to assist
9 Corporal Wyant.

10 Q. Did you have occasion to collect any bits
11 of evidence on that day?

12 A. Yes, sir. I collected a wood handled
13 sawed-off shotgun from the passenger seat.

14 Q. I am going to show you ---

15 MR. VOIGHT: Your Honor, if I may
16 approach.

17 THE COURT: You may.

18 MR. VOIGHT: (Tenders shotgun to be
19 marked as exhibit).

20 COURT REPORTER: State's Exhibit 1
21 for identification.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. VOIGHT:

24 Q. If you could -- I know the packaging is
25 somewhat cumbersome. If you could, take a

1 look -- break that seal, and I don't have
2 anything to break the seal with, -- can you
3 look at that, are there any identifying
4 markers on that exhibit, the exhibit that I
5 have just handed you?

6 A. (Review).

7 Q. Do you recognize that item?

8 A. Yes, sir.

9 Q. How is that item?

10 A. It is the item that I located inside the
11 vehicle on the passenger side. The barrel was
12 pointing towards the floorboard it was leaned
13 up against the passenger seat.

14 Q. That is a shotgun?

15 A. Yes, sir.

16 MR. VOIGHT: At this time the State
17 would this ---

18 MR. BUTLER: No objection.

19 THE COURT: Without objection, it
20 is admitted. State's Exhibit 1, a firearm.

21 (SO ENTERED AS STATE'S EXHIBIT 1)

22 DIRECT EXAMINATION CONTINUED

23 BY MR. VOIGHT:

24 Q. Did you ---

25 THE COURT: Does it have the

1 protective ---

2 MR. VOIGHT: Your Honor, it has been
3 disassembled slightly to accommodate ---

4 THE COURT: Let me see it.

5 MR. VOIGHT: (Tenders).

6 THE COURT: (Upon review), it has
7 the protective devices on it. Thank you.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. VOIGHT:

10 Q. This is the shotgun that you took out of
11 the car?

12 A. Yes, sir.

13 Q. Did you collect any evidence other than
14 the shotgun?

15 A. No, sir. That's the only thing that I
16 collected while on scene. The gun was jammed,
17 so I had to take it back to the station to
18 meet with an armor -- (pause).

19 MR. VOIGHT: I tender the witness.

20 THE COURT: You may cross examine.

21 CROSS EXAMINATION

22 BY MR. BUTLER:

23 Q. Good morning. Ms. Bunkar, you have the
24 title of agent or ---

25 A. Investigator.

1 Q. Thank you. The gun was on the passenger
2 side of the vehicle?

3 A. Yes, sir.

4 Q. In the passenger seat?

5 A. It was partially in the passenger seat and
6 partially on the floorboard near the center
7 console. The barrel was facing the floorboard
8 and the butt of the gun was leaning up against
9 the passenger seat.

10 Q. Okay. Do you know if there was any
11 inspection of the gun to determine whether it
12 was loaded?

13 A. I believe that it was loaded, sir; for the
14 strict reason, I had to take it to get it un-
15 jammed.

16 Q. Unjammed meaning what exactly?

17 A. I was unable to secure the weapon to
18 ensure that it was safe, so I had to get a
19 trained agent to do so for me.

20 Q. Tell me why that -- I don't know anything
21 about guns. I'm not playing stupid here. Why
22 is that -- why does jammed mean the same thing
23 as that it was loaded? Jammed meaning there
24 was a shell inside?

25 A. Sir, you will have to ask Sergeant Dean

1 that.

2 Q. So you don't know whether it was loaded or
3 not?

4 A. I can't answer, no, sir. You'd have ---

5 Q. But it at least was not functioning when
6 you retrieved it?

7 A. I was unable to guarantee that it was safe
8 to be placed into evidence. I cannot testify
9 whether it was functionable or not, I am not
10 trained in that.

11 Q. Just from observing it, the general
12 condition of the gun -- it is rusted, right?

13 A. Yes, sir.

14 Q. It appears to be an old gun, right?

15 A. Yes, sir.

16 MR. BUTLER: Beg the court's indul-
17 gence

18 THE COURT: Yes, sir.

19 MR. BUTLER: Nothing further.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MR. VOIGHT:

23 Q. You told Mr. Butler that this was an old
24 gun?

25 A. I stated that it appears to be.

1 Q. Does that barrel appear to be the original
2 length?

3 A. No, sir.

4 Q. Does it appear to have been sawed off?

5 A. Yes, sir.

6 MR. VOIGHT: Nothing further of this
7 witness.

8 THE COURT: Recross?

9 MR. BUTLER: No, sir.

10 THE COURT: You may come down.

11 (WITNESS STEPS DOWN)

12 THE COURT: Ladies and Gentlemen,
13 at this point we will take a recess. Do not
14 begin your deliberations, do not discuss the
15 case, we will be with you in about ten or
16 fifteen minutes. You may retire to your jury
17 room.

18 (JURY OUT @ 11:13 A.M.)

19 (BRIEF RECESS)

20 (DEFENDANT PRESENT)

21 THE COURT: Are you'all ready?

22 MR. VOIGHT: Yes, Your Honor. There
23 is one brief matter.

24 THE COURT: Sure.

25 MR. VOIGHT: Mr. Butler and I have

1 agreed to handle -- we would like to recall
2 Ms. Bunkar for one brief bit of clarification.
3 I have -- that she caught and that she caught
4 after she had walked out of the ---

5 THE COURT: Do you have any
6 objection?

7 MR. BUTLER: No, I ---

8 MR. VOIGHT: It is his idea and I
9 agree with it.

10 THE COURT: All right. Let the
11 record reflect that Mr. Coaxum is present.
12 The defendant is ready to proceed, Mr. Butler?

13 MR. BUTLER: Yes, sir.

14 THE COURT: Invite the jury to
15 return, Mr. Williams (bailiff), please, sir.

16 (JURY IN @ 11:25 A.M.)

17 THE COURT: Thank you, Ladies and
18 Gentlemen. As I understand before the jury
19 came in that -- that there is a matter that --
20 you wish to recall a witness. Is that
21 correct, Mr. Voight?

22 MR. VOIGHT: That's correct, Your
23 Honor. Mr. Butler and I have agreed to recall
24 Ms. Bunkar.

25 THE COURT: Ms. Bunkar, if you

1 would come back -- and I would remind you that
2 you are still under oath in this matter.

3 (WITNESS TAKES STAND)

4 ANGELA BUNKAR, having been
5 previously sworn testified, as follows:

6 EXAMINATION

7 BY MR. VOIGHT:

8 Q. Ms. Bunkar, you are the author of the
9 crime scene report in this matter?

10 A. Yes, sir.

11 THE COURT: I didn't hear. Was
12 that a "yes"?

13 THE WITNESS: Yes, sir.

14 THE COURT: Thank you. I'm sorry.

15 EXAMINATION CONTINUED

16 BY MR. VOIGHT:

17 Q. In your investigation of that particular
18 firearm, did you find it to empty?

19 A. Yes, sir. I apologize for that earlier.

20 Q. So there wasn't a shotgun shell in that?

21 A. No, the gun was jammed and I was unable to
22 confirm that I could secure it in evidence, I
23 was unable to prove that it was or was not;
24 but further on in my report it does mention
25 that the gun was confirmed empty at the time.

1 MR. VOIGHT: Thank you.

2 THE COURT: Any questions?

3 MR. BUTLER: Briefly.

4 EXAMINATION

5 BY MR. BUTLER:

6 Q. And by "jammed", that means that it did
7 function?

8 A. No, sir, that does not mean that it is not
9 functionable. It just means that I was unable
10 -- that I personally was unable to open it and
11 secure it.

12 Q. Okay. But when it was opened and secured,
13 there was no shell inside?

14 A. Correct.

15 Q. Got it. Thank you.

16 THE COURT: Redirect?

17 MR. VOIGHT: No, Your Honor.

18 THE COURT: You may come down.

19 (WITNESS STEPS DOWN)

20 THE COURT: Call your next witness,
21 please.

22 MR. VOIGHT: The State rests, Your
23 Honor.

24 THE COURT: Very well. Ladies and
25 Gentlemen, at this point there are some

1 matters that I need to take up out of your
2 presence. I am going to ask that you not
3 begin your deliberations. We will be with you
4 as quickly as we can. I know that you just
5 came in but that's -- the system works that
6 way and you know, as I mentioned, that we have
7 to hear those matters of law out of your
8 presence. That's the reason for my excusing
9 you. Please retire to your jury room but,
10 again, please do not begin your deliberations.
11 Do not discuss the case. We will be with you
12 as quickly as we can.

13 (JURY OUT)

14 THE COURT: I know the answer
15 before I ask it but are there any matters, any
16 Motions from the State?

17 MR. VOIGHT: No, sir.

18 THE COURT: Mr. Butler?

19 MR. BUTLER: Your Honor, I would
20 lament the fact that we've made the sort of
21 standard directed verdict Motion. I regret
22 that when I really have one that is important,
23 I am always worried that it is brought down by
24 the ninety-nine percent of the time that I
25 don't. But I get a directed verdict today on

1 that -- on the indictment for the North
2 Charleston Inn.

3 The only witness that testified was
4 Mr. Jennings, who said that he didn't see
5 whether or not anything changed hands at all.
6 He sees one person that he identifies as my
7 client holding a shotgun but a robbery is a
8 taking, a taking by force. Perhaps there is
9 evidence of pointing-and-presenting but there
10 is no evidence of what was said or what, if
11 anything, was taken. So I think I'm entitled
12 to a directed verdict on that charge.

13 And I guess since that would be the
14 only evidence of a crime of violence, the
15 accompanying firearm charge, as well.

16 THE COURT: Response?

17 MR. VOIGHT: Briefly, Your Honor.
18 I think we heard yesterday from Detective
19 Patrick about Marquine Benbow explaining how
20 when they took the money from the North
21 Charleston Inn that it "wasn't enough" and
22 that's why they robbed the Pizza Hut.

23 In the light most favorable to the
24 defendant, I don't think under any
25 circumstances that they can get a directed

1 verdict on the whole thing. When I say "the
2 whole thing" I mean that particular charge of
3 -- in thinking last night that I was running
4 the risk, if Ms. Smith didn't come this
5 morning, of only being able to retain
6 attempted armed robbery, which is -- but I
7 believe that the testimony of Detective
8 Patrick along with what we heard from Marquine
9 Benbow, I believe that I have in the light
10 most favorable to the defendant given to the
11 jury the ---

12 THE COURT: Okay.

13 MR. BUTLER: I would add, if I may
14 respond. I should have put it on the record
15 yesterday but during Mr. Benbow's testimony, I
16 objected to the hearsay statement coming from
17 Mr. Benbow ---

18 THE COURT: Yeah.

19 MR. BUTLER: --- as a prior
20 inconsistent statement. It wouldn't really
21 matter with respect to this argument except as
22 to this -- when Detective Patrick testified to
23 the inconsistent statement that they come --
24 that's only impeachment. But my position at
25 the sidebar was, 'well, there's nothing to

1 impeach him on.' You know, he -- Mr. Voight
2 got from Mr. Benbow, 'you told us this, you
3 told us this'. He said, 'I don't remember.
4 No, I didn't say that.' Detective Patrick's
5 testimony in that context only comes in for
6 impeachment of Mr. Benbow and cannot be used
7 to get past the State's -- meets the State's
8 burden for a directed verdict. So I would
9 respectfully disagree with the State on that.

10 THE COURT: Okay. In the light
11 most favorable to the State, I understand your
12 ruling (sic). I don't know why we didn't hear
13 evidence about -- there was talk of a cash
14 drawer returned.

15 Clearly there was testimony that --
16 from Mr. Benbow, and just forget about his
17 statement for a second, let's talk about what
18 we have. He said that he did not hold the
19 gun. No question about that. No question
20 that he said that there was someone with him,
21 said 'I wasn't acting alone', and that there
22 was a gun.

23 There is also money that has been
24 found in his pocket. We have testimony from
25 one, there's no question that money was taken,

1 but the inference to be drawn -- I don't know
2 which one that it was.

3 So in the light most favorable to the
4 State, even without considering the statement
5 of Benbow -- he didn't equivocate about being
6 a part of the robbery, he didn't equivocate
7 that there were two robberies conducted, and
8 there is no equivocation that he was in a car,
9 an orange car. That car was found, clearly a
10 firearm was found, clearly money was found on
11 the person of the Defendant in a position --
12 he had money. I think he testified that he
13 had money in a wallet and money stuffed in his
14 pocket, which a reasonable inference to be
15 drawn in the light most favorable given all --
16 and the fact that they ran and the description
17 of the car leaving and all of that, I think
18 all of that in the light most favorable would
19 support my denying your Motion for directed
20 verdict.

21 MR. BUTLER: Thank you, sir. I
22 have to, for the record, say what I would do
23 if the ruling were otherwise, for appeal. My
24 Motion would then be for a mistrial if a
25 directed verdict were granted, because the

1 State would have heard -- I mean the jury
2 would have heard evidence on a charge that
3 should not have properly been before them.

4 THE COURT: Correct.

5 MR. BUTLER: They can't separate the
6 two. So I understand the court's position but
7 if the Motion were granted, I would then move
8 for a mistrial.

9 THE COURT: But I did not grant the
10 Motion.

11 MR. BUTLER: I know you didn't.

12 THE COURT: Therefore ---

13 MR. BUTLER: But somebody smarter
14 than me might later say that I waived ---

15 THE COURT: I understand.

16 MR. BUTLER: --- something.

17 THE COURT: Thank you, sir. Any
18 other Motions from the Defendant?

19 MR. BUTLER: No, sir

20 THE COURT: Have you discussed with
21 your client whether he wishes to take the
22 stand or not take the stand?

23 MR. BUTLER: We have but I think we
24 will need a few more minutes.

25 THE COURT: Okay.

1 MR. BUTLER: I quite frankly thought
2 that they had some more witnesses, so now I
3 need to figure out in my own mind where I'm at
4 and whether or not I want to put up anything.

5 THE COURT: Why don't we do this,
6 why don't we go ahead and recess early for
7 lunch? That gives you an opportunity to make
8 the assessment. I am going to bring the jury
9 in and we will excuse them until 1:00 o'clock.
10 Then we will have -- we will reassemble at
11 12:45. Bring in our jury, please.

12 (JURY IN @ 11:37 A.M.)

13 THE COURT: Ladies and Gentlemen,
14 it is apparent that we are going to take a
15 little bit longer. I know that it is a little
16 early for lunch, but this will work better for
17 us to do that -- this will work better for us
18 and then we can take our lunch break. I am
19 going to excuse you now for lunch, let you go
20 early, and ask that you be back in your jury
21 room at 1:00.

22 Please do not discuss this case among
23 yourselves and do not, especially now, I
24 reiterate, permit anyone to talk to you about
25 this case or to talk about it in your

1 presence. Have a pleasant lunch and I will
2 see you 1:00 o'clock.

3 Please leave your notebooks in the
4 jury room.

5 (JURY OUT @ 11:40 A.M.)

6 THE COURT: Anything further from
7 the State?

8 MR. VOIGHT: No, Your Honor.

9 THE COURT: Anything further from
10 the Defendant at this point?

11 MR. BUTLER: Judge, just to help us
12 figure out where we've got to go, I served --
13 I asked Mr. Voight yesterday if he would make
14 Officers Bauer and/or Board (phonetic)
15 available. He said that they were not
16 subpoenaed, so we subpoenaed them this morning
17 but I think they're on telephone standby --
18 until 2:30, but I'll make every attempt to get
19 them here -- if Mr. Voight could assist me in
20 that, I would ---

21 THE COURT: That's fine. Mr.
22 Voight, I would ask that the State assist in
23 getting those persons here. It's very
24 important for the continuation of the case.

25 MR. BUTLER: Also Officer Vasquez,

1 if ---

2 MR. VOIGHT: We have had difficulty
3 making direct contact -- after we discussed --
4 Mr. Butler e-mailed me last night to discuss
5 the availability of Vasquez. Apparently he is
6 -- we've tried to call him today but ---

7 THE COURT: Is Officer Vasquez no
8 longer with the North Charleston ---

9 MR. VOIGHT: He's there. I believe
10 that he is on personal leave.

11 THE COURT: Well, surely someone in
12 that office has the ability to contact him.

13 MR. VOIGHT: It is ---

14 THE COURT: Tell them that they
15 have a -- you know, they are kind of an
16 extension of this court, I think. They have
17 a little bit of a -- they are not just your
18 average citizen.

19 MR. VOIGHT: I understand.

20 THE COURT: Maybe we need to use a
21 little more pressure like, uh, -- I don't know
22 who knew it was there and who left an Order of
23 the court involving a matter in which an
24 officer has some interest -- and didn't bother
25 to do something about it? That's -- just say

1 that the judge is a little bit concerned about
2 that.

3 MR. VOIGHT: We will make every
4 attempt to ---

5 THE COURT: Thank you.

6 MR. BUTLER: In my opinion, Vasquez
7 would -- if he were available, I ---

8 THE COURT: I don't whether he is
9 or isn't. I am just saying that I don't
10 understand -- I understand personal leave but
11 if you are a law enforcement officer and
12 you're involved in a case and that case -- he
13 is really an extension of the solicitor's
14 office in some ways. That -- I don't think
15 that you can just sit there and say, 'Well, we
16 don't have any responsibility to do anything
17 about that subpoena.'

18 MR. VOIGHT: And we have made ---

19 THE COURT: I know that you have. I
20 am not faulting you, Mr. Voight. I just think
21 somebody on the other end understands that
22 there is a little more urgency that attaches
23 when a subpoena comes in for a law enforcement
24 officer.

25 MR. VOIGHT: And just so that we can

1 be clear, there are unused officers out in the
2 hall but the only officers that you want are
3 Bauer and -- I'm trying to locate three of
4 them.

5 THE COURT: Three officers.

6 MR. BUTLER: And you know what we
7 can do? We can all meet outside and if any of
8 these people can testify to what Vasquez
9 could, then we don't ---

10 THE COURT: Good, go talk to them.
11 The rest of us will go to lunch.

12 (LUNCH RECESS)

13 (DEFENDANT PRESENT)

14 THE COURT: Have you had an
15 opportunity to discuss with your client now
16 whether he wishes to testify or not testify?

17 MR. BUTLER: Yes, sir, we have.

18 THE COURT: And has he made a
19 decision, Mr. Butler?

20 MR. BUTLER: Yes, sir.

21 THE COURT: And what is that
22 decision?

23 MR. BUTLER: He will not.

24 THE COURT: All right. Mr. Coaxum,
25 good afternoon, sir.

1 DEFENDANT: Good afternoon.

2 THE COURT: You have heard your
3 lawyer represent that he has had an
4 opportunity to discuss with you -- that he has
5 talked with you about your right to testify or
6 not testify, is that true?

7 DEFENDANT: Yes, sir.

8 THE COURT: And you've had
9 sufficient time to think about that decision?

10 DEFENDANT: Yes, sir.

11 THE COURT: Have you had enough
12 time to think about it?

13 DEFENDANT: Yes, sir.

14 THE COURT: And you've decided that
15 you do not wish to testify, is that true?

16 DEFENDANT: Yes, sir.

17 THE COURT: And that is your right,
18 and your lawyer has explained that to you; is
19 that right?

20 DEFENDANT: Yes, sir.

21 THE COURT: He's also explained to
22 you that I will instruct the jury that they
23 can't use that against you in any way. Do you
24 understand that?

25 DEFENDANT: Yes, sir.

1 THE COURT: You also understand
2 that while you don't have to testify that you
3 still have the right to testify if you wanted
4 to? Do you understand that?

5 DEFENDANT: Yes, sir.

6 THE COURT: But you do not wish to
7 do that; is that correct

8 DEFENDANT: That's correct.

9 THE COURT: Are you under the
10 influence of any alcohol or any medication
11 here today, sir?

12 DEFENDANT: No, sir.

13 THE COURT: Are you satisfied with
14 the manner in which Your Honor has advised you
15 in this connection?

16 DEFENDANT: Yes, sir.

17 THE COURT: And the manner in which
18 he has submitted your case thus far?

19 DEFENDANT: Yes, sir.

20 THE COURT: Thank you, sir.

21 I find that Mr. Coaxum has had the benefit
22 of very competent counsel. He's had an
23 opportunity to talk with his attorney. As
24 demonstrated by his responses here, he has
25 fully demonstrated his right and has chosen

1 not to testify. I find that decision to be
2 one that he makes freely, voluntarily,
3 knowingly and intelligently.

4 Mr. Coaxum, I am going to assume that
5 is your decision -- you may remain seated,
6 sir. If you change your mind between now and
7 when Mr. Butler tells me that the defense
8 rests, just let your lawyer know. I will
9 excuse the jury and we'll have a conversation
10 again. Okay?

11 DEFENDANT: Yes, sir.

12 THE COURT: If I don't hear from
13 you again, I will assume that you are
14 comfortable with your decision not to testify.
15 Okay?

16 DEFENDANT: Yes, sir.

17 THE COURT: Thank you, sir.

18 Mr. Butler, have you had a chance to
19 talk with your witnesses, as well, sir?

20 MR. BUTLER: I have. I believe that
21 two of them are here. We are still trying to
22 locate Mr. Vasquez.

23 MR. VOIGHT: Your Honor, after you
24 and I discussed Mr. Vasquez on the record, I
25 went outside with the six or so North

1 Charleston police officers that remained in
2 the hall. I had all six of them on their cell
3 phones trying to reach him. Ultimately it was
4 determined that Officer Vasquez was out
5 injured, which was different than out on leave
6 like I had previously stated.

7 When last we left it, they were
8 attempting to have the City of Charleston
9 drive by Officer Vasquez's house on Daniel
10 Island and see if they could make contact with
11 him.

12 We have called him on his private
13 cell phone number, my investigator as well as
14 the other officers, and have left messages but
15 as of this time we have had no response.

16 THE COURT: And you did not have
17 him subpoenaed?

18 MR. VOIGHT: I did have him
19 subpoenaed, Your Honor, but apparently that
20 subpoena was never picked up by him. He was
21 out injured ---

22 THE COURT: So he has never been
23 served?

24 MR. VOIGHT: He has never been
25 officially served.

1 THE COURT: And the Defendant did
2 not subpoena him?

3 MR. BUTLER: No, and I guess -- when
4 I spoke to Mr. Voight earlier yesterday about
5 that, my understanding was that he was
6 available. I took that to mean subpoenaed and
7 they had him. I actually expected him in
8 their case. I was operating on the assumption
9 that when Mr. Voight told me that he was
10 available that meant he was in fact served
11 with a subpoena.

12 You know, I -- I was speculating out
13 in the hallway -- Mr. Voight -- every trial
14 that comes up, I could subpoena every officer
15 and make them sit here but that just seems to
16 be overkill, then I find myself in this
17 situation. However, unlike Office Bauer, who
18 was not subpoenaed and I subpoenaed him today,
19 I was operating on the assumption that Vasquez
20 was subpoenaed.

21 THE COURT: All right. Well, I
22 understand that. Of course, as I did -- and
23 as I am sure you have done to, you can
24 subpoena a witness and tell them 'give me your
25 telephone number, I don't expect you to sit

1 here but you have to be on call.'

2 MR. BUTLER: Yes, sir.

3 THE COURT: We will go ahead with
4 the two witnesses and then we will deal with
5 Vasquez when we get to that point.

6 MR. BUTLER: Thank you, sir.

7 THE COURT: All right, sir. And
8 those witnesses are present, as I understand?

9 MR. BUTLER: Yes, sir.

10 THE COURT: Okay.

11 MR. VOIGHT: Your Honor, we -- he
12 hasn't responded to any telephone calls but we
13 will ---

14 MR. BUTLER: And my other witness is
15 just somebody from the jail.

16 THE COURT: Okay, that's fine.
17 The State is ready to proceed?

18 MR. VOIGHT: State is ready, Your
19 Honor.

20 THE COURT: Very well, let's bring
21 in our jury.

22 (JURY IN @ 1:12 P.M.)

23 THE COURT: Thank you, Ladies and
24 Gentlemen. I hope that you had a good lunch.
25 We are ready to continue. When we took our

1 recess, the State had rested. Mr. Butler,
2 does Mr. Coaxum wish to present any witnesses?

3 MR. BUTLER: Yes, sir.

4 THE COURT: You may proceed.

5 MR. BUTLER: The Defense calls
6 Officer Sean Bauer.

7 (WITNESS TAKES STAND)

8 SEAN BAUER, being duly sworn
9 to tell the truth, the whole truth and nothing
10 but the truth, testified, as follows:

11 DIRECT EXAMINATION

12 BY MR. BUTLER:

13 Q. Officer Bauer, were you employed
14 currently?

15 A. North Charleston Police Department.

16 Q. And how long have you been employed with
17 the North Charleston Police Department?

18 A. About three years.

19 Q. In what capacity are you employed?

20 A. I am just a patrol officer.

21 Q. Okay. What does it mean to be a patrol
22 officer?

23 A. I answer calls for service and service the
24 citizens of North Charleston.

25 Q. And on November 27th, 2007, were you so

1 employed?

2 A. I was.

3 Q. And in the evening of November 27th, what
4 did you do?

5 A. At approximately 10:56 hours I responded
6 to a call at the Pizza Hut at 4397 Dorchester
7 road in reference to an armed robbery that had
8 just occurred.

9 Q. Okay. And who arrived first?

10 A. That was, uh, I believe that Officer Don
11 Ward was on the scene first. I can't recall
12 as far as -- (pause).

13 Q. How shortly thereafter did you arrive?

14 A. Within a minute or so.

15 Q. And would you characterize your role that
16 evening as a responding officer?

17 A. I was the primary officer on scene. The
18 call was dispatched to me.

19 Q. And what does it mean to be a primary
20 officer on the scene?

21 A. I was going to take the report and handle
22 all the preliminary investigations of it.

23 Q. What does that entail?

24 A. Talking to the witnesses and the victims,
25 getting their information done, description of

1 suspects.

2 Q. And how important is the description of
3 suspects when you are the primary officer
4 responding like this?

5 A. It's pretty important.

6 Q. Why is that?

7 A. Because without it we don't know who to
8 look for.

9 Q. Okay. You get the details so that you
10 know who you are looking for?

11 A. (Affirmative nod).

12 Q. And did you speak to a Ms. Brown at the
13 scene?

14 A. Yes, sir, I did.

15 Q. Who was she?

16 A. She was a shift manager for Pizza Hut that
17 night.

18 Q. Do you recall her first name?

19 A. I have it written down, -- Tamera.

20 Q. Tamera Brown, you spoke to her?

21 A. Yes, sir.

22 Q. And when responding and interviewing a
23 witness or victim like this, what do you want
24 to do first before you take a description or
25 statement?

1 A. Make sure that everyone is okay.

2 Q. You did that?

3 A. Yes, sir.

4 Q. And what else?

5 A. I mean, that's pretty much what I did.
6 Made sure she was okay, asked what happened.

7 Q. And how did she describe the clothes of
8 the person who had the gun?

9 A. She described him as having a camouflage
10 hoodie on.

11 Q. Okay. And how important is that to you as
12 the primary officer?

13 A. It is pretty important. I mean, it is a
14 distinguishing feature.

15 Q. So she said that the gunman had a camou
16 hoodie -- by "camou", you mean what?

17 A. Like a hunter camouflage-type.

18 Q. Okay. Was she able to tell you anything
19 else about the gunman?

20 A. Other than that he was a black male, no.

21 Q. When you spoke to her, nothing about
22 height?

23 A. She didn't mention any of that.

24 Q. Weight?

25 A. She said that she was still a little shook

1 up.

2 Q. Facial features?

3 A. (Negative gesture).

4 Q. And what about the other suspect, did she
5 give you a clothing description?

6 A. She just described him as being another
7 black male with a gray G-Unit sweatshirt on.

8 Q. Say that again?

9 A. (No verbal response).

10 Q. What kind of sweatshirt?

11 A. A gray G-Unit sweatshirt.

12 Q. Gray G-Unit?

13 A. Yeah.

14 Q. G-hyphen-Unit?

15 A. Yes, sir, it's a -- it's a rap thing,
16 apparently.

17 Q. A rap-style clothing?

18 A. Um-humm.

19 Q. And that's ---

20 THE COURT: Was that a "yes"?

21 THE WITNESS: Yes, sir.

22 THE COURT: Thank you.

23 DIRECT EXAMINATION CONTINUED

24 BY MR. BUTLER:

25 Q. And that information came specifically

1 from who?

2 A. That came from Ms. Tamera Brown.

3 Q. So Ms. Brown said that the other person
4 had a gray G-Unit sweatshirt?

5 A. Um-humm.

6 Q. What about the pants?

7 A. They just described them as light color.
8 They couldn't really say.

9 Q. So she tells you -- was she able to tell
10 you anything else about that person?

11 A. Uh, -- no. No, sir.

12 Q. So one had on a camou hoodie, right?

13 A. Yes, sir.

14 Q. And the other person had a gray G-Unit
15 sweatshirt, light colored pants?

16 A. Yes, sir.

17 Q. And you documented all of that in your
18 report?

19 A. Yes, sir.

20 MR. BUTLER: That's all that I have.

21 THE COURT: You may examine the
22 witness.

23 CROSS EXAMINATION

24 BY MR. VOIGHT:

25 Q. Officer, when you first responded to the

1 Pizza Hut, was Ms. Brown visibly shaken?

2 A. Yes, sir.

3 Q. She was upset?

4 A. Yes, sir.

5 Q. Now, was she crying?

6 A. No, sir, she was not crying but she was
7 shaken up.

8 Q. Was she shaking, physically shaking?

9 A. Yes, sir.

10 Q. And how long did that last, how long was
11 she in that condition?

12 A. I can't recall.

13 Q. How long did you stay there at the Pizza
14 Hut?

15 A. I was there for -- I believe that I was
16 there for approximately thirty minutes before
17 I was called away.

18 Q. Did you ever go anywhere else in your
19 investigation or was your primary focus just
20 the Pizza Hut?

21 A. I did go to, uh, went to Rivers Avenue and
22 Bolton Street and transported the victim over
23 there to see if she could identify a suspect.

