

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Richland County
Honorable J. Derham Cole, Circuit Court Judge

S.C. SUPREME COURT

JEFF CHESTNUT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000347

APPENDIX

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INDEX

INDEX	i
TRANSCRIPT OF TRIAL HELD SEPTEMBER 17-20, 2012	1
APPLICATION FOR POST-CONVICTION RELIEF	675
RETURN.....	690
TRANSCRIPT OF POST-CONVICTION HEARING HELD FEBRUARY 3, 2016.....	699
ORDER OF DISMISSAL.....	789
INDICTMENTS	826

1 Q. ---at the bingo hall.

2 A. I was asking her how much -- how much money is there
3 because she never had no money. I wanted to know why they
4 wasn't paying her.

5 Q. Okay. So you were just asking what she made?

6 A. I was asking what -- how much money do y'all have up
7 there? Because you don't seem to never have none.

8 Q. You don't seem to never have none. So your only concern
9 was the fact that she wasn't making any money.

10 A. That's right because I got -- I'm tired -- I got tired.
11 I run the streets. I have my own kids. I have my own
12 personal life.

13 Q. Own personal life. And she was involved in that life
14 for a year.

15 A. She -- see, what you -- you're getting it mixed --
16 you're trying to mix me up. Teidra -- we was not dating over
17 a year.

18 Q. Okay. Well---

19 A. We was, you know, on and off.

20 Q. On and off but for a year.

21 A. Yeah. So?

22 Q. For a year.

23 A. Yeah.

24 Q. And during that time you asked her about how much money
25 the bingo hall was bringing in. And so she had complained to

1 you at times that she wasn't able to pay her rent; right?

2 A. Teidra didn't have rent.

3 Q. She didn't have rent.

4 A. No.

5 Q. So she never talked to you -- well, let me back up. You
6 knew that the bingo hall, the place where she worked---

7 A. Uh-huh.

8 Q. ---was going to be closing soon; right?

9 A. How did I know that?

10 Q. Because she told you; right?

11 A. She told me that -- she told me that I want to say
12 either that Saturday or -- yeah, that Saturday.

13 Q. So the Saturday before the Sunday---

14 A. Yes.

15 Q. ---she told you they were closing.

16 A. Yes.

17 Q. And, you know, she'd have issues paying her rent.

18 A. She didn't have rent.

19 Q. She didn't have rent.

20 A. No.

21 Q. So she didn't have money issues.

22 A. She had a light bill. She had kids.

23 Q. She had a light bill and kids but no rent. She never
24 said that.

25 A. She didn't have rent.

1 Q. And all those employees and coworkers who testified
2 about her complaining about it, that just wasn't accurate.

3 A. I don't have nothing to do with that.

4 Q. You don't have nothing to do with that. Now, let's go
5 to hot dog night.

6 A. Okay.

7 Q. You were there.

8 A. Yes.

9 Q. Right? And that was the Friday before this robbery.

10 A. Yes.

11 Q. And you were there with your co-defendant, Tyward
12 Jordan.

13 A. Yes.

14 Q. You have to speak up for the reporter.

15 A. Yes.

16 Q. And you were there with Terrell Miller.

17 A. Yes.

18 Q. Right? Y'all ate some hot dogs.

19 A. I didn't eat any.

20 Q. You didn't eat any.

21 A. No.

22 Q. You didn't eat any. You just went there to see Teidra.

23 A. That's correct.

24 Q. And you'd never been in the bingo hall; right?

25 A. I have -- I have never been in there, but I've been

1 there.

2 Q. Oh, you've been there.

3 A. Yes.

4 Q. But you've never been in and you don't play bingo.

5 A. No.

6 Q. And you've only been there how many times with Tyward?

7 A. I only been there -- he only took me there that hot dog
8 night and that Sunday.

9 Q. That one night two days before the robbery and that
10 Sunday---

11 A. Yes.

12 Q. ---of the robbery.

13 A. That was it.

14 Q. And it's your girlfriend that works there.

15 A. Yeah.

16 Q. Right?

17 A. Uh-huh.

18 Q. His girlfriend didn't work there. No?

19 A. I can't say.

20 Q. You can't say. You didn't know of a girlfriend that
21 worked there.

22 A. Correct.

23 Q. On Sunday -- I'm jumping around a little bit. On Sunday
24 you talked to Teidra throughout the day; right?

25 A. Uh-huh.

1 Q. And Teidra has her own phone; correct?

2 A. Her phone was off.

3 Q. Her phone was off. So she called you from other
4 peoples' phones.

5 A. Which was normal.

6 Q. That was normal. She always called you from other
7 peoples' phones.

8 A. When her phone is off, she use -- let me see. I want to
9 say -- is it the -- I want to say Scooter. Scooter? Peanut?
10 One -- I don't know them---

11 Q. So you do know some of the coworkers..

12 A. I know their names.

13 Q. You know their names.

14 A. Yes.

15 Q. And you know their names because Teidra talked to you---

16 A. Yeah.

17 Q. ---about her coworkers.

18 A. No.

19 Q. She talked to you enough---

20 A. She only---

21 Q. ---so that you knew Scooter and Peanut.

22 A. She only calls -- when she calls me, I ask her whose
23 phone she's calling me from.

24 Q. Okay. So the only time you learned about Scooter and
25 Peanut was when she called you on Sunday.

1 A. No, that wasn't the only time that she called me from
2 one of their phones. She called me all the time from one of
3 her employee phones.

4 Q. Okay. All the time she was using the employees' phones.

5 A. Yes. She would call---

6 Q. They were just like, Teidra, while you're at work -- she
7 would be calling you.

8 A. She would call me, yes.

9 Q. All the time.

10 A. Yes, throughout the---

11 Q. While she's working.

12 A. Obviously she's not working if she's calling me.

13 Q. And it's not odd for her to not be on the phone because
14 she's on the phone with you while she's working.

15 A. Well, I'm telling you that's -- she calls me normally---

16 Q. Normally.

17 A. ---at work.

18 Q. All the time. But she did call you that day.

19 A. Yes.

20 Q. And she called you from Scooter's phone. You've said
21 Peanut.

22 A. (Witness nodded head up and down.)

23 Q. Anybody else?

24 A. I don't know.

25 Q. You don't know, but you just asked or you said you asked

1 her every time: Whose phone are you calling me from?

2 A. Yeah, those numbers were normal.

3 Q. Okay. So she called you from Scooter and Peanut's phone
4 more than just that Sunday---

5 A. Yeah, because she used to work -- one of those guys --
6 I'm not sure. One of those guys she used to work with in
7 that stand on a regular.

8 Q. And I'm sorry. I didn't understand what you said.

9 A. One of those guys she was working with on a regular.

10 Q. Working with on the regular.

11 A. Yes.

12 Q. And she called you.

13 A. She called me from their phone.

14 Q. Okay. So you knew about them before. I'm a little
15 unclear whether it's you knew that she called you weeks
16 before---

17 A. I know---

18 Q. ---or months before---

19 A. It's---

20 Q. ---or that day.

21 A. I want to say---

22 **Mr. Chaplin:** Objection, Your Honor.

23 **The Witness:** ---it's not just that day.

24 **Mr. Chaplin:** I ask counsel to---

25 **The Court:** Let him answer the question.

1 **Mr. Chaplin:** ---let him answer the question.

2 **Ms. Simpson:** I'll move on.

3 By Ms. Simpson:

4 Q. There was another phone call that's pretty important.

5 A. Uh-huh.

6 Q. And you've sat here this week---

7 A. Uh-huh.

8 Q. ---and this is your trial.

9 A. Yeah.

10 Q. And this phone call is the one made after the robbery;
11 correct?

12 A. Correct.

13 Q. And it's to your phone.

14 A. Uh-huh.

15 Q. And you have the 740-9098; correct?

16 A. Yes. Yes.

17 Q. That's the phone you were using at the time.

18 A. Yes.

19 Q. And a phone call was made, and it was one of the
20 employees that worked with Teidra; right?

21 A. Uh-huh.

22 Q. Drenita.

23 A. I didn't know who it was.

24 Q. A female.

25 A. Yeah.

1 Q. She called you asking where Teidra was.

2 A. Correct.

3 Q. And what was your response?

4 A. "Teidra is not with me."

5 Q. Teidra is not with you. You didn't say, "Teidra is not
6 with me," and let me make sure I get this right, "Heard y'all
7 got caught up in some bullshit."

8 A. No.

9 Q. You didn't say that.

10 A. No.

11 Q. And you didn't say, "Tell homies everything is all right
12 now. It's over."

13 A. Tell what homies?

14 Q. Tell what homies?

15 A. Yeah.

16 Q. You don't know because it wasn't said.

17 A. I didn't say that.

18 Q. You never said that to her. You just said---

19 A. No.

20 Q. ---Teidra is not with you.

21 A. I just said, "Teidra is not with me."

22 Q. And this phone call was actually right after the
23 robbery; right?

24 A. I don't know what time it was. I just know that I was
25 at my grandma's house when I got the call.

1 Q. Okay. Well, this call was made shortly after the
2 robbery, 10 or 20 minutes or so, but you were already back at
3 your grandma's house? Correct?

4 A. First -- hold on. First off, when I got the call, I was
5 already back at my -- back at my grandma's house. So I can't
6 say what time it occurred or when or what.

7 Q. Okay. And if I told you that it occurred shortly after
8 the robbery, you're certain that you were at your grandma's
9 house.

10 A. All I know is when I got the call, they said, "Is Teidra
11 with you? May I speak to Teidra?" I said, "Teidra is not
12 with me." That was all I said. I didn't say nothing about
13 no homies all right, no tell everybody it will be okay. I
14 didn't say none of that.

15 Q. Okay. But it would have been your voice that they
16 heard; right?

17 A. It's my phone.

18 Q. It's your phone, your voice.

19 A. Correct.

20 Q. And after the robbery, you were hiding under the steps;
21 right?

22 A. Yes. I made a phone call for someone to come get me.

23 Q. Okay. So you called somebody to come get you.

24 A. Yes.

25 Q. So you wouldn't have talked to anybody on the phone

1 calling for Teidra, hiding under the steps.

2 A. First -- all right. I answers -- I answer my phone
3 every time it rings, whether it's a number I don't know or
4 whether it's a number I know, because of what I was doing.

5 Q. Okay. So even if you're hiding from the police, for
6 whatever reason---

7 A. Why would I be hiding from the police?

8 Q. You were hiding under the steps.

9 A. That's because I knew something had just happened.

10 Q. Okay. So you knew something was happening. I guess you
11 knew the police would be coming.

12 A. Okay. If I was hiding from the police, why would I make
13 a phone call and call my ride there and leave from there?

14 Q. I'm asking the questions. You just said that you were
15 hiding under the steps.

16 A. Yes.

17 Q. Correct?

18 A. Yes.

19 Q. You knew that something had just happened.

20 A. Yes.

21 Q. Correct? And you're hiding.

22 A. Uh-huh.

23 Q. From the police.

24 A. Why would I be hiding from the police?

25 **Mr. Chaplin:** Objection. Asked and answered.

1 **The Court:** Overruled.

2 By Ms. Simpson:

3 Q. Why else would you hide under the steps?

4 A. Why else would I hide under the steps? Where else was I
5 going to hide?

6 Q. So you needed to hide.

7 A. If I see two guys running past me, I can't run with
8 them. What would I run with them for?

9 Q. Okay. Let me -- let me just make sure I'm clear. Two
10 guys -- and we're not talking about just any two guys; right?

11 A. Right.

12 Q. Two guys you know.

13 A. I only know one real good.

14 Q. You only know one real good---

15 A. Yes.

16 Q. ---and that's Tyward Jordan.

17 A. Yes.

18 Q. Come running out.

19 A. Uh-huh.

20 Q. Okay. Bandanas on their faces?

21 A. I didn't pay attention.

22 Q. You didn't pay attention. You just saw them running.

23 A. Yes.

24 Q. But you knew what one of them was wearing because you
25 gave him your clothes; right?

- 1 A. I gave him my shirt.
- 2 Q. And that would be not the one you knew; right?
- 3 A. That would be the one I know of.
- 4 Q. The one you know of.
- 5 A. Yes.
- 6 Q. Which is---
- 7 A. Quantis.
- 8 Q. ---who? Quantis.
- 9 A. Q.
- 10 Q. Q. Oh, so you know him by a nickname, too.
- 11 A. That's the nickname in the neighborhood.
- 12 Q. Okay. So Quantis now not only has a last name of Sims
- 13 -- right? Right?
- 14 A. Right.
- 15 Q. You also know him as Q.
- 16 A. Right.
- 17 Q. Okay. This person you know of as Q., Quantis Sims, he
- 18 was the one who you gave your clothes to.
- 19 A. Correct.
- 20 Q. And that's because he showed up -- originally it was
- 21 just an orange shirt; right?
- 22 A. No, it was a Clemson tiger shirt.
- 23 Q. Clemson tiger which Upstate orange -- Clemson tiger is
- 24 orange.
- 25 A. Yes.

1 Q. He showed up and said, "I have on the wrong clothes."

2 A. He didn't come out and exactly say just, "I have on the
3 wrong clothes."

4 Q. What did he say?

5 A. All right. Well, as I'm talking to him - my customer or
6 whatever, they're doing their thing - he comes over there to
7 me asking me can he gets my shirt.

8 Q. Okay. So he knew you though; right?

9 A. I sell him weed, too.

10 Q. You sell him weed, too, and he's clearly friends with
11 Tyward Jordan.

12 A. Yeah. I don't have nothing to do with them.

13 Q. You don't have anything to do with Tyward Jordan---

14 A. Them being friends or how good they know each other.

15 Q. But -- and let's not assume. I'm not going to ask you
16 to assume how well they knew each other. They were there
17 together. You later learn that that's who Tyward was
18 planning to do the robbery with.

19 A. Correct.

20 Q. Because he was doing it while you were there.

21 A. Correct.

22 Q. So Q. just came up to you -- now, there are other people
23 standing around because you're selling drugs; right?

24 A. There was only one other person who I was selling the
25 weed to. The other two guys that was back there who worked

1 at The Comedy House, I didn't see them anymore.

2 Q. So they were gone by the time Quantis walks up to you.

3 A. Well, all I know is when I'm -- when I'm making my serve
4 to Twan (phonetic), the guy in the back of The Comedy House
5 -- there was a Caucasian guy and a black guy. The white guy
6 was still out there. The black guy had just -- had already
7 gone.

8 Q. Okay.

9 A. So that's who was all back there was, I guess, me, Twan,
10 the guy from -- one of the guys from The Comedy House and
11 Chief and Q.

12 Q. Chief and Q. And so this other guy -- the white guy is
13 still with you; right?

14 A. He's not with me; he was working out there. I think he
15 was dumping the trash or something.

16 Q. Okay. So he's dumping the trash. The white guy is the
17 one you were selling weed to though; right?

18 A. No.

19 Q. No, Twan.

20 A. Yes.

21 Q. Excuse me. The black guy is the one you're selling weed
22 to.

23 A. Yes.

24 Q. I'm just trying to get all these people straight.

25 A. Okay.

1 Q. So if I get it wrong, you just let me know.

2 A. I will.

3 Q. Now, so you're selling weed to Quan -- Twan, whatever---

4 A. Yes.

5 Q. ---his name is.

6 A. Yes.

7 Q. Q., Quantis, whoever, comes up. Tyward is with him.

8 A. Uh-huh.

9 Q. He says, "I've got on the wrong clothes for this
10 robbery. Give me your shirt."

11 A. "I need another shirt."

12 Q. "I need another shirt." Now, Twan is standing there;
13 right?

14 A. Your point? Yeah.

15 Q. Okay. So Q. says, "I'm wearing the wrong shirt for a
16 robbery," and somebody he doesn't know is standing there.

17 A. He didn't say nothing about he was wearing the wrong
18 shirt for no robbery. All he said to me was, "Bro, I need
19 another shirt."

20 Q. Another shirt. Did you know what he needed another
21 shirt for?

22 A. He didn't say. They never told me that -- what they was
23 planning to do.

24 Q. They never told you what they was planning to do. So
25 you just gave him your shirt.

1 A. I gave him my shirt; yes, I did.

2 Q. And your hat.

3 A. My hat.

4 Q. Why did he ask for the hat?

5 A. I just gave him that.

6 Q. So you just give your clothes away to people who say
7 they need it.

8 A. I gave him my shirt. The hat matched the shirt.

9 Q. Oh, well, why didn't you give him your pants if we're
10 going with everything matches?

11 **Mr. Chaplin:** Objection, Your Honor.

12 **The Court:** Sustained. Sustained.

13 **The Witness:** Why I didn't give him my pants? Probably
14 because he couldn't fit in my pants.

15 By Ms. Simpson:

16 Q. Speaking of that, let's back up. Fitting -- fitting
17 clothes. Quantis. You gave a description to police about
18 Quantis; right?

19 A. I did.

20 Q. Because you knew that Quantis was the person who
21 committed this robbery; right? Not you.

22 A. Right.

23 Q. Okay. And when you did it, Quantis just happens to be
24 about the same build and height as you; correct?

25 A. He's probably -- he's a little bigger than me.

1 Q. A little bit bigger but about the same.

2 A. I want to say he weigh like -- I weigh 160 to 170. He's
3 a little bigger than me. I want to say probably like 5'10",
4 5'11", 180, something like that.

5 Q. Okay. And his hair was different, too; right?

6 A. Well, at that time he just -- he just had low -- low
7 hair.

8 Q. Low-fade hair and a---

9 A. Just low hair.

10 Q. ---and a thin beard.

11 A. Yeah.

12 Q. Low fade; right?

13 A. Low hair.

14 Q. Okay. So you never said low fade. Low hair.

15 A. Low hair.

16 Q. But he didn't have twists and he didn't have dreads.

17 A. No.

18 Q. No. So you gave him your clothes, this person you
19 barely know, and then are you still talking to Twan?

20 A. Yes.

21 Q. Still talking to Twan, selling him weed.

22 A. Yes.

23 Q. No idea what Quantis and Tyward are doing; right?

24 A. Well, after -- after I gave him my shirt, Twan left,
25 too.

1 Q. Okay. So Twan left, too. You're standing there with---

2 A. Yeah, I thought---

3 Q. ---your undershirt on or another shirt on.

4 A. Yes, I did have on a shirt.

5 Q. Oh, you did?

6 A. Yeah.

7 Q. You wear undershirts; right?

8 A. Yeah.

9 Q. Okay. So you had an undershirt on.

10 A. I wear undershirts every day under everything.

11 Q. Every day. And you gave him your overshirt.

12 A. Yes.

13 Q. So they come running out, these two people, not just two
14 random dudes. They come running out, and you think something
15 happened. Correct?

16 A. Correct.

17 Q. But you didn't know they had just robbed the place;
18 right?

19 A. Well, I'm not even going to sit here and say that I
20 didn't know that because you're already trying to catch me at
21 something, but I'm going to say that what he was talking
22 about on the phone he did. I'll just say that much. I'm not
23 going to say I didn't know, but at that time I already knew
24 what happened.

25 Q. Okay. So at the time they come running out, you know

1. that robbery happened.

2. A. I knew that---

3. Q. The lick happened.

4. A. Yes.

5. Q. And when a lick happens and a robbery happens -- because
6. people are here; right? The business isn't closed.

7. A. Uh-huh.

8. Q. Customers are there. The police are going to get
9. called. And you go run and hide under the steps; right?

10. A. Correct.

11. Q. Because the police are coming. And after you hide --
12. about how long were you there?

13. A. Well, to the best of my knowledge, I want to say I was
14. under there for probably about no more than -- no more than
15. 15 or 20 minutes.

16. Q. So 15, 20 minutes. And then you go to your grandma's
17. house.

18. A. Correct.

19. Q. Right?

20. A. Correct.

21. Q. Now, Teidra has been calling you---

22. A. Uh-huh.

23. Q. ---on this day.

24. A. Uh-huh.

25. Q. Calling you for a ride?

1 A. Well, at first when she first got there she called me
2 and asked me would I have a ride later to pick her up.

3 Q. Okay. Later to pick her up.

4 A. Yes.

5 Q. And by later did she mean when she got off work?

6 A. Yes.

7 Q. Okay. But she called you several times.

8 A. Yes. The couple of times she called, she -- the second
9 -- the third time she called, she called to see if I would
10 bring her something to eat or some cigarettes.

11 Q. Okay.

12 A. And then afterwards, after those calls, she called me
13 and told me that somebody that -- I guess the lady Ronnie or
14 something like that was going to come up to the job, and she
15 wanted me to meet her to bring her some weed. And I told
16 her, "Okay. Well, call me once Ronnie gets there."

17 Q. Uh-huh. And so these calls are before the robbery;
18 right?

19 A. Yeah, I would assume.

20 Q. Okay. You would assume. And at no point did you tell
21 her you were at the bingo hall.

22 A. No.

23 Q. And when you knew what went down, that lick, did you go
24 try to find Teidra?

25 A. No.

1 Q. No? You weren't a little worried about her?

2 A. I mean, Teidra is grown.

3 Q. Teidra is grown. So it's okay that your friends are
4 robbing where she's working; right?

5 A. My friends? (Mr. Chestnut laughs.)

6 Q. Tyward is your friend; right?

7 A. I know of him. We're associates.

8 Q. You're associates now.

9 A. I don't have friends.

10 Q. You don't have friends. Okay. So you're not
11 neighborhood friends, not close enough. You don't call him a
12 friend. You're just associates.

13 A. He calls. I give him weed. He brings me my money.

14 Q. Okay. But you don't go see Teidra at the bingo hall
15 that day.

16 A. No, I didn't see her that day.

17 Q. At some point she says, "We were robbed."

18 A. She told me that.

19 Q. And you actually told her, "Yeah, I know. We planned to
20 do it." Right?

21 A. You said I told her that we planned to do it?

22 Q. Yes, you told her.

23 A. No.

24 Q. No. Did you say, "I know who did it"?

25 A. Well, no.

1 Q. No.

2 A. I didn't say I knew who did it.

3 Q. Okay. You didn't tell her anything. You just acted
4 like: I don't know anything about the robbery.

5 A. I mean, when she told me they got robbed, I was like
6 okay.

7 Q. Okay.

8 A. Yeah, which I had already knew Tyward did it.

9 Q. Okay. Let's move forward just a bit. At some point the
10 police want to talk to you; right?

11 A. The police want to talk to me June 8th when my warrant
12 was issued.

13 Q. Okay. So the warrant was out for your arrest; right?

14 A. The same day I went to probation.

15 Q. The same day you went to the probation office. But this
16 warrant for armed robbery was out for your arrest.

17 A. That same day.

18 Q. That same day. But it's prior to you talking to
19 Sergeant Isenhoward; right?

20 A. No, I talked to him afterwards after I got arrested.

21 Q. Okay. No. That's what I'm saying. Maybe we're just a
22 little confused.

23 A. Oh, okay.

24 Q. The arrest warrant is out. That's why you get arrested
25 for this armed robbery.

1 A. Yeah.

2 Q. Okay. You go to probation, and would it surprise you to
3 learn that the time of your arrest was actually 17:01
4 military time, so about 5:01? That was the time when you
5 were arrested. Sound about right?

6 A. At the probation place?

7 Q. The time of your arrest, yes.

8 A. At the probation; right?

9 Q. Yes.

10 A. I got there -- it's probably -- yeah, about right.

11 Q. Okay. And you testified earlier that after you got
12 arrested they took you directly to the sheriff's department;
13 right?

14 A. Yes.

15 Q. They put you in holding.

16 A. Yes.

17 Q. Sergeant Isenhoward comes up to you. Y'all have a
18 conversation.

19 A. He comes to get me out of the holding tank.

20 Q. Okay. But at that time he's never advised you; right?

21 A. He's never done what?

22 Q. Advised you of your rights.

23 A. Yeah. At that time, no.

24 Q. No. And he's actually -- his first question to you was
25 why don't -- "Why don't you tell me what you know about this

1 robbery?"

2 A. He asked me -- he said, "Do you know why you're here?"

3 Q. "Do you know why you're here?" That was all your
4 conversation consisted of.

5 A. No, that was not the whole conversation.

6 Q. And so y'all talked more about why you were there.

7 A. We talked about why am I charged or -- and the charge --
8 how much the charge carries. We talked about numerous
9 things.

10 Q. Numerous things. So it was a fairly decent I guess
11 lengthy -- not lengthy conversation but a matter of, what,
12 20 minutes at least?

13 A. I can't---

14 Q. Is that fair?

15 A. I can't say.

16 Q. But enough time for you to be able to talk about your
17 charges, a little bit about what happened, everything like
18 that.

19 A. Correct.

20 Q. But at no point did he advise you of your rights,
21 correct, during that conversation?

22 A. No.

23 Q. No. Because if he would have, you wouldn't have talked
24 to him.

25 A. Correct.

1 Q. I'm going to show you State's Exhibit 1 which is already
2 in evidence. This is your advice of rights. Look familiar?

3 A. Yes.

4 Q. And on that -- eventually you signed it; right?

5 A. Yes.

6 Q. You were advised. Now, the date on this is June the 8th
7 of 2010. That's right.

8 A. Right.

9 Q. Correct? And it's Sergeant Isenhoward who advised you;
10 right?

11 A. Uh-huh.

12 Q. The time on this is 17:14 which would be 5:14 in the
13 afternoon.

14 A. Uh-huh.

15 Q. That's a matter of minutes after you were actually
16 arrested.

17 A. Uh-huh. Your point?

18 Q. So this long conversation, you actually had been
19 advised.

20 A. What you mean I had been advised? I was talking to him
21 before 7:00. I got there between 5 -- I had to get there
22 between 5 and 5:30.

23 Q. Okay. Well, this advice of rights form which says "Your
24 rights" -- which you're claiming he didn't advise you.

25 A. Uh-huh.

1 Q. Right?

2 A. Right.

3 Q. "Before we ask you any questions, you must understand
4 your rights." Check. "You have the right to remain silent."
5 Check. "Anything you say can be used against you in court."
6 Check. Does this look right? These are the rights.

7 A. Uh-huh.

8 Q. And it goes on; right? And then there's a waiver of
9 rights, correct, at the bottom?

10 A. Uh-huh.

11 Q. And you finished high school; right?

12 A. Yeah.

13 Q. Fairly smart.

14 A. Yeah.

15 Q. You can read.

16 A. Yeah.

17 Q. You understand things pretty well.

18 A. Uh-huh.

19 Q. I believe you testified you know your rights.

20 A. Yes.

21 Q. And you know what it means to waive your rights.

22 A. Yes.

23 Q. And you checked that box.

24 A. I didn't check nothing.

25 Q. He checked it, but you signed it.

1 A. Uh-huh.

2 Q. It says, "I have read this statement of my rights, and I
3 understand what my rights are. I'm willing to talk and
4 answer questions. I understand and know what I am doing. No
5 promises have been made to me, and no pressure or coercion of
6 any kind has been used against me." Is that what that says?

7 A. Yes.

8 Q. Okay. And that's at 5:14.

9 A. At 5:14.

10 Q. Now, your statement you gave freely; correct?

11 A. You're saying that was at 5:14?

12 Q. Well, no, my question to you now is: Your statement was
13 given freely; correct?

14 A. Yeah.

15 Q. You wanted to talk to Sergeant Isenhoward.

16 A. I mean, I talked to him. It's not that I wanted to. I
17 was trying to clear my name.

18 Q. Clear your name.

19 A. Yes.

20 Q. Give him all the information that you possibly have.

21 A. I talked to him and the only -- the only reason I talked
22 to him is because we had established that if I talked to him
23 I would only be charged with one count of robbery. I
24 wouldn't get the counts of everyone in the building.

25 Q. Okay. That's your understanding. Now, you were already

1 under arrest.

2 Mr. Chaplin: Objection, Your Honor.

3 The Court: What's the objection?

4 Mr. Chaplin: She should ask a question, not commentary.

5 Ms. Simpson: I believe I did, Your Honor.

6 The Court: Ask it in the form of a question.

7 By Ms. Simpson:

8 Q. And you were already under arrest for armed robbery.

9 A. Under arrest? I assume I am if I got the warrant.

10 Q. You were advised why you were under arrest; correct?

11 A. At the probation place? Yes.

12 Q. Okay. And that warrant reads armed robbery.

13 A. Yes.

14 Q. Now, your statement -- I'm showing you State's

15 Exhibit 2. That's what we've been talking here about.

16 A. Uh-huh.

17 Q. Right?

18 A. Uh-huh.

19 Q. This is the statement that we're talking about, and
20 that's your signature on that statement.

21 A. Yes.

22 Q. Right? But it's your contention here today that you
23 don't know what you were signing; right?

24 A. You said I'm telling you now I don't know what I was
25 signing?

1 Q. Yeah, when you signed it.

2 A. Oh, when I signed it.

3 Q. Uh-huh.

4 A. No.

5 Q. At the time because he just handed you a stack of papers
6 and said, "Sign it. Sign here. Sign here. Sign here."

7 A. Sign two X's. Sign the two X's. That's all he said. I
8 just signed the papers.

9 Q. Okay. And as a matter of fact, you thought that this
10 was your rights; correct? You didn't realize what it was
11 'til you got back to the jail.

12 A. I didn't realize that was the statement until I got to
13 the jail.

14 Q. Okay. So Kevin Isenhoward, Sergeant Kevin Isenhoward,
15 didn't sit down with you in his office.

16 A. I never said he didn't.

17 Q. Okay. So he did sit down with you.

18 A. Yes.

19 Q. And he never got on his computer while you were there.

20 A. Yeah.

21 Q. He did get on his computer.

22 A. Yes.

23 Q. And he was typing stuff while you were talking.

24 A. Hold on.

25 Q. Correct?

1 A. Before -- before you even get into that, what he was on
2 his computer doing, I didn't know.

3 Q. You didn't know.

4 A. No.

5 Q. So he was just on Facebook and stuff and maybe talking
6 to you.

7 A. I'm -- all right. If I'm Kevin Isenhoward and you're me
8 and you're out there, how could you know what I got on my
9 computer?

10 Q. Okay. So he never told you -- he never advised you
11 again; right?

12 A. Advised me of what?

13 Q. Your rights as to this statement.

14 A. Before that? Before that? Before that statement?

15 Q. Correct.

16 A. No.

17 Q. No. You've never been advised. The statement that
18 starts at 1900 hours.

19 A. Uh-huh.

20 Q. Okay.

21 A. And that is what time?

22 Q. 1900 hours. I'm asking the questions. I tell you what;
23 it's after 5:14 in the afternoon.

24 A. Uh-huh.

25 Q. After this advice of rights; correct?

1 A. What?

2 Q. So let's move along.

3 A. Move.

4 Q. This statement -- he's typing something. When he's
5 finished, he hands you a stack of papers. You don't look at
6 it. Now, you're under arrest for armed robbery; right?

7 A. (Witness nodded head up and down.)

8 Q. You don't look at any paperwork. You just sign it.

9 A. That's right. I didn't.

10 Q. But y'all did talk about the incident.

11 A. We talked.

12 Q. And some of the things in the statement are accurate;
13 correct?

14 A. Some things.

15 Q. Just not all of them.

16 A. Correct.

17 Q. Well, let's -- let's go through because we want to make
18 sure that we get this right.

19 A. Let's go through it.

20 Q. Just so you know, I'm going to be highlighting the
21 things that you say are inaccurate---

22 A. Okay.

23 Q. ---just so we have a clear, fair assessment. Okay.
24 Now, Sergeant Isenhoward is asking the questions; right?

25 A. Correct.

1 Q. To you, who is responding; right?

2 A. (Witness nodded head up and down.)

3 Q. And that did happen, Q. and A., question and answer;
4 correct?

5 A. Yes.

6 Q. "Were you involved in the robbery at the Carolina Gold
7 Bingo on May 23rd of 2010?" Your response: "Yes."

8 A. See, he asked me did I know anything about it, and then
9 he asked me was I involved. So when I said, "Yes," how do I
10 know what I'm answering to?

11 Q. So you said yes---

12 A. I was answering two questions.

13 Q. So you said, "Yes," but that's just -- it's inaccurate
14 the way it is.

15 A. Yes. I misunderstood. That's what that is.

16 Q. You misunderstood. We'll go with misunderstandings and
17 inaccuracies. "What happened?" "I was at home in the yard
18 with my stepdaughter, Tionna Dennis." Correct?

19 A. All that right there is accurate.

20 Q. Everything. Well, let's just go through it. "I called
21 Chief to come take me to take somebody some weed. Chief came
22 to get me in a blue Corolla. He was by himself when he
23 picked me up at Teidra's house. I overheard him in the car
24 talking on the phone saying, 'I need to settle this lick so I
25 can hit this spot.'" Okay? That's accurate; right? You're

1 in the car when he's talking on the phone.

2 A. Uh-huh.

3 Q. You've got to say yes or no for the court reporter.

4 A. Yes.

5 Q. Okay. "When he hung up the phone, I asked him what he
6 was talking about. He told me he was thinking about hitting
7 the bingo hall." Is that accurate?

8 A. He told me he was thinking about -- yeah, he been told
9 me that.

10 Q. Okay. Well, I thought earlier you said that he didn't
11 mention the bingo hall---

12 A. He told me that Saturday.

13 Q. Okay. So you knew on Saturday about them hitting the
14 bingo hall.

15 A. I knew Saturday he said he was talking about it. I
16 didn't say -- I didn't know nothing about him doing it that
17 day.

18 Q. Oh, but you knew about a robbery they were planning.

19 A. Yes, I knew it.

20 Q. Okay. So that's accurate what I just said.

21 A. What?

22 Q. "He told me he was thinking about hitting the bingo
23 hall."

24 A. Okay.

25 Q. "I asked him who all was going with him." Right?

1 A. (Witness nodded head up and down.)

2 Q. "He told me that it was going to be him and Quantis."

3 Right?

4 A. Right.

5 Q. "I told him that I wanted some of that. At first he was

6 like, 'Nah, you can't get down with this.' Then he told me,

7 'Come on.' We pulled up at the bingo hall and parked the

8 car." Now, Staples is across the street.

9 A. That's right.

10 Q. So this is inaccurate?

11 A. Correct.

12 Q. Okay. We'll highlight this. "We walked around back,

13 and I saw two people that I usually deal with. I saw the

14 dude from The Comedy House, and I chilled with him, sold the

15 dude a bag. That's when Quantis came up walking. He was

16 saying he had on the wrong clothes. He had the wrong clothes

17 on." Now, at this point, right, you know about the robbery?

18 Correct?

19 A. Yeah.

20 Q. And you know that it's Tyward Jordan and Quantis who are

21 planning on hitting this bingo hall; correct?

22 A. At that time because I'm out there.

23 Q. Right. So when you gave him your clothes, you knew why

24 you were giving him your clothes.

25 A. But, still, what does that mean?

1 Q. But you knew why you were giving him your clothes;
2 correct?

3 A. Correct.

4 Q. Okay. "I gave him my black tee shirt and my Atlanta
5 Braves hat and he put it on. I told Chief that it" -- now,
6 all the rest of that was accurate; right? What I just read.
7 You gave him your hat and your tee shirt.

8 A. Uh-huh.

9 Q. "I told Chief that it ain't no need for me to go now.
10 He told me that he didn't want me to do it anyway." Right?

11 A. Correct.

12 Q. "I told him that I would stay here and look out."
13 Correct?

14 A. No, I didn't say look out.

15 Q. That's inaccurate, too. You didn't say you would stay
16 there and look out.

17 A. Correct.

18 Q. You stayed out at the back of the bingo hall; right?
19 They ran off to go do the robbery. "I stayed out there to
20 talk to a little white dude for a minute." Nothing about
21 Twan; right?

22 A. Keep going.

23 Q. "A few minutes later, Chief and Quantis came running
24 back."

25 A. That's right. All right. Now, why when I'm talking to

1 that investigator would I tell him that I'm back there
2 selling weed?

3 Q. I don't know why you would tell him anything. My
4 question to you is: Is this accurate in what you said? "I
5 was talking to a little white dude for a minute."

6 A. That was accurate.

7 Q. Okay. Not Twan, not a black dude. A little white dude.

8 A. That was accurate.

9 Q. "A few minutes later Chief and Quantis came running
10 back."

11 A. Uh-huh.

12 Q. "When I saw them, I hid under the steps behind The
13 Comedy House." Correct?

14 A. (Witness nodded head up and down.)

15 Q. "Under the steps where they put all the grease and
16 trash. I stayed there for about 30 to 45 minutes."

17 A. That was overexaggerating.

18 Q. Overexaggerating.

19 A. Yes.

20 Q. So inaccurate. "I walked out on the side of the
21 building, and I was scared and shaking."

22 A. No, I didn't -- I didn't say nothing about shaking. I
23 was a little scared.

24 Q. But you weren't shaking. "An older lady saw me and gave
25 me a ride to my grandmama's house---

1 A. No.

2 Q. ---in Greenvview."

3 A. Okay. That's inaccurate. You see how that sounds?

4 Someone just seen me and gave me a ride? No.

5 Q. So that's inaccurate. On your part or Sergeant
6 Isenhoward?

7 A. It's not on my part.

8 Q. Not on your part. You never told him that.

9 A. I never said that I was -- that I walked out and a
10 little lady gave me a ride.

11 Q. Okay. "Did you have a gun?" "No."

12 A. I said that.

13 Q. "Who had the guns?" "I didn't see them with no guns."

14 A. Correct.

15 Q. "What was Chief wearing?" "He had on a white or gray
16 tee shirt, some blue sweats. He had on a piece of brown
17 cloth that covered his mouth." Correct?

18 A. Correct.

19 Q. "What is Chief's real name and what does he look like?"

20 Your response: "Everybody knows him as Rocca. I don't know
21 his real name. He's about 6'4" and about 180, 200 pounds.

22 He's about 20 years old and has skin a little lighter than

23 me. His hair on his head is rough-looking like he don't cut

24 it. The hair on his face is like that, too." Is that

25 accurate?

1 A. Yeah.

2 Q. "What is Quantis' full name and what does he look like?"

3 "I just know his first name." You didn't say you knew him as

4 Q.; right?

5 A. Yes, I did. I didn't say that on the statement, but I

6 told him that.

7 Q. Okay. So he didn't put that in it, and you didn't say

8 that his last name was Sims.

9 A. No, I didn't know that at the time.

10 Q. Okay. You learned that later.

11 A. Yes.

12 Q. "He's from Irmo, but he be in Greenvview, too. He's

13 about 5'10", 185 pounds, with brown skin. He is between 22

14 to 25 years old. He has a low-fade haircut and a thin

15 beard." Is that accurate?

16 A. That's what I said.

17 Q. "What was Quantis wearing?" "Black jeans. And before I

18 gave him my shirt, he was wearing an orange shirt." Right?

19 A. Correct.

20 Q. "Do you know either Quantis or Chief's phone numbers?"

21 "I don't know Quantis. Chief had a number, 229-3829 or

22 something like that. It's a Charleston or Greenville area

23 code." Accurate?

24 A. Yes.

25 Q. "What did you get out of the robbery?" "They didn't

1 give me anything. They said I didn't do anything."

2 Accurate?

3 A. Correct.

4 Q. So you and Tyward talked about it later.

5 A. I called him.

6 Q. You called him.

7 A. I called him and I asked him about my money he owed me
8 from a previous transaction that I gave him to go make.

9 Q. Oh, the day before; right?

10 A. No, I gave him that -- I gave him that package earlier
11 that day.

12 Q. Oh, that day.

13 A. Yes.

14 Q. Okay. "Why did you give Quantis your shirt and your
15 hat?" "So I could back out of it," the robbery that you knew
16 they were about to do.

17 A. That's true.

18 Q. True. "Where are they now?" "He has them." "Did you
19 enter the bingo hall during the robbery?" "No, sir."

20 Accurate?

21 A. Correct.

22 Q. "Did you talk to Teidra before the robbery?" "I talked
23 to her before and after." Accurate?

24 A. Yeah.

25 Q. "Was she relaying information to you during the calls?"

1 "She just called to see if I could pick her up." Is that
2 right?

3 A. Right.

4 Q. "Did you tell her that you were there?" "Hell no."
5 Right?

6 A. Right.

7 Q. "Why would she say you participated in a robbery and
8 that you got money from it?" "Because I told her I planned
9 to do it." That's right?

10 A. That's not accurate.

11 Q. That's not accurate.

12 A. No.

13 Q. You never said that.

14 A. I never told her I planned to do that.

15 Q. What did you tell her?

16 A. I didn't tell Teidra anything.

17 Q. Didn't tell her anything.

18 A. Not pertaining to a robbery at her job.

19 Q. Okay. You weren't concerned about her.

20 A. I mean, after the fact she -- after I talked to her and
21 she told me that happened, I asked her was she all right.
22 That was it. I didn't go make sure, play Superman or
23 nothing.

24 Q. Because a man wouldn't do those kind of things; right?

25 A. Probably would, but, hey.

1 Q. "When did you tell her this?" "The day it happened."

2 A. (Witness shook head from side to side.)

3 Q. That's wrong, too?

4 A. Yeah. If I didn't tell her that I didn't plan it, why
5 would it be the day it happened?

6 Q. Question: "Was this before or after Chief picked you
7 up?" "This was after I got back. She told me that they got
8 robbed, and I told her that we'd planned to do it." Is that
9 correct?

10 A. I didn't tell her I planned to do nothing.

11 Q. Okay. "So was this before or after Chief picked you
12 up?" "This was after I got back. She told me that they got
13 robbed."

14 A. And that was all I said.

15 Q. So just this last part about planning it.

16 A. Yes, I didn't plan nothing.

17 Q. "Did you see Teidra outside during the robbery?"

18 A. No.

19 Q. No. So that's accurate. "She was calling me from like
20 two people phone." Right?

21 A. Correct.

22 Q. And now you know those two people because she called you
23 from peoples' phones all the time.

24 A. I already -- I knew whose phones it was.

25 Q. Okay. Even though you said you know because you asked;

1 right?

2 A. I always ask.

3 Q. "Did someone from the bingo call your phone after the
4 robbery?" That question was asked; correct?

5 A. Correct.

6 Q. "Yeah, looking for Teidra." Had you talked -- and
7 that's right; correct?

8 A. Correct.

9 Q. "Had you talked to her at that point?" "Yes, she called
10 me before that." "Did she tell you about the robbery then?"
11 "Yes, she told me about it." All this is right.

12 A. Yeah.

13 Q. "So is that when you told her that you planned to rob
14 the bingo?" "Yes." Is that right?

15 A. I never -- I never told her I planned to rob nothing.

16 Q. So this question should be highlighted, too.

17 A. Yes, highlight it.

18 Q. "So was it over the phone or when you got back that you
19 told her what you'd planned?" "Both."

20 A. You can highlight that, too.

21 Q. I can highlight this, too.

22 A. Yeah.

23 Q. It's getting a little weak. Let's see. "Why would
24 Teidra call Chief prior to the robbery?" "I don't know. I
25 didn't know she had his number." Is that right?

1 A. Go ahead.

2 Q. "Did Teidra tell you about how much money was in the
3 bingo?" "No." Right?

4 A. Right.

5 Q. "Is Teidra involved in any way?" "No."

6 A. Correct.

7 Q. "Do you have anything else to add?" "No."

8 A. Correct.

9 Q. And on all these pages that is your signature.

10 A. Yes..

11 Q. Correct? One, two, three, four. But all these -- these
12 highlights, Sergeant Isenhoward just made it up. You didn't
13 say those things.

14 A. Those didn't come out of my mouth.

15 Q. Okay. So---

16 A. That's not no---

17 Q. ---he made it up.

18 A. That's not no mistake. That's not saying that, oh, I
19 don't remember. That's not none of that. That didn't come
20 out of my mouth.

