

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County

Honorable D. Craig Brown, Circuit Court Judge

TYKEEM KALANI MAY,

RECEIVED
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S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000524

APPENDIX

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State v. Tykeem May
Jackson V. Denno Hearing
August 13, 2014

1 Your Honor.

2 THE COURT: Sir, if you would come forward to be
3 sworn.

4 [Whereupon, Mr. Dukes comes forward]

5 [Whereupon, Mr. Dukes is duly sworn by the clerk
6 of court as follows: do you hereby swear or affirm
7 that the evidence you shall present will be the truth,
8 the whole truth, and nothing but the truth, so help
9 you God]

10 THE WITNESS: I do.

11 MR. BELL: And, Your Honor, if I may lead a
12 little bit at the beginning --

13 THE COURT: In the interest of time, yeah. You
14 may proceed.

15 Please state your full name for the record.

16 THE WITNESS: Kevin Christian Dukes. Do you
17 need me to spell my last name?

18 THE COURT: Yeah, just to be consistent. Thank
19 you.

20 THE WITNESS: Last name is D-U-K-E-S.

21 THE COURT: You may proceed.

22 - - -

23 - - -

24 - - -

25 - - -

Jackson v. Denno Hearing
Kevin Dukes
Direct Examination by Mr. Bell

1 KEVIN DUKES,

2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. BELL:

6 Q. Sargent Dukes, I think we've had your testimony
7 before. And to get to where we need to be, I think you
8 testified under oath, prior to, that on September 15th you
9 went to the house at [REDACTED] Wilkinson Street and that you and
10 other officers took the defendant, Tykeem May, into
11 custody along with Ms. Ford; is that correct?

12 A. Correct.

13 Q. And what did you do with Mr. May when he was
14 taken into custody there?

15 A. They were separated. Him and Ms. Ford were
16 separated. Both Ms. Ford and Mr. May were taken to our
17 headquarters, 1320 Middleton Street, for interrogation
18 purposes.

19 Q. And who talked to Mr. May?

20 A. Myself.

21 Q. And when you went to talk to Mr. May, where did
22 you talk to him?

23 A. I talked to him at my desk, which is back in
24 investigations.

25 Q. Is it a particular room?

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1 A. It's an open area. We have partitions. I think
2 we have nine desks altogether, and we just have
3 partitions. But it's not closed off. It's very open.

4 Q. Was Mr. May in handcuffs, or not, when you were
5 talking to him?

6 A. He was in handcuffs but we had removed them from
7 the back, so he would be more comfortable, and put them in
8 the front.

9 Q. Now, when he was taken into custody, I think you
10 also testified, and others, that the county's SWAT team or
11 SRT team went in --

12 A. Correct.

13 Q. I mean, they put them in handcuffs and they
14 probably put them at gunpoint at the location; correct?

15 A. Correct.

16 Q. Because of the circumstances?

17 A. Correct. Because of the nature of the crime.

18 Q. When you brought him back to your headquarters
19 on Middleton Street, police headquarters, DPS
20 headquarters, he was at your desk?

21 A. Uh-huh.

22 Q. And you changed -- he was in handcuffs?

23 A. Correct.

24 Q. And you changed them where he was comfortable?

25 A. Correct.

Jackson v. Denno-Hearing
Kevin Dukes
Direct Examination by Mr. Bell

1 Q. Did you ask him if he wanted anything to eat or
2 drink?

3 A. I can't remember specifically if I asked him
4 that. But it was available to him. Had he have asked, it
5 would have been made available to him.

6 Q. Okay. Did he ask to go to the restroom at any
7 time?

8 A. I can't remember. I don't believe so, to the
9 best of my recollections. But I don't remember.

10 Q. And how was his demeanor? How was he acting?

11 A. Like most people that get taken into custody.
12 He was quiet. He only answered if he was asked a
13 question.

14 Q. Now, when you started talking to him, what's the
15 first thing that you did?

16 A. I Mirandized him. What we did is actually --
17 may I look at it? We have a form, a Miranda rights form,
18 that -- so we can have it documented, that I actually read
19 out to them.

20 First of all, I ask them can they read and write
21 and what's their educational level. I can't remember what
22 his answer was, as far as the education, but I think he
23 told me he was currently still in college. But I asked
24 him could he read and write okay and he stated that he
25 could. So what I did is I verbally read, verbatim, each

Jackson v. Denno Hearing
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1 line out.

2 At the top you actually have the Miranda
3 warnings. I gave him or handed him a pen --

4 Q. Go ahead. I'm listening.

5 A. -- handed him a pen and I asked him, at
6 completion of each one, did he understand that. He stated
7 that he did, and he provided his initials by each
8 sentence.

9 At the very bottom of it I asked him again, do
10 you understand the statement as a whole. He stated that
11 he did, and he provided his signature.

12 Q. And I'm going to show you this document and ask
13 is that what you're referring to.

14 A. Yes. Correct.

15 Q. And what rights did you read to him?

16 A. If you want me to read it to you, I can read it.

17 Q. Yes, please. Read them as they -- and what did
18 -- you read it to him? How did you do it? How did you
19 read it to him?

20 A. He was sitting next to me at the desk and I
21 explained to him what I was going to read to him and the
22 reason I was going to read it to him, that we were
23 investigating the armed robbery and because he was a
24 person of interest, that before I could question him or
25 talk to him that he had to understand his rights.

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1 And basically what I did is I took the form and
2 I put it in front of him and I gave him a pen and asked
3 him that if he understood each statement, each sentence
4 that I read, to provide his signature on it. And I read
5 out to him, you have the right to remain silent; anything
6 you say can be used against you in court; you have the
7 right to talk to a lawyer for advice before we ask you any
8 questions and to have him with you during questioning; if
9 you cannot afford a lawyer, one will be appointed for you
10 before any questioning if you wish; if you decide to
11 answer questions now without a lawyer present, you will
12 still have the right to stop answering at any time; you
13 also have the right to stop answering at any time until
14 you talk to a lawyer.