24 Q. Okay. So you took Ms. Brown to the -- to
25 Bolton Street, Rivers and Bolton?

1 A. Yes, sir.

2 Q. When you got there, was there anybody in
3 custody then?

4 A. Yes, sir.

5 Q. Who was that?

6 A. That would be William Coaxum.

7 Q. Were you in the car when Ms. Brown was
8 asked to identify Mr. Coaxum?

9 A. Yes, sir.

10 Q. Did she hesitate?

11 A. No, sir.

12 Q. Did she indicate whether Mr. Coaxum was
13 the individual with the gun or the other
14 individual?

15 A. She identified him as the one with the
16 firearm, sir.

17 MR. VOIGHT: Thank you very much,
18 nothing else.

19 THE COURT: Redirect?

20 MR. BUTLER: No, sir.

21 THE COURT: Thank you, sir. You
22 may come down.

23 (WITNESS STEPS DOWN)

24 THE COURT: You may call your next
25 witness.

1 MR. BUTLER: The Defense calls
2 Ulysess Smith.

3 (WITNESS TAKES STAND)

4 ULYSESS SMITH, being duly sworn
5 to tell the truth, the whole truth and nothing
6 but the truth, testified, as follows:

7 DIRECT EXAMINATION

8 BY MR. BUTLER:

9 Q. Good afternoon, Lieutenant.

10 A. Good afternoon.

11 Q. Where are you employed, sir?

12 A. Charleston County Detention Center.

13 Q. In what capacity?

14 A. Lieutenant.

15 Q. And what do you do there?

16 A. I am over the booking process at the
17 Charleston County Detention Center.

18 Q. Okay. And what does it mean to be over
19 the booking process?

20 A. We deal with inmates with coming in for
21 the first time, the in-take area, booking
22 area.

23 Q. What does it mean to be booked-in, for
24 those of us who don't know?

25 A. Okay. Well, like they come in. We take

1 their property, we scan their fingerprints to
2 make sure that we have the right person that
3 is coming in at the jail.

4 Q. This is what you do with somebody after
5 they have been arrested? They are brought to
6 the jail ---

7 A. Yes, sir.

8 Q. And are there certain records and
9 documents that you create to keep track of --
10 in the booking process?

11 A. Yes, sir.

12 Q. What are those?

13 A. Property sheets, we inventory their
14 property once they come in; medical sheets, we
15 inventory -- we do a medical screen sheet when
16 they come in also, in the booking area.

17 Q. And when you say "they come in", who
18 brings in inmates to be booked-in?

19 A. The arresting officer.

20 Q. So once somebody is arrested they are
21 brought here?

22 A. Yes, sir.

23 Q. And booked in?

24 A. Yes, sir.

25 Q. Did you bring with you two documents

1 today?

2 A. Yes, sir.

3 Q. What are those?

4 A. Okay, uh, property sheets for, uh, for the
5 case.

6 Q. Okay. Which inmate particularly?

7 A. Okay. William Coaxum and Marquise (sic)
8 Benbow.

9 Q. William Coaxum and Marquise Benbow,
10 Marquise Benbow?

11 A. Yes, sir.

12 Q. And what date were they booked in?

13 A. 11-28-07.

14 Q. And specifically the documents that you
15 brought today, what do they reflect?

16 A. The inmate's property and, uh, the
17 description of their property.

18 Q. Okay. Let's talk first about Mr. Coaxum.

19 A. Okay.

20 Q. When he is booked in, what clothing does
21 he have with him?

22 A. Okay. When he was booked in, he had a,
23 (reading): "Gray jacket, white tee-shirt,
24 white tank top, white socks, black pants,
25 black belt, white shoes, yellow metal chain

1 with yellow metal charm, belt buckle, keychain
2 with seven keys, coins, seventy-four cents,
3 Polaroid picture, one."

4 Q. So the jacket was gray?

5 A. Yes, sir.

6 Q. And the pants were black?

7 A. Yes.

8 MR. VOIGHT: Objection to the form
9 of the question.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. BUTLER:

12 Q. What color was the jacket?

13 A. The jacket was gray.

14 Q. What color were the pants?

15 MR. VOIGHT: Objection, asked and
16 answered.

17 THE COURT: Overruled.

18 DIRECT EXAMINATION CONTINUED

19 BY MR. BUTLER:

20 Q. What color were the pants?

21 A. (Reading): "Pants, black."

22 Q. With respect to Inmate Benbow, what color
23 jacket did he have when he was booked in?

24 A. (Reading): "Gray camou jacket."

25 Q. Say that again, the first word?

1 A. Oh, "Green camou jacket."

2 Q. Green camou jacket, and what kind of
3 pants?

4 A. (Reading): "Pants, black."

5 Q. Green camou jacket and black pants?

6 A. Yes, sir.

7 MR. BUTLER: Beg the court's
8 indulgence.

9 THE COURT: Yes, sir.

10 MR. BUTLER: That's all that I have.
11 Thank you.

12 THE COURT: Cross examine?

13 CROSS EXAMINATION

14 BY MR. VOIGHT:

15 Q. Mr. Smith, how are you doing?

16 A. Fine.

17 Q. Is there any mention in either one of
18 those booking sheets about a G-Unit jacket?

19 A. G-Unit?

20 Q. (Affirmative nod).

21 A. (Upon review), no, sir.

22 Q. Do you know where those jackets are?

23 A. No, sir.

24 Q. Does the Sheriff's Office possess those
25 jackets now?

1 A. No, sir, I have no record of it.

2 Q. So you'all don't have those jackets?

3 A. No, sir.

4 Q. Does the information that you provided Mr.
5 Butler indicate where those jackets may have
6 gone?

7 A. No, sir.

8 MR. VOIGHT: Thank you.

9 MR. BUTLER: Nothing further.

10 THE COURT: Very well, you may come
11 down.

12 (WITNESS STEPS DOWN)

13 THE COURT: Call your next witness.

14 MR. BUTLER: May we approach?

15 THE COURT: Sure.

16 BENCH CONFERENCE:

17 MR. BUTLER: That's all that I
18 have except for Vasquez. Here's what I think
19 that we can do, agree to do, that we introduce
20 his report in substitution for him and I can
21 read it into the record.

22 MR. VOIGHT: Just as long as it
23 is the whole thing.

24 MR. BUTLER: I will read the
25 whole thing in.

1 MR. VOIGHT: Have you go an
2 unmarked copy?

3 MR. BUTLER: I did this once, a
4 long time ago. Can you give me some
5 directions how to do it? I am moving that we
6 stipulate ---

7 THE COURT: Stipulate and then
8 I will tell the jury that you are going to
9 publish ---

10 MR. BUTLER: And then you will
11 allow me to publish ---

12 THE COURT: Um-humm.

13 MR. BUTLER: Great. Thank you.

14 (BENCH CONFERENCE CONCLUDED)

15 THE COURT: Are you prepared to do
16 that now or do you need a few moments?

17 MR. BUTLER: No, we can do that now.

18 THE COURT: Very well. Ladies and
19 Gentlemen, the next matter that you will
20 consider, and will consider when you begin
21 your deliberations, parties from time to time
22 will enter into stipulations. What is going
23 to happen now is that the parties have
24 stipulated to a report of a witness who is not
25 present. They are going to read basically

1 what the report contains for your
2 consideration. You will evaluate that
3 stipulation along with all other evidence in
4 this case. You may proceed.

5 MR. BUTLER: (Reading): "On
6 November 27th, 2007, at approximately 11:00
7 p.m., I, J. Vasquez, participated in a traffic
8 stop with Officer R. Amon at Rivers Avenue and
9 Durant Avenue. Units were called out, they
10 were involved in a vehicle pursuit of possible
11 armed robbery suspects Rivers Avenue westbound
12 and Helms (phonetic) Avenue. I and Officer
13 Amon got behind the units involved in the
14 vehicle pursuit and pursued the same vehicle
15 to Rivers and Bolton where the fleeing vehicle
16 wrecked. Both suspects exited the vehicle and
17 began to run on foot. I and Officer Amon
18 pursued one suspect down Bolton. The suspect
19 who was fleeing was wearing a camouflage
20 jacket and black jeans with dreads in his
21 hair. After losing sight of the suspect at
22 Bolton, Officer Amon saw the suspect jumping a
23 fence at [REDACTED] and crawling
24 underneath a vehicle that was located in the
25 driveway at the residence. I climbed the

1 fence behind the residence and Officer Amon
2 ordered the subject (sic) to get on the
3 ground. The suspect (sic) got on his knees
4 and put his hands up into the air. I drew my
5 Department-issued taser and presented it at
6 the suspect's chest. I and Officer Amon gave
7 loud and clear verbal commands to go prone on
8 the ground. I holstered the taser after
9 compliance was gained and assisted Officer
10 Amon in placing handcuffs on the suspect. We
11 then placed the suspect in the rear seat of
12 Officer Steinburner's vehicle. The suspect
13 was later identified by South Carolina
14 driver's permit as Marquine Antonio Benbow."

15 If we could make this mark of ---

16 THE COURT: As a stipulation, it
17 will be retained as a court's exhibit here.
18 It does not go to the jury.

19 (SO ENTERED AS COURT'S EXHIBIT 2)

20 THE COURT: Anything else?

21 MR. BUTLER: No, sir, with that the
22 Defense rests.

23 THE COURT: Any reply testimony?

24 MR. VOIGHT: No, Your Honor.

25 THE COURT: Very well. Ladies and

1 Gentlemen, at this point there are some
2 matters of law that I need to take up out of
3 your presence. I am going to ask you to go to
4 your jury room. When we come back we will
5 move into the final phases of this process.

6 As I mentioned to you when we started, the
7 attorneys have two opportunities to speak to
8 you and after you've heard the evidence -- you
9 will not hear any more evidence in the
10 remaining phases.

11 Following the arguments of the
12 attorneys, I will give you the law and you
13 will then be instructed to begin your
14 deliberations. But until you receive that
15 instruction, remember that it would be
16 improper for you to begin your deliberations
17 individually or collectively. So be patient
18 with us, we will get there very shortly.

19 Please retire to your jury room. We
20 will be with us as quickly as we can.

21 (JURY OUT @ 1:30 P.M.)

22 THE COURT: Anything from the
23 State?

24 MR. VOIGHT: No, sir.

25 THE COURT: Mr. Butler?

1 MR. BUTLER: Judge, before I do my
2 standard Motion -- I know that I put this on
3 the record and I think that we are all in
4 agreement but I want to make sure that --
5 yesterday during Mr. Benbow's testimony there
6 was an objection made by me and off the record
7 we spoke, and my objection was that the State
8 had not laid the proper foundation for ---

9 THE COURT: Correct.

10 MR. BUTLER: I just want to make
11 sure that is clear for the record.

12 THE COURT: I believe that you
13 stated that his statement was that he was
14 stating what he said were out-of-court
15 statements and that therefore they were
16 hearsay?

17 MR. BUTLER: Yes, and that -- and
18 that the State had not laid the proper
19 foundation to impeach its own witness.

20 THE COURT: Precisely. I found
21 that they could impeach a witness at any point
22 and that that was -- that they didn't have to
23 lay a foundation, and that my feeling was that
24 the witness' own statements would not be
25 hearsay.

1 MR. BUTLER: Yes, sir. Thank you.

2 THE COURT: Thank you.

3 MR. BUTLER: And I renew my
4 previously made Motion for a directed verdict
5 for all grounds previously stated.

6 THE COURT: Thank you very much.
7 That would be denied.

8 All right. I am going to charge
9 armed robbery, of course, and possession of a
10 firearm during a violent offense.

11 Now, based on the testimony that is
12 before me, given all the circumstances, I now
13 will have to charge 'the hand of one is the
14 hand of all' because the witness described --
15 there has been testimony that could say 'he
16 was the other person, not having the gun.'
17 The fact that he doesn't have a gun makes it
18 nevertheless -- it still would apply, so I
19 believe that charge now becomes germane.

20 MR. BUTLER: Yes, sir. I know that
21 within the hand of one charge or accomplice
22 liability charge there are several charges and
23 different judges give different ones. The one
24 that I have always requested would be the part
25 of it that 'mere presence did not' ---

1 THE COURT: That's it.

2 MR. BUTLER: Something to the effect
3 that they shared in the intent.

4 THE COURT: That there had to be
5 some common design or intent to commit a
6 crime.

7 MR. BUTLER: That covers it. Thank
8 you.

9 THE COURT: I have added to mine
10 recently and I think that I have addressed all
11 of those, but after you hear it if there is
12 something that I omit, I will be happy to
13 consider that.

14 MR. BUTLER: And I think this has
15 happened -- if I could ask for five or ten
16 minutes.

17 THE COURT: You got it, ten
18 minutes.

19 MR. BUTLER: (Sidebar with Mr.
20 Voight).

21 THE COURT: If you need to read
22 anything, it's ---

23 MR. BUTLER: I was asking Mr. Voight
24 about the indictment. I don't know if
25 pretending to have a weapon was a part of the

1 case. I submit that it is not. If you ---

2 THE COURT: The only thing that I
3 am going to include in that is whether the gun
4 was loaded or not is not an issue.

5 MR. BUTLER: So you will not charge
6 pretending to have a weapon or ---

7 THE COURT: I think what has been
8 displayed is -- the testimony is that there
9 was a firearm displayed.

10 MR. BUTLER: Okay. Thank you.

11 THE COURT: I don't think that is
12 pertinent.

13 MR. BUTLER: Reconvene at a quarter
14 'til?

15 THE COURT: Yes, we will be at-ease
16 otherwise.

17 (BRIEF RECESS)

18 (DEFENDANT PRESENT)

19 THE COURT: Are you ready?

20 MR. VOIGHT: The State is ready?

21 MR. BUTLER: Mr. Butler? Ready?

22 MR. BUTLER: Yes, sir.

23 THE COURT: Thank you. Let the
24 record reflect that Mr. Coaxum is present. Is
25 Mr. Coaxum ready to proceed, Mr. Butler?

1 MR. BUTLER: Yes, sir.

2 THE COURT: The State is ready to
3 proceed?

4 MR. VOIGHT: Yes, sir.

5 THE COURT: Are you going to waive
6 opening (sic).

7 MR. VOIGHT: I -- (no verbal
8 response).

9 THE COURT: Let's bring in our
10 jury, please.

11 (JURY IN @ 1:51 P.M.)

12 THE COURT: Thank you very much,
13 Ladies and Gentlemen. As I mentioned to you
14 when we took our recess, we have completed the
15 evidentiary portion of this proceeding. Of
16 course it is that evidence that you will
17 ultimately analyze very shortly when you begin
18 your deliberations.

19 There still remains two very
20 important parts to this dispute resolution,
21 the last opportunity for the attorneys to
22 speak to you and then I will give you the
23 charge on the law.

24 Please give the attorneys your
25 attention. As I mentioned to you when we

1 started, their remarks will be extremely
2 helpful to you when you begin to analyze the
3 evidence and in applying the law. Therefore
4 very important but, remember, their remarks
5 are not evidence.

6 Mr. Butler?

7 MR. BUTLER: May it please the
8 court?

9 THE COURT: Yes, sir.

10 MR. BUTLER: You know what I want to
11 know -- before I get started with the rest of
12 this, do you know what I want to know, and
13 what I hope you want to know? I want to know,
14 where is the person in the G-Unit sweats and
15 the light pants, and who is that person?

16 We now know who was wearing the
17 camouflage and it wasn't Mr. Coaxum. We know
18 that because that's what the woman from the
19 Pizza Hut told the responding officer, that
20 the gunman was wearing camouflage. We know
21 that Officer Vasquez said when he arrested Mr.
22 Benbow that he had on camouflage. We know
23 that when Mr. Benbow was checked into the jail
24 that he was wearing camouflage and that
25 William is not. So we know who the camouflage

1 person is. I want to know who the other
2 person is, and why is it that when William is
3 checked into the jail that he doesn't have
4 those things, that he has dark pants not light
5 pants. I will come back to that, but in case
6 I forget I wanted to pose those questions.

7 Assumptions are things that we have
8 to make every day. Every day in our lives we
9 have to assume things. We couldn't go through
10 the practical aspects of our daily lives if we
11 didn't.

12 It is also an integral part of police
13 work, investigation. Police officers when
14 they investigate have to assume things. Most
15 of the things they are logical and reasonable,
16 and in this case it is 'logical' that they
17 stop a car, it has a gun, it has money and
18 therefore he must also be the person who
19 robbed the place; a perfectly fair, a
20 perfectly reasonable assumption to make.
21 But it is still an assumption.

22 If we just assumed that a person is
23 guilty based on what the police officers and
24 investigators say, we wouldn't need you, we
25 wouldn't need defense lawyers, we wouldn't

1 need prosecutors, we wouldn't need trials,
2 we wouldn't need judges, we wouldn't need
3 courtrooms.

4 Assumptions, no matter how justified
5 and how reasonable in the past play no role in
6 criminal trials. Judge Dennis also already
7 beforehand instructed you a little bit about
8 what a trial is like and what you're doing,
9 and you're not to use the word "assumption".

10 They might say, 'Wait a minute, hold
11 on, there's more than just an assumption.
12 There's more than just circumstances. Two
13 people who were brought to the scene said that
14 he was the robber, that's not an assumption.'
15 Okay, that's fair. It's not.

16 But in and of itself, is it
17 reasonable? Who else are they going to pick?
18 There's only one person in handcuffs, leaning
19 against a police car. It's not exactly like
20 they had a multiple-choice test. If it is the
21 only option there, well then you'd get a
22 hundred every time.

23 It is not much more reasonable to
24 think that is accurate than when they asked
25 the cook from the Pizza Hut, 'Could the person

1 who robbed you be in here?' That is just
2 drama, there's nothing to that other than
3 drama. Who else could it be? Me? Someone in
4 the audience? It's just drama, it's not based
5 on anything other than drama.

6 But it's more than that. It's more
7 than there were just two witnesses that picked
8 him out when obviously there was only one
9 person there. Look back at what people said
10 moments after the robbery. Two police
11 officers who are trained to interview, who are
12 trained to get at the truth, know that there
13 is a robber out there that they still have to
14 catch, and what do they tell them? Well, 'the
15 gunman had on camouflage'; both of them, Mr.
16 Jennings and the woman from Pizza Inn. They
17 didn't really get a look at his face, he had
18 the hood up. Didn't get a good look at his
19 hair, he had his hood up.

20 What was she able to tell Officer
21 Bauer, the responding officer -- who, by the
22 way, I brought to you. I am not sure why it
23 is that I had to bring that person. I am glad
24 to have done so but -- but if the State is
25 interesting in presenting to you the full case

1 and the truth, I am not sure why I brought
2 that person to you. But what did she tell
3 him? Nothing other than that the gunman had
4 on camouflage and the other person a G-Unit --
5 because she got a good look.

6 I am not sure what a G-Unit
7 sweatshirt is but she must have gotten a good
8 look at that to know that is what it was.
9 Nothing about height, nothing about facial
10 features, nothing about age; all of that comes
11 later after she has seen William.

12 Lo and behold, who is wearing
13 camouflage? Not William but Marquine. Is it
14 just a coincidence? It's not a coincidence.
15 He's wearing camouflage and he's the gunman,
16 the gunman was wearing camouflage in the armed
17 robbery. It's the other robber who is wearing
18 the gray G-Unit and light pants. If William
19 was not when he was arrested, then that person
20 is someone else. That is just logical.
21 That's not an assumption.

22 And let's talk about Mr. Benbow.
23 What did you make of his testimony? They are
24 saying, 'Well, he got up there and he just
25 lied.' Why? I guess they are going to say

1 that he is afraid of William. What reason is
2 there to believe that? I don't know what
3 familiarity that you have with the prison
4 system but this isn't Mayberry, where you go
5 into two cells and Barney is watching you.
6 We have prisons all over the state, dozens of
7 them.

8 Here is what the State would ask you
9 to believe, here is what they are asking you
10 to believe, that William orchestrated these
11 robberies and dragged poor Marquine along just
12 for the ride; that Marquine tells the truth,
13 implicating William; Marquine is only doing
14 ten years in prison, yet Marquine wants to
15 protect him somehow? I mean, you don't think
16 that he would be chomping at the bit to put
17 the person who threw him into all this mess
18 into prison as well? Do you think that
19 Marquine is going to go down for something
20 that William did? Does that make sense?

21 You know, -- and what reason would he
22 have not to tell the truth if the truth is as
23 they say that it is? All he would get from
24 getting up there lying would be to open
25 himself up to more charges -- perjury. Why

1 would he do that for somebody who they say
2 got him into all this trouble? Why?

3 You know, the truth is -- I don't
4 know. Maybe his conscience is bothering him.
5 Maybe his conscience is bothering him for what
6 he told the police. I don't know. I don't
7 pretend that I know that reason, because I
8 don't know. I don't know any more than you
9 do.

10 But the reason that we are left to
11 speculate as to why, that's -- we shouldn't
12 have to speculate as to why he said what he
13 said then and what he may have said in the
14 past.

15 Let's talk about the interrogation of
16 Marquine Benbow. There's all this talk of an
17 interrogation of him. We know that it took
18 two hours for them to get from him a three-
19 page statement that Detective Patrick
20 summarizes in ten minutes. What else was
21 going on for those two hours?

22 You know that Detective Patrick is
23 operating on the same assumption -- and it's a
24 fair one to operate on. He was in the car,
25 with a gun. Do you think that Marquine could

1 say that it was somebody else? Did he have
2 that option at that point? Don't you think
3 that it went something like this, 'Hey, look,
4 Marquine, you are going to prison, no two ways
5 about it. The only option is how long, no
6 less than ten years, up to thirty, maybe life
7 without parole. So don't tell me that William
8 is not involved and that it is somebody else
9 in a G-Unit sweatshirt and light-colored
10 pants.'

11 What else could Marquine say at that
12 point? Given that -- from the Detective's own
13 mouth -- that a statement from a suspect is
14 critically important, why would it be the one
15 that has the least evidence proving it? Why
16 is it a 'he said/she said' when it is a
17 suspect's statement? Why is that we take
18 Detective Patrick's word?

19 You know, you might say that I am
20 expecting too much saying that they should
21 have videotape or audio-taped some things or
22 had the person write it out in his own
23 handwriting. But, you know, given how
24 important proof is and the things that he has
25 to prove to you and the court, why would they

1 use the least reliable form of evidence? Why
2 is the most important evidence the least
3 reliable that was presented to you? I can
4 only think of one reason why, and that -- that
5 way they can say whatever they want to say.

6 Why wouldn't you record it? Why wouldn't
7 you have somebody else there to say, 'yes,
8 this is exactly how it went down.' Why are
9 you relying on that one person's word when
10 that evidence is so critical? You know, this
11 isn't the 1950s. Today everything everywhere
12 is recorded. I wouldn't be surprised if by
13 the time I get home today something that I do
14 is on You Tube. It's everywhere.

15 I will tell you why, why don't they
16 want to change the times, why the police
17 officer don't want to change the times, they
18 don't think that there is any need to because
19 our assumptions, their assumptions are good
20 enough.

21 Don't you know that it's every case,
22 every case where someone is arrested and
23 brought to trial, whether they are innocent or
24 not, there is somebody saying that the person
25 is guilty. There is somebody saying 'that's

1 the guy.' There are assumptions made in every
2 case, every case, even when innocent people go
3 to prison there were assumptions that were
4 made.

5 But you have to look beyond the
6 assumption(s) to make sure that they are
7 justified, to make sure that they are backed
8 up and supported by the evidence. There has
9 to be more. They can't ask you to fill in the
10 blanks for you. They can't ask you to connect
11 the dots for them.

12 They need to be able to answer the
13 question, 'who was it in the G-Unit sweat-
14 shirt and white pants?'

15 And here is another question, whose
16 car was it? Don't you want to know that?

17 How much money was taken from the
18 first place? Does that add up to what was in
19 the car?

20 Why am I asking these questions?

21 Because they just assume that you'll
22 assume the same thing that everybody did.

23 How tall are they both? You saw
24 William. Yeah, he's tall. But, guess what?
25 Marquine is tall, too. All this talk about

1 height, why hasn't somebody told you how tall
2 they are or old they are?

3 And where is Ms. Smith, the woman who
4 gets robbed? They say gets robbed. I am not
5 sure what happened in there. Where is she?

6 The driver for the Pizza Hut, where is
7 that person? Maybe they aren't so confident
8 of what happened.

9 It's the State's obligation, not
10 ours, to bring them to you. The obligation
11 exists, yes, in large part to William but --
12 guess what? It also exists to you. They have
13 to paint a picture to you of what happened and
14 that picture has to show William guilty of
15 robbing someone. It can't just be a part of
16 the picture, a part of the truth. A part of
17 the truth, just a part of the picture, without
18 the whole picture is misleading.

19 They can't say to you, 'Yes, the
20 picture is there but we can't illuminate it
21 because we can't reach the light switch' or
22 'the light bulb is burned out.' They don't
23 get any excuses. You can't tolerate any
24 excuses.

25 That is for you, because this is one

1 of the most important decisions that you are
2 ever going to make in your own lives. It is
3 the most important decision that anyone can
4 ever make in William's life. You are sitting
5 in judgment of somebody else's freedom for a
6 very, very long period of time.

7 They should have filled in the blanks
8 for you, they should have connected the dots.
9 I shouldn't have to point out there they
10 didn't.

11 And if they didn't, it's not because
12 they are slack, it is not because they are
13 lazy, it's not because they are not competent.
14 It's because those answers don't exist and the
15 answers don't exist because the assumptions
16 that they made are not valid, they are not
17 supported. They might have been fair at the
18 time but they are not now.

19 When I talk to you about how
20 important your verdict is, I want to remind
21 you that nobody will come behind you and
22 second-guess what you do today. You can't
23 call me tomorrow -- as, believe it or not, it
24 happens -- and say, 'Hey, I thought about it.'
25 There are no recounts, there are no re-votes.

1 Although you might hear of other people
2 getting other trials or appeals, getting out,
3 that's not because they decided that you were
4 wrong, that the jury was wrong. They might
5 secondguess what I did and they might second-
6 guess a decision that the judge makes in a
7 trial but your verdict exists as it does for
8 ever-and-a-day, in stone. It is. You can't
9 say, 'well, let's just err on the side of
10 caution, somebody else can figure it out.'
11 Today is the day.

12 There is also no opportunity for
13 compromise. The verdict is yours
14 collectively, but individually too. The
15 reason that we pick twelve people from diverse
16 backgrounds with diverse experiences is
17 because not everybody sees everything the
18 same. So you should feel comfortable in
19 sticking to your guns, don't let other people
20 -- and you should be the same with them.
21 Don't try to impose your will on yours. It
22 is your decision individually as well as
23 collectively.

24 You need to make sure that you can
25 issue a verdict that you can take pride in

1 personally, that you can embrace personally,
2 yourself. Their job is to bring you evidence
3 that allows for that. If they didn't, you
4 have no choice but to find William not guilty.

5 What is often said at this point in
6 the process is that you have no friends to
7 reward nor enemies to punish. You took an
8 oath. That oath was to follow the law of
9 South Carolina whether you agree with it or
10 not. Everybody that is part of the process,
11 we all take it -- lawyers, judges, the same
12 oath that you take -- to ensure that justice
13 is done. For you, justice requires that you
14 find William not guilty.

15 Thank you.

16 THE COURT: Mr. Voight.

17 MR. VOIGHT: Thank you, Your Honor.
18 Thank you, Mr. Butler.

19 Yesterday morning, we did openings,
20 both the State and Mr. Butler. Mr. Butler
21 stood up and told you what he thought the case
22 was about. He told you that he thought that
23 he had the hardest job, that in a way you'all
24 have the hardest job but that in this case he
25 had the hardest job.

1 And he told you that things are not
2 always as they seem. I agree with part of
3 that and disagree with part of that. Things
4 sometimes are what they seem.

5 I agree that he had the hardest job,
6 because he had to stand up here and for ten to
7 twelve minutes, with a straight face, argue
8 that William Coaxum is not guilty of armed
9 robbery; with a straight face to tell you that
10 justice requires that you find him not guilty.

11 That is wrong. That is not what
12 justice requires.

13 Sir Walter Scott, who is remembered
14 mostly for making us read a boring novel, but
15 one of the things that Walter Scott brought
16 into the English language is the concept of
17 someone being caught "red-handed." William
18 Coaxum, in his bright little orange car, with
19 the shotgun with the -- looks like duct tape
20 on it -- was caught red-handed.

21 It really is sometimes that simple.

22 Keith Jennings watched an armed
23 robbery. He told you about it. He told you
24 who the man with the gun was. Did he
25 equivocate? He got a good look at him. He

1 told you that the man had on what he thought
2 was gray camouflage -- we've got green
3 camouflage in this case and gray camouflage or
4 something that can be characterized as
5 camouflage. Marquine was wearing, obviously,
6 green camouflage and he is an armed robber,
7 he's admitted to it.

8 William Coaxum is wearing what Mr.
9 Jennings said was a gray camouflage-looking
10 jacket, that he was the gunman.

11 Was he the older of the two? You saw
12 Mr. Benbow, a very young looking fellow. This
13 (indicating Defendant) is the older gentleman.
14 This was the man with the gun at the North
15 Charleston Inn, who got into the orange car
16 and sped away.

17 And you heard from Detective Patrick
18 that they didn't get enough money, and that's
19 why they went to the Pizza Hut, because
20 William said 'we didn't get enough money.' So
21 to the Pizza Hut they go.

22 Tamera Brown was shaking, she was
23 nervous, this was the first time this had ever
24 happened to her. She concentrated on the gun,
25 the eyes and the mouth. Whose eyes? Whose

1 gun? Red-handed, right there (indicating
2 Defendant).

3 Within minutes of all of this,
4 because somebody doesn't drive terribly well,
5 somebody who hits a fire hydrant. You hear
6 the testimony that there was water all over
7 everywhere, that a police cruiser skidded into
8 one of the two people trying to get away.
9 Here he is (indicating Defendant). Okay.