21 Q. Okay. But it came from somewhere because it was on the
22 statement; right?

23 A. It didn't come from me.

24 Q. So the four times that you talk about planning the
25 robbery were inaccurate. Right?

1 A. I didn't plan it at all.

2 Q. My question is the four times---

3 A. Right.

4 Q. ---that you talked about planning in your statement was
5 inaccurate. Right?

6 A. Right.

7 Q. Okay. And the one time that you talk about being a
8 lookout, that also is inaccurate.

9 A. Correct.

10 Q. Beg the Court's indulgence one moment. Okay. You were
11 arrested on June the 8th; right?

12 A. Yes.

13 Q. On June 9th you actually took a ride; correct?

14 A. Correct.

15 Q. You rode with Sergeant Isenhoward.

16 A. Correct.

17 Q. Right? And also Major Stan Smith; correct?

18 A. Yes. Yes.

19 Q. Two men in the car. And you were riding with them to
20 point out hangout spots; correct?

21 A. I pointed to a specific house.

22 Q. Specific house.

23 A. Yes.

24 Q. Where Chief is known to hang out.

25 A. No, where Quantis hangs out.

1 Q. Where Quantis hangs out.

2 A. Yes.

3 Q. So not Chief or Rocca.

4 A. No.

5 Q. And you're kind of in what? The Greenview area, I
6 guess, or Irmo?

7 A. In Greenview.

8 Q. In Greenview. And during that car ride, isn't it true
9 that you told them about -- a little bit about the incident;
10 right?

11 A. Like what?

12 Q. You said that Chief recruited you to participate in the
13 robbery; right?

14 A. You said I told them Chief recruited me?

15 Q. Let me make sure I get this exactly right. I don't want
16 to misstate it. Okay. Told you -- told Major Smith that
17 Chief recruited you to participate in the robbery; right?

18 A. No, I didn't.

19 Q. You never said that.

20 A. That he recruited me to be in a robbery? No.

21 Q. What did you say?

22 A. I don't even remember pertaining to that.

23 Q. But you didn't mention anything about the robbery.

24 A. Nothing but they -- the purpose for them picking me up
25 that day was to point out the whereabouts of Quantis. That

1 was -- and I rode with them. I showed them the exact house
2 where he be's (verbatim), where he used to stay at.

3 Q. Okay. And that's Quantis, not Chief.

4 A. That's right.

5 Q. And you also told them that you had a gun at the time,
6 but the cylinder didn't work.

7 A. No. I told him that -- he asked me did I ever own a
8 gun. I told him, yes, I did.

9 Q. Okay. So you never said that at the time of the robbery
10 you had a gun, but the cylinder didn't work.

11 A. No. He asked me did I ever own a gun.

12 Q. Okay. And you never said that you had sold it on the
13 street since.

14 A. I sold it on the streets before I even talked to them.

15 Q. Before all the robbery.

16 A. Yeah, before that.

17 Q. But you never told them that you participated or that
18 Chief recruited you to participate.

19 A. I didn't never said nobody recruited me to do nothing.

20 Q. Okay. In 2004 you were arrested for and convicted of
21 grand larceny; correct?

22 A. Yes.

23 Q. Also in 2004, breach of trust---

24 A. Yes.

25 Q. ---with fraudulent intent; correct?

1 A. Yes.

2 Q. And then in July of 2009, shortly before this, you were
3 convicted of strong arm robbery; correct?

4 A. Yes.

5 Ms. Simpson: Nothing further, Your Honor.

6 The Court: Redirect?

7 Mr. Chaplin: Yes.

8 Redirect Examination

9 By Mr. Chaplin:

10 Q. Okay, Jeff. Do you need to get a drink of water?

11 A. Yeah, let me get some.

12 Q. Okay.

13 A. Thank you.

14 Q. All right. Jeff, let's just touch base on a couple of
15 things here. Let's talk about the times on this advisement
16 of rights. This is the time that -- and I'm going to just do
17 regular time, 5:14 in the afternoon.

18 A. Uh-huh.

19 Q. This one actually has a time of 7:00---

20 A. Uh-huh.

21 Q. ---later that same evening. Okay?

22 A. (Witness nodded head up and down.)

23 Q. Okay. All right. I just want to make sure I
24 understand. Your testimony was that you're not sure what the
25 times were placed on those documents, but it's your testimony

1 that you signed---

2 **Ms. Simpson:** Objection to the leading.

3 **The Court:** I'll allow it. Go ahead.

4 By Mr. Chaplin:

5 Q. But it's your testimony that you signed everything at
6 the same time.

7 A. Yes.

8 Q. Okay. So there wasn't like two separate sessions where
9 you sign here, now let's talk, then sign again.

10 A. No.

11 Q. Okay. All right. Now, you testified that -- go ahead.
12 I think you testified that you later found out who your
13 girlfriend was with after the robbery?

14 A. Yeah.

15 Q. Who was that?

16 A. That was Tyward.

17 Q. Okay. They asked you did Tyward have a girlfriend or
18 somebody at the bingo parlor.

19 A. Uh-huh.

20 Q. When you were there for hot dog night, was he talking to
21 anyone?

22 A. He was talking to Drenita.

23 Q. Okay. Now, I know you answered a lot of questions here,
24 and I'm just going to try to summarize this. Okay. So you
25 were behind The Comedy House, and you were doing something

1 you shouldn't have been doing. You were selling marijuana.

2 A. Yeah.

3 Q. Okay. And you freely admit that.

4 A. Yeah. This is my life on the line.

5 Q. Okay. Now, you deny that you planned the robbery at
6 Carolina Gold Bingo?

7 A. Yes, I do.

8 Q. Okay. And you also testified that you were not a
9 lookout for anyone.

10 A. Correct.

11 Q. Was it important that you come here today and try to
12 clarify your statement and some other things?

13 A. Yes.

14 Q. Why?

15 A. That was the reason I didn't take the plea.

16 Q. Okay. You wanted to get this information out.

17 A. Yes.

18 Q. All right. And let me just look real quick. There's a
19 lot of questions with regards to, you know, how much of a
20 friendship you had with Tyward or whatever the case might be.
21 I mean, you said you dealt with him like two to three times a
22 week.

23 A. Yeah.

24 Q. Was that to get rides or what?

25 A. That was basically for -- I used to get rides from him

1 and he used to come -- I used to front him weed, too.

2 Q. Okay. All right. When y'all got to The Comedy House
3 that day, you decided not to go forward with -- with trying
4 to do anything as far as with Tyward; correct?

5 A. Correct.

6 Q. And you stayed in the back?

7 A. Yeah, I stayed and made my service instead.

8 **Mr. Chaplin:** Okay. Okay. That's all I have. They may
9 have more questions.

10 **Ms. Simpson:** Briefly, Your Honor.

11 **The Court:** Recross.

12 Recross Examination

13 By Ms. Simpson:

14 Q. So on twenty-five-cent hot dog night you didn't go
15 inside the bingo hall; right?

16 A. No, ma'am.

17 Q. You've never been inside the bingo hall; right?

18 A. No, ma'am.

19 Q. So how do you know that Tyward Jordan was inside talking
20 to Drenita?

21 A. I didn't say he was inside. I say when -- when he asked
22 me, they was outside with me and Teidra.

23 Q. Okay. So they were hanging outside.

24 A. So when I -- as a matter of fact, when we got there --
25 when we got there and pulled in the parking lot, I didn't

1 even have to walk from the car. Teidra walked to me. Her
2 other employees were over at the door. So as we're talking,
3 I hand her the cigarettes and we light the cigarettes. They
4 said that Teidra told them that it was twenty-five-cent hot
5 dogs. So I hand them \$2 to go get them some hot dogs. As in
6 the process of that, I guess he met Nita and they came
7 outside talking.

8 Q. Okay. So Nita was talking to him outside. They were
9 talking kind of---

10 A. Yeah.

11 Q. He was trying to---

12 A. Yeah.

13 Q. Or that was his girlfriend. I'm a little confused.

14 A. I don't know. All I know is he told me they exchanged
15 numbers.

16 **Ms. Simpson:** Okay. Nothing further.

17 **The Court:** All right, sir. You may come down. Next
18 witness.

19 **Mr. Chaplin:** Your Honor, at this point the State,
20 excuse me, the defense rests. Mr. Chestnut was our only
21 witness.

22 **The Court:** Thank you. Any reply?

23 **Ms. McDuffie:** Your Honor, beg the Court's indulgence
24 and ask could we take a recess for just a few minutes.

25 **The Court:** Let's take a short recess. All right.

1 Ladies and gentlemen, at this point in time the State does
2 have an opportunity to offer what's called a rebuttal to the
3 defendant's testimony. Apparently they want to consider that
4 for just a minute.

5 If there is no rebuttal, I'm going to dismiss you for
6 the day, and I'll tell you about that and give you further
7 instructions in just a few minutes. So just go to the jury
8 room for a few minutes and relax, and we'll call you in a few
9 minutes. Don't talk about the case while you're in the jury
10 room. Talk about the football game.

11 (Whereupon, the jury was excused from open court at
12 3:37 p.m.)

13 **The Court:** All right. We'll stand at ease for a few
14 minutes.

15 **Mr. Chaplin:** Thank you.

16 (Whereupon, a short break was taken.)

17 **The Court:** All right. Be seated. Does the State
18 propose to call a reply witness?

19 **Ms. McDuffie:** Yes, Your Honor.

20 **The Court:** Can you tell me who it is?

21 **Ms. McDuffie:** Major Stan Smith, Your Honor.

22 **The Court:** Daphne, off the record.

23 (An off-the-record discussion took place.)

24 **Mr. Chaplin:** Your Honor, could we get an offer of proof
25 as to what the intentions are?

1 **The Court:** I'll be glad to ask the State.

2 **Court Reporter:** Is this still off the record, Judge?

3 **The Court:** No. No, we're on the record now. What's
4 the substance of the reply and what's it in reply to or in
5 rebuttal to?

6 **Ms. McDuffie:** Your Honor, it will be in reply to
7 impeach him on prior statements that he made. The statements
8 are contained in Mr. Smith's follow-up that Mr. Chaplin has a
9 copy of, and we are seeking to introduce this evidence under
10 Rule 613 I believe it is, Your Honor, 613(b).

11 **The Court:** What's the nature of it?

12 **Ms. McDuffie:** I'm sorry. I didn't hear you.

13 **The Court:** I said: What is the nature of it?

14 **Ms. McDuffie:** Ms. Simpson asked Mr. Chestnut---

15 **The Court:** Prior statement.

16 **Ms. McDuffie:** Yes, Your Honor.

17 **The Court:** A prior statement of the defendant?

18 **Ms. McDuffie:** Yes. He denied making that statement to
19 Mr. Smith, and so we intend to impeach him under Rule 613.

20 **The Court:** Oh, okay. Okay. Do you understand?

21 **Mr. Chaplin:** Yes, I do. Thank you.

22 **The Court:** All right. Are you ready for the jury?

23 **Ms. McDuffie:** The State's ready.

24 **The Court:** Defense ready?

25 **Mr. Chaplin:** The defense is ready.

1 **The Court:** Bring the jury.

2 (Whereupon, the jury was brought into open court at
3 4:03 p.m.).

4 **The Court:** All right. Ladies and gentlemen of the
5 jury, the State has elected to call their rebuttal or reply
6 witness, and I will allow them to do so at this time.
7 Solicitor, call your reply witness.

8 **Ms. McDuffie:** Thank you, Your Honor. The State would
9 call Major Stan Smith.

10 J. Standin Smith, after being duly sworn, testified
11 as follows:

12 **The Clerk:** Please have a seat in the witness stand, and
13 state your full name for the record.

14 **The Witness:** It's James Standin Smith. It's
15 S-T-A-N-D-I-N, middle name.

16 Direct Examination

17 By Ms. McDuffie:

18 Q. Major Smith, where are you employed?

19 A. Richland County Sheriff's Department.

20 Q. How long have you been at the sheriff's department?

21 A. I started in June of 1984.

22 Q. And what are your duties with the sheriff's department?

23 A. I am a supervisor in the Criminal Investigative
24 Division. I hold the rank of a major. At this time I
25 primarily supervise all investigations, as it turns out. I

1 do have a focus, a personal involvement, in some of the major
2 crimes, homicides and robberies.

3 Q. And in this case that we're here for today, the robbery
4 that occurred at the Carolina Gold Bingo on May 23rd of 2010,
5 did you play a limited role in this case?

6 A. I did.

7 Q. On June the 9th of 2010, did you have occasion to come
8 in contact with the defendant, Jeff Chestnut?

9 A. I did.

10 Q. And please tell the jury where that was.

11 A. Sergeant Isenhoward, who is one of the case officers in
12 the case, asked me to accompany him. Chestnut was in
13 custody, and he wanted to further some of the statement that
14 he had given I think the day before regarding some locations
15 of where the co-defendant, who he identified I believe as
16 Chief, where he resided, places he hung out and that kind of
17 thing so we could further the investigation and try to get
18 him under arrest.

19 Q. Chief also known as Tyward Jordan?

20 A. That's correct.

21 Q. In the car with Mr. Chestnut, did he make some
22 statements to you?

23 A. Yes, he did make some general statements to both of us.

24 Q. And did he specifically tell you that Chief recruited
25 him to participate in the robbery?

1 A. Yes. I got on that -- in my follow-up on the return
2 trip, he had actually pointed out a house in the Greenview
3 subdivision where Chief frequented, and then on the return
4 trip to the sheriff's department he said that Chief had
5 recruited him to participate in the robbery.

6 Q. Did he also tell you that he had a gun but the cylinder
7 didn't work?

8 A. He said he had a gun with a cylinder that didn't work,
9 and he said he later -- has since sold it on the street.

10 Ms. McDuffie: Thank you. No further questions for this
11 witness.

12 Mr. Chaplin: No questions.

13 The Court: All right. You may come down. Anything
14 further?

15 Ms. McDuffie: No, sir, Your Honor.

16 The Court: All right. All right. Ladies and
17 gentlemen, that's all the evidence you will hear in this
18 case. As I told you - I think I told you - the remaining
19 part of the trial will consist of the final summations or
20 arguments of counsel and my instructions to you on the law of
21 the state of South Carolina as it applies to this case. Now,
22 that process will take some time. So, again, I think the
23 most efficient use of our time will be to reconvene in the
24 morning.

25 Would 9:00 in the morning inconvenience anybody? It

1 would? Okay. 9:30? We'll stick with that? All right.
2 We'll do that. We'll have a pretty full day tomorrow. I
3 think we'll conclude the case tomorrow. So have a pleasant
4 evening, and again don't discuss the case among yourselves
5 when you return to the jury room or with anyone else over the
6 evening hours. We'll see you at 9:30 in the morning. Thank
7 you very much.

8 (Whereupon, the jury was excused from open court for the
9 day at 4:08 p.m.)

10 **The Court:** All right. Counsel, let's discuss charges
11 to the jury. With regard to the State's three requests to
12 charge, those are all contained in my standard charge, and I
13 will give those charges, not in the form submitted, but in my
14 regular form which I think you might be familiar with. Now,
15 with regard to the---

16 **Ms. McDuffie:** Your Honor, we would also just ask that
17 you include in your standard charge the charge on note-taking
18 and expert witnesses and such as that.

19 **The Court:** I will do that. Yes, I do. That will be
20 included. As far as the defendant's requests to charge,
21 requests, plural, to charge, let me just say as a
22 preliminary: I have reviewed them, and let me just go
23 through them and then if you have any objections, I'll hear
24 them.

25 The first charge on inference, the Schrock case, I think

1 that's a fair inference that can be drawn from the evidence,
2 so I'll -- I will plan to give that unless there's some
3 objection. The reasonable doubt charge is included in my
4 standard charge. At least -- they're not numbered, so...

5 **Mr. Chaplin:** I apologize.

6 **The Court:** You've got two reasonable doubt charges.

7 **Mr. Chaplin:** I'm interested in the Manning charge, Your
8 Honor, which is the first.

9 **The Court:** Yes, sir, I'll give that. I always do.

10 **Mr. Chaplin:** Okay.

11 **The Court:** I'm not going to give all reasonable doubt,
12 the what you call Devitt charge.

13 **Mr. Chaplin:** Yes.

14 **The Court:** The State doesn't have to prove beyond all
15 reasonable doubt. The circumstantial evidence charge is
16 included.

17 **Ms. McDuffie:** Your Honor, you're going to include this
18 circumstantial charge?

19 **The Court:** No.

20 **Ms. McDuffie:** Okay.

21 **The Court:** Mine. Again, I might have them mixed up now
22 because I've been through it, so just kind of bear with me.
23 The innocence -- the Devitt/Blackmar innocence/guilt charge I
24 think is a duplicate of the inference charge, so I don't need
25 to give that. The request to charge on another State v.

1 Schrock which says the accused is entitled to the benefit of
2 any doubt, that's -- I don't think that's the case. I mean,
3 I don't think that's the law. Mere presence is not an issue
4 in this case. Where is... Mere presence in the -- he says
5 he was -- how is a mere presence charge applicable? Let me
6 ask you.

7 **Mr. Chaplin:** You're asking me to respond, Your Honor?

8 **The Court:** Yeah. It's your charge.

9 **Mr. Chaplin:** Yes, sir. Basically if all the jury finds
10 is that he was just present behind The Comedy House when this
11 occurred and that was it---

12 **The Court:** Well, that's not the scene of the crime.

13 **Mr. Chaplin:** Well, I agree.

14 **The Court:** I'm trying to link it up. If he admits he
15 was in the bingo parlor, I think a mere presence charge is
16 applicable, but if he's not at the scene of the crime---

17 **Mr. Chaplin:** As long as the State doesn't try to argue
18 that behind The Comedy House is the scene of the crime..

19 **The Court:** What's the State's position?

20 **Ms. McDuffie:** Your Honor, the State's position, which
21 it has been this entire time, is that the defendant was
22 inside the bingo parlor actively participating in this armed
23 robbery. However, Your Honor, in terms of mere presence,
24 even by the defendant's own statement he -- if you want to
25 include the crime scene to include The Comedy House and

1 surrounding area, he is not merely present. He stated that
2 he knew about the robbery. He actively participated by
3 helping to switch clothes with the guy prior to it. I don't
4 think mere presence is appropriate under any rendition of the
5 facts.

6 **Mr. Chaplin:** Your Honor, and that's dependent upon
7 whether or not---

8 **The Court:** Wait.

9 **Mr. Chaplin:** I'm sorry.

10 **The Court:** Go ahead.

11 **Ms. McDuffie:** Your Honor, so even if you assume what he
12 said was true, which we would say it's not, but even if you
13 do, then mere presence would not be appropriate because
14 there's no evidence that he was merely present.

15 **The Court:** Well, he raises the question: Does the
16 State take the position that being behind The Comedy House is
17 the scene of the crime?

18 **Ms. McDuffie:** No, sir, Your Honor.. Our position has
19 been from the beginning that he was actively participating
20 inside in the bingo place.

21 **The Court:** You see the disjunctive there?

22 **Mr. Chaplin:** I do, Your Honor, but it concerns me and
23 that's why I wanted to put that there because, you know --
24 but I will---

25 **The Court:** You don't have to withdraw it.

1 **Mr. Chaplin:** Well, I'm just saying I'll---

2 **The Court:** They take the position that the scene of the
3 crime is the bingo parlor.

4 **Mr. Chaplin:** Inside the bingo parlor.

5 **The Court:** Well, if he's -- even if he's a lookout -- I
6 mean, if he's in or about the vicinity of the bingo parlor --
7 now, you know, I don't know how far away he alleges he was
8 when this took place. Mere presence is a -- certainly a
9 theory that he would be entitled to if the facts support it.

10 **Mr. Chaplin:** And, Your Honor, I've heard the State --
11 and I understand what Joanna says and I have the utmost
12 respect for her. I'm just saying that I've heard things with
13 regards to lookout and -- and I'm concerned that a hand of
14 one/hand of all theory of him being behind The Comedy House
15 might be something that---

16 **The Court:** Well, now, hand of one/hand of all charge in
17 and of itself---

18 **Mr. Chaplin:** Yes.

19 **The Court:** ---contains a mere presence charge, not a
20 separate charge.

21 **Mr. Chaplin:** Okay.

22 **The Court:** If you look at my mere -- I mean my hand of
23 one/hand of all charge, it contains a mere presence
24 provision.

25 **Mr. Chaplin:** I just---

1 **The Court:** If that's your -- if that's your theory,
2 I've got it covered. I'm going to give you a set of charges
3 for right now---

4 **Mr. Chaplin:** Yes, sir.

5 **The Court:** ---and you can evaluate, but I don't think a
6 separate mere presence charge is appropriate. On the
7 suspicion, that's part of my standard charge. Confession is
8 part of my standard charge as is presumption of innocence.
9 Now, any objection based on---

10 **Ms. McDuffie:** Your Honor, if you mentioned it, I
11 apologize that I didn't hear it. The defense requested a
12 charge of: If you, the jury, have any reasonable doubt as to
13 whether the defendant is guilty of a greater or lesser
14 included offense -- there are no lesser included offense --
15 no lesser included offenses than requested. I don't think
16 that's an appropriate charge to charge---

17 **The Court:** You mean the King charge?

18 **Ms. McDuffie:** Yes, Your Honor.

19 **The Court:** Tell me about the King charge.

20 **Ms. McDuffie:** Your Honor, as it's written, it says---

21 **The Court:** No. It's a test. The King charge was
22 overruled years ago.

23 **Ms. McDuffie:** I agree with that, Your Honor, but it's
24 not even -- I mean, there's no lesser included offense---

25 **The Court:** I'm not going to give the King charge.

1 **Ms. McDuffie:** Thank you.

2 **The Court:** That's the King charge. Okay. Anything
3 else?

4 **Mr. Chaplin:** Nothing from the defense.

5 **Ms. McDuffie:** You're going to give us a copy of your
6 charge?

7 **The Court:** As soon as I -- I'll print them now that
8 we've been through them.

9 **Ms. McDuffie:** Thank you, Your Honor.

10 **The Court:** Did I say -- did I say that Major Smith is
11 free to go?

12 **Major Smith:** I was standing by, Your Honor, until you
13 let me leave. I have respect for the Court.

14 **The Court:** All right. We'll stand at ease for a
15 minute.

16 (Pause in proceedings.)

17 **The Court:** All right. Counsel, I tell you what. Y'all
18 look at them and tell me in the morning.

19 **Ms. McDuffie:** Thank you, Judge. 9:30.

20 (Whereupon, the trial concluded for the day at 4:30 p.m.
21 and resumed the following day, September 20, 2012, as
22 follows.)

23 **The Court:** Be seated. Thank you. All right. Just for
24 the record, I have provided the State and the defendant
25 proposed jury charges. Any objection to the charges as

1 proposed?

2 **Ms. McDuffie:** Not other than the previously discussed,
3 Your Honor.

4 **The Court:** Defense?

5 **Mr. Chaplin:** Same, as -- as corrected.

6 **The Court:** They have been modified.

7 **Mr. Chaplin:** Thank you.

8 **The Court:** State ready for the jury?

9 **Ms. McDuffie:** The State's ready, Your Honor.

10 **Mr. Chaplin:** The defense is ready.

11 **The Court:** State opening?

12 **Ms. McDuffie:** Yes, Your Honor, I am.

13 **The Court:** Open on the law. Bring the jury, please.

14 (Whereupon, the jury was brought into open court at
15 9:41 a.m.)

16 **The Court:** Good morning, ladies and gentlemen. We're
17 now ready to conclude the trial with the final arguments of
18 counsel and my charge to you on the law as it applies to this
19 case. So please listen attentively to the attorneys, and
20 we'll now begin with the solicitor's -- you may proceed.

21 **Ms. McDuffie:** Thank you, Your Honor. May it please the
22 Court? Good morning. Mr. Foreman, ladies and gentlemen of
23 the jury, on behalf of the State of South Carolina, the
24 citizens of Richland County and the victims in this case, I'd
25 like to say thank you. We all know that when you got that

1 letter in the mail summoning you for jury duty on Monday
2 morning, this was one of the last places that you wanted to
3 be, but you have been a tremendously attentive jury and we
4 appreciate your service.

5 I'd also like to take a minute to apologize to you if
6 there's anything that I have done, Ms. Simpson or Mr.
7 Steadman have done to offend you over the last few days. We
8 know that sometimes things can get heated in the courtroom,
9 but, ladies and gentlemen, the fact of the matter is we all
10 have a job to do.

11 It is our job as the State of South Carolina to serve as
12 ministers of justice, to bring forth all relevant and
13 credible evidence for you, the jury, to consider. It's Mr.
14 Chaplin's job to defend his client to the best of his
15 ability. It is the judge's job to instruct you, the jury, on
16 what the law is that applies in this case.

17 If you'll remember back to Tuesday morning, each and
18 every one of you took an oath. You took an oath to set aside
19 any bias or prejudice you may have against the State of South
20 Carolina or against the defendant and render a verdict based
21 on two things: the evidence and the law. Not on
22 speculation, not on fiction, but on the evidence and the law.

23 I'm going to take a few minutes and instruct you on what
24 the law is in this case, and after I finish, defense counsel
25 will then have a chance to make a closing argument, and after

1 that because we, as the State of South Carolina, have the
2 burden of proof in this case, we will have a chance to make
3 our closing argument. Ms. Simpson will do that.

4 Ladies and gentlemen, you must base your verdict on the
5 evidence and the law, and at this point in the trial you have
6 heard all the evidence in this case. That evidence comes
7 from two sources: the testimony of the witnesses on the
8 witness stand under oath and the physical exhibits that have
9 been entered into evidence. What's not evidence in this case
10 are opening statements, questions by the attorneys or closing
11 arguments. The evidence is the testimony of the witnesses
12 and the physical exhibits that have been introduced.

13 You may have heard people mentioning giving written
14 statements, things of that nature. In criminal cases in
15 South Carolina you don't have depositions. You can't
16 introduce written statements of witnesses, and that is
17 because the defendant has a right to confront the witnesses
18 against him. That right of confrontation is why we have live
19 testimony from witnesses and not depositions like you do in
20 civil cases. So you may have heard mention that people gave
21 written statements and things of that nature, but it's the
22 live testimony that you must consider when returning a
23 verdict.

24 Now, ladies and gentlemen, in South Carolina there are
25 two types of evidence. There's direct evidence and there's

1 circumstantial evidence, and the law makes absolutely no
2 distinction between the two. Direct evidence is testimony of
3 a person who asserts or claims to have actual knowledge of
4 facts such as an eyewitness. I submit to you, ladies and
5 gentlemen, that when Angela Diaz-Garcia came in here and
6 testified about how she identified Jeff Chestnut as the man
7 that robbed her at gunpoint, that is direct evidence.

8 Circumstantial evidence is proof of a chain of facts or
9 circumstances indicating the existence of the fact. An
10 example of circumstantial evidence would be Teidra Dennis's
11 suspicious behavior, her borrowing of other employees' cell
12 phones, her calling her boyfriend, Jeff Chestnut, her turning
13 the police away a mere five minutes before the robbery
14 occurred, and then her boyfriend and Tyward Jordan coming in
15 and robbing the Carolina Gold Bingo.

16 The law makes absolutely no distinction between the
17 weight or value to be given to either direct or
18 circumstantial evidence nor is a greater degree of certainty
19 required for circumstantial evidence than that of direct
20 evidence. You should weigh all the evidence in the case, and
21 after weighing that evidence, if you are not convinced of the
22 guilt of the defendant beyond a reasonable doubt, then you
23 must find the defendant not guilty. If, on the other hand,
24 you are convinced of the defendant's guilt beyond a
25 reasonable doubt, then you must find him guilty.

1 Now, ladies and gentlemen, we as the State of South
2 Carolina have the burden of proof in this case as we do in
3 every criminal case. We must prove to you that the defendant
4 committed each element of the offenses charged with proof
5 beyond a reasonable doubt. Proof beyond a reasonable doubt
6 is the highest burden that there is.

7 In civil cases you may have heard people talk about
8 preponderance of the evidence or clear and convincing
9 evidence, but proof beyond a reasonable doubt is proof that
10 leaves you firmly convinced of the defendant's guilt. There
11 are very few things in this world that we know with absolute
12 certainty, and in criminal cases the law does not require
13 that we overcome every possible doubt. However, based on
14 your consideration of the evidence, if you are firmly
15 convinced of the defendant's guilt of the crime charged, then
16 you must find him guilty. If, on the other hand, you think
17 there's a real possibility that he is not guilty, then you
18 must give the defendant the benefit of that doubt and find
19 him not guilty. I submit to you, ladies and gentlemen, that
20 in this case with these facts and this evidence, we welcome
21 that burden of proof.

22 As a result of Jeff Chestnut's actions on May the 23rd
23 of 2010, he is charged with four counts of armed robbery.
24 South Carolina law defines armed robbery as the taking of
25 property from the person or presence of another. From the

1 person: taking money out of someone's hand. Or from the
2 presence of another. When you take something from their
3 presence, you take something that is within their immediate
4 reach, control or observation.

5 Ladies and gentlemen, when you hold a gun on someone and
6 take their purse that's sitting on the table next to them,
7 that is from the presence of another person. When Kayla
8 Sharpe placed the money on the floor, that is from the
9 presence of another person. You don't have to yank it out of
10 their hands. The law allows for either.

11 By means of force or intimidation while armed with a
12 deadly weapon or any object which a person present during the
13 commission of the robbery reasonably believed to be a deadly
14 weapon. Ladies and gentlemen, I submit to you that a gun is
15 a deadly weapon whether it's operational or not. Every
16 single witness came in here and told you that both suspects
17 had a gun, that they were held at gunpoint and robbed, and
18 that, ladies and gentlemen, under South Carolina law is armed
19 robbery.

20 Mr. Chestnut is also charged with three counts of
21 kidnapping. Under South Carolina law, whoever shall
22 unlawfully seize, confine, inveigle, decoy, kidnap, abduct or
23 carry away any person by any means whatsoever without
24 authority of law shall be guilty of kidnapping. When every
25 single one of these victims was held at gunpoint, their

1 movement was restricted. They were not free to leave.

2 Therefore, the defendant is guilty of kidnapping.

3 You don't have to pick someone up and take them to
4 another place or hide them in an underground bunker like you
5 see on T.V. You just have to restrict their movement so that
6 they're not free to leave, and kidnapping can last for five
7 seconds or it can last for three months. There is no
8 distinction that the law makes about the amount of time that
9 a person has to have their movement restrained.

10 Now, ladies and gentlemen, you have heard a lot in this
11 case about the co-defendant, Tyward Jordan, and his role in
12 all of this, along with that of Mr. Chestnut's. In South
13 Carolina there's a legal principle called the hand of one is
14 the hand of all. Ladies and gentlemen, South Carolina law
15 says that if a crime is committed by two or more persons who
16 are acting together in the commission of an offense, the act
17 of one is the act of both or all.

18 When Tyward Jordan and Jeff Chestnut planned to go into
19 that bingo hall, when they split up when they got in there,
20 when one went behind the cage -- when Mr. Chestnut went
21 behind the cage and Mr. Jordan went out on to the floor, the
22 act of each is imputed to the other one. Each is responsible
23 for the acts that the other commits. Tyward Jordan was
24 responsible for when Mr. Chestnut held a gun on Angela Diaz-
25 Garcia and stole the money at the Carolina Gold Bingo just

1 as, ladies and gentlemen, we're asking you to hold Jeff
2 Chestnut guilty of robbing Marva Coates, Sarah Furtick, and
3 Drenita Ore because the act of one or the hand of one is the
4 hand of all.

5 By way of illustration, ladies and gentlemen, two or
6 more people can be guilty of killing another or a murder when
7 only one of the two had a pistol and only one bullet. If
8 both are acting together, assisting each other in the
9 commission of the offense, the law says that under those
10 circumstances the act of one is the act of all or, as it's
11 sometimes said, the hand of one is the hand of all. And,
12 ladies and gentlemen, it doesn't even require you to go that
13 far. When two people set out to do a robbery and one goes in
14 and robs and the other stays outside as the lookout, then
15 each are equally as guilty in South Carolina because the hand
16 of one is the hand of all. In South Carolina when two or
17 more people set out to commit a crime together, each is
18 guilty no matter what role they play. The hand of one is the
19 hand of all.

20 Ladies and gentlemen, I told you just a few minutes ago
21 that yours is the most important role in this courtroom. We
22 all like to think that we're very important to the system,
23 but the fact of the matter is that we're not. Court could
24 continue every single day without me, without defense
25 counsel, without the judge, but it could not continue without

1 you. The 12 of you individually, and ultimately
2 collectively, when you go back into that jury room to
3 deliberate are the ultimate finders of fact or judges of fact
4 in this case. It is up to you to determine if Jeff Chestnut
5 committed the crimes that we, the State, allege he did.

6 Ladies and gentlemen, you've heard me say that the
7 evidence comes from two sources: the testimony of the
8 witnesses on the witness stand and the physical exhibits.
9 One of your most important functions is to determine the
10 credibility of those witnesses. Credibility is also known as
11 believability, and, ladies and gentlemen, the law says that
12 when you're determining the credibility of witnesses, you can
13 believe all of what a witness said, some of what a witness
14 said or none of what a witness said. You can believe one
15 witness against many or many witnesses against one.

16 But there's some factors we ask you to consider when
17 determining the credibility of witnesses. What was the
18 demeanor of the witness on the witness stand? Was the
19 witness forthright or hesitant? Was the testimony of the
20 witness consistent, and was the testimony of the witness
21 corroborated? I submit to you, ladies and gentlemen, that
22 Angela Diaz-Garcia, Drenita Ore, Kayla Sharpe, Timothy Bell,
23 Robert Furtick, Sarah Furtick, Marva Coates, each and every
24 one of their testimonies was consistent. Their stories never
25 wavered. Never. Never.

1 Ladies and gentlemen, each one of them told you what
2 they saw and what happened to them when they were victimized,
3 held at gunpoint, robbed and kidnapped on the day of May 23rd
4 of 2012. Ladies and gentlemen, there were inconsistencies in
5 their statements. Some said that he had a red bandana or a
6 blue bandana or a black bandana. Some were more focused on
7 one thing and not another.

8 Ladies and gentlemen, I submit to you that that's what
9 makes them credible. If every single witness came in here
10 and told you the exact same story, that they observed the
11 exact same thing, that every little detail was the exact
12 same, that's not believable. That's not real life.

13 You could be at home or out on the street and see a car
14 accident, and if you're standing on one corner and someone
15 else is on the other, what you see is not going to be the
16 same. What you're focused on is not the same thing that
17 someone else is focused on.

18 Angela Diaz-Garcia told you she saw the gun. She
19 briefly -- she couldn't tell you what he was wearing, but she
20 was focused on his face. On his face. Ms. Furtick told you
21 that she was focused on the barrel of the gun, and that's
22 what these people are focusing on. Had they come in here and
23 given you the same story over and over again, ladies and
24 gentlemen, I submit to you that wouldn't have been credible.

25 What is credible is that these people came in here and

1 told you what they saw, what they observed on that day. They
2 have no bias. They have no interest. They don't want to see
3 the wrong man go to jail for this, ladies and gentlemen.
4 They came and told you what they saw.

5 Angela Diaz-Garcia came and told you that she was
6 100 percent positive that it was Jeff Chestnut who robbed her
7 at gunpoint on May 23rd of 2010. What bias, what interest
8 does she have?

9 Ladies and gentlemen, you also can judge the credibility
10 of the defendant's testimony, and I'm going to ask you to do
11 that. What bias does he have? Has his story changed? I
12 submit to you it absolutely has. He gave law enforcement one
13 statement and then got on the stand yesterday and told you:
14 Well, most of what's in the statement is true, but everything
15 that kind of implicates me in this I did not say.

16 He told you that Investigator Isenhoward Mirandized him,
17 then didn't Mirandize him and then did Mirandize him, and
18 maybe he just signed some form that he didn't know. Is that
19 credible, ladies and gentlemen? He said he knew his rights,
20 but then he told you he was never Mirandized and he wouldn't
21 have talked to the police. Is that credible? I submit to
22 you it's not, ladies and gentlemen.

23 Ladies and gentlemen, he said that when he got back to
24 his jail cell that night he read over the statement and saw
25 that the officer put these words in his mouth, that he was

1 the lookout, things of that nature. But, ladies and
2 gentlemen, the very next day he requested to speak with law
3 enforcement, and not only did Investigator Isenhoward but his
4 supervisor, Major Stan Smith of the sheriff's department, go
5 there and pick him up, and in the car did he tell the
6 supervisor, "This investigator put these words in my mouth,
7 made this statement up"? No, sir. No, ma'am. That's not
8 what he did.

9 What he told Major Smith was that, yes, Tyward recruited
10 me to do this robbery, and I had a gun and I have since sold
11 it on the street. He never told them that these falsehoods,
12 these untruths were in his statement like he did yesterday.
13 I would submit to you, ladies and gentlemen, it's just not
14 credible.

15 Now, ladies and gentlemen, I'm going to sit down in just
16 a minute, and defense counsel will get up here and give you
17 their version of the facts, and we'll have a chance to
18 respond. What we ask you to do is to render a verdict in
19 this case, and the word verdict comes from the Latin phrase
20 veredicto which literally means to speak the truth. And all
21 we ask you to do in this case is to render a verdict that
22 speaks the truth, a verdict of guilty for four counts of
23 armed robbery and three counts of kidnapping. Thank you.

24 **The Court:** Mr. Chaplin?

25 **Mr. Chaplin:** Thank you very much, Your Honor. Okay.

1 Good morning, ladies and gentlemen of the jury. I want to
2 piggyback on what Joanna said with regards to thanking you
3 for your service and your dedication to the process. Like
4 she said, you're the reason that the system works, and
5 everybody is entitled to their trial by a group of their
6 peers. That's what Mr. Chestnut has asked for in this
7 particular case, and again I really, really thank you all for
8 being so attentive. I saw you listening. I saw you
9 watching. Some of you took a lot of notes and things on that
10 order, and that really assures me that you all will be able
11 to go back in that room and deliberate and come out with a
12 fair verdict.

13 So what we're about to do is sit down and pass the case
14 over to you all, but prior to doing that we have closing
15 arguments. Now, Ms. McDuffie just got up and gave you the
16 law. Now I'm going to argue my case, and I represent Jeff
17 Chestnut.

18 Now, before I start, I'd also like to say that I know
19 that I might have been a little rough on some of the
20 witnesses, and I want to tell you right now that just like
21 Joanna, I had a job to do and it's not personal, but I'm
22 representing Jeff and I'm trying to get the information out.
23 It's no dispute: I know that something happened at that
24 bingo parlor on that night. That's not in dispute. What's
25 in dispute is whether or not Jeff Chestnut was involved in

1 that matter. So in advance, I just want to let you know that
2 -- well, not in advance, but at this point I would like to
3 just say that please don't hold that against Jeff or anything
4 like that. This is just what I needed to do in order to
5 cross-examine the witnesses.

6 Now, I told you in my opening that there were two
7 robbers, and robber one has already been caught. All right?
8 And we're -- and robber two has never been found. We're here
9 because the State believes that robber two is Jeff Chestnut,
10 and like I told you in my opening, all the State needs in
11 order to have Jeff sitting over there is -- is probable
12 cause. Beg your pardon. All the State needs in order to
13 have Jeff sitting over there is probable cause.

14 Probable cause is the lowest level of proof required,
15 and that level of proof is so low until Jeff was arrested
16 before an identification was even made. And I also pointed
17 out to you that probable cause is not enough to convict, and
18 as Joanna said, you have to be convinced beyond a reasonable
19 doubt that Jeff is guilty of these crimes.

20 So if I could just give you an example: Probable cause
21 is down here. Beyond a reasonable doubt is way up here. So
22 the question is: Does the State's evidence hit this mark?

23 So far they're here, and that's the evidence that they
24 used to arrest Jeff. The burden is on them to prove their
25 case beyond a reasonable doubt, and they are going to have to

1 hit this mark. I suggest to you that they will not be able
2 to do that and have not done that. In order to hit that
3 mark, they're going to have to prove to you beyond a
4 reasonable doubt that Jeff is guilty of armed robbery and
5 that Jeff is guilty of kidnapping. Inferences in this
6 particular matter are to be decided in Jeff's favor.

7 Now, I indicated to you in my opening that the State had
8 very little evidence. I told you that they had an unreliable
9 eyewitness, no D.N.A., no fingerprints, no weapon, and I
10 stand by that. But what the State does have is a huge burden
11 on them to convict somebody as robber number two. The
12 victims in this case demand that.

13 The State just pointed out to you that most of their
14 information is circumstantial, and they told you, well, but
15 you could weigh them both the same, but let's just look at
16 it. The only direct evidence that they have presented to you
17 is the identification from Ms. Garcia. We'll talk about that
18 in a minute. Everything else is circumstantial. Look at the
19 phone records. Look how he got there. Look at the fact that
20 she told security to leave and things on that order, and I'm
21 going to cover all that with you as well.

22 Now, let's go to Ms. Garcia. I would submit to you that
23 Ms. Garcia is a nice lady, and she said herself that she
24 would like to see someone punished for what happened. She
25 lost her job, and she told you how her daughter was

1 traumatized throughout this entire event. I don't doubt any
2 of that.

3 Now, I also pointed out to you that on June 8th that
4 Jeff Chestnut got arrested for this crime, but the State
5 realized that they really couldn't hold Jeff much longer if
6 they didn't have somebody that could I.D. him.

7 **Ms. McDuffie:** Objection, Your Honor.

8 **Mr. Chaplin:** On June 9th -- I'll move on, Your Honor.
9 On June 9th the State finally got that I.D., the day after he
10 was arrested. Things that make you go hmmm (phonetic).

11 Now, I'm going to come back to that in a second. Let's
12 talk about: Are you satisfied with Ms. Garcia's
13 identification beyond a reasonable doubt? She told you
14 herself that she misidentified Peanut. She told you that she
15 was nearsighted, but then she also told you what happened far
16 away. She told you it happened so fast.

17 And then when questioned, she admitted that she was
18 looking at the gun. She was looking at his clothes. She was
19 immobilized with fear, worried about her daughter. She
20 always went back to that mantra: But I never took my eyes
21 off his eyes. I submit to you that that's impossible just by
22 the mere fact that she testified that the robber went into
23 the drawer and took the cash. Her daughter said that --
24 well, I'll come to that in a second. Just by the fact that
25 the robber had to bend down and go to the drawer. Just by

1 the fact that she says looking at his clothes... Just by the
2 fact that she said, "I was looking at the gun," but yet she
3 says, "I never took my eyes off his eyes."

4 Now, on May 23rd she spoke with law enforcement, and I
5 submit to you that there is no record whatsoever from her
6 statements at that time that she never took her eyes off
7 those eyes. That's a very important thing. That's what the
8 State is coming to you with as their direct evidence, but
9 there's no record of that on May 23rd. Things that make you
10 go hmmm. Then on May 24th she meets with law enforcement
11 again, and I submit to you that again there is no record of
12 her saying anything about the eyes that she will never ever
13 forget.

14 Now, when Jeff testified, he told you that when you get
15 arrested you go to jail and that that information is public
16 knowledge. It's actually on the internet. So he gets
17 arrested on June 8th. The first time Ms. Garcia was able to
18 identify anyone is on June 9th. Things that make you go
19 hmmm.

20 All right. I already told you before that I think Ms.
21 Garcia is a nice lady, but I also think that Ms. Garcia would
22 like to see robber two caught and punished. I also believe
23 that Ms. Garcia lost her job. Ms. Garcia is angry about this
24 entire thing, and I don't blame her one bit. But, see, the
25 problem that you have is that you're going to have to go back

1 there in that room and make sure that you're not going to
2 make an emotional decision and that you're going to make your
3 decision based on the evidence that's been provided by the
4 State, and I submit to you that the fact that she was only
5 able to make that identification on the record the day after
6 Mr. Chestnut's picture was all over the internet goes towards
7 the credibility of her identification.