15 And at completion of that I asked him, do you
16 understand this as a whole, and he provided his signature.

17 Q. Okay. And you stated that he initialed each
18 line as you --

19 A. He initialed by each line as we went.

20 Q. And what does that initial signify?

21 A. I imagine it would be his initials, Tykeem --

22 Q. But what do they signify, though?

23 A. That he understood what was read to him.

24 Q. And after you read him all that, you read him a
25 waiver of rights, as well --

Jackson v. Denno Hearing
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1 A. Correct. At the bottom of the form. Correct.

2 Q. -- that basically states that he read the
3 statements of his rights and he understands what his
4 rights are, et cetera?

5 A. Correct.

6 Q. And he signed it? That's his signature?

7 A. He did. Correct.

8 Q. And whose signature is at the bottom?

9 A. That's myself and -- at the time, I think she
10 was a corporal. It was Latisha Walker.

11 Q. And did he, in actuality, based on your
12 observations, understand what was going on?

13 A. Correct. He stated so by providing his
14 signature and verbally.

15 Q. But, I mean, did you -- did he seem to
16 understand it?

17 A. Yes.

18 Q. Was he -- did he appear under the influence of
19 any substances or --

20 A. No.

21 Q. And did he say if he had had anything to drink
22 or ingested --

23 A. I didn't ask.

24 Being an officer, I didn't detect any alcohol or
25 any substances that I could detect coming from his

Jackson v. Denno Hearing
Kevin Dukes
Direct Examination by Mr. Bell

1 persons.

2 MR. BELL: The Miranda rights form we would
3 offer as a Court's Exhibit.

4 THE COURT: I apologize.

5 [Off the record momentarily]

6 THE COURT: Any exception from the defense?

7 MR. STEVENS: No, Judge.

8 THE COURT: Then it will be a Court's Exhibit
9 for the purposes of this hearing.

10 THE COURT REPORTER: Court's 1 for the Jackson-
11 Denno.

12 THE COURT: Thank you.

13 [Whereupon, Jackson v. Denno Court's Exhibit
14 Number 1 is marked by the court reporter]

15 Q. [Mr. Bell] And let me show you this second
16 piece of paper and ask you if you can identify that.

17 A. That's a voluntary statement form. And at that
18 time he was not under arrest, he was just being detained
19 for this crime. But it was a voluntary statement of
20 pretty much his actions on the date of the armed robbery,
21 which would have been September the 8th.

22 Q. And who wrote the body of that form?

23 A. He did.

24 Q. Who wrote his -- did you write his name or did
25 he write his name?

Jackson v. Denno Hearing
Kevin Dukes
Direct Examination by Mr. Bell

1 A. No. He wrote his name.

2 Q. And whose signatures are at the bottom?

3 A. Would be myself and I believe that's Latisha
4 Walker.

5 Q. And how did -- did you ask him several questions
6 or did you just ask him to write what's --

7 A. I asked him directly if he had anything to do
8 with the armed robbery. His demeanor was he kind of
9 wanted to open up and talk to me. But he kept his
10 conversation limited.

11 I asked him if he could, you know, write out
12 where he was that day, did he remember where he was on
13 September the 8th, and that's pretty much what he did on
14 here.

15 Q. And that's what he wrote?

16 A. Correct. Yes, sir.

17 Q. Did you force him to write this?

18 A. No, sir. Not at all.

19 Q. Did you tell him what to write?

20 A. No, sir.

21 Q. Did you offer him anything to sign these
22 forms --

23 A. No, sir.

24 Q. -- Court's 1?

25 Let me --

Jackson v. Denno Hearing
Kevin Dukes
Direct Examination by Mr. Bell

1 MR. BELL: This second one, Your Honor, I would
2 offer as Court's 2 or Court's --

3 THE COURT: Any objection?

4 MR. STEVENS: No objection.

5 THE COURT: Marked and admitted as Court's next
6 in line.

7 THE COURT REPORTER: Court's 2 for the Jackson-
8 Denno.

9 [Whereupon, Jackson v. Denno Court's Exhibit
10 Number 2 is marked by the court reporter]

11 Q. [Mr. Bell] And both of these, Court's 1 for the
12 Jackson v. Denno and Court's 2 for the Jackson v. Denno, I
13 was asking you did you offer him anything to write this or
14 sign his name on any of these documents.

15 A. Not at all.

16 Q. Did you --

17 A. And I explained to him again -- even when I read
18 him the Miranda warnings and the waiver of rights, before
19 I put the statement form in front of him I told him, I
20 said, look, you don't have to write a statement; if you
21 want to talk to a lawyer, you know, that's your right.
22 I'm not a high-pressured type person.

23 Q. Did you force him?

24 A. No. Not at all.

25 Q. Did you put a gun to his head and make him write

Jackson v. Denno Hearing
Kevin Dukes
Direct Examination by Mr. Bell

1 this?

2 A. Not at all.

3 Q. Was he under any duress to write a statement?

4 A. No.

5 Q. He did it freely and voluntarily, as far as you
6 saw?

7 A. Yes.

8 Q. And this is his statement?

9 A. Yes.

10 Q. He understood what was going on?

11 A. Yes.

12 Q. And the person that gave the statement, could
13 you point him out? Is he in the courtroom?

14 A. It's the defendant, Mr. May.

15 MR. BELL: Nothing further, Your Honor.

16 THE COURT: Any questions for the witness?

17 MR. STEVENS: Yes, Judge.

18 THE COURT: You may proceed.

19 MR. STEVENS: How are you doing, sir.

20 THE WITNESS: How are you.

21 MR. STEVENS: Just briefly.

22

23

- - -

24

- - -

25

- - -

Jackson v. Denno Hearing
Kevin Dukes
Cross-Examination by Mr. Stevens

CROSS-EXAMINATION

BY MR. STEVENS:

Q. You said you separated both Mr. May and Ms. Ford?

A. Correct.

Q. And you took both of them to headquarters for interrogation?

A. Our headquarters. Correct.

Q. And they were taken that night from their home; right?

A. That's correct.

Q. At [REDACTED] Wilkinson Street?

A. Correct.

Q. And that was in the middle of the night; right?

A. Correct.

Q. Okay. And you said the SRT team was used; right?

A. They were. Yes, sir.

Q. What does SRT stand for?

A. It's basically a special response and tactics team. Whenever we feel -- if we're going to execute a search warrant or we're taking police action where either an officer's life or a citizen's life is going to be in danger or there may be deadly weapons present, it's not uncommon for us to use that type of team. Because it was

MIA PERRON, CVR-CM-M

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Cross-Examination by Mr. Stevens

1 in the county, we had to contact the county SRT team.

2 Q. It's kind of like a SWAT team?

3 A. Correct. Yes, exactly.

4 Q. So the SWAT team hit the house?

5 A. Yes.

6 Q. And they were handcuffed?

7 A. Yes.

8 Q. Guns were pointed, obviously?

9 A. I wasn't in the house, but I would assume so,
10 yes, sir.

11 Q. Okay. They were put in cars?

12 A. Yes.

13 Q. Taken to headquarters?

14 A. Yes.

15 Q. And you said that they were separated; right?

16 A. Yes.

17 Q. Now, you said he was eventually taken over to
18 your cubicle?

19 A. Yes.

20 Q. He didn't start out in your cubicle?

21 A. He didn't start out in my --

22 Q. Where did they initially have him?

23 A. I'm not sure exactly where he went, because
24 initially Ms. Ford was at my cubicle.

25 Q. I see. But he was still handcuffed while he was

Jackson v. Denno Hearing
Kevin Dukes
Cross-Examination by Mr. Stevens

1 there; right?

2 A. Correct.

3 Q. And you did have an opportunity to speak with
4 him; right?

5 A. I did. Yes, sir.

6 Q. And when you spoke with him, did he ask any
7 questions?

8 A. He was pretty -- he was pretty quiet. I mean,
9 he really didn't say anything. Unless I asked him a
10 specific question, he really didn't give an answer --

11 Q. -- it out?

12 A. Yeah.

13 Q. Okay. So he asked you why he was there?

14 A. To my knowledge, I don't remember. I think I
15 explained that to him once we got in.

16 Q. I see.

17 You said you don't remember whether he asked to
18 go to the bathroom?

19 A. Correct. I do not remember.

20 Q. Now, you said they were Mirandized, that you
21 read it out for him; right?

22 A. Correct.

23 Q. You also said that he was not under arrest at
24 the time?

25 A. He was not. He was detained.

Jackson v. Denno Hearing
Kevin Dukes
Cross-Examination by Mr. Stevens

- 1 Q. Detained. Okay.
- 2 So he was not free to go; right?
- 3 A. He was not free to go.
- 4 Q. Okay. He was in the police station?
- 5 A. Correct.
- 6 Q. In handcuffs?
- 7 A. Correct.
- 8 Q. And Mirandized?
- 9 A. Correct.
- 10 Q. And being asked questions about his potential --
- 11 A. Involvement --
- 12 Q. -- involvement in a robbery?
- 13 A. Correct.
- 14 Q. So you would agree that that was a question that
- 15 would lead to potentially inculpatory statements; right?
- 16 A. I understand that, yes.
- 17 Q. Now, did he ever ask about an attorney?
- 18 A. I think once -- once I started talking with him,
- 19 he didn't really. Because I specifically asked him did he
- 20 have anything to do with the robbery. Of course, he
- 21 denied it. I asked him could he recount the events of
- 22 where he was at on September the 8th and I explained to
- 23 him that I know that was a week prior, you know, if he
- 24 could give me -- if he couldn't provide exact times, just
- 25 to basically lay out where he was at that day, which he

Jackson v. Denno Hearing
Kevin Dukes
Cross-Examination by Mr. Stevens

1 did in the voluntary statement.

2 I also explained to him that I had already
3 talked with Ms. Ford and that several of the items that
4 were in the video she had pointed out to me, such as her
5 car, the shoes, the rifle and such.

6 And at that point -- I can't remember whether he
7 specifically asked for a lawyer but from his demeanor, I
8 assumed he didn't want to talk anymore. I didn't want to
9 push the issue, so I just discontinued questioning.

10 Q. Do you remember if he said, you know, do you
11 think I need a lawyer to you?

12 A. I can't remember. I mean, that's been over a
13 year ago. I can't specifically remember that.

14 Had he done that, I would have gave him that
15 opportunity. I would have quit questioning and just gave
16 him the opportunity to make contact with a lawyer or get a
17 public defender.

18 Q. Okay. Thank you.

19 MR. STEVENS: Court's indulgence?

20 THE COURT: Uh-huh.

21 MR. STEVENS: No further questions at this time.

22 THE COURT: Any redirect?

23 MR. BELL: No, Your Honor.

24 THE COURT: Sir, you may step down.

25 THE WITNESS: Thank you.

Jackson v. Denno Hearing
Kevin Dukes
Cross-Examination by Mr. Stevens

1 [Whereupon, Mr. Dukes is excused and exits the
2 witness stand]

3 THE COURT: Any further witnesses from the
4 State?

5 MR. BELL: None from the State, Your Honor.

6 THE COURT: Any further witnesses from the
7 defense?

8 MR. STEVENS: Court's indulgence, Judge.

9 THE COURT: Yes, sir.

10 MR. STEVENS: Yes, ma'am.

11 THE COURT: You may proceed.

12 MR. STEVENS: Thank you. For purposes of the
13 Jackson v. Denno hearing, the defense calls Tykeem
14 May.

15 THE COURT: Sir, if you would come to this
16 stand. I'll remind you you are still under oath.

17 [Whereupon, Mr. May comes forward]

18 THE COURT: Once seated, please state your full
19 name for the record and spell your last name for the
20 court reporter.