10 The police are there within minutes
11 after both of these armed robberies, -- now
12 usually -- well, not usually, that may not
13 correct.

14 In building a case like this, I am
15 sometimes put in the position of having to
16 explain or apologize for something that has
17 been overlooked. I didn't have to do that in
18 this case. They get the call that the North
19 Charleston Inn had an armed robbery and they
20 are on their way. They get that call from the
21 Pizza Hut, they're on their way. In fact,
22 they are figuring out what -- in fact, Officer
23 Singletary he sees that car and he turns
24 around. He doesn't even know who is in that
25 car but he wants to make sure that he stops

1 that car just to make sure. All right.

2 If you were driving an orange car on
3 November 27th, 2007, sometime between 10:45 and
4 11:15 at night, chances are that they were
5 going to stop you.

6 That car contained William Coaxum and
7 Marquine Benbow, the car crashed. Benbow
8 almost gets away, but he doesn't. Enough
9 officers had responded quickly, thoroughly,
10 had flooded the area, they catch Marquine, and
11 he pleads guilty. But before he pleads guilty
12 last November he tells a little story about
13 what happened.

14 Now, Mr. Butler would have you
15 believe that this story involves this fantasy
16 third person wearing a hoodie or jacket of
17 some sort. The story that he tells us is
18 about William Coaxum.

19 MR. BUTLER: Judge, I am sorry but
20 I have to object and ask that we approach.

21 THE COURT: Okay.

22 BENCH CONFERENCE:

23 MR. BUTLER: This was my
24 position earlier, his prior inconsistent
25 statement is only for impeachment value, it is

1 not substantive evidence. He is arguing that
2 this is substantive evidence now.

3 THE COURT: I ---

4 MR. BUTLER: I just want to make
5 sure that I preserve that objection.

6 THE COURT: Objection is noted
7 and overruled.

8 MR. BUTLER: Thank you.

9 (BENCH CONFERENCE CONCLUDED)

10 THE COURT: Ladies and Gentlemen, I
11 remind you that what the attorneys are telling
12 you is not evidence. We will talk about that
13 when I instruct you. You are to consider the
14 value of the testimony from the witness stand.
15 You may continue.

16 MR. VOIGHT: You heard from -- Mr.
17 Butler felt that the timing of this statement
18 was important, that how long Detective Patrick
19 was discussing it with him or how long it took
20 to write the three pages is important. The
21 fact that it was -- I hope that it wasn't
22 boring to you but how many times did he
23 mention William's name.

24 Mr. Benbow has been arrested. There
25 was no mystery person. There is no gap. It

1 really is as simple as it looks. Two guys
2 commit an armed robbery at the North
3 Charleston Inn, in a bright orange car. They
4 get seen by the security guard, who
5 immediately calls 9-1-1. The one, the
6 security guard gets a good look at is William
7 Coaxum and that was what he said. Did he tell
8 you that he got a good look at the other one?
9 No, he doesn't. Marquine Benbow is just as
10 guilty but he says it was the older guy.
11 Marquine is the young guy. Okay? But who was
12 he certain about? William Coaxum.

13 Tamera Brown, did she hesitate? No.
14 William Coaxum. How many police officers did
15 we bring to you today that she told that,
16 William Coaxum. Mr. Butler didn't ask her
17 those questions, I had to ask those questions.
18 She pointed him out, she was certain.

19 Is this the most important decision
20 in your life? No, it is not.

21 It is important to me, it is
22 important to the system, it is important to
23 William Coaxum, but I believe that you have
24 made more important decisions in your life.

25 Is it the most important decision in

1 William Coaxum's life? No. I submit to you
2 that the most important decision that he made
3 was picking up Marquine Benbow, with a
4 shotgun, and saying 'let's go rob the North
5 Charleston Inn'. Then that wasn't good
6 enough. 'While fleeing from an armed robbery,
7 we're going to stop and do another armed
8 robbery.' Maybe that is the most important
9 decision in William Coaxum's life.

10 The police responded quickly, they
11 did a good job, they responded in force. They
12 caught the persons with the gun, with the car,
13 with the money, with the cash drawer from the
14 Pizza Hut -- all those things.

15 When they hit the fire hydrant, Mr.
16 Benbow fled the car. Mr. Coaxum tried to flee
17 but he was hit by the patrol car, he was
18 unable to flee.

19 All of it was right there. There is
20 no gap, there is no mystery person. It really
21 is that simple. William Coaxum was in the
22 car, he had cash in his pocket, he had the
23 Pizza Hut drawer, he's got this gun readily
24 accessible to him, the gun that he used to rob
25 two different businesses. That is the gun.

1 I will be honest with you, I don't
2 really care if Marquine Benbow was holding the
3 gun because the law makes the distinction that
4 William Coaxum is just as guilty. The judge
5 will instruct you that the hand of one is the
6 hand of all, which is archaic way of
7 describing a theory or principle that the law
8 says that if you intend to do it, you aided,
9 abetted and helped that the gun can be in
10 somebody's else hand and you committed the
11 armed robbery.

12 That is the theory under which
13 Marquine Benbow pled guilty. He didn't have
14 the gun. He told you that. That might be the
15 only part of what he said that you can
16 believe. He was there when William robbed the
17 place and he is the one who went and got the
18 driver and brought him back into the Pizza
19 Hut. He helped. He was guilty, he pled
20 guilty and he's in jail where he should be.

21 One last thing, and it really is the
22 hardest job in this courtroom and -- that
23 whole 'don't compromise, stick-to-your guns'
24 thing, -- (negative gesture) -- come to the
25 right decision. The judge is going to tell

1 you how to make your decision -- and I am
2 telling you, there was an armed robbery at the
3 North Charleston Inn, there was an armed
4 robbery at the Pizza Hut, they fled in the
5 orange gun, there was the gun, the money, the
6 cash drawer from the Pizza Hut, Marquine pled
7 guilty. William Coaxum is guilty, guilty,
8 guilty, guilty. Thank you, I appreciate it.

9 THE COURT: Thank you, Ladies and
10 Gentlemen. It now becomes my responsibility
11 to give you the law that of course you must
12 accept and apply to the facts that you
13 determine very shortly when you begin the
14 process of analyzing the evidence in this
15 case, and making the decision which you were
16 selected to make when you were picked to be a
17 judge with me in this case.

18 As I told you when we started, you
19 and you alone are the sole judges of the
20 facts. That means that you have to consider
21 and evaluate the credibility of each witness
22 and determine the effect, the value, the
23 weight and the truth of the evidence. When
24 you've done that, totally, the State and all
25 involved in this process will have achieved

1 and attained that which they have sought from
2 the very beginning, and that is a fair and
3 impartial determination. That's what this
4 whole process is design to accomplish.

5 During my instruction, you may hear
6 me use -- and I've used it already -- the word
7 "defendant". That word is really used to
8 designate the party against whom a claim is
9 made. That is the purpose of the term. It
10 really is another way of referring to Mr.
11 Coaxum. It has no other significance other
12 than, so when you hear "defendant" know that
13 I am referring to Mr. Coaxum.

14 Mr. Coaxum, as I mentioned when we
15 started is accused or has been accused of --
16 and these documents that I am holding in my
17 hand, and as you've noticed there are four of
18 them, they will not accompany you to your jury
19 room because they are not evidence. They are
20 merely the allegations that frame the issues
21 to be resolved in this process.

22 He is accused with two counts of
23 armed robbery and two counts of possession of
24 a firearm during the commission of a violent
25 crime. We will talk about what is an armed

1 robbery, what is entailed in that charge, as
2 well possession of a firearm in the commission
3 of a violent offense in just a few moments.

4 To these indictments, Mr. Coaxum has
5 entered a plea of Not Guilty. That then
6 places upon the State the burden of proving
7 beyond a reasonable doubt that he is guilty of
8 one or more of these offenses. For, you see,
9 persons such as Mr. Coaxum who are accused of
10 committing criminal offenses in this state,
11 and in this country, are never required to
12 come in and prove anything at all. They
13 certainly aren't required to prove their
14 innocence.

15 The principle of law that controls
16 is the principle of law that we call the
17 presumption of innocence, that each of you is
18 required under our law to actively presume
19 that Mr. Coaxum is not guilty. This
20 presumption of innocence is maintained at all
21 times throughout the trial of this case is
22 only removed when and if the State brings in
23 sufficient evidence to persuade you beyond a
24 reasonable doubt that Mr. Coaxum is guilty or
25 one or more of these crimes.

1 So obviously, Ladies and Gentlemen,
2 the fact that a person accused of a criminal
3 offense does not testify in his or her own
4 behalf should never be, and cannot be,
5 considered against that person under any
6 circumstances whatsoever; because as I told
7 you, persons accused have no responsibility or
8 burden of proof to prove anything at all.

9 I would further instruct you that
10 persons accused in criminal offenses have the
11 Constitutional right to remain silent, and the
12 assertion of that right cannot and must not be
13 considered against that individual.

14 Therefore, under your oath, you are
15 to reach no inference and draw no conclusions
16 whatsoever from the fact that Mr. Coaxum did
17 not testify in this case. His failure to
18 testify shouldn't even be discussed in the
19 jury room. If it is, you will have violated
20 the oath that you took when you started this
21 process because the burden, as I have stated
22 throughout, rests solely upon the State to
23 prove his guilt. That means that they have to
24 prove each element required of it by the law,
25 for each offense, and they have to prove each

1 element beyond a reasonable doubt.

2 What is a reasonable doubt? A
3 reasonable doubt, as I stated when we began,
4 is a doubt that would make a honest, sincere,
5 conscientious juror searching for the truth in
6 a case to hesitate to act.

7 Proof beyond a reasonable doubt is
8 proof that leaves you firmly convinced of the
9 Defendant's guilt.

10 Now, there are very few things in
11 this life and in this world that we know with
12 absolute certainty. In criminal disputes,
13 criminal cases such as this, the law does not
14 require proof that overcomes every possible
15 doubt.

16 If based on your consideration of the
17 evidence you are firmly convinced that the
18 Defendant is guilty of one or more of these
19 crimes, then you must return a verdict of
20 Guilty.

21 If, on the other hand, you think that
22 there is a real possibility that he is not
23 guilty, then you must give him the benefit of
24 the doubt and return a verdict of not guilty.

25 A reasonable doubt may arise, Ladies

1 and Gentlemen, from the evidence which is in a
2 case or from the lack or absence of evidence
3 in a case. It is up to you to determine
4 whether or not a reasonable doubt exists as to
5 Mr. Coaxum's guilt. I charge you in that
6 regard that he is entitled to every reasonable
7 doubt arising in the whole case.

8 What do I mean by that statement?
9 Simply this, if upon any issue of fact which
10 would be essential to your returning a verdict
11 of guilty or reaching or determining a
12 conviction -- finding that he should be
13 convicted of this, if you should have a
14 reasonable doubt as to how that issue is to be
15 resolved, I am instructing you that it would
16 be your duty to resolve that reasonable doubt
17 in his favor.

18 Now, the evidence which you are to
19 consider consists of the testimony of the
20 witnesses and the exhibits that have been
21 introduced during the trial. As we have
22 states throughout, my remarks are not
23 evidence. The objections made and rulings
24 made during the trial on matters on which I
25 may have excluded or prevented testimony, or

1 which I may have allowed testimony over an
2 objection, that should never be considered by
3 you because that was my responsibility.

4 You have nothing to do with matters
5 of law. In fact, probably the best example
6 that I can give you of how we work together
7 would be -- because generally you didn't hear
8 most of the arguments, very few times that you
9 did and generally it dealt with matters of
10 evidence. One of the attorneys said
11 'objection' and my ruling was that I would
12 either overrule the objection or I sustained
13 it.

14 If I overruled the objection, I've
15 said as a matter of law that I am going to
16 permit the question and answer. That is as
17 far as my involvement goes. If you infer
18 anything from the fact that I have overruled
19 the objection, then you've kind of stepped
20 over into my area of responsibility. In
21 other words, just because I ruled that it was
22 permitted doesn't mean that you have to accept
23 it, it doesn't mean that you have to believe
24 it, because quite honestly at that moment it
25 shifts to you and now you evaluate it and

1 determine whether or not you believe it or not
2 and, if you do, how strongly you believe it.

3 So, you see, that is really a good
4 example of how we work together. I make a
5 ruling on the legal aspect, you make the
6 ruling on whether you believe that testimony
7 and, if so, how strongly.

8 Also I would remind you that the
9 remarks of the attorneys are not evidence.
10 Their remarks are given to assist you in
11 evaluating the evidence and in applying the
12 law, but you are instructed to disregard any
13 statements by the attorneys, in their opening
14 statements or in their closing arguments,
15 which is inconsistent with your recollection.
16 When I say "your", please remember something,
17 you each have notes -- some of you do, some of
18 you may not have taken as many as others.

19 Remember that Ms. Garrison is the
20 court reporter. She is in charge of keeping
21 the record. If you have a difference of
22 opinion of what a witness said or didn't say,
23 we can replay that testimony. We can resolve
24 that concern.

25 But that resolution is for you and

1 when you determine what a witness says, it
2 doesn't matter what anybody else said during
3 the proceeding of this, because my remarks
4 about it, the attorneys' remarks may not be
5 considered by you as evidence under any
6 circumstance.

7 Likewise, any statement by the
8 attorneys that may differ from the law that I
9 give to you, you must accept the law as I am
10 giving it to you. Just as you are the sole
11 judges of the facts in this dispute, at this
12 point I am the sole judge of the law, which
13 means that it is my responsibility to make a
14 determination on issues of law and to give you
15 the law, which you are to accept.

16 Now, Ladies and Gentlemen, in -- when
17 the State presents evidence in cases for a
18 jury to consider, there are generally two
19 types of evidence that one may here. One we
20 call 'direct evidence' and the other
21 'indirect.' The more popular name, the more
22 common name for indirect evidence is
23 circumstantial evidence.

24 Now, direct evidence, just as that
25 name would imply, generally deals with one's

1 sensory perception. 'I saw something, I heard
2 something, I felt something' or the like.
3 If you are firmly convinced of that testimony
4 and the believability and credibility of that
5 particular testimony, then that would
6 establish that particular fact. If you are
7 not, then it does not.

8 Circumstantial evidence or indirect
9 evidence is when one comes in and testifies to
10 a number of circumstances or facts. Again, if
11 you are convinced as to each of those, if you
12 are firmly convinced of it, then you use those
13 and combine those to point to another fact,
14 the existence of something else, or a logical
15 conclusion from those facts. That is likewise
16 a proper way of presenting evidence. If you
17 are firmly convinced of that conclusion, then
18 it would establish that particular fact or
19 circumstance.

20 Now, I would tell you that quite
21 often you will hear both types of evidence.
22 That is not uncommon. The law makes
23 absolutely no distinction between the weight
24 or the value to be given to either direct or
25 circumstantial evidence, nor is there any

1 greater degree of certainty required of
2 circumstantial evidence than direct evidence.
3 But I would instruct you with regard to
4 circumstantial evidence, the mere fact that a
5 circumstance is brought out in a case that is
6 strongly suspicious of guilt or that
7 circumstances are such that the defendant's
8 guilt is probable, that's not enough. It has
9 to be more than someone being probably guilty
10 or suspicious of guilt to sustain a
11 conviction, because it has to be proof that
12 firmly convinces you -- in other words
13 satisfies you beyond a reasonable doubt of his
14 guilt.

15 Now, an issue in this case, Ladies
16 and Gentlemen, as it is in any case that is
17 brought in this court, is the identification
18 of the Defendant, Mr. Coaxum, as the person
19 who committed this crime or these crimes, or
20 one or more of them. The State has the burden
21 of proving identity beyond a reasonable doubt.
22 You must be satisfied beyond a reasonable
23 doubt of the accuracy of his identification
24 before you may convict him.

25 Identification testimony, Ladies and

1 Gentlemen, is an expression of belief or
2 impression of a witness. You must determine
3 the accuracy of the identification. You may
4 consider the believability of each
5 identification witness in the same manner as
6 you do any other witness. You may consider
7 whether the witness had an adequate
8 opportunity to observe the person at the time
9 of the offense. This of course would be
10 affected by such things as how long or short a
11 period of time it was available, how far or
12 close to the witness, what were the lighting
13 conditions and whether the witness had a
14 chance to see or know the person in the past.

15 Once again, I instruct you the burden
16 of proof is on the State as to each element,
17 and that would include the identity of the
18 Defendant as the perpetrator of this -- of
19 these -- of a crime, of any of these crimes.

20 If after examining the testimony you
21 have a reasonable doubt as to accuracy of the
22 identification, then you must find the
23 Defendant not guilty.

24 How do you determine the
25 believability and credibility of a witness?

1 As I mentioned to you when we started, back
2 when I qualified you, there is no one more
3 capable of making this determination than you,
4 because you apply your sense of -- your
5 commonsense, your sense of logic and reason,
6 your life's experiences fairly and impartially
7 in analyzing the evidence and in deciding what
8 you find to be credible and believable.

9 I would suggest to you that we make
10 these decisions every day of our lives in some
11 form or fashion. Most of the time it's
12 subconsciously but there are a number of
13 occasions that arise when we make these
14 decisions consciously, for the sole purpose of
15 determining what we believe and how strongly
16 we believe it.

17 There are many, many factors that
18 persons may consider and methods that persons
19 may employ to assist them in making these
20 determinations. I am going to discuss some of
21 the factors with you now, but if I don't
22 mention a factor that you've considered and
23 used in your life, that you've found to be
24 very reliable in assisting you in making this
25 decision, please, when you begin your

1 deliberations, resort to what you've found to
2 be reliable in something that you've done in
3 your life to help you.

4 Some of the factors that you may want
5 to consider when you evaluate the credibility
6 and believability of the witness are:

7 The appearance of that witness.
8 How did they appear to you, straightforward or
9 hesitant in answering questions?

10 Was the testimony of a witness
11 consistent or was it inconsistent?

12 Was it strengthened or weakened
13 by other evidence in the case?

14 How did the witness come to know
15 the facts that he or she testified to, what
16 was the ability of that witness to know those
17 particular facts or circumstances?

18 Is there a reason for a witness
19 to give testimony which may be beneficial to
20 one side or may be detrimental or harmful to
21 one side? In other words, was the witness
22 biased or prejudiced in any fashion?

23 In determining the credibility or the
24 believability of witness, the law gives you
25 very broad discretion. You have the right to

1 believe one witness against many, many
2 witnesses against one; you have the right to
3 believe all of a witness' testimony, parts of
4 a witness' testimony or none of a witness'
5 testimony.

6 Now, you don't make these decisions
7 arbitrarily but if there is a reason in the
8 record of this case, that is the evidence in
9 this case for taking that position you have
10 that prerogative because your objective it to
11 determine the truth -- and that means by
12 evaluating the evidence in the case and
13 deciding what you find to be the true facts
14 of this dispute.

15 Now, as we stated throughout, while
16 you enjoy very broad discretions when it comes
17 to determining the facts, you've promised that
18 you will accept the law as I give it to you.
19 That means that if you should hear a principle
20 of law with which you may differ, you've
21 promised that you will set it aside.

22 Remember when I commented to you that
23 I knew that you had an identification card, a
24 driver's license or a voter's registration
25 certificate? Personally I think that is

1 interesting that I have to ask that of people
2 who are there, that have already demonstrated
3 that they do. Why do I do that? Because it
4 is the law. I took the same oath that you
5 took to follow that law, notwithstanding my
6 personal opinion of that law. So I will
7 continue to ask that question every time that
8 I qualify a jury so long as it is the law.

9 If you hear some principle of law,
10 and I don't know that you will but should you
11 hear something that causes you to think,
12 'there's got to be a better way of saying
13 that' or 'I am not in agreement with that
14 law', I respect your right to feel that way
15 but you've promised the court, Mr. Coaxum and
16 the State that you would set that feeling
17 aside and take the law and apply that law
18 fairly and impartially to the facts as you
19 determine them.

20 Now, the fact that I give you an
21 instruction in a particular area or on a
22 particular aspect of the law is not to be
23 taken as a suggestion that you must resolve
24 something in a certain fashion. That is up to
25 you. It means that you simply apply the law.

1 Also, the order of the instruction
2 means nothing. I had to put it in some order.

3 Let's look at the two charges. I
4 mentioned to you that there are two. One is
5 the charge of armed robbery, and as I
6 mentioned there are two counts of that. We
7 will set out in a verdict form, which I will
8 go over at the end with you, and there is a
9 separate one for each one and we've placed in
10 each one -- I've chosen to identify them as
11 the Pizza Inn and the North Charleston Inn,
12 which are the two charges.

13 Section 16-11-330(a) of our Code of
14 Laws provides, in part, that a person who
15 commits robbery while armed with a pistol,
16 dirk, slingshot, metal knuckles, razor or
17 other deadly weapon or while alleging, either
18 by actions or words that he or she is armed
19 while using a representation of a deadly
20 weapon or any object which a person present
21 during the commission of a robbery reasonably
22 believes is a deadly weapon, would be guilty
23 of the offense of armed robbery.

24 The State must prove, in order to
25 obtain a conviction for armed robbery that the

1 Defendant took personal property from the
2 person or presence of another. Property is
3 considered to be in the presence of a person
4 if it is within that person's reach,
5 inspection, observation or control so that the
6 person could, if not overcome with violence or
7 prevented by fear, keep possession of that
8 property.

9 The State must also prove beyond a
10 reasonable doubt that the Defendant carried
11 the property away intending to permanently
12 deprive the owner of the property and to keep
13 the property for the Defendant's own use. The
14 slightest removal of the property or complete
15 possession of the property, even for an
16 instant, by the Defendant is sufficient to
17 show a taking and carrying away of the
18 property.

19 The taking and the carrying away of
20 the property must have been done with violence
21 or by putting the owner of the property or the
22 person in control of that property in fear of
23 violence.

24 Finally, the State must prove beyond
25 a reasonable doubt that the Defendant was

1 armed with a deadly weapon during the robbery.

2 A deadly weapon is any article,
3 instrument or substance which is likely to
4 cause death or great bodily harm. Whether an
5 instrument has been used as a deadly weapon
6 depends on the facts and circumstances of each
7 case. I would instruct you that a shotgun is
8 considered a deadly weapon under our law.

9 A gun may be a deadly weapon even if
10 it is not operable, under our law. It is up
11 to you to determine the value, weight and
12 circumstances in each case.

13 The next crime that you will consider
14 is that the State has alleged that Mr. Coaxum
15 has committed is the crime that follows that
16 -- by that, I mean this: Armed robbery is
17 considered, under our law, a violent crime.

18 So if you find a person and you find
19 that Mr. Coaxum committed the offense of armed
20 robbery, then you may consider this offense:
21 That is that a person may be charged with the
22 possession of a violent -- during the --
23 possession of a firearm during the commission
24 of a violent crime. The law provides in
25 Section 16-23-490, provides in part that if a

1 person is in possession of a firearm or
2 visibly displays what appears to be a firearm
3 during the commission of a violent crime and
4 is subsequently convicted of committing or
5 attempting to commit a violent crime, then the
6 person would be guilty of this offense.

7 The term "firearm" is defined in this
8 section as any machine gun, automatic rifle,
9 revolver, pistol or any weapon which will or
10 is designed to or may readily be converted to
11 expel a projectile.

12 Now, Ladies and Gentlemen, I want to
13 instruct you on a principle of law that we
14 call "the hand of one is the hand of all."
15 This principle of law states, as follows,
16 (reading):

17 "If a crime is committed by two
18 or more people who are acting together in
19 committing a crime, the act of one is the act
20 of all.

21 A person who joins with another
22 to accomplish an illegal purpose is criminally
23 responsible for everything done by the other
24 person which occurs as a natural consequence
25 of the acts done in carrying out the common

1 plan and purpose.

2 If two or more people are
3 together, acting together, assisting each
4 other in committing the offense, the act of
5 one is the act of all or, as it has been said,
6 the hand of one is the hand of all."

7 Prior knowledge that a crime is going
8 to be committed, without more, is not
9 sufficient to make a person guilty of that
10 crime. Mere knowledge that another person is
11 going to commit a crime, even if the defendant
12 is present when the crime is committed, is not
13 sufficient to convict a defendant as a
14 principal.

15 Guilt as a principal is shown by
16 actual or constructive presence at a scene as
17 a result of a prior arrangement. Therefore,
18 the finding of a prearranged plan or scheme
19 is necessary for a finding of guilt as a
20 principal. The State must prove beyond a
21 reasonable doubt by competent evidence the
22 theory of the hand of one is the hand of all.

23 A principal in a crime is either one
24 who actually commits a crime or who is present
25 aiding, abetting or assisting in committing

1 the crime. When a person does an act in the
2 presence of and with the assistance of
3 another, the act is done by both. When two or
4 more who are acting with a common plan or
5 intent are present at the commission of a
6 crime, it does not matter who actually commits
7 the crime, all are guilty.

8 Present at the commission of a crime
9 means to be sufficiently near to aid, abet and
10 assist in the commission of the crime.
11 However, I would repeat, merely being present
12 at the scene of a crime is not sufficient to
13 convict on that theory of aiding and abetting.
14 Intent is also a necessary element, for there
15 must have been a common design or intent to
16 commit a crime and the crime must have been
17 committed pursuant thereto with the person
18 aiding and abetting by some overt act.

19 "Intent" means actually -- it means
20 intending the result which actually occurs,
21 not accidentally or involuntarily. Intent may
22 be shown by acts or conduct of the defendant
23 and other circumstances from which you may
24 naturally and reasonable infer intent. The
25 State must prove these elements beyond a

1 reasonable doubt.

2 Criminal intent can be stated as the
3 state of mind that operates jointly with an
4 act in the commission of a crime. As I
5 stated, it includes those very consequences
6 which represent the very purpose for which the
7 act is done or may be known to -- or known to
8 be substantially certain to result regardless
9 of one's specific desires.

10 Criminal intent is a mental state of
11 a conscious wrongdoing. It is up to you to
12 determine whether or not the State has
13 satisfied you or convinced you beyond a
14 reasonable doubt as to the intent of this
15 Defendant, assuming of course that the State
16 has proved to your satisfaction that he was
17 present, involved in aiding and abetting in a
18 common scheme or plan, either as a principal
19 or someone assisting.

20 Ladies and Gentlemen, throughout this
21 process you have never been and are not now
22 partisans or advocates for either side. As
23 was stated in argument, correctly so, you
24 don't have any friends in this process nor do
25 you have any enemies, no one to reward or to

1 punish.

2 You are also here to set aside something
3 else that sometimes may require more effort
4 than others, but it doesn't matter whether it
5 is the most severe or the least, one thing is
6 for certain, human emotion has absolutely no
7 involvement, no place in performing your task
8 as judges, either in matters of law or in
9 matters of fact. You have promised that you
10 will set aside human emotion and that you will
11 apply your commonsense, your sense of logic
12 and reasoning fairly and impartially, and that
13 you will do that very methodically. I am
14 confident that is what each of you will do in
15 just a moment when you retire to begin your
16 deliberations.

17 To assist you in reporting your
18 verdict, Madame Presiding Juror, I have
19 prepared four verdict forms. Basically they
20 are referencing the -- the armed robberies are
21 set out in the guilty -- and each one has its
22 own statement, as I stated to you. The first
23 form, and they are basically the same, -- you
24 will note that they are captioned and
25 numbered, showing the case page numbers. That

1 is to facilitate filing and that's all that
2 that means. The body of all of them has the
3 same two choices, one is Guilty and the other
4 is Not Guilty. Then each has a place for you
5 to sign it. I will go over this one with you
6 but the others basically track, with one
7 exception, they mention the place involved;
8 which ties to the indictment involved in that
9 particular charge.

10 The one that I am holding happens to
11 be the verdict form for the armed robbery at
12 the Pizza Hut. It states the indictment
13 number and then it says, "We, the jury, by
14 unanimous consent..." -- what does that mean?
15 It means all twelve of you, twelve to zero has
16 to be the verdict. "...find the Defendant..."
17 -- and the order in which they appear means
18 nothing, I had to put them in some order, and
19 you are not to infer anything from that.
20 "...guilty of armed robbery occurring at the
21 Pizza Hut located at 4391 Dorchester Road."
22 The next is "Not Guilty".

23 What will you be saying if the first
24 is your choice? You will be saying that you
25 have analyzed the evidence and that you are

1 convinced, beyond a reasonable doubt, as to
2 each of those elements of the offense of armed
3 robbery that the State has established that
4 Mr. Coaxum is Guilty.

5 Not Guilty would be saying that
6 you've considered the evidence and you are not
7 firmly convinced, that the State has not
8 proved each of those elements and, as
9 instructed, you must return a verdict of Not
10 Guilty -- unless each element has been
11 satisfied to that level.

12 Whatever is the choice of the jury,
13 if you would simply designate that by either
14 placing a check or an "x", and also I would
15 ask you to circle it as well, to show that is
16 your choice. Once you have completed it, if
17 you will, sign where it says Presiding Juror
18 and then you can move to the next form.

19 You will have another form that deals
20 with presenting and -- the possession of a
21 firearm during the commission of a violent
22 crime -- one for each of the two. Obviously
23 in this one if you've found Not Guilty as to
24 any armed robbery you must return a verdict of
25 Not Guilty on the possession, because you have

1 to have found the person guilty of the crime
2 before you can find him guilty of being in
3 possession of a firearm during the commission
4 of a violent crime.

5 The options are the same, Guilty or
6 Not Guilty. Simply that instruction, apply it
7 to each one of the forms, sign and -- once you
8 have completed all four forms, if you will
9 knock on the door we will be happy to return
10 you to receive your verdict.

11 I know you are anxious to get
12 started. I told you that the last thing that
13 I would tell you is when you may start. I am
14 going to have to excuse you now to discuss
15 with the attorneys my charge. It might be
16 necessary that I return you and give you some
17 clarification or additional charge. If we do,
18 if that is required, I will return you to the
19 courtroom and accomplish that. If there are
20 no additions, then we will gather the exhibits
21 and the verdict form and deliver them to you.
22 When you receive the exhibits, then you may
23 commence your deliberations but not before.