8 And I'll tell you something else. Ms. Garcia told you
9 that she never, ever took her eyes off those eyes, but she
10 never told you the color of those eyes. Things that make you
11 go hmmm. Now, if you stared at something so well that you
12 could look at six photographs and say, "Oh, yeah, that's the
13 eyes," why on earth would that person not get on the stand
14 and say something more than it was slanted or it was wide?

15 I encourage you when you get back there -- you look at
16 it. You look at each one, and you look at the eyes. And
17 you -- you figure out for yourself: Can you make that
18 identification based on what she told you? I submit to you
19 that you will not be able to do that beyond a reasonable
20 doubt.

21 Now, Jeff gave a statement, and there's been a lot of
22 talk about that. Now, the State wants you to believe that
23 Ms. Garcia could not have -- that there could be no records
24 of her identifying Ms. Chestnut -- Mr. Chestnut, rather, for
25 18 days after the robbery, and then they come right back and

1 they say: There's no way Jeff recognized those robbers. He
2 met with law enforcement the very next day, and he didn't say
3 anything. Well, you can't have it both ways. So if you
4 can't believe Jeff because there is no record of him saying
5 that, then you can't believe her.

6 Jeff did give a statement. Jeff got down there, and he
7 knew it looked bad. At this point he realized that he
8 actually rode to The Comedy House and the person that he rode
9 with robbed the facility with someone else. Jeff is sitting
10 there. He knows that he has a record; he told you about
11 that. And he also had to anticipate the fact that if he came
12 to court on this matter, the wrong juror or somebody who may
13 not be as unemotional as we need them to be might say, "Well,
14 if he did it before, well, he would probably do it again."
15 Now we know that you wouldn't do that because that's not the
16 law, but that was going through his mind when he was meeting
17 with Investigator Isenhoward. Jeff did not need any more
18 trouble.

19 He told you that his main focus when he was talking to
20 that guy was he wanted to get out of there. He needed a low
21 bond in order to do that. He needed a low bond because he
22 didn't have no money. He lives day to day. And while I
23 certainly don't condone that lifestyle, that's how he did it.

24 Someone with a bunch of cash from just robbing a bingo
25 parlor does not worry about a low bond. They go to jail.

1 They say nothing and take you to jail, go to bond court, and
2 they post a bond. Jeff told you that he was promised a low
3 bond but that Isenhoward didn't deliver.

4 Jeff went to jail, and Jeff didn't get out for five
5 months. All right? So not only did Jeff not have a bunch of
6 cash, nobody around him did. You know, here it is. Jeff
7 just got played by Isenhoward. It's clear to me that that's
8 what occurred, and I'm not trying to say anything bad about
9 Investigator Isenhoward. I'm trying to say that he has a job
10 to do. He is supposed to find the bad guys and lock them up.
11 All right? And a lot of law enforcement believes that it's
12 okay to trick people as long as you can get what you need to
13 bring to court in general, and I'm not saying that that's
14 bad. I'm just telling you that that occurs a lot, and I'm
15 probably not telling you something you've never heard before.

16 And just because this statement is in evidence, that
17 don't (verbatim) mean it's true. All that means is that
18 they've got a statement. They have it. Now, if you think
19 that statement was done improperly, then you have to dismiss
20 it. Jeff pointed out the things that he feels were
21 inappropriately applied to that statement, to the best of his
22 knowledge. It was pretty fast the way it was done. Those
23 things will be highlighted. The State says, oh, he just
24 highlighted everything that implicates him. The flip side of
25 that is that maybe everything that implicates him was

1 actually added without his knowledge.

2 He didn't read it first. Good gosh. You know, I teach
3 business law. I tell my students all the time: Don't sign
4 it if you haven't read it. But Jeff wasn't thinking about
5 that. There was a level of trust built in that room. He
6 felt like, okay, you're trying to help me. Let's get this
7 done, whatever, and he just signed some papers. He's headed
8 to bond court. The officer is coming to say: Give him a low
9 bond so he could probably be home that same night.

10 Well, that didn't happen. He didn't get home for five
11 months. The statement is not in Jeff's handwriting. I mean,
12 they knew that they were going to bring this charge at some
13 point. That could have assured you that, well, he's -- he
14 had to say that because it's in his writing, but you can't
15 even say that. The law says that if the statement was caused
16 by pressure, threats, hopes or promise of leniency that it's
17 not voluntary. You're going to be the judge. I think to
18 tell someone that you're going to help them get a low bond
19 sounds like a promise to me.

20 All right. Who sits down in front of law enforcement
21 and says, "Oh, I was the lookout. Oh, I planned it"? I
22 submit to you that those things were added to that statement
23 so that the State could prove the charge of hand of one/hand
24 of all, see, because at this point they didn't have anybody
25 that could put him in the building. That didn't happen until

1 Ms. Garcia had her epiphany on June 9th. So if I can't get
2 him in the building, what do I do? Okay. Well, he's out of
3 the building, but we can still get him on hand of one/hand of
4 all. It's pretty smooth.

5 The law says that just because you might know about
6 something doesn't mean you planned it. Jeff didn't have a
7 lawyer present. There was no -- Jeff says that there was no
8 Miranda. That's up to you to decide. Jeff said that he
9 signed everything at the same time. It wasn't done
10 individually as it's been presented to you all. That's open
11 for discussion, but I tell you what's not open for discussion
12 is the fact that you're about to put somebody away and you're
13 going to use their statement to do that.

14 Let's be fair. Why not have it videotaped? All they
15 had to do was come in here, hit play, and let you see it.
16 They can't do it. It's not like their abilities weren't
17 there. I mean, even in a D.U.I. if the officer can't bring a
18 video to court of you doing your field sobriety tests or in
19 the breath test room, it's dismissed. I didn't make that
20 rule. The courts did because they said there's too much back
21 and forth going on about, "Well, did he do it or did he not
22 do it?"

23 So they say -- the law is -- the Supreme Court said: We
24 want it videotaped. I suspect that they're going to start
25 saying that about interrogations like this in the future,

1 too. I hope they will. So what we're stuck with is no
2 audio, no visual, no witnesses were there, and the State
3 offers you a lot of excuses about that. Basically they say:
4 Well, it's the department policy that we don't do that.
5 Well, they need you to go back there and cosign what they did
6 on that evening, and I'm asking you not to do that.

7 The State says: Oh, you can trust us. Well, why don't
8 they -- why don't they give you something that you can sink
9 your teeth into, something that you can support so that when
10 you do deliberate you're not concerned that you might be
11 making a mistake?

12 Let's talk about the video that you saw. It was
13 somewhat blurry. It moved real fast. You didn't see any
14 faces. Whatever you saw was covered. You couldn't see any
15 eyes. You can't say that -- the State has not proven that
16 Jeff carried away anyone's property, and that's another
17 required element. They never searched his home. Come on;
18 this is an investigation. Get a search warrant.

19 They say, "Oh, he had access to money." Then if he got
20 arrested in June, why did it take him 'til October to make
21 bond? And you didn't see any property that they presented to
22 you that said: We got this off of Jeff.

23 Credibility of the witnesses. Now, I'm not picking on
24 these witnesses. I know that they went through something
25 very traumatic, and I know that it was a very bad experience

1 for them. But like I said before, Officer Smith got on the
2 stand and basically he could not tell you that his report
3 contained anything about the eyes when he spoke to Ms.
4 Garcia.

5 They said they had lab units, canine, C.S.I. Well, I
6 didn't see none of that. Why not run the dogs through or
7 something like that? I don't know. All I know is it ain't
8 here, and those are the kind of things that can clear
9 somebody as well, but you don't have that.

10 Drenita -- well, Ore -- well, I know that there was a
11 lot going on and it was very traumatic, but she lost me with
12 the red bandana. All right? And then when I questioned her
13 about that and said, "Could it have been black?" she
14 immediately chased that rabbit and said, "Oh, yeah, yeah,
15 yeah. That's the one that was in his back pocket." Well,
16 come on. Don't insult us. You saw the video. The shirt
17 covered the back pockets. You didn't see a black bandana; at
18 least I didn't.

19 Peanut - I really felt bad for him. The way he
20 described what happened to him was horrible. But he saw that
21 red bandana, too. I suspect he was just trying to help his
22 older sister, Drenita.

23 Kayla, when she got her composure, she said that robber
24 two took money from the cash drawer, and then there was some
25 dispute about: Did it get placed on the floor or did he go

1 into the drawer? Or whatever the case might be. And I don't
2 want to misstate what she said, but the point I want to make
3 is: Where was Kayla really during this incident?

4 Now, in order for her to be talking about the cash, the
5 drawer, she had to be back there somewhere in the area with
6 her mom, but her mom denied that. She got on the stand and
7 she said that her daughter and all those other guys were out
8 there with the other robber and she was petrified. She
9 didn't know what was going on. I don't know, but my concern
10 here is the credibility. And if Kayla gave money to -- on
11 the floor or had contact with the other robber, then she
12 never said anything about the eyes either. So I struggle
13 with that.

14 Marva Coates. She wears glasses, nice little lady. She
15 said out of the corner of her eyes she saw a piece of hair
16 sticking out of a cap. Based on that, they want you to
17 believe that whoever it was had dreads or twists. That's
18 their evidence. Now, come on. Just because Jeff was there
19 on hot dog night and he happened to be there with Jordan,
20 that does not prove beyond a reasonable doubt that Jeff was
21 robber number two. Jordan, I'm sure, had other friends,
22 maybe the person that he was on the phone with on the way to
23 the bingo parlor that night.

24 Hand of one/hand of all, I'm going to move to that. The
25 law says prior knowledge about something is not enough. The

1 judge went as far as to say that even if a person is present
2 when the crime is committed, that's not enough.

3 A prior arranged plan: Jeff just arranged to get a ride
4 to go to The Comedy House to go sell some weed, and that's
5 what he told you. He said he did hear something about it
6 earlier and he did overhear Mr. Jordan talking about it on
7 the way there, but there's no proof whatsoever that Jeff
8 planned a robbery.

9 Now, they say the proof is is that his girlfriend kept
10 calling him and he had these phone calls and -- to Jordan and
11 Teidra or whatever the case might be. Well, if you can't
12 think of any other explanation as to why his girlfriend would
13 be calling him, then I guess you'll believe what the State
14 said, but he said it was for cigarettes. He said she needed
15 a ride, and it was not unusual that she called him a lot that
16 day during the day.

17 Now, if they showed you six months of phone records or
18 maybe three months so that you could say, well, two weeks
19 before that he never called her at all, she never called him
20 at all, and now all of a sudden we've got all these phone
21 calls... Now, her phone was not operational at that time,
22 but I'm sure that it was at some point and they could have
23 checked that.

24 If you're trying to plan a robbery with your boyfriend,
25 why would you use someone else's phone wherein the call --

1 the number is going to be saved in that phone's memory? Come
2 on. Why not use a landline? They testified yesterday that
3 the landline was there. And if it was so well planned, why
4 do you need to do all these calls back and forth? Calls to
5 Tyward before this. Said Jeff told you he needed a ride to
6 go to The Comedy House, and he even told you that he did have
7 knowledge when he heard Tyward talking that something was
8 about to break out, but then who was celebrating the night of
9 the robbery after everything occurred? Not Jeff. It was
10 Tyward and the person that the State can't seem to find and
11 that's Teidra.

12 They say, well, Jeff knew about it because he answered
13 the phone. Okay. What robber picks up a phone and speaks to
14 someone after he just did it and say incriminating stuff?
15 Okay. If you wanted to be known so bad, why even bother to
16 wear a mask? I submit to you nobody is that stupid.

17 Jeff did admit that he did get a phone call and he said
18 he did tell them that Teidra is not there or not with him.
19 But Drenita, who was also very adamant about finding robber
20 number two, added some other things to it. Now, that's your
21 job to think about that and figure out who you believe. All
22 I'm saying is that that dog don't hunt. Something is wrong
23 with that.

24 Then they started getting on Jeff about the times.
25 Well, if this happened then and if that happened then and if

1 this happened then -- wait a minute. Wait a minute. Okay.
2 Garcia, she had some problem with the times, too. She said,
3 "I was so shook up." One minute she said, "It happened so
4 fast." The next minute she said, "It seemed like hours."
5 Then I tried to get her to tell me: Was it ten seconds? Was
6 it -- well, maybe it was sometime before that, but she could
7 never really wrap her arms around that either. A lot was
8 going on. But Jeff, they believe, must be perfect when it
9 comes to that type of response and testimony, and that's not
10 fair.

11 Well, he had a gun. I didn't hear that. Jeff said,
12 yes, he did have a gun in the past, and prior to the incident
13 he sold it. So to impeach him they bring in Stan Smith, and
14 he takes the stand and he says, "Yeah, he told us he had a
15 gun." Okay. But what he didn't say was: We were in the
16 vehicle and Jeff said that on May 23rd, 2010, -- 2010, I had
17 a gun. He didn't say that. So as far as I'm concerned, the
18 evidence still doesn't show that Jeff ever had a gun.

19 Now, the movie night -- I'm not going to be much longer.
20 The movie night that they had at the bingo parlor really
21 concerns me. All right. So I don't know what the witnesses
22 were really describing to you all. Was it what they saw in
23 the videos or was it what they actually saw? Well, we'll
24 never know the answer to that because everybody got together
25 in the break room. The police came in, played a bunch of

1 videos or whatever, and as Kayla testified and some other
2 people, there you go. I don't know what they saw. When they
3 were back there, did they compare notes? Did they talk about
4 it? I don't know. I suspect they did.

5 Quantis. They said: Oh, now you got a last name.
6 Well, you know what I say to that? The State could have had
7 one, too. All they had to do was to follow up on the lead.
8 Jeff even pointed to the house and said: This is where he
9 hangs out or this is where he lives, something to that
10 effect. The burden is not on Jeff to do that. All they had
11 to do was probably do a D.M.V. search. You didn't hear any
12 proof that that was done. There were no case notes that they
13 ever tried to follow up on this person.

14 They say they went to a location; it was vacant. Well,
15 what did the register of deeds say who owned it? What's
16 going on with that? He said he's the lead investigator. And
17 the reason is they already had their guy. They weren't
18 trying to follow up on nothing. They weren't trying to bring
19 you any evidence to say: Well, that is definitely not the
20 case. He just told you: I didn't believe him. Well, that's
21 not beyond a reasonable doubt. That's highly prejudicial and
22 very unreliable.

23 They said Jeff was a lookout. A lookout for what? He's
24 behind The Comedy House. He can't even see Decker Boulevard.
25 He can't even see. So if somebody was going to call the cops

1 and say, "Oh, my gosh, we're getting robbed," where are the
2 cops going to come from? Some might show up in the back, but
3 the majority of them are going to come in off the major
4 arteries. So why would you hide in the back of the building
5 if you're going to be the lookout? You go to the front, and
6 you also make sure that no one sees you. You sit in a car,
7 whatever the case might be. That's not what they said. They
8 said he's in the back of the building and he's the lookout.
9 Lookout for what?

10 They said Teidra cancelled the detail. Ah ha. She had
11 to be planning it. That's not what they said. They told you
12 that she did speak with a person, and the lady testified to
13 that, but she said in actuality the detail had been cancelled
14 long before. Now, what Teidra did is bring that to that
15 lady's attention. All right?

16 Now, if that means that she was planning the robbery, go
17 figure, but she did say that. She could have just been out
18 there smoking a cigarette. She knew the place was about to
19 close, and she was like, "You know what? They aren't doing
20 that no more. You might want to just go ahead and leave or
21 whatever the case might be. Nobody has been here for days."

22 There's a lot of pressure right now coming from the
23 victims in this. Now, Jeff took the stand and, you know, I
24 enjoyed the rather comical cross-exam that he endured. It
25 was done in lightning speed. A lot of jokes were cracked and

1 fun was made of Jeff. You know why? Because there was no
2 real evidence. Tripped him up. We can't prove our case, so
3 let's put the burden on Jeff. Let's make him look bad.

4 No fingerprints. Now, that really bothered me. What do
5 you mean no fingerprints? Dust the thing and get the prints.
6 So what if you find 12 different sets? But it wasn't --
7 nothing was done. They didn't even fingerprint any of the
8 employees to rule them out. They didn't do anything. They
9 said, oh, it wasn't available. This is an investigation. If
10 they had done that and found eight sets of print, they could
11 come to you and say that one of those prints was Jeff
12 Chestnut. They can't do it.

13 All they have is somebody who says that she will never
14 forget those eyes the day after his picture was published on
15 the internet. That's all they can say. And then the State
16 is saying to you - and I think this is a clear indication of
17 reasonable doubt - okay, if you don't think that we've proven
18 kidnapping and armed robbery, all right, well, we've got door
19 number two for you. Let's try hand of one/hand of all.
20 Okay. Either he was in the building and Garcia identified
21 him or he was not and he was out back, but you can't have it
22 both ways. Why are they at the end of this case still
23 arguing conflicting theories? Because they want you to go
24 back there and no matter what you have to do, you come back
25 with a verdict of guilty. Well, if you can't do it that way,

1 do it this way.

2 Now, the State's going to get up here and deny that
3 that's what they're doing. They have to say that, but I'm
4 just telling you: Think about it. If their case was so
5 strong and Garcia was so credible, then why not just say
6 that? That's our case, ladies and gentlemen. Go deliberate.

7 So the charges are armed robbery. In order to prove
8 that, you're going to have to believe that Jeff was there and
9 participating, let's say, inside the building. You're going
10 to have to rely on Garcia's identification. I'm telling you
11 that's not credible. No one else can identify Jeff as being
12 in the building.

13 The video is useless. You don't see a gun. And you
14 also have to wonder about how bad the evidence is tainted
15 because of the jail website. To prove kidnapping, you're
16 going to have to basically go through the same analysis.

17 Now, if you go to hand of one/hand of all, I think you
18 should stop right there and say, "Wait a minute. The State
19 don't know who did it, so why are we even going to that?"
20 But you're going to have to go there as well because they
21 could say, "Well, he was in the building, but he's
22 responsible for what Tyward did." Well, then it goes back to
23 Garcia's identification.

24 Now, robber number one - let's talk about that real
25 quick before I close - he's in prison. All right. Why

1 didn't he just come to court and testify?

2 **Ms. McDuffie:** Objection, Your Honor.

3 **The Court:** Sustained.

4 **Mr. Chaplin:** If they want you to believe hand of one/
5 hand of all, they should have brought you one of the hands.

6 **Ms. Simpson:** Objection, Your Honor.

7 **The Court:** I'm sorry? Overruled. Go ahead.

8 **Mr. Chaplin:** This case is not about Jeff's record.

9 This case is not about if you like Jeff. This case is not
10 whether you think Jeff is a nice guy. This case is not
11 whether you suspect Jeff, and it's not about the fact that
12 Jeff is sitting over there arrested. This case is about the
13 fact that the State has to prove beyond a reasonable doubt
14 that Jeff committed armed robbery and kidnapping, and they
15 can't.

16 Now, I told you beyond a reasonable doubt is the highest
17 level of proof that's required, and what I'm saying to you
18 right now is that - and I'll just do this in closing - the
19 State has not proven to you, excuse me -- beyond a reasonable
20 doubt they have not proven I.D. The witnesses lacked
21 credibility. Jeff's statement was not voluntary. There's no
22 gun. There's no defendant. I'm sorry. You can't even see.
23 They have not proved planning.

24 How about Quantis, that he doesn't exist? They have not
25 proven beyond a reasonable doubt that Jeff was ever a

1 lookout. They have not proven to you that Jeff kidnapped
2 anybody. They haven't proven to you that Jeff took anything
3 away from that location, and then finally they haven't proven
4 to you that Jeff had access to cash.

5 All right. That's your reasonable doubt. And every
6 inference in that analysis is to be decided in Jeff's favor.
7 It's not suspicion. It's proof. Therefore, as I close I
8 want to say again thank you very much for your attention.
9 Thank you for letting me talk as long as I have, and thank
10 you for going back there and doing the job that I know you
11 will do and that is make a decision not based on if you think
12 Jeff is a nice guy, if you like Jeff or whatever the case
13 might be, but based on whether or not the State has proven
14 their case beyond a reasonable doubt. And when you apply the
15 law the way it's been described to you by the judge, I submit
16 to you that you will not be able to say that, and I know that
17 you'll come back with the right verdict. Thank you very
18 much.

19 **The Court:** Is everybody all right?

20 **Ms. Simpson:** Actually, Your Honor, may we approach
21 briefly?

22 **The Court:** Yes.

23 (Whereupon, a bench conference was held.)

24 **The Court:** Ms. Simpson, go ahead.

25 **Ms. Simpson:** That's fine, Your Honor.

1 **The Court:** Go ahead.

2 **Ms. Simpson:** May it please the Court?

3 **The Court:** Whatever you wish to do.

4 **Ms. Simpson:** Some people work for their money. Others
5 might just be lucky enough to win it like playing bingo and
6 even a few might inherit it or receive it as a gift, but then
7 there are those who would steal it, those who would take it,
8 take what doesn't belong to them, take the hard-earned money
9 of others, and of those people, some of them are kind of
10 sneaky about it. They use trickery or deception to get it or
11 they take it when no one is around, when no one is looking.

12 But then there are those like the defendant, Jeff
13 Chestnut, and his co-defendant, Tyward Jordan. There are
14 those who would put a gun in the victims' faces and demand
15 money, those who would take it by force and by threats, and
16 in doing so they take oh so much more: Their sense of pride
17 and their peace of mind.

18 What will my two-month- old daughter do if I die? What
19 will I do -- what will my daughter do if my mother dies? She
20 was just a teenager, terrified, felt the need to call and
21 check on her daughter, can't even work in a bingo hall to
22 this day. That was Kayla Sharpe. I thought he was going to
23 kill me. I was upset. I couldn't sleep. And wherever I go,
24 I always look at the door wondering who is going to walk in.

25 Marva Coates. He had the gun in my brother's face. He

1 had him on his knees. That was my family. What would I do
2 if I lost my family?

3 Drenita Ore. He put me on my knees; the gun was in my
4 face. I was terrified. I was scared.

5 Timothy Bell, the jokester, fondly referred to as
6 Peanut. He had the gun on me. There was nothing I could do
7 except pay attention. I was scared. I didn't know if any of
8 us were going to make it out alive. I had my back to my
9 bingo family. There was a robber on the floor. But this guy
10 had a gun in my face, and I will never forget those eyes.
11 Couldn't get to the daughter.

12 Angela Diaz-Garcia. Lord, did I come to the bingo hall
13 to die today? That was Ms. Furtick. And seeing that man put
14 a gun in my wife's face and being able to do nothing about
15 it, I felt like less than a man. Mr. Furtick.

16 Make no mistake about it, members of the jury. The
17 defendant, Jeff Chestnut, and his co-defendant, Tyward
18 Jordan, on May 23rd they took so much more than just money so
19 that the victims didn't have gas to get back home or forcing
20 the bingo hall to close down so that they didn't have jobs.
21 They took so much more than money. They left their victims
22 always having to look over their shoulder. Their sense of
23 security stolen from them and stripped, and in that moment of
24 helplessness something was lost. And we are here today
25 because of Jeff's actions in planning, in executing this

1 armed robbery.

2 And let's be clear up front. We're not saying that he
3 was the lookout. He tried to say that. We're saying that he
4 is the man who was in the bingo hall with a gun robbing the
5 victims along with his co-defendant, Tyward Jordan, who has
6 had his day in court and we are here for his.

7 Good morning. As you've learned, my name is Nicole
8 Simpson, and I along with my co-counsels, together we
9 represent the State, and earlier you heard from my
10 co-counsel, Ms. McDuffie, and she got up here and she talked
11 to you about the law as it applies in this case because, as
12 the State, we bear the burden of proof. And then the defense
13 got up here and he talked about their version of the
14 evidence, what they think the evidence shows, and this is my
15 one and only opportunity to speak with you about the facts in
16 this case, the facts that prove the defendant is guilty.

17 But before I do that, I want to echo my colleagues and
18 thank you for your time, your patience, and your service in
19 this case because, as you heard in jury qualifications, it is
20 often said that jury service is perhaps the greatest duty a
21 man or woman can render his or her country during times of
22 peace. Well, that couldn't be more true than it is here
23 today in this in this courtroom in this case. And so on
24 behalf of all of us, I thank you.

25 Now, as Ms. McDuffie said, the roles in this courtroom

1 are very defined, and as the State, we have to bring forth to
2 you the admissible, credible evidence to prove the defendant
3 guilty, and the defense, he ensures his client's right to a
4 fair trial and represents him to the best of his ability.

5 The judge will instruct you on the law, and if ever
6 there's a discrepancy between what His Honor says about the
7 law in this case and the attorneys, you are to follow his
8 rulings and instructions to you. But with that said and,
9 again I'll echo, you have the most important job. You're the
10 sole finders and judges of the fact in this case. What that
11 means is that each of you here today is wearing a black robe,
12 and individually and collectively you must decide what
13 happened. Sole judges of the facts.

14 So when either side mischaracterizes or misstates the
15 facts - and I submit the defense has - but if I do it, too,
16 you remember them because you heard them. You heard the
17 testimony from this witness stand. You'll have the video.
18 You remember what it was, and you will make your decisions.

19 So when the State presents a case and prepares a case,
20 we try to anticipate what a defense may be. Sometimes it's
21 just, oh, that crime didn't happen at all. Others: Oh, it
22 happened and I did it, but there was a good reason such as,
23 yeah, I shot him, but I had to do it. It was self-defense.
24 And as I listened to the defense's opening statement and
25 their cross-examination and their presentation of their case,

1 their defense became clear: An armed robbery and a
2 kidnapping did occur. They're just saying Jeff didn't do it.
3 But he did do it, members of the jury, and that's what the
4 credible facts and evidence in this case prove.

5 As I said and as was echoed and emphasized, the State
6 bears the burden of proof. We must prove to you beyond a
7 reasonable doubt that the defendant is guilty, and that is as
8 it should be because no person ever accused of a crime should
9 have to come in here and prove himself innocent, but we
10 welcome that burden. But remember: That presumption of
11 innocence, every defendant who was ever convicted by a jury
12 was ultimately found guilty beyond a reasonable doubt. So
13 while our burden is high, as it should be, it is not
14 insurmountable, and I submit that we have not only met this
15 burden in this case, we have exceeded.

16 So what happened on May the 23rd of 2010 at the Carolina
17 Gold Bingo? Well, you heard the witnesses testify about what
18 happened. They took the witness stand: Marva Coates,
19 Timothy Bell, Drenita Ore, the Furticks, Kayla Sharpe, Angela
20 Diaz-Garcia. And what did you learn from them about the
21 armed robbery itself that day? Well, Drenita's (verbatim)
22 behavior was strange, and at some point after using
23 everybody's phone, she walked out and this was just past
24 6:30. She walked out the side door, and then a short time
25 later two men wearing bandanas around their faces and armed

1 with guns came in that very same door.

2 Now, Drenita, she was kind of above everybody. She's
3 the caller. She sees what's happening. Yes, it is what it
4 is. This is what you think it is. So what does she do? She
5 calls out to the people who haven't noticed, might not know
6 what's going on: Don't move. Don't move.

7 Kayla is not really paying attention. Baby, don't move;
8 we're being robbed. And they come in and this isn't
9 scattered. It's not sloppy. They come in and they move with
10 purpose. Their actions are consistent with people having a
11 plan. Tyward Jordan, he moves to the floor, guns in faces.
12 Puts Scooter and Timothy on their knees. The gun is in Marva
13 Coates' face, Ms. Furtick, all looking at the barrel of that
14 gun and he demands their money, and they give it to him.

15 And while this is going on, that second guy, the
16 defendant, he goes straight back to the cashier area. And
17 look at the pictures. Look at the video. He goes straight
18 back. One cash register, he passes it. Two, he passes it.
19 And he goes around to the cage outside of the camera. Now,
20 the cage is separate from the cashier area, and when he gets
21 there, he encounters Angela Diaz-Garcia. Gun out. Where is
22 the money? She doesn't say anything. She just points. And
23 what does she point at? There's a pile of money on top of
24 the counter, but does he go to that pile of money? No,
25 because he knows where the big money is kept. He goes

1 straight to that drawer where Kayla Sharpe had just started
2 keeping it four days prior to this incident, the day before
3 hot dog night.

4 He goes directly to it. Well, then he helps himself to
5 the cash off the counter. Then he exits the cage, and then
6 he takes the money from those registers. Tyward Jordan
7 motions: Come on; let's go. And they flee out the same
8 door, side door, that they came in. That was the armed
9 robbery, but this was no ordinary armed robbery. This isn't
10 just your drug deal gone bad or the spur-of-the-moment kind
11 of thing. This armed robbery was planned, and it was an
12 inside job.

13 They picked the perfect location, the perfect victims:
14 Senior citizens, elderly people, employees at a bingo hall, a
15 place where people go to have fun, unsuspecting, unarmed, and
16 unable to fight back. They knew what they were doing. And
17 Jeff Chestnut? Who worked there? Who had the inside
18 knowledge? Teidra Dennis. And that's his girlfriend by all
19 accounts.

20 We're going to talk about that plan, but before we get
21 there, something struck me yesterday about the defendant's
22 testimony beyond the fact that it was all over the place.
23 One thing he said stuck out, and this was when we were
24 talking about: Did he know about the plan? Did he not know
25 about the plan? When did he learn about the plan? All that.

1 At some point he said -- he admitted, "Yeah, I told him
2 to let me in on it." But then he says, "No, no. I then
3 backed out because I'm not walking in blind. I'm not falling
4 for that." The defendant is a planner, and this was planned.
5 He didn't go in blind. They knew what they were doing.

6 And the defense got up here and he spoke about all this
7 evidence that doesn't exist. Well, I'm going to talk to you
8 about the evidence that does exist, the facts in this case
9 that they just kind of want you to ignore because it goes to
10 the defendant's guilt.

11 Teidra Dennis, that's the defendant's girlfriend,
12 employee, and an insider, and her warrant is still
13 outstanding. Let's be clear on that. The bingo hall: High-
14 cash flow. You look at the picture, and I think it even
15 says, "Big jackpots." She's been working in the business at
16 least two years. She knows. And what's the risk? It's very
17 low. Perfect victims, the employees, and the customers. As
18 I said, unarmed, many elderly, and they come in with what?
19 Cash. Bingo doesn't work on credit.

20 So not only does the business have a lot of cash, so do
21 its customers. And the defendant -- and, again, we're not
22 saying he's the lookout. That is Jeff Chestnut. The
23 defendant knows about the drawer where she only had been
24 keeping the money four days prior. And you look at the
25 video. He passes right by it. And remember the testimony.

1 Now, this security detail, I want to talk about it just
2 for a little bit because Teidra knew about it. Some of the
3 employees knew about it because the bingo hall closes for a
4 period of time and then opens back up. Well, Mr. Kirby
5 testified, yes, the security detail had been cancelled, and
6 you heard from Deputy Fisher who didn't know. She wasn't
7 informed, so she showed up. But she did realize that it had
8 been -- like no officers had signed in, so something was kind
9 of up.

10 But who else knows that it's been cancelled? Well,
11 clearly Teidra. And Deputy Fisher comes in, and who takes
12 her outside? Who makes sure that she knows it's been
13 cancelled? You're not getting paid. It's been cancelled,
14 and the owner is on vacation. Deputy Fisher. Well, she's
15 going to do her job. She calls to confirm, but she's sitting
16 in her patrol car outside. She said she parked in the front.

17 And who is standing outside on the phone the whole time?
18 Doesn't leave. She testified, yeah, she was out there. I
19 submit she was waiting to make sure Deputy Fisher left, to
20 make sure that she was gone because, remember, she knows the
21 security detail has been cancelled because the police haven't
22 been coming there, but for some reason maybe Deputy Fisher
23 almost messed up the plan. She wasn't supposed to be there,
24 and Teidra made sure she knew it, made sure she left. So she
25 leaves. A matter of minutes. Like I said, all this occurs

1 around 6:30 or a little bit later. Deputy Fisher leaves.

2 Two men go in the side door, and the robbery occurs.

3 Now, these phone calls to the defendant's phone, the
4 defendant admits, yes, I got these calls. What did he
5 testify to? Oh, wait a minute -- and this was all over the
6 place, too. Yeah, she calls me from peoples' phones all the
7 time; that's not unusual. Hers was off. She calls me from
8 everywhere, and every time she picks up, you know, I ask:
9 Whose phone are you calling from?

10 Well, that's just not true. You heard the testimony
11 from each employee who knew something about the phones. They
12 thought it was odd that she was using Scooter's phone. They
13 testified it's odd. She had a phone. There's landlines at
14 the business, but she was using our phones. Why? Because it
15 didn't need to be traced back to her. That's key. Maybe.

16 Noticeable void for calls during the robbery, and
17 there's a plus of calls up until the point that the robbery
18 -- just before it occurs, during the time -- and it's not a
19 long time span because this is planned, and really as it's
20 going on without -- without a hitch. It's executed and
21 executed well.

22 Teidra is on the phone as she walks out the side door,
23 and remember Deputy Fisher has left. She's on the phone.
24 Goes out the side door, and minutes later the defendant and
25 Tyward Jordan come in that very same door, guns in hand,

1 bandanas on, and they know exactly where to go. How do they
2 know it? They scoped out the place on twenty-five-cent hot
3 dog night.

4 Now, the defendant tried to say: I never went in. And
5 this, too, all over the place. I never went in on hot dog
6 night. Well, that's not what Drenita testified to. She saw
7 him inside and outside, and even without that, it doesn't
8 matter. His girlfriend worked there. She can tell him about
9 the layout. He's up there all the time bringing her things
10 because that's what a man does for his lady. This was
11 planned.

12 Now, let's talk a little bit about the investigation in
13 this case. You heard from Investigator Chauncey Smith. He
14 was the first officer on the scene. It's his job to check
15 for the safety of the people there to determine if any other
16 suspects may be on the scene. He said that people were in
17 shock.

18 Now, people are rattled. These people don't get robbed
19 every day. This doesn't happen. They gather the initial
20 information, and as much as they want to ignore it, he spoke
21 with Angela Diaz-Garcia and she gave him a description of the
22 assailant, of the robber, on that date. It's in the incident
23 report. It's almost as if they say some things enough, that
24 will just make it so, but that is not the facts. She did
25 give a description. She has never wavered, ever.

1 Investigator John Carwell. He's the on-call
2 investigator. He comes out to the scene. Now, he's going to
3 do a little bit more. He's updated by Corporal Smith, and
4 they made a big deal about this. Chauncey -- Investigator
5 Chauncey Smith told him, "These are the people I've talked
6 to. This is the information I have. Here is what may or may
7 not be important."

8 He's not going to duplicate everything. He's not going
9 to go re-talk to everybody, and this case is being turned
10 over to the lead investigator to follow up. There are a lot
11 of witnesses. Gather what you can.

12 He got descriptions from Marva Coates. He got
13 descriptions from Ms. Furtick, Mr. Furtick, Drenita Ore, the
14 people who saw something, and be it a description of general
15 height, build, weight -- yeah, it varied a little bit, but
16 their descriptions of that second guy, the defendant, Jeff
17 Chestnut, it's consistent. And it's consistent even with his
18 made-up person, Quantis. Yeah, we're about the same size.

19 So, yeah, they got descriptions, and they told the
20 officer what they knew, everybody except Teidra because she
21 didn't hang around. And there are no ready-made suspects.

22 Defense counsel got up here and through cross-
23 examinations and closing argument in the case -- well, you
24 know what? Angela Diaz-Garcia, she didn't pick the defendant
25 out. She didn't see him. She didn't talk about the eyes.

1 She didn't -- she didn't say all this stuff on the day it
2 happened. Well, I tell you what. He wasn't standing around.
3 He didn't hang around for her to pick him out. They don't
4 have ready-made suspects; that's why they investigate.

5 Teidra became a person of interest because of her
6 behavior. He's talking to people. Whose name keeps coming
7 up over the course of this as something odd, something off,
8 something suspicious? Teidra. And phone numbers became
9 important, so he gathered that information for the lead
10 investigator.

11 Now, this next witness is the crime scene investigator,
12 Yvonne Woods. I'll take a moment here because I watch a lot
13 of T.V., and my favorite shows are crime scene shows, *Law and*
14 *Order*, all that, and let me tell you, members of the jury,
15 that's just not what happens in real life. The real science,
16 the real math behind it is that we don't get fingerprints all
17 the time. It's not just as easy as, oh, this and there's a
18 usable identifiable print of mine, especially where there's
19 contamination. Other people are touching. All these factors
20 affect ability to lift prints.

21 Now, she is a crime scene investigator. She is trained
22 in this area, and what did she tell you was her job? To
23 collect the evidence and process the scene. When she first
24 came in those side doors, she told you off the bat: I walked
25 up; people were coming in and out. You'll see the doors.

1 They were contaminated. And they do this, members of the
2 jury. This is her job, and she's familiar that when it's
3 contaminated, you can't get probative evidence. It doesn't
4 work like that.

5 She processed the drawers, as she told you about, and
6 attempted to collect fingerprints with negative results. So
7 it's not like she didn't try. She told you she could not get
8 any identifiable prints. Overlapping, smudging, all of these
9 things make a difference, and we just don't have that in
10 every case.

11 She did collect swabs for possible D.N.A. However,
12 again, after all this, she is informed that everybody has
13 been touching on these drawers. Contamination. That is a
14 problem. That is a problem that the lead investigator will
15 later consider after consulting other forensic analysts.

16 Again, D.N.A. Investigator -- Sergeant Isenhoward
17 talked a little bit about it, too. D.N.A., the best possible
18 sources are from blood, semen, and bodily fluids such as
19 saliva. We don't have any of those things in this case, and
20 it's clear nobody -- there's not a struggle. These people
21 didn't struggle. This isn't a rape case where semen may be
22 left behind. They didn't spit anywhere. And they weren't
23 just touching drawers; they were touching the money. That's
24 what they were grabbing on, the money.

25 So the fact that there isn't D.N.A. -- and they can't,

1 remember, just manufacture evidence, just make it up. This
2 isn't one of those cases, but what you do have is a lot of
3 witnesses, credible witnesses, circumstantial evidence in
4 this case.

5 You heard from Drenita Ore, the caller. She mentioned
6 that Teidra was on the phone a lot and not working. Again,
7 she observed her go out the side door, and that's when the
8 robbers come in. And what after it's over? She runs out and
9 who is standing there but Teidra because, members of the
10 jury, Jeff Chestnut wasn't the lookout. I submit it was
11 Teidra.

12 So Drenita comes out. Did you see anything? Did you
13 see where they went? No, I didn't see anything. It was
14 impossible for her not to see. Drenita, positively
15 identifies the co-defendant, Tyward Jordan, and knows that
16 Tyward came in the night with Teidra's son on twenty-five-
17 cent hot dog night talking to Teidra, not playing bingo. And
18 as much as the defendant seemed to go back and forth on:
19 "These were friends. No, these were not my friends. These
20 were my associates. No, they were my friends. I don't have
21 friends," whatever, days prior to this incident he is with
22 Tyward Jordan and Teidra.

23 What else did she tell you? She said, "Yeah, later I
24 saw the video." She said, "Yeah, I saw it, and it sure did
25 look like him."

1 Marva Coates. You heard from her. And defense counsel
2 kind of brushed over this description, but she, too, gave
3 officers a general description, but one thing is key and it
4 wasn't that he had on all black and it wasn't just a hair --
5 a little something sticking out, as defense counsel said.
6 She said that hair was sticking out of the cap like twists or
7 dreads. That is pretty specific, and that is key because
8 even the defendant's made-up person, Quantis Sims, Q.,
9 whoever: Low-fade haircut. Low-fade haircut. Well, that's
10 not what's in the video. That's not what the witnesses
11 described.

12 Angela Diaz-Garcia. Now, the defense talked about her a
13 lot, and that's because she identifies his client as 100
14 percent sure that his client is the person that did this. So
15 what did she testify to? She said, "I was working in the
16 cage," and she had a good opportunity to see the defendant.
17 She was paying close attention, trying to get something that
18 could help if they ever made it out alive.

19 Members of the jury, what does she do? She handles
20 money. She deals with money, sort of like bank tellers,
21 people who might be trained to pay a little more attention to
22 things and she did, and she has never wavered. She is
23 consistent. She gave the description on that day, and she
24 always said, "I felt like I could identify him if I ever saw
25 him again." If he had just been walking down the street, she

1 could have picked him out. She is that sure.

2 I will never forget those eyes. Eyes. Face. Clear.
3 And what -- when this line-up was shown to her -- when the
4 line-up was shown to her, she said, "As soon as I saw his
5 picture, I got sick to my stomach." It wasn't suggested to
6 her. She didn't look this up on the jail website. How did
7 she know his name at that point? She knew him because she
8 remembered him from the robbery. No doubt, 100 percent sure,
9 never wavered.

10 And what did she have against Jeff Chestnut? Some of
11 these witnesses might have seen him before. She had never
12 seen him. She didn't know who he is. She doesn't want the
13 wrong person to be punished. What did he say? "Where's the
14 money?" But he pointed to the cash -- she pointed to the
15 cash on the counter, but the defendant went directly to the
16 drawer underneath.

17 And we go back to Teidra's behavior. Everybody is
18 hanging around. Stay here. We need to talk to the police,
19 tell them what we know. Yes, everybody wanted to leave, but
20 Teidra just clocked out and left. Didn't stick around.

21 Finally -- and you heard from some other witnesses in
22 the State's case, too. You heard from Lieutenant Scott
23 McDonald, and he talked to you about the importance of phone
24 records generally in cases, and that importance varies from
25 case to case. And in this one it's key because of some of

1 the timing but primarily because of the unusual behavior by
2 Teidra calling the defendant from other peoples' phones, and
3 he admits that and he admits to getting a call from Drenita.
4 But, oh, Drenita is lying about that call.

5 Yeah, she called me. I picked it up. That was me on
6 the other end, but all that stuff about tell little homies
7 it's going to be all right, none of that's true. She is
8 lying.

9 Sergeant Kevin Isenhoward. Now, this is the witness
10 that the defense wants you to believe just played the
11 defendant because he's about tricking people and making stuff
12 up and just wants a conviction, and this poor pitiful Mr.
13 Chestnut, just a victim. He got played.

14 Well, that's just not true. Lead investigator on the
15 case. He's been investigating for years. This is what he
16 does. He developed Teidra Dennis as a possible suspect, and
17 we've talked about that. Behavior, witnesses, things come
18 up, and he follows up.

19 Phone records became important, so he got a search
20 warrant for them. Everything about this - remember, he's
21 experienced - indicates a planned attack. Their movements
22 when they get in there: They know where they're going.
23 They're not bumbling around. It's quick and, for all intents
24 and purposes, clean. They get in and they get out, and they
25 get all the money.

1 He spoke with Teidra Dennis, and he told you about the
2 information that she gathered from him or he told you about
3 the information that he gathered from her. But, again, as I
4 said, Teidra Dennis -- that warrant is still outstanding.

5 Witnesses identify, positively identify, Tyward Jordan
6 as the co-defendant in this case, even the defendant. So,
7 here, we're one step further. There's absolutely no doubt
8 that Tyward Jordan was one of these people and not just one,
9 but he was the person on the floor that committed this
10 robbery, the second guy. And he interviewed the defendant,
11 and we're going to get to that.

12 Attempted to follow up on Quantis. Now, counsel said,
13 nope, they didn't do anything; they didn't follow up. Well,
14 here is the information, and remember the only person who has
15 any information about Quantis -- because Teidra doesn't.
16 Nobody does but the defendant. Quantis. His name is
17 Quantis. He lives in Irmo, Greenview area, hangs out
18 sometimes. That's all they got.

19 He told you about what he did to try to follow up.
20 There's only so much you can do with as much information as
21 you have. Of course, a whole lot more came out. Oh, he's Q,
22 known in the neighborhood. Quantis Sims. Where is Quantis?
23 And we'll get back to that.