21 THE WITNESS: Tykeem Kalami May. Last name,
22 M-A-Y.

23 THE COURT: You may proceed.

24 MR. STEVENS: Thank you, Judge.

25 THE COURT: You're welcome.

Jackson v. Denno Hearing
Tykeem May
Direct Examination by Mr. Stevens

1

TYKEEM MAY,

2

Having Been First Duly Sworn,

3

was Examined and Testified as Follows:

4

DIRECT EXAMINATION

5

BY MR. STEVENS:

6

Q. Tykeem, I want to talk about the night of
September 15, 2013.

8

A. All right.

9

Q. Do you remember it?

10

A. Vaguely.

11

Q. Okay. Where were you that night?

12

A. September 13.

13

Q. No, no. 15th.

14

A. 15th. Okay. September 15th, I was at

15

Ms. Ford's residence.

16

Q. Is that at [REDACTED] Wilkinson Street?

17

A. Yes.

18

Q. Did you have anything to drink that night?

19

A. Yes. Throughout the day, I was drinking.

20

Q. Okay. And about what time did you start

21

drinking?

22

A. About 7:30, I believe, p.m.

23

Q. P.M. Okay. What did you drink?

24

A. I had about -- I bought a six-pack of Miller

25

Highlife and I was just drinking one of them, you know.

Jackson v. Denno Hearing
Tykeem May
Direct Examination by Mr. Stevens

1 And I believe it was Sunday, so I was -- no. I believe it
2 was Sunday. I'm not quite sure. But I believe it was a
3 Sunday, so I was watching football and drinking. The
4 Highlifes, I don't really call that heavy drinking
5 because, you know, you can drink a beer every now and
6 then. But by the time I got done, I drunk about five.

7 Q. And any other drinks?

8 A. I had a couple shots of gin.

9 Q. Were you able to get to sleep that night?

10 A. No. I dozed off for a second, though, sitting
11 on the front -- on the front couch.

12 Q. Were you woken up that night?

13 A. Yes.

14 Q. What happened?

15 A. The front door was kicked open or somehow
16 opened. I don't know if they kicked it or used a
17 battering ram or something. But they barged -- some
18 people barged in. They never announced who they were. I
19 just put one and two together. I was thrown to the
20 ground, a gun was pointed at my head. There was threats
21 to shoot the dog. Well, it wasn't my dog, it was
22 Ms. Ford's dog but I help take care of him. And he
23 threatened to shoot the dog. Then they put me and
24 Ms. Ford in handcuffs. And when they took us to the
25 front, I asked a plethora of times what exactly was going

Jackson v. Denno Hearing
Tykeem May
Direct Examination by Mr. Stevens

1 on, and no one told me. And then when I seen the cars
2 outside, I knew that it was police. So then I asked what
3 was going on again and they told me they would tell me at
4 the station.

5 Q. So where did they put you next?

6 A. They put me in the back of a police car.

7 Q. And where did they take you?

8 A. They took me to the station.

9 Q. Where in the station did they take you?

10 A. To an interrogation room.

11 Q. Were you still handcuffed?

12 A. Yes.

13 Q. Did you say anything about the handcuffs?

14 A. Yes.

15 I told them that it was too tight and that it
16 was uncomfortable because they were behind my back. And
17 once I did that, they moved them to the front for me.

18 Q. Did you speak with Corporal Dukes?

19 A. Yes.

20 Q. Did you ask him anything?

21 A. Yes. Actually, I asked him -- he came in and he
22 introduced himself. And I asked him -- once he started to
23 talk to me, I asked him what was this obtaining to. And
24 he really didn't go in too much detail. And he just
25 started asking me what I did on September 8th.

Jackson v. Denno Hearing
Tykeem May
Direct Examination by Mr. Stevens

1 And then I asked him, do you think I need a
2 lawyer. And when I asked him that, he said, do you think
3 you need a lawyer. And I said, well, I don't feel as if I
4 do; lawyers are for people who think they did something or
5 they're guilty and I still wanted to know exactly what I
6 was there for.

7 Q. All right. Did you stay in the room?

8 A. For a brief second he left out.

9 Q. So you were left in the room at the time? Or
10 were you left in the room at the time?

11 A. Yes, I was, with another officer.

12 Q. Did Corporal Dukes comes back?

13 A. Yes, he did.

14 Q. What happened next?

15 A. When he came back, he started to question me
16 about the whereabouts of that night. He told me to write
17 a statement, and I wrote the statement.

18 But at the time, he was just asking me stuff
19 like, you know, if he -- what exactly he said? I don't
20 want to -- I want to get exactly what he said. He said
21 something of the effects of if you help me out, I'll help
22 you out, or something like that. And I was kind of
23 confused because I was trying to figure out what exactly
24 he wanted me to do, like you --

25 Q. Did you feel under duress or coerced?

Jackson v. Denno Hearing
Tykeem May
Direct Examination by Mr. Stevens

1 A. Yes.

2 Q. What did you do?

3 A. I wrote the statement, thinking to the best of
4 my ability. Still kind of confused and dazed from the
5 whole incident. And I gave him the statement. He left
6 out with it.

7 Q. Did anyone come back in?

8 A. Yes.

9 Ms. Walker, Latisha, she came back in with the
10 statement and laid it down.

11 Q. So she had the statement, brought it back and
12 laid -- did you say. Okay.

13 Did she say anything to you?

14 A. Yes.

15 She told me that, I don't believe the statement
16 is true, and something about we're just going to act like
17 you didn't write that statement and you can write again
18 what really happened. And I told them to the best of my
19 knowledge that is what happened.