24 Now, once the deliberations start,
25 the only real restriction that I place on you

1 is that if at any point a juror has to leave
2 the table, for any reason, you must stop
3 deliberating until all twelve of you are
4 together. Other than that, you may proceed
5 as you deem fit and proper.

6 Thank you very much for your
7 attention. You may retire to your jury room
8 and await the exhibits.

9 One thing that I want to point out to
10 you, remember that your notes are for your own
11 use. They are designed to assist you. Once
12 you have completed your deliberations, they
13 are your notes. You may leave them, if you
14 wish. We will destroy them. But they are
15 yours to take, they belong to you, that's the
16 sole purpose of -- once you've finished this
17 case, you may then remove or take them if you
18 wish or otherwise we will destroy them. But
19 please do not let the notes leave this court-
20 house until you have been discharged. Thank
21 you.

22 (JURY OUT @ 3:00 P.M.)

23 THE COURT: Any objections or
24 exceptions from the State?

25 MR. VOIGHT: None, Your Honor.

1 THE COURT: Any objections or
2 exceptions from the Defendant?

3 MR. BUTLER: None to the charge. At
4 the appropriate time I would like to put on
5 the record my objection to ---

6 THE COURT: You objected and we
7 stopped and -- I don't think he resumed. I
8 think it appears from the instruction that --
9 you objected to the argument made by solicitor
10 as to ---

11 MR. BUTLER: Yes, sir, I objected to
12 the State using Mr. Benbow's statement to
13 police as substantive evidence, from arguing
14 that it was true. My position during the
15 testimony and now is that it was only admitted
16 for impeachment and perhaps improperly so
17 since there was no foundation I was objecting
18 to his using it as substantive evidence in his
19 argument. My understanding was that Your
20 Honor overruled my objection but, yet, gave a
21 curative instruction ---

22 THE COURT: I overruled the
23 objection because obviously I didn't agree
24 with you in the first place.

25 MR. BUTLER: Yes, sir.

1 THE COURT: I believe that he could
2 argue Mr. Benbow -- but I reminded them that
3 the statements had to be -- I think that is a
4 hypothetical argument in the first place.

5 MR. BUTLER: Yes, sir, it is.

6 THE COURT: It goes to the issue of
7 whether they should have heard it.

8 MR. BUTLER: Yes, sir.

9 THE COURT: I assume you were
10 protecting the record for there being ---

11 MR. BUTLER: I've -- I didn't want
12 to have the Court of Appeals tell me that I've
13 waived something when I didn't.

14 THE COURT: Understood. That's
15 precisely why I said I am overruling but out
16 of an abundance of caution I put ---

17 MR. BUTLER: Yes, sir, and I want
18 to put on the record that I am relying on
19 *State v. Copeland*, 300 S.E. 2nd, 63.

20 THE COURT: Thank you, sir.
21 (To law clerk), pull that case, I want to read
22 that case. What was that number again?

23 MR. BUTLER: 300 S.E. 2nd, 63.

24 THE COURT: (Upon review), ---

25 (OFF RECORD SIDEBAR WITH LAW CLERK

1 AND COURT REPORTER)

2 THE COURT: All right, we are at-
3 ease.

4 (NOTIFIED OF JURY REQUEST @ 3:07 P.M.)

5 THE COURT: We have a request from
6 the jury that they want a copy of the charge.
7 I'll print what I read to them and let you'all
8 look at it. This (jury note) will be Court's
9 Exhibit 3.

10 (SO ENTERED AS COURT'S EXHIBIT 3)

11 (JURY IN DELIBERATION)

12 (NOTIFIED OF JURY REQUEST TO REHEAR
13 TESTIMONY OF BENBOW & JENNINGS RECEIVED
14 AT 3:50 P.M.)

15 (DEFENDANT PRESENT)

16 THE COURT: We have a request from
17 the jury to rehear the testimony of Marquine
18 Benbow and of the security officer, Mr.
19 Jennings, and "any other testimony related".

20 COURT REPORTER: Court's Exhibit 4.

21 (SO ENTERED AS COURT'S EXHIBIT 4)

22 THE COURT: "Any other testimony",
23 I am going to tell them that they have to be
24 specific if they want anyone with North
25 Charleston or -- they have to figure that out

1 and let us know. All bring, bring in the
2 jury.

3 (JURY IN @ 4:00 P.M.)

4 THE COURT: Thank you, Ladies and
5 Gentlemen. I have your note requesting to
6 rehear the testimony of Benbow and of Mr.
7 Jennings, the security guard at North
8 Charleston Inn. Ms. Garrison has located that
9 testimony and will replay it for you now. We
10 will play it all or we will play as much of
11 the testimony as you want to hear. If you
12 reach a point where you have heard enough,
13 just raise your hand. Ms. Garrison, who are
14 you going to do first?

15 COURT REPORTER: The following is
16 the testimony of Marquine Benbow, direct
17 examination by Mr. Voight (reading):

18 MARQUINE BENBOW, *being duly*
19 *sworn to tell the truth, the whole truth and*
20 *nothing but the truth, testified, as follows:*

21 DIRECT EXAMINATION

22 BY MR. VOIGHT:

23 Q. Marquine Benbow, is that right?

24 A. (No verbal response).

25 Q. Mr. Benbow, I want you to speak loudly

1 enough that the jury can heard you. Okay?

2 A. (No verbal response).

3 Q. Do you know William Coaxum?

4 A. No, sir.

5 Q. You've never seen William Coaxum?

6 A. (No verbal response).

7 Q. Were you arrested on November the 27th by
8 the North Charleston Police Department?

9 A. Yes, sir.

10 Q. Were you charged with the robbery of the
11 Pizza Hut and the North Charleston Inn on that
12 day?

13 A. Yes, sir.

14 Q. Did you also plead guilty to armed robbery
15 of those ---

16 A. Yes, sir.

17 Q. And are you serving time in SCDC for both
18 of those armed robberies?

19 A. Yes, sir.

20 Q. Do you remember being in court when you
21 pled guilty?

22 A. Yes, sir.

23 Q. And the judge asked you what you did that
24 made you guilty?

25 A. (No verbal response).

1 Q. Do you remember that?

2 A. Yes, sir.

3 Q. Do you remember telling the judge?

4 A. Yes, sir.

5 Q. Do you remember giving a statement to the
6 North Charleston Police Department?

7 COURT REPORTER: Objection by Mr.
8 Butler, sidebar with the Court.

9 Examination of Mr. Benbow by Mr.

10 Voight continued, (reading):

11 Q. You pled guilty. When did you plead
12 guilty, do you recall?

13 A. It was -- when I went to court?

14 Q. Yes?

15 A. I believe that it was November the 18th.

16 Q. Of last year?

17 A. Yes, sir?

18 Q. And when you pled guilty, you waived your
19 rights.

20 A. (No verbal response).

21 Q. One of the rights that you waived was your
22 Fifth Amendment right to remain silent. Did
23 the judge talk to you about that right?

24 A. (No verbal response).

25 Q. Do you recall?

1 A. Um-humm.

2 Q. And you told the judge what you did at
3 the North Charleston Inn and at the Pizza Hut,
4 right?

5 A. Um-humm.

6 THE COURT: You need to answer with
7 words, please. Was that a "yes" or a "no"?

8 THE WITNESS: Yes, sir.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. VOIGHT:

11 Q. Did you tell the judge that you held a gun
12 to anyone?

13 A. No, sir.

14 Q. Did you hold a gun to anyone?

15 A. No, sir.

16 Q. Somebody else held the gun, didn't they?

17 A. I don't remember.

18 Q. You remember what you did, right?

19 A. Yes.

20 Q. You went into the North charleston Inn --
21 were you by yourself?

22 A. No.

23 Q. Were you with somebody else?

24 A. Uh -- I don't recall.

25 Q. Do you suffer from amnesia?

1 A. No, sir.

2 Q. Do you suffer from any mental defect(s)
3 that would cause you not to remember what you
4 did when you held up the North Charleston Inn
5 or the Pizza Hut?

6 A. No, sir.

7 Q. You remember very clearly going into the
8 North Charleston Inn, don't you?

9 A. Yeah. Yes, sir.

10 Q. You remember going into the Pizza Hut,
11 don't you?

12 A. Yes, sir.

13 Q. You remember William holding the shotgun,
14 don't you?

15 A. No, I don't remember that.

16 Q. Did you hold the shotgun?

17 A. No, sir.

18 Q. A shotgun was held, wasn't it?

19 A. I don't remember that.

20 Q. You don't remember?

21 A. (No verbal response).

22 Q. You -- just to be clear, you don't know
23 this man at all?

24 A. (No verbal response).

25 Q. This gentleman sitting at this table? But

- 1 you don't know this gentleman, do you?
- 2 A. I don't remember seeing him.
- 3 Q. Are you afraid of him?
- 4 A. No, sir.
- 5 Q. Are you afraid of being a rat?
- 6 A. No, sir.
- 7 Q. Are you afraid of being a snitch?
- 8 A. No, sir.
- 9 Q. Are you afraid of punking out a friend?
- 10 A. No, sir.
- 11 Q. Did you rob the Pizza Hut all by yourself?
- 12 A. No, sir.
- 13 Q. Was somebody with you?
- 14 A. Uh -- yeah.
- 15 Q. Who was that person?
- 16 A. I don't recall his name.
- 17 Q. How did you get to the Pizza Hut?
- 18 A. His car.
- 19 Q. Whose car?
- 20 A. The person's that I was with.
- 21 Q. What colored car was it?
- 22 A. I don't recall.
- 23 Q. Was it blue?
- 24 A. I don't think so.
- 25 Q. This other person who you don't remember,

1 *did he hold the gun?*

2 A. *I don't recall.*

3 Q. *Did you hold the gun?*

4 A. *No, sir.*

5 Q. *Was a gun held?*

6 Q. *I don't recall.*

7 Q. *The lady at the North Charleston Inn, she*
8 *didn't give up the money without there being a*
9 *gun used; did she?*

10 A. *No, sir.*

11 Q. *The lady at the Pizza Hut, she didn't give*
12 *up her cash drawer without there being a gun*
13 *used; did she?*

14 A. *I was not inside the Pizza Hut.*

15 Q. *You were not inside the Pizza Hut?*

16 A. *No, sir.*

17 Q. *You never went inside?*

18 A. *No, sir.*

19 Q. *But you pled guilty for robbing the Pizza*
20 *Hut?*

21 A. *Because I was part of the crime.*

22 Q. *You were a part of the crime?*

23 A. *Yes, sir.*

24 Q. *What part?*

25 A. *Standing outside, sir.*

1 Q. Standing outside?

2 A. (Affirmative nod).

3 Q. How many people went in the Pizza Hut?

4 A. One.

5 Q. Do you remember talking to Detective Shawn

6 Patrick with the North Charleston Police

7 Department?

8 A. No, sir.

9 Q. Do you remember giving a statement to him?

10 A. Yes, sir.

11 Q. Do you remember telling him that "William

12 got the shotgun from the back floorboard", did

13 you ever tell him that?

14 A. I don't remember telling him no names,

15 sir.

16 Q. Do you remember telling him that "William

17 told me to follow him and we went inside,

18 William pointed the gun at the clerk and told

19 her to give him the money"?

20 A. (No verbal response).

21 Q. Do you remember that?

22 A. I remember -- I don't remember saying no

23 names, sir.

24 Q. Do you remember saying "after she emptied

25 the register, William told her to get the

1 money out of the safe." Do you remember that?

2 A. I don't remember saying no names at all,
3 sir.

4 Q. Do you remember saying, "William said
5 'come on' and we ran to the car and towards
6 Dorchester Road on Montague. William pulled
7 the money out of his left pocket and said
8 'this ain't enough' -- do you remember saying
9 that?

10 A. No, sir.

11 Q. Do you remember saying, "William drove to
12 Dorchester Road and then made a left onto
13 Dorchester and the Pizza Hut was on the right-
14 hand side and I told William that I thought it
15 was open." Do you recall that, saying that?

16 A. No, sir.

17 Q. You remember going to the Pizza Hut and
18 thinking it was open, right?

19 A. Yes, sir.

20 Q. Do you remember knocking on the front
21 door?

22 A. No, I never knocked on the front door.

23 Q. Do you remember saying, "We parked the car
24 at Checkers and walked over to the Pizza Hut",
25 do you remember saying that?

1 A. No, sir.

2 Q. Do you remember saying, "William was
3 standing along the side of the building and
4 told me to go to the front door that was
5 open." Do you remember saying that?

6 A. No, sir.

7 Q. Do you remember saying, "I checked the
8 front door and it was locked."

9 A. (No verbal response).

10 Q. Do you remember telling Detective Patrick
11 that?

12 A. No, sir.

13 Q. Do you remember telling Detective Patrick,
14 "I walked in the back door and William must
15 have already opened it. William pulled the
16 gun out on one black male and another black
17 male was walking away." Do you remember
18 saying that?

19 A. No, sir.

20 Q. Do you remember saying that, "William told
21 me to 'get him', that he might call the
22 police?"

23 A. No, sir.

24 Q. Do you remember saying, "I told the guy
25 to get inside and he walked back in"?

1 A. No, sir.

2 Q. So when you were at the Pizza Hut, did
3 you round up people back into the Pizza Hut so
4 they wouldn't get away and tell the police?
5 Is that what you did?

6 A. No, sir, I was standing outside.

7 Q. And nobody tried to get away?

8 A. Not that I saw.

9 Q. Do you remember telling the judge all of
10 this when you pled guilty?

11 A. No, sir.

12 Q. Because you did remember it back then,
13 didn't you?

14 A. Yeah. Yes, sir.

15 Q. You didn't tell the judge that you didn't
16 remember, did you?

17 A. No, sir.

18 Q. You told the judge that you walked inside,
19 didn't you?

20 A. No, sir.

21 Q. Do you remember telling Detective Patrick
22 that "William made the white (sic) female to
23 set the money out on the register and my job
24 was to watch the other two black guys." Do
25 you remember saying that?

1 A. No, sir.

2 Q. Do you remember telling Detective Patrick
3 that, "she gave him the money and (he) told
4 her to get the money out of the safe. She told
5 him that she couldn't open the safe. William
6 told them all to get in the back of the store,
7 then me and William ran out the back and got
8 into the car." Do you remember telling
9 Detective Patrick that?

10 A. No, sir.

11 Q. Do you remember telling Detective Patrick
12 where you had the same shotgun during this
13 robbery?

14 A. (No verbal response).

15 Q. You don't remember any of that?

16 A. No, sir.

17 Q. You don't know who William Coaxum is?

18 A. No, sir.

19 Q. You didn't rob the Pizza Hut on November
20 27th, 2007, with William Coaxum?

21 A. No, sir.

22 Q. You did it by yourself?

23 A. No, sir.

24 Q. Did you rob the North Charleston Inn on
25 the 26th of November, 2007, with William

1 Coaxum?

2 A. No, sir.

3 Q. Did you do it by yourself?

4 A. No, sir.

5 Q. Who did you do it with?

6 A. I don't recall his name.

7 COURT REPORTER: Cross examination
8 by Mr. Butler, (reading):

9 Q. Mr. Benbow, you've never met me, have you?

10 A. (No verbal response).

11 Q. You and I have never talked? Right?

12 A. (No verbal response).

13 THE COURT: You need to answer.

14 Was that a "yes" or a "no"?

15 THE WITNESS: Uh, -- no, sir.

16 THE COURT: Thank you.

17 CROSS EXAMINATION CONTINUED

18 BY MR. BUTLER:

19 Q. And nobody from my office has ever come
20 and talked with you?

21 A. No, sir.

22 Q. This statement that Mr. Voight was asking
23 you about. You never wrote out a statement,
24 did you? The detective wrote out the
25 statement?

1 A. Yes, sir.

2 MR. BUTLER: That's all that I have.

3 THE COURT: Redirect, Mr. Voight?

4 MR. VOIGHT: No redirect, Your
5 Honor.

6 COURT REPORTER: The following is
7 testimony of Keith Jennings's direct
8 examination by Mr. Voight, (reading):

9 KEITH JENNINGS, being duly
10 sworn to tell the truth, the whole truth and
11 nothing but the truth, testified, as follows:

12 DIRECT EXAMINATION

13 BY MR. VOIGHT:

14 Q. Mr. Jennings, where do you work?

15 A. I work for Trident Security.

16 Q. How long have you worked security?

17 A. I have been doing it for right at eight
18 years.

19 Q. Were you working for Trident Security on
20 November the 27th, 2007?

21 A. Yes, I was.

22 Q. Where were you assigned that night?

23 A. North Charleston Inn.

24 Q. What shift were you working that night?

25 A. I was working the 10:00 to 6:00.

1 Q. If you know, who was working as the night
2 clerk at the North Charleston Inn that night?

3 A. All I know is her last name is "Smith". I
4 didn't know her first name.

5 Q. Did you have a chance to talk with her at
6 all when you checked in?

7 A. Well, that's what we do when we come in.
8 We've got to check in with them first.

9 Q. What are your duties as a security guard
10 when you are assigned to the Charleston Inn?

11 A. Mainly just walk around the parking lot to
12 make sure that none of the cars are broken
13 into, and walk around on the inside over by
14 where the bar and everything's at to make sure
15 that everything is going all right inside the
16 bar; watching out for -- (pause).

17 Q. Did you have occasion on the night of the
18 27th to call 9-1-1?

19 A. Yes, sir.

20 Q. Why did you call 9-1-1?

21 A. Well, I was making my rounds and when I
22 came around to the front of the building where
23 the lobby is at I noticed two black gentlemen,
24 one with a gun and another standing off to his
25 left. That's when I called. I was standing

1 *behind one of the three pillars that were*
2 *standing there, I stood behind them and called*
3 *9-1-1.*

4 *Q. What did the gentlemen do next?*

5 *A. Well, he had the gun to the young lady's*
6 *head. The guy to his left was kinda of, I*
7 *reckon, looking like a lookout or whatever.*
8 *When she -- after they did what they did, she*
9 *ran in the back door (sic), which it*
10 *automatically locks for certain reasons just*
11 *for that.*

12 *He come -- they come running out and*
13 *I was standing behind the pillar. The young*
14 *guy kind of had his head down and the older*
15 *gentleman looked right at me. I don't think*
16 *he realized that I was standing there.*

17 *Q. Did they leave on foot, did they catch a*
18 *bus, what did they do ---*

19 *A. No, sir. They got into an orange -- I*
20 *thought it was a Suzuki. I'm not much for*
21 *cars, so I don't know ---*

22 *Q. But you know the color was orange?*

23 *A. Yeah, it was orange.*

24 *Q. Do you know which one of them got in the*
25 *driver's seat?*

1 A. I didn't really see who got in the -- it
2 happened so fast and all I was thinking about,
3 was worrying about her in the motel.

4 Q. Was that the first time that you had seen
5 the orange car?

6 A. No, I had seen it earlier when I was just
7 starting my rounds. I seen it pull up to the
8 motel. That late at night it's not unusual
9 for people to check in.

10 Q. Did you see anybody in the car when it was
11 pulling ---

12 A. There was two gentlemen in the car.

13 Q. What did you do after you first saw the
14 car?

15 A. I didn't think too much about it. I just
16 kinda looked at them and then just walked/
17 continued my rounds. You know, the ---

18 Q. About how long did your round take?

19 A. A little less than ten minutes.

20 Q. And how far away from the gentlemen were
21 you the next time that you saw them?

22 A. I was from about here to where you are
23 standing at, probably, in that area.

24 A. Was there anything obstructing your view,
25 anything between you and the gentlemen?

1 A. No, there wasn't.

2 Q. Did you see Ms. Smith?

3 A. Yes, she was standing behind the counter
4 when the guy was holding the gun to her and
5 then after -- apparently he -- I don't know if
6 he got anything, I didn't see him get
7 anything, but she ran into the back room where
8 the back door automatically locks for security
9 reasons.

10 Q. Is that front desk area well lit?

11 A. Yes, very well lit.

12 Q. About how long do you look at them from
13 that distance?

14 A. Probably two or three minutes, maybe.
15 Because once they did that, they we went --
16 they went pretty quick and I noticed that when
17 they came that the older gentleman -- I don't
18 know if he was just looking around to see if
19 anybody was around or anything but I looked
20 right at him.

21 Q. Did you get a good look at his face?

22 A. Yes, I did.

23 Q. You describe him as the older gentleman?

24 A. Yes.

25 Q. Was there a discrepancy in the ages of the

1 two men?

2 A. Yeah, the other guy looked like he was in
3 his teens, he was a younger fellow.

4 Q. Did you see the younger fellow with a gun?

5 A. No.

6 Q. When you got a good look at the older
7 gentleman, what was the lighting like?

8 A. It's pretty lit up. It -- where they
9 were, they pull up to the motel where they
10 check in, so they -- we've got to keep it
11 pretty well lit up so that they can -- so we
12 can see in or out. That way we can see
13 anybody who comes in or out.

14 Q. Was the older gentleman clean-shaven or
15 did he have facial hair?

16 A. He has like a little goatee-like thing,
17 but it -- it wasn't really bad looking, it was
18 just a little goatee-like type thing.

19 Q. What was the older gentleman wearing?

20 A. I thought that it was a gray-and-white
21 jacket. I thought it was camouflage. All I
22 know is that it looked camouflage to me.

23 Q. Did you called 9-1-1 before the gentlemen
24 left or after the gentlemen left?

25 A. Before he (sic) left. I was standing

1 *behind that pillar calling them when he came*
2 *out. That is when I told the police that they*
3 *were coming out and that they'd gotten into*
4 *that orange car and took a right on Montague.*

5 *Q. You told the police about the orange car?*

6 *A. Yes, sir.*

7 *Q. What did you do after the gentlemen left?*

8 *A. I went in and checked on the young lady.*

9 *Q. How did she appear to you?*

10 *A. She was scared, crying and upset.*

11 *Q. How long after the gentlemen left did it*
12 *take for the police to get there?*

13 *A. Not very long, three to five minutes.*

14 *Q. Did there come a time when the police*
15 *asked you to go with them?*

16 *A. Yes, they did.*

17 *Q. Did you go with the young lady or did you*
18 *go separately?*

19 *A. We went separately.*

20 *Q. Did you take your car or did they drive*
21 *you?*

22 *A. No, I rode with the policeman.*

23 *Q. Were you in the front seat or the*
24 *backseat?*

25 *A. Front seat.*

1 Q. Where did they take you?

2 A. Took me to Rivers Avenue.

3 Q. What did you see when you got to Rivers
4 Avenue?

5 A. I noticed a lot of police cars and an
6 orange car that had hit a fire hydrant off to
7 the right.

8 Q. Was it the same orange car that you had
9 seen at the North Charleston Inn?

10 A. Yes, it was.

11 Q. Did they show you anybody out there, did
12 the police show you anybody?

13 A. Yes, they showed me the older gentleman.

14 Q. The gentleman that they showed you, did
15 you tell them what if any role in the armed
16 robbery that he had?

17 A. Yes. He had asked me was he one of them
18 and I just -- I thought for a few minutes
19 because I wanted to make sure that I got it
20 right and I -- after I looked at him, I said
21 'yeah', that that was him, that he was the one
22 that was holding the gun.

23 Q. Do you see the man who was holding the
24 gun, in the courtroom today?

25 A. Yes, I do.

1 COURT REPORTER: Objection by Mr.

2 Butler, noted by the court. (Reading):

3 DIRECT EXAMINATION CONTINUED

4 BY MR. VOIGHT:

5 Q. Would you point -- would you describe
6 where he is and what he is wearing?

7 A. He is wearing a gray suit over to the
8 left.

9 Q. Are you certain that that was the man with
10 the gun?

11 A. Yes, I am.

12 MR. VOIGHT: Thank you, I have no
13 further questions.

14 THE COURT: You may cross examine.

15 MR. BUTLER: May it please the
16 Court.

17 THE COURT: Yes, sir.

18 CROSS EXAMINATION

19 BY MR. BUTLER:

20 Q. Good morning, Mr. Jennings.

21 A. How you doing?

22 Q. I'm fine. Thank you for asking. I just
23 have a few questions. When you first see the
24 two men -- you recall the area that they were
25 in was in the lobby?

1 A. Yes, sir, they were in the lobby ---

2 Q. And you were outside?

3 A. Yes, I am outside by the pillars where the
4 driveway is, where they come to check in at.

5 Q. And you are seeing what is going on inside
6 through a window?

7 A. Yes, sir.

8 Q. And -- because you talked about seeing
9 them two separate times, I want to make sure
10 that we get the distances right. When you see
11 them and you are outside, how far away are
12 you?

13 A. When I am outside and he's inside, he is
14 probably to the double doors.

15 Q. Back here (indicating doors into
16 courtroom)?

17 A. Yeah.

18 Q. Then when the two men exit, that's when
19 you are about this far away?

20 A. Yeah. Yes, sir.

21 Q. From where you are to the prosecutor's
22 table?

23 A. Yes, sir.

24 Q. And you described the car as a Suzuki.

25 Did you tell the police that it was a Dodge

1 Neon?

2 A. No, I really don't know exactly what it
3 was. It was just an orange car. I just kinda
4 guessed at what it was, I didn't see exactly.
5 All I know is that it was orange.

6 Q. Yes, sir.

7 MR. BUTLER: Beg the court's
8 indulgence.

9 THE COURT: Yes, sir, take your
10 time.

11 MR. BUTLER: Thank you, Mr.
12 Jennings, that is all that I have.

13 THE COURT: Redirect?

14 MR. VOIGHT: No redirect at this
15 time.

16 THE COURT: Thank you, Mr.
17 Jennings, you may step down.

18 THE COURT: Thank you, Ladies and
19 Gentlemen. You may retire to your jury room
20 and continue with your deliberations.

21 (JURY OUT @ 4:40 P.M.)

22 THE COURT: Any objections or
23 exceptions from the State?

24 MR. VOIGHT: None, Your Honor.

25 THE COURT: Any objections or

1 exceptions from the Defendant?

2 MR. BUTLER: Only to add -- and,
3 like I said, I never know when they are going
4 to tell me that I am -- I am assuming that the
5 objection that I lodged here in real life,
6 real time, ---

7 THE COURT: Continues.

8 MR. BUTLER: --- will continue.

9 THE COURT: It continues.

10 MR. BUTLER: Thank you.

11 (JURY IN DELIBERATION)

12 (JURY NOTE RECEIVED @ 5:15 P.M.)

13 (DEFENDANT PRESENT)

14 THE COURT: We have a note
15 requesting a fifteen-minute break and they
16 want to know how long they can stay. It's
17 whatever you want to do. I don't mind
18 adjourning for the evening and coming back.
19 The rule doesn't allow it.

20 MR. BUTLER: I know. There's been
21 times when I've had to ask the court to
22 enforce it.

23 THE COURT: I will be happy to do
24 whatever you want. I do it by agreement. I
25 think it's kind of crazy because other

1 jurisdictions apparently do it as a matter of
2 course.

3 MR. BUTLER: I have had judges tell
4 that the Rule doesn't read how you and I read
5 it.

6 THE COURT: Well, I don't know how
7 you could read it -- I respect those people,
8 I ---

9 MR. BUTLER: I believe what I've
10 been told is that in capital cases you have
11 people that are ---

12 THE COURT: It doesn't say "in
13 capital cases", ---

14 MR. BUTLER: I know.

15 THE COURT: --- I don't believe.

16 MR. BUTLER: It doesn't.

17 THE COURT: I mention that but
18 unless there is an agreement, given the nature
19 of this, if you are uncomfortable with that, I
20 understand.

21 MR. BUTLER: Well, let me go through
22 it in my head.

23 THE COURT: Fine. No rush.

24 COURT REPORTER: Court's Exhibit 5.,

25 (SO ENTERED AS COURT'S EXHIBIT 5)

1 MR. BUTLER: I believe that I would
2 agree.

3 THE COURT: You agree?

4 MR. BUTLER: Yes.

5 THE COURT: Does the State agree?

6 MR. VOIGHT: What time ---

7 THE COURT: Oh, I don't know. I
8 will wait until they -- when they come back
9 from their fifteen-minute break, we will bring
10 them in and answer their question and tell
11 them that we will wait as long as they want,
12 or if they want to work to a point and stop
13 and then adjourn for the evening, then return,
14 -- they apparently don't want to come back. I
15 understand. I don't want to pressure them. I
16 find it is helpful for them not to feel
17 pressured if we let them make the decision.

18 The only time that I've had it
19 backfire and I didn't do it for several years
20 afterwards and I said, 'no, that's just not
21 fair.' I did it in Manning. I do it
22 customarily and I'd do it over objections in
23 civil cases though I am not so inclined in
24 criminal cases. We had a criminal case and I
25 did it and said to be back at 9:30. I wish I

1 had thought about it because I -- I really
2 could have just sent them back home. The
3 defense counsel moved for a mistrial when one
4 juror didn't show up. I probably could have
5 just -- we tried to find the guy, he'd gone to
6 work, gone out of town. We could have simply
7 sent the jurors home until tomorrow and then
8 bring that juror in. I found him in contempt
9 of court, sentenced him and then came back
10 about three weeks later and commuted it, so to
11 speak. I just -- you know, that's a risky
12 business too.

13 MR. VOIGHT: And we're down to
14 twelve.

15 THE COURT: Mr. Williams, please
16 let me know when all the jurors get back from
17 their break.

18 BAILIFF: Yes, sir.

19 (OFF RECORD DISCUSSION RE:

20 VARIOUS CASES AND EXPERIENCES

21 UNRELATED TO CURRENT CASE

22 DEFENDANT NOT PRESENT DURING RECESS)

23 BAILIFF: Jurors are all present
24 now, Your Honor.

25 THE COURT: Let's bring in the

1 Defendant.

2 (DEFENDANT PRESENT)

3 THE COURT: Let the record reflect
4 that the Defendant is present. Bring in the
5 jury, please. I will inquire and tell them
6 what the options are. What is the State's
7 position concerning recessing?