24 Forensic testing. He told you he makes these decisions
25 in murder cases, assault cases, armed robbery, burglaries

1 about what to do and why they do it, and the choices they
2 make. The defendant was in possession of a large sum of
3 money. Now, he coughs this up to, yep, I'm a drug dealer. I
4 always have several hundred dollars on me, and yet he has no
5 money. He goes back and forth. But this is the information
6 they had, and it is consistent with someone having to rob the
7 bingo hall.

8 All of the descriptions given by the witnesses, the
9 eyewitnesses, on that day match the defendant. The general
10 descriptions of their height and weight, they may vary a
11 little bit, but it's consistent. And even the defendant says
12 that Quantis is about his height and weight, almost exactly
13 like him.

14 The photo line-up, again he showed it to Angela.
15 Throughout this case, she felt she could identify him and she
16 did. And when they had a suspect -- again, they don't have
17 ready-made suspects. The course of this investigation leads
18 up to his arrest on June the 8th. This incident happened on
19 May 23rd. They didn't just go out and say: You know what?
20 Jeff Chestnut committed that other -- I believe counsel said,
21 oh, we just want you to think that maybe because he's done it
22 before, he'll do it again. They didn't just pull a man out
23 of the hat and say let's go take some pictures; let's talk to
24 everybody and have them identify him. No. Their
25 investigation led up to him, and this is before his

1 statement, and Angela I.D.'s him the next day.

2 Members of the jury, that is enough. That evidence is
3 enough that I just talked about. That is proof beyond a
4 reasonable doubt. That is proof that leaves you firmly
5 convinced if you find the witnesses credible, and I submit
6 that they are.

7 But you have even more than that in this case because
8 you have the defendant's own statement that he gave to law
9 enforcement back on June the 8th of 2010. Now, there's
10 something that we often refer to as the art of confessing
11 error, and what that essentially means is that when
12 confronted with some sort of accusation, a person will
13 confess to something lesser, something that makes him just
14 not quite as culpable as that awful thing that you're saying
15 I did such as: Yeah, all that weed was mine, but I just
16 smoke it. I don't sell it. Those type of things.

17 They minimize their guilt, and that is what has been
18 happening in this case since day one, since that first
19 statement with Sergeant Isenhoward. He has been minimizing
20 his guilt because, as I said, we're not saying he was the
21 lookout. We're not -- we are saying that he planned it. But
22 we're saying that he went in with a gun and robbed them.

23 But the problem is that even when he tried to minimize,
24 he didn't realize that under South Carolina law, he's still
25 guilty. If two or more people set out to commit a crime

1 together, each is guilty no matter what roles they play. The
2 hand of one is the hand of all.

3 So under his first statement, he's guilty. He thought
4 that if I said I didn't go in with the gun -- I kind of
5 abandoned that part of it. I gave my shirt to this other
6 guy, Quantis. I was just a lookout. Still guilty.

7 We'll get to how he tries to distance himself from that,
8 but let's focus on what his statement says. What does he
9 tell you? What does he admit to you? He says boyfriend of
10 Teidra Dennis; he admits that. And he admits to being
11 involved in the robbery. He says he was picked up from
12 Teidra's house by Tyward, the person he knows as Chief or
13 Rocca. And Tyward was talking about hitting the bingo hall.
14 He said he wanted some of that. They get to the bingo hall.
15 Now, Teidra has been calling him, but he doesn't go to find
16 her to speak with her?

17 He says Quantis walks up but isn't dressed right. Now,
18 remember, in his statement Quantis knows about this robbery.
19 He knows. So he's going to wear this bright orange shirt and
20 then go up to some guy he barely knows and say, "Hey, give me
21 your clothes," and then the defendant, as generous as he is,
22 says, "Okay. Well, here is my shirt." When I asked him,
23 "Well, you gave him your hat, too?" "Well, I did that
24 because they match." Come on.

25 Black tee shirt and Braves hat. You know why he says

1 that in his statement? Because that's what people can see.
2 That's clearly what people will identify. He knows that
3 Sergeant Isenhoward knows about that.

4 Quantis just happens to be about the same height and
5 weight. He says he will stay here and look out. Then he
6 says he hid under the steps for about 30 to 45 minutes, but
7 remember the police were there for several hours and remember
8 that phone call that he gets from Drenita looking for Teidra.

9 Doesn't have a gun. Never saw them with no guns and,
10 yes, he told Teidra they planned to do it. Hand of one/hand
11 of all. He's guilty by his own statement.

12 But his philosophy is clear, and I believe defense
13 counsel even mentioned it. From the beginning his concern,
14 what he was worried about: How could I get myself out of
15 this trouble? He was trying to do it when he spoke with
16 Sergeant Isenhoward. He was trying to do it when he was in
17 the car with Major Smith, and he was trying to do it when he
18 took this witness stand and testified to you yesterday.

19 We're going to talk just a little bit about his
20 testimony because you heard it. You remember it, and it was
21 all over the place. And, again, it will be up to you to
22 judge the credibility of witnesses.

23 In growing up I learned from my mom and from experience
24 that the only thing that's ever really difficult to keep
25 straight is a lie. The truth doesn't change. The truth is

1 easy.

2 His statement. And, yes, counsel is right. We
3 highlighted it because the highlights are important because I
4 want to make sure that we were all clear on what he was
5 saying was a misunderstanding, how Sergeant Isenhoward was
6 playing poor pitiful him.

7 Were you involved in the robbery? Yes. Oh, no, didn't
8 say that, didn't mean that. And this one section -- and I
9 ask that you reflect back to your memories of the testimony
10 about his knowledge and what he knew about the crime and when
11 he knew about the robbery that apparently Tyward and Quantis
12 had planned because at one point he says: We were in the
13 car. That's when they mentioned the bingo hall. And I say:
14 Are you sure? Oh, no, no, didn't know about it yet, didn't
15 know that the bingo hall was the place or else I wouldn't
16 have been down with that.

17 Then later on in his testimony he says: Actually, I
18 knew about the bingo hall. They had been talking about it
19 earlier. Well, which is it? At what point do you know or
20 not know? He knew from day one because he helped plan it.

21 Quantis. He says that's -- all that's accurate. Okay.
22 Then we have: "I told him I would stay out here and look
23 out." This is after he's given his clothes to the guy he
24 barely knows so he can go do what? And he was back and forth
25 on this, too. Did I know they were going to do a robbery?

1 No, I didn't know. I just thought he wanted some clothes?
2 Or he did know what they were going to do. Then finally he
3 said: I'm not going to say I didn't know that I knew what
4 they were going to do or didn't know.

5 I told him I would stay here and look out, and he's
6 right. I'll give him a little credit. He's right. He
7 wasn't the lookout. That is inaccurate. He was the guy in
8 the bingo hall with the gun robbing the place, but this is
9 him minimizing his guilt, but even that wasn't enough.

10 I stayed under there for about 30 to 45 minutes. This
11 next part: I walked out on the side of the building, and I
12 was scared and shaking. What part did he say just wasn't
13 accurate? Oh, I wasn't shaking. Oh, no.

14 You judge his demeanor on the stand. He said: I might
15 have been a little bit scared. He didn't have any reason to
16 be scared and he didn't have any reason to shake, but he
17 couldn't even admit to that because oh, no, I don't shake. I
18 don't get scared. But he wasn't scared because he had the
19 gun. He committed the crime. He had no reason to be scared.

20 An older lady saw me and gave me a ride to my
21 grandmama's house in Greenvew. That's not accurate.

22 Talking about Teidra. When asked: Why would she say
23 that you participated in the robbery and that you got money
24 from it? Because I told her I planned to do it. Why would
25 she say that? He did plan to do it. She helped him. When

1 did you tell her this? The day it happened. What did he
2 say? No, no, never said it, never told her about planning
3 anything. None of that happened.

4 Was this before or after Chief picked you up? This was
5 after I got back. She told me they got robbed, and he again
6 said: I never said I planned to do it. And he's right. All
7 the things that implicate him, that's what he's trying to get
8 away from now.

9 And, again, it's not just one question or two. We have
10 about four questions about planning this robbery. So is that
11 when you told her that you planned to rob the bingo? Yes.
12 So was it over the phone or when you got back that you told
13 her what you planned? Both. We talked about it. Was she
14 involved in any way? No. How should he know if he knows
15 nothing about it?

16 And you can judge his credibility on the stand with
17 respect to that statement and the circumstances surrounding
18 that statement, at what point he was advised, not advised.
19 And, yeah, at times I asked him about times because they made
20 it important because he says, no, if he had advised me of my
21 rights, I wouldn't have been talking to him. Yet I wanted to
22 talk to him. I didn't want to talk to him. He's all over
23 the place. He did give this statement. It was voluntary.
24 He freely made it and not because any promises were made to
25 him. He was already under arrest for armed robbery.

1 Quantis. Where is Quantis? Now, the defendant has no
2 burden of proof in this case, but they do have the ability to
3 call witnesses. So where is this Quantis Sims, this Q.? I
4 tell you where he is. He's sitting right there next to his
5 counsel because Quantis is Jeff Chestnut. There is no
6 Quantis.

7 When you review that, it makes no sense, no sense, but
8 he's trying to come up with whatever he can think of,
9 whatever it might take, but again he's all over the place and
10 he tries to rationalize and say, oh, certain behaviors on
11 Teidra's part, those -- those were normal. Those were normal
12 because I came -- I came to take her or bring her cigarettes
13 all the time. I was picking her up, taking her the things
14 that she needs. That's what a man do for his lady.

15 Now, mind you, all these rides, all this stuff, he
16 doesn't have a car, so why would she call him? But when it
17 comes down to it, I didn't go to her or worry about her after
18 the robbery because she is grown and can handle herself. He
19 is back and forth all over the place.

20 And then back to that statement because I want to hit
21 this point again that Ms. McDuffie brought up to you. This
22 statement -- and, remember, he admitted he is smart. He can
23 read. He knows his rights. He's pretty familiar with
24 things. Yet he handed me a stack of papers, just told me to
25 sign it. I didn't know what I was signing. I didn't know

1 this thing that says statement of Jeff Vontavious Chestnut
2 was a statement. I thought he was advising me of my rights
3 which I have already signed off on. Is it believable?

4 And then he says, even if you take him at his word:
5 Well, I got back to the jail and then I read every page. Oh,
6 my goodness, all this stuff. Sergeant Isenhoward just played
7 me, played me for a fool. Well, if he'd been played, did he
8 seem like the person to you that wouldn't say something when
9 having the opportunity? Oh, no. And he was in the car with
10 Major Smith, Sergeant Isenhoward's supervisor, the next day,
11 and he wasn't pointing out Quantis's hangouts. He was
12 pointing out where Chief or Rocca stayed, and he said that
13 Chief recruited him to help him out with the robbery. And he
14 wasn't just talking about a gun he had at one point in time.
15 He said: I had a gun, but I've since sold it on the street.
16 That's where the gun is, on the street. It's not here.

17 And where does he say those clothes are that he gave?
18 He admits that they're his. What purpose would they have to
19 get a search warrant? He admits it. Braves hat, black
20 shirt, oh, Quantis has it, but they were mine. It was all
21 mine, but that gun is gone, too.

22 And as for search warrants -- and I'll only touch on
23 this briefly. Yes, they didn't get a search of the house,
24 but he was staying kind of everywhere. He would stay with
25 Teidra. He would stay with his grandma, and the police can't

1 just go up into somebody's house. There are standards and
2 requirements to be able to search someone's house, but even
3 if they had, it wouldn't have mattered. There's nothing
4 probative that would have been gained in this case.

5 He admits he was there. He admitted he was the lookout.
6 He helped plan it, and only when he took this witness stand -
7 because, oh, goodness, I'm still guilty with my statement -
8 is he backing away from that.

9 These are the State's witnesses that we've presented in
10 our case: Investigator Chauncey Smith, Drenita Ore, Timothy
11 Bell, Kayla Sharpe, Marva Coates, Sarah Furtick, Robert
12 Furtick, Angela Diaz-Garcia, Wayne Kirby, Deputy Margaret
13 Fisher, Ron Witt, Investigator John Carwell, Woods, Scott
14 McDonald, and Isenhoward. Now, all these witnesses, it is up
15 to you to judge their credibility, and as counsel said, you
16 can believe some of what they say, none of what they say or
17 all of what they say, but at the end of the day credibility
18 is key. I agree with the defense counsel on that point.

19 And what do you need to assess about credibility? What
20 was that witness's demeanor on the stand? Was that witness
21 hesitant or forthright when testifying? Is the testimony of
22 that witness corroborated and is it consistent? And perhaps
23 most importantly: Does that witness have anything to gain or
24 lose?

25 And when you do, I submit that only one witness that

1 testified in this witness stand isn't credible. Only one
2 witness's testimony isn't corroborated, and only one witness
3 had everything to gain and nothing to lose and that's the
4 defendant. So I'm going to ask that you go back there --
5 yes, you judge each witness. You look at that video, and
6 that guy, his undershirt, it's not orange. And, yes, we're
7 not relying on the video. Angela Diaz-Garcia said: I saw
8 him. That's the man. I'm a hundred percent sure.

9 And he matches all the other descriptions. The phone
10 calls, the co-defendant, everything points to the defendant,
11 Jeff Chestnut. It points to him and his guilt.

12 Now, there are two witnesses who you didn't hear from,
13 and they are perhaps the most important witnesses in this
14 case, and that is common sense and human nature. And so when
15 you go back in that jury room and you deliberate over this
16 case, I'm going to ask that you use your common sense and
17 what you know about human nature when you decide this case,
18 and when you do, it will be clear. And there is only one
19 just verdict in this case, and so I'm going to ask that you
20 return a verdict, a just verdict, that the evidence supports
21 and that the facts show, a verdict finding the defendant,
22 Jeff Chestnut, guilty of four counts of armed robbery and
23 three counts of kidnapping. Thank you.

24 **The Court:** All right. Ladies and gentlemen, let's take
25 a short break before I give you my final charge. Let's take

1 about a ten-minute break, and we'll call you when we're
2 ready. Just relax for a minute, a few minutes. Don't
3 discuss the case among yourselves while you're in the jury
4 room.

5 (Whereupon, the jury was excused from open court at
6 11:44 a.m.)

7 **The Court:** We'll stand at ease for ten minutes.

8 **Mr. Chaplin:** Thank you.

9 (Whereupon, a short break was taken.)

10 **The Court:** All right. Be seated.

11 **Ms. McDuffie:** Your Honor, I was looking over your
12 charges again, and I know you're not going to bring out that
13 one of the indictment numbers is missing from the---

14 **The Court:** One of the what?

15 **Ms. McDuffie:** Indictments is missing from---

16 **The Court:** Yeah, I saw that. It's not on -- somebody
17 handed me these indictments. Yeah, I noticed that, but it
18 doesn't get filed.

19 **Ms. McDuffie:** Yeah.

20 **The Court:** All right. Bring the jury, please.

21 (Whereupon, the jury was brought into open court at
22 11:56 a.m.)

23 **The Court:** All right. Ladies and gentlemen, we're now
24 ready to conclude the trial with the instructions of the
25 Court. Ladies and gentlemen, you've heard all the testimony

1 in this case. You've heard the arguments of both the State
2 and the defendant, and you'll take to the jury room with you
3 all the evidence in this case that was introduced. In that
4 regard, if you wish to see the video, we'll make arrangements
5 to have the video equipment brought in to you.

6 Now, from time to time I've had juries send out a
7 message and ask me to send them a copy of what I'm about to
8 explain to you. I'm not able to do that. In South Carolina
9 that's not a procedure that's normally done. So I'm going to
10 ask you to pay close attention as I go through these
11 instructions. They're a little bit lengthy, but they are all
12 necessary.

13 Now, under our constitution and code of laws, only the
14 jury can make findings of fact. I'm not permitted to
15 indicate to you how I might feel about the facts, and if I've
16 done or said anything in this case which would indicate to
17 you that I have an opinion concerning the facts, then you
18 should disregard that. You must independently weigh the
19 evidence presented in this trial and render a verdict based
20 solely on that evidence.

21 And the same constitution and laws that make you the
22 finders of fact also make me the instructor of the law. If
23 you have some idea as to what the law is or what the law
24 ought to be and it does not agree with what I now tell you
25 the law is, you're obligated under the oath which you have

1 taken to abandon this preconception and accept and apply the
2 law precisely as I now state it to you.

3 The defendant, as you know, Mr. Chestnut, in this case
4 has been charged with four counts of armed robbery and three
5 counts of kidnapping. I remind you again the fact that the
6 defendant was arrested and charged and indicted in this case
7 is not evidence in this case, cannot be considered by you as
8 evidence of guilt in this case nor does it create any
9 presumption or inference of guilt. These documents again are
10 only the formal legal written instruments which contain the
11 charges made against the defendant.

12 Now, each indictment charges a separate and distinct
13 offense. You must decide each indictment separately on the
14 evidence and the law applicable to it, uninfluenced by your
15 decision as to any other indictment. The defendant, Mr.
16 Chestnut, may be convicted or acquitted on any or all of the
17 offenses charged. You'll be asked to write a separate
18 verdict of guilty or not guilty for each indictment.

19 Mr. Chestnut has pled not guilty to these indictments,
20 and that plea puts the burden on the State to prove the
21 defendant guilty. A person charged with committing a
22 criminal offense in South Carolina is never required to prove
23 himself or herself innocent. I charge you again - this is an
24 important rule of law - that a defendant in a criminal trial,
25 no matter what the seriousness of the charge may be, will

1 always be presumed to be innocent of the crime for which the
2 indictment was issued unless guilt has been proven by
3 evidence satisfying you of that guilt beyond a reasonable
4 doubt.

5 This presumption of innocence does not end even when you
6 begin your deliberations, but it accompanies the defendant
7 throughout the trial until you reach a verdict of guilt based
8 on evidence satisfying you of that guilt beyond a reasonable
9 doubt. Again, the presumption of innocence is not a mere
10 legal theory; it's not just a legal phrase. It is a
11 substantial right to which every defendant is entitled unless
12 you, the jury, are satisfied from the evidence of the
13 defendant's guilt beyond a reasonable doubt. The State is
14 required to prove the guilt of the defendant -- is not
15 required to prove the guilt of the defendant beyond all doubt
16 or beyond every doubt but beyond what is known as a
17 reasonable doubt. I charge you that the defendant, Mr.
18 Chestnut, is entitled to every inference in his favor which
19 can be reasonably drawn from the same facts, one consistent
20 with guilt and one consistent with innocence, and the
21 defendant is entitled to the inference which is consistent
22 with his innocence.

23 Well, what is a reasonable doubt in the law? A
24 reasonable doubt is the kind of doubt that would cause a
25 reasonable person to hesitate to do something. Let me repeat

1 that. A reasonable doubt is the kind of doubt that would
2 cause a reasonable person to hesitate to act. The State has
3 the burden of proving the defendant guilty beyond a
4 reasonable doubt.

5 Some of you may have served as jurors in civil cases
6 where you were told it's only necessary to prove that a fact
7 is more likely true than not true such as by the greater
8 weight or preponderance of the evidence. In criminal cases,
9 however, the State's proof must be more powerful than that.
10 It must be beyond a reasonable doubt. If you think the
11 defendant is probably guilty or the circumstances are
12 suspicious, it is not enough. Proof beyond a reasonable
13 doubt is proof that leaves you firmly convinced of the
14 defendant's guilt.

15 Now, there are very few things in this world that we
16 know with absolute certainty. In criminal cases the law does
17 not require proof that overcomes every possible doubt. If,
18 based on your consideration of the evidence, you're firmly
19 convinced that the defendant is guilty of the crime charged,
20 you must find the defendant guilty. On the other hand, if
21 you think there's a real possibility that the defendant is
22 not guilty, you must give the defendant the benefit of the
23 doubt and find him not guilty.

24 Now, generally there are two types of evidence which are
25 presented during a trial, direct evidence and circumstantial

1 evidence. Direct evidence is the testimony of a person who
2 claims to have actual knowledge of a fact such as an
3 eyewitness. It's evidence which immediately establishes the
4 main fact to be proved.

5 Circumstantial evidence, on the other hand, is proof of
6 a series or a chain of facts and circumstances indicating the
7 existence of some fact. It's evidence which immediately
8 establishes collateral facts from which the main fact may be
9 inferred. Circumstantial evidence is based on inference, in
10 other words, and not on personal knowledge or observation.
11 But the law makes absolutely no distinction between the
12 weight or value to be given to either direct or
13 circumstantial evidence nor is a greater degree of certainty
14 required of circumstantial evidence than of direct evidence.
15 You should weigh all the evidence in the case. After
16 weighing all the evidence, if you're not convinced of the
17 guilt of the defendant beyond a reasonable doubt, you must
18 find the defendant not guilty.

19 Now, necessarily you must determine the credibility of
20 the witnesses who have testified in this case. Credibility
21 simply means believability. It becomes your duty as jurors
22 to analyze and evaluate the evidence and determine which
23 evidence convinces you of its truth.

24 In determining the believability of the witness or the
25 witnesses who have testified in this case, you may believe

1 one witness over several witnesses or several over one. You
2 may believe a part of the testimony of a witness and reject
3 the remaining part of the testimony of that same witness.
4 You may believe the testimony of a witness in its entirety or
5 reject the testimony of a witness in its entirety.

6 You may consider whether any witness has exhibited to
7 you any interest, bias, prejudice or other motive in this
8 case. You may consider the appearance and manner of a
9 witness while on the witness stand. Now, these
10 considerations you do not exercise arbitrarily. Your
11 objective, ladies and gentlemen, is to seek the truth,
12 regardless of its source.

13 In exercising your mental processes in determining what
14 you consider to be true, the law simply requires that you
15 exercise your good judgment, your common sense, your sense of
16 logic and reason and your experiences in life. You then
17 apply these attributes to the evidence in determining what
18 you, the jury, consider to be the truthful evidence. You
19 will then take and apply the law as I now state it to you
20 and, thus, arrive at a true verdict in this case.

21 Now, a -- an issue that has come up in this case is the
22 identification of the defendant as the person who committed
23 the crime charged. The State has the burden of proving
24 identity beyond a reasonable doubt. You must be satisfied
25 beyond a reasonable doubt of the accuracy of the

1 identification of the defendant before you may convict the
2 defendant.

3 Identification testimony is an expression or a belief or
4 impression by a witness. You must determine the accuracy of
5 the identification of the defendant. You must consider the
6 believability of each identification witness in the same way
7 as any other witness. You may consider whether the witness
8 had an adequate opportunity to observe the offender at the
9 time of the offense. This will be affected by things like
10 how long or short a time was available, how far or close the
11 witness was, the lighting conditions, and whether the witness
12 had a chance to see or know the person in the past.

13 Once again, I instruct you that the burden of proof is
14 on the State. It extends to every element of the crime
15 charged, and this specifically includes the burden of proving
16 beyond a reasonable doubt the identity of the defendant as
17 the person who committed the crime. If, after examining the
18 testimony, you have a reasonable doubt as to the accuracy of
19 the identification, you must find the defendant not guilty.

20 Now, also a statement has been introduced in evidence,
21 and it's alleged to have been made by the defendant. While
22 the Court has determined, that is, I have determined that the
23 statement was admissible to be brought in evidence, I
24 instruct you that you make the ultimate decision of whether
25 or not the defendant made the statement. If the defendant

1 did make the statement, you must determine whether the
2 statement was made by the defendant voluntarily and of his
3 own free will.

4 This means the statement was not caused by pressure,
5 force, fear, threats, coercion, or intimidation or by hope or
6 a promise of leniency or a reward of any kind. In
7 determining whether the statement was voluntary, you should
8 consider both the characteristics of the defendant and the
9 details of the questioning.

10 Some of the factors you may consider are the age of the
11 defendant, the defendant's education or lack of education,
12 the defendant's mental ability or capacity, the defendant's
13 intelligence, the defendant's background and environment, the
14 place and length of the detention, the nature of the
15 questioning, and the advice or lack thereof of the defendant
16 of his constitutional rights including, but not limited to,
17 the right to remain silent, that any statement could be used
18 against him in a court of law, the right to have a lawyer
19 present, that if he could not afford an attorney that a
20 lawyer would -- an attorney -- a lawyer would be appointed to
21 represent him without any cost and that he could stop making
22 a statement at any time. You must consider carefully all of
23 the surrounding circumstances before you give any weight to
24 the alleged statement.

25 The State has the burden of proving beyond a reasonable

1 doubt that the alleged statement was voluntary. If you
2 determine it was, you may give the statement any further
3 consideration that you deem proper. You must decide what
4 weight, if any, should be given to the alleged statement. If
5 you determine the alleged statement was not the free and
6 voluntary statement of the defendant, you should not consider
7 the statement at all.

8 Now, a person who has a past criminal record is
9 competent to testify in a trial. A past record does not
10 affect the ability of that witness to testify. A past record
11 may only be considered by you, if at all, in determining the
12 witness's believability. Remember, you are the sole judges
13 of the facts in the case and the believability of any and all
14 of the witnesses.

15 Now, the rules of evidence - those are the rules that
16 govern the procedure in a trial - ordinarily do not permit
17 witnesses to testify about opinions or conclusions. This is
18 what you might call lay witnesses. They are not allowed to
19 offer opinions or conclusions. However, an exception to this
20 rule exists for witnesses we call expert witnesses, and we
21 had one in this case. He was discussing the phone records.
22 A witness who by education and experience has become expert
23 in some art or science or profession may state an opinion as
24 to a relevant and material matter in which the witness claims
25 to be an expert and may also state the reason for that

1 opinion.

2 Now, in order to establish criminal liability, criminal
3 intent is required. Criminal intent must be proven by the
4 State beyond a reasonable doubt. Criminal intent is always a
5 matter that must be determined by the jury from the
6 circumstances surrounding the situation. There's no way to
7 prove intent to a mathematical certainty. There's no way
8 medical science can dissect a person's brain to determine
9 what the person had in mind. So the law says that criminal
10 intent may be inferred from the circumstances shown to have
11 existed at the time and place of the incident. This is how
12 you make a determination of whether or not the element
13 requiring intent was present. Criminal intent is a mental
14 state, a conscious wrongdoing. It's up to you to determine
15 what the defendant intended to do based on the circumstances
16 shown to have existed at the time and place of the incident.

17 Now, kidnapping in South Carolina is defined as the
18 State must prove beyond a reasonable doubt that the defendant
19 knowingly and unlawfully seized - now these are the words of
20 the statute - confined, inveigled, decoyed, kidnapped,
21 abducted or carried away another person without authority of
22 law. Obviously to do a thing unlawfully is to do it
23 willfully against the law, and knowingly means with knowledge
24 and conscientiously, not accidentally. Seize means to take
25 hold of or suddenly or forcibly, and confine means to limit

1 or restrict or enclose within bounds, imprison or keep or
2 shut in. And kidnap is to remove a person or hold a person
3 against his or her will by unlawful force or by fraud.

4 The State does not have to prove the defendant did all
5 of these things. Instead, if you find beyond a reasonable
6 doubt that the defendant did any of these things, you may
7 find the defendant guilty of kidnapping, something done
8 without authority of law, something which the law does not
9 sanction, permit, allow or condone. Kidnapping does not have
10 to be for any personal or monetary gain for any or -- or any
11 illegal purpose but may be for any reason whatsoever.

12 The defendant is also charged with armed robbery. In
13 order to prove this offense, the State must prove beyond a
14 reasonable doubt the defendant took personal property from
15 the person or presence of another person. Property is in the
16 presence of a person if it is within that person's reach or
17 inspection or observation or control so that the person
18 could, if not overcome with violence or prevented by fear,
19 keep possession of his or her property.

20 The State must also prove beyond a reasonable doubt the
21 defendant carried the property away, intending to permanently
22 deprive the owner of the property and to keep the property
23 for the defendant's own use. The slightest removal of the
24 property or the complete possession of the property, even for
25 an instant, by the defendant is sufficient to show a taking

1 and carrying away of the property. The taking and carrying
2 away of the property must have been done with violence or by
3 putting the owner of the property in fear of violence.

4 And finally the State must prove beyond a reasonable
5 doubt that the defendant was armed with a deadly weapon or
6 any object which the person present believing the commission
7 of a robbery -- reasonably believed to be a deadly weapon. A
8 deadly weapon is any article, instrument or substance which
9 is likely to cause death or great bodily harm. Whether an
10 instrument is used as a deadly weapon depends on the facts
11 and circumstances of each case. Obviously examples of a
12 deadly weapon might be a pistol or a shotgun or a rifle or a
13 knife, and a gun may be a deadly weapon even if it's not
14 operating.

15 Now, finally, I want to discuss with you this concept of
16 the hand of one is the hand of all. Counsel have mentioned
17 it in their closing arguments. If a crime is committed by
18 two or more people who are acting together in committing a
19 crime, the act of one is the act of all. A person who joins
20 with another to commit an unlawful act is criminally
21 responsible for everything done by the other person which
22 happens as a probable or natural consequence of the acts done
23 in carrying out the common plan and purpose.

24 For example, two people can be guilty of killing another
25 person when only one of the two had a gun and there was only

1 one bullet and only one of the two fired the shot that caused
2 the death. If two or more people are acting together -- are
3 together and acting together, assisting each other in the
4 committing of the offense, the act of one is the act of all
5 or as has been sometimes said, the hand of one is the hand of
6 all.

7 Prior knowledge that a crime is going to be committed
8 without more is not sufficient to make a person guilty of
9 that crime. Mere knowledge that another person is going to
10 commit a crime, even if the defendant is present when the
11 crime is committed, is not sufficient to convict the
12 defendant as a principal. Guilt as a principal is shown by
13 actual or constructive presence at the scene as a result of
14 prior arrangement. Therefore, a finding of a prior-arranged
15 plan or scheme or common scheme is necessary for the finding
16 of guilt as a principal. The State must prove beyond a
17 reasonable doubt by competent evidence the theory of the hand
18 of one is the hand of all.

19 A principal in a crime is one who either actually
20 commits the crime or who is present aiding, abetting, or
21 assisting in the commission of a crime. When a person does
22 an act in the presence of and with the assistance of another,
23 the act is done by both. Where two or more acting with a
24 common plan or intent are present at the commission of a
25 crime, it does not matter who actually commits the crime.

1 All are guilty. The hand of one is the hand of all.

2 Present -- being present at the commission of a crime
3 means to be sufficiently near to aid and abet and assist in
4 the commission of the crime. However, mere presence at the
5 scene of a crime is not sufficient to convict one as the
6 principal on the theory of aiding and abetting.

7 Intent is also a necessary element, for there must have
8 been a common design or intent to commit the crime, and the
9 crime must have been committed pursuant thereto if the person
10 aiding and abetting by some overt act -- with the person
11 aiding and abetting by some overt act. Intent means
12 intending the result which actually occurs, not accidentally
13 or involuntarily. Intent may be shown by acts and conduct of
14 the defendant and other circumstances from which you may
15 naturally and reasonably infer intent. The State must prove
16 these elements again beyond a reasonable doubt.

17 Now, ladies and gentlemen, I further charge you that any
18 punishment provided by law to this offense or these offenses
19 charged in these indictments is a matter exclusively within
20 the province of the Court. It should never be considered by
21 the jury in any way whatsoever in arriving at a fair and
22 impartial verdict as to the guilt or innocence of the
23 defendant.

24 I'm required to declare the law as I've done through
25 these instructions to help and guide you to a just and lawful

1 verdict. Whether some of these instructions will apply will
2 depend on what you find to be the facts. The fact that I
3 have instructed on various subjects in this case must not be
4 taken by you as indicating an opinion of this Court as to
5 what you should be -- what you should find to be the facts or
6 which party should be entitled to your verdict.

7 The verdict must represent the considerate judgment of
8 each juror. In order to return a verdict, it's necessary
9 that each juror agree. In other words, your verdict must be
10 unanimous. All 12 of you must agree on the verdict. Your
11 verdict cannot be based on sympathy or passion or prejudice
12 or emotion or any other consideration not in evidence in this
13 case.

14 Remember at all times that you are not partisans
15 favoring one party over another. You are judges, judges of
16 the facts. Your sole interest is to seek the truth from the
17 evidence in this case.

18 Now, Mr. Foreman, I will send with you to the jury room
19 all seven indictments. On what we call the face of the
20 indictment, the bottom left-hand corner, is the place for
21 your verdict. I need you to write a verdict as to each
22 indictment, not guilty or guilty, sign your name, and date
23 it. Knock on the jury room door, and we will receive your
24 verdict.

25 Now, I want to caution you one other thing, ladies and

1 gentlemen. Those of you who may have been taking notes
2 during the course of the trial, again I reiterate that those
3 notes are for your benefit and your benefit only, not to be
4 used to try to convince another juror that you took better
5 notes than they did or that you wrote down something that
6 they forgot. They're just, as I said, for your own personal
7 benefit.

8 All right. Ladies and gentlemen, you now may retire to
9 the jury room. Your lunch is here, so it's up to you whether
10 you want to deliberate while you eat or eat and then
11 deliberate. Once that jury room closes, it's all -- it's all
12 yours. The lunch will be delivered to you in just a minute.

13 In any event, don't begin your deliberations until you
14 receive the indictments and the evidence that's been
15 presented in this case, and again let us know if you need to
16 see the video. All right. You may retire to the jury room.
17 Thank you very much.

18 (Whereupon, the jury was excused from open court at
19 12:20 p.m.)

20 **The Court:** Frank, I want the two alternates in the
21 hall. Any exceptions to the charge from the State?

22 **Ms. McDuffie:** None, Your Honor.

23 **The Court:** From the defense?

24 **Mr. Chaplin:** None, Your Honor.

25 **The Court:** All right. Please check the evidence and

1 we'll send the evidence to the jury.

2 (Pause in proceedings.)

3 **The Court:** Got it.

4 **Mr. Chaplin:** Yes, sir.

5 **The Court:** Any objection to excusing the alternates?

6 **Ms. McDuffie:** No, Your Honor.

7 **Mr. Chaplin:** None.

8 **The Court:** All right. I'll wait 'til the jury begins
9 deliberating. We've got lunch for them anyway. All right.
10 We'll stand at ease 'til we hear from the jury.

11 (Whereupon, the alternate jurors were excused from the
12 trial, and the jury began deliberating at 12:23 p.m. Court's
13 Exhibit 2 was marked for identification only.)

14 **The Court:** Where did you go for lunch?

15 **Mr. Chaplin:** The Vineyard.

16 **The Court:** I thought you might have gone to Charlotte.

17 **Mr. Chaplin:** No. I just walked; that's all.

18 **The Court:** Defense counsel has -- I mean, the solicitor
19 has seen the note. Approach the bench, counsel.

20 (Whereupon, a bench conference was held.)

21 **The Court:** Okay, counsel.

22 **Mr. Chaplin:** No objection.

23 **The Court:** No objection? From the State?

24 **Ms. McDuffie:** No, sir.

25 (Court's Exhibit 3 was marked for identification only.)

1 **The Court:** Be seated. All right, counsel. The jury
2 has asked to be re-instructed on the hand of one/hand of all
3 theory. Any problem with that?

4 **Ms. McDuffie:** No, Your Honor.

5 **The Court:** From the defense?

6 **Mr. Chaplin:** Beg the Court's indulgence.

7 (Mr. Chaplin talks off the record with Mr. Chestnut.)

8 **Mr. Chaplin:** Your Honor, I'm going to object to that.

9 **The Court:** Okay.

10 **Mr. Chaplin:** Yes.

11 **The Court:** Overruled.

12 **Mr. Chaplin:** Thank you.

13 **The Court:** If the jury wants to hear it, to hear the
14 instructions -- they can come back and hear evidence. They
15 can come back and hear the instructions. Bring the jury in.

16 (Whereupon, the jury was brought into open court at
17 3:10 p.m. Court's Exhibit 4 was marked for identification
18 only.)

19 **The Court:** Mr. Foreman, it's my understanding the jury
20 would like me to review the instruction on hand of one/hand
21 of all?

22 **Foreman:** (Nodded head up and down.)

23 **The Court:** All right. This is the exact instruction I
24 gave when I first gave the charge. If a crime is committed
25 by two or more people who are acting together in committing a

1 crime, the act of one is the act of all. The person who
2 joins with another to commit an unlawful act is criminally
3 responsible for everything done by the other person which
4 happens as a probable or natural consequence of the acts done
5 in carrying out the common plan or purpose.

6 For example, two people can be guilty of killing another
7 person when only one of the two had a gun. There was only
8 one bullet and only one of the two shots -- only one of the
9 two fired the shot that caused the death. When two or more
10 people are acting together -- are together and acting
11 together, assisting each other in committing the offense, the
12 act of one is the act of all or as sometimes is said, the
13 hand of one is the hand of all.

14 Prior knowledge that a crime is going to be committed
15 without more is not sufficient to make a person guilty of
16 that crime. Mere knowledge that another person is going to
17 commit a crime, even if the defendant is present when the
18 crime is committed, is not sufficient to convict the
19 defendant as a principal. Guilt as a principal is shown by
20 actual or constructive presence at the scene as a result of
21 prior arrangement. Therefore, a finding of a prior-arranged
22 plan or scheme, common scheme, is necessary for a finding of
23 guilt as a principal. The State must prove beyond a
24 reasonable doubt by competent evidence the theory of the hand
25 of one is the hand of all.

1 A principal in a crime is one who either actually
2 commits the crime or who is present aiding, abetting, or
3 assisting in committing the crime. When a person does an act
4 in the presence of and with the assistance of the other,
5 another, the act is done by both. Where two or more acting
6 with a common plan or intent are present at the commission of
7 a crime, it does not matter who actually commits the crime.
8 All are guilty. The hand of one is the hand of all.

9 Present at the commission of a crime means to be
10 sufficiently near to aid and abet and assist in the
11 commission of the crime. However, mere presence at the scene
12 of a crime is not sufficient to convict one as a principal on
13 the theory of aiding and abetting. Intent is also a
14 necessary element for there must have been a common design or
15 intent to commit the crime, and the crime must have been
16 committed pursuant thereto with the person aiding and
17 abetting by some overt act.

18 Intent means intending the result which actually occurs,
19 not accidentally or involuntarily. Intent may be shown by
20 acts and conduct of the defendant and other circumstances
21 from which you may naturally and reasonably infer intent.
22 The State must prove these elements beyond a reasonable
23 doubt.

24 All right? Thank you very much, ladies and gentlemen.
25 You may now retire to the jury room to continue

1 deliberations.

2 (Whereupon, the jury was excused from open court to
3 continue deliberations at 3:14 p.m.)

4 **The Court:** We'll stand at ease.

5 **Mr. Chaplin:** Thank you very much.

6 (Pause in proceedings while the jury deliberates.

7 Court's Exhibit 5 was marked for identification only.)

8 **The Court:** All right. Be seated. Thank you. All
9 right. Counsel, the bailiff informs the Court the jury has a
10 verdict. Ready to receive the verdict?

11 **Ms. McDuffie:** The State's ready, Your Honor.

12 **Mr. Chaplin:** The defense is ready, Your Honor.

13 **The Court:** All right. Bring the jury.

14 (Whereupon, the jury returned to open court with a
15 verdict at 3:50 p.m.)

16 **The Court:** Mr. Foreman, has the jury reached a verdict?

17 **Foreman:** Yes, sir.

18 **The Court:** Would you hand it to the -- the indictments
19 to the bailiff, please? Madam Clerk, publish the verdicts,
20 please.

21 **The Clerk:** Yes, Your Honor. The State of South
22 Carolina, in the county of Richland, in the court of general
23 sessions in the matter of The State versus Jeff Vontavious
24 Chestnut. On the indictment for kidnapping, indictment --
25 docket number 2012-GS-40-4244, the jury finds the defendant

1 guilty.

2 On the other indictment for kidnapping, docket number
3 2012-GS-40-4241, the jury finds the defendant guilty.

4 On docket number 2012-GS-40-4243, an indictment for
5 kidnapping, the jury finds the defendant guilty.

6 On docket number 2012-GS-40-4245, an indictment for
7 armed robbery, the jury finds the defendant guilty.

8 On docket number 2012-GS-40-4246, an indictment for
9 armed robbery, the jury finds the defendant guilty.

10 Docket number 2012-GS-40-4242, an indictment for armed
11 robbery, the jury finds the defendant guilty.

12 Docket number 2010-GS-40-2641, an indictment for armed
13 robbery, the jury finds the defendant guilty. Mr. Foreman,
14 is this your verdict and the verdict of the entire jury?

15 **Foreman:** Yes, it is.

16 **The Clerk:** Thank you.

17 **The Court:** Do you desire to poll the jury?

18 **Mr. Chaplin:** Yes. Please poll the jury.

19 **The Clerk:** Mr. Foreman, ladies and gentlemen of the
20 jury, I'm going to ask each of you two questions. I need you
21 to answer each of the questions. Number 138, were these your
22 verdicts?

23 **Juror 138:** Yes.

24 **Foreman:** Yes.

25 **The Clerk:** Are they still your verdicts?

1 Juror 138: Yes.

2 Foreman: Yes.

3 The Clerk: Number 111, were these your verdicts?

4 Juror 111: Yes.

5 Foreman: Yes.

6 The Clerk: Are they still your verdicts?

7 Juror 111: Yes.

8 Foreman: Yes.

9 The Clerk: One at a time---

10 The Court: One at a time.

11 The Clerk: ---as I call your number. One at a time.

12 Number 151.

13 Juror 151: Yes.

14 The Clerk: Was this your verdict?

15 Juror 151: Yes.

16 The Clerk: Are they still your verdicts?

17 Juror 151: Yes.

18 The Clerk: Number 51, were these your verdicts?

19 Juror 51: Yes.

20 The Clerk: Are they still your verdicts?

21 Juror 51: Yes.

22 The Clerk: Number 240, were these your verdicts?

23 Juror 240: Yes.

24 The Clerk: Are they still your verdicts?

25 Juror 240: Yes.

1 **The Clerk:** Number 116, were these your verdicts?

2 **Juror 116:** Yes.

3 **The Clerk:** Are they still your verdicts?

4 **Juror 116:** Yes.

5 **The Clerk:** Number 212, were these your verdicts?

6 **Juror 212:** Yes.

7 **The Clerk:** Are they still your verdicts?

8 **Juror 212:** Yes.

9 **The Clerk:** Number 299, were these your verdicts?

10 **Juror 299:** Yes.

11 **The Clerk:** Are they still your verdicts?

12 **Juror 299:** Yes.

13 **The Clerk:** Number 248, were these your verdicts?

14 **Juror 248:** Yes.

15 **The Clerk:** Are they still your verdicts?

16 **Juror 248:** Yes.

17 **The Clerk:** Number 130, were these your verdicts?

18 **Juror 130:** Yes.

19 **The Clerk:** Are they still your verdicts?

20 **Juror 130:** Yes.

21 **The Clerk:** Number 45, were these your verdicts?

22 **Juror 45:** Yes.

23 **The Clerk:** Are they still your verdicts?

24 **Juror 45:** Yes.

25 **The Clerk:** Number 247, were these your verdicts?

1 **Juror 247:** Yes.

2 **The Clerk:** Are they still your verdicts?

3 **Juror 247:** Yes.

4 **The Clerk:** The jury is polled, Your Honor.

5 **The Court:** Thank you very much, ladies and gentlemen.

6 All right. That will conclude your service. I will tell you
7 that our practice in -- at least in this court in Richland
8 County -- because we have so many cases, it's generally the
9 rule that we will sentence the defendant or I will sentence
10 the defendant immediately after a jury verdict of guilty, and
11 I plan to do that in a very short period of time. You can
12 stay for that. You're welcome to stay.

13 I will tell you just for your information that the
14 co-defendant that was spoken of during the course of the
15 trial received a sentence of 30 years, and I just mention
16 that to you in terms of what the available range of sentences
17 might be. Of course, it's much -- because there's seven
18 indictments, it potentially is much more than that, but it's
19 not likely that I would exceed that.