20 Q. Did anyone else come back into the interrogation
21 room?

22 A. Kevin Dukes.

23 Q. Did they keep you in the interrogation room at
24 that time?

25 A. Yes.

Jackson v. Denno Hearing
Tykeem May
Direct Examination by Mr. Stevens

1 But once Kevin Dukes came in and started to
2 question me, he took me to a cubicle and showed me a
3 video.

4 Q. What videos did he show you?

5 A. He showed me what he said was a robbery from the
6 Keg on September 8th. And he said that -- he asked where
7 was I at on that date, he didn't believe my statement.
8 And I told him that the statement that I wrote was to the
9 best of my knowledge and that, you know, I didn't know
10 anything about a robbery.

11 So he kept I guess you could say badgering me,
12 because he kept insisting, yes, you do know, yes, you do
13 know. And then he went as far as to say -- or Ms. Walker
14 went as far as to say, I know that's you right there, and
15 tried to describe stuff on the robbery and say that was
16 me. And I said, no, ma'am, that's not me. And then he
17 said, so you didn't rob the Hot Spot. And I said, the Hot
18 Spot, I thought you said the Keg. And he said, you know
19 what I'm talking about. And I was like, no. And he was
20 like, if you help me out, I'll help you out. He said that
21 again. And after I denied it again, I caught my head and
22 shook my head because I just couldn't believe that I was
23 being accused of something like this.

24 Then he told them to just put the handcuffs back
25 in the front -- I mean, behind me, and they took me to the

Jackson v. Denno Hearing
Tykeem May
Direct Examination by Mr. Stevens

1 station. But at that point, he Mirandized me right when
2 they put the handcuffs behind me. I was standing on the
3 wall and he told me, don't try to escape because it won't
4 do any good. And I reassured him, why would I try to
5 escape, I'm not guilty, I didn't do anything. And then
6 they took me to the county jail.

7 Q. Were any threats, verbal threats, made to you?

8 A. No, not -- none other than him -- I felt like
9 him telling me to help me out or I'll help you out or you
10 won't see the light of day, that could be somewhat of a
11 threat. But --

12 Q. I got you.

13 Now, this is -- just to make sure we're clear.
14 Is this on the same night you actually drink one to two
15 shots of gin and five Miller Highlife beers?

16 A. Yes.

17 Q. Were you thinking clearly when you wrote your
18 statement?

19 A. No.

20 I was really under duress and I was -- I just
21 had -- I was -- my mind was everywhere.

22 Q. Was all the information a hundred percent
23 accurate?

24 A. No.

25 Q. So from your perspective, was your statement

Jackson v. Denno Hearing
Tykeem May
Direct Examination by Mr. Stevens

1 freely, knowingly, and voluntarily made?

2 A. No.

3 MR. STEVENS: Okay. Thank you. Please answer
4 any questions.

5 THE COURT: You may proceed.
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Jackson v. Denno Hearing
Tykeem May
Cross-Examination by Mr. Bell

CROSS-EXAMINATION

BY MR. BELL:

Q. When do you say that they gave you Miranda warning, Mr. May?

A. They showed me the paper. And that was after I wrote the statement they showed me the paper and I initialed it and I signed the bottom.

But I really was -- when I was initialing and signed the bottom, it was read to me but I wasn't really thinking about what was going on: I was trying to figure out still why I was being accused and everything. And then they read my Miranda rights again, right before they put the handcuffs from the front to the back.

Q. Now, when did you say they showed you the paper, which is Court's 1 for this hearing?

A. They showed me that after I wrote the statement.

Q. After you wrote the statement? That's your testimony?

A. Yes.

Q. And you just initialed these willy-nilly?

A. No.

He actually started to read it and then when he read it he was like, just initial beside there. And I started -- he said, if you understand. And I initialed and then I signed it.

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1 Q. Did you understand what he was saying?

2 A. Yes.

3 I was familiar with the Miranda rights, but I
4 just -- like I said, I was intoxicated at the time and I
5 felt like I was under duress, so I was just trying to help
6 him as much as possible.

7 Q. So are you saying that they forced you to write
8 this statement?

9 A. Actually, like I said, I was trying to help him
10 as much as possible and when I gave him the statement, I
11 wasn't thinking clearly.

12 Q. But every time they tried to say that this
13 statement's incorrect you said, that's my statement;
14 right?

15 A. No.

16 Actually, he didn't come back and say that.
17 Ms. Latisha -- I forget her name. But she came in and
18 laid the statement down and said that, we know that this
19 isn't your statement, tell us what really happened. And I
20 told them to the best of my knowledge that was what
21 happened. But at that time, I was intoxicated.

22 Q. But that statement, to the best of your
23 knowledge, was what happened?

24 A. At that -- at that point in time.

25 Q. So their offers of helping you or your feeling

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Cross-Examination by Mr. Bell

1. of coercion didn't change your mind, did it?

2. A. No.

3. Q. I mean, you didn't say that you were involved in
4 a robbery, did you -- an armed robbery, did you?

5. A. No, sir.

6. Q. They didn't force you into saying that, did you
7 [phonetic]

8. A. No, sir.

9. Q. You weren't coerced into saying that, were you?

10. A. No, sir.

11. Q. You told them what you say you did and kept to
12 that statement; is that correct?

13. A. Yes, sir, I did.

14. Q. Okay. And your version is that they gave you
15 Miranda afterwards; is that right?

16. A. Yes.

17. Q. Did they -- but did they force you to write this
18 statement, which is Court's 2?

19. A. Other than giving me the sheet and telling me to
20 write what happened that night, no.

21. Q. Did they tell you what to write down?

22. A. No.

23. Q. You wrote this down; right?

24. A. Yes. I've been --

25. Q. Knowingly, you wrote this down?

Jackson v. Denno Hearing
Tykeem May
Cross-Examination by Mr. Bell

1 A. I've been told to recount my what I did on
2 September the 8th.

3 Q. Okay. And you wrote what you remembered you did
4 on September 8th at that time; right?

5 A. Yes, at that time.

6 Q. They didn't force you to write that down, they
7 just told you to; right?

8 A. Yes.

9 Q. And you stated that Mr. Dukes -- you asked him
10 if the question was that you stated to Mr. Dukes, Sargent
11 Dukes, do you think I need an attorney; is that correct?