8 MR. VOIGHT: I have no objection.

9 THE COURT: Thank you, and you (Mr.
10 Butler) still have none?

11 MR. BUTLER: I have no objection.

12 THE COURT: Which was this?

13 COURT REPORTER: Court's Exhibit 5.

14 BAILIFF: Judge, -- (sidebar).

15 THE COURT: That's no problem.
16 They say that they may be close, so we --
17 that's good.

18 (JURY IN DELIBERATIONS)

19 (ADVISED OF PIZZA HUT VERDICT @ 6:25 P.M.)

20 THE COURT: We have a note that
21 says, "We have reached a decision on the Pizza
22 Hut." They are still struggling on the
23 Charleston Inn charges. I don't know what the
24 decision is? Do you want to take the Pizza
25 Hut and see where we are or do you ---

1 MR. VOIGHT: I'd say we take the
2 Pizza Hut and see where we are.

3 THE COURT: Mr. Butler?

4 MR. BUTLER: (No verbal response).

5 THE COURT: All right, let's go
6 ahead and receive that verdict. Tell the jury
7 to stop deliberating. Tell the foreperson to
8 bring in just the verdict in the case which
9 they have decided. Stop deliberating and come
10 in, that we want to take the verdict in --
11 this is Court's Exhibit 7?

12 COURT REPORTER: Six.

13 (SO ENTERED AS COURT'S EXHIBIT 6)

14 THE COURT: Exhibit 6 indicates
15 that they have decided one case. Tell her to
16 leave everything in the jury room but bring
17 the verdict form and bring the jury back in.

18 (JURY IN @ 6:30 P.M.)

19 THE COURT: Thank you very much,
20 Ladies and Gentlemen. Madame Foreman, I
21 understand that the jury, according to the
22 last message, which is Court's Exhibit 6, you
23 indicated that the jury has decided the Pizza
24 Hut but is still continuing deliberations on
25 the North Charleston Inn issue.

1 FORELADY: Correct.

2 THE COURT: You have brought with
3 you the verdict forms on the Pizza Hut case?

4 FORELADY: Yes.

5 THE COURT: If you would, pass
6 those to the court.

7 FORELADY: (Complies).

8 THE COURT: (Upon review), those
9 verdict forms have been properly completed. I
10 am going to ask you, Mr. Callahan (Clerk), to
11 publish those verdicts. Mr. Coaxum, you may
12 remain seated.

13 CLERK: The verdict in the State of
14 South Carolina versus William Coaxum, Jr.,
15 Defendant, as to Indictment 08-GS-10-2629,
16 "We the jury by unanimous consent find the
17 Defendant guilty of armed robbery occurring at
18 the Pizza Hut located at 4391 Dorchester Road
19 in Charleston County, South Carolina."
20 Signed, Patricia Norlander as foreperson of
21 the jury, January 13th, 2009.

22 Ladies and Gentlemen, if this was
23 your verdict, please raise your right hand --
24 (unanimous response).

25 Please let the record reflect that

1 all twelve jurors raised their right hand.

2 The other verdict form, in the matter
3 of William Coaxum, Jr., Defendant, Indictment
4 08-GS-10-2630, "We the jury by unanimous
5 consent find the Defendant guilty of the
6 possession of a firearm during the commission
7 of a violent crime occurring at the Pizza Hut
8 located at 4391 Dorchester Road in Charleston
9 County, South Carolina." Signed Patricia
10 Norlander as foreperson on the jury on January
11 13th, 2009.

12 Ladies and Gentlemen of the jury, if
13 this was your verdict, please raise your right
14 hand -- (unanimous response).

15 Please let the record reflect that
16 all twelve jurors raised their right hand.

17 THE COURT: Very well. Anything
18 further from the State for the jury concerning
19 this verdict?

20 MR. VOIGHT: Not concerning this
21 verdict.

22 THE COURT: Very well. Anything
23 from Mr. Coaxum concerning this verdict?

24 MR. BUTLER: Yes, we would request
25 a polling of the jury.

1 THE COURT: Certainly. Ladies and
2 Gentlemen, what is going to happen now is that
3 Mr. Callahan (Clerk) is going to call your
4 name and he is going to ask you two questions:

5 One, was that your verdict?

6 Two, is that still your verdict?

7 If you will just follow his questions
8 we will get through that very quickly. Thank
9 you, Mr. Callahan.

10 CLERK: Juror Number 200, Patricia
11 Norlander, were those your verdicts?

12 JUROR NUMBER 200: Yes.

13 CLERK: Are they still your
14 verdicts?

15 JUROR NUMBER 200: Yes.

16 CLERK: Juror Number 14, Illa
17 Barnes, were those your verdicts?

18 JUROR NUMBER 14: Yes.

19 CLERK: Are they still your
20 verdicts?

21 JUROR NUMBER 14: Yes.

22 CLERK: Juror 73, Angientia Deveau,
23 were those your verdicts?

24 JUROR NUMBER 73: Yes, sir, they
25 were.

State of South Carolina v. William Coaxum
Case No. 08-GS-10-2629 et al
Jury Trial of January 12-13, 2009
Before The Honorable R. Markley Dennis, Jr.

1 CLERK: Are they still your
2 verdicts?
3 JUROR NUMBER 73: Yes, sir.
4 CLERK: Thank you. Juror Number 78,
5 Jane Dowd.
6 JUROR NUMBER 78: Yes, sir.
7 CLERK: Were those your verdicts?
8 JUROR NUMBER 78: Yes, sir.
9 CLERK: Are they still your
10 verdicts?
11 JUROR NUMBER 78: Yes, sir.
12 CLERK: Juror 176, Tonya Matthews,
13 were those your verdicts?
14 JUROR NUMBER 176: Yes.
15 CLERK: Are they still your
16 verdicts?
17 JUROR NUMBER 176: Yes, sir.
18 CLERK: Juror 229, Patrice
19 Robertson, were those your verdicts?
20 JUROR NUMBER 229: Yes.
21 CLERK: Are they still your
22 verdicts?
23 JUROR NUMBER 229: Yes.
24 CLERK: Juror 233, Adam Rohas, were
25 those your verdicts?

1 JUROR NUMBER 233: Yes.

2 CLERK: Are they still your
3 verdicts?

4 JUROR NUMBER 233: Yes.

5 CLERK: Are they still your
6 verdicts?

7 JUROR NUMBER 233: Yes.

8 CLERK: Juror 243, Michael Sharpe?

9 JUROR NUMBER 243: Yes, sir?

10 CLERK: Were those your verdicts?

11 JUROR NUMBER 243: Yes, sir.

12 CLERK: Are they still your
13 verdicts?

14 JUROR NUMBER 243: Yes, sir.

15 CLERK: Juror 276, Louis Wachsmuth.

16 JUROR NUMBER 276: Yes, sir.

17 CLERK: Were those your verdicts?

18 JUROR NUMBER 276: Yes, sir.

19 CLERK: Are they still your
20 verdicts?

21 JUROR NUMBER 276: They are, yes.

22 CLERK: Juror Number 323, Martha
23 Morgan. Were those your verdicts?

24 JUROR NUMBER 276: Yes.

25 CLERK: Are they still your

1 verdicts?

2 JUROR NUMBER 276: Yes, sir.

3 CLERK: 209, Brooke Pennell, were
4 those your verdicts?

5 JUROR NUMBER 209: Yes, sir.

6 THE COURT: Are they still your
7 verdicts?

8 JUROR NUMBER 209: Yes, sir.

9 CLERK: Is there any juror whose
10 name I did not call? If so, please raise your
11 hand. (No response).

12 Your Honor, the jury has been polled
13 and the verdict stands.

14 THE COURT: Thank you, Mr.
15 Callahan. The jury has been polled and thank
16 you very much, the verdict does stand.
17 Anything further from the jury panel as to
18 this verdict in this case?

19 MR. VOIGHT: (Negative gesture).

20 MR. BUTLER: No, sir.

21 THE COURT: Ladies and Gentlemen, I
22 am going to ask that you retire to your jury
23 room for just a few moments. I will be with
24 you in just a couple of moments. There are a
25 couple of matters that I need to take up out

1 of your presence. Do not begin your
2 deliberations until I give you further
3 instructions.

4 (JURY OUT @ 6:34 P.M.)

5 THE COURT: All right, does the
6 State wish for the jury to continue to try to
7 decide the other armed robbery case?

8 MR. VOIGHT: No, Your Honor.

9 THE COURT: Any objection to
10 withdrawing that?

11 MR. BUTLER: We have no objection.

12 THE COURT: Thank you very much,
13 sir. I am going to excuse this jury then and
14 advise them that they have completed their
15 service. I will be back in just a moment.

16 (BRIEF RECESS, DEFENDANT AND
17 COUNSEL REMAIN PRESENT)

18 THE COURT: Thank you. Are you
19 ready?

20 MR. BUTLER: Your Honor, at this
21 time I would like to renew all of the ---

22 THE COURT: All your -- okay, let
23 me go through -- no Motions from the State
24 concerning the verdict that was received?

25 MR. VOIGHT: None from the State.

1 THE COURT: Now, I will hear from
2 you, Mr. Butler, but before we get into any
3 other Motions from the Defense, are there any
4 other Motions that you have concerning the
5 verdict?

6 MR. BUTLER: Yes, sir, I would
7 make a Motion for a new trial based on all
8 previously made Motions, specifically my
9 Motion for a directed verdict on the charge
10 that has now been withdrawn from the jury. I
11 think, according to -- I think I am entitled
12 to a directed verdict. I know that Your Honor
13 disagrees but I have to do this -- had I been
14 granted a directed verdict I think we may have
15 had a mistrial, so I have to ask for a new
16 trial based on those grounds.

17 THE COURT: Thank you. I believe
18 -- I believe insofar as the ruling, and I
19 think that I stated, and I reiterated -- the
20 fact that there was testimony and in listening
21 to the testimony being reread to the jury, it
22 really confirms that there -- there were a lot
23 of circumstances that tied-into it, basically
24 the same method, same M.O., in both crimes,
25 number one; number two, didn't "get enough"

1 money; and, number three, again the money
2 being in the pocket, I think, gives rise to
3 an inference.

4 MR. BUTLER: Yes, sir, ---

5 THE COURT: So thank you very much,
6 your Motion -- but it is protected and the
7 court would deny your Motion for a new trial
8 based on that.

9 MR. BUTLER: Thank you.

10 MR. VOIGHT: At this time, Your
11 Honor, I would like -- if I might approach, I
12 am handing to the court sentencing sheets in
13 this case. I am also giving the court a
14 packet indicating the filing of the life-
15 without-parole notice.

16 THE COURT: Okay.

17 MR. VOIGHT: I have also given the
18 court a certified copy of the previous
19 conviction for armed robbery, as well as the
20 original packet that indicated service on
21 December 17th, which Mr. Coaxum refused to
22 sign. The affidavit of that service is not
23 notarized but the very same server that
24 attempted to serve executed a notarized
25 affidavit.

1 THE COURT: Okay. Am I reading
2 this correctly, that he was convicted and
3 sentenced in April of 2008? He hadn't even
4 started serving that sentence?

5 MR. BUTLER: He had started serving
6 the sentence, he was brought from the
7 Department of Corrections where he is serving
8 that sentence.

9 THE COURT: I see. Okay. All
10 right, thank you.

11 All right. Mr. Butler, be happy to
12 hear from you, sir.

13 MR. BUTLER: Thank you, Judge. With
14 respect to the life without parole, I would
15 take issue with whether or not this is a
16 proper life-without-parole case in light of
17 the fact that Mr. Coaxum had no prior
18 conviction at the time that this incident
19 occurred. Unlike a situation where a person
20 had been convicted of a Most Serious offense,
21 served that sentence -- well, wouldn't have
22 even had to have served that sentence, could
23 have gotten into the Department of Correction.

24 THE COURT: Correct.

25 MR. BUTLER: Is convicted of a Most

1 Serious offense, then after the conviction
2 committed another Most Serious offense; which
3 I think is a proper life-without-parole
4 situation. He had no convictions for any Most
5 Serious offense at the time that he committed
6 the offense that the jury has found him guilty
7 of today.

8 The life-without-parole statute is
9 aimed to punish people more severely -- who
10 have already been convicted of a crime,
11 somehow gone through the system -- whether it
12 be through prison or probation or parol -- and
13 not learned their lesson. That is not the
14 situation that we have. He had no convictions
15 at the time of his -- at the time of this
16 offense that he has been found guilty of
17 occurred.

18 THE COURT: Okay. Does the State
19 wish to respond?

20 MR. VOIGHT: Your Honor, I don't
21 have the case in front of me but I know that
22 I've seen this very same situation that's
23 happened before. This gentleman was out on
24 bond for the initial underlying armed robbery,
25 that he ultimately pled guilty for. While he

1 was out on bond he committed the two armed
2 robberies that we have before us today, one of
3 which has led to a conviction, as well as a
4 third armed robbery which I will be null
5 prossing. I believe that the statute leads to
6 -- I think that we can agree that on upon
7 second convictions, and this is a second
8 conviction, the language indicates mandatory
9 ---

10 THE COURT: We talked about that
11 recently. In fact, I -- I have the statute
12 before me right now. It says the provisions
13 of 17-25-45(a) "shall be mandatory", that is
14 pretty -- it is discretionary as to whether
15 or not to seek it, but it is mandatory as to
16 sentencing. That's been my interpretation of
17 the statute, if the records of a prior
18 conviction are present.

19 MR. BUTLER: And I am not
20 disagreeing that is what ---

21 THE COURT: Precisely.

22 MR. VOIGHT: I believe, Your Honor,
23 that this case does meet the statute and
24 requires ---

25 THE COURT: All right. There is no

1 question -- I don't have the date but
2 obviously if he was convicted and tried, this
3 armed robbery didn't occur anywhere near, at
4 any time near this offense, the one that he's
5 been convicted of?

6 MR. VOIGHT: He was arrested on the
7 9th of April, 2007, for that offense.

8 THE COURT: That offense occurred
9 when?

10 MR. VOIGHT: He was arrested on the
11 9th, the night of the -- so he was ---

12 THE COURT: So this offense
13 occurred after the ---

14 MR. VOIGHT: The initial -- the
15 armed robbery for which he pled guilty
16 occurred in April 2007.

17 THE COURT: Right.

18 MR. VOIGHT: The armed robbery for
19 which he was convicted today occurred in
20 November of 2007.

21 THE COURT: Right. So he was on
22 bond for the ---

23 MR. VOIGHT: He was out on bond for
24 the first ---

25 THE COURT: --- April armed

1 robbery?

2 MR. VOIGHT: Yeah.

3 THE COURT: Anything else?

4 MR. BUTLER: No, sir.

5 THE COURT: It is an interesting
6 question and I wanted to look at the statute
7 again because it clearly talks about some of
8 those things about priors and I -- I am not
9 familiar with any case. If there was one, I'm
10 sure that I would have it before me ---

11 MR. BUTLER: I don't believe ---

12 THE COURT: I'm dealing with first
13 impressions here.

14 MR. BUTLER: Yes, sir.

15 THE COURT: The language that gives
16 me concern about what you discuss -- and I
17 don't quarrel with your argument or statement,
18 the purpose of the statute in the first place,
19 but this language seems to be contrary to that
20 philosophy in this respect: Subparagraph (e)
21 -- no, (f). I beg your pardon, it looks like
22 whoever drafted this -- yeah, (f), and it
23 reads, as follows, (reading):

24 "For the purpose of determining
25 a prior previous conviction under this

1 section..." -- and I am reading parts of it,
2 "a prior or previous conviction shall mean
3 that the defendant has been convicted of a
4 Most Serious of Serious offense, as may be
5 applicable, on a separate occasion prior to
6 the instant adjudication."

7 Next sentence, I quote, (reading):
8 "There is no requirement that the sentence for
9 the prior previous conviction must have been
10 served or completed before a sentence of life
11 without parole can be imposed."

12 You don't even have to serve it, then
13 it would seem to me that it doesn't relate to
14 anything concerning the punishment aspect.

15 MR. BUTLER: You wouldn't have to
16 serve it. For example, somebody could get
17 sentenced ten years and be in the Department
18 of Correction and ---

19 THE COURT: I know, but they could
20 have clearly then said what they needed to but
21 they chose to say something, and I think what
22 they mean, what the intent of the legislature
23 was that ---

24 MR. BUTLER: Yes, sir.

25 THE COURT: So I respect your

1 position and I certainly understand the
2 argument. So ---

3 MR. BUTLER: Well, in light of that,
4 then, usually at this point I would be pre-
5 senting mitigation biographical information,
6 but I've explained to Mr. Coaxum and his
7 mother that there really is nothing that I can
8 say, that your hands are tied.

9 THE COURT: They are. I will say
10 this, uh, it is one of those sections that has
11 given me concern as a judge, and still does.
12 I am not so sure -- I don't like -- and I
13 don't fault, and I am not saying anything
14 improper about the solicitor but it just
15 places a tremendous amount of flexibility and
16 power, for lack of a better word, in the hands
17 of the solicitor to say, 'I am doing it here
18 but I am not going to do it here.' But that
19 is not an issue that needs to be addressed.
20 There is no question that -- I understand the
21 reason for it. The reason for it is that
22 people committing multiple offenses, the State
23 wants to protect society and that's what we're
24 doing. They are not leaving it to judges to
25 fashion sentences.

1 I would -- Mr. Coaxum, according to
2 what I have is 27. I could fashion a sentence
3 that would keep him in jail for -- he would be
4 close to 60. You know, that would be, uh,
5 maybe one way of looking it, sufficient
6 punishment; but, that is not my call.

7 MR. BUTLER: Yes, sir.

8 THE COURT: I thank for you that, I
9 understand that. Mr. Coaxum is there anything
10 else that you would like to say, sir?

11 DEFENDANT: No, sir.

12 THE COURT: The sentence of the
13 court on Indictment 08-GS-10-2629, which is
14 the indictment for armed robbery, the sentence
15 is that I sentence you in accordance with
16 Section 17-25-45, in that I find the requisite
17 prior conviction has been established by the
18 filings that have been submitted to me, -- as
19 I understand that statute, I sentence you to
20 life in prison.

21 08-2630, the sentence is five years
22 and that is concurrent.

23 Good luck to you, sir.

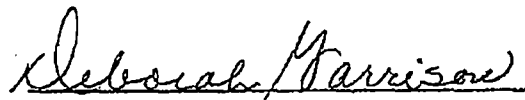
24 (TRIAL CONCLUDED)

25

CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9TH Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the jury
trial held before The Honorable R. Markley
Dennis, Jr., on January 12-13, 2009;

I further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

March 18, 2009

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.

William Coaxum, Sr., Appellant.

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-496
Heard September 12, 2011 – Filed November 7, 2011

REVERSED AND REMANDED

Appellate Defender Elizabeth A. Franklin-Best, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Assistant Deputy Attorney
General Salley W. Elliott, and Senior Assistant
Attorney General Norman Mark Rapoport, and
Assistant Attorney General Mark R. Farthing all of
Columbia; Solicitor Scarlett Anne Wilson, of
Charleston, for Respondent.

PER CURIAM: William Coaxum, Sr., appeals his convictions for armed robbery and possession of a firearm during the commission of a violent felony, arguing the trial court erred in dismissing a juror who revealed she was acquainted with a member of Coaxum's family. We reverse and remand for a new trial.

When a juror conceals information inquired into during voir dire, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn.

State v. Woods, 345 S.C. 583, 587-88, 550 S.E.2d 282, 284 (2001) (internal citation omitted); see State v. Stone, 350 S.C. 442, 448, 567 S.E.2d 244, 247 (2002) (providing the factors to consider before removing a juror for failure to disclose information during voir dire are (1) whether the

concealment was intentional, and (2) whether the information would have been a material factor in the use of a peremptory challenge or would have supported a challenge for cause).

When a party contends a juror should be removed for failure to disclose information during voir dire, Stone requires the trial judge to consider the two criteria from Woods. If the judge finds both of the Woods criteria exist, the judge must remove the juror.

However, if either of the criteria is absent, the judge may not remove the juror on that basis.

State v. Burgess, 391 S.C. 15, 19, 703 S.E.2d 512, 514 (Ct. App. 2010); see generally State v. Bell, 374 S.C. 136, 148, 646 S.E.2d 888, 895 (Ct. App. 2007) (stating where there is no concealment, "the language from Stone regarding whether the information would have been a material factor in the use of a peremptory challenge" does not apply); id. (reviewing the trial court's decision to allow a juror to remain on the jury under the abuse of discretion standard).

Here, there was no evidence the juror's failure to disclose her relationship was intentional. Under Woods and its progeny, the unintentional failure to disclose does not provide an automatic ground for the trial court to remove the juror. Thus, we hold the trial court abused its discretion in removing the juror. Accordingly, we reverse and remand for a new trial.

REVERSED AND REMANDED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Petitioner,

v.

William Coaxum, Sr., Respondent.

Appellate Case No. 2012-206607

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 27452
Heard May 8, 2014 – Filed October 8, 2014

REVERSED

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliott, and Assistant
Attorney General Mark Reynolds Farthing, all of
Columbia, for Petitioner.

Appellate Defender David Alexander, of Columbia, for
Respondent.

CHIEF JUSTICE TOAL: The State appeals the court of appeals' decision to reverse the convictions of William Coaxum, Sr. (Respondent), who was found guilty of armed robbery and possession of a firearm during the commission of a violent crime. *See State v. Coaxum*, Op. No. 2011-UP-496 (S.C. Ct. App. filed Nov. 7, 2011). The court of appeals found reversible error in the trial court's decision to remedy a juror's unintentional nondisclosure during voir dire by replacing the juror in the middle of Respondent's trial. We reverse.

FACTS/PROCEDURAL BACKGROUND

On November 27, 2007, around 11:00 p.m., two armed men robbed a Pizza Hut located in North Charleston, South Carolina. The robbers escaped in an "orange hatchback-type car." Within minutes, the police saw a vehicle matching this description in the same general vicinity of the Pizza Hut and attempted to conduct an investigatory stop. The driver of the vehicle, Respondent, refused to pull over, and a high-speed pursuit ensued.

Within two miles of the start of the chase, Respondent lost control of the vehicle and crashed into a fire hydrant, which caused a water line to rupture. Respondent and his passenger attempted to flee on foot. However, the police car hydroplaned in the water spilling from the broken fire hydrant and collided with Respondent. The police arrested Respondent at the scene of the crash, and their search of his car and person revealed a sawed-off shotgun and over \$1,000 in cash.¹

Prior to Respondent's trial, the trial court conducted voir dire of the prospective jurors. Specifically, the court asked: "Are there any members of the jury panel related [by] blood or marriage, socially or casually connected with [Respondent], or that have any business dealings, any connection whatsoever?" None of the prospective jurors responded. After the judge asked the jury pool several other questions, the parties selected twelve jurors and one alternate juror to serve as jurors during Respondent's trial, including Juror #7.²

¹ Shortly after the passenger was arrested, he gave a written statement to police describing the Pizza Hut robbery in detail and naming Respondent as his co-conspirator.

² The parties selected Juror #7 as the second person to be seated on the jury. Prior to Juror #7's selection, the State had exercised two of its five available peremptory strikes; however, after Juror #7's selection, the State did not exercise any further peremptory strikes. Neither party exercised a peremptory strike during the

At trial, after the State presented the first four of its eight witnesses, the judge received a note from the jury foreperson indicating that Juror #7 recognized one of Respondent's family members sitting in the courtroom. The judge conducted an off-the-record discussion with Juror #7 to determine the nature of her relationship with the family member and whether she could remain impartial during the trial. He then summarized his discussion with Juror #7 on the record.

The judge reported that Juror #7 and Respondent's family member were co-workers, and that the family member previously claimed that Juror #7 was a "distant cousin."³ Juror #7 indicated that, once she recognized Respondent's family member, she felt uncomfortable not disclosing the working and family relationship between the two. She told the judge that the working and family relationships would not affect her decision in the trial.

The solicitor requested Juror #7 be removed from the jury, arguing that although Juror #7's initial nondisclosure during voir dire was unintentional,⁴ "these types of relationships . . . [,] ultimately she may not be able to put it out of her mind." The solicitor further indicated that, had he known of the relationship between Juror #7 and Respondent, no matter how tenuous, he would have exercised one of the State's three remaining peremptory challenges against her.⁵

selection of the alternate juror.

³ The Record is unclear whether Juror #7 truly was related to Respondent's family member, to both the family member and Respondent, or to neither. Juror #7 was "not sure" whether she was a blood relative to Respondent's family. Presumably, her uncertainty is the reason she failed to answer during voir dire when the trial court asked the prospective jurors whether they were "related [by] blood or marriage, socially or casually connected with [Respondent]."

⁴ "Unintentional concealment . . . occurs where the question posed [during voir dire] is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances." *State v. Woods*, 345 S.C. 583, 588, 550 S.E.2d 282, 284 (2001).

⁵ The solicitor detailed his strategy for exercising peremptory strikes, stating that he specifically looked for ties to the community, longstanding employment history, and ties to the defendant or a key witness.

In response, Respondent's counsel argued that alternate jurors do not pay as much attention to the evidence and testimony as the original twelve jurors, despite the court's warnings to the contrary. Therefore, Respondent's counsel argued for a public policy against replacing jurors in the middle of a trial.

After conducting a lengthy inquiry, the trial court found that the alleged connection between Juror #7 and Respondent would have been a material factor in the State's exercise of its peremptory challenges. The court did not view Juror #7's connection with Respondent and his family as a basis for a challenge for cause. However, the court ruled that the connection would have been a legitimate basis for the State's exercise of its peremptory strikes, and that the State would have struck Juror #7 had she disclosed the connection. Therefore, the trial court excused Juror #7 from the jury and replaced her with the alternate juror. The State then called its remaining witnesses, and the jury ultimately convicted Respondent of armed robbery and possession of a firearm during the commission of a violent crime.

The court of appeals reversed Respondent's convictions and remanded the case for retrial, concluding that a trial court may not "automatically" remove a juror for an unintentional failure to disclose requested personal information during voir dire. Further, the court of appeals held that it was an abuse of discretion for the trial court to have removed Juror #7 because, in essence, a trial court may remove a juror mid-trial only if the juror has *intentionally* failed to disclose. This appeal followed.

ISSUE

Whether the trial court abused its discretion in removing Juror #7 for her unintentional failure to disclose her relationship with Respondent's family member during voir dire?

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only" and is "bound by the trial court's factual findings unless they are clearly erroneous." *State v. Wilson*, 345 S.C. 1, 5–6, 545 S.E.2d 827, 829 (2001) (citation omitted). "In order to receive a mistrial, the defendant must show error and resulting prejudice." *State v. Kelly*, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998); *see also State v. Galbreath*, 359 S.C. 398, 402, 597 S.E.2d 845, 847 (Ct. App. 2004) (requiring the defendant to show a prejudicial abuse of discretion (citing *State v. Covington*, 343 S.C. 157, 163, 539 S.E.2d 67, 69–70 (Ct. App. 2000))).

ANALYSIS

"All criminal defendants have the right to a trial by an impartial jury." *State v. Woods*, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001) (citing U.S. Const. amends. VI and XIV). To that end, the jury must render its verdict free from outside influences of all kinds. *Kelly*, 331 S.C. at 141, 502 S.E.2d at 105 (quoting *State v. Cameron*, 311 S.C. 204, 207, 428 S.E.2d 10, 12 (Ct. App. 1993)). To protect both parties' right to an impartial jury, the trial court must conduct voir dire of the prospective jurors to determinate whether the jurors are aware of any bias or prejudice against a party, as well as to "elicit such facts as will enable [the parties] intelligently to exercise their right of peremptory challenge." *Woods*, 345 S.C. at 587, 550 S.E.2d at 284.

"[T]rial judges and attorneys cannot fulfill their duty to screen out biased jurors without accurate information." *Kelly*, 331 S.C. at 145, 502 S.E.2d at 106. Should jurors give false or misleading answers during voir dire, the parties may mistakenly seat a juror who could have been excused by the court, challenged for cause by counsel, or stricken through the exercise of a peremptory challenge. *State v. Gulledge*, 277 S.C. 368, 371, 287 S.E.2d 488, 490 (1982).

In the event of such juror misconduct, the trial court must inquire into whether the withheld information affects the jury's impartiality. *Kelly*, 331 S.C. at 141, 502 S.E.2d at 104. However, the court should not grant a mistrial based on a juror's concealment of information "unless absolutely necessary." *Id.* at 142, 502 S.E.2d at 104. "Instead, the trial judge should exhaust other methods to cure possible prejudice before aborting a trial." *Id.* (citing *State v. Wasson*, 299 S.C. 508, 386 S.E.2d 255 (1989)); *see also State v. Williams*, 321 S.C. 455, 459–60, 469 S.E.2d 49, 52 (1996) (affirming the trial court's decision to seat an alternate juror midtrial after another juror's impartiality came into question); *State v. McDaniel*, 275 S.C. 222, 224, 268 S.E.2d 585, 586 (1980) (same).

We have previously held that a new trial is required "only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." *Woods*, 345 S.C. at 587, 550 S.E.2d at 284 (emphasis added). In the face of a juror's intentional nondisclosure of pertinent information during voir dire, "it may be inferred, nothing to the contrary appearing, that the juror is not impartial." *Id.* at 587–88, 550 S.E.2d at 284. Thus, should the trial court fail to replace such a juror or grant a mistrial, the party need only demonstrate the error of the trial court's decision by

proving the concealment was, in fact, intentional; however, the party need not show prejudice, as the bias against the moving party is inferred, and prejudice from the moving party's inability to strike the juror is apparent. *Id.* at 589, 550 S.E.2d at 285.