20 You can stay for that, as I say. You don't have to.
21 The bailiffs will tell you where to sit during that. It's
22 going to take a few minutes because we've got so many
23 indictments to make -- to make -- to get the paperwork ready.
24 It will take about ten minutes. If you wish to stay, you're
25 certainly welcome to stay. If you don't wish to stay, you're

1 going to be dismissed.

2 I do want to thank you. This -- I know you deliberated
3 long and hard on this. It's a difficult case, a lot of
4 issues, but as the attorneys told you during their closing
5 remarks, we noticed that you were very attentive throughout
6 and I think you listened to the evidence and made a decision
7 and that's what we asked you to do.

8 These -- these matters are difficult in the community.
9 A lot of people are interested because a lot of people are
10 affected by crime in our community, and we need good people
11 to come and resolve these matters for us. This is a system
12 that's been in place in this country for some 250 years.
13 It's a system that's envied around the world. A lot of
14 places in the world don't have such things as jury trials,
15 and we think the system works well.

16 Individual citizens with no bias one way or the other
17 come in and listen to the facts, listen to the law and make a
18 decision, and that's what you've done and I want to thank you
19 for it. I've told many jurors that the system can do without
20 me, can do without these attorneys, but it can't do without
21 you. You're such an important part of the judicial system in
22 this country.

23 So thank you very much, ladies and gentlemen. You're
24 now excused. Good luck to all of you, and the bailiff and
25 madam clerk will take care of you in terms of your -- any

1 work assistance or work excuses and collect your badges. And
2 as I say, you're certainly welcome to stay and watch the
3 sentencing procedure. Otherwise, have a pleasant afternoon
4 and pleasant weekend. Thank you very much.

5 (Whereupon the jury was excused from the trial at
6 3:58 p.m.)

7 **The Court:** All right. Any motions?

8 **Mr. Chaplin:** Yes, sir. Your Honor, at this point Mr.
9 Chestnut would make a motion for a new trial, and we would
10 also like to renew all previous objections as if being made
11 at this time.

12 **The Court:** All right, Well, I think the jury was
13 certainly within their province. They heard the evidence,
14 the admissible evidence. They deliberated. I see no reason
15 to go behind the jury verdict at this point, and I
16 respectfully deny your motions.

17 All right, If y'all will -- if somebody will get the
18 paperwork on the way. We'll take about a ten-minute break,
19 and then we'll continue with the sentencing of the defendant.
20 Thank you very much.

21 **Mr. Chaplin:** Would you have a problem if Mr. Chestnut
22 stays in here with me while we wait for that?

23 **The Court:** Oh, no. No.

24 **Mr. Chaplin:** Okay. Thank you very much.

25 **The Court:** It's his day in court, as you say. We'll

1 stand at ease for about ten minutes.

2 (Whereupon, a short break was taken.)

3 **The Court:** All right. Be seated. Thank you. All
4 right. Solicitor? Mr. Chaplin, bring your client around.
5 Yes, ma'am.

6 **Ms. McDuffie:** Thank you, Your Honor. You've heard all
7 the evidence in this case after a three-day trial. I'd just
8 like to tell you about the defendant's prior record. It's a
9 2003 no license. 2004 grand larceny, five years suspended
10 upon two years probation. Also breach of trust in 2004.
11 2007 there was a possession of a controlled substance charge,
12 and then in July of 2009 he was charged with armed robbery
13 but pled to strong arm robbery. He was on probation for
14 strong arm robbery at the time that this offense was
15 committed. In addition to that, he also - one right before
16 this offense happened and then one afterwards - has two
17 pending possession with intent to distribute marijuana
18 charges pending in our office as well -- as long as -- as
19 well as a receiving stolen goods charge.

20 Your Honor, the co-defendant in this case, Tyward
21 Jordan, we would argue is equally as guilty as this
22 defendant. Each one of them went into the business with a
23 gun, held people at gunpoint and robbed them. Your Honor, as
24 you've heard during the trial, this -- Mr. Chestnut was the
25 individual that the State believes and the jury agreed went

1 into the cage, held the gun on Ms. Angela Diaz-Garcia, and
2 robbed the business of money, and Mr. Jordan is the one who
3 robbed the players on the bingo floor.

4 As a result of this defendant and his co-defendant's
5 actions, the bingo closed. The employees have lost their
6 jobs. Many remained unemployed for awhile after this before
7 they could find new employment.

8 Ms. Simpson has some victim impact she would like Your
9 Honor to hear. The victims were not able to be here. Ms.
10 Angela Diaz-Garcia lives out of state, and her flight left
11 last night. And you heard from the other witnesses that they
12 all live in Sumter and Orangeburg, Your Honor, and so could
13 not be with us today but were here as much as they could
14 during the trial.

15 Your Honor, we would ask that you give him a sentence
16 commiserate---

17 **The Court:** Commensurate.

18 **Ms. McDuffie:** ---commensurate - I'm sorry, Your Honor -
19 with the acts that he committed. We believe that these
20 charges were very serious and the impact on the victims and
21 what he and his co-defendant did that day should be punished
22 to the fullest extent of the law, Your Honor.

23 **The Court:** Now, what was the -- it's my understanding
24 that the sentence on the co-defendant was 30 years. Is that
25 correct?

1 **Ms. McDuffie:** That's correct, Your Honor.

2 **The Court:** All right. Ms. Simpson?

3 **Ms. Simpson:** Thank you, Your Honor. May it please the
4 Court? With respect to the victims in this case, we were
5 able to speak with Marva Coates. She was here when she could
6 be, and we talked to her. We heard a little bit during the
7 trial about how it affected her, but she was deeply affected
8 for a significant period of time after this event with her
9 sleeping. She had nightmares, stomach upset, things of that
10 nature, and suffered some health issues because of it.

11 As far as health issues go, Ms. Sarah Furtick and Mr.
12 Robert Furtick who were here -- they are from Orangeburg as
13 much as they could be, but since this incident -- and I know
14 Your Honor and everybody observed her walking with a cane.
15 Prior to this, she didn't have that. As a result of this,
16 she explained to us that she suffered a lot of health
17 problems that caused her husband to pretty much -- a very
18 independent woman now had to be taken care of by her husband
19 and cleaned up after, especially with the stomach issues and
20 the other health issues that she suffered.

21 They all truly feel that they could have died that day.
22 They think about it. They love to play bingo.

23 Part of Ms. Furtick's victim impact, she said that
24 everything upset me. She had a lot of tension and
25 nervousness. Additionally, she couldn't sleep at night. She

1 misses most of all being at the bingo hall and being with her
2 friends at the bingo hall because, as she explained, this was
3 something they did and it was fun for everybody to go.

4 As for Drenita and her brother, Timothy Bell, they, too,
5 deeply affected. I know they wanted to be here as well, and
6 she is actually a foster parent, so she has those
7 responsibilities and could not be here. As you know, they
8 were scared for each other, being a family, and they just
9 asked that we relay that to you.

10 As for Ms. Kayla Sharpe, the very young Ms. Kayla
11 Sharpe, she actually submitted a statement that I'd like to
12 read to Your Honor on her behalf since she could not be here
13 today. It says, "May 23rd, 2010, is a day I will never
14 forget, even if I wanted to. I can't. I was 16 years old
15 that day. I had a two-month-old baby girl at home depending
16 on me. So, as usual, and being the responsible mother that I
17 am, I went to work. I never knew a routine night at work
18 change my life forever.

19 "Mr. Chestnut stated that he sold weed because that's
20 what he had to do and he had no other choice. I find that
21 funny considering following his selfish and stupid acts of
22 robbing the bingo hall I was left without a job. Do you know
23 what I did? I honestly dug inside the dumpsters, asked
24 businesses for things they would throw out, and picked up
25 cans off the side of the road. I made my money by selling

1 scrap metal.

2 "Now, tell me, if a 16-year-old could do this, why
3 couldn't a 28 or at the time a 26-year-old man do it? Of
4 course, it was embarrassing and at times I wanted to stop,
5 but as a mother I knew I had diapers to buy. Never once did
6 selling weed cross my mind. Do you know why? It's not only
7 illegal and it's very dangerous but a lazy way out of
8 working. I would never put my child in that kind of danger.
9 How could a parent, well, a good parent, do such a thing?

10 "You, Mr. Chestnut, had a choice, and you chose to do
11 the wrong thing. I live in constant fear and worry. Some of
12 my friends and family even say I'm overprotective. My doors
13 to my home are always locked. My windows are nailed shut.
14 If I stop at a stoplight, my car doors are locked, if they
15 weren't already. I do not go to the store or anywhere alone
16 if it's possible because I am scared I will run into Mr.
17 Chestnut, Teidra Dennis or Tyward Jordan.

18 "Now, Tyward is behind bars. It's time for the other
19 two to be as well. I'm tired of living this way. I'm tired
20 of people thinking I'm the crazy one. I'm tired of being
21 scared to try to move on with my life.

22 "Mr. Chestnut, you know what you did on May 23rd and so
23 do we. As I watched you throughout court this week, you
24 showed no emotions other than anger that was accompanied by
25 head shaking when someone was testifying and things of that

1 nature. Whatever it may be, I hope the jury listened
2 carefully to each of our testimonies and that they do the
3 right thing.

4 "You have choices in your life. There's a repeat
5 pattern, and you continue to make bad decisions. So let's
6 stop this pattern before you really hurt someone. I would
7 like nothing greater than to see you sit in prison for the
8 rest of your life since you took my peace of mind, safety,
9 and so much more from me as a 16-year-old girl." And it goes
10 on a little bit longer.

11 Her mother, Ms. Angela Diaz-Garcia, also couldn't be
12 here, and I also have a victim impact statement from her. "I
13 am a victim of the robbery that occurred on May 23rd of 2010.
14 This tragedy changed my life and the life of my family
15 forever. At the time of the robbery I didn't know if anyone
16 would be alive in the end." At the time -- I'm sorry. "My
17 daughter, Kayla Sharpe, is a victim also. At the time she
18 was just 16 years old with a new baby at home. When Mr.
19 Chestnut and Mr. Jordan decided to rob the bingo hall, little
20 did they know the lifetime effect that it would have on all
21 of us.

22 "The days following the robbery were very dark and
23 gloomy. I tried to comfort Kayla who was having nightmares
24 and still deal with my own. I was asked to handle some work
25 at the bingo hall during the few weeks following the robbery,

1 and it was like it was happening all over again. I couldn't
2 go in the building without crying or having a panic attack.
3 The days and nights all seemed to run together because I
4 didn't sleep and ate very little.

5 "I threw away all of my husband's bandanas and refused
6 to let him use them. I even told him that we would split up
7 if he did because he always had bandanas to keep his hair
8 back while working.

9 "I remember going to a different bingo hall and running
10 into Mr. And Mrs. Furtick, and as I walked up and asked how
11 they were doing, Mrs. Furtick jumped. I felt so bad for
12 having scared her, but I knew all too well how she felt. I
13 watched over my shoulders every time I left the house.

14 "My family moved to North Carolina, and as we were
15 looking for places to live, I called about a home. The man
16 said he would give me an address and we could go see it and
17 call him back. I don't remember the house number he gave me,
18 but as soon as he told me it was on Chestnut Street, I froze.
19 My husband picked up the phone and handled the call from
20 there. He already knew I wasn't about to live there. And
21 even though Kayla and I relocated to North Carolina, we still
22 had no peace of mind.

23 "It's hard for other people to understand the full
24 impact of a crime on someone. I would like to ask the jury
25 to consider all the evidence and make a fair decision. I

1 would like to see Mr. Chestnut receive the maximum sentence
2 in this case because I truly feel that if he is released he
3 will commit another crime of this nature.

4 "There are days I still can't sleep, and I think only of
5 the robbery. I do not believe this will ever go away. I
6 never have complete peace of mind even in my own home. I was
7 able to sleep through the night for the first time last night
8 since this event, and as I left the courtroom, I prayed that
9 the jury would find Mr. Chestnut guilty and hold him
10 responsible for his actions. I thank God every day that
11 nobody was killed, and I pray that we can all put this behind
12 us at some point."

13 Your Honor, that is all for the victim impact. I
14 believe it's clear how this incident affected them, and we
15 would just ask for a sentence that is just.

16 **The Court:** Mr. Steadman?

17 **Mr. Steadman:** I have nothing further, Your Honor.

18 **The Court:** Mr. Chaplin?

19 **Mr. Chaplin:** Thank you very much, Your Honor. Your
20 Honor, I'm just going to move straight into the mitigation.
21 As far as the impact that it had on all of the victims, Your
22 Honor, Mr. Chestnut certainly empathizes with them and does
23 have remorse for that. Mr. Chestnut took responsibility for
24 what he did do in this particular matter, and unfortunately
25 the jury felt otherwise.

1 At the same rate, Your Honor, Mr. Chestnut has three
2 children. He's 28 years old. He has the potential to have a
3 good life. He needs to take care of his children. He needs
4 to get back to his family. And, Your Honor, I would just say
5 that I think that the original allegation was that Mr.
6 Chestnut went in and robbed the cage which, if you don't
7 consider the hand of one/hand of all theory, was the extent
8 that what he was originally accused of, and I would like you
9 to just consider that as you sentence him in this particular
10 matter. I don't think -- I do not think that he should
11 receive the same sentence as Tyward Jordan.

12 **The Court:** Why not? The jury said he did the same
13 thing.

14 **Mr. Chaplin:** Your Honor---

15 **The Court:** I mean, different -- people are different.
16 I understand that.

17 **Mr. Chaplin:** Yes. I think the jury -- well, I can't
18 tell you what I think the jury thought, but at the same rate
19 I would just ask that his sentence not be the same, that it
20 be less, and if -- he didn't hold a gun to anyone and that he
21 is not as culpable as the allegations against Mr. Jordan, and
22 I think originally he was just charged with one count of
23 armed robbery. Your Honor, I think Mr. Chestnut would like
24 to address the Court.

25 **The Court:** How long has he been in jail? I mean, how

1 long did he...

2 **Ms. McDuffie:** Five months, Your Honor.

3 **The Court:** Five months?

4 **Mr. Chaplin:** Oh, yeah. I'm sorry. Yes, five months,
5 from June to October, and then the last few days.

6 **The Court:** All right.

7 **Mr. Chaplin:** So, Your Honor, Mr. Chestnut would like to
8 address the Court and I believe that Stephanie Mickens and
9 LaShawn Sumter -- and, Terrell, I forgot your last name.

10 **Mr. Miller:** Miller.

11 **Mr. Chaplin:** Miller would just like to say something
12 briefly as well. This is Jeff's family, and they're here to
13 support him.

14 **The Court:** All right. I'll be glad to hear from them.

15 **Mr. Chaplin:** Do you want to go, Jeff, or... Why don't
16 you go, Stephanie?

17 **The Court:** What's your name, please?

18 **Ms. Mickens:** Stephanie Mickens.

19 **The Court:** Have you got that?

20 **Court Reporter:** I did, but she's going to have to speak
21 up.

22 **Ms. Mickens:** Stephanie Mickens.

23 **The Court:** Okay. She just needs to hear what you have
24 to say.

25 **Ms. Mickens:** Okay. I don't believe---

1 **Court Reporter:** I can't hear her at all, Judge. I'm
2 sorry.

3 **Ms. Mickens:** I don't believe that in this matter that
4 he was, you know, involved. I really don't. I know by his
5 past -- I know him by his past. I've been knowing him by his
6 past, and I've seen him try to do better and I've seen him --
7 I've seen him shaken down because of his past, and I don't
8 think that it's fair in that -- I don't think that what
9 happened is fair legally, and I don't think that---

10 **The Court:** Are they your children?

11 **Ms. Mickens:** Huh?

12 **The Court:** Are they your children?

13 **Ms. Mickens:** Yeah.

14 **The Court:** All of them?

15 **Ms. Mickens:** Just two.

16 **The Court:** Do you live -- do they live with you?

17 **Ms. Mickens:** My kids?

18 **The Court:** Yes.

19 **Ms. Mickens:** Yes.

20 **The Court:** Do they live with him?

21 **Ms. Mickens:** No. Well, now we are -- now at this point
22 we do.

23 **The Court:** Okay.

24 **Ms. Mickens:** For the last couple of years, I guess.

25 But it's just -- this is hard to see, you know, for somebody

1 just taken away when you -- knowing what you know. And
2 seeing my kids grow up -- they know their father. I want
3 their father a part of their life, and I just want that to be
4 considered because I can try to do it alone, but they need
5 their father, too.

6 **The Court:** Thank you, ma'am.

7 **Mr. Chaplin:** Thank you. LaShawn Sumter.

8 **Ms. Sumter:** I'm his sister and it's hard watching a
9 loved one be taken away for something that you don't feel
10 deep down in your heart that they did. I understand how the
11 victims feel in this case. I know they were traumatized.
12 But we didn't grow up with a father figure. That's my big
13 brother. That was my father figure.

14 I'm just asking the leniency of the Court on his behalf
15 because he does have three daughters that he needs to be
16 there for. I know that you will give him some kind of time,
17 some kind of punishment for this, and that's acceptable, but
18 please be lenient. That's all I'm asking.

19 **The Court:** Thank you, ma'am.

20 **Mr. Chaplin:** Mr. Miller?

21 **Mr. Miller:** I'm Terrell Miller. Vonta Chestnut has
22 been my brother. I've known him, you know. He's this
23 coldhearted person -- that's what the jury and the solicitor
24 makes him seem like, but it ain't nothing like that because
25 it's the same person that tells me every day that I don't

1 need to be in the streets, the same person that got me -- got
2 my mind right to get back in school and do the things I'm
3 supposed to do in life.

4 You know, I was running wild and young, 16, 17. You
5 know, he took me in and took care of me. I'm 24 now. You
6 know what I'm saying? That's eight years he done took care
7 of me like he was my older brother. He's not my sibling, but
8 that's my brother and I'll never change that. And it hurt --
9 it hurt -- it hurts me badly to see his life get taken
10 because he was accused of doing something that he didn't do.

11 **The Court:** The jury said he did.

12 **Mr. Miller:** That's what the jury said, but in my book,
13 in my head, only God can judge us. So I just -- I ain't
14 trying to be rude or anything---

15 **The Court:** I understand.

16 **Mr. Miller:** ---but...

17 **The Court:** That's what I'm faced with. Do you
18 understand?

19 **Mr. Miller:** Yes, sir. I just hope that you can see
20 that he's really not, you know, a bad person, just that -- I
21 know the jury say that he did this, he did do that, but, you
22 know, some people can't do that all time. They got to find
23 the best way they can. I know the drug thing, that's bad or
24 whatever, you know, but his intentions are still good.

25 I know -- I know how y'all got to think, but it's

1 different when you're actually on the streets and you don't
2 really have nothing because picking up scraps and cans and
3 all that, that won't get you nothing but two or three, five
4 or ten dollars, and that's not enough to take care of three
5 kids. So I do feel sorry for the victims in this case, and I
6 hope they do get their peace of mind back. I also hope that
7 my brother can get his back, too.

8 **The Court:** Thank you very much.

9 **Mr. Chaplin:** Your Honor, I would also like you to -- I
10 think also it was taken into consideration that the other
11 co-defendant had recently gotten out of prison for a very
12 serious offense, and I think that that might have had an
13 impact on the sentence as well that he received. Mr.
14 Chestnut does have a record, but I don't think it's to that
15 extent and---

16 **The Court:** Still, he pled down from an armed robbery
17 just a couple of a years before this.

18 **Mr. Chaplin:** That's because they couldn't prove the
19 armed robbery.

20 **The Court:** I don't know. Maybe.

21 **Mr. Chaplin:** Yes, sir. So, Your Honor, I also would
22 like to put on the record that these kidnapping charges are
23 not sexual offenses and if you could please indicate that on
24 the sentencing sheet---

25 **The Court:** You're correct.

1 **Mr. Chaplin:** ---that he's -- that he's not to be on the
2 registry.

3 **The Court:** Do you understand?

4 **Ms. McDuffie:** We have no objection to that, Your Honor.

5 **Mr. Chaplin:** And again I would just---

6 **The Court:** You're correct.

7 **Mr. Chaplin:** Thank you. Jeff, your turn.

8 **Mr. Chestnut:** Well, all I want to say is that my life
9 is being taken for being in the wrong place at the wrong
10 time. I always grew up raising my siblings on my own and
11 which by all means, yeah, I sold drugs, yeah, but robbery I
12 haven't -- I haven't ever done before, but I mean, I run with
13 the wrong crowd. I've been with the wrong people, and this
14 has cost me my life and cost my loved ones to have to miss
15 me.

16 So, I mean, with that being said and done, I'm going to
17 stand here like a man and I'm going to take whatever is
18 dished out to me because I accept whatever comes my way
19 because I've been there on them grounds and I have -- I knew
20 what was going to happen, but like I say, I didn't tell or
21 involve myself in it in any way but -- so I'm willing to just
22 accept whatever comes with me. I just ask for your leniency
23 and consideration of my three girls, that all I have --
24 everything I've ever done or everything that I've ever worked
25 for was for them.

1 I've never been the type of person to abandon my kids or
2 my family. I always made sure they had if I did it.
3 Sometimes I sell myself short, but in this case it looks like
4 I'm going to have to need them now, so...

5 **Mr. Chaplin:** Your Honor?

6 **The Court:** Yes, sir.

7 **Mr. Chaplin:** I would just also like for you to take
8 into consideration that Mr. Chestnut did -- no, no. I'm
9 going to move on. Your Honor, I would just like to on the
10 record point out that I think the previous offer by the State
11 that I presented to Mr. Chestnut on several occasions was 10
12 to 15, and I would just like to ask the State would they be
13 willing to extend that offer at this time.

14 **Ms. McDuffie:** Absolutely not, Your Honor.

15 **Mr. Chestnut:** Your Honor, can I...

16 **The Court:** Yeah.

17 **Mr. Chestnut:** I want to say something. I do -- I just
18 want to tell the courts, you know, that I apologize for all
19 the work they have done even though it wasn't enough, but I
20 just want to tell my family I'm sorry. I love y'all, and
21 that's it.

22 **Ms. McDuffie:** Your Honor, if I may correct one thing
23 Mr. Chaplin said. His co-defendant, Tyward Jordan's record,
24 was not as lengthy as his. His record was a 2008 strong arm
25 robbery.

1 **Mr. Chaplin:** Okay. Well, I stand corrected.

2 **The Court:** All right. All right, Mr. Chestnut. As I
3 said more than once, I see no reason to treat you differently
4 than the co-defendant. On all charges, the sentence of the
5 Court is you be committed to the state department of
6 corrections for a period of 30 years. You're given credit
7 for 150 days of time credit, pretrial time credit. Your name
8 will not be listed on the sexual offender registry. Good
9 luck to you. All sentences are to run concurrent.

10 **Ms. McDuffie:** Thank you, Judge.

11 **Ms. Simpson:** Thank you, Your Honor.

12 **Mr. Chaplin:** Your Honor, could he hug his family real
13 quick?

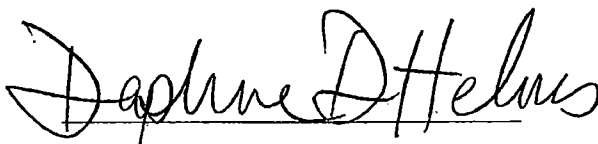
14 **The Court:** That's up to law enforcement.

15 (Court's Exhibit 6 was marked for identification only.
16 Whereupon, the proceedings were concluded.)
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25

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 17th through 20th of September, 2012.

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

February 7, 2013

A handwritten signature in cursive script that reads "Daphne D. Helms". The signature is written in dark ink and is positioned above the printed name.

Daphne D. Helms, court reporter

STATE OF SOUTH CAROLINA

County of RichlandJeff Chestnut #304420

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2014CP4105779APPLICATION FOR
POST-CONVICTION RELIEF

RICHLAND COUNTY
FILED
2014 AUG 22 PM 4:42
JEANNETTE W. MCBRIDE
CLERK & G.S.

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick C.I. 386 Redemption Way
McCormick, SC 29899
2. Name and location of Court which imposed sentence Gen. Sessions
Richland Co.
3. Name(s) of co-defendant(s) (if any) Tyward Jordan
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) #12-GS-400-4241, 43-44 Kidnapping
 - (b) #12-GS-400-4241, 42, 45 and 46 Armed Robbery

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) _____
- (b) 30 years concurrent
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S. C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Submitted March 1, 2014 - Filed June 25, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. No. 2014-UP-237
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____ N
- (b) _____ A

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) SEE ATTACHED SHEETS 1-5
- (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? YES
- (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:
- (a) the specific nature thereof:
- i. Appeal
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Affirmed
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Submitted March 1, 2014 - Filed June 25, 2014
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. No. 2014-UP-237
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i.	<u>N</u>
ii.	
iii.	<u>A</u>

(b) the proceedings in which each ground was raised:

i.	<u>N</u>
ii.	
iii.	<u>A</u>

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) SEE: 10 (2) Applicant first time presenting ground

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A →

(b) your trial, if any? YES

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
None

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. Mathias Chaplin 4511 North Main St.
Colo. SC 29203

ii. David Alexander, SC. Com. on Indigent Defense
Div. of Appellate Defense POBOP 11589 Colo SC 29201

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial & Sentencing

ii. Appeal

iii. _____

19. State clearly the relief you seek in filing this application:

New trial and any other relief I may be entitled to and the courts deems just and fair.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of McCormick)

VERIFICATION

I, Jeff Chestnut, 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.

Jeff Chestnut

SWORN to and subscribed before me this 19 day of August, 2014.

Jeff Mauld (L.S.)
Notary Public

My Commission Expires: 12/16/2019

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Jeff Chestnut, 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.

Jeff Chestnut
Applicant

SWORN or affirmed to and subscribed before me this

19 day of August, 2014

[Signature]
Notary Public

My Commission Expires: 12-16-2019

RICHLAND COUNTY
FILED
2014 AUG 22 PM 4:43
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

INEFFECTIVE ASSISTANCE OF COUNSEL

Per the Bill of Rights to the Federal Constitution I was denied the right to effective assistance of counsel. thereby, my conviction and sentence violates the Constitutions and laws of the United States, as guaranteed by the 6th and 14th Amendments and South Carolina Const. Article I Sec 3 and Sec 14 Also see Strickland v Washington 104 S.Ct. 2052. Here counsel Mathias Chaplin acts and or omissions including but not limited

to — failure to properly research
 and investigate the facts and
 laws surrounding my whole case,
 and appeal Pelzer v State 672
 SE2d 790; Rap v State 401 SE2d
 151; Ard v Catoe 642 SE2d 590

If it was not for counsel
 Chaplin's unprofessional errors.....
 my trial and my appeal, there's
 a reasonable probability the results
 would have been different SEE:
Porter v State 629 SE2d 356

I further argue that with the aid of appointed PCR counsel, I will prove my claims by the preponderance of evidence SEE: S.C.R. Civil P. Rule 71.1 (d); Rule 409 SCA.C.R "Rule of Professional Conduct"; Frasier v State 570 SE2d 172; Also see Martinez v Ryan 132 S.Ct. 1309 Further see Cherry v State 386 SE2d 624, Johnson v State 480 SE2d 733 and Butler v State 334 SE2d 813

Further, I argue that any grounds set out in my original PCR application

expressly or not argued, is subject
to amendment(s) per. S.C. Code Ann §
17-27-90 Also see S.C.R. Court
Rule 71.1(d).

Thus, I am entitled to a FULL
and FAIR evidentiary hearing
upon "any" and "all" my issues
SEE: Sharper v State 305 SE2d 247;
Odom v State 523 SE2d 753

Moreover, I would like to bring to
the court the Assistant Atty Gen and
my PCR counsel's attention,
that I am also entitled to

a ruling upon "all" my PCR issues,
that is brought up during my PCR
hearing SEE: S.C. Code Ann § 17-27-80

Marlar v State 653 S.E2d 266 Also

See Bostick v Stevenson 589 F3d 164

Date 8-19-14

Respectfully submitted
s/ Jeff Chestnut

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND
 Jeff Chestnut #804420
 Applicant
 vs

IN THE COURT OF COMMON PLEAS

NOTICE AND MOTION
 FOR
 COSTS / FEES

The State

NOW COMES the above named Applicant who moves this Hon. court in the above entitled matter per S.C. Code Ann § 17-3-50 and 17-3-60 and any other applicable rules and laws.

This motion will be based on the following:

- (1) Where the State's case surrounded Applicant's identification. And, thus.
- (2) Applicant is in need / expert in identification to prove his claims upon his PCR. thereby.
- (3) The Applicant further argue without such said service he will be denied DUE PROCESS SEE: Easter v Estelle 609 Fed 256; Underwood v State 425 S2d 20; Bannister v State 509 S2d 807; Bassette v Thompson 915 Fed 932.

Date 8-19-14

Jeff Chestnut

PROOF OF SERVICE

I Jeff Chestnut certify that I have

served the below Hon. Clerk of Ct. my PCR
form/grounds and motion for costs/fees. By placing
the above said into the M^cCJ. mail room on
this 19 day of August 2014 to be placed in the U.S.
mail with postage prepaid.

Jeanette W. Mc Bride, Clerk
P.O. Box 2766
Cola, SC 29202-2766

SWORN to before me Jeff Chestnut
this 19 day of August 2014
J. Franklin

Notary Public
my Commission Expires 12-16-2016

cc: Personal file

Jeannette W. McBride Clerk
P.O. Box 2766
Cola SC 29202-2766

Date:

Dear Ms. McBride

Please find enclosed for filing my PCR
form/grounds and motion for costs/fees.

Would you be so kind as to forward
the Atty Gen's Office a filed copy and
me one back.

Thanking you in advance, I am

cc: Personal File

Sincerely
Jeff Chestnut

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2014-CP-40-5179
COUNTY OF RICHLAND	)	
	)	
Jeff Chestnut,	)	
S.C.D.C. No. 304420,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed August 22, 2014, the Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court's orders of commitment. The Richland County Grand Jury indicted the Applicant at the July 2014 term of General Sessions for three (3) counts of Kidnapping (2012-GS-40-04241, -04243, -04244) and four (4) counts of Armed Robbery (2012-GS-40-02641, -04242, -04245, -04246). Mathias G. Chaplin, Esquire represented the Applicant.

The State called the case to trial, and Applicant was convicted on all charges as indicted. On September 20, 2014, the Honorable G. Thomas Cooper Jr. sentenced the Applicant to thirty (30) years imprisonment on each charge with the sentences to run concurrently.

A notice of appeal was filed at the South Carolina Court of Appeals. David Alexander, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense

perfected an Anders¹ brief. The Applicant filed a pro se brief. The Court of Appeals dismissed Applicant's appeal and granted counsel's request to be relieved on June 25, 2014. State v. Chestnut, Op. No. 2014-UP-237 (S.C. Ct. App. filed June 25, 2014). The Remittitur was sent on July 18, 2014.

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
 - a. Failed to properly investigate the facts and law surrounding Applicant's case

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held on the issue of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 

Attorneys for Respondent

March, 11 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JEFF CHESTNUT, #304420

Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2014-CP-40-05179

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
The Law Office of Jonathan Waller, LLC
1720 Main Street, Suite 104
Columbia, SC 29201

DATED this 11th day of March, 2015.



Sara B. Moore, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

JEFF CHESTNUT, #304420,)
 Applicant,)

2014-CP-40-5179

v.)

State of South Carolina,)
 Respondent.)

**Amendment to Application for
 Post Conviction Relief**

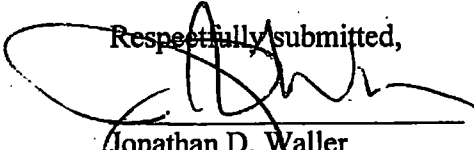
RICHLAND CO
 2016 JAN 26 PM 1:34
 CLERK OF COURT

Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post Conviction Relief filed on August 22, 2014, by adding the specific claims and allegations of ineffective assistance of counsel of counsel:

1. Counsel was ineffective for failing to retain the services or investigate the potential effectiveness of an eyewitness identification expert.
2. Counsel was ineffective for failing to procure telephone records of Defendant as a potential defense.
3. Counsel was ineffective for failing to object to the lack of notice of State's expert witness and for failing to object to the witness' written report being admitted into evidence as it was not produced in discovery as a report from an expert witness.
4. Counsel was ineffective for failing to properly argue factors regarding the reliability of a witness' identification during the suppression hearing.
5. Counsel was ineffective for failing to object to Judge Cooper's preliminary remarks to the jury as they improperly shifted the burden to the Defendant.
6. Counsel was ineffective for failing to object to several instances of impermissible hearsay during the testimony of Drenita Ore.

7. Counsel was ineffective for failing to object to impermissible hearsay during the testimony of Timothy Bell.
8. Counsel was ineffective for failing to contemporaneously object to State's Exhibit #3 (lineup) being offered into evidence.
9. Counsel was ineffective for failing to contemporaneously object to Angela Diaz-Garcia's in-court identification of Defendant.
10. Counsel was ineffective for failing to object to several leading questions during the testimony of Investigator Kevin Eisenhower.
11. Counsel was ineffective for failing to object to State's Exhibit #1 (advisement of rights) thereby not preserving the issue for appeal.
12. Counsel was ineffective for failing to allow Defendant to view surveillance video prior to trial.
13. Counsel was ineffective for failing to renew motion for Directed Verdict at the close of Defendant's case and the close of all evidence.
14. Counsel was ineffective for failing to request a jury charge of "withdrawal."
15. Counsel was ineffective for failing to request a jury charge of "mere presence" after the State's closing argument.
16. Counsel was ineffective for failing to object to Judge Cooper's charge to the jury.

Respectfully submitted,


Jonathan D. Waller
Attorney for Applicant
The Giese Law Firm, LLC
1315 Blanding Street
Columbia, South Carolina 29201

January 26, 2016
Columbia, SC

STATE OF SOUTH CAROLINA

COUNTY OF RICHLANDJeff Chestnut, #304420

Plaintiff,

vs.

State of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUITCASE NO.: 2014 -CP-40-5179MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: <u>Jonathan D. Waller, Bar No. 76290</u> Address: <u>1315 Blanding Street, Columbia, SC 29201</u> Phone: <u>803-708-6767</u> Fax <u>803-708-6769</u> E-mail: <u>jwaller@thegieselawfirm.com</u> Other:		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: <u>Discovery</u> Estimated Time Needed: <u>15</u> Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☒ Plaintiff / ☐ Defendant		<u>1/26/2016</u> Date submitted	
SECTION III: Motion Fee			
☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason)			
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Jeff Chestnut, 304420,

Applicant,

vs.

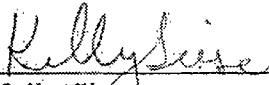
State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT**CERTIFICATE OF SERVICE**

Case No. 2014-CP-40-5179

I certify that on this date I served a copy of Applicant's Amendment to Application for Post Conviction Relief and Notice of Motion and Motion for Discovery, Funding, and in this case on counsel for Respondent by delivering a copy of same to the Respondent's attorney of record by delivering by the United States Postal Service, in a sealed envelope clearly bearing a return address with adequate first class postage affixed thereon, said copy to his office located at Post Office Box 11549, Columbia, SC 29211, and addressed to his attention.


 Kelly Giese

Columbia, South Carolina

This 27th day of January, 2016

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No(s) : 2014CP4005179
	)	
Jeff Chestnut,	)	
	)	
Applicant,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

February 03, 2016
Columbia, South Carolina

B E F O R E:

HONORABLE J. DURHAM COLE, Judge.

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

JONATHAN D. WALLER, Esquire
Attorney for the Applicant

J. CLAYTON MITCHELL, III, Esquire
Assistant Attorney General
Attorney for the Respondent

Recorded by: Elizabeth B. Harris, CVR-M, CM
Circuit Court Reporter

Transcribed by: Teresa B. Johnson, CVR-M, CM
Circuit Court Reporter

I N D E XDIRECT CROSS REDIRECT RECROSS

Mathias Chaplin

by Mr. Waller 13

by Mr. Mitchell 48

by Mr. Waller 69

Jeff Chestnut

by Mr. Waller 77

by Mr. Mitchell 85

Certificate of Reporter 90

EXHIBITS PAGE**NO.****DESCRIPTION****ID EV****PLAINTIFF EXHIBITS**

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

MR. MITCHELL: Okay. Judge, may it please the Court. The next matter is Jeff Chestnut versus the State of South Carolina. Mr. Chestnut was indicted July of 2014, three counts of Kidnapping, four counts of Armed Robbery. He proceeded to trial with Mr. Mathias Chaplin as his counsel. It took place before Judge G. Thomas Cooper. He was sentenced to 30 years imprisonment concurrent on each indictment.

Notice of appeal was filed in the case, and his conviction was affirmed. He filed this timely application on August 22nd of 2014 where he has alleged various allegations of ineffective assistance of counsel. An amendment was filed in this case, I believe, last week, January 26th of 2016 and also a motion for discovery was filed in the case by his attorney, Mr. Waller. I'll let them address that matter.

MR. WALLER: Your Honor, the motion for discovery, there's two specific aspects that we're asking for. First, Mr. Watson was, initially, identified as a suspect or as a

Remarks

1 person of interest by a review of some phone
2 records. This was a robbery at a bingo parlor.
3 There is the allegation that Mr. Chestnut's
4 girlfriend participated in the robbery. She
5 used some of the other employees phones to call
6 Mr. Chestnut earlier in that day. The State
7 contended that was evidence that she was trying
8 to conceal her involvement.

9 The State had an expert testify to those
10 cell phone records of Mr. Chestnut's leading up
11 to -- that day leading up to the event between
12 Mr. Chestnut and his girlfriend from the
13 various phones of other individuals and also
14 Mr. Chestnut and one other co-defendant --
15 there were three co-defendants -- as evidence
16 of planning of the crime. They also said that
17 there was a lack of phone calls made during the
18 15 or 30 minutes that the crime was actually
19 taking place. Their expert testified that that
20 was evidence that they were busy and couldn't
21 call each other.

22 Mr. Chestnut testified. The defense
23 presented a defense. During that testimony and
24 subsequent closing arguments, the defense's
25 theory was that Mr. Chestnut's girlfriend often

1 called him from other -- from her other
2 coworkers' phones as they were -- she had a
3 prepaid phone that had minutes on it, so it was
4 not uncommon. They said, both during Mr.
5 Chestnut's testimony and during closing, that
6 if you had gone back and checked the phone
7 records a couple of months back, that it would
8 show that. In speaking with Mr. Chaplin who
9 represented Mr. Chestnut, they didn't have his
10 phone records going back that far. They
11 certainly didn't present them at trial. That's
12 how Mr. Chestnut was, initially, identified as
13 a person of interest. We asked the Court to be
14 able to subpoena those records. I believe it's
15 T-Mobile, was the carrier at the time.

16 After that, Your Honor, Mr. Chestnut was
17 picked out of a six-person lineup. Mr. Chestnut
18 was identified -- all the testimony -- he was
19 only identified by one person. The testimony
20 was that he was wearing or the assailant was
21 wearing a bandana covering his face and a hat
22 and something around the top of his head, so
23 only his eyes were visible.

24 Your Honor, we would seek funding to retain
25 the services of eyewitness identification or

1 eyewitness testimony expert. Your Honor, in
2 reviewing testimony of eyewitness experts
3 before -- Your Honor, there are studies --
4 excuse me -- that in the presence of a gun, a
5 person's focus goes all to the gun. Your Honor,
6 Judge Cooper actually, in his ruling, on page
7 127, rules that because the witness had a gun,
8 he believe she had a heightened sense of
9 awareness and alertness. Your Honor, I believe
10 that there are studies to the opposite that are
11 true. So we're asking the Court to allow us
12 conduct discovery and also retain the services
13 of an eyewitness identification or eyewitness
14 testimony expert.

15 **THE COURT:** When you say in Judge Cooper's
16 ruling, you're talking about the motion to
17 suppress in-court identification?

18 **MR. WALLER:** Yes, sir, Your Honor.

19 **THE COURT:** All right.

20 **MR. WALLER:** That's it, Your Honor.

21 **MR. MITCHELL:** Judge, I would just note
22 that ID was an issue, but there was other
23 evidence implicating Mr. Chestnut in the crime.
24 He gave a statement that implicated his
25 involvement to an extent. In his statement, he

1 said he was a lookout for the back of this
2 bingo parlor before the robbery. There was --
3 he had a co-defendant who was convicted as
4 well, Mr. Jordan. He was convicted. And then
5 Mr. Chestnut's testimony, as he testified at
6 trial, was that there was another third person
7 involved and that he was the one who actually
8 went into the bingo parlor to do the robbery
9 and that Mr. Chestnut was just the lookout in
10 the back.

11 He -- his testimony and his statement was
12 that he was involved, but just to an extent.
13 The State did go forward on the hand-of-
14 one/hand-of-all type of case, so I'm just
15 bringing that to your attention in making your
16 decision on whether to grant the discovery.

17 **MR. WALLER:** Just for clarification, Your
18 Honor, his statement said that he was lookout.
19 His testimony at trial indicated that he
20 withdrew prior to the burglary taking place and
21 was not a lookout of any kind and, actually,
22 left the area. That was his testimony at trial.
23 Neither co-defendant -- I believe one has never
24 been apprehended, and neither co-defendant
25 testified against him. So it was -- I think

1 identification was the main issue at trial.

2 **THE COURT:** All right. Motion for
3 producing discovery denied. Y'all ready to
4 proceed with the application?

5 **MR. WALLER:** We are, Your Honor. This is
6 the matter we just spoke with you a moment ago.

7 **THE COURT:** You want to do another one
8 ahead of it?

9 **MR. MITCHELL:** Yes, sir, if we can.

10 **MR. WALLER:** Thank you, Your Honor.

11 **THE COURT:** We'll take a short break.

12 (Short recess is taken.)

13 **MR. MITCHELL:** Judge, may it please the
14 Court?

15 **THE COURT:** Yes.

16 **MR. MITCHELL:** We're back on the record
17 with Jeff Chestnut versus the State of South
18 Carolina. We took one case before this due to
19 some scheduling arrangements. Now, we're ready
20 to go on this one. Mr. Chestnut is present and
21 represented by Mr. Jonathan Waller. We'll be
22 going forward on the allegations set forth in
23 the amendment, which was filed January 26th of
24 2016. I'll turn it over to Mr. Waller at this
25 time.

1 **THE COURT:** All right. Mr. Waller.

2 **MR. WALLER:** Thank you, Your Honor.

3 Briefly all me to place this on the record. I
4 know an amendment was filed with the Court. If
5 Your Honor's had a chance to review those, I
6 don't need to put them on the record, I guess.

7 **THE COURT:** I've not reviewed it yet. I
8 just got it, but I will review it.

9 **MR. WALLER:** Your Honor, Mr. Chestnut is
10 alleging various aspects of ineffective
11 assistance of counsel. Your Honor, he's
12 alleging that counsel was ineffective for
13 failing to retain the services or investigate
14 the potential effectiveness of an eyewitness
15 identification expert, that counsel was
16 ineffective for failing to procure the
17 telephone records of the defendant as a
18 potential defense, that counsel was ineffective
19 for failing to object to the lack of notice of
20 the State's expert witness and for failing to
21 object to the witnesses' written report being
22 admitted into evidence because it was not
23 produced in discovery as a report.

24 Counsel was ineffective for failing to
25 properly argue the facts -- the factors

1 regarding the reliability of the witnesses'
2 identification during the suppression hearing.
3 Counsel was ineffective for failing to object
4 to Judge Cooper's preliminary remarks to the
5 jury as they improperly shifted the burden to
6 the defendant. Counsel was ineffective for
7 failing to object to several instances of
8 impermissible hearsay testimony during the
9 testimony of Drenita Orr. Counsel was
10 ineffective for failing to object to
11 impermissible hearsay during the testimony of
12 Timothy Bell.