12 A. Yes.

13 Q. Is that the statement you said?

14 A. Yes.

15 Q. And he didn't tell you one way or the other, did
16 he?

17 A. He inferred that, I don't believe you do -- no.
18 it was either, I don't believe -- something to the effect
19 of, I don't believe you do or what do you -- it was, do
20 you think you need an attorney.

21 Q. So he just was asking you back, do you think you
22 need an attorney?

23 A. No.

24 Q. He's a police officer; right? He's not there to
25 help give you advice; right?

Jackson v. Denno Hearing
Tykeem May
Cross-Examination by Mr. Bell

1 A. Huh-uh.

2 Q. And your statement, if I remember correctly, was
3 -- and correct me if I'm wrong -- was, I don't think I
4 need one. Right?

5 A. Yes.

6 MR. BELL: Okay. No further --

7 A. I don't think I need one because I'm not guilty.

8 MR. BELL: Nothing further, Your Honor.

9 THE COURT: Any redirect?

10 MR. STEVENS: No, Judge.

11 THE COURT: Sir, you may step down.

12 [Whereupon, Mr. May is excused and exits the
13 witness stand]

14 THE COURT: Any further witnesses?

15 MR. STEVENS: No further witnesses from us,
16 Judge.

17 THE COURT: Any further witnesses from the
18 State?

19 MR. BELL: No, Your Honor.

20 THE COURT: Glad to hear any argument.

21 MR. STEVENS: I'm sorry, Judge?

22 THE COURT: I said I'll be glad to hear any
23 argument, if there is any.

24 MR. STEVENS: Thank you, Judge.

25 We have heard some evidence of a -- regarding

Jackson v. Denno Hearing
Tykeem May
Cross-Examination by Mr. Bell

1 this hearing from the witness indicating that he did
2 feel duress, did feel coerced. When it comes to the
3 issue of coercion, it's to be viewed from the
4 perspective of the accused. He's also indicated that
5 the information in there, you know, might have been
6 accurate to what he actually thought that day or at
7 that moment. We also know that he doesn't feel it was
8 accurate because of the mental condition that he was
9 in at the time, due to being under the influence.

10 Additionally, Judge, he's indicated that that
11 was his way of asking for an attorney and none was
12 given at the time and the interrogation did not end at
13 that moment. That's evidence in the record from our
14 client.

15 From now Sargent Dukes, he indicated that
16 although it's contradictory evidence as far as what he
17 would have done, he did at least acknowledge that
18 there was conversation about an attorney. It simply
19 was my recollection to testimony.

20 Based on those circumstances, Judge, we would
21 move to have his statement suppressed --

22 THE COURT: Any response from the State?

23 MR. BELL: Yes, Your Honor.

24 I would say that his answer was extremely clear:
25 he didn't ask for an attorney, he just asked do you

Jackson v. Denno Hearing
Tykeem May
Cross-Examination by Mr. Bell

1 think I need an attorney. And I think our courts are
2 pretty clear, both South Carolina and federal are --
3 and I hate to use this term, but they -- you have to
4 use the magic words, I need an attorney. I think
5 there's a couple of cases in South Carolina where
6 asking for a mother, or do you think I need this, do
7 not amount to I want an attorney on that.

8 Otherwise, I think that the testimony from the
9 officer was that he read him his Miranda warnings,
10 explained it to him. Didn't appear to be under the
11 influence or anything, or wasn't asked that. Seemed
12 to be coherent, he was quiet. And I think part of the
13 standard is coercion or duress to overcome the will of
14 the defendant to force him into writing something that
15 isn't true or whatever. And he's testified what he
16 wrote was what he remembered he did on that day. And
17 they kept coming at him, according to his testimony,
18 and offering him stuff to help him out, and all this,
19 and it did not overcome his will. He stuck to his
20 guns and said, that's what I remember, that's what I
21 wrote. He wrote it. He wasn't told what to write.

22 I think, Your Honor, he was given his Miranda
23 warnings, he was given them freely and voluntarily and
24 he wrote the statement freely and voluntarily, and his
25 will was not overcome by coercion, duress, force, et

Jackson v. Denno Hearing
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1 cetera.

2 THE COURT: In order to use a statement provided
3 by the defendant, the State must prove by a
4 preponderance of the evidence that the statement was
5 given freely, voluntarily, knowingly and intelligently
6 with knowledge of the Miranda warning.

7 I find the testimony of -- and I don't want to
8 get his title incorrect. Is it investigator, sargent,
9 lieutenant?

10 MR. BELL: Sargent.

11 THE COURT: Sargent.

12 I find the testimony of Sargent Dukes credible
13 on the issue. He testified that the defendant was
14 taken into custody. Clearly, he was detained. The
15 Miranda warnings were appropriate. No questioning was
16 embarked upon prior to the defendant being properly
17 Mirandized and those appropriate warnings were given,
18 as evidenced by Miranda warnings that have been
19 entered in as a Court's Exhibit.

20 There is no indication, from the defendant's
21 signature or otherwise, or where he initialed each of
22 these rights, that he was incapable of signing or
23 providing his signature. And his signature and
24 initials, by its nature, is independent corroborative
25 proof of his understanding the rights and

Jackson v. Denno Hearing
Tykeem May
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1 acknowledging each of the rights.

2 I find credible the officer's testimony that he
3 was not impaired in any way, that there was no
4 indication of the use of alcohol in or about his body
5 -- that means the odor -- or any other objective signs
6 of him having been impaired, that there was no duress
7 employed in the taking of the statement, and no
8 promises were given or offered to him.