In contrast, if a juror's nondisclosure is unintentional, the trial court may exercise its discretion in determining whether to proceed with the trial with the jury as is, replace the juror with an alternate, or declare a mistrial.⁶ *Cf. id.* ("Only where a juror's intentional nondisclosure does not involve a material issue, or where the nondisclosure is *unintentional*, should the trial court inquire into prejudice." (quoting *Doyle v. Kennedy Heating & Serv., Inc.*, 33 S.W.3d 199, 201 (Mo. Ct. App. 2000))). Paralleling the inquiry in cases of intentional concealment, the trial court in the unintentional concealment situation must determine whether the information concealed would have supported a challenge for cause or would have been a material factor in a party's exercise of its peremptory challenges. *State v. Stone*, 350 S.C. 442, 448, 567 S.E.2d 244, 247–48 (2002) (citing *Woods*, 345 S.C. at 587–88, 550 S.E.2d at 284).

However, "where the failure to disclose is innocent, no inference of bias can be drawn." *Woods*, 345 S.C. at 589, 550 S.E.2d at 285. Accordingly, the moving party has a heightened burden to show that the concealed information indicates the juror is potentially biased, and that the concealed information would have been a material factor in the party's exercise of its peremptory challenges. In other words, the moving party must show that it was prejudiced by the concealment because it was unable to strike a potential—and material—source of bias.

⁶ See, e.g., *State v. Sparkman*, 358 S.C. 491, 495–98, 596 S.E.2d 375, 377–78 (2004) (affirming the trial court's refusal to replace a juror when, after the verdict but before the sentencing hearing, the defendant became aware of the juror's unintentional nondisclosure during voir dire); *State v. Stone*, 350 S.C. 442, 448–49, 567 S.E.2d 244, 247–48 (2002) (finding the trial court abused its discretion in removing a juror during the punishment phase of a death penalty trial because of the juror's unintentional nondisclosure during voir dire); *Kelly*, 331 S.C. at 139–44 (affirming the trial court's decision to remove a juror midtrial and replace the juror with an alternate because the juror appeared to be biased); *Williams*, 321 S.C. at 459–60, 469 S.E.2d at 52 (same); *McDaniel*, 275 S.C. at 224, 268 S.E.2d at 586 (same).

Our previous decisions have not focused on the need for this prejudice analysis,⁷ and the court of appeals has periodically omitted it when considering cases involving a juror's unintentional nondisclosure during voir dire. For example, the court of appeals has previously read *Stone* and its progeny to essentially eliminate the trial court's ability to remove a juror for an unintentional concealment, no matter how relevant the information disclosed would have been to exercising a peremptory strike:

When a party contends a juror should be removed for failure to disclose information during voir dire, *Stone* requires the trial judge to consider two criteria from *Woods*. If the judge finds both of the *Woods* criteria exist, the judge must remove the juror. **However, if either of the criteria is absent, the judge may not remove the juror on that basis.** Here, we need only look to the absence of the first criterion to affirm. As in *Stone*, this juror's failure to disclose the information was innocent. Thus, the removal of the juror would have been error.

State v. Burgess, 391 S.C. 15, 19–20, 703 S.E.2d 512, 514–15 (Ct. App. 2010) (bold emphasis added) (citations omitted).

The analysis in *Burgess* is the same analysis used by the court of appeals in Respondent's case; however, we find this analysis to be an improper reading of our prior case law, as it does not consider how material the information would have been to the parties in exercising their peremptory challenges. While the information concealed in *Burgess* may not have been material—and thus the court

⁷ Nonetheless, we have in fact conducted such an analysis. *See, e.g., Sparkman*, 358 S.C. at 497, 596 S.E.2d at 378 ("Because [the juror's] concealment was unintentional our inquiry is over, however, we fail to see how [the defendant] was prejudiced given that the trial judge questioned the jury after the verdict."); *Stone*, 350 S.C. at 448, 567 S.E.2d at 247–48 (finding that a juror's "scant acquaintance" with the defendant's family would not have prejudiced the State had the juror remained on the jury); *Kelly*, 331 S.C. at 142, 502 S.E.2d at 104 ("While it was improper for Juror O to possess this pamphlet, in our opinion, appellant failed to show prejudice."); *Williams*, 321 S.C. at 460, 469 S.E.2d at 52 ("[W]e discern no prejudice to [the defendant] from the seating of the alternate juror here."); *McDaniel*, 275 S.C. at 224, 268 S.E.2d at 586 ("Moreover, appellant has failed to establish in what manner this procedure prejudiced him.").

of appeals may have reached the correct result in that case—it is too broad to say that, in all cases, when the concealment is unintentional, it is automatically immaterial.

Moreover, as we have previously stated, "a new trial is *required* only when the court finds the juror *intentionally* concealed the information" *Stone*, 350 S.C. at 448, 567 S.E.2d at 247 (emphasis added) (quoting *Woods*, 345 S.C. at 587, 550 S.E.2d at 284). Here, there is no allegation that Juror #7's failure to disclose was intentional. While the trial court likely would have been justified in refusing to excuse Juror #7 from the jury, its decision to remove her is not an abuse of discretion given the thorough inquiry it conducted into the solicitor's strategy in seating or striking prospective jurors. *Cf. Kelly*, 331 S.C. at 142, 502 S.E.2d at 104 ("A mistrial should not be granted unless absolutely necessary."); *McDaniel*, 275 S.C. at 224, 268 S.E.2d at 586 ("[T]he procedure employed by the trial court [in replacing a juror midtrial and impaneling an alternate], however irregular, was not sufficient to deprive appellant of his right to a jury trial. There is no right to be tried by a jury composed of particular individuals. The alternate juror had been approved by both sides at the inception of the trial, and there is no showing that appellant withdrew that approval at the time of substitution. Moreover, appellant has failed to establish in what manner this procedure prejudiced him." (citations omitted)).

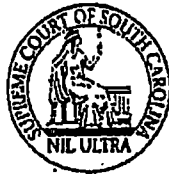
As stated, *supra*, to receive a new trial, the defendant must show a prejudicial abuse of discretion. *Galbreath*, 359 S.C. at 402, 597 S.E.2d at 847 (citing *Covington*, 343 S.C. at 163, 539 S.E.2d at 69–70). As there is no question the jury was impartial after Juror #7's removal, Respondent did not meet his burden, and therefore is not entitled to a new trial. Accordingly, we reverse the court of appeals decision reversing Respondent's convictions.

CONCLUSION

For the foregoing reasons, the court of appeals decision is

REVERSED.

PLEICONES, KITTREDGE, HEARN, JJ., and Acting Justice James E. Moore, concur.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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October 24, 2014

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ATTORNEY GENERALS
OFFICE

MF-File & case

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: The State v. William Coaxum, Sr.
Lower Court Case No. 2008GS1002629, 2008GS1002630
Appellate Case No. 2012-206607

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 along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CLERK

Cc: Mark Reynolds Farthing, Esquire
David Alexander, Esquire

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF CharlestonWilliam Coaxum, #32766
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2015-CP-D-3936
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
JUL 15 PM 4:55
CLERK OF COURTINSTRUCTIONS - 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 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 Broad River Corr. Institution
2. Name and location of Court which imposed sentence: Chas. Cnty. Ct. Gen. Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) See Court Records on File / 08GS 1002629, et al.
 - (b) /
 - (c) /
5. The date upon which sentence was imposed and the terms of the sentence: Life, et
 - (a) Trial Initially ONLY - 12 years - Arm Robbery X2
 - (b) Poss. of Weapon In Comm. of a Violent Crime - See Records

Sentence Date: January 13, 2009. (For Life Imprisonment)
See Record of Guilty plea Sentencing -

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Coerced Plea on Initial Plea.
- (b) after a plea of not guilty Not Guilty at Trial on Additional offense.
- (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. See Appellate Number: 2012-206607-27452
- iii. Case Citation # State v. Coaxum, 410 SC320 (2014).
- (b) the result in each such Court to which you appealed:
- i. Dismissal
- ii. *Note. Applicant's conviction was Reversed on
- iii. Appeal. State Filed Writ of Certiorari.
- (c) the date of each such result: November 7, 2011.
- i. [REDACTED]
- ii. State Certiorari was Granted: [REDACTED] July 2013.
- iii. By State on July - See Record of Files.
- (d) if known, citations of any written opinion or orders entered pursuant to such results: On Appeal, it was ruled:
- i. Trial Court Abused its Discretion
- ii. by Removing a Juror During Trial.
- iii. See, State v. Coaxum, Number: 2011-UP-496 -
9. If you answered "no" to (7), state your reasons for not so appealing: N/A
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Unlawfully Sentenced to Life
Without Parole, Without Written Notice
Served and Signed By Applicant.

- (a) (1) Ineffective Assistance of Counsel, (Plea, Trial and
 (b) Appellate Counsel of Record), (2) Guilty Plea Not knowingly
 (c) and Intelligently Entered (3) Malicious Prosecution, (4) Denial of
Due Process and Equal Protection (5) Lack of Jurisdiction of Court.
11. State concisely and in the same order the facts which support each of the grounds set out

in (10):

- (a) Please See Attached Sheets and
 (b) Legal Analysis.
 (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? /

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application: See any and all pertinent Court Records on Files (If Any)

- (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. See Records on File.
- 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?
- See Records on File
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented: [Grounds] raised by Attorneys
- i. B. Butler, and Counsel of Record During Plea-
- ii. Elizabeth A. Franklin-BEST,
- iii. See Court Records on File.
- (b) the proceedings in which each ground was raised: of All Attorneys in case
- i. Trial, Plea, and Appeal.
- 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) Please See: Attachments.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes.
- (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? Yes.

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. B. Butler - Chas. Co. Public Defender
 - ii. Appellate Counsel - Best of Appellate Defense.
 - iii. See record of Plea Counsel.
- (b) the proceedings at which each such attorney represented you:
- i. Trial, plea, (Appeal).
 - ii. /
 - iii. /

19. State clearly the relief you seek in filing this application:

Reversal and/or Vacation of Sentence / New Trial.

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA)

VERIFICATION

County of. Charleston)

I, William Coaxum, S.C.D.C. # 327616, 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.

William A. Coaxum Sr.

SWORN to and subscribed before me this 13th
day of July, 2015

Susan H. Frye (L.S.)
Notary Public

My Commission Expires

My Commission Expires: March 5, 2018

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, William Coaxum, SCDC # 387616, 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.

William A. Coaxum SR.
Applicant

SWORN or affirmed to and subscribed before me this
13th day of July, 2015.

Susan H. Frye
Notary Public

My Commission Expires
March 5, 2018

My Commission Expires: _____

Attachment

Counsel was Ineffective for Not objecting to the States Failure to Serve Written Notice of Life Imprisonment. He is Unlawfully Sentence to Life Imprisonment and that His Conviction Should be Vacated and Sentence For Armed Robbery Reversed.

Applicant, Coaxum Initially entered a plea of Guilty to one Count of Armed Robbery and was informed by plea Counsel that because of His plea, which was [Negotiated] between Counsel and the Solicitors Office that He would Not Have to face prosecution for any other Armed Robbery offenses.

Applicant Coaxum entered a plea with this in mind and likewise sentenced to a term of 12 years.

He and His Family and Loved ones were all with the Belief that it was the ONLY sentence He had to serve and further, they all believed that He would be [Released] after Having served 85% of the

Sentence with credits being given for any time he served in the County Jail.

His sentence Expiration Date per Prison Records was March 10, 2019, and his Sentence Start Date was computed at April 9, 2008.

Interestingly, Shortly after his arrival at the South Carolina Dept. of Corrections (SCDC) He was informed by his caseworker at the prison that he had Two (2) Detainers which are listed below:

Warrant # K260750 - Arm. Robbery - Chap. Co.

Warrant # K260751 - Poss. of Weapon - Comm. of a Violent Crime.

He informed his caseworker at the prison that he thought the matter was taken care of per his plea Lawyer as a condition of the plea Agreement. He made Numerous attempts at contacting said lawyer by letter and telephone to NO Avail at all.

See Transcript, page 358, Lines 17-19 (Coaxum Had NO Prior convictions)

(3)

See also, Transcript, page 359, Lines 4-16.

What became more shocking, strange, unusual or interesting is that the Additional Armed Robbery offense for which he is serving a sentence of Life for Wasn't The ones the Detainers from SCDC Records was for that came from the Clerk of Court's office for Charleston County.

Because the Clerk of Court is the keeper of Records She sent the alleged ONLY warrants that were said to be [outstanding] thus Applicant, Coaxum's conviction for the Current offense is Unlawful and Must be Vacated on its face, also in the Alternative coupled with the fact that he had never signed any Written Notice of the State seeking Life without Parole Should he loose at Trial.

He Never received Written Notice from Counsel, Nor did he sign any waivers.

Mr. Coaxum would Respectfully show He was
*Denied Effective Assistance by both Plea
and His Trial Attorneys.

His plea Counsel for Deception, inasmuch
as it so relates to 'Coercing' him under
False pretense and Ineffective Assistance
by His Trial Attorney.

The Warrant Numbers Applicant, Coaxum
was Unlawfully Convicted under was:
K260762 - Armed Robbery at Trial, which
was the very offense used by the
State to give Him a Sentence of Life
Imprisonment without the possibility
of Parole.

Mr. Coaxum would even go as far as stating
that he also received Ineffective Assistance
of Counsel by His Appellate Attorney on
Appeal for Failure to Raise as a Viable
Issue on Appeal that the Court Ruled
upon on a Directed Verdict as outlined
on page #226 of the Trial Transcript,
Lines 19-25 and on Trial Transcript

page 227, Lines 1-15.

Legal Analysis

In the event the State offers an Argument in its Return or Response to the Applicant's PCR regarding Appellate Counsel, Applicant, William Coaxum would demonstrate that Appellate Attorneys can be held liable for Ineffective Assistance. In the case of Legger v. State, - 349 SC 222, 562 SE 2d 618 (02), during the Defendants PCR Hearing the Judge found that the Attorney Representing the Defendant provided Ineffective Representation by Failing to raise a viable Issue on Appeal, Reversing the Sentence and Defendants Conviction. please see also, Samuels v. State, 356 SC 635, 591 SE 2d 606 (2004)

under Strickland v. Washington, 466 U.S. 668 an Applicant or Defendant must be prejudiced by Counsel's deficient performance.

It is unquestionable Counsel representing him was Ineffective and that Mr. Coaxum herein has met both the Objective and Subjective components under Strickland,

and Especially relating to his Initial plea
Attorneys performance which could not have
been in Applicant, Coaxum's best of Interest.
Had Applicant, Coaxum had known other charges
were pending He would have Insisted on going
to trial and not enter a plea to the Initial
Armed Robbery.

See Kilpatrick v. State, 306 SC 359, 412 SE2d -
389, Roseboro v. State, 317 SC 292, 454 SE2d 312,
also see; State v. Sheppard, 706 SE2d 16 (2011)
where the Court found a Defendant was Denied
a Fair Trial. See, State v. Morgan, 367 SC 615 (2006).
See Boyer v. Alabama (Supra).

In Ray v. State, 303 SC 374, 401 S.E.2d 151 the
Court found the Defendants' Guilty Plea was Not
Intelligently made due to False and Erroneous
advice of the Attorney. A Defendant has a
Constitutionally protected Right to attack the
Voluntary and Intelligent Character of the Plea.
See, Hill v. Lockhart, 474 U.S. 52.

please also see: case of Alexander v. State, 303 -
SC 539, 542, 402 S.E.2d 484, 485.

Trial Counsel can be found Ineffective in his
Representation. See, Morris v. State, 371 SC 278 (2006)
(For Failure to properly Investigate a Defendants
case

In State v. Gordon, (SC 2003) 356 SC 143

The Sentencing of a Defendant to Life Imprisonment who Have No prior Conviction for a violent Crime as enumerated in Title 17-25-45, South Carolina Code of Laws as Amend.

Applicant, Coaxum had Never been convicted of a prior violent crime. His Initial Armed Robbery resulted in a conviction during a plea. He Had Never been Released after that Conviction and got arrested for another violent offense. He was Still In Custody of the State of South Carolina, in prison when the Solicitor and thus the State Sentenced on the second offense while He was still Imprisoned, using the prior conviction on the PLEA to render Enhancing the Other for Trial to Have Him Sentenced to Life.

This in itself was a Miscarriage of Justice and Denial of Applicant's Right to Due Process of Law and Equal Protection.

In State v. Woody, 359 SC 1, 596 SE2d 907, it was ruled that the Life sentence Statute 17-25-45, and Non-Life Sentence

Statute MUST be construed together to ascertain whether a Life sentence is warranted.

Two prior Armed Robberies the court ruled should have been treated as ONLY ONE offense and the Defendant should have not received Life Imprisonment for purpose of the Recidivist Sentence.

Section or Title 17-25-50 requires a Sentencing Judge to Treat as ONE offense Any Number of offenses which have been committed at

times so closely connected in point of Time that [they] may be considered as only One offense and Ran Concurrently as ONLY one conviction.

At worst, the plea to Armed Robbery should have been the ONLY conviction even if the State sought a conviction on Multiple Armed Robbery offenses. Again, see the case of Gordon.

The Court ruled in James v. State, 368 SC323, - 628 S.E.2d892 (2006) Defendant's Attorney was Ineffective during Trial for failure to object the States Failure to provide Written Notice to the Defendant of its Intent to seek Life without parole under § 17-25-45 (H) and Reversed the conviction.

Applicant, Coaxum Only should have been convicted of one strike (Not Two) or Sentence for Concurrent Multiple offenses under 17-25-50 and thus should not have under the Law Been sentenced to Life.

To: Ms. Julie Armstrong
Clerk of Court - Chas. Co.

100 Broad Street, Chas, SC 29401

* July 3, 2015.

Re: Coaxum v. State,

Initial Filing - Application for PCR.

Dear Clerk:

How are you. Please find for
 Filing my Application for Post-
 conviction Relief.

Please provide me with a Filed
Copy A.S.A.P.,

Thank you,

William Coaxum Sr.

o William Coaxum, SCDC #351616

Broad River Corr. Inst.

4460 Broad River Rd.

Columbia, SC 29210

Applicant, pro se

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

William Coaxum, #327616,

2015-CP-10-3936

Applicant,

v.

**AMENDED RETURN AND PARTIAL
MOTION TO DISMISS**

State of South Carolina,

Respondent.

Respondent, making its Amended Return to the application for post-conviction relief (PCR) filed July 15, 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 Charleston County Clerk of Court. Applicant was indicted at the August 2007 term of the Charleston County Grand Jury for one (1) count of Armed Robbery (2007-GS-10-9978)¹ and at the April 2008 term for one (1) count of Armed Robbery and Possession of Firearm During the Commission of Violent Crime (2008-GS-10-2629, -2630). Beattie Butler, Esquire, represented him. On April 9, 2008, Applicant pled guilty to the 2007 Armed Robbery charge. On January 12-13, 2009, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted of the 2008 Armed Robbery and Possession of a Firearm charges. The Honorable R. Markley Dennis, Jr. sentenced Applicant to incarceration for life pursuant to S.C. Code Ann. § 17-25-45.

A notice of appeal was filed on Applicant's behalf and an appeal perfected. The South Carolina Court of Appeals reversed and remanded Applicant's conviction and sentence. State v. Coaxum, 2011-UP-496 (filed on November 7, 2011). The State petitioned the South Carolina

¹Supreme Court for Certiorari, which was granted on July 25, 2013. The South Carolina Supreme Court reversed the Court of Appeal's decision in Opinion No. 27452 (filed October 8, 2014). The Remittitur was issued on October 24, 2014.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, the application, Appellate records, and the transcript of the proceedings. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Denied effective assistance by both plea and trial attorneys
 - b. "Failure to object to the State's failure to serve written notice of Life imprisonment
 - c. "Applicant initially entered a plea of guilty to one count of armed robbery and was informed by plea counsel that because of his plea, which was negotiated between Counsel and the Solicitor's Office that he would not have to face prosecution for any other armed robbery offenses. Applicant entered a plea with this in mind and likewise sentenced to a term of twelve years.
2. "Plea not knowingly and intelligently entered"
 - a. "Plea counsel for: Deception, inasmuch as it so relates to 'coercing' him under false pretense"
3. "Malicious Prosecution"
4. "Denial of Due Process and Equal Protection"
5. "Lack of Jurisdiction of Court"

¹ Respondent submits that Applicant's initial 2007 Armed Robbery charge should be dismissed without an evidentiary hearing, as Applicant only raised indictments 2008-GS-10-2629 and 2008-GS-10-2630 in his direct appeal; therefore, the allegations in this PCR application pertaining to 2007-GS-10-9978 were filed outside the applicable statute of limitations.

6. "Unlawfully sentenced to Life without Parole without Written Notice Served and Signed by Applicant."
 - a. Applicant never signed any written Notice of the State seeking Life without Parole should he lose at trial. He never received written notice from Counsel nor did he sign any waivers.
 - b. The two armed robbery offenses should have been treated as one

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

Respondent submits that Applicant's allegation of Ineffective Assistance of Counsel is without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits the 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, 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).

IV.

Applicant also alleges that he did not plead guilty freely and voluntarily to the 2007 Armed Robbery charge. Respondent submits this allegation should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. See S.C. Code Ann. §17-27-10 to -160. Section §17-27-45(A) provides:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pleaded guilty to the 2007 Armed Robbery charge on April 9, 2008. Applicant did not appeal that conviction or sentence. Therefore, Applicant was required to file his application on or before April 10, 2009. This current Application was filed on July 15, 2015, which was well beyond the expiration of the statutory filing period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consol. Sch. Dist. of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(C) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, Respondent requests that this Court summarily dismiss any allegations arising from the 2008 guilty plea for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

V.

Respondent further interprets Applicant's second allegation as a claim of due process violations. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that an Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held.

Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

The Respondent submits that the Applicant's allegation that the trial court lacked subject matter jurisdiction is without merit. Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong. Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). A review of the record clearly indicates that there is no basis upon which to conclude that the trial court lacked subject matter jurisdiction. Further, the Applicant's indictments are facially valid and proper. An indictment is adequate and valid on its face if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent prosecution. State v. James, 472 S.E.2d 38 (S.C. 1996); State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952). The indictments in this case are facially valid because they contain all the necessary elements of the offenses intended to be charged, state the date of the offenses, and the name of the accused. The respondent moves for summary dismissal pursuant to South Carolina Code Ann. '17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that this allegation should be dismissed as a matter of law.

VII.

WHEREFORE, having made its Amended Return and Partial Motion to Dismiss, Respondent moves to summarily dismiss any claims arising from the 2008 guilty plea as untimely, and requests an evidentiary hearing be held *solely* on Applicant's allegations of ineffective assistance of counsel pertaining to his 2009 trial.

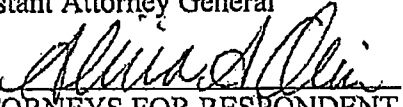
Respectfully submitted,

ALAN WILSON
Attorney General

J. ROBERT BOLCHOZ, JR.
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

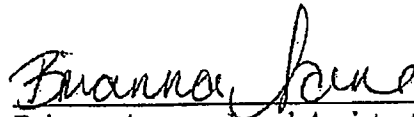
December 2, 2016.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2015-CP-10-3936
WILLIAM COAXUM, #327616,	)	
	)	
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 **Amended Return and Partial Motion to Dismiss** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christopher L. Murphy, Esquire
Post Office Box 2008
Mt. Pleasant, South Carolina 29465

DATED this 2nd day of December, 2016.


Brianna Arnone, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of Common Pleas
3 _____) Case No. 2015-CP-10-3936
4 WILLIAM COAXUM,)
5 Applicant,)
6 v.) Transcript of Record
7 STATE OF SOUTH CAROLINA,)
8 Respondent.) DATE: December 5, 2016
9 _____)

9

10

B E F O R E:

11

THE HONORABLE THOMAS W. COOPER, JR.

12

13

A P P E A R A N C E:

14

CHRISTOPHER L. MURPHY
Attorney for the Plaintiff

15

16

ALICIA A. OLIVE
Attorney for the Defendant

17

18

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

19

20

21

22

23

24

25

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1 MS. OLIVE: Coaxum was a trial, Your Honor.

2 THE COURT: Does he have a lawyer?

3 MS. OLIVE: I thought he did.

4 THE COURT: Who is your lawyer? You are Mr. Coaxum?

5 MR. COAXUM: Uh-huh.

6 THE COURT: Who is your lawyer?

7 MS. OLIVE: It's Chris Murphy. I'm sorry. He's
8 been in here. He must have stepped out.

9 THE COURT: Chris Murphy? Let me do this before we
10 get started. Just for everybody's benefit, including Mr.
11 Grose, Mr. Grose, I just want to address those in the
12 courtroom that are coming before me, that Ms. Olive, the
13 attorney general, was a law clerk of mine several years ago.
14 I had no other social contact or professional contact other
15 than the fact that she served as my law clerk. I just wanted
16 to make that disclosure.

17 MR. GROSE: I appreciate you putting that on the
18 record.

19 THE COURT: Any problem with that, let me know.

20 MR. GROSE: No, sir, there is not.

21 THE COURT: Mr. Murphy, any problem with that?

22 MR. MURPHY: No, Your Honor.

23 THE COURT: Ms. Olive, you may proceed.

24 MS. OLIVE: This is William Coaxum, 2015-CP-10-3936.
25 Your Honor, Mr. Coaxum was indicted in April of 2000 --

1 excuse me. He was initially indicted for a count of armed
2 robbery in August of 2007. And he pleaded guilty to that.
3 And that was April of 2008.

4 He was subsequently indicted in April of 2008 for
5 two counts of armed robbery and possession of a firearm
6 during the commission of a violent crime. Beattie Butler
7 represented him on those charges, as well as the 2007 guilty
8 plea.

9 On January 12th, 2009, he proceeded to a jury trial,
10 where he was found guilty as indicted of one count of armed
11 robbery, possession of a firearm. Judge Dennis sentenced him
12 to incarceration for life pursuant to South Carolina Code
13 Annotated 17-25-45.

14 He did appeal that conviction. And, initially, the
15 Court of Appeals reversed or remanded his conviction
16 sentence. Subsequently, the South Carolina Supreme Court
17 reversed the Court of Appeals, confirmed his conviction. The
18 remittitur was issued for that on October 24th, 2014. He
19 filed this application for post-conviction relief on July
20 15th, 2015.

21 Your Honor, as an initial matter -- well, he raises
22 several allegations of ineffective assistance of counsel
23 concerning not only his trial on the second armed robbery,
24 but on his guilty plea for the first armed robbery for which
25 he was convicted April 9th, 2008.

1 Your Honor, as an initial matter, the State would
2 move to dismiss any allegations concerning his 2007 guilty
3 plea -- excuse me, his 2008 guilty plea. Mr. Butler did
4 represent him on that charge as well. However, no appeals or
5 collateral appeals were made concerning that 2008 guilty plea
6 until this PCR application. So we would move to dismiss
7 allegations arising from that guilty plea pursuant to the
8 statute of limitations.

9 In addition, because no claims were raised prior to
10 now, there has been no transcript produced from that guilty
11 plea. So the State would be prejudiced in the sense that we
12 don't have a transcript to be able to defend those claims
13 either.

14 Mr. Coaxum is present in the courtroom today and
15 represented by Mr. Murphy. I will turn it over to him at
16 this time.

17 THE COURT: All right.

18 MR. MURPHY: Thank you, Your Honor. May it please
19 the Court. With regard to the motion to dismiss, the claims
20 related to the 2008 guilty plea, we are not alleging anything
21 substantively in terms that there was ineffective assistance
22 of counsel for having him plead guilty to those charges.
23 However, the consequence of that plea is relevant in relation
24 to the conviction of the second charge.

25 So we will be bringing up issues about what was

1 explained to him, what was his understanding. But in terms
2 of any ineffective assistance allegations, there will be
3 no --

4 THE COURT: No relief --

5 MR. MURPHY: No, that's correct, Your Honor.

6 THE COURT: -- on the plea?

7 MR. MURPHY: That's correct, Your Honor.

8 THE COURT: I understand.

9 MR. MURPHY: And at this point, Your Honor, we would
10 call Mr. Coaxum to the stand.

11 WILLIAM COAXUM,
12 having been duly sworn, testifies as follows:

13 THE CLERK: Please state your first and last name,
14 and spell your last loudly and clearly into the microphone.

15 THE WITNESS: William Coaxum.

16 THE COURT: You may proceed.

17 MR. MURPHY: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. MURPHY:

20 Q. Mr. Coaxum, you are going to have to talk slowly and
21 speak up for the court reporter. Okay, sir?

22 A. Uh-huh.

23 Q. Can you hear me okay?

24 A. Yes, sir.

25 Q. All right. Mr. Coaxum, you were charged with two

1 counts of armed robbery; is that correct?

2 A. Yes, sir.

3 Q. And you were represented by Mr. Beattie Butler on
4 both of them, correct?

5 A. Yes, sir.

6 Q. And you initially pled guilty in 2008 to one of the
7 armed robbery charges, correct?

8 A. Yes, sir. Actually, I was told that I was pleading
9 to two armed robberies.

10 Q. And that's what we are going to get to. What was
11 your understanding about when you pled back in 2008 to those
12 charges?

13 A. Say that one more time.

14 Q. What did you think you were pleading to in 2008?

15 A. I was pleading -- what I thought is that it was told
16 that everything was coming in one and that I was pleading to
17 12 years.

18 Q. Okay. So you thought you were facing two counts of
19 armed robbery, correct?

20 A. Yes, sir.

21 Q. And you thought there was a global resolution?

22 A. Yes, sir.

23 Q. So you thought --

24 A. That is what I was told. It was explained to me and
25 my parent that everything was coming into one, that I was

1 pleading to 12 years for everything.

2 Q. And when you said it was explained to you, who
3 explained that to you?

4 A. Mr. Beattie Butler.

5 Q. Now, you pled guilty, correct?

6 A. Yes, sir.

7 Q. And did you talk to Mr. Butler about the
8 consequences of that conviction in terms of that it was a
9 most serious offense?