13 Counsel was ineffective for failing to
14 contemporaneously object to State's Exhibit
15 Number 3 -- it was a lineup -- being offered
16 into evidence. Counsel was ineffective for
17 failing to contemporaneously object to Angela
18 Diaz Garcia, the in-court identification of the
19 defendant. Counsel was ineffective for failing
20 to object to several leading questions during
21 the testimony of Kevin Eisenhower. Counsel was
22 ineffective for failing to object to State's
23 Exhibit Number 1, an advisement of rights form,
24 thereby, not preserving the issue for appeal.

25 Counsel was ineffective for failing to

1 allow the defendant to view the surveillance
2 video prior to the commencement of the trial.
3 Counsel was ineffective for failing to renew
4 his motion for directed verdict at the close of
5 the defendant's case and also the close of all
6 evidence.

7 Counsel was ineffective for failing to
8 request a jury charge of withdrawal. Counsel
9 was ineffective for failing to request the jury
10 charge of mere presence after the State's
11 closing argument. And finally, Your Honor, that
12 counsel was ineffective for failing to object
13 to Judge Cooper's charge to the jury.

14 Your Honor, this was a trial that took
15 place following an armed robbery of a bingo
16 parlor. Mr. Chestnut was tried as one of three
17 co-defendants. He was tried by himself. Another
18 co-defendant had been tried prior to him and
19 been convicted. The third co-defendant, Your
20 Honor, is, I believe, still at large. There is
21 -- warrants have been issued, but I'm not sure
22 that they were ever actually served.

23 Your Honor, as was presented to the Court
24 earlier, identification was quite an issue
25 during this case. I think that the trial shows

1 that. Your Honor, at this point, we would call
2 Mathias Chaplin.

3 **THE COURT:** These are the sole allegations
4 that you are proceeding under?

5 **MR. WALLER:** Yes, sir, Your Honor.

6 **THE COURT:** Okay.

7 **MATHIAS CHAPLIN**

8 having first been duly sworn, testifies as follows:

9 **THE COURT:** Thank you. You can have a
10 seat.

11 **DIRECT EXAMINATION**

12 **BY MR. WALLER:**

13 **Q** Good morning, Mr. Chaplin.

14 **A** Good morning.

15 **Q** Mr. Chaplin, how did you come to represent
16 Mr. Chestnut?

17 **A** I was appointed to represent Mr. Chestnut
18 in this particular matter. I also -- I think I spoke
19 with him on a few other issues, like bonds and stuff
20 like that prior to that. But this particular trial, I
21 was appointed.

22 **Q** Okay. And he was charged with seven counts
23 of two different crimes, is that your recollection?

24 **A** My recollection is -- well, let me point
25 out -- you asked me to bring my file. I think your

1 client informed you that he filed a complaint with
2 ODC in 2013 and, as a result, he requested all of his
3 materials. And I actually have a copy of the letter
4 that I provided him. I reviewed some of my personal
5 notes, but as far as the file is concerned, I'm sure
6 Mr. Chestnut informed you that he received that.

7 Q Yes, sir.

8 A Okay.

9 Q Have you reviewed your file to the best of
10 your abilities?

11 A To the best of my abilities, yes.

12 Q Do you recall this trial?

13 A I do recall the trial. To answer your
14 question originally about how many charges, I
15 remember that there were numerous arrests and
16 numerous charges to include a probation violation. A
17 lot of things were on table. We finally went to
18 court.

19 Q Okay. But this trial was seven charges,
20 armed robbery and kidnapping?

21 A I have no reason to doubt that.

22 Q And what do you -- if you recall, when --
23 after you were appointed, how long was it before you
24 met with Mr. Chestnut?

25 A I met with Mr. Chestnut, probably to

1 prepare for his trial, probably in excess of 20
2 hours.

3 Q Okay.

4 A As far as the first time I laid eyes on
5 him, I can't tell you exactly. I do know that Mr.
6 Chestnut and I met in my office, Mr. Chestnut and I
7 -- you know, I did -- while we were preparing, I did
8 motions to get him on bond and ankle monitor and to
9 do this and do that. Mr. Chestnut and I came to court
10 on numerous occasions. While the case was being --
11 while we were preparing for trial, Mr. Chestnut had
12 several other issues going on with him that I
13 assisted him in addressing.

14 Q Okay. And he ultimately made bond at some
15 point, correct?

16 A He did.

17 Q So he was able to come to your office and
18 meet with you?

19 A Numerous times.

20 Q Okay. What was your understanding of the
21 State's allegations against Mr. Chestnut,
22 specifically, and how did he intend to show that it
23 was he that committed this crime?

24 A My understanding was that there was some
25 issues regarding Mr. Chestnut. I think he was dating

25 Mr. Chestnut informed me that she wanted

1 some cigarettes or something to that effect. But the
2 State's allegations was that that was -- I think the
3 cops came to do security at the place the night right
4 before the robbery. Teidra Dennis told them that we
5 don't need any security that night. I think because
6 of her, Mr. Chestnut was, and his connection to her,
7 I think that's where it started. Then ultimately,
8 it's where someone said, yeah, that's him in the
9 video.

10 Q Okay. And to the best of your knowledge,
11 the time y'all tried this case, had Ms. Teidra Dennis
12 ever been arrested?

13 A Never. And I constantly asked them what's
14 up with that. Why haven't you all found Ms. Dennis
15 and why haven't you arrested her, whatever the case
16 might be. Their position was that they had already
17 issued a warrant, but they haven't been able to
18 apprehend her. My suspicion is that, if I can go that
19 far, is that she might have been cooperating or
20 whatever the case might be. I don't know.

21 Q She didn't testify?

22 A She did not at trial.

23 Q By the time you were appointed, Mr.
24 Chestnut had given a statement to law enforcement?

25 A Right after the incident occurred, I guess

1 before I became involved, you are correct. Mr.
2 Chestnut met with law enforcement and gave them his
3 theory of what occurred. I think they approached him
4 and said, well, you know, let's open a hot dog night,
5 and why were y'all doing this and why is your --
6 these calls -- phone calls being made and, shortly
7 after that, bam, there's a big robbery.

8 Mr. Chestnut then sat down, unfortunately,
9 to try to explain that to law enforcement. What he
10 said was that he did originally think that, you know,
11 he was going to participate in something. Then his
12 better judgment caught him and he realized, no, I'm
13 not going to do that. So, then, he let somebody else
14 who was there borrow his clothes, somebody by the
15 name of Quantus, which they've never been able to --
16 I don't know if they ever found him or not. But
17 anyway, that's the person that was inside. Quantus
18 happened to be the same height and the same body
19 shape as Mr. Chestnut, according to Mr. Chestnut. So
20 -- I'm sorry.

21 Q No, no, no. I was going to say, in addition
22 to the statement, he was also identified in a six
23 photo -- six-person photo lineup ---

24 A Yeah.

25 Q --- before you were appointed to represent

1 him. Is that correct?

2 **A** Yeah. I think it was the one that came to
3 trial and said I'll never forget those eyes.

4 **Q** Okay. Is it fair to say that the phone
5 records and the identification, the lineup were,
6 amongst other things, big issues as far as tying him
7 to the robbery of the bingo parlor?

8 **A** Well, the defense theory was that, sure,
9 there were phone calls, but that doesn't necessarily
10 mean that he did anything wrong. I don't think we --
11 I don't think our position was that we denied calls
12 were made. But the State did use phone records and
13 things, if that was your question, to try to use that
14 as circumstantial evidence that it must have been
15 connected.

16 **Q** Sure. We're going to circle back ---

17 **A** Go ahead.

18 **Q** --- in a few minutes to that. Did you
19 discuss with him his constitutional rights?

20 **A** Yeah. Let me point out that not only did I
21 interview Mr. Chestnut, this case was so important to
22 my office until I got ODC to hire our own
23 investigator. We had someone. Mr. Chestnut may recall
24 her name as Jael. They met on several occasions
25 alone, as well as me meeting with him along with her.

1 We went through that file ad nauseam, breaking it
2 down. Mr. Chestnut should have in his possession a
3 grid that we created and some other things like that.
4 But anyway, yeah, it was a real biggie.

5 Q Okay. So when you went over Mr. Chestnut's
6 constitutional --

7 A And I did. I'm sorry. I didn't answer your
8 question. I did go over his rights, as well as the
9 discovery and possible defenses, everything.

10 Q Okay. Did you discuss with him, I guess,
11 his options at that point, plea or trial, and what
12 each of those would entail?

13 A Actually -- and if you'd like a copy of
14 this, this is -- to support my position on that, I
15 went over that -- the options with Mr. Chestnut again
16 ad nauseam. I said to Mr. Chestnut, the State's offer
17 is blah. We talked about that. We talked about that.
18 Mr. Chestnut, on 9/16/12, signed a statement saying I
19 do not want this offer.

20 Q Okay.

21 A And even at trial, as you saw from the
22 transcript, I made -- put it part of the record that
23 Mr. Chestnut honestly believed that they were not
24 going to be able to identify him at trial.

25 Q Okay. So on the date that he signed that

1 statement, y'all -- you knew you were going to trial
2 at that point?

3 **A** Well, I knew that he denied -- that he
4 didn't want the offer. I knew that. I can't tell you
5 that -- I was -- even up until the time we got to
6 court that day, I was still trying to speak with him
7 and trying to see, you know, are you sure you want to
8 do this, whatever the case might be. He was adamant
9 he wanted to go to trial and he also wanted to
10 testify.

11 **Q** Okay. At that point, you knew that getting
12 prepared for trial was a very real possibility for you
13 as his attorney?

14 **A** Well, and I think my testimony was that I
15 was well prepared for the trial.

16 **Q** Sure.

17 **A** Yes.

18 **Q** What did you and Mr. Chestnut discuss, as
19 far as your strategy, to present your defense at
20 trial?

21 **A** You're asking me what did Mr. Chestnut tell
22 me?

23 **Q** I'm asking you what your -- what strategy,
24 based on y'all's conversations, that you were
25 preparing to proceed on.

1 **A** Mr. Chestnut said that he was outside
2 hiding while the robbery was taking place. And after
3 that, he, then, got out of there.

4 **Q** Okay.

5 **A** But the strategy was, basically, Mr.
6 Chestnut planned to take the stand and tell the
7 truth, and the truth was he did not go inside and rob
8 anybody.

9 **Q** Okay. Did you -- talking about him
10 testifying, did you discuss with him the pros and
11 cons to him testifying, including his constitutional
12 right not to testify?

13 **A** One of the benefits, I think, of working
14 with Jeff is that -- and I actually got to the point
15 where we actually were on a first name basis because
16 I was referring to him as Jeff -- he's a very
17 intelligent young man, well-spoken as the Court will
18 probably see in a few minutes. Just a nice guy. I
19 enjoyed working with Jeff.

20 I think that we talked about him
21 testifying. We talked about what if you don't,
22 whatever the case might be. But Jeff, from the very
23 onset, even when -- that's why he gave that original
24 statement, he says, is that he has been wrongfully
25 accused and he was going to go to court and get this

1 straight.

2 Q Did you advise him that if he testify --
3 that if he did not testify, the judge would instruct
4 the jury that they could not use that -- his lack of
5 testimony against him?

6 A He knew that.

7 Q Did you instruct him on it, specifically?

8 A My standard is that I instruct everyone on
9 that.

10 Q Okay. Did you instruct him that if he
11 testified that any prior record that he might have
12 had could be used for impeachment purposes?

13 A Again, my standard practice is that
14 everyone is advised of that. I want to say Jeff and I
15 talked about his testimony and his prior record and
16 the fact that he may not be believable because of
17 that record, the fact that he's on probation, the
18 fact that he is taking a risk. We talked about that
19 over and over and over. All right. Short of me
20 sitting there putting words in his mouth, Jeff knew
21 exactly what he wanted to say.

22 Q Did he know the risks of what he was
23 opening himself up to by testifying?

24 A Well, I guess you'll have to ask him
25 whether he understood it or not. But I can tell you

1 that, as his attorney, I advised him of it.

2 Q When you and Mr. Chestnut were preparing,
3 did y'all discuss the phone records? Were those
4 provided in discovery?

5 A You know, and I looked at my notes last
6 night. We did go over phone records. Jeff and I sat
7 down and we identified whose number is this, whatever
8 the case might be, and we did look at all that. Jeff
9 and I, then, went through it so much as to say, well,
10 I know this day, I called here, but that's when she
11 called me and said I want cigarettes. This is when
12 whatever, whatever. So yeah, we did go over phone
13 records.

14 Q Do you recall how long a time frame of
15 phone records that were provided to you?

16 A Well, I do think there might have been a
17 problem with them not giving me things a little
18 further -- they gave a certain time frame. If you are
19 suggesting that had we gotten some records further
20 back that it might had been helpful, I can't deny
21 that. I don't -- it might have been helpful. But I
22 think what the case was about was what occurred and
23 what they are saying here is a conspiracy, here's the
24 set up, here's the disk and these are the records
25 that support that. Now, whether there were records a

1 month earlier that could have refuted that, I don't
2 know, cause I didn't see them.

3 Q Do you recall how long -- how far back the
4 records that you were provided by the State in
5 discovery?

6 A I can't say that for sure.

7 Q Okay.

8 A This was some time ago.

9 Q Okay. Did you attempt to subpoena any
10 record, I believe it was T-Mobile, on your own?

11 A I didn't attempt to subpoena. I felt that
12 what Joy McDuffie in the Solicitor's office provided
13 us was a pretty adequate amount of records. I know we
14 had several conversations on records and who was
15 doing what and things like that.

16 Q Okay. The State -- the State's theory with
17 the phone records was there was a flurry of activity,
18 Ms. Dennis was calling from other people's cell
19 phones ---

20 A Yes, sir.

21 Q --- to Mr. Chestnut and also Mr. Chestnut
22 was speaking with the other co-defendant back and
23 forth right -- earlier that day leading up to the
24 robbery. There was a relatively short gap of time
25 where nothing was -- no calls were made right around

1 the time of the robbery?

2 **A** Yes, sir.

3 **Q** Mr. Chestnut, when he testified, testified
4 that that doesn't account for Ms. Dennis to call him
5 from other numbers and for there to be a lot of calls
6 going back and forth between him and other people. He
7 testified that if you looked at his phone records
8 going back, then it would show that that's
9 consistent. Did you and he ever have that
10 conversation that phone records going farther back
11 would be more helpful to you?

12 **A** I can't. I can't recall. Like I said, Jeff
13 was a very intelligent young man. I think that if
14 that point had been emphasized a little bit, maybe I
15 probably would have done that, but I'm not going to
16 sit here and say something that I honestly don't
17 know. We didn't request any other records or
18 whatever. I think what was -- maybe there were
19 records that might have been -- a month ahead of time
20 that could have shown her using several phone calls
21 to call. But I think the State's position was that
22 and I think the testimony was that -- from other
23 people was that, while she was inside the bingo
24 parlor, she was -- something was going on with her
25 phone. She was borrowing people's phones to try to

1 get with him to talk to him or whatever. Now, maybe
2 she's done that in the past. I don't know how that
3 would have helped us. I'm not quite sure.

4 Q Well, glad you brought. Mr. Chestnut
5 testified that that wasn't uncommon because she had a
6 prepaid phone. The phone was often out of minutes or
7 whatever. So y'all didn't attempt to get any
8 additional records on your own?

9 A No, we did not.

10 Q Did you and Mr. Chestnut discuss his
11 identification by Ms. Angela Diaz Garcia?

12 A Briefly.

13 Q Okay. Did you and he discuss hiring an
14 expert in eyewitness identification?

15 A I caught hell just getting ODC to approve
16 the investigator that we had. So yeah, I don't think
17 that we talked about it. I thought that the cross-
18 examination that I gave of Ms. Garcia, which was in
19 the transcript and the other people, I thought that
20 that was pretty compelling. I really believed that
21 they should have -- the jury should have looked at
22 her with a bit of suspect with regards to how
23 reliable that was. I really thought that what we were
24 trying to do was present that to them with -- with,
25 you know, through direct testimony and cross-

1 examining. And I've never shown that to an expert.
2 I've got to be honest. One of the concerns I had is
3 what if they came back and wrote a report and said
4 that it is Jeff. Then what do I do with it?

5 Q Now, everybody's, including Ms. Diaz
6 Garcia's, statement to law enforcement was that both
7 robbers had bandanas across their face?

8 A Yeah.

9 Q And the one that was supposed to be Mr.
10 Chestnut had a hat also; is that your recollection?

11 A Uh-huh.

12 Q So Ms. Diaz --

13 A Stocking cap or something like that.

14 Q Ms. Diaz Garcia's identification, from a
15 warrant perspective, was based solely on Mr.
16 Chestnut's eyes?

17 A Which I pointed out and I think it was
18 emphasized at trial that that was pretty incredible.

19 Q And there was also, if you recall --

20 A Excuse me. I'm sorry. Also, the fact that
21 she was busy trying to take care of her daughter and
22 do some other things. They said that the person
23 touched the cash drawer. Well, why didn't you dust
24 the cash drawer or whatever -- said it was
25 contaminated or whatever the case might be. It all

1 boiled down to her statement, "I'll never forget
2 those eyes."

3 **Q** Do you recall the length of time between
4 the robbery and when she made the identification?

5 **A** It wasn't the very next day or something
6 like that. It might have been within a week or
7 something like that. I'm not sure. Maybe you know
8 that better than I do.

9 **Q** Does two and a half weeks sound about
10 right?

11 **A** Sounds about right.

12 **Q** Again, y'all never discussed -- did you
13 make a motion for funding for an expert?

14 **A** I did not. I think I said that earlier.

15 **Q** The State called an investigator with the
16 sheriff's department as an expert witness in cell
17 phone records. Did you have prior notice that the
18 State intended to call an expert?

19 **A** You know, you asked me that earlier. To the
20 best of my recollection, I don't -- I went back and I
21 thought about that. I think that I was aware that the
22 person was going to testify, but I did not -- I was
23 not aware that the person was going to come in as,
24 quote, unquote, an expert.

25 **Q** I'm not challenging the qualifications. I'm

1 just trying to see what notice that you were aware
2 of.

3 **A** I know.

4 **Q** During his testimony, he presented a
5 PowerPoint presentation that was introduced into
6 evidence. Were you given that presentation or that
7 report in advance?

8 **A** No, but what I was told is that their
9 presentation was how they wanted to present the
10 evidence that we received by Rule 5, which is all
11 phone records. That's the way they chose to present,
12 but no, we didn't have their trial material prior to
13 them calling the case.

14 **Q** You didn't have the expert's report in
15 advance or notice that they were intending to call
16 them as an expert, here is his report?

17 **A** Not to my knowledge. I'm sorry. Report? Are
18 you saying that the PowerPoint was a report?

19 **Q** I'm not sure that I -- I can answer that in
20 this setting. The written -- you were provided with
21 written materials?

22 **A** I think we were provided with the basis
23 that he was going to make his testimony. I think that
24 -- in the transcript, I think -- I believe that the
25 proper foundation was laid to have it admitted. I

1 might have been a bit -- could have been a bit more
2 aggressive with trying to keep it out or whatever the
3 case might be. But like you said earlier, Jeff and I
4 really wanted -- Jeff and I really wanted that
5 information to -- to come in, because what Jeff's
6 position was is yes, I made calls, but it's because
7 her phone was dead, it was this, it was that, and
8 that was a lot of our case as well was disproving and
9 showing that there was a lot more than one reason why
10 maybe a phone call was made.

11 Q Sure. I'm not questioning the foundation
12 that was laid ---

13 A Okay.

14 Q --- or the substance of the presentation
15 itself. I'm just asking what advance notice you had
16 of an expert witness' written materials.

17 A Okay. And I think I've answered it best I
18 can.

19 Q When you -- when Judge Cooper initially was
20 speaking to the jury, if I could get you to turn to
21 page 143 of the transcript.

22 A Okay. I'm here.

23 Q Line 9. Judge Cooper told the jury that the
24 defendant will also make an opening statement. Did
25 that concern you at all as possibly shifting the

1 burden to the defendant?

2 **A** Where? Line 9?

3 **Q** Yes, sir.

4 **A** It says the attorney for the defendant.

5 **Q** Yes, sir.

6 **A** Okay. So I don't understand your question.

7 What are you saying?

8 **Q** Did that concern you at all as shifting the
9 burden because you're not required to make an opening
10 statement at all?

11 **A** Maybe that might have been strategic and I
12 think that's an issue that attorneys have some leeway
13 with, but I think why would I not. I have a client
14 who's stating that he's innocent, he had been
15 wrongfully charged. Why would we sit there and just
16 look like we've got something to hide? Of course, we
17 made an opening statement.

18 **Q** Mr. Chaplin, I understand that. I'm just
19 asking if the judge's statement -- if you were okay
20 with the judge's statement.

21 **A** I really was, because I thought it actually
22 reflected what did happen. I made a very powerful, I
23 think, opening statement.

24 **Q** Okay. If I could get you to turn to page
25 176.

1 **A** Okay. What line?

2 **Q** Line 11.

3 **A** Okay.

4 **Q** This is the testimony of Drenita Orr. She
5 was one of the fact witnesses.

6 **A** Yeah.

7 **Q** Several times -- I won't point them all out
8 to you, but several times during her testimony, she
9 testifies to what Teidra Dennis told her and the rest
10 of the bingo employees. Did you -- particularly on
11 page 176, line 11, what was the strategy behind not
12 objecting to that as impermissible hearsay?

13 **A** Okay. Where's the hearsay?

14 **Q** Line 11.

15 **A** No, I didn't see anybody run out of the
16 door. Let me just read. (Reviewing.)

17 You know, a lot of that is -- I think what
18 she's saying there, I think that might have been
19 consistent with our position that -- it didn't strike
20 me as impermissible hearsay at the time. It was --
21 she had personal knowledge of what Teidra said and
22 she was testifying to it. I could be wrong about
23 that. I'm just kind of thinking out loud. I think our
24 position was that he didn't run out of the door
25 either.

1 **Q** Teidra did not testify?

2 **A** She did not, no.

3 **Q** If I could get you to turn to page 178.
4 What I'm focusing on is lines 5 through 6. I think
5 you're going to need to read some in advance of that
6 to get perspective on it.

7 **A** (Reviewing.)

8 Okay.

9 **Q** Again, the same question. What -- the line
10 from Ms. Orr is she is saying, Teidra, you can't
11 leave, you have to talk to the cops. And Teidra, she
12 says, well, I'm not going anywhere. I'm not going
13 anywhere.

14 **A** You know, prior to -- and you're asking me
15 to kind of go back in time here, but prior to us
16 going to trial, the co-defendant had actually pled. I
17 think what Jeff told me was that he believed that
18 Teidra and the co-defendant were in cahoots, whatever
19 the case might be. Right? What all this does is, I
20 guess, kind of just points the finger at her. It
21 didn't appear to me to be hearsay at the time, nor
22 did it appear to be harmful. I thought it was
23 consistent with what we were saying is that Jeff had
24 nothing to do with it and why don't y'all go get
25 Teidra and get her in here.

1 Q So you didn't think it rose to the level of
2 needing to be objected to?

3 A Well, I didn't object to it.

4 Q Okay. The next page, page 179, lines 7
5 through 12.

6 A Can I help you out? If I didn't make an
7 impromptu objection, then, obviously, I didn't see
8 it. I can help you out with that. We can talk about
9 each one if you'd like, but I can tell you, if you
10 don't -- if the script says it's silent to me
11 objecting, then I didn't object.

12 Q Well, I think we need to talk to each
13 one ---

14 A That's fine.

15 Q --- for record purposes.

16 A That's fine.

17 Q I appreciate that.

18 A Yeah. Okay. What lines?

19 Q Lines 7 through 12.

20 A Okay. (Reviewing.)

21 Okay.

22 Q What she just said, you didn't object to it
23 and you didn't feel the need to object to it?

24 A Yeah, I'm going to stick with that answer.

25 Q Okay. Again, on page 180, and it's really

1 the majority of the page. I'll give you a minute to,
2 if you could, take a look at it and see if you recall
3 if you had any specific trial strategy for not
4 objecting to the hearsay testimony.

5 **A** (Reviewing.)

6 I guess the only thing I can tell you is
7 that our position is that Jeff was not involved and I
8 think that there were other co-defendants involved or
9 whatever and I don't think anybody -- in this
10 particular case, they didn't say Chestnut or whatever
11 the case might be. They just said the man on the line
12 or whatever the case might be. I don't know if they
13 were saying that that was Jeff. I think they might
14 have been referring to just what was occurring or
15 something like that. I could be wrong about that, but
16 that's how I read it.

17 **Q** You're talking about there was a phone call
18 made back to the number of one of the employee's
19 phones to the number that Teidra Dennis had been
20 calling ---

21 **A** Right.

22 **Q** --- is that correct? And the State said
23 that the person that answered that phone said it's
24 over. Is that your recollection?

25 **A** (No audible response.)

1 Q Something to that --

2 A Something to that effect. And I think that
3 -- and the suggestion was that maybe Teidra and the
4 guy who pled got together after the robbery and
5 whatever the case might be, and might have done
6 something like that. I think Jeff testified that he
7 hid under the stairs and a little old lady was going
8 by and gave him a ride to get up out of there, cause
9 he was very scared.

10 Q But that was Mr. Chestnut's number that was
11 called; is that right?

12 A I don't recall.

13 Q When -- before the trial, before the jury
14 was sworn, you made a pretrial motion to suppress the
15 lineup. If I could get you to turn to page 282.

16 A Okay. All right.

17 Q The State sought to introduce State's
18 Exhibit Number 3, which was the lineup. You did not
19 object to it. What was the trial strategy behind not
20 objecting to that after you made the pretrial motion
21 to suppress?

22 A Obviously, the motion was denied. Very
23 likely, I would have heard the same issue again. As
24 far as issue preservation, I probably should have
25 made an objection at that time, in hindsight. At the

1 same rate, I think we were going to probably
2 introduce it ourselves. I think that was the whole
3 idea is that, you know, you look at the video and you
4 look at the guy in the picture, how can somebody make
5 that leap? Here, you've got a guy who looks like, you
6 know, he's from Indian with a burqa on and then
7 you've got -- if that's the right word -- and then
8 you've got a whole face or whatever the case might
9 be. And, okay, one of these things don't go with the
10 other. What's the problem?

11 Q Why didn't you make the motion to suppress
12 pretrial?

13 A Well, I think that, if I remember, I
14 probably objected to a lot of the stuff that they
15 were trying to admit into evidence, whatever the case
16 might be. Like you said, based on reliability, we
17 never felt like that was reliable. We always thought
18 that, yes, she might have seen Jeff, but as Jeff
19 pointed out, she saw him a week or so earlier, if I'm
20 correct, Jeff, at hot dog night. And Jeff was there
21 and everybody else was there. And just cause you
22 could point him out doesn't mean that he's the one
23 that robbed you. We argued that as well.

24 Q To preserve the record for appeal, you just
25 testified that you didn't think the identification

1 was reliable. Was there a strategy behind not
2 preserving the --

3 **A** No. I already said that that probably, in
4 hindsight, should have been done.

5 **Q** Jumping forward to the video that you just
6 mentioned, when did you receive the video?

7 **A** I know we saw it -- we saw it well in
8 advance and had plenty of time to go over it. I know
9 that.

10 **Q** Okay. Do you recall when you and Mr.
11 Chestnut went over it?

12 **A** Not particularly. But I do know that we --
13 we -- we knew going into the court that the person in
14 the video -- excuse me -- that the image in the video
15 was a far cry from the photo lineup that somebody saw
16 or whatever the case might be. We knew that going in.
17 That's one of the reasons why the suppression motion
18 and other things like that were made.

19 **Q** Okay. What was -- what was the reason for
20 asking the Court to show Mr. Chestnut the video? It
21 as decided that the video was going to be shown of
22 just Mr. Chestnut, so there wasn't an issue with him
23 walking back and forth.

24 **A** Well, good question. That is -- as you well
25 know, we walked in there. Jeff and I are looking at

1 it on one thing; they've got big screen TV. There's
2 no attorney/client privilege at this point, but I
3 wanted to make sure that when we saw it on this
4 projector that it wasn't high definition, that it
5 wasn't something that was going to scare the hell out
6 of everybody.

7 Q So it wasn't a situation where y'all had
8 never been able to review video before, it's just you
9 wanted to view it on the --

10 A Yeah, I wanted to see it on the media that
11 they had, because I had never seen it on that before.
12 We walked in there and they had a projector that was
13 about as tall as this wall back there. They were
14 getting ready to show something and I wanted to be
15 able to view it, and Jeff did too.

16 Q After viewing it, was it substantially the
17 same, just larger?

18 A We thought it was still blurry.

19 Q Okay. But it was the same one that you had
20 been provided? It hadn't been altered?

21 A Uh-huh.

22 Q Back to this Diaz Garcia's testimony, the
23 following page, on page 283, she identifies Mr.
24 Chestnut in court. You did not object at the time. I
25 believe you attempted to object later. What was the

1 strategy behind not objecting when she actually
2 identified Mr. Chestnut in court? It's at the very
3 top.

4 **A** Okay. Let me look and see. (Reviewing.)

5 I think one thing was that we were under
6 the impression that even though she did say that's
7 him in the courtroom, that, I think, our testimony
8 would refute that. I think the cross-examination
9 would -- I think probably in the back of my mind, I
10 was a little concerned about creating a concern with
11 the jury that, you know, we're protesting a bit too
12 much here. Sometimes, if you ask the judge to strike
13 something, then you get to repeat the statement that
14 you don't want admitted into evidence as least four
15 different times. Sometimes, it's not the best move. I
16 think enough was made about the fact that you
17 couldn't rely on her testimony. I think enough
18 statements had been made about that over and over.

19 **Q** Okay. But as far as preserving for the
20 record ---

21 **A** Yeah.

22 **Q** --- you did not make that objection?

23 **A** I did not, if it's not in the record, if
24 it's not in the transcript. And I don't know if
25 there's a benefit to me having made it later on or

1 whatever, but I think it's certainly enough language
2 in the colloquy in the transcript to argue that it
3 wasn't viable.

4 Q Okay. When Investigator Kevin Eisenhower
5 testified -- I'm going to be kind of general with
6 these questions.

7 A Go ahead.

8 Q There were leading questions asked
9 throughout this testimony. I believe you did object
10 to some, but you did not object to others. What was
11 the strategy behind not objecting to some of the
12 leading questions?

13 A I think the answer is I objected to as many
14 as I could. I had, you know, a gazillion things going
15 on at one time. I'm not quite sure. I don't think
16 there was a strategy to that. I'm not looking at the
17 document right now, but all I can say is I thought
18 that a lot of stuff that Eisenhower said was
19 conclusory and things of that order. I objected to
20 what I -- what struck me at the time.

21 Q Okay. Additionally, during his testimony,
22 the statement given by Mr. Chestnut was introduced?

23 A Yes.

24 Q You made a motion pretrial to Jackson v.
25 Denno hearing taking place?

1 **A** Yes, sir.

2 **Q** Your contention was -- or the defense's
3 contention was that the statement was inaccurate and
4 it was typed by Investigator Eisenhower and
5 everything, including the statement and advisement of
6 rights, was all signed at the end by -- in one fall
7 swoop and didn't progress as it was supposed to,
8 advisement of rights and then a discussion. On page
9 383 --

10 **A** And they didn't record it and they could
11 have recorded it.

12 **Q** Yes, sir.

13 **A** Yeah.

14 **Q** -- page 383, the State moved to admit
15 State's Exhibit Number 1, the advisement of rights
16 form. You did not object to it. What was the strategy
17 behind not objecting to that?

18 **A** There wasn't one. The only thing I can
19 think of is that I think we plowed that ground in
20 pretrial as far as issue preservation or whatever the
21 case might be. I have no reason to think that an
22 appellate court would have ruled otherwise. But I
23 guess in his best interest, it should have been made.

24 **Q** You made a motion for directed verdict and
25 renewed your motions and objections at the close of

1 the State's case.

2 **A** Right.

3 **Q** However, you did not make those same
4 motions at the close of your case and also at the
5 close of all the testimony the State offered of
6 rebuttal of this. Now, what was the strategy behind
7 not renewing those motions?

8 **A** The appellate court denied because it
9 wasn't properly preserved, that matter?

10 **Q** I don't recall.

11 **A** I think that would be the basis of your
12 question, right? I mean, did it get discussed in the
13 appeal and is that why you're asking? They said we
14 won't hear that because it wasn't preserved?

15 **Q** My question is why you didn't renew them.

16 **A** My question to you though is --

17 **Q** Mr. Chaplin, with all due respect, I'm the
18 one asking the questions.

19 **A** But I don't understand your question. I've
20 heard you ask me numerous times why wasn't that made,
21 why wasn't that made. What I'm asking you is are you
22 basing that on the fact that you read the appeal and
23 the appellate court said, well, that's not before us
24 because Mr. Chaplin didn't preserve it.

25 **Q** I'm just asking the question of why it

1 wasn't renewed.

2 **A** Okay. If it's not in the transcript, then
3 no. But I think what you said was it did happen, it
4 just didn't happen at every point that you thought it
5 should happen.

6 **Q** Your -- defense -- one of the main
7 strategies was that Mr. -- Mr. Chestnut's version of
8 the facts was that he got in the car with the co-
9 defendant, the co-defendant mentioned the robbery.
10 He, initially, said he wanted to be part of it and
11 then later decided that he did not want to go through
12 with it, gave his shirt and his hat to this Quantus
13 person and kind of hid out for a little while, saw
14 him run by and left the area.

15 **A** Right.

16 **Q** He testified and then based on y'all's
17 theory of the case and his testimony, did you request
18 a jury charge withdrawal to Judge Cooper?

19 **A** Are you asking me why didn't I request a
20 jury charge withdrawal?

21 **Q** Yes, sir.

22 **A** I didn't see that.

23 **Q** Okay. You did request a charge of mere
24 presence. Then the State -- the State gave their
25 closing arguments. Was there a reason why you didn't

1 renew your request for mere presence based on the
2 State's closing argument?

3 **A** Ask the question again. I understood what
4 you said. Was there a reason why now? Why I didn't
5 what?

6 **Q** Renew your request for a mere presence
7 charge based on the State's closing argument. You
8 requested it prior to closings. Once the State gave
9 its closing argument, you did not -- based on their
10 closings, you didn't ask for any other charges to be
11 given. Is there a reason for that?

12 **A** Well, can you help me out? When I requested
13 it originally, did the judge rule on it?

14 **Q** He did. He refused to grant -- refused to
15 charge the jury that.

16 **A** Right. Okay. I guess I just felt like it
17 was futile to do it again.

18 **Q** Okay. Following the judge charging the jury
19 on the law, you failed to object to the judge's jury
20 charge despite him not charging some of the things
21 you requested. What was the strategy behind not
22 objecting to that?

23 **A** I'm not quite sure what it was when I made
24 those issues or whatever. But, I mean, I think,
25 bottom line is that if it's something that the Court

1 of Appeals determined harmed Jeff because it wasn't
2 made, then it clearly should have been done. I guess
3 that's just the bottom line. Like I told Jeff when I
4 started this thing, I was going to give him my best,
5 and I think that's what I did. At the same rate, if
6 you've got a transcript from the appellate court that
7 says that as a result of this, Jeff was prejudiced,
8 then, you know, it should not -- it should have been
9 different.

10 Q Okay. When the State's expert, the cell
11 phone expert, testified that there was a flurry of
12 activity and there was no calls made during the time
13 of the robbery, he testified that that was evidence
14 that they were committing it because there was a 15-
15 or 30-minute gap where no calls took place. Did that
16 seem speculative to you?

17 A Well, it did. I think that's when Jeff's
18 position was that he was hiding underneath the stairs
19 in another man's clothes because they actually
20 changed clothes, which the jury kind of found
21 suspect. But anyway, his position was him and another
22 man changed clothes and he was hiding under the
23 stairs. That's why he wasn't on the phone. I mean, I
24 think our theory might have been a bit speculative as
25 well. But anyway, maybe a motion -- maybe an

1 objection regarding speculation would have been a
2 good one. At the same rate, I think we addressed it
3 in our direct.

4 Q Okay. Turning back just briefly to the cell
5 phone records.

6 A Right.

7 Q Let me hand you the second portion of the
8 transcript. If I can get you to turn to page 592, the
9 paragraph beginning on line 17.

10 A Okay.

11 Q You argued to the jury that if there was
12 six months or three months or two weeks of phone
13 records showing the phone call history with Mr.
14 Chestnut's phone number, that that would be better
15 evidence than just the one day that they show.

16 A And I still agree with that. I think that
17 was my testimony earlier.

18 MR. WALLER: Beg the Court's indulgence.

19 (Pause.)

20 No further questions for this witness.

21 Please answer any that Mr. Mitchell may
22 have.

23 CROSS-EXAMINATION

24 BY MR. MITCHELL:

25 Q Good afternoon, Mr. Chaplin.

1 **A** Hi. How are you?

2 **Q** Great. Thanks for being with us. Appreciate
3 your patience on everything. Give us a little brief
4 rundown of your background.

5 **A** Well, let's see, presently, I'm a criminal
6 defense attorney. I'm a 1981 Citadel graduate. I
7 majored in chemistry. After that, I got a master's
8 degree in healthcare administration. Following that,
9 I went to law school. I graduated in the top 10
10 percent. I own my own firm, which is the Law Office
11 of Mathias Chaplin and I have some, you know, -- and
12 I have a very thriving practice.

13 **Q** So you've handled many serious crimes
14 before?

15 **A** Yes.

16 **Q** Armed robbery, kidnapping --

17 **A** I have practiced in state, federal, on
18 robberies, drug charges, the gamut.

19 **Q** So this happened to be an appointed case;
20 is that right?

21 **A** I was appointed, yes.

22 **Q** So in meeting with Mr. Chestnut, what was
23 the overall kind of broad defense theory in the case?

24 **A** Well, I mean, the first meeting that I had
25 with Jeff and, subsequent after that, I just wish he

1 had never given a statement. I said that to him over
2 and over again. I think when he takes the stand, he
3 will tell you that. It just seems like Jeff got --
4 you know, his good intentions got -- our position was
5 it got twisted. He was trying to help them understand
6 the case. I think what they were saying is that all
7 of his help was really just trying to take the --
8 deflect it off of him and put it on this imaginary
9 person or whatever the case might be.

10 Q So the State kind of turned it around and
11 said he was trying to minimize his guilt?

12 A Yes. And I talked to Jeff about that over
13 and over and over again. We talked about the fact
14 that, you know, how it was going to look and the way
15 it was presented. I think that's one of the reasons
16 why he got geared up and said, well, then I'm going
17 to have to just tell my story and I will tell it.

18 Q That was his decision on why he wanted to
19 testify?

20 A Well, I mean, and I'm not going to say I
21 didn't -- we didn't talk about it. I'm not going to
22 put it all on Jeff, but I do know that there's a
23 statement out there. Basically, that's the key piece
24 of evidence that the state is using. It had to be
25 addressed or whatever. I don't think Jeff ever had

1 any concerns with that. I think Jeff, just like he
2 didn't seem concerned about making the first
3 statement, he certainly didn't seem concerned about
4 that. I think he wanted to make sure that some
5 guidance as to how do I approach it and what kind of
6 questions they may ask and stuff like that.

7 Q So it's kind of fair to say that, kind of
8 the main strategy was just to show that while -- that
9 the identifications were definitely faulty, he kind
10 of went so far as to say that he was arrested one
11 day, these photos get posted of mug shots and then
12 he's identified the next day?

13 A Yeah, I'm glad you pointed that out. We
14 went on the internet, the investigator and I. Jeff
15 was there too. We found all the different times where
16 there was a BOLO and all that other stuff. We thought
17 that, too, might have contaminated the alleged
18 witnesses of that. Cause, you know, they just -- Jeff
19 was all over the news.

20 Q It was kind of like this bingo parlor like
21 was a close-knit group of people and they were upset
22 with what happened. A lot of people lost their jobs
23 that day from that incident because a lot of money
24 was stolen; is that right?

25 A Yeah. I think the whole Decker Boulevard,

1 that whole area was distraught. I think the most --
2 the most -- the worse part about it is that there
3 were a bunch of old people in there. I don't mean
4 old. I'm old. But there were a bunch of elderly
5 people in there playing bingo. What else is -- when
6 that's not sacred, then what else? They were actually
7 -- you know, testified that they were held at
8 gunpoint.

9 One man said that in his entire life, he
10 had never not been able to protect his wife and all
11 he did was sob because -- I don't know if he said
12 sob, but he said that instead of being able to help
13 his wife, he wet himself. And that resinated with the
14 jury very, very -- pretty strong.

15 Q And that was a lot of the statement that
16 was presented on the victim impact testimony.

17 A A lot of emotion and stuff like that or
18 whatever the case might be. As I pointed out, I
19 think, repeatedly, it was not a whole lot of direct
20 evidence.

21 Q You kind of used that to your advantage to
22 show that these people were a bit close-knit and
23 would talk meeting up to their interviews with
24 investigators?

25 A Yes.

1 Q You were able to get that before the jury
2 that these people may have been able to put together
3 a suspect on their own and then say, oh, I identified
4 him when it may not be their actual testimony or
5 personal knowledge; is that correct?

6 A Exactly.

7 Q That's -- you know, I kind of want to start
8 with that ID issue.

9 A Uh-huh.

10 Q Is it Garcia Diaz or Diaz Garcia? What was
11 your strategy in handling her? She was the one who
12 will never forget his eyes.

13 A Right. I mean, I'm not -- I'm not sure
14 exactly what is in the transcript, but my thought was
15 that here is someone who is allegedly, you know,
16 excited. There's numerous things going on at the
17 time. I think she might have even said that she was
18 being held at gunpoint, I believe. I'm not sure. I
19 was trying to impress upon the people that it's very
20 likely that you might have been looking at a whole
21 lot of things, but you certainly didn't have enough
22 time to really focus on this individual. But I think
23 her saying that she'll never forget those eyes, you
24 know, went a long way.

25 Q Well, I mean, that was all she was able to

1 identify. He was wearing a hat and bandana on his
2 face, so all she could see were his eyes, right?

3 **A** And I don't think that that point had been
4 made until the cross. I think they wanted -- the
5 State wanted the jury to believe that, you know, she
6 actually saw his entire face. I think on cross, it
7 was revealed that, well, you didn't see this. So now,
8 it's like, yeah, but I'll never forget those eyes.

9 I got the impression that they might have
10 been kind of anticipating some of my questions and
11 dodging them a little bit or whatever. But that woman
12 knew -- she knew good and well that that was a
13 likelihood that she could have been -- how do I put
14 it -- influenced by all the different stuff on the
15 media and things like that. I just wanted Jeff to get
16 a fair trial.

17 **Q** You really brought that all out. You could
18 only see his eyes. She's got these other influences.
19 These people in the media were talking about
20 happened. Not that they did anything improper, but
21 she could maybe take something someone said and say I
22 think I saw that too, right?

23 **A** Well, yeah. And after the incident
24 occurred, they were all there. Like under any, you
25 know, like burglary or whatever the case might be,

1 they are all sitting around and they are just -- they
2 are devastated. They can't believe what happened. I
3 think they were all like pointing a finger and things
4 like that and were like, oh, yeah, I know. Yeah, I
5 think that Teidra girl -- whatever, you know.

6 Q Things had kind of built on each other to
7 where Mr. Chestnut could have been identified. You
8 agree with that, right?

9 A Exactly.

10 Q You also really kind of hammered that she
11 wore glasses and had impaired vision, right?

12 A Yeah.

13 Q Talked about her being immobilized with
14 fear because of everything that was going on. It
15 wasn't just that she was, you know, sitting from
16 afar, she was directly affected. He was right in her
17 face, according to her, right?

18 A (No audible response.)

19 Q All the identification came in, but you
20 were still able to argue to the jury that it was very
21 -- they might not have been accurate and that it was
22 not very detailed.

23 A I mean, the likelihood that they weren't
24 going to show it and a judge was going to say, no,
25 I'm not going to admit it or whatever the case might

1 be, I think that that was slim to none or just slim
2 just left out. I thought that -- I thought we did a
3 good job of discrediting it.