9 Now, there has been some indication by the
10 defendant that on the date of this incident, that he
11 was not a heavy drinker but he had had five or six
12 beers and a couple of shots. There really is no clear
13 indication as to the scope of time that that would
14 have taken place and whether his body would have had
15 the ability to have basically have eliminated this
16 alcohol, as his indication was he was not a heavy
17 drinker, he had bought a six-pack and had drunk them
18 over the course of the day. I do not find credible
19 his testimony that he was impaired.

20 I do find credible his testimony, and I think
21 what is most persuasive and dispositive on the issue,
22 is the colloquy between he -- and I don't know that it
23 actually took place the way he represented it. But he
24 was adamant on the stand, and I would imagine was
25 adamant at the time, that he said he didn't need a

Jackson v. Denno Hearing
Tykeem May
Cross-Examination by Mr. Bell

1 lawyer, that lawyers are for guilty people and he was
2 not guilty and he did not need a lawyer. He did not
3 invoke his right to counsel and, therefore -- if
4 someone says -- if you read somebody's rights to them
5 and they said, do you think I need a lawyer, the
6 police can use reasonable deception. They don't have
7 to tell him he needs a lawyer. That's his decision.
8 And he's been fully informed of his Miranda warnings.

9 It was a bit, really, of a game that was being
10 played. If someone told me -- and I've done this long
11 enough to know that when you offer somebody a lawyer,
12 if they want one they ask for it and they're
13 articulate about it and they don't hesitate about it,
14 whether it be during the beginning of a statement, in
15 the middle of a statement, or near the end of a
16 statement, or even when they reinitiate contact with
17 the police. But I don't really know that that's here
18 or there as regards any applicable analysis to this
19 situation.

20 But very clearly, he was Mirandized and if he
21 wanted a lawyer, very clearly he was advised that if
22 you can't afford one we'll get one for you. So he
23 knew that it was available to him and he did not avail
24 himself of it. And, again, he said very clearly that,
25 I don't need a lawyer because I have not done anything

Jackson v. Denno Hearing
Tykeem May
Cross-Examination by Mr. Bell

1 wrong. And he reinforced that at least two to three
2 times during the course of his testimony.

3 I do not find credible his testimony that he was
4 promised something. Again, police can use reasonable
5 deception. They do it all the time. They say, you
6 help yourself, we'll help you. That does not rise to
7 the level of some promise as an inducement to
8 inculcate oneself. And that very clearly, the
9 statement that he gave, while he indicates he was
10 impaired in some way, that he was not aware of his
11 surroundings, and he was under duress, is quite self-
12 serving and to his benefit. So that flies in the face
13 of his voracity regarding him being under duress or
14 somehow being unfamiliar with what he was doing, not
15 oriented as to time and place. It's just not
16 supported by even his testimony as it regards this
17 hearing.

18 And he indicated that he was familiar with the
19 Miranda rights. And I think at this point in our
20 history of the country, I think even a five-year-old
21 is -- knows what the Miranda warnings are. If anybody
22 has watched a police show, they know. I mean, a child
23 can recite it to you, you have the right to remain
24 silent. Even if they're being funny about it or
25 they're being -- I mean, people now, even in arguments

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1 with significant others and otherwise, will say I'm
2 going to take -- I'm taking the fifth, I'm going to
3 remain silent because I don't want you to use what I
4 say against me. So I think almost everybody, unless,
5 of course, they have some limited, you know, cognitive
6 ability, is familiar with the Miranda warnings. And
7 he's indicated that he was, in fact, familiar with
8 those. But I just have no independent corroboration
9 in the record that he was intoxicated and not thinking
10 clearly.

11 Therefore, the motion to suppress his statement
12 is denied.

13 Now, and upon further inspection of the
14 statement, I think it is more than appropriate that we
15 had a Jackson v. Denno hearing because it is his
16 theory that he did not need to rob any place because
17 he had two jobs, he was gainfully employed and
18 supporting himself. And I would assume the State will
19 use one of these statements in his statement to
20 impeach him, which is that he called his mother to
21 talk to her about getting money, which flies in the
22 face of the defendant's theory and is -- can be used
23 to impeach his credibility on that issue.

24 But I think even if there weren't any
25 impeachable evidence, you can't just use a defendant's

Jackson v. Denno Hearing
Tykeem May
Cross-Examination by Mr. Bell

1 statement because he takes the stand, is procedural,
2 as his due process rights are invoked and the Court
3 needs to make an independent finding as to the
4 freeness and voluntariness of the statement and
5 whether it was, in fact, intelligently made with
6 knowledge of his protections given by the fifth
7 amendment, that being his Miranda warnings.

8 It's already been marked as a Court's Exhibit.
9 I don't know if the State is actually going to employ
10 it. I don't know that he will answer inconsistently.
11 But certainly they can use it for that purpose. And
12 the motion is denied.

13 MR. STEVENS: Judge --

14 THE COURT: Yes, sir?

15 MR. STEVENS: -- if I may have a moment with my
16 client, I believe --

17 THE COURT: Is that going to alter his decision
18 potentially?

19 MR. STEVENS: Yes, ma'am, it may.

20 THE COURT: Yeah. Y'all go talk. But please be
21 quick, because --

22 MR. STEVENS: Yes, ma'am.

23 THE COURT: -- my jury has been sitting --

24 MR. STEVENS: This won't take --

25 THE COURT: -- for over an hour now --

Jackson v. Denno Hearing
Tykeem May
Cross-Examination by Mr. Bell

1 MR. STEVENS: -- but just a moment.

2 THE COURT: -- and I'm not pressuring you. I
3 want to give you enough time to speak with him. But I
4 also need to be mindful of the needs of my jury.