10 A. No, sir.

11 Q. Do you know what a most serious offense is?

12 A. No, sir.

13 Q. Do you know what a strike is from a legal
14 perspective?

15 A. Yes.

16 Q. What is that?

17 A. You said a strike?

18 Q. Yes.

19 A. You mean like one strike, two strike, you know what
20 I'm saying?

21 Q. That's correct.

22 A. Yes, sir.

23 Q. Did you know at the time you were pleading that you
24 were pleading to a conviction that would carry one strike?

25 A. No, I didn't know anything about the strike until

1 the second time when they brought me back to court.

2 Q. All right. We are going to get to that. I promise
3 you. But for the guilty plea, how many times did you meet
4 Mr. Butler to discuss those charges?

5 A. How many times what?

6 Q. Did you meet to talk with Beattie Butler about the
7 charges, the allegations against you?

8 A. Actually, he came to me once about pleading to all
9 of them one time. And after that, that was it, you know.
10 And when I went -- once I got incarcerated and was in the
11 system, he came back to me afterwards.

12 Q. All right. But let's talk about prior to your first
13 plea, you spoke with Mr. Butler about a global resolution; is
14 that correct?

15 A. Yes.

16 Q. All right. And did you go over any defenses or any
17 trial strategy that you may be able to present for those
18 first set of charges?

19 A. No, sir.

20 Q. When you were plead guilty, you thought you were
21 pleading to all the charges against you?

22 A. Yes, sir.

23 Q. And did you understand that that charge would carry
24 one strike against you when you plead guilty?

25 A. No, I didn't know anything about the strikes at the

1 time.

2 Q. Now, you ended up pleading guilty, correct?

3 A. Yes, sir.

4 Q. And you were sentenced to 12 years?

5 A. The only reason that I got -- only reason I pleaded
6 guilty is because he told me that all of that together would
7 have been 12 years, that it would have been over with.

8 Q. And then at some point, you realized that there was
9 still a pending armed robbery charge, correct?

10 A. Yes, sir.

11 Q. And how long after you pled guilty did you find out
12 about that armed robbery charge?

13 A. It was like -- I believe it was like going on almost
14 a year afterward.

15 Q. And when you found out that there was still a
16 pending armed robbery charge, what did you do?

17 A. Took it to trial.

18 Q. Okay. Did you talk to Mr. Butler about it?

19 A. Me and Mr. Butler talked. Yeah, we talked.

20 Q. Did you ask him why there's still a pending armed
21 robbery charge, why this wasn't included in the first plea?

22 A. Yes, sir. And his words were that I only pleaded to
23 one. And I told him, I said, well, you told me and my mother
24 that I was pleading to all of them.

25 Q. Now, at some point, did you talk about the

1 consequences of getting convicted of a second armed robbery
2 charge?

3 A. If I was found guilty?

4 Q. Yes.

5 A. Yes, sir.

6 Q. And what was your understanding of what would
7 happen?

8 A. That I would receive life.

9 Q. Okay. And you understood that the judge did not
10 have any discretion if you were convicted?

11 A. Say that again.

12 Q. Did you know that the judge would have no choice if
13 you were convicted of that second armed robbery charge to
14 give you life in jail?

15 A. I mean, actually, we didn't have much time to talk
16 after that, but I heard from other people about it.

17 Q. Okay. Did you hear after the fact or prior to
18 making your decision to go to trial?

19 A. Uh-huh.

20 Q. Which one? Did you understand the consequence of
21 conviction prior to making that decision to go to the second
22 trial?

23 A. Yes.

24 Q. Okay. Now, you also -- did you discuss your trial
25 strategy with Mr. Butler for the second conviction?

1 A. Did I what?

2 Q. Did you have any trial strategy for the trial for
3 the armed robbery that you went forward with?

4 A. No, sir.

5 Q. Did you understand what your strategy was?

6 A. I am not understanding what you are asking.

7 Q. Okay. Let me ask you this. Did you and Mr. Butler
8 talk about the facts of the second or the case you went to
9 trial on?

10 A. No, no, we didn't talk about anything.

11 Q. Did you meet him to discuss the second armed robbery
12 charge?

13 A. As far as -- you mean as far as receiving life if I
14 would have been convicted?

15 Q. That's prior to going to trial. I just want to know
16 how many times you've talked to Mr. Butler about the second
17 armed robbery.

18 A. I only talked to him when I pleaded to the first
19 time and when I went to trial.

20 Q. Okay.

21 A. That was it.

22 Q. And did you talk to him before going to trial?

23 A. Before going to trial?

24 Q. Yes.

25 A. Yes, I did.

1 Q. How long did you talk to him for?

2 A. For like about three minutes.

3 Q. How many times did you guys meet to talk about your
4 case before trial?

5 A. Just that one time, right before I went in the
6 courthouse.

7 Q. And did he talk to you about the ramifications or
8 the consequences if you were convicted at trial, what would
9 happen, what would your sentence be?

10 A. No, he didn't. I didn't hear it from him. What I'm
11 saying is I heard it from other people.

12 Q. All right. Did you understand that if you were
13 convicted, that would count as a second strike against you?

14 A. Yes, sir.

15 Q. Now, did you talk about your right to take the stand
16 at trial?

17 A. Right to take the stand? He told me while we were
18 in the courthouse, while we were in the court, you know, he
19 whispered to me, said I didn't have to testify, they wouldn't
20 count that against me.

21 Q. I understand, but your defense -- you denied
22 involvement in that armed robbery, correct?

23 A. Say that again.

24 Q. You said you had nothing to do with that?

25 A. Yes, I said I didn't have anything to do with the

1 armed robbery.

2 Q. And that was your position at trial, correct?

3 A. Yes, sir.

4 Q. And that's your position now?

5 A. Uh-huh.

6 Q. Now, did you talk to him about taking the stand to
7 testify on your behalf that you had nothing to do with the
8 case?

9 A. Did I talk to him about testifying?

10 Q. Yes.

11 A. You mean like now?

12 Q. That's correct, yep.

13 A. I mean, I wouldn't mind testifying. Yes, I would
14 like to testify now.

15 Q. Did you talk about -- did you talk about an *Alford*
16 plea with him?

17 A. Who?

18 Q. Just a plea -- did you ever hear the word *Alford*
19 plea? Do you recall that term or know what that term means?
20 And it's okay if you don't understand that.

21 A. I don't understand what you are saying.

22 Q. All right. Talking to Mr. Beattie before trial, you
23 said you met with him once for about five minutes or three
24 minutes.

25 A. Yeah, about three minutes, yeah.

1 Q. Do you recall looking back -- that seems awful
2 difficult to understand if you had a trial. Do you recall
3 meeting him any other times to talk about your trial?

4 A. No, we didn't talk any other times.

5 Q. Did you talk about the facts of your trial, what the
6 State was going to present against you?

7 A. I mean, from what I heard, he was just telling me
8 right then, he was like, I need to plead to both armed
9 robbery, that's all he said.

10 Q. Did you talk about the witnesses that the State was
11 going to put forward against you at all at your trial?

12 A. No, we didn't speak one-on-one about that. Anything
13 that was talked -- that was spoken about the witnesses was
14 heard during the trial. That was it.

15 Q. All right. Did you know what the evidence was going
16 to be against you prior to going to trial?

17 A. I didn't know anything until I got in the
18 courthouse.

19 Q. Did you talk about the likelihood that you would be
20 convicted if you went to trial?

21 A. No, sir.

22 Q. And what was your understanding when you went to
23 trial? What did you think was going to happen?

24 A. I mean, actually, I think I was going to beat it,
25 because I know I didn't have any involvement to do with it.

1 Q. You thought you would be found not guilty?

2 A. Yes.

3 Q. Did you talk to Mr. Butler about any other
4 consequences or any other path that could have occurred other
5 than a not-guilty verdict?

6 A. No, sir.

7 Q. Did you want to go to trial?

8 A. Did I want to go to trial?

9 Q. Yes, sir.

10 A. Actually, I wanted to go to trial when they were
11 seeking, you know, what I'm saying --

12 Q. When they were seeking life?

13 A. Yeah.

14 Q. Did you talk to Mr. Butler about any offers to
15 resolve this case or any guilty pleas prior to going to
16 trial?

17 A. Only offer I talked to him about was the 12 years.
18 That's when I pleaded guilty the first time. I figured it
19 would have been over. He told me it would have been over.
20 Plea guilty to the 12 years, it would have been over with.
21 That's what I did.

22 Q. Was it your understanding that the second armed
23 robbery charge would be dismissed as a result of your
24 pleading?

25 A. Exactly, the second armed robbery was supposed to

1 have been the first one.

2 Q. All right. And you actually filed an appeal on
3 this, correct?

4 A. Yes, sir.

5 Q. For the conviction? And that was the appellate
6 court ruled in your favor, correct?

7 A. Yes, sir.

8 Q. And the Supreme Court reversed the appellate court,
9 correct?

10 A. Yes, sir.

11 Q. Have you talked to Mr. Butler since your trial
12 conviction?

13 A. No, sir.

14 Q. If you knew that the evidence would result in a
15 likely conviction prior to going to trial, would you have
16 wanted to go to trial?

17 A. Actually, they don't have any evidence on me. So, I
18 mean, I don't know what evidence you are talking about. They
19 don't have any evidence on me. From my understanding, the
20 guy who got up and testified in court, I don't know him. He
21 don't know me. He pleaded guilty saying that he did it. So,
22 I mean, I don't know what evidence they can be talking about.

23 Q. And you've alleged ineffective assistance of
24 counsel, correct?

25 A. Yes, sir.

1 Q. And part of the allegations is you thought that the
2 charges were globally resolved when you pled guilty, right?

3 A. Yes, sir.

4 Q. You didn't understand the consequences of second
5 conviction, right?

6 A. Did I understand consequences?

7 Q. Yes.

8 A. Yeah, I knew what the consequences would be.

9 Q. You didn't go over your trial strategy with him for
10 the second case with Mr. Butler, did you?

11 A. Uh-huh.

12 Q. You did not, did you?

13 A. No.

14 Q. And then do you allege any other issues regarding
15 ineffective assistance of counsel?

16 A. The reason I said ineffective assistance of counsel
17 is because, like I said, you said the evidence that they have
18 against me, when you are saying evidence, everyone keeps
19 saying evidence, but what is the evidence? There's no
20 evidence.

21 Q. You remember the State putting on witnesses,
22 correct?

23 A. Uh-huh.

24 Q. And they would have been testifying. Whether you
25 agree or not, that would have been evidence against you.

1 Okay?

2 A. Uh-huh.

3 Q. Did you understand what the State's witnesses were
4 going to say prior to going to court?

5 A. The State, you are talking co-defendant?

6 Q. I'm talking about anything that the State, the
7 Charleston County Solicitor's Office, would have put up
8 against you.

9 A. Uh-huh.

10 Q. They put up their case. You recall that?

11 A. Uh-huh.

12 Q. Now, that would have been evidence that they
13 presented on their behalf, correct?

14 A. Yes, sir.

15 Q. Did you know what they were going to say prior to
16 them taking the stand?

17 A. No, sir.

18 MR. MURPHY: Your Honor, that would be all.

19 Answer any questions for Ms. Olive.

20 THE COURT: Cross-examination.

21 MS. OLIVE: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. OLIVE:

24 Q. Mr. Coaxum, your view that there was no evidence to
25 convict you of the second armed robbery, did that factor into

1 your decision to go to trial rather than plead guilty?

2 A. I can't hear you. You are going to have to come
3 closer, because I can't understand what you are saying.

4 Q. Can you hear me now?

5 A. Can you come closer and speak to me, because I can't
6 hear you from a distance.

7 Q. Okay. You can't hear me? There's a microphone
8 right here. Can you hear me?

9 A. Are you able to come closer to speak to me? Because
10 I can't hear you from a distance.

11 THE COURT: I can hear her. I can hear her.

12 THE WITNESS: You can hear her? But I'm hard of
13 hearing. That's why I'm asking, can she come closer.

14 MS. OLIVE: I will just try to speak louder. Can
15 you hear me now? Can you hear me?

16 THE WITNESS: I can hear you now.

17 BY MS. OLIVE:

18 Q. Mr. Coaxum, you testified that there was not
19 evidence to convict you at this trial, right?

20 A. Uh-huh.

21 Q. Did that factor into your decision to go to trial
22 rather than plead guilty to these charges?

23 A. Is that what?

24 Q. Did that factor into your decision to go to trial
25 rather than plead guilty on these charges?

1 A. The reason -- he told me that if -- the first time I
2 pleaded guilty is because he told me I was pleading to 12
3 years. So the second time, he said if I pleaded guilty
4 again, if I was going to have to plead guilty again, that I
5 would receive a life sentence. I said, why would I plead
6 guilty again if I know I'm not guilty? You know, so that was
7 my reason to take it to trial, you know.

8 Q. So your testimony is that he told you if you pleaded
9 guilty to the second set of charges of the armed robbery,
10 that you were going to get life without parole if you pleaded
11 guilty?

12 A. Say that again.

13 Q. In your conversations with Mr. Beattie -- okay. Let
14 me back up for a second. So you pleaded guilty, it was April
15 9th of 2008; is that right?

16 A. Yeah.

17 Q. I'm sorry. Let me just double check. April 9th of
18 2008, correct?

19 A. Yes.

20 Q. And that was to the armed robbery that arose from a
21 set of circumstance that occurred on April 30th of 2007; is
22 that right?

23 A. Yes, yes.

24 Q. Now, then you go to trial. And you weren't on trial
25 for just one count of armed robbery, right? This was two

1 separate incidents of armed robbery that occurred on the same
2 evening, right?

3 A. I mean, actually, I don't know when -- which armed
4 robbery occurred, you know. I just knew the date that I went
5 to court.

6 THE COURT: Clarify. I have read the transcript.
7 These two armed robberies took place on the same date? Is
8 that what you are saying?

9 MS. OLIVE: Your Honor, and I apologize when we were
10 discussing the facts in the beginning. And Your Honor has
11 the indictments and sentencing sheets in your packet. There
12 was one armed robbery for which Mr. Coaxum was indicted in
13 August of 2007. The facts that gave rise to that armed
14 robbery took place on April 30th, 2007.

15 THE COURT: And where did --

16 MR. COAXUM: November 2007.

17 THE COURT: Where was the armed robbery?

18 THE DEFENDANT: The first armed robbery I was
19 charged with was November 27th, 2007.

20 MS. OLIVE: No, Your Honor, that's not correct.

21 THE COURT: Well --

22 MS. OLIVE: The armed robbery that he pleaded guilty
23 to arose from the April 30th, 2007, event?

24 THE WITNESS: No, I don't think about April. I got
25 arrested November 27th, 2007, on armed robbery. Nothing

1 happened prior to that.

2 THE COURT: All right. And where did they say that
3 armed robbery took place?

4 THE WITNESS: The armed robbery that I got arrested
5 for?

6 THE COURT: Yeah. Where?

7 THE WITNESS: You are talking about the
8 establishment, where it happened at?

9 THE COURT: Yeah, the one you pled guilty to.

10 THE WITNESS: It happened at -- what is this? Is
11 this --

12 THE COURT: Was it a business?

13 THE WITNESS: A business establish, yes.

14 THE COURT: Was it a convenience store?

15 THE WITNESS: No. It was --

16 THE COURT: Check cashing place?

17 THE WITNESS: It was a hotel, I think.

18 THE COURT: Hotel?

19 THE WITNESS: Yeah.

20 THE COURT: Okay. That's the first one.

21 THE WITNESS: Uh-huh.

22 THE COURT: And they charged you -- they say that on
23 April --

24 THE WITNESS: That and the Pizza Hut was November
25 27th armed robbery.

1 MR. MURPHY: Judge, that's the one he went to trial
2 on, the Pizza Hut and Charleston Inn, was the two incidents
3 he went to trial on.

4 THE WITNESS: All happened the same night.

5 THE COURT: What I'm trying to do is, Ms. Olive, if
6 you would identify the locations, he may be able to
7 understand. In other words, the two armed robberies are
8 running into each other. If you identify for him where the
9 first one was, where the second one was, it may be a little
10 clearer.

11 MS. OLIVE: Your Honor, and I think Mr. Coaxum might
12 be confused. And I'm happy to show him the sentencing sheet
13 if it would help. The armed robbery that he pleaded guilty
14 to occurred on April 30th, 2007. And that was from the
15 person of Robert Madison.

16 THE COURT: From a person? From a person, is that
17 what you are saying?

18 MS. OLIVE: Yes, Your Honor. The two incidents that
19 he's talking about are the incidents that he was tried on.

20 THE COURT: He was tried on two armed robberies?

21 MS. OLIVE: That's correct, Your Honor. And one
22 ended up being dismissed. So he was only convicted of one.

23 THE COURT: Okay. I've got Piccadilly Cafeteria. I
24 see that one.

25 THE WITNESS: Pick?

1 THE COURT: Piccadilly Cafeteria?

2 THE WITNESS: Yes, I remember them saying that.

3 THE COURT: That's the one you went to trial on?

4 THE WITNESS: Yes, sir. Yes, sir.

5 THE COURT: Okay. We are getting it straight.

6 MS. OLIVE: No, Your Honor. I'm sorry. The
7 Piccadilly Cafeteria was the one that he pleaded guilty to.
8 That was from the person of Robert Madison.

9 I'm sorry. This is part of the problem not having a
10 transcript of the guilty plea. But it is specified on the
11 back of the --

12 THE COURT: I see the indictment.

13 MS. OLIVE: Thank you.

14 BY MS. OLIVE:

15 Q. Okay. So, Mr. Coaxum, are we in agreement that the
16 armed robbery that you pleaded guilty to arose from the April
17 30th, 2007, robbery of Piccadilly Cafe?

18 A. Okay.

19 Q. Are you in agreement with that?

20 A. What about it?

21 Q. That's the offense that you pleaded guilty to that
22 arose from April 30th, 2007?

23 A. Okay. That's the Piccadilly one you are talking
24 about?

25 Q. Right. So you pleaded guilty to that offense on

1 April 9th, 2008, correct?

2 A. Uh-huh.

3 Q. And now, you were indicted subsequently for another
4 armed robbery that occurred on November 27th, 2007. One of
5 those involved the Pizza Hut, right?

6 A. Yes.

7 Q. And the other involved the inn, right?

8 THE COURT: The what?

9 MS. OLIVE: The inn.

10 THE COURT: Charleston Inn?

11 MS. OLIVE: Correct.

12 THE WITNESS: Yes, ma'am.

13 BY MS. OLIVE:

14 Q. Okay. Now, you were indicted for those second --
15 the second batch of armed robberies. Okay? We will call
16 those the November 27th armed robberies.

17 A. When I got indicted the second time, that was the
18 Piccadilly, right? The second one I went to trial for was --
19 that didn't have anything to do with the Piccadilly.

20 Q. What is your understanding of the facts involving
21 your first guilty plea? What is your recollection that you
22 pleaded guilty to?

23 A. This is my understanding. See, like, now you are
24 telling me that the second indictment is for the Piccadilly.
25 When I went to trial, I went to trial for the hotel.

1 Q. The hotel and the Pizza Hut, right?

2 A. Yes. That's what I went to trial for. Me going to
3 trial for the hotel, what did I plead guilty to the first
4 time? That's my understanding. What's my understanding of
5 that? That's my question. What did I plead to? Because if
6 I pleaded guilty to -- if I pleaded guilty to the hotel armed
7 robbery, then why did I go to trial for it?

8 Q. Mr. Coaxum -- okay. Will it help you if I show the
9 sentencing sheets from your first guilty plea?

10 A. Ma'am?

11 Q. Okay. I'm sorry, Mr. Coaxum. I'm not quite sure
12 how to communicate with you.

13 A. You caught me off guard.

14 MS. OLIVE: Beg the Court's indulgence, Your Honor.

15 BY MS. OLIVE:

16 Q. Okay. Mr. Coaxum, I'm just going to back up or move
17 forward. So your testimony is that you only met with
18 Mr. Butler twice?

19 A. Did I what?

20 Q. Can you hear me? Do you understand me?

21 A. Yes.

22 Q. How many times did you meet with Mr. Butler? Your
23 testimony was that --

24 A. I talked to Mr. Butler right before I pleaded
25 guilty. And then I seen him right before I went to trial.

1 Q. Okay. So your testimony is that you only met with
2 him two times?

3 A. Huh?

4 Q. Your testimony is you only met with him two times?
5 Is that a yes or a no?

6 A. Yes, ma'am.

7 Q. Okay. And your testimony is that you did not have a
8 conversation -- excuse me. Withdrawn.

9 You testified that you did not testify at your
10 trial, correct?

11 A. Yes, ma'am.

12 Q. Okay. Is it your testimony that you did not have a
13 conversation with your attorney about your right to testify?

14 A. He just talked to me while we was in court. He just
15 let me know, you know, that I didn't have to get on the stand
16 and that that would not affect me, you know what I'm saying,
17 considering my case. But outside of court, he didn't say
18 anything. He spoke to me in court saying that.

19 Q. Okay. But it was your decision not to testify,
20 correct?

21 A. Yes, ma'am.

22 Q. Okay. Okay. And you testified that your attorney,
23 Mr. Butler, did not talk to you about the likelihood that you
24 would get convicted at trial?

25 A. No, ma'am.

1 Q. He did not discuss that with you?

2 A. He didn't talk to me about anything.

3 MS. OLIVE: Beg the Court's indulgence.

4 BY MS. OLIVE:

5 Q. And your testimony is that you did not talk -- that
6 your attorney did not inform you of the consequences of your
7 guilty plea?

8 A. Is it true that what?

9 Q. Is it your testimony that Mr. Butler did not talk to
10 you about the consequences of entering a guilty plea?

11 A. I didn't talk to anybody about anything.

12 Q. And your testimony is that you did not know that
13 your guilty plea was going to count as a strike against you?

14 A. Not correct.

15 MS. OLIVE: Okay. That's all the questions I have.

16 MR. MURPHY: That is all we have. Nothing
17 further.

18 THE COURT: Okay. You may come down.

19 Next witness.

20 MR. MURPHY: Thank you. We call Mr. Beattie Butler.

21 BEATTIE BUTLER,

22 having been duly sworn, testifies as follows:

23 THE CLERK: Please state your first and last name,
24 and spell your last loudly and clearly into the microphone.

25 THE WITNESS: Beattie Butler, B-u-t-l-e-r.

1 MR. MURPHY: Thank you, sir. May it please the
2 Court.

3 DIRECT EXAMINATION

4 BY MR. MURPHY:

5 Q. Mr. Butler, you were in the courtroom during
6 Mr. Coaxum's testimony?

7 A. Yes.

8 Q. And you would agree that he has a difficulty
9 understanding what's going on, or at least there's difficulty
10 communicating with him that you saw?

11 A. He's hard of hearing. And I didn't recall that
12 until just now, but now I do. Yes, he's hard of hearing.

13 Q. When you were representing him, did you have that
14 same difficulty talking with him or communicating with him?

15 A. If I did, I don't recall. I recall it more so at
16 the plea.

17 Q. Okay. And that was at the plea before the Court for
18 the first armed robbery charge that we discussed?

19 A. The only plea.

20 Q. Okay. The only plea?

21 A. Yes, sir.

22 Q. Do you recall any difficulty communicating with him
23 prior to trial or during the trial at all?

24 A. I don't, but that doesn't mean I didn't.

25 Q. Okay. You don't have any notes or anything to

1 refresh your memory?

2 A. I don't know if I told you this, Mr. Murphy, but I
3 have not seen the file in this case. So I don't have any
4 notes. And I am not employed with the public defender
5 anymore, so I can't go get the file. I often wish I had the
6 file, but I don't.

7 Q. All right. And in terms of meeting with Mr. Coaxum
8 prior to the guilty plea, do you recall how many times you
9 met with him?

10 A. I don't, but if it were only once, that would be a
11 record for me in 18 years. And so I doubt that that
12 happened. But, no, I do not independently recall how many
13 times I met with him.

14 Q. Prior to going to trial, do you recall meeting or
15 how many times you met with Mr. Coaxum?

16 A. I do not, but I would be surprised if it were only
17 one.

18 Q. Now, at the guilty plea, at the time of the guilty
19 plea, there were the two sets of armed robbery charges
20 against him, correct?

21 A. Right.

22 Q. And you ended up pleading him to one of those
23 charges, correct?

24 A. Right.

25 Q. Now, did you have any communications with the

1 prosecution about a global resolution?

2 A. Yes.

3 Q. And what were they?

4 A. Some of what my answers will be, I definitely
5 independently recall. Others might be I will have to say
6 this is what I usually would have done, but this part I
7 independently recalled. The prosecutor was Greg Voigt. If
8 William wanted to plead to everything, he could have. But
9 William wasn't going to plead. William wasn't going to plead
10 to anything.

11 And he had three armed robberies. But the second
12 two were part of a continuing course of conduct. They
13 occurred on the same night and in a matter of minutes. The
14 first one was at the Piccadilly, which was where William used
15 to be employed, is what I recall. He went in to use -- the
16 allegations were that he went in to use the restroom, waited
17 until it closed, and then robbed, I think, an employee there
18 who identified him.

19 Greg Voigt offered to let William plead to
20 everything. William wasn't going to plead to anything. We
21 were going to trial on the Piccadilly case. And I can't say
22 it was last minute, but it was only days or so before the
23 trial that William said, no, I will plead. Greg Voigt said
24 he can still plead to everything, but William wasn't willing
25 to.

1 I can't imagine that I wouldn't have explained to
2 him -- well, before I say that, let me say this. I cleared
3 it -- this I definitely recall. I cleared with the
4 Mr. Voigt, that, look, I asked him, if William pleads to this
5 today, are you going to LWOP him on the others? And he said,
6 no, if he pleads to the others, I will not, but if it's a
7 trial, I will.

8 Q. All right. So did you discuss -- once he pled, that
9 was a strike against him; there's no question about that?

10 A. Yes.

11 Q. And you would have explained that to Mr. Coaxum,
12 correct?

13 A. Definitely.

14 Q. Now, let's focus on the second trial or the trial,
15 which is kind of the linchpin here and the key issue. Did
16 you talk to him about the consequences of getting a
17 conviction at the second trial?

18 A. Yes. And I want to make it clear. He still could
19 have pled. At the time that they called the second case,
20 Mr. Voigt said, if he pleads, I will withdraw LWOP. I don't
21 recall there being any agreement as to sentence. But he
22 could have still pled. And I remember telling William, this
23 I recall, if you are convicted by a jury of one of the two,
24 because there were two, only one of them, it's mandatory
25 life, the judge doesn't have any choice. But you can plead

1 now and you won't be subject to mandatory life. And William
2 said, I already pled guilty to one thing I didn't do, I'm not
3 pleading to anything else I didn't do.

4 Q. And since you do not have your file, I would assume
5 you don't have any letters or notes that would reflect that
6 conversation?

7 A. No.

8 Q. Okay. If that file were to be produced, do you
9 believe that there would be a letter or notes reflecting that
10 decision?

11 A. I couldn't be certain that there would be, no.

12 Q. Now, your testimony is that William wanted to go to
13 trial. He said he wasn't guilty of the second set of
14 charges?

15 A. He said he wasn't guilty of all three.

16 Q. All right. Well, for the purposes of just to make
17 this easy, we are talking about the trial for the second
18 matter. He denied any association with those two robberies,
19 correct?

20 A. Yes, that's right.

21 Q. Now, did you discuss with him the possibility of an
22 Alford plea with him?

23 A. I don't recall whether I did or not.

24 Q. And in your practice, does it typically -- let me
25 ask you this. Did you go over the evidence that the State

1 was going to present against him?

2 A. This is one of those where I would have to say, I
3 don't independently recall it, but I have to imagine that I
4 would have, because even today, I recall that the evidence
5 against him was compelling.

6 Q. Yeah. And I don't have any issue with it, I'm sure
7 you did. But you would agree that the evidence was
8 compelling against him at trial?

9 A. Yes.

10 Q. And looking at the evidence, even if he disagreed or
11 denied any guilt, any association with it, would your opinion
12 be that it most likely would have resulted in a conviction?

13 A. Yes. As a matter of fact, I was surprised that we
14 hung the jury on one of them.

15 Q. And that was a good job. I agree with that. Now, I
16 do a lot of defense work as well. In your practice, is there
17 any point where you say, look, to the client, you are being
18 incredibly unreasonable, you are going to get convicted, for
19 lack of a better word, you are making a stupid decision here?
20 Do you force them or try to compel them to plead guilty, to
21 do what's in their best interest, even when they don't want
22 to do that?

23 A. No.

24 Q. You faced that situation, though, before?

25 A. Yes. And I should say that depending on the

1 circumstances, I might be more persuasive in some cases than
2 in others. But I never try to force or compel somebody to do
3 something they didn't want to do.

4 Q. When someone, when a defendant maintains their
5 innocence despite overwhelming evidence, an *Alford* plea would
6 be a way to make everybody happy, correct?

7 A. Yes.

8 Q. Did you talk to Mr. Coaxum about doing an *Alford*
9 plea, saying, look, you are going to get convicted, but you
10 can still maintain your innocence and be pled -- sentenced
11 accordingly?

12 A. I don't remember. All I remember his saying is, I
13 already pled guilty to something I didn't do; I'm not
14 pleading guilty to anything else.

15 Q. And, again, you don't have your notes, but is it
16 your practice when you are dealing with a difficult client or
17 someone who is making decisions against their best interest,
18 that you would ask them to put it in writing or have them
19 sign something saying they understand what's going on?

20 A. No.

21 Q. Do we have any extrinsic evidence other than your
22 testimony that you explained the consequences of this second
23 strike to him?

24 A. No.

25 MR. MURPHY: That's all I have, Your Honor.

1 THE COURT: Ms. Olive.

2 MS. OLIVE: May it please the Court.

3 CROSS-EXAMINATION

4 BY MS. OLIVE:

5 Q. Mr. Butler, you testified that you have been unable
6 to acquire your file for this hearing; is that right?

7 A. Well, I didn't make an attempt to. I'm no longer
8 employed with the public defender's office.

9 Q. When we subpoenaed you, we did ask you to appear
10 with your file?

11 A. I don't know. I've never seen the subpoena. I get
12 the e-mails from you telling me when to be here. I've never
13 seen the subpoena.