4 Q You challenged that idea about any place
5 you go; isn't that right?

6 A I think Jeff thinks I should have
7 challenged it more, but I did what I thought I could.

8 Q So you mentioned earlier when you testified
9 earlier that Mr. Chestnut had a plea offer of what?

10 A Well, I think -- what was one of the final
11 offers? 10 to 15? This -- 10 to 15, this would
12 encompass the drug charges, the property offense and
13 all of the armed robberies and kidnappings. You are
14 free to ask the Court for the minimum and mitigate in
15 whatever way you see fit, i.e., you know, unreliable
16 ID or whatever the case might be. Should I go
17 forward, I'll be asking for 30 years. Further, the
18 drug charges would still be outstanding and we would
19 be asking for consecutive time, exposing him to,
20 potentially, 40-plus years.

21 Q That was rejected?

22 A Yes. Cause even once they -- even once they
23 got through with the bingo parlor, we still had a
24 bunch of dope we had to get rid of too. So I mean, it
25 wasn't going to be over. Jeff and I talked about

1 that. And we had a probation violation that still
2 needed to be tacked on. So there was a lot hanging
3 out there. That one -- that one plea deal there you
4 just mentioned wouldn't have encompassed everything.
5 So I don't believe Jeff could be a little annoyed
6 right now, if he is. He didn't say he's annoyed, but
7 I don't -- I believe...

8 Q So moving to the phone records, this would
9 have been, you know, the State alleged that Ms.
10 Dennis was in cahoots with Mr. Chestnut and there's a
11 lot of calls back and forth and she didn't want to
12 reveal her identity, so she used other people's
13 phones to call his phone. Is that about -- is that a
14 fair way to characterize the phones?

15 A Yeah. They continually tried to connect
16 them like that or whatever. I think a lot of that had
17 to do with the fact that Jeff was seeing her and
18 guilt by association and some other things like that.
19 And I think Jeff did a good job speaking to that when
20 it was his turn and that it wasn't uncommon for them
21 to talk or it wasn't uncommon for her to call from
22 different numbers.

23 Q Right. Exactly.

24 A So that got before the jury through his
25 testimony when he testified. We had a lot of leeway

1 with objections from the State.

2 **Q** PowerPoint presentation. That was -- the
3 witness who introduced that PowerPoint or presented
4 that PowerPoint, he was just testifying as to the
5 cell records; is that right?

6 **A** Yeah, I guess what the deal is is in order
7 to have it admitted, you need to have someone, like a
8 custodian or whatever like that without personal
9 knowledge of that. You know, I looked at the business
10 rule exception and some other things like that, but
11 the bottom line is they subpoenaed someone from that
12 location to come in and testify to that.

13 **Q** The PowerPoint, it just contained
14 information that you had already had, just in a
15 different form?

16 **A** Yeah, I didn't see anything. I mean, if
17 Jeff knows otherwise, I missed it. I didn't see
18 anything that was -- except for the way that it was
19 packaged. We did some similar things. We went through
20 all the discovery and talked about, you know, each
21 witness and what they were likely going to say and
22 some other things like that and prioritized it and
23 things of that order. I think the way the State
24 prepared the presentation was pretty convincing.

25 **Q** That just went to show the various phone

1 calls from Ms. Dennis to Mr. Chestnut, is that --

2 **A** I think Attorney McDuffie kind of had a
3 theory of this happened and that happened. I think
4 the phone calls just reinforced that.

5 **Q** Mr. Chestnut was -- he was able to explain
6 some of that in his testimony?

7 **A** I thought he did a good job explaining it.

8 **Q** All right. So the -- the beginning of Judge
9 Cooper's comment when he said something about the
10 defense will be making an opening, you find that
11 common -- as a common introduction to juries? First,
12 the State would make an opening statement, then the
13 defense will make an opening statement.

14 **A** As an old guy who has been doing this for
15 years, one of the first things I'll tell you is that
16 it's very unlikely that I'm going to be the first
17 person out of the box to pop up when the judge is
18 talking and holler objection. I'm probably not going
19 to do that, because I don't want the jury to not like
20 me or my client. I'm trying to put us in the best
21 light possible.

22 I also didn't think that what he said was
23 objectionable. I think it actually is what was going
24 to occur. In my opening, I told -- I said some things
25 with regards to, you know, prepared them for this is

1 what I think you're going to see.

2 Q We'll move on from that. I guess I'll move
3 down to some of the testimony of Ms. Orr. She was one
4 of the first witnesses ---

5 A Yeah.

6 Q --- where it was the allegations that there
7 was a lot of hearsay in that. Did you consider any of
8 that really hurtful though? Most of that's towards
9 what Ms. Dennis was doing, what Ms. Dennis was
10 saying. May that hurt Ms. Dennis, but that's not
11 tying anything to Mr. Chestnut at that point, right?

12 A You know, in 20/20 hindsight, if the person
13 wasn't there, it probably should have been objected
14 to. At the same rate, if you look at some of the
15 stuff that we said and some of the allegations that I
16 made regarding her or whatever, I guess that could
17 have been objected to as well. But I thought Teidra
18 Dennis was a very weak link in the State's case. And
19 why on earth -- why don't you have her here, whatever
20 the case might be? We were pointing the finger at
21 her. I thought some of those statements emphasized to
22 the jury even more. I wanted the jury to go back in
23 that room and go, wait a minute, where is this Teidra
24 woman. You know what I'm saying? Why isn't she here?
25 Whatever the case might be.

1 Q Like if she's an inside job -- she's the
2 inside person?

3 A Yeah. What's going on? You know what I
4 mean? Why are we so bent on this guy was saying he
5 was hiding under the stairs in somebody else's
6 clothes? Why don't we get Teidra? I think that was
7 kind of our theme as well is if you really want to
8 know what happened, you know, you telling me y'all
9 have not been able to apprehend her whatsoever.

10 Again -- I'm sorry. A lot of those
11 statements, again, I think Mr. Waller's point that
12 maybe to preserve it, if it did affect Jeff
13 prejudicially, then probably should have been
14 preserved. If it was no mention to it, then I don't
15 know why we're talking about it. But at the same rate
16 -- at the same rate, I do think that the more they
17 talked about her and disparaged Teidra, I thought
18 that would have taken some of it off of us.

19 Q It was better for Mr. Chestnut and worse
20 for Ms. Dennis, right?

21 A Exactly.

22 Q It was kind of -- it was pretty consistent
23 with what the defense was, you know, that they have
24 this evidence against her. Where is she, like you
25 just said, right?

1 **A** I still don't know. I mean, has she ever
2 been arrested?

3 **Q** I don't think that's part of the record.
4 I've not been able to figure that out myself. So
5 moving to the lineup.

6 **A** Yes.

7 **Q** I think you testified that you thought you
8 may have introduced that yourself if the State had
9 not? The lineup doesn't match what you thought was on
10 the video ---

11 **A** Well --

12 **Q** --- or the descriptions by the witnesses?

13 **A** I guess one of the things that we were
14 emphasizing by -- like with the video and everything
15 else is how incredible it is that this woman, who
16 says that she was, you know, being held up and
17 kidnapped and everything else and worried about her
18 daughter and the cashier cage and everything like
19 that, that she could come in and say that's the man,
20 especially when you see how wrapped up the person was
21 and the only thing that was visible was the person's
22 eyes and some other things like that, whatever the
23 case might be.

24 So I think that -- I mean, I don't know if
25 I would have introduced it, but I certainly would

1 have -- I might have. But I think the point is that I
2 was really trying to show the jury how far the State
3 was reaching in this one and that they were grasping
4 at straws. And if you want to solve the case,
5 investigate and go do your job.

6 Q She pointed Mr. Chestnut out 19, 18 days
7 after the incident?

8 A Right. It's all on the news. It's every
9 place else, whatever the case might be.

10 Q Judge Cooper ruled that that was coming in
11 in the Biggers hearing, right?

12 A I kind of anticipated that though. I mean,
13 that was a key piece of evidence in the case. It was
14 an ID case. I know you didn't ask me this, but I'll
15 just say that it would have been great to have
16 somebody come in. But having done this for years --
17 I'm almost 60 -- I know that if you get a report from
18 an investigator, you've got to -- or an expert,
19 you've got to turn it over. If that report says it's
20 very likely that your client -- whatever it says or
21 whatever, I mean, ethically, you've got to turn that
22 over. I wouldn't have known what that report might
23 have said.

24 Q Well, have you dealt with or observed any
25 eyewitness identification experts before this trial?

1 **A** Ask this question again?

2 **Q** Have you -- have you dealt with or retained
3 any eyewitness identification experts before --

4 **A** I know that I've spoken to people that
5 claimed to be experts or whatever the case might be.
6 Sometimes -- you know, my experience with experts has
7 been that generally a jury looks at them as hired
8 guns, they'll say whatever you pay them to say,
9 whatever the case might be.

10 I know I had a case where the issue was
11 proximate causation. We hired an expert from
12 Cleveland to come in and say that the first blow
13 killed the guy and not the second, and it didn't go
14 anywhere or whatever. So I'm kind of leery on that.
15 But again, I don't know. I didn't ask ODC for money
16 for that and I don't think Jeff's family had the
17 money for that or whatever the case might be, so we
18 went with what we had.

19 **Q** You know, you're familiar that these types
20 of experts are kind of focused on different factors
21 that affect reliability or memory?

22 **A** And after you pay them, that doesn't mean
23 that they are going to testify for you. They're going
24 to give their expert opinion because they want to
25 keep their credibility. You know, I don't know. I

1 didn't send it to anybody and say what do you think
2 or whatever. I just looked at it. To Jeff and I, it
3 was, like, so incredible that they would actually
4 want to try to say that and not -- and the jury not
5 see that they -- that it was darn near impossible.

6 Q An expert can say what you will, but you
7 still have cross-examination where you can question
8 each little detail of what was going on, whether she
9 had poor vision, whether it was bad lighting. You
10 could really emphasize pretty much all of that on
11 cross-examination?

12 A And I think we did that. Instead of having
13 a hired gun come in and say that's not Jeff, which
14 could have been believed or not believed. A lot of
15 times, it's not. But I don't know what could have
16 happened in this case, because I didn't do it. But I
17 think what we were trying to do is show the jury why
18 you can't rely on this woman's ID and this is why
19 it's not reliable.

20 Q Let's just move along here. Investigator
21 Eisenhower was being led through a lot of that. Do
22 you have strategies on just objection -- objecting,
23 generally? Do you try to tailor your objections to
24 something you think may be important? Do you shy away
25 from making objections, making 10 objections in a row

1 or things like that in you standing in your general
2 strategy of cases?

3 **A** I think, as you know, the rules say it has
4 to be done at the time, whatever the case might be.
5 To make sure that I caught it, I even had the
6 investigator sitting with me so that, you know, if
7 something seemed objectionable or whatever the case
8 might be, we were popping. I mean, I was getting up.

9 Jeff was there, as well. He would add. He
10 did a great job of writing notes and stuff like that.
11 I can tell you, again, I think I made the appropriate
12 objections. Some of the stuff that came in, we
13 actually used it in our argument. While I'm not doing
14 a line-by-line analysis, I can tell you that if it's
15 something that I jotted down because I'm going to
16 cross on, I'm probably not going to object to it.

17 **Q** Leading questions, those aren't usually too
18 high on the priority of objections; is that kind of
19 fair to say?

20 **A** Let me tell you what I was thinking on
21 that. I knew that around an hour later, my client,
22 who was somewhat nervous was going to be on that
23 stand. If you look at the transcript, we got a lot of
24 leeway with getting -- letting him get his statement
25 in. Now, the cross was disastrous because I think the

1 State asked him tell me what part of your statement
2 is a lie or whatever the case might be and we'll
3 highlight it or something like that. But I think
4 that, you know, as a general rule, if you're popping
5 up every two minutes, they're popping up every two
6 minutes. And really, all it is is a battle of, you
7 know, back and forth and back and forth and the story
8 and the theme of what you're trying to impress upon
9 the jury doesn't even get heard. I'm just a little
10 leery of that. I've been in court with attorneys and,
11 you know, every minute, objection, objection,
12 objection. You know, I think sometimes that makes
13 them look worse than probably better, in the eyes of
14 the jury.

15 Q Talk a little bit about the appeal. Were
16 you aware that there was an Anders brief?

17 A Say it again.

18 Q Were you aware that the appeal was briefed
19 pursuant to Anders?

20 A No, I'm not. I know I filed a notice for
21 them and everything.

22 Q Right. As far as renewing all objections,
23 do you believe you did that properly?

24 A You know, at the end of a trial, any
25 criminal defense attorney, whatever, you know, you

1 always have thoughts when you're walking out of there
2 and you're like, well, did I make all the proper --
3 whatever the case might be. I mean, you're juggling a
4 lot of balls.

5 I can't sit here and tell you, you know,
6 I'm perfect and I made every objection or whatever
7 the case might be. But I will tell you this, I think
8 we gave Jeff one hell of a trial. I think we were,
9 basically, taking chicken poop and trying to make
10 chicken salad because that statement that he gave was
11 very damaging. I think we did a hell of a job.

12 Q Did you try this case, you think, to the
13 best of your ability?

14 A I know I did. I know I did. That's one of
15 the things that -- you know, I don't do appointed
16 work a lot anymore, whatever the case might be,
17 because, I mean, it's just like when I looked at what
18 I billed and what I actually did, whatever the case
19 might be, I mean, there were so many times when I was
20 talking to Jeff, he would swing by the office and
21 we'd meet or whatever the case might be, and I just
22 realized I didn't even document all that stuff. Jeff
23 and I talked so much.

24 I don't know how our relationship is now,
25 but we had a pretty close relationship up until the

1 time that we got to court. I know right now, the only
2 person that can really (Indiscernible) trial attorney
3 and, you know, by gosh, I was ineffective. But I
4 think I gave him a good job. But if the Court finds
5 some way to help this guy out and say, well, because
6 of this, we're going to take some time off or
7 something like that, hey, no objection to me. Hey,
8 bring it.

9 Q All right, Mr. Chaplin. I have no further
10 questions. Thank you.

11 A Thank you.

12 MR. WALLER: Just briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. WALLER:

15 Q Mr. Chaplin, talking about the
16 identification. Just briefly, the employees of the
17 bingo parlor got together afterwards and watched the
18 video together; is that your recollection?

19 A Yeah, I think so.

20 Q They also talked about the robbery with
21 each other?

22 A Well, I mean, and I think we pointed that
23 out in trial. Not only did they -- none of it was --
24 I think the jury knew that. There were meetings after
25 meetings at the bingo parlor because it closed that

1 night. So they would come by and they would meet and
2 they would -- they had to close it down. The people
3 in the cashier's booth had to shut things down or
4 whatever. They were talking and discussing things and
5 comparing notes.

6 Q And to the best of your recollection,
7 Teidra Dennis was not at those meetings. She never
8 came back; is that right?

9 A Yeah, Teidra was just a ghost.

10 Q They all knew that she was the girlfriend
11 of -- her boyfriend was Jeff Chestnut?

12 A Well, I think what they said was hot dog
13 night, Teidra and Jeff were hugged up.

14 Q Okay.

15 A I think that's what they said. They were
16 hugged up.. So, to them, that meant that they were --
17 you know what I'm saying.

18 Q Mr. Chestnut testified that he knew a
19 couple of the employees because he had sold marijuana
20 to them in the past.

21 A Yeah. Well, I'm glad you brought that up.
22 What Jeff said was that actually while the robbery
23 was going on, he was in the back selling weed.

24 Q Okay. Now, all those people got together
25 before Ms. Diaz Garcia made her identification. Is

1 that your understanding?

2 **A** I think so. I mean, I can't say. I wasn't
3 there. But based on my recollection of what was
4 presented to us, it's more than likely than not that
5 they talked first.

6 **Q** Okay. And as you stated earlier and has
7 since changed, but the Richland County jail website
8 used to put everybody's picture that was in the
9 detention center was on the internet for the public
10 to see?

11 **A** Well, I think, yes. But you didn't even
12 have to be that savvy. I think there was a bulletin
13 done by the sheriff's department that was out there,
14 WLTX, I believe. And we had our investigator just do
15 a whole search and google and find everything. One
16 day, Jeff came by the office and we looked at
17 everything. We really, I think, handled that point.

18 **Q** There was a bunch of information that could
19 have potentially tainted Ms. Diaz Garcia's -- the
20 reliability of her identification?

21 **A** Yes.

22 **Q** There wasn't any -- did you argue any of
23 those factors to the court?

24 **A** You'd have to look at the transcript. I
25 mean, to my recollection, I did. But, I mean, you may

1 think otherwise. I don't know.

2 Q And neither of the employees that Mr.
3 Chestnut testified that he sold marijuana to in the
4 past, they never gave an identification of him?

5 A I don't know if -- I don't know if Jeff
6 told me that he was selling it to the people inside
7 or if that was just like the spot where people would
8 meet him or something like that. It was kind of, you
9 know -- I think -- no, he said there was a little guy
10 over at the Comedy House that was a client of his or
11 something like that and he would sell weed to him or
12 something like that. I don't think it was the bingo
13 parlor.

14 Q Okay. But no one else from -- no one else
15 identified him that was presented at trial?

16 A No.

17 Q Regarding the hearsay that came from Teidra
18 Dennis that was not objected to ---

19 A Okay.

20 Q --- you testified that you were trying to
21 -- you thought that everything -- the jury was going
22 to lump everything onto her. Is that fair? I don't
23 want to put words in your mouth.

24 A I think that's part of what I told you. I
25 think the first part of what I told you was that if

1 there was an objection that should have been made and
2 he was prejudiced by it, then that was definitely not
3 right. But I think, in hindsight, I'm thinking that
4 not only were they talking a great deal about Teidra,
5 so were we, and kind of utilizing the fact that she
6 told this person that she had leave and things like
7 that or whatever, which kind of contradicted what
8 they said about Jeff and the phone calls and stuff
9 like that.

10 Q Okay. I believe you just testified that you
11 wanted the jury to, I guess, ask themselves why
12 wasn't she brought there or why wasn't she held
13 accountable.

14 A Uh-huh.

15 Q She wasn't in front of that jury though; is
16 that right?

17 A Well, I mean, you just said 100 times that
18 she wasn't there. So what's your question?

19 Q That jury that tried the case wasn't able
20 to hold her accountable because she wasn't there; is
21 that right?

22 A I mean, you know, there's always that third
23 guy or whatever, something like that. I mean, the
24 point was we were trying to get some of the
25 allegations that were being levied on Jeff. It's

1 called reasonable doubt.

2 Q Okay. And just in finishing up here, you
3 testified on cross-examination that you were granted
4 a great deal of leeway in Mr. Chestnut's testimony
5 and that might have been due to giving them a little
6 bit of leeway on prior testimony because you're
7 popping up every two minutes, you said, then the same
8 would have happened --

9 A You're misstating what I said.

10 Q I'm not trying to.

11 A Okay. Well, let's slow it down.

12 Q Okay. I'm asking the question. I'm trying
13 to understand that.

14 A Well, you asked like three questions. You
15 just put everything together. First of all, about the
16 objections during the direct of Jeff, my direct of
17 Jeff.

18 Q Yes, sir.

19 A What I said was when you said why didn't
20 you object to Eisenhower or whatever the case might
21 be, well, I said, well, I should have -- if it was
22 something that hurt him, I should have objected but I
23 did note that when I was directing Jeff, I don't
24 think we got a lot of objections from the other side
25 as well. That's how I put it. It wasn't tit for tat.

1 It was just I was just playing out this is how it
2 played out.

3 Q Correct. If I attempted to put that
4 together, it wasn't my intention.

5 A Okay. That's what I heard.

6 Q If there's something objectionable, you
7 make that objection. If it's something that needs to
8 be objected to, is that your standard of practice?

9 A That's any attorney's standard of practice
10 and it is mine.

11 Q Okay.

12 A If you see it and you feel that it's
13 something that you need to object to because it's
14 going to hurt your client or whatever the case might
15 be or it's wrong, you need to object.

16 Q And you're not going to not object to
17 something hoping that the favor will get returned?

18 A See, now you're twisting things. That's not
19 what I said. I said that -- no, I'm a little insulted
20 by that. Because what I told you was that when I was
21 -- when -- you asked me how come I didn't object to
22 everything that -- when she was leading Eisenhower. I
23 said, well, if it was something that hurt Jeff, then
24 I probably should have. But I also pointed out that
25 just like I wasn't jumping up and down objecting to

1 everything, I think I was asking Jeff leading
2 questions and they didn't say anything. But it
3 certainly wasn't favor for favor.

4 **Q** No, no, Mr. Chaplin.

5 **A** Those are your words and I just need to put
6 that in check because that doesn't sound right.

7 **Q** Mr. Chaplin, that's not what I'm trying to
8 say. Please listen to my question. You are -- you, as
9 an attorney, are not going to not object to something
10 trying to get leeway; is that right?

11 **A** You know what, I've already asked and
12 answered that. I mean, I've already answered that
13 question. I've already told you that. You keep trying
14 to rephrase it to get -- make a point that I think is
15 inappropriate.

16 **Q** Mr. Chaplin, first of all, I'm not. But you
17 can't make an objection. Please answer the question.

18 **A** As an attorney, as you well know when you
19 are representing someone, if you see an objection,
20 you make it. If I didn't make an objection that I
21 should have and it hurt Jeff, I apologize, and it
22 should have been fixed.

23 **Q** Thank you. No further questions.

24 **MR. MITCHELL:** Nothing further.

25 **THE COURT:** All right. You may step down.

1 **MR. CHAPLIN:** Thank you very much.

2 **THE COURT:** Is your client going to
3 testify?

4 **MR. WALLER:** Yes, sir. He is.

5 **THE COURT:** All right. We're going to
6 break for lunch. Court is in recess until 2:45.
7 Court is in recess until 2:45.

8 **MR. CHAPLIN:** Judge, may I be excused?

9 **THE COURT:** Anybody need him?

10 **MR. WALLER:** No objection.

11 **MR. MITCHELL:** No objection.

12 **THE COURT:** You may be excused.

13 **THE WITNESS:** Thank you very much, Your
14 Honor.

15 (Lunch recess is taken.)

16 **THE COURT:** All right. You are Jeff
17 Chestnut?

18 **THE WITNESS:** Yes, sir.

19 **JEFF CHESTNUT**

20 having first been duly sworn, testifies as follows:

21 **THE COURT:** Thank you. Be seated in the
22 witness chair.

23 **MR. WALLER:** Thank you, Your Honor. May it
24 please the Court.

25 **DIRECT EXAMINATION**

1 BY MR. WALLER:

2 Q Mr. Chestnut, how are you this afternoon?

3 A I'm okay.

4 Q Mr. Chestnut, I want to talk a little bit
5 about your representation by Mathias Chaplin. How did
6 Mr. Chaplin come to be your attorney?

7 A He was appointed by the courts for armed
8 robbery.

9 Q For the record, my question was how did Mr.
10 Chaplin come to be your attorney. Had you dealt with
11 Mr. Chaplin before? Had he been your lawyer before?

12 A No, he wasn't my lawyer before.

13 Q Okay. Was he appointed to represent you on
14 any other charges or just the charges we are here to
15 talk about today?

16 A I really don't know, cause I had a
17 violation of probation and he showed up and spoke to
18 me then. From there, he worked on my case.

19 Q Okay. Did y'all discuss each of the seven
20 charges you had in this case?

21 A Additionally, I was charged with one count
22 of robbery instead of 2012 of July.

23 Q Okay. Then, more charges were presented to
24 the Grand Jury?

25 A In July of 2012.

1 Q Did y'all discuss the elements of armed
2 robbery and the elements of kidnapping?

3 A We discussed the elements of armed robbery.
4 I wasn't charged with kidnapping at that time.

5 Q Okay. When you later became charged with
6 kidnapping, did y'all discuss that?

7 A Yeah.

8 Q Okay. How long do you think Mr. Chaplin was
9 appointed to represent you before you went to trial?

10 A I want to say around two years.

11 Q How many times do you think you met with
12 him?

13 A We met -- I want to say we met, like, six
14 or seven times.

15 Q Did you understand all your conversations
16 with him?

17 A Most of them.

18 Q Okay. Is there anything that he told you
19 that you didn't understand?

20 A I really don't remember everything to be
21 honest.

22 Q Okay. Did he go over your constitutional
23 rights with you?

24 A I believe so.

25 Q Okay. One of those rights is the right to

1 remain silent. Did he explain to you that you had
2 already waived that when you spoke with the officers?

3 **A** Yeah, he told me that.

4 **Q** I want to get back to your statement in a
5 minute. Did Mr. Chaplin explain to you your other
6 constitutional rights?

7 **A** What other?

8 **Q** Did he explain to you your right to a jury
9 trial?

10 **A** Yeah.

11 **Q** Did y'all talk about what would happen if
12 you went forward with the trial?

13 **A** Yes.

14 **Q** Okay. Did y'all discuss your testifying?

15 **A** Testifying to what?

16 **Q** Did y'all discuss you testifying at trial?

17 **A** We discussed testifying after I turned down
18 the plea.

19 **Q** Okay. Did he explain to you that you didn't
20 have to testify?

21 **A** Yeah.

22 **Q** Did he explain to you that a judge would
23 have to tell the jury that they couldn't hold that
24 against you?

25 **A** About me testifying?

1 Q Yes, sir.

2 A Yes, sir.

3 Q Okay. I want to talk a little bit about the
4 phone calls that the State introduced. The State
5 introduced a bunch of phone calls from your
6 girlfriend or a woman who you were acquainted with,
7 Teidra Dennis.

8 A Yeah.

9 Q And the State said that y'all talked back
10 and forth and she was using other people's phones?

11 A She did. During that particular time, her
12 phone was off. It was off for, I want to say,
13 probably a couple of weeks or so.

14 Q Okay. And you testified that it wasn't
15 uncommon for her to call you from other people's
16 phones.

17 A Right.

18 Q Okay. Did you and Mr. Chaplin discuss
19 getting your phone records to show that?

20 A No.

21 Q Did y'all discuss the phone records that
22 were provided by the State?

23 A We didn't discuss that until -- until
24 probably a week or so before trial.

25 Q Okay. Did you see the phone records?

1 **A** No.

2 **Q** Okay. What do you -- if you recall, what
3 did Mr. Chaplin tell you about the phone records?

4 **A** He really didn't speak on the phone records
5 or nothing like that. It was other stuff like getting
6 ready for the trial and statements and things like
7 that.

8 **Q** Okay. You were picked out of a lineup by
9 one of the employees of the bingo parlor. Did you and
10 Mr. Chaplin discuss that lineup?

11 **A** We discussed that. We discussed that a
12 while.

13 **Q** Did y'all ever discuss retaining the expert
14 in that matter?

15 **A** No.

16 **Q** Okay. Did Mr. Chaplin ever mention anything
17 about an expert witness?

18 **A** No.

19 **Q** What did Mr. Chaplin tell you about the
20 lineup in your identification?

21 **A** He basically just told me that she
22 identified me in a lineup. He said that she
23 identified me in a lineup and that they was going to
24 use her as a witness in the case.

25 **Q** Okay. What did you and Mr. Chaplin talk

1 about about the surveillance video?

2 **A** We really didn't talk about the
3 surveillance video. The only time I saw the
4 surveillance video was during the time I saw it here.

5 **Q** Okay. So prior to -- during the trial is
6 the first time you saw the video?

7 **A** Yeah.

8 **Q** Do you know -- did you and Mr. Chaplin
9 discuss the video before that?

10 **A** He didn't say that they -- he didn't say
11 whether they had video or not.

12 **Q** When did you learn there was a video?

13 **A** When I came here and I came here and saw
14 it.

15 **Q** The first time you saw the video was
16 sitting in the courtroom?

17 **A** Yes.

18 **Q** Okay. When the trial started, were you able
19 to communicate with Mr. Chaplin?

20 **A** Not after I was took into custody.

21 **Q** Did you have a pad and pencil to take notes
22 or anything like that?

23 **A** Yeah, when I was in here.

24 **Q** Okay. What -- when y'all were getting ready
25 to go to trial, what did y'all talk about? What was

1 your strategy?

2 **A** Well, the strategy was, I guess, he was
3 going on the identification. That was really all that
4 was.

5 **Q** How about before you actually got here,
6 what did y'all talk about as far as your strategy?

7 **A** Really, he was just talking about all the
8 witnesses and certain things that was in my motion.
9 It wasn't really too much of a strategy.

10 **Q** Okay. You -- when you took the stand and
11 testified, one of the things you testified to was
12 that you initially agreed to go along with a robbery,
13 and then when you found out what it was, you decided
14 you didn't want to go along with it and you gave your
15 shirt and your hat to another individual.

16 **A** Yes, sir.

17 **Q** Okay. Did you and Mr. Chaplin discuss at
18 all that you tried to withdraw from the robbery?

19 **A** Yeah.

20 **Q** What did he say about that?

21 **A** Nothing.

22 **Q** Did you and Mr. Chaplin discuss in advance
23 that you knew two of the employees at the bingo hall
24 from selling marijuana?

25 **A** It was -- repeat the question again.

1 Q You testified that you had previously sold
2 marijuana to some male employees at the bingo parlor.

3 A Some of the females and males. Females and
4 males.

5 Q Okay. Did you and Mr. Chaplin discuss that
6 fact before the trial started?

7 A Yes.

8 Q Okay. Was he aware that none of those
9 people had given statements or identified you to law
10 enforcement?

11 A Yes.

12 Q Mr. Chestnut, I think I asked all the
13 questions I have. Is there anything you think I've
14 forgotten or left out that you think the Court needs
15 to be aware of of Mr. Chaplin's representation of
16 you?

17 A Not -- just the fact that he could have did
18 my -- he could have expressed my idea a little better
19 and went after the statement a little better.

20 Q Okay. I don't have any further questions
21 for you. Please answer any questions that
22 Mr. Mitchell has for you.

23 **CROSS-EXAMINATION**

24 **BY MR. MITCHELL:**

25 Q Mr. Chestnut, good afternoon.

1 **A** Hey. How you doing?

2 **Q** Good. Good. You met Mr. Chaplin at, you
3 said, your probation violation?

4 **A** Yes.

5 **Q** So then he became -- then he got involved
6 in your case on the armed robberies too, right?

7 **A** Yeah.

8 **Q** And the kidnapping. In those -- in the
9 initial meetings, did he go over the -- just kind of
10 the regular advisement of rights and just tell you
11 basically what to expect type deal?

12 **A** He said I had the right to remain silent
13 and have an attorney, things of that nature.

14 **Q** So did y'all talk about testifying after
15 you turned down the plea, you said?

16 **A** Yeah.

17 **Q** Okay. And his advice was that he thought
18 you should testify?

19 **A** Yes.

20 **Q** You wanted to testify; is that right?

21 **A** I really didn't know what to do, really.

22 **Q** And he thought -- Mr. Chaplin told you that
23 if you testified, it would help explain your
24 statement you made to law enforcement?

25 **A** Yeah.

1 Q Did y'all go through your testimony
2 beforehand and kind of go over the questions that he
3 was going to ask?

4 A I want to say some of them. Something like
5 that.

6 Q Did he go over the questions that the State
7 might ask you too?

8 A No. We went over things like what we were
9 discussing about the case.

10 Q Wasn't it your testimony that you were
11 selling drugs to people at the Comedy House that was
12 across the street?

13 A The Comedy House was right next door.

14 Q Right next door, not across the street.
15 That's a Staples across the street?

16 A Yeah, something like that.

17 Q So you had been there before on the hot dog
18 night?

19 A Yeah.

20 Q And got to know a couple of people there?

21 A I knew some of -- I knew some of the
22 employees before that.

23 Q Your testimony at trial, you testified that
24 Mr. Jordan was there with Ms. Dennis, right?

25 A (Indiscernible.)

1 **Q** Right. You felt betrayed by him.

2 **A** Yeah.

3 **Q** Or by her?

4 **A** Yeah.

5 **Q** The State made a big deal about your
6 statement.

7 **A** Yeah.

8 **Q** They kind of went through line by line by
9 line saying what do you think is accurate, what do
10 you think is inaccurate, right?

11 **A** Right.

12 **Q** That's all the questions I have. Thank you.

13 **MR. WALLER:** Nothing further, Your Honor.

14 **THE COURT:** All right. You may step down.

15 **MR. WALLER:** Nothing further from the
16 applicant, Your Honor.

17 **MR. MITCHELL:** Nothing from the State.

18 **THE COURT:** Any statements you would like
19 to make?

20 **MR. WALLER:** Nothing, Your Honor. I would
21 just stand on my amendments. I think they were
22 pretty detailed.

23 **MR. MITCHELL:** Nothing from me, Your Honor.

24 **THE COURT:** All right. I'll read the
25 record and issue an order.

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MR. WALLER: Thank you, Your Honor.

MR. MITCHELL: Thank you, Your Honor.

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland, South Carolina, on this 16th day of October, 2017.

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

Teresa B. Johnson

Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Jeff Chestnut, #304420,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2014-CP-40-05179

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2019 FEB 19 PM 4:04
JEANETTE W. MURPHY
C.C.P. & G.S.

This matter comes before the Court by way of an application for post-conviction relief filed August 22, 2014. Respondent made its Return on March 11, 2015, requesting an evidentiary hearing be held. Thereafter, through counsel, Applicant filed an amended application for post-conviction relief on January 26, 2016. An evidentiary hearing into the matter was convened on February 3, 2016, at the Richland County Courthouse before the Honorable J. Derham Cole. Applicant was present at the hearing and was represented by Jonathan D. Waller, Esquire. Assistant Attorney General J. Clayton Mitchell, III of the South Carolina Attorney General's Office represented Respondent.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denied this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. During its July 2012 term, the Richland County Grand Jury indicted Applicant for three

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counts of kidnapping (2012-GS-40-04241; -04243; -04244) and for three counts of armed robbery (2012-GS-40-04242; -04245; -04246). The Grand Jury also indicted Applicant for an additional charge of armed robbery in 2010 (2010-GS-40-02641). Mathias G. Chaplin, Esquire represented Applicant on these charges. On September 17-20, 2012, Applicant proceeded to a jury trial before the Honorable G. Thomas Cooper, Jr., where he was convicted as indicted on all charges. Judge Cooper sentenced Applicant to concurrent terms of imprisonment of thirty years for each charge.

Applicant filed a timely notice of appeal in the South Carolina Court of Appeals. Appellate Defender David Alexander of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected an *Anders*¹ brief on Applicant's behalf. Thereafter, the South Carolina Court of Appeals dismissed Applicant's appeal and granted counsel's request to withdraw. *State v. Chestnut*, 2014-UP-237 (Ct. App. Filed June 25, 2014). The Remittitur was issued on July 18, 2014.

CURRENT ACTION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel;
 - a. "Failure to properly research and investigate the facts and laws surrounding my whole case."

In his amended application, filed January 26, 2016, Applicant also raised the following allegations:

1. Counsel was ineffective for failing to retain the services or investigate the potential effectiveness of an eyewitness identification expert;
2. Counsel was ineffective for failing to procure telephone records of Defendant as a potential defense;
3. Counsel was ineffective for failing to object to the lack of notice of State's expert witness and for failing to object to the witness' written report from an expert witness;

¹ *Anders v. California*, 386 U.S. 738 (1967).

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4. Counsel was ineffective for failing to properly argue factors regarding the reliability of a witness' identification during the suppression hearing;
5. Counsel was ineffective for failing to object to Judge Cooper's preliminary remarks to the jury as they improperly shifted the burden to the Defendant;
6. Counsel was ineffective for failing to object to several instances of impermissible hearsay during the testimony of Drenita Ore;
7. Counsel was ineffective for failing to object to impermissible hearsay during the testimony of Timothy Bell;
8. Counsel was ineffective for failing to contemporaneously object to State's Exhibit #3 (lineup) being offered into evidence;
9. Counsel was ineffective for failing to contemporaneously object to Angela Diaz-Garcia's in-court identification of Defendant;
10. Counsel was ineffective for failing to object to several leading questions during the testimony of Investigator Kevin Eisenhoward;
11. Counsel was ineffective for failing to object to State's Exhibit #1 (advisement of rights) thereby not preserving the issue for appeal;
12. Counsel was ineffective for failing to allow Defendant to view surveillance video prior to trial;
13. Counsel was ineffective for failing to renew motion for Directed Verdict at the close of Defendant's case and the close of all evidence;
14. Counsel was ineffective for failing to request a jury charge of "withdrawal;"
15. Counsel was ineffective for failing to request a jury charge of "mere presence" after the State's closing argument; [and]
16. Counsel was ineffective for failing to object to Judge Cooper's charge to the jury.

At the evidentiary hearing, Applicant proceeded forward on the allegations raised in his amended application.

STATEMENTS OF FACTS ADDUCED AT TRIAL

On May 23, 2010, the Carolina Gold Bingo was robbed. A few days prior to the robbery, Applicant and his co-defendant went to the bingo parlor to visit Applicant's girlfriend, Teidra Dennis, who worked there. Tr. 182, 185. The following Sunday, two men, wearing bandanas and carrying guns entered the bingo parlor. Tr. 174. The men announced to the bingo parlor they were robbing the place. Tr. 174. One man remained on the floor while the other went into the cage area of the parlor where the money was kept. Tr. 175, 207, 209, 210.

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The man entered the cage and asked Angela Diaz-Garcia, who was working in the cage that day, where the money was kept. Tr. 279, 281. She pointed to the counter, which had money sitting on top of it, but the man opened the drawer² and took the money out. Tr. 279-80. He also took money out of the till. Tr. 279. He then took the money that was on top of the counter. Tr. 280. After taking the money, the man and his co-defendant left. Tr. 284.

After the robbery, Ms. Garcia told law enforcement she believed she could identify the robber who held her gunpoint. Tr. 281. Ms. Garcia described the robber as wearing a baseball cap, black shirt, black pants, and a black bandana. Tr. 280. She could also see his eyes, which she testified: "I'll never forget his eyes as long as I live." Tr. 280, 282.

Some weeks later, Sergeant Kevin Isenhoward, of the Richland County Sheriff's Department, showed Ms. Garcia a six-person photo lineup. Tr. 281. When Sergeant Isenhoward showed her the lineup, she immediately felt sick and picked out picture number two. Tr. 282-83. She was one hundred percent sure of the man she identified. Tr. 283. Ms. Garcia identified the robber as Applicant. Tr. 282-83.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from trial counsel, Mathias Chaplin, Esquire. This Court also had before it a copy of the Applicant's trial transcript, the records of the Richland County Clerk of Court, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant first presented the testimony of trial counsel, Mathias Chaplin, Esquire (hereinafter "Counsel"). Counsel testified he is a criminal defense

² Only employees were aware that money was kept in the drawer. Tr. 280.

 4

attorney with his own practice. He testified he has handled many serious crimes before at both the State and Federal levels. He testified he was appointed to represent Applicant on his numerous arrests and charges, including his probation violation. He testified he met with Applicant in excess of twenty times, both in his office and at court. He further testified he got ODC to hire an investigator for him, who also met with Applicant a number of times, both with and without Counsel. He elaborated they went through the file ad nauseam, including discovery, Applicant's rights, possible defenses, and Applicant's options. He testified he and Applicant discussed a plea offer for between ten and fifteen years imprisonment, but the plea offer did not encompass all of the potential charges. He testified Applicant rejected this plea offer. Counsel further testified he was well prepared for trial. Counsel also testified he told Applicant he was going to give him his best, which is what he did. He elaborated despite Applicant's damaging statement, he believes he "gave one hell of a trial."

He testified Applicant was adamant he wanted to go to trial and wanted to testify. He elaborated Applicant was sure that no one was going to be able to identify him at trial. He testified it was their strategy at trial to have Applicant take the stand to tell the truth—that he did not go inside the bingo parlor and did not rob anyone. He further testified he and Applicant discussed Applicant testifying at trial; and from the very beginning, Applicant was adamant he was wrongfully accused and wanted to go to court to straighten everything out. He elaborated Applicant knew if he ultimately chose not to testify, that fact could not be used against him at trial. Counsel also testified it is his standard practice to advise everyone of this right. He further testified it is his standard practice to advise everyone that their prior criminal record could be used against them for impeachment purposes if they decide to testify. He testified he and Applicant discussed

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his testimony, as well as his prior record. He elaborated he explained to Applicant his prior record may cause the jury to not believe him. He further testified he explained to Applicant that because he was on probation, he was taking a risk. Counsel also testified he advised Applicant as to the risks he was exposing himself to by testifying.

Counsel testified the State alleged Applicant was dating a woman who worked at the bingo parlor, Teidra Dennis, and came to bingo on hot dog night, which was prior to the night of the robbery, to case the place. He further testified Applicant denied that he was there to case the place but rather went to the bingo parlor that night to see Dennis. He elaborated the State alleged Applicant was involved in the robbery that occurred a few nights after hot dog night because several individuals tied him to the bingo parlor and there were phone calls around that time between Applicant, Dennis, and another person. Counsel also testified the State alleged Dennis told law enforcement the night before the robbery that they would not need security. Counsel further testified someone identified Applicant from the surveillance video at the bingo parlor.

Counsel testified as to Applicant's version of the facts: Applicant was outside hiding while the robbery took place. He further testified Applicant asserted he got into the car with the co-defendant, and the co-defendant mentioned the robbery. He elaborated Applicant initially said he would participate in the robbery but later decided he did not want to go through with it, so he gave his shirt and hat to Quantas and hid during the robbery. He also testified Applicant saw Quantas run by, and then Applicant left the area.

Counsel testified his main defense strategy was that the identifications were faulty. He elaborated law enforcement arrested Applicant and posted his mug shots, then Applicant was identified the next day. He testified Applicant's appearance in the news contaminated the

6

witnesses. He further testified the employees at the bingo parlor were a close-knit group and would talk about the robbery leading up to their interviews with law enforcement and were able to watch the surveillance video together. He testified he was able to use this to his advantage and argue this point to the jury. He elaborated these employees may have been able to put together a suspect and may have identified someone from something that was not their own personal recollection of the robbery. He also testified Applicant knew a couple of the employees from the bingo parlor because he sold them marijuana in the past.

Counsel testified Dennis was never arrested and did not testify at trial. Counsel further testified law enforcement was never able to apprehend Dennis.

Counsel also testified Applicant gave a statement right after the robbery. He elaborated in this statement, Applicant stated he was going to participate in the robbery, but then he decided against it. He further testified in this statement, Applicant claimed he let someone by the name of Quantas borrow his clothes. He elaborated Quantas was the same height and body shape as Applicant, but he was never found. Counsel testified it was their theory that law enforcement misinterpreted Applicant's statement. He elaborated the State's theory surrounding Applicant's statement was that in helping law enforcement, Applicant was actually trying to minimize his guilt and put the blame on an imaginary person. He also testified because of this statement, it needed to be addressed, which he and Applicant discussed. He testified Applicant would have to testify, and Applicant was concerned neither with his statement nor with testifying.

Counsel testified Applicant was identified from a six-person photo lineup about two-and-a-half weeks after the robbery, which occurred prior to his appointment on the case. He testified the woman who identified Applicant, Angela Diaz Garcia, stated that she would "never forget

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those eyes.” He further testified he and Applicant discussed Ms. Garcia’s identification briefly. Counsel testified he made a motion to suppress the lineup, but the trial court denied that motion. He testified he did not object to the State’s introduction of the lineup, but, in hindsight, he should have objected to preserve the record. He elaborated he did not object at the time because he believed he would have heard the same issue, which was raised during the suppression motion. He further testified there was a slim chance the trial court would not have allowed the identification into evidence. He also testified it was likely they would have introduced the lineup themselves in order to show it was impossible to make an identification from the surveillance video. He elaborated he wanted to demonstrate to the jury how far the State was reaching with this identification. Counsel further testified the trial court ruled the lineup was admissible in the *Biggers*³ hearing, which he anticipated because the lineup was a key piece of evidence.