14 Q. Okay. If you did have discussions with Mr. Coaxum
15 concerning an *Alford* plea, do you believe that you would have
16 notations in your file concerning this?

17 A. It's possible. But I can also tell you, my
18 assessment was that even if I had that discussion with
19 William, he wasn't going to plead.

20 Q. Okay. So even if you had explained what an *Alford*
21 plea was to him, he would not have pleaded? That's your
22 opinion?

23 A. I mean, I'm speculating to some extent, but, yes,
24 that's my opinion.

25 Q. Based on your conversations with him?

1 A. Based upon my recollection of how resolute he was to
2 not enter a plea, because he had already pled guilty, got 12
3 years to something that he said something he didn't do.

4 Q. And although you don't have your file with you
5 today, is your recollection of your representation of
6 Mr. Coaxum fresh in your memory?

7 A. I remember the trial, because the facts were
8 somewhat unique. I remember that he could have gotten it all
9 resolved at once, but refused, and then at the last minute
10 had second thoughts. And even when -- even after he pled and
11 gotten 12 years, right before trial, he still could have pled
12 and not gotten life, but he wasn't going to.

13 Q. So he understood when he went to trial on these
14 Pizza Hut -- I'm going to call it the Pizza Hut.

15 A. It's Pizza Hut and the inn.

16 Q. When he went to trial on those, he understood that
17 if convicted, he was facing a sentence of life without
18 parole?

19 A. Yes. And I would say, more importantly, I would
20 have explained to him if he pleads, he won't get life without
21 parole.

22 Q. And you had that discussion with him?

23 A. Yes.

24 Q. And was he aware of that at the time -- excuse me --
25 he entered into this guilty plea?

1 A. He should have -- well, yes.

2 Q. You had those discussions with him at that point?

3 A. Yes.

4 Q. And, again, your testimony was that in your
5 discussions with the solicitor, the solicitor was willing to
6 resolve the second set of charges without seeking life
7 without parole if Mr. Coaxum pleaded guilty?

8 A. Yes.

9 Q. And that would have been straight up?

10 A. Yes. So, I guess, to an extent, it did benefit him
11 to go to trial in some way, because he was only found guilty
12 of one. However, it only took one to get him life without
13 parole.

14 Q. And if I'm asking you to repeat yourself, I
15 apologize. But did you have discussions with him about the
16 likelihood that he would be convicted if he went to trial?

17 A. I don't independently recall conversations, but
18 knowing the evidence, I can't imagine that I would not have.

19 Q. Is that something you would generally discuss with a
20 client prior to going to trial?

21 A. Yeah. And the evidence against William, as I recall
22 it, especially on the Pizza Hut, was compelling.

23 Q. Mr. Butler, I apologize. I'm going to back up for a
24 minute.

25 A. That's fine.

1 Q. How long have you been practicing law?

2 A. 20 years.

3 Q. And what portion of that practice has been criminal
4 law?

5 A. All of it, 18 years as a public defender.

6 Q. Okay. And when you represented Mr. Coaxum on these
7 charges, had you represented individuals on armed robbery
8 charges prior?

9 A. Yes.

10 Q. Concerning your meetings with Mr. Coaxum prior to
11 trial, I know you don't have -- you testified you don't have
12 a specific recollection of how many times you met with him.
13 But as a general practice, how many times do you normally
14 meet with a client prior to trial?

15 A. I varies. And I will say, his situation would have
16 been complicated by the fact that after his first guilty
17 plea, he would have gone to the Department of Corrections.
18 So he would not have been here in Charleston. So that would
19 have made it difficult. But there's no way I only saw him
20 twice. That's just -- I can't imagine that that's true.

21 I would have seen him as soon as I got the file.
22 And then I would have seen him to discuss the plea. So
23 that's two right there. And I'm sure I saw him more times
24 than that.

25 Q. At what point did he decide to go to trial on the

1 Pizza Hut robbery?

2 A. I couldn't say.

3 Q. Okay. You don't recall whether it was the day of,
4 the day before, week before?

5 A. I do not. I do not.

6 Q. Had he planned to go to trial all along?

7 A. I don't know that.

8 Q. Would you have discussed a trial strategy with him?

9 A. I'm sure that I would have. Again, I don't
10 independently recall it.

11 Q. Is that something you generally discussed with your
12 clients?

13 A. Yes.

14 Q. Do you recall what your trial strategy was in this
15 case?

16 A. I do not.

17 MS. OLIVE: Beg the Court's indulgence.

18 That's all the questions I have for you.

19 MR. MURPHY: Very briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. MURPHY:

22 Q. When you had the guilty plea for the Piccadilly
23 charge, did you talk to Mr. Voigt about any recommendations
24 or offers that were made? Did he plead straight up to the
25 armed robbery and receive 12 years, or was there some type of

1 recommendation by the State?

2 A. I don't remember.

3 Q. Okay. Do you recall at the hearing whether you
4 discussed or put on the record that there were other pending
5 armed robbery charges?

6 A. I was thinking -- I was trying to recall that as
7 William was testifying. I do not independently recall, but I
8 can't imagine that either I or Mr. Voigt would not have put
9 that on the record, but I have no independent recollection of
10 it.

11 Q. Mr. Beattie, how many criminal trials do you think
12 you've tried to verdict over your career?

13 A. 50.

14 Q. And based on these 50-or-so trials, is it your
15 testimony that reviewing the evidence, it would have been
16 most likely or more probable than not that Mr. Coaxum was
17 going to get convicted of the armed robbery for the Pizza
18 Hut?

19 A. Yes.

20 MR. MURPHY: That's all I have. Thank you.

21 THE COURT: Mr. Butler, just kind of wrap this up
22 time-wise. It looks like the plea was in April of 2008, at
23 which time it looks like Judge Williams gave him the 12
24 years. And it wasn't really that long before the trial in
25 front of Judge Dennis in January of '09. So it was a matter

1 of about eight or nine months there. Do you recall going to
2 the Department of Corrections, or do you remember where he
3 may have been housed?

4 THE WITNESS: I do not.

5 THE COURT: But other than the State bringing him
6 back to Charleston County, is it your testimony that you
7 would have spoken with him about the trial, the upcoming
8 trial?

9 THE WITNESS: I definitely didn't wait until right
10 about the trial to talk to him. What either happened is, I
11 either went to the Department of Corrections, and I can't
12 swear that I did, I don't recall, or I would have had him
13 brought over to meet with me or brought over some time ahead
14 of the trial so that I could speak to him. My recollection
15 is that my hope was that he was going to plead, because it
16 was in his best interest to do so. And the prosecutor was
17 being cooperative. He didn't have to let him --

18 THE COURT: He left that offer open?

19 THE WITNESS: He left it open right up until the
20 end.

21 THE COURT: Did you offer him -- I'm just reading
22 from the indictment. The evidence in the Pizza Hut
23 indictment sounds, sounds, without knowing specifically, but
24 it sounds fairly strong evidence. And the employee
25 identified him. And it looks like the shotgun that was used

1 during the robbery was seized from he and a co-defendant?

2 THE WITNESS: There's shotgun and the money and an
3 orange get-away car.

4 THE COURT: Get-away car?

5 THE WITNESS: Yes, orange. That sticks out in my
6 memory.

7 THE COURT: All right. Thank you.

8 Anything further?

9 MS. OLIVE: Nothing from the State, Your Honor.

10 MR. MURPHY: Nothing, Your Honor.

11 THE COURT: All right. Thank you, Mr. Butler. I
12 won't call you, Mr. Beattie.

13 THE WITNESS: I answer to both.

14 MR. MURPHY: And we would rest at this time, Your
15 Honor.

16 THE COURT: Any more witnesses for the State?

17 MS. OLIVE: No, Your Honor.

18 THE COURT: Okay. Counsel, how soon can you provide
19 the Court with proposed orders?

20 MR. MURPHY: I would ask 15 days, Your Honor.

21 Probably she needs more time.

22 THE COURT: 30?

23 MS. OLIVE: Yes, Your Honor.

24 THE COURT: 30 days. Thank you very much.

25 (Whereupon, the proceedings are adjourned.)

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

William Coaxum, #327616,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2015-CP-10-3936

ORDER OF DISMISSAL

BY

FILED
2018 MAR 13 AM 11:50
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court by a pro se application for post-conviction relief filed July 15, 2015 by Applicant, William Coaxum, challenging his January 12-13, 2009 trial and conviction for armed robbery before the Honorable R. Markley Dennis and sentence of life without parole. Respondent made a Return to the Application on February 25, 2016 and served his court-appointed counsel Christopher L. Murphy of Mt. Pleasant, S.C. The Respondent, through Assistant Attorney General Alicia Olive made an Amended Return on December 2, 2016. On December 5, 2016, an evidentiary hearing was held. Applicant was present and represented by Mr. Murphy. The State was represented by Assistant Attorney General Olive. Testimony was received from Applicant and trial counsel Beattie Butler (Butler). This Court took the matter under advisement. This Order of Dismissal follows.

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was initially indicted at the August 2007 term of the Charleston County Grand Jury for one (1) count of Armed Robbery (2007-GS-10-9978) involving the April 30, 2007 armed robbery at the

Piccadilly Cafeteria. On April 9, 2008, Applicant pled guilty to the 2007 Armed Robbery charge before the Honorable James Williams and was sentenced to 12 years.¹

Coaxum was indicted at the April 8, 2008 term for one (1) count of Armed Robbery and Possession of Firearm During the Commission of Violent Crime (2008-GS-10-2629, -2630) involving the November 27, 2007 Pizza Hut robbery. He was also indicted for the November 27, 2007 armed robbery and possession of a weapon at the North Charleston Inn. Butler represented him on all charges.

On January 12-13, 2009, Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted of the 2007 Pizza Hut Armed Robbery and Possession of a Firearm charges. The jury did not reach a verdict concerning the North Charleston Inn charges. The Honorable R. Markley Dennis, Jr. sentenced Applicant to incarceration for life without parole pursuant to S.C. Code Ann. § 17-25-45 for armed robbery and five years for the weapons charge to run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals reversed and remanded Applicant's conviction and sentence. State v. Coaxum, 2011-UP-496 (filed on November 7, 2011). The State petitioned the South Carolina Supreme Court for Certiorari, which was granted on July 25, 2013. The South Carolina Supreme Court reversed the Court of Appeal's decision in Opinion No. 27452 (filed October 8, 2014). State v. Coaxum, 410 S.C. 320, 764 S.E.2d 242 (2014). The Remittitur was issued on October 24, 2014.

This Court has before it the records of the Charleston County Clerk of Court regarding the convictions, Applicant's public records from the South Carolina Department of Corrections, the

¹ At the outset of the hearing, it was resolved that this application and hearing only involved seeking relief on the January 2009 trial. Any challenge to the April 9, 2008 guilty plea would have been beyond the statute of limitations and dismissed as untimely.

application, Appellate records, and the transcripts of the January 2009 trial and December 5, 2016 PCR hearing

STATEMENT OF FACTS

At 10:00 p.m. on the evening of November 27, 2007, Keith Jennings began his shift as a security guard at the North Charleston Inn. While patrolling the motel, Jennings noticed two men pull up in an orange car and enter the motel lobby. One of the men appeared to be a teenager. The other man was older, had a goatee, and was wearing a gray and white camouflage jacket. As Jennings watched the men, the older man pulled out a shotgun and pointed it at the motel clerk's head. In response, Jennings quickly called 911 to report the robbery. The robbers fled and left in the orange vehicle they arrived in.

Shortly thereafter, Tamera Brown, a shift manager at a Pizza Hut in North Charleston, was preparing to close the restaurant for the evening. As she was emptying the cash registers, Brown heard a knock at the restaurant's front door, which had already been locked for the evening. Brown asked the restaurant's delivery driver to tell the person knocking on the door to go around to a side door. The delivery driver exited through the side door, and then Brown heard him communicating with someone outside. Brown looked up, and two men entered the restaurant behind the delivery driver and another employee. The taller of the two men, who was armed with a sawed-off shotgun and wearing a camouflage hooded sweatshirt, quickly ordered Brown to open the restaurant's safe. Brown explained that she could not do so, so the gunman demanded she open the cash register. The gunman took money from the cash register before ordering Brown and the other employees to move to the back of the restaurant. They complied with the gunman's demands, and the robbers fled through the side door. Brown made sure the door was closed and locked before calling 911. Law enforcement officers arrived on the scene several minutes later, and Brown provided them



with a description of the robbers. She later identified Coaxum in court as the person who held the gun on her.

Meanwhile, Sergeant David Singletary and Officer Jason Gamba of the North Charleston Police Department were dispatched to the restaurant in response to the armed robbery and were notified to be on the lookout for an orange vehicle. Sergeant Singletary observed an orange vehicle matching the description of the suspects' vehicle when he neared the restaurant. He attempted to stop the vehicle, but the vehicle fled. Officers pursued the car for approximately two to two and a half miles before the suspects' vehicle crashed into a fire hydrant. Following the crash, two people got out of the orange vehicle and attempted to flee on foot. However, the patrol car of a pursuing officer slid across water in the roadway and struck Applicant William Coaxum as he tried to flee. After he was struck, multiple officers apprehended and arrested Coaxum.

Within minutes of Coaxum's arrest, officers brought several witnesses to Coaxum's location to see if they recognized him as one of the robbers. Brown identified Coaxum as the gunman in the armed robbery of the Pizza Hut without hesitation and indicated she was certain he was the perpetrator. Likewise, Jennings identified Coaxum as the gunman in the armed robbery of the North Charleston Inn. Following Coaxum's arrest, officers searched Coaxum and the orange vehicle he was driving. Inside the orange vehicle, officers found a sawed-off shotgun on the passenger seat. Additionally, officers located \$396 in currency in Coaxum's left pocket and \$622 in cash in a wallet in Coaxum's right pocket.

Later that evening, Coaxum's accomplice, Marquine Benbow, was arrested. Detective Shawn Patrick of the Charleston Police Department spoke with Benbow about the armed robberies, and Benbow implicated Coaxum in the crimes. In the statement, Benbow stated Coaxum picked him up in an orange car and told him that he was looking for a place to rob. Benbow claimed they

then went to the North Charleston Inn and he acted as a lookout while Coaxum robbed the motel at gunpoint. After robbing the North Charleston Inn, Benbow stated they went to the Pizza Hut, Coaxum robbed the Pizza Hut. Coaxum and Benbow left and were followed by the police.

Subsequently, during trial, Brown testified about the robbery of the Pizza Hut and identified Coaxum in court as the gunman who committed the crime. Detective Patrick testified about his conversation with Benbow after Benbow was apprehended on the night of the robberies. Detective Patrick stated Benbow implicated Coaxum in the crimes during their conversation.

Jennings identified Coaxum in court as the gunman involved in the robbery of the North Charleston Inn. Furthermore, the officers who apprehended Coaxum after he attempted to flee, testified about Coaxum's arrest and the ensuing searches that led to the discovery of over \$1,000 in cash in Coaxum's pockets and a sawed-off shotgun in Coaxum's car.

At the conclusion of trial, the jury convicted Coaxum of the armed robbery of the Pizza Hut along with possession of a firearm during the commission of the robbery of the Pizza Hut. After the jury could not reach a verdict, the solicitor dismissed the charges related to the armed robbery of the North Charleston Inn. Thereafter, the trial judge sentenced Coaxum to life imprisonment. Coaxum appealed his convictions.

Butler's strategy was consistent throughout trial. At the outset, there was a Neil v. Biggers motion concerning the identification of Applicant by Tamara Brown, the shift manager at the Pizza Hut. Butler asserted at the outset that Ms. Brown had given a statement that was different than the police report on whether the gunman had on a camouflage jacket. In his opening statement to the jury, Butler asserted that the armed robber was in the car that the police stopped, but it was not Coaxum. He noted there were no fingerprints at the crime scene or on the shotgun, nor DNA, hairs, or fibers tying Applicant to the crime.

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Applicant waived his right to testify. In his closing argument, Butler took the position that the person wearing the camouflage jacket was not Applicant, but rather it was Benbow. Butler further explained that when Coaxum and Benbow were booked into the Detention Center, it was Benbow, not Applicant, wearing the jacket. Butler asserted that since his client was not wearing camouflage, he did not hold the weapon on the employee at the Pizza Hut.

II.

In his *pro se* Application, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Denied effective assistance by both plea and trial attorneys
 - b. "Failure to object to the State's failure to serve written notice of Life imprisonment
 - c. "Applicant initially entered a plea of guilty to one count of armed robbery and was informed by plea counsel that because of his plea, which was negotiated between Counsel and the Solicitor's Office that he would not have to face prosecution for any other armed robbery offenses. Applicant entered a plea with this in mind and likewise sentenced to a term of twelve years.
2. "Plea not knowingly and intelligently entered"
 - a. "Plea counsel for: Deception, inasmuch as it so relates to 'coercing' him under false pretense"
3. "Malicious Prosecution"
4. "Denial of Due Process and Equal Protection"
5. "Lack of Jurisdiction of Court"
6. "Unlawfully sentenced to Life without Parole without Written Notice Served and Signed by Applicant."
 - a. Applicant never signed any written Notice of the State seeking Life without Parole should he lose at trial. He never received written notice from Counsel nor did he sign any waivers.
 - b. The two armed robbery offenses should have been treated as one.

26

During the PCR hearing, the State noted that the pro se application covers both the guilty plea in April 2008, as well as the 2009 trial. The State sought to dismiss the grounds related to the 2008 guilty plea as barred under the statute of limitations, S.C. Code Ann. §17-27-45. Applicant's counsel clarified that issues concerning the 2008 guilty plea and ineffective assistance concerning that plea are not being alleged substantively. Therefore, any specific issue related to the 2008 guilty plea was withdrawn and abandoned.

This Court finds that counsel Beattie Butler performed within the standards required under Strickland v. Washington, 466 U.S. 668(1984). This Court, upon review of the record and testimony received, makes the following findings of fact and conclusions of law.

PCR Hearing Testimony

Applicant testified that when he originally entered a guilty plea in 2008 for the Piccadilly armed robbery, he was under the impression the guilty plea was a global resolution for all of the charges in connection with the three armed robberies. Applicant asserted Butler told him it was a global resolution. In accordance with the guilty plea for the Piccadilly armed robbery, Applicant was sentenced to 12 years imprisonment. Applicant testified he believed the other two armed robberies were dismissed with that plea. Applicant further opined that he was not told that the guilty plea for armed robbery would count as a strike against him for purposes of S.C. Code Ann. § 17-25-45.

Applicant testified that Butler only met with him one time prior to trial for the North Charleston Inn and Pizza Hut armed robberies. Applicant asserted Butler did not go over any trial strategy with him. Applicant further explained that he was not aware of any of the evidence against him until he arrived to court for trial. Applicant was also dissatisfied that Butler never discussed an Alford plea with him.

Applicant testified he had nothing to do with the armed robberies and did not even know Marquise Benbow, the man that testified against him in court. Applicant asserted he decided to go to trial on the second and third armed robberies because he believed he would be found not guilty.

Applicant later testified that he understood by going to trial on the Pizza Hut and North Charleston Inn armed robberies, he would be facing a sentence of life without parole. Applicant asserted that Butler told him he would be facing life without parole if convicted, but that he wanted to go to trial because there was no evidence against him.

Butler testified that the guilty plea in 2008 was only in regards to the Piccadilly armed robbery. Butler testified that Solicitor Voigt offered a global resolution at that time, but Applicant was only willing to plead to the Piccadilly armed robbery. Butler added that Solicitor Voigt was still willing to go through with a plea the day trial was set to begin for the North Charleston Inn and Pizza Hut armed robberies, and that he would not seek a life without parole sentence were Applicant to plead guilty. However, Applicant told Butler he wanted to go forward with trial because he was not involved in the robberies.

Butler denied the assertion that he only met with Applicant once. Butler stated he had been practicing law for 20 years, 18 years as a public defender, and his entire career was devoted to criminal defense. It was his practice to see clients as soon as he got the file and again to discuss any plea offers. Butler was certain he discussed the evidence against Applicant with him as well as any trial strategy for each charge.

Butler did not recall any specific conversation in regards to an Alford plea. However, Applicant told him that he did not want to plea to anything. Butler could not specifically recall where he met with Applicant between the guilty plea in regards to the Piccadilly armed robbery



and the trial for the North Charleston Inn and Pizza Hut robberies, but Butler suggested it would have either been at the prison or he would have had Applicant transported to the court house.

Standards of Review

In a post-conviction relief action, Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Findings of Fact and Conclusions of Law

This Court concludes Butler acted within the range of competence demanded of criminal lawyers concerning both his advice and preparation for trial concerning the November 27, 2007 incidents. First, this Court must find as a fact that when Applicant entered his guilty plea in April 2008 before Judge Williams on the Piccadilly Cafeteria armed robbery, there was no agreement that the remaining charges would be dropped at that time. Applicant's testimony that he believed this guilty plea also disposed of the November charges is rejected by this Court.

Butler testified his client was not willing to plead guilty to the remaining charges at that time. Applicant was facing trial on the Piccadilly Cafeteria case scheduled before Judge Williams

and chose to plead to the 12 year sentence on that charge only. This plea was not a "global resolution" of the charges. Coaxum rejected a global resolution at that time by not pleading in April 2008 to the remaining charges.

Similarly, counsel adequately advised his client prior to the January 2009 trial, about the plea offers made by the State to drop the life without parole sentencing notice if Applicant would plead to the pending charges. Butler stated his client was adamant in going to trial because Applicant indicated he was not going to plead guilty to a crime that he did not commit. Counsel was prepared to try the case, albeit with a recognition that the State's case against Applicant on the robberies was compelling.

Butler's strategy was to have the accomplice, Marquine Benbow, who had already pled guilty, to be viewed as the possessor of the shotgun based upon inconsistency in statement given in the case about the camouflage jacket. Although Butler opined that it was in Applicant's best interest to plead guilty and avoid the potential life sentence, he was unequivocal in his advice to Applicant that it was Applicant's decision and Applicant understood he was facing a life without parole sentence if he went to trial.

This Court cannot find counsel was under any duty to suggest that Applicant pursue an Alford plea in this setting where Applicant was refusing to plead guilty to anything. Butler did what reasonable counsel must do - provide his client with a full understanding of the consequences he faced by pleading guilty or by going to trial. It is the defendant's option at that point to decide whether he will freely waive his right to a jury trial. Coaxum, aware of those consequences, chose to go to trial and risk a life sentence. Counsel performed competently in his advice and presentation at trial. Applicant failed in his burden of proof to show that counsel was ineffective.



This Court concludes Applicant failed to prove that counsel was deficient in his representation prior to and during trial. In addition, this Court finds credible counsel's testimony that he met more than twice with Applicant prior to trial. A review of the trial record reveals that counsel was prepared to address the issues presented and had an understanding of the compelling case against Applicant.

In his application, Applicant also makes allegations about the notice to seek life without parole. No evidence was presented at the PCR hearing concerning this notice. However, a review of the trial transcript reveals that Coaxum was served with the notice of filing the life without parole notice on December 17, 2008. Tr.p. 357. Applicant refused to sign the notice accepting service. The notice was based upon the April 2008 plea and conviction for armed robbery. Notice is required to be given to the defendant and counsel not less than 10 days before trial pursuant to §17-25-45(H). See James v. State, 372 S.C. 287, 641 S.E2d 899(2007). There is no requirement that Applicant sign the notice, only that he is given it. The notice given was more than 10 days prior to the January 12, 2009 trial. Counsel was not ineffective in failing to object to the Court's authority to sentence to life without parole based upon the timely notice. Although no evidence was presented by the Applicant on this issue, it fails as a matter of fact and law based upon the conclusive record before this Court.

Applicant also asserted in his application that his two armed robbery convictions should be treated as one under the recidivist statute. Applicant's April 2008 guilty plea concerned the April 30, 2007 armed robbery at the Piccadilly Cafeteria. His January 2009 conviction concerned the November 27, 2007 armed robbery of the Pizza Hut. Under the recent decision of the South Carolina Supreme Court in Bryant v. State, 384 S.C. 525, 683 S.E.2d 280 (2009) his allegation is without legal merit. To the extent he may be asserting counsel should have objected, the Bryant



decision resolves the propriety of the life sentence based upon the two separate incidents and convictions.

In his application, Applicant further alleged that appellate counsel was ineffective in failing to raise a claim related to a directed verdict of acquittal. The trial record reveals that defense counsel Butler made a motion for directed verdict on the North Charleston Inn robbery based on the fact that the only witness, Jennings, saw Applicant holding the shotgun, but did not see a robbery. Tr.p. 227. The State responded that additional evidence was presented from Benbow's statement that the money they got from the North Charleston Inn was not enough so they robbed the Pizza Hut. Tr.p. 227. The trial court denied the motion. The Court finds appellate counsel was not ineffective in failing to brief the directed verdict issue. Since Applicant was not convicted of the robbery, there was no issue to raise on appeal. No testimony was presented from either side on this issue. To the extent that Applicant is presenting this issue against appellate counsel, it is denied.

In his application, Applicant makes unspecified claims of due process and equal protection violations. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. Applicant failed to present any evidence at the hearing to make the allegations more specific in any manner. This Court concludes the allegations were abandoned.

Similarly, Applicant asserts in his application there was unspecified "malicious prosecution." He has failed to present any evidence in this matter to support his claim. The Applicant failed to set forth any facts at the hearing to support any assertion of "malicious prosecution." This ground must be denied for lack of proof.

The Court further finds that Applicant's allegation that the trial court lacked subject matter jurisdiction is without merit. Subject matter jurisdiction is the power of a court to hear and

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determine cases of the general class to which the proceedings in question belong. Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). A review of the record indicates there is no basis upon which to conclude that the trial court lacked subject matter jurisdiction. The record reflects that Coaxum was indicted at the April 8, 2008 term for one (1) count of Armed Robbery and Possession of Firearm During the Commission of Violent Crime (2008-GS-10-2629, -2630) involving the November 27, 2007 Pizza Hut robbery.

Regardless of whether Petitioner's challenge is treated as a challenge to the indictment or as a challenge to the trial court's subject matter jurisdiction, his argument fails. Because the record establishes that a Charleston County Grand Jury returned a true bill of indictment against Petitioner in April 2008, and because circuit courts have subject matter jurisdiction to try criminal matters, his argument that the trial court lacked jurisdiction over him is meritless.

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 PCR Application is DENIED and dismissed with prejudice.

The Court notes that 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

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

WILLIAM COAXUM, #327616

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
234 Seven Farms Drive, Suite 128
Charleston, SC 29492

This 21st day of March, 2018.



Jennifer Jennison
Legal Assistant for Respondent

SWORN to before me this 21st day of March, 2018.



Notary Public for South Carolina.

My Commission Expires: 5/20/2025

GKV20070507215

WITNESSES

JASON FORSYTHE

North Charleston Police Department

AGENCY CASE NUMBER

2007018100

ARREST WARRANT NUMBER

K221546

DATE OF ARREST

2007-05-01

ACTION OF GRAND JURY

TRUE BILL

AUG 7 2007

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2007GS1009978

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2007

THE STATE

VS.

WILLIAM COAXUM SR

Indictment for

Armed Robbery

FILED

2007 AUG -9 PM 12:14

JULIE J. ARMSTRONG
CLERK OF COURT

07-2771 (1)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on August 6, 2007 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about April 30, 2007, in Charleston County, South Carolina, the Defendant, WILLIAM COAXUM SR, at [REDACTED] by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Robert Madison with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



GREGORY VOIGT
ASSISTANT SOLICITOR

GKV20071212020

WITNESSES

SHAWN PATRICK
North Charleston Police Department

AGENCY CASE NUMBER

2007050185

ARREST WARRANT NUMBER

K260762

DATE OF ARREST

2007-11-27

ACTION OF GRAND JURY

TRUE BILL

Edna Cochran
Foreperson of Grand Jury Date: APR 08 2008

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1002629

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

April Term 2008

THE STATE

vs.

WILLIAM COAXUM SR
DOB: [REDACTED]
B/M

Indictment for
Armed Robbery

FILED
2008 APR 11 PM 4:09
CLERK OF COURT

07-7655-1

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

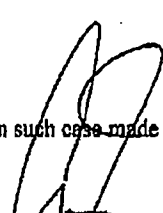
INDICTMENT

At a Court of General Sessions, convened on April 7, 2008 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about November 27, 2007, in Charleston County, South Carolina, the Defendant, WILLIAM COAXUM SR, while at [REDACTED], by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Tamara Brown with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



GREGORY VOIGT
ASSISTANT SOLICITOR

GKV20071212020

WITNESSES

SHAWN PATRICK
North Charleston Police Department

AGENCY CASE NUMBER

2007050185

ARREST WARRANT NUMBER

K260764

DATE OF ARREST

2007-11-27

ACTION OF GRAND JURY

TRUE BILL

Edwin Cochran
Foreperson of Grand Jury
Date: APR 08 2008

VERDICT

Guilty

Patricia J. Anderson Jan 13 09
Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2008GS1002630

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2008

THE STATE

vs.

WILLIAM COAXUM SR

DOB: [REDACTED]
B/M

Indictment for

Possession of a Firearm During the
Commission of a Violent Crime

FILED
CLERK OF COURT
2008 APR 11 PM 4:05

07-7655-3

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

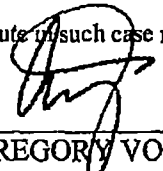
INDICTMENT

At a Court of General Sessions, convened on April 7, 2008 the Grand Jurors of Charleston County present upon their oath:

Possession of a Firearm During the Commission of a Violent Crime

That in Charleston County, South Carolina, on or about November 27, 2007, the Defendant, WILLIAM COAXUM SR, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: Armed Robbery; in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended)

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



GREGORY VOIGT
ASSISTANT SOLICITOR