He testified he and Applicant did not discuss hiring an expert in witness identification because he “caught hell” just getting ODC to approve the investigator they had. He further testified he had some concern that an expert would come back with a report identifying Applicant as the robber, which he would have had to turn over to the State. He testified in his experience, the jury looks at an expert witness as a hired gun who will say whatever you pay them to say. He testified instead of hiring an expert, he cross-examined Ms. Garcia on poor vision, bad lighting, and other factors that might have tainted her identification.

He testified his theory surrounding Ms. Garcia was to indicate to the jury that her identification of Applicant was highly suspect and, therefore, they could not rely on it. He elaborated he presented this through direct examination and cross-examination and believes his

³ *Neil v. Biggers*, 409 U.S. 188 (1972).

cross-examination of Ms. Garcia was compelling. He further testified all of the witnesses, including Ms. Garcia, testified that both robbers had bandanas across their faces, and the robber who was supposed to be Applicant had a hat on as well. He also testified he pointed out and emphasized at trial that Ms. Garcia's identification of Applicant from only his eyes was pretty incredible. He testified he was able to bring out during cross-examination the fact that Ms. Garcia was only able to see the robber's eyes. He expounded, however, that Ms. Garcia's testimony that she would never forget Applicant's eyes went a long way. He elaborated he was also able to highlight that Ms. Garcia was busy trying to take care of her daughter during the robbery. He testified he was trying to impress on the jury that it was very likely the witnesses might have been looking at a lot of different things and, therefore, could not have had enough time to look at the robber. He testified he hammered on the fact that Ms. Garcia wore glasses and was immobilized with fear. He also testified he was able to argue to the jury that simply because Ms. Garcia identified Applicant does not conclusively mean that Applicant was the individual who robbed her. He ultimately testified he did a good job discrediting the identification and challenged what he thought he could.

He also testified even though Ms. Garcia identified Applicant in court, Applicant's testimony would refute that identification. He further testified he did not object to this in-court identification because he was concerned with protesting too much. He elaborated he argued extensively about the unreliability of Ms. Garcia's identification, so he did not object to her in-court identification. He testified the State did not produce any other witnesses who identified Applicant, except for Ms. Garcia.

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Counsel testified he saw the surveillance video will in advance of trial and had plenty of time to review it. He testified he does not recall specifically when he and Applicant reviewed the video. He further testified he knew going into court the image in the video was a far cry from the photo lineup, which explained why he made the motion to suppress. He testified he wanted to watch the video again in court because he wanted to ensure the projector was not high definition. He further testified after his and Applicant's review of the video on the projector, it was still blurry and had not been altered in any way.

Counsel testified the State used the phone calls and records between Applicant and Dennis as circumstantial evidence that they were connected to the robbery. He elaborated the State used these phone calls to support its theory Dennis and Applicant conspired to commit this robbery. He further testified the State tried to connect Dennis and Applicant through the phone calls by saying Dennis did not want to reveal her identity, so she called Applicant from other people's phones. He testified it was his theory that the phone calls between them did not necessarily mean Applicant did something wrong, and he did not deny those phone calls were, in fact, made. He further testified Applicant testified it was not uncommon for Dennis to call him from different numbers. Counsel also testified he and Applicant reviewed the phone records; and during that review, Applicant identified various phone numbers and specific calls. He elaborated, for example, that in one of the phone calls from Dennis, Dennis called Applicant because she wanted him to purchase some cigarettes for her. He testified the phone records were from a specific time frame, and records from further back might have been helpful. He elaborated he was unaware, however, if records from one month prior would have refuted the State's theory surrounding the phone calls. He further testified he did not attempt to subpoena T-Mobile for more phone records because he

believed what the State provided were adequate. He testified he does not recall if he and Applicant discussed whether or not older records would have been helpful, but he was unaware as to how older records would have supported his case. He elaborated the testimony elicited at trial, from both the State and Applicant, indicated Dennis was having problems with her phone, so she used other people's phones to call Applicant.

He testified he was aware the State was going to introduce the testimony of an individual regarding the phone records, but he was unaware that person was going to be introduced as an expert. He testified he was not provided with this expert's PowerPoint presentation in advance but was told the presentation was the method in which the State wanted to present the phone records. He elaborated the records in the presentation were already received through Rule 5, and the presentation was just a different form of presenting those records. He further testified the State provided him with the basis of this expert's testimony. He testified although he could have been a bit more aggressive with trying to keep out the presentation, the proper foundation was laid to have it admitted. He elaborated he and Applicant wanted that information to come in, as it was their position that Applicant made calls to these other individuals because Dennis's phone was dead, which would have shown there was more than one reason those phone calls were made. He testified Applicant addressed these phone calls in his testimony. He further testified this expert's testimony was because there were no calls made during the time of the robbery that was evidence Applicant was committing the crime. Counsel testified he did not object to this testimony as speculative, but he addressed it on cross-examination. He elaborated it was their theory Applicant was hiding during the time of the robbery, which would explain why he did not make any phone calls during that time.

Counsel testified he had no problem with the trial court's statement that the defense would be making an opening because it reflected what happened. He elaborated it was very unlikely he was going to object while the court was speaking because he does not want to hurt the jury's opinion of him or his client. He further testified he did not think the trial court's statements were objectionable.

Counsel also testified he did not object to Drenita Ore's testimony regarding Dennis's asserting that she did not see anyone run out of the door. Counsel elaborated Ms. Ore had personal knowledge of what Dennis said and she was testifying to it. He further testified it was their position that Applicant did not run out of the door either. Counsel also testified he did not object to Ms. Ore's testimony that Dennis said she was not going anywhere because he felt this statement showed that Dennis and the co-defendant were in cahoots and because it put the blame on Dennis. He elaborated at the time, he did not believe these statements were hearsay and also did not believe they were harmful. He expounded this was consistent with Applicant's assertion that he had nothing to do with the robbery. He further testified the testimony regarding Dennis, he hoped, allowed the jury to ask where she was and why she was not being held accountable for this crime. He testified the more the State talked about Dennis and the more Dennis was disparaged, the better it was for Applicant. Counsel also testified Ms. Ore's recitation of a phone call she had with an unidentified male because the man was not saying that Applicant was involved in this crime, but rather there were other co-defendants. He elaborated from this phone call the suggestion was that Dennis and the co-defendant got together after the robbery. He also testified he does not recall if this was Applicant's phone number that Ms. Ore called.

Counsel testified he objected to as many leading questions surrounding Sergeant Isenhoward's testimony as he could, but he did not think there was a strategy behind not objection. He also testified Applicant's statement was introduced through Investigator Isenhoward, but he did not object. He testified he made a motion to suppress the statement prior to trial because it was their theory that the statement was inaccurate, and the advisement of rights and statement were signed together at the end of the interview, rather than what was proper procedure—first advising the suspect of his rights, then taking the statement. He further testified there was no strategy behind him not objecting to the advisement of rights at trial, but he felt he covered his objections to the advisement of rights in pre-trial.

Counsel testified he generally believes he made appropriate objections. He also testified some of the evidence that came in, he used in argument. He elaborated if he was going to cross-examine a witness on the admitted evidence, he was probably not going to object to it. He further testified constantly objecting makes an attorney look worse in the eyes of the jury. Counsel testified he made a motion for a directed verdict and renewed all of his motions and objections at the close of the State's case.

Counsel also testified he did not see any evidence of withdrawal on the part of Applicant, so he did not request a jury charge on that. He testified he did request a charge on mere presence, but the trial court refused to charge mere presence. He further testified he did not re-request a charge of mere presence after the State's closing argument because he believed it would be futile.

Following Counsel's testimony, Applicant testified. Applicant testified Counsel was appointed to represent him on his probation violation and began working on his other charges from there. He further testified Counsel was appointed about two years before his trial. He testified he

was initially charged with one count of robbery, but then more charges were presented to the Grand Jury in July 2012.

Applicant also testified he and Counsel met about six or seven times, and he understood most of their conversations. He testified he and Counsel discussed the elements of armed robbery and of kidnapping. He also testified they discussed his constitutional rights, and Counsel explained to him he waived his right to remain silent when he talked to law enforcement. He further testified they discussed Applicant testifying at trial after he rejected the State's plea offer. He elaborated Counsel told him he did not have to testify. He testified Counsel's advice was that he should testify because it would help explain his statement to law enforcement, but he did not know what he should do. He further testified he and Counsel went over some of the questions Counsel would ask him at trial, but they did not go over any potential questions the State may have asked. He testified the State made a big deal about his statement at trial and went through it line-by-line, asking him what was accurate and what was inaccurate.

Applicant testified Dennis used other people's phones to call him because hers was turned off. He further testified this was not uncommon. He also testified he and Counsel did not discuss getting the phone records to show that Dennis would call him from different numbers. He testified rather, they discussed the phone records the State provided about one week before trial. He elaborated he did not see the phone records, and Counsel did not talk about the records but discussed other evidence to prepare for trial, i.e. the statements.

Applicant also testified he and Counsel discussed the lineup but did not discuss hiring an expert. He further testified Counsel told him Ms. Garcia identified him in the lineup and the State was going to use her as a witness.

He testified he and Counsel did not discuss the surveillance video. He further testified the only time he saw the video was when it was played in court during the trial. He also testified Counsel did not tell him whether or not they were provided the video.

Applicant testified the defense strategy was on the identification. He elaborated Counsel talked to him about witnesses and certain things in the motion, but did not talk a lot about strategy.

He also testified at trial he testified that he initially agreed to go along with the robbery but then decided he did not want to participate, so he gave his shirt and his hat to someone else. He testified he and Counsel discussed that he tried to withdraw from the robbery, but Counsel did not really say anything about it.

Applicant testified he was not able to communicate with Counsel during the trial after he was taken into custody. He did testify, however, he had pencil and paper in order for him to take notes during the trial.

He testified he had been to the bingo parlor prior to hot dog night and knew some of the employees. He elaborated he had previously sold some of the employees at the bingo parlor marijuana, which he discussed with Counsel prior to trial. He further testified Counsel was aware that none of those individuals had given statements to law enforcement or identified him.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

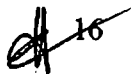
Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

 16

*Counsel's alleged failure to retain the services of an eyewitness
identification expert*

Applicant alleges that Counsel was ineffective for failing to retain the services or investigate the potential effectiveness of an eyewitness identification expert. This Court finds Applicant has failed to establish any deficiency of Counsel and this allegation must be denied and dismissed with prejudice. A competent attorney may elect a trial strategy which does not require the use of an expert. *Harrington v. Richter*, 562 U.S. 86, 88 (2011). Moreover, "counsel is entitled to balance limited resources in accord with effective trial tactics and strategies. *Id.* To do otherwise would fail to "reconstruct the circumstances of counsel's challenged conduct' and 'evaluate the conduct from counsel's perspective at the time.'" *Id.* (quoting *Strickland*, 466 U.S. at 689). The uncontroverted testimony reveals Counsel had a difficult time in obtaining funding for an investigator, much less an expert witness. Moreover, Counsel testified he chose to raise the question of Ms. Garcia's identification as suspect through cross-examination. In fact, Counsel testified he emphasized how incredible her identification of Applicant was given that she could only see the perpetrator's eyes and given that she has poor vision and was focused on a number of things at the time of the robbery, not just the perpetrator. Thus, Counsel employed an effective trial tactic and strategy given his resources. This Court finds that Counsel's performance was reasonable and effective under professional norms. *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*).

Additionally, this Court finds that Applicant cannot prove any resulting prejudice from this alleged deficiency, as Applicant wholly failed to provide any testimony from an identification expert and further failed to identify how the testimony from such an expert would have been helpful. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where



the witnesses do not testify at the post-conviction relief hearing. *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Bassette v. Thompson*, 915 F.2d 932 (4th Cir. 1990), *cert. denied*, 499 U.S. 982 (1991). Applicant's mere speculation as to what a witness's testimony would have been cannot, by itself, satisfy his burden of showing prejudice. *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993); *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995). An applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the post-conviction relief hearing in order to establish prejudice from the witness's failure to testify at trial. *Bannister v. State*, 333 S.C. 298, 509 S.E.2d 807 (1998). Therefore, as Applicant provided neither the testimony of any identification expert witness nor the reasoning behind why such testimony would have been helpful, Applicant has failed to establish any resulting prejudice. This allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to procure telephone records

Applicant alleges that Counsel was ineffective for failing to procure telephone records of Applicant as a potential defense. This Court finds Applicant has failed to establish any deficiency of Counsel and this allegation must be denied and dismissed with prejudice. At the evidentiary hearing, Counsel testified that while phone records from a period prior to the timeframe the State provided could have been helpful, he is unaware that such records would refute the State's theory of the case: that Dennis used other people's phones to call Applicant in order to conceal her identity. Moreover, Counsel testified Applicant was able to explain the phone records through his testimony at trial, by testifying that it was not uncommon for Dennis to call him from other people's phones. As Counsel testified he was unaware of any benefit additional records would have had to Applicant and because Applicant was able to address the reasoning behind Dennis

calling him from various phones, Counsel cannot be said to have been deficient. This Court finds that Counsel's performance was reasonable and effective under professional norms. *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*).

Additionally, this Court finds that Applicant cannot prove any resulting prejudice from this alleged deficiency, as Applicant failed to present any concrete evidence of these alleged phone records at the evidentiary hearing. Applicant's bare assertions as to what these phone records would have shown, without more, do not give rise to the level of proof required for Applicant to meet his burden. Based on the foregoing, this Court finds that this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to object to the lack of notice of the
State's expert witness*

Applicant alleges Counsel was ineffective for failing to object to the lack of notice of the State's expert witness and for failing to object to the witness's written report being admitted into evidence, as it was not produced in discovery as a report from an expert witness. The uncontroverted testimony reveals Counsel was aware the State would produce a witness to address the phone records, as he was provided with the basis of this individual's testimony, but was unaware this person would be testifying as an expert. Furthermore, Counsel testified although he was not provided with the exact PowerPoint presentation, which was introduced through this witness, the presentation contained information the State provided in discovery, just in a different form. By Counsel's own testimony, he was aware of not only this witness but also the basis of this witness's testimony. Therefore, Counsel cannot be found deficient for failing to object to the lack of notice, as he, in fact, did have notice of this witness. Moreover, upon the request of a defendant, the State must make available for inspection and copying any results or reports of

scientific tests or experiments. Rule 5(a)(1)(D), SCRCrimP. Here, however, the PowerPoint presentation introduced at trial did not include the results of any scientific test or experiment. Much less, the State's expert surrounding the phone records did not conduct any scientific experiments or tests. The PowerPoint presentation was merely another method in which the State chose to present those records provided to Applicant through discovery. Consequently, Counsel cannot be found to be deficient for failing to object to material introduced into evidence which did not include any results from any scientific tests or experiments and which was provided by the State through discovery. This Court finds Counsel's performance was reasonable and effective under professional norms. *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*).

Additionally, this Court finds Applicant can establish no resulting prejudice from the alleged deficiencies. Even if Counsel had objected to the lack of notice to this expert witness, it is unlikely the trial court would have excluded this witness's testimony, as Counsel was both aware of this witness and the basis of this witness's testimony prior to trial. Similarly, it is unlikely the trial court would have excluded this presentation from being introduced into evidence. Counsel testified the State laid a proper foundation for the presentation to be admitted. Moreover, where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. See *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996) ("[C]ounsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness."); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992) ("Where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective."); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992) (finding counsel was not ineffective when he articulated a valid reason for not calling certain witnesses at trial). By

Counsel's own admission, he and Applicant wanted the phone records admitted into evidence, as it was their position that Dennis made those calls to Applicant from various phones because her phone was dead. Counsel elaborated part of their defense was to show there was more than one reason those phone calls could have been made, which would have only been supported by the introduction of the records. This Court finds Counsel's testimony with respect to this allegation very credible, whereas Applicant's testimony is not credible. Therefore, Applicant can establish no resulting prejudice. This Court finds this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to properly argue factors regarding the
reliability of a witness's identification during the suppression
hearing*

Applicant alleges Counsel was ineffective for failing to properly argue factors regarding the reliability of a witness's identification during the suppression hearing. This Court finds Applicant has failed to establish any deficiency on the part of Counsel. The factors to be considered when evaluating the reliability of an identification include: (1) the opportunity of the witness to view the perpetrator at the time; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the perpetrator; (4) the level of certainty demonstrated by the witness at the time of the identification; and (5) the length of time between the crime and the identification. *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972).

The evidence presented at the suppression hearing revealed Ms. Garcia was working at the bingo parlor in the back office, behind the counter when the robbery took place. Tr. 111. The lights were on. Tr. 114. While she was working, she saw a man coming behind the counter. Tr. 113. The man was wearing a bandana over his face, which covered the tip of his nose, and a hat,

but she was able to clearly see his eyes. Tr. 113, 119. She would never be able to forget the man's eyes, particularly in light of the shape of his eyes, which were very slanted and wide. Tr. 117, 119. He was also holding a gun, which she believed to be real, and a bag. Tr. 115. She was approximately three feet away from the robber and had an opportunity to clearly observe the portion of his face that was uncovered. Tr. 114. Although she was scared, she was trying to get any kind of description in her mind, so that she might be able to point out any identifying mark. Tr. 115. She was with this individual for about one to three minutes, but she cannot be sure as to the exact time. Tr. 114, 120. About two weeks after the robbery, she contacted the sheriff's department and told them she might be able to identify the man who came behind the counter. Tr. 115. When she met with Investigator Isenhoward, she immediately felt sick when she saw the six-photo lineup, and she immediately picked out Applicant. Tr. 116-17. At the suppression hearing, Ms. Garcia testified she had not spoken with anyone from the sheriff's department or the solicitor's office concerning her testimony prior to court, but she had spoken with other employees, particularly her daughter Kayla, during the two weeks between the robbery and her identification. Tr. 119, 122. She also testified she has prescription glasses, but she did not have them the night of the robbery. Tr. 123. She elaborated, however, that she has no problem seeing up close. Tr. 123.

In arguing Ms. Garcia's identification was not reliable, Counsel highlighted that Ms. Garcia's attention was not necessarily on the perpetrator's eyes. He also emphasized that Ms. Garcia was only in front of the perpetrator for two to three minutes, and her identification was at least two weeks after the robbery, at which time she indicated that she could not be sure if she could identify anyone, but she would try. Additionally, Counsel was able to stress during cross-

examination that Ms. Garcia did wear prescription eyeglasses and did not have them at the time of the robbery. Furthermore, by Ms. Garcia's own admission, she was very scared at the time of the robbery, and Counsel was also able to elicit testimony from her that she was frantic as well, thereby alluding to the fact that her full attention might not have been on the perpetrator. Given the fact Counsel was able to address each factor laid out in *Biggers*, either through argument or cross-examination, this Court finds Counsel's performance was reasonable and effective under professional norms. *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*).

Furthermore, Applicant cannot show any resulting prejudice from this alleged deficiency. Following the testimony of Ms. Garcia and argument from both Counsel and the State, the trial court made specific findings as to each factor identified in *Biggers*. Specifically, the trial court found that Ms. Garcia had an adequate opportunity to view the accused in well-lit, close quarters with a heightened degree of attention, based on the fact she was in a position to pick out identifying factors. Additionally, although the trial court was concerned with the length of time between the robbery and Ms. Garcia's identification, he indicated the length of time between the crime and the identification was not a disqualifying factor. Moreover, the trial court found Ms. Garcia demonstrated a high level of certainty when she was confronted with the photo lineup, given that she immediately identified Applicant and indicated she did not need any additional time. Given the trial court's specific findings as to each *Biggers* factor, it is unlikely had Counsel argued the factors more vociferously that the trial court would have not permitted Ms. Garcia's in-court identification. This allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to object to the trial court's preliminary remarks

Applicant alleges counsel was ineffective for failing to object to the trial court's preliminary remarks to the jury, specifically that Applicant would make an opening statement, as they improperly shifted the burden to Applicant. The uncontroverted testimony reveals Counsel did not object to the trial court's statement that "[Applicant] will also make an opening statement" because it reflected what occurred. Tr. 143. In addition, Counsel was adamant he would make an opening statement, especially in light of the fact Applicant asserted his innocence. Therefore, this Court finds Counsel's performance was reasonable and effective under professional norms. *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*).

Moreover, Applicant cannot establish any resulting prejudice from this alleged deficiency. Had the trial court not made these remarks, Counsel would have still given an opening statement. Therefore, Applicant cannot show the result of the proceeding would have been different absent these remarks. This Court finds this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to object to hearsay statements during
Drenita Ore's testimony*

Applicant alleges counsel was ineffective for failing to object to several instances of impermissible hearsay during the testimony of Drenita Ore. At trial, Ms. Ore testified she was working as the caller at the bingo parlor on the night of the robbery. Tr. 168. On that night, Dennis was making phone calls from other people's cell phones constantly. Tr. 173. Dennis then went out the side door of the bingo parlor; and ten minutes later, two men wearing bandanas—one brown and one red—came into the bingo parlor. Tr. 174. While the man wearing the red bandana went into the cage area, the other man wearing the brown bandana stood to her right and took money from the other employees and the customers. Tr. 175. After the robbers exited through the side door, Ms. Ore ran to the side door to see if she could see what type of car the men were driving.

Tr. 176. Ms. Ore saw Dennis on the other side of the door, and Dennis responded she did not see anybody run out of that door. Tr. 176, 179. Later, Dennis took Scooter's, who was another employee at the bingo parlor, phone to make a call. Tr. 178. Ms. Ore told Dennis she could not leave because everyone had to stay to talk to law enforcement, to which Dennis replied she was not going anywhere. Tr. 178. Thereafter, Dennis disappeared without clocking out and without saying anything to anyone. Trial Tr. 178. After Dennis left, Ms. Ore, Scooter, and Kayla, another employee at the bingo parlor, compared the numbers on Scooter's and Kayla's phone because Dennis was using their phones on the night of the robbery. Tr. 179. As a result, Ms. Ore called a number on Kayla's phone. Tr. 180. She told the man who answered she was trying to get in touch with Dennis, to which the man replied he heard the bingo parlor had been robbed that night and to "tell the two young men know everything is alright now. They can breathe easy." Tr. 180.

At the evidentiary hearing, Counsel testified he did not object to the statements that repeated what Dennis told Ms. Ore because these statements were not harmful to Applicant. He further testified these statements tended to support Applicant's position that he had nothing to do with the robbery, but Dennis did. Counsel also testified he did not object to the statements made from the man who answered Ms. Ore's call as hearsay because there was no specific reference to Applicant in that call but rather the man was referring to what occurred during the robbery.

Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. "No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." *Strickland*, 466 U.S. at 688-89. Moreover, "representation is an art, and an act or omission that is unprofessional in one case may be sound

or even brilliant in another.” *Id.* at 693. Therefore, judicial scrutiny of counsel’s performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Furthermore, “courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel.” *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992). Here, Counsel articulated he did not object because he believed this testimony served to put the blame on Dennis, rather than Applicant, which supported their defense strategy. Furthermore, Counsel specified their position was that Applicant had no part in this robbery, and Dennis’s behavior and comments shortly thereafter only served to show that she, not Applicant, was acting strangely and might have been involved in the robbery. Therefore, because Counsel employed a specific trial strategy in not objecting to these comments during Ms. Ore’s testimony, this Court finds counsel’s performance was not deficient.

Similarly, this Court finds Applicant suffered no resulting prejudice from Counsel’s alleged deficiencies. As Counsel testified at the evidentiary hearing, none of these statements were harmful to Applicant. Counsel specified the more disparaging comments made about Dennis, the better it was for Applicant. Moreover, none of these statements implicated Applicant in the robbery in any way. As there is no indication whatsoever that the result of the proceeding would have been different had Counsel objected to these statements, Applicant has failed to show that he has suffered any prejudice from these alleged deficiencies and, therefore, has failed meet his burden. This Court finds this allegation must be denied and dismissed with prejudice.

*Counsel's alleged failure to object to impermissible hearsay
during Timothy Bell's testimony*

Applicant alleges Counsel was ineffective for failing to object to hearsay statements made during Timothy Bell's testimony. At trial, Mr. Bell testified he was working at the bingo parlor on the night of the robbery. Tr. 202. He heard his sister, Ms. Ore, announce over the speaker not to move, but he thought she was joking around. Tr. 203. Then, one of the robbers, who was on the floor not in the cage area, walked up to him with a gun, made Mr. Bell get on his knees, and held the gun to his head. Tr. 203, 207, 208. As he was making Mr. Bell get on his knees, the robber told him he was a "bold one," and "if you want your life, you better get on your knees." Tr. 204. Mr. Bell could clearly hear this man's voice and recognized it from hot dog night the week before. Tr. 205, 212. However, he was never able to identify anyone and would only be able to identify the voice, although he was unsure exactly who it was. Tr. 211, 213. After the robber took money from him and the customers, he and the other man left. Tr. 204. Thereafter, Dennis proclaimed she needed to leave. Tr. 206.

This Court finds Counsel was not deficient, nor did Applicant suffer any resulting prejudice from this alleged deficiency. As aforementioned, these statements neither specifically allude to nor impliedly allude to Applicant's involvement in this crime. Furthermore, these statements serve to place blame on two other individuals—Dennis and the co-defendant—rather than Applicant. Because of the nature of these statements, they ultimately serve to support Applicant's theory of the case—Dennis and the co-defendant were in cahoots and planned this robbery together. This Court finds this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to contemporaneously object to State's Exhibit #3

Applicant alleges Counsel was ineffective for failing to contemporaneously object to the photo lineup from which Applicant was identified (State's Exhibit #3) when the State offered it into evidence. Even if Counsel had contemporaneously objected to the lineup in order to preserve the issue on appeal, this Court finds Applicant has failed to establish any resulting prejudice, as it is unlikely an appellate court would have reversed the trial court's decision. "Whether an eyewitness identification is sufficiently reliable is a mixed question of law and fact." *State v. Liverman*, 398 S.C. 130, 137-38, 727 S.E.2d 422, 425 (2012) (citing *State v. Moore*, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000)). In reviewing such issues, "where the evidence supports but one reasonable inference, the question becomes a matter of law for the court." *Id.* at 138, 727 S.E.2d at 425. The decision to admit an eyewitness identification is within the trial court's discretion and will only be disturbed on appeal if there is an abuse of this discretion. *Id.* The factors to be considered when evaluating the reliability of an identification include: (1) the opportunity of the witness to view the perpetrator at the time; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the perpetrator; (4) the level of certainty demonstrated by the witness at the time of the identification; and (5) the length of time between the crime and the identification. *Biggers*, 409 U.S. at 199-200.

As the trial court found, Ms. Garcia had an adequate opportunity to view the accused in well-lit, close quarters with a heightened degree of attention, based on the fact she was in a position to pick out identifying factors of the robber. Additionally, although the trial court was concerned with the length of time between the robbery and Ms. Garcia's identification, he indicated the length of time between the crime and the identification was not a disqualifying factor. Moreover, the trial court found Ms. Garcia demonstrated a high level of certainty when she was confronted with the

photo lineup, given that she immediately identified Applicant and indicated she did not need any additional time. Based on the foregoing, there is no indication the trial court abused his discretion in admitting the eyewitness identification. Therefore, this Court finds it is unlikely Applicant would have been successful on appeal even if Counsel had contemporaneously objected to the photo lineup. Accordingly, Applicant has failed to establish any prejudice, and this allegation must be denied and dismissed.

Counsel's alleged failure to contemporaneously object to the in-court identification of Applicant

Applicant contends Counsel was ineffective for failing to contemporaneously object when Ms. Garcia identified him in court. For the reasons listed in the section immediately preceding this section, this Court finds Applicant has failed to establish any prejudice from this alleged deficiency. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to object to leading questions

Applicant contends Counsel was ineffective for failing to object to leading questions during the testimony of Investigator Isenhoward. "Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony." Rule 611(c), SCRE. However, Applicant has wholly failed to establish any prejudice which would warrant a reversal. Indeed, it is extremely unlikely mere leading questions could garner the requisite prejudice to warrant a reversal here. Had Counsel objected to this line of questioning, the State simply would have rephrased its questions and still elicited the same testimony. Accordingly, this Court finds Applicant has failed to meet his burden. This allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to object to State's Exhibit #1

Applicant alleges Counsel was ineffective for failing to object to the advice of rights form administer to Applicant (State's Exhibit #1). Applicant further alleges Counsel's failure to object to the advice of rights did not preserve this issue for appeal. This Court finds Applicant has failed to establish he suffered any prejudice from this alleged deficiency. A defendant is entitled to an independent evidentiary hearing in order to determine the voluntariness of statements made by the defendant. *Jackson v. Denno*, 378 U.S. 368, 377 (1964). During this hearing to determine the voluntariness of the statement, the court must determine whether the defendant was in custody, whether the statements were incriminating, and whether the statements were made voluntarily. *State v. Silver*, 314 S.C. 483, 485, 431 S.E.2d 250, 251 (1993). The trial court determines the admissibility of the statement made "upon proof of its voluntariness by a preponderance of the evidence." *State v. Miller*, 375 S.C. 370, 378, 652 S.E.2d 444, 448 (Ct. App. 2007) (citing *State v. Washington*, 296 S.C. 54, 55, 370 S.E.2d 611, 612 (1988); *State v. Smith*, 268 S.C. 349, 354, 234 S.E.2d 19, 21 (1977)). A trial court's determination as to the voluntariness of a statement "will not be reversed unless so erroneous as to show an abuse of discretion." *Id.* (citing *State v. Von Dohlen*, 322 S.C. 234, 242, 471 S.E.2d 689, 695 (1996)). Furthermore, when reviewing the trial court's determination as to the voluntariness of a statement, the appellate court determines whether that determination is supported by any evidence. *Id.* at 378-79, 652 S.E.2d at 448.

Following a *Jackson v. Denno* hearing as to the voluntariness of Applicant's statement and after considering all of the evidence presented, the trial court found Applicant was fully advised of his constitutional rights under the Fifth and Sixth Amendments prior to giving a statement to law enforcement. Tr. 102-04. The trial court further found Applicant had knowingly and intelligently waived these rights and made the statement freely and voluntarily. Tr. 104. This

finding is supported by the testimony of Sergeant Isenhoward. Sergeant Isenhoward testified he reviewed the advice of rights form with Applicant on June 8, 2010, at 5:14 in the evening. Tr. 49. He further testified Applicant understood he had the right to remain silent, that anything he said could be used against him in court, he had the right to talk with an attorney prior to questioning and also had the right to have an attorney present at the time of questioning, that an attorney would be appointed to him if he could not afford one, he had the right to stop questioning at any time. Tr. 49. Sergeant Isenhoward elaborated Applicant appeared to understand each of his rights by acknowledging his understanding several times, including signing the advice of rights form. Tr. 50-51. In addition, Applicant never told Sergeant Isenhoward he did not understand. Tr. 51. He also never indicated he did not want to speak with Sergeant Isenhoward nor that he wanted to speak with an attorney. Tr. 51, 54. Applicant further indicated he wanted to waive his rights and speak with Sergeant Isenhoward. Tr. 51-52. Investigator Isenhoward did not threaten Applicant, coerce him, hold out any promise or hope of reward, nor withhold any comforts from Applicant. Tr. 52.

Based on the foregoing, this Court finds even if Counsel had preserved this issue for appellate review, it is unlikely Applicant would have been successful on appeal or that the trial court would change its previous ruling. *See Milledge v. State*, 422 S.C. 366, 382, 811 S.E.2d 796, 805 (2018) (to demonstrate prejudice from counsel's failure to preserve an issue for appeal, the applicant must show a probability either the appellate court would have reversed and remanded for a new trial if counsel contemporaneously objected or the trial court would have sustained a contemporaneous objection, which reasonably would have resulted in a not guilty verdict). Specifically, this Court finds there is no indication the trial court abused his discretion in finding

A³¹

Applicant's statement was freely and voluntarily given. Therefore, Applicant has failed to establish he suffered any prejudice from Counsel's failure to contemporaneously object. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to allow Applicant to view the surveillance video prior to trial

Applicant alleges Counsel was ineffective for failing to allow Applicant to view the surveillance video of the incident prior to trial. At the hearing, Applicant testified he and Counsel did not discuss the surveillance video prior to trial. PCR Tr. 83. He elaborated: "The only time I saw the surveillance video was during the time I saw it here." PCR Tr. 83. He further elaborated he first saw this video during his trial. PCR Tr. 83. Counsel, however, testified he reviewed all of the discovery materials with Applicant prior to trial. PCR Tr. 20, 58. This Court finds Counsel's testimony with respect to this allegation very credible, whereas Applicant's testimony is not credible. Accordingly, this Court finds Applicant has failed to establish Counsel was deficient.

Similarly, this Court finds Applicant has wholly failed to establish any resulting prejudice from this alleged deficiency. In particular, this Court notes Applicant has wholly failed to testify as to what course of action he would have taken had he seen the video prior to trial. Additionally, Applicant has failed to provide this Court with any evidence as to what benefit could have been realized from viewing the surveillance video prior to trial. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to renew his motion for a directed verdict

Applicant further alleges Counsel was ineffective for failing to renew his motion for a directed verdict at the close of Applicant's case and at the close of all evidence. When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of

evidence, not its weight. *State v. Larmand*, 415 S.C. 23, 30, 780 S.E.2d 892, 895 (2015) (citing *Butler*, 407 S.C. at 381, 755 S.E.2d at 460). The trial court should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. *State v. Hernandez*, 382 S.C. 620, 625-26, 677 S.E.2d 603, 605-06 (2009). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. *State v. Ladner*, 373 S.C. 103, 120, 644 S.E.2d 684, 693 (2007).

Here, an eyewitness identified Applicant as one of the individuals who robbed the bingo parlor. Indeed, all of the eyewitnesses indicated the robbers entered the bingo parlor with guns. Several eyewitnesses also indicated they recognized one of the robbers as having been at hot dog night the week prior.⁴ In addition, Applicant gave a confession to law enforcement, indicating he was involved in this robbery. The trial court accurately assessed the evidence and determined it sufficient to allow Applicant's guilt to be fairly and logically deduced by the jury, when taken in a light most favorable to the State. Based on the foregoing, there is evidence from which the jury could have, and did, convict Applicant; and it is unlikely Applicant would have prevailed on this issue on appeal, even if Counsel had renewed his motion for a directed verdict. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to request specific charges on the law

Applicant alleges Counsel was ineffective for failing to request specific jury charges. In particular, Applicant contends Counsel should have requested a jury charge on withdrawal. Applicant further contends Counsel was ineffective for failing to renew his request for a charge on mere presence after the State made its closing argument.

⁴ Evidence indicated Applicant attended hot dog night a couple of days prior with his girlfriend, who worked at the bingo parlor.

With respect to Applicant's allegation Counsel was ineffective for failing to request a charge on withdrawal, this Court finds Applicant has wholly failed to meet his burden. "The law to be charged must be determined from the evidence presented at trial." *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010) (quoting *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394(2001)). In order to withdraw from the commission of a crime, a person must "withdraw entirely and unequivocally from the plan throughout the commission of the entire plan and . . . communicate his withdrawal to all of the associates involved in the plan." *State v. Vang*, 353 S.C. 78, 87, 577 S.E.2d 225, 229 (Ct. App. 2003) (citing *State v. Woods*, 189 S.C. 281, 288, 1 S.E.2d 190, 193-94 (1939)). There was no evidence Applicant withdrew from the commission of these offenses. Indeed, at the evidentiary hearing, Counsel testified he did not request a charge on withdrawal because he did not see any evidence Applicant withdrew. Therefore, this Court finds Applicant has failed to establish any deficiency on the part of Counsel and failed to establish any resulting prejudice therefrom. Accordingly, this allegation must be denied and dismissed with prejudice.

With respect to Applicant's allegation Counsel was ineffective for failing to renew his request for a charge on mere presence, this Court finds Applicant has failed to establish any deficiency on the part of Counsel. In instances where a defendant may be guilty under a theory of accomplice liability, "the trial court may be required to instruct the jury that 'a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.'" *State v. Dennis*, 321 S.C. 413, 420, 468 S.E.2d 674, 678 (Ct. App. 1996) (quoting *State v. Austin*, 299 S.C. 456, 385 S.E.2d 830 (1989)). In addition, "mere presence at the scene is not sufficient

to establish guilt as an aider or abettor.” *Mattison*, 388 S.C. at 480, 697 S.E.2d at 584 (quoting *State v. Leonard*, 292 S.C. 133, 137, 355 S.E.2d 270, 272 (1987)). The eyewitness testified Applicant came into the cage of the bingo parlor with a gun and asked where the money was. Tr. 279, 281. After she pointed to the cash drawer, Applicant then opened the drawer and took the money out. Tr. 279-80. Based on the foregoing, this Court finds there was no evidence to support a charge on mere presence, as the eyewitness testimony indicated Applicant actively participated in the crime. Indeed, the trial court stated: “Mere presence is not an issue in this case.” Tr. 562. This Court further finds Applicant has failed to establish Counsel was deficient.

Similarly, this Court finds Applicant has wholly failed to establish any resulting prejudice from this alleged deficiency. In reviewing jury charges for error, the charge must be taken as a whole in light of the evidence presented at trial. *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003). Moreover, a jury charge is correct if, when it is read as a whole, it contains the correct definition and adequately covers the law.” *Id.* at 318, 577 S.E.2d at 464. A jury charge which is substantially correct and covers the law does not require reversal. *State v. Foust*, 325 S.C. 12, 479 S.E.2d 50 (1996). Furthermore, “the substance of the law is what must be charged to the jury, *not* any particular verbiage.” *Adkins*, 353 S.C. at 318-19, 577 S.E.2d at 464 (emphasis added). Here, the trial court charged: “Present – being present at the commission of a crime means to be sufficiently near to aid and abet and assist in the commission of the crime. However, mere presence at the scene of a crime is not sufficient to convict one as the principal on the theory of aiding and abetting.” Tr. 645, 651. Taken as a whole, this Court finds the trial court’s charge contained the correct definition and adequately covered the law. This allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to object to the jury charge

Applicant contends Counsel was ineffective for failing to object to the jury charge after it had been given. Applicant, however, wholly fails to articulate to what exactly Counsel should have objected. Indeed, at the hearing, Applicant merely indicated: "Following the judge charging the jury on the law, [Counsel] failed to object to the judge's jury charge despite him not charging some of the things you requested." PCR Tr. 46. Applicant wholly failed to identify the "things" which were requested but not charged. This Court finds this allegation is so vague that Applicant has failed to establish any deficiency on the part of Counsel or any resulting prejudice therefrom. Therefore, this allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this 12 day of February, 20 19.



J. DERHAM COLE
Presiding Judge
Fifth Judicial Circuit

_____, South Carolina

WITNESSES

(S) Isenhoward - Richland County Sheriff

ARREST WARRANT NUMBER

DP12160

ACTION OF GRAND JURY

TRUE BILL

Jill Koenigs
Foreperson of Grand Jury
Date: JUL 19 2012

VERDICT

Guilty

R. M. C. #138
Representative of Petit Jury
Date: 9/20/12

DOCKET NO. 2012GS4004246

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

July TERM 2012

154

**THE STATE
vs.**

Jeff Vontavious Chestnut

**Indictment for
ARMED ROBBERY**

SC Code: 16-11-0330(A)
CDR Code: 0139

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

**CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA**

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on July 18, 2012, the
Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Jeff Vontavious Chestnut did in Richland County on or about May 23, 2010, commit robbery by feloniously taking from the person or presence of Drenita Ore, by means of force or intimidation, goods or monies of Drenita Ore, such goods or monies being described as US Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he or she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of §16-11-330(A), SC 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.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Isenhoward – Richland County Sheriff

ARREST WARRANT NUMBER

DP12159

ACTION OF GRAND JURY

TRUE BILL

Jill Koenige
Foreperson of Grand Jury
Date: JUL 19 2012

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury
Date: 9/20/12

DOCKET NO. 2012GS4004245

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

July TERM 2012

154

**THE STATE
vs.**

Jeff Vontavious Chestnut

**Indictment for
ARMED ROBBERY**

SC Code: 16-11-0330(A)
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After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

**CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA**

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on July 18, 2012, the
Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Jeff Vontavious Chestnut did in Richland County on or about May 23, 2010, commit robbery by feloniously taking from the person or presence of Sarah Furtick, by means of force or intimidation, goods or monies of Sarah Furtick, such goods or monies being described as US Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he or she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of §16-11-330(A), SC 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.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Isenhoward – Richland County Sheriff

ARREST WARRANT NUMBER

DP12163

ACTION OF GRAND JURY

TRUE BILL

Jill Koenig
Foreperson of Grand Jury
Date: JUL 19 2012

VERDICT

Guilty

R. H. H. #138
Foreperson of Petit Jury
Date: 9/20/12

DOCKET NO. 2012GS4004244

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

July TERM 2012

154

**THE STATE
vs.**

Jeff Vontavious Chestnut

**Indictment for
KIDNAPPING**

SC Code: 16-03-0910
CDR Code: 0095

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

**CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA**

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on July 18, 2012, the
Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That Jeff Vontavious Chestnut did in Richland County on or about May 23,
2010, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry
away one Drenita Ore, without authority of law, in violation of Section 16-
03-0910, S. C. Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.


DAN JOHNSON, SOLICITOR

WITNESSES

(S) Isenhoward – Richland County Sheriff

ARREST WARRANT NUMBER

DP12162

ACTION OF GRAND JURY

TRUE BILL

Jill Koenig
Foreperson of Grand Jury
Date: JUL 19 2012

VERDICT

Guilty

[Signature] #138
Foreperson of Petit Jury
Date: 9/20/12

DOCKET NO. 2012GS4004243

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

July TERM 2012

154

**THE STATE
vs.**

Jeff Vontavious Chestnut

**Indictment for
KIDNAPPING**

SC Code: 16-03-0910
CDR Code: 0095

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

**CERTIFIED TRUE COPY
OF ORIGINAL FILED,**
[Signature]
**C.C.C. & G.S.
RICHLAND COUNTY**

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on July 18, 2012, the
Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That Jeff Vontavious Chestnut did in Richland County on or about May 23, 2010, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Sarah Furtick, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Isenhoward – Richland County Sheriff

ARREST WARRANT NUMBER

DP12158

ACTION OF GRAND JURY

TRUE BILL

Gill Koenig
 Foreperson of Grand Jury
 Date: JUL 19 2012

VERDICT

Guilty

R. A. #138
 Foreperson of Petit Jury
 Date: 9/20/12

DOCKET NO. 2012GS4004242
The State of South Carolina
County of
Richland

COURT OF GENERAL SESSIONS

July TERM 2012

154

THE STATE
vs.

Jeff Vontavious Chestnut

Indictment for
ARMED ROBBERY

SC Code: 16-11-0330(A)
CDR Code: 0139

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

 I
 hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeanette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on July 18, 2012, the
Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Jeff Vontavious Chestnut did in Richland County on or about May 23, 2010, commit robbery by feloniously taking from the person or presence of Marva Coates, by means of force or intimidation, goods or monies of Marva Coates, such goods or monies being described as US Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he or she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of §16-11-330(A), SC 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.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Isenhoward - RCSD - Richland County
Sheriff

ARREST WARRANT NUMBER

DP12161

ACTION OF GRAND JURY

TRUE BILL

Jill Koenig
Foreperson of Grand Jury
Date: JUL 19 2012

VERDICT

Guilty

[Signature] #138
Foreperson of Petit Jury
Date: 9/20/17

DOCKET NO. 2012GS4004241

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

July TERM 2012

154

**THE STATE
vs.**

Jeff Vontavious Chestnut

**Indictment for
KIDNAPPING**

SC Code: 16-03-0910
CDR Code: 0095

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

**CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA**

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on July 18, 2012, the
Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That Jeff Vontavious Chestnut did in Richland County on or about May 23, 2010, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Marva Coates, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DAN JOHNSON, SOLICITOR