5 MR. STEVENS: Yes, ma'am. Thank you.

6 THE COURT: Thank you.

7 [Whereupon, Mr. Stevens and Mr. May confer]

8 THE COURT: Have you completed speaking with
9 your client?

10 MR. STEVENS: I have, Your Honor.

11 THE COURT: Sir, stand for me, please. I'll
12 remind you you're still under oath.

13 [Whereupon, Mr. May complies]

14 THE COURT: Have you spoken further with your
15 attorneys about whether you should or should not
16 testify?

17 MR. MAY: Yes, Your Honor.

18 THE COURT: Do you need to speak with them any
19 further?

20 MR. MAY: No, Your Honor.

21 THE COURT: Sir, do you wish to testify?

22 MR. MAY: No, I do not.

23 THE COURT: So I assume you just need to rest in
24 the presence of the jury --

25 MR. STEVENS: Yes, ma'am.

Jackson v. Denno Hearing
Tykeem May
Cross-Examination by Mr. Bell

1 THE COURT: -- Mr. Stevens? Okay.

2 Now, we have some scheduling --

3 You can take your seat.

4 [Whereupon, Mr. May complies]

5 THE COURT: We have some scheduling we need to
6 discuss, because we have a juror that has a doctor's
7 appointment and I promised him during jury
8 qualification that I would make sure he meets that
9 appointment today. It is at 3:30 and I would think
10 that he would need to leave here by at least 3:00 to
11 be timely, because I'm sure he doesn't want to be
12 rushing, you know, in traffic and otherwise, to get
13 where he's going.

14 We still need to have lunch which,
15 conservatively, if we went to lunch that would be two
16 o'clock. And I doubt -- I know the jury charge is at
17 least twenty-five minutes. So there's no way we would
18 be able to have argument and charge and let them start
19 deliberations.

20 So what I'm thinking is that we'll go ahead and
21 let the defense rest in the presence of the jury, and
22 then we'll have charge conference and otherwise, and
23 then we'll resume in the morning at 9:30 with closing
24 argument and instruction.

25 Is there any exception from the State in

Jackson v. Denno Hearing
Tykeem May
Cross-Examination by Mr. Bell

1 proceeding in that way?

2 MR. BELL: Your Honor, I agree with that way but
3 I also think -- what about -- isn't there a juror that
4 has a conflict tomorrow, as well?

5 THE COURT: No. He's not on the panel. That's
6 a technical student who was --

7 THE COURT: [Off the record momentarily]

8 I thought it was that young man, but it's not.
9 I went back and looked back at my numbers and he's not
10 on the panel. -

11 There's a young man I protected, number 164, for
12 orientation at Tech on Thursday. He's not on the
13 panel.

14 MR. BELL: Okay. I'm sorry. My mistake.

15 THE COURT: No. I thought he was, for some
16 reason. But when I -- as soon as I got in this
17 morning, I went and looked back through the list and
18 the only person that we have with a conflict is the
19 gentleman that has the doctor's appointment at 3:30
20 today.

21 I don't think I protected -- even if somebody is
22 protected on Friday, I don't think that's going to
23 pose a problem for us unless -- you know, but stranger
24 things have happened. I had a half a day wreck
25 deliberate for three days. You just never know.

Jackson v. Denno Hearing
Tykeem May
Cross-Examination by Mr. Bell

1 MR. BELL: I know. I've been in the courthouse
2 till one o'clock in the morning, so I understand.

3 THE COURT: Yeah. Believe me, I hold the record
4 in Charleston for 3:00 a.m. And that's -- I promised
5 that would never happen again.

6 [Off the record momentarily]

7 MR. BELL: But, otherwise, no objection.

8 THE COURT: Yeah. But he's not on the panel.
9 I'm sorry to belabor the point. He's not. I thought
10 he was, but he's not.

11 MR. BELL: Okay. But no objection, from the
12 State, proceeding as the Court has --

13 MR. STEVENS: None from the defense, Judge.

14 THE COURT: Any exception from the defense?
15 Okay.

16 And then what I'll do is I'll go ahead and let
17 them go. I'll let you rest in their presence, I'll go
18 ahead and let them go for the day, then we'll do
19 charge conference and then we can all go eat.

20 MR. BELL: Okay.

21 MR. STEVENS: Thank you.

22 MR. BELL: Thank you.

23 THE COURT: You can get the jury for me, please.

24 THE BAILIFF: Yes, Your Honor.

25 THE COURT: Thank you, ma'am.

Jackson v. Denno Hearing
Tykeem May
Cross-Examination by Mr. Bell

1 And do we have anything for the afternoon?

2 [Off the record momentarily]

3 MR. STEVENS: Judge, do you want me to renew our
4 motion for directed verdict before or after the jury
5 comes in?

6 THE COURT: We can do it after.

7 MR. STEVENS: Thank you, ma'am.

8 [Off the record momentarily]

9 [Whereupon, the jury enters the courtroom at
10 1:05 p.m.]

11 THE COURT: Ladies and gentlemen, we appreciate
12 your patience. That took a little bit longer than we
13 anticipated. Please know that we don't take your time
14 for granted.

15 We'll now resume with the trial. The defense
16 may proceed.

17 MR. STEVENS: Thank you, Judge. May it please
18 the Court.

19 THE COURT: Yes, sir.

20 MR. STEVENS: At this time, the defense rests.

21 THE COURT: Thank you so much.

22 Ladies and gentlemen, both the State and the
23 defense have rested their cases.

24 The next part of the process is closing argument
25 and the Court's instructions. Normally what we would

Jackson v. Denno Hearing
Tykeem May
Cross-Examination by Mr. Bell

1 do is we would go to lunch for an hour, come back, and
2 then start that process. But I promised one of your
3 fellow members that I would make sure he met an
4 appointment this afternoon, so we're going to adjourn
5 for the afternoon so that he can meet that obligation.
6 And you can't control how long closing arguments are
7 going to take or how long deliberation will take and
8 so we would not want him stuck here with us, so to
9 speak, and not be able to meet that obligation.

10 So we're going to break for the afternoon.
11 We'll resume in the morning at 9:30 with closing
12 arguments and the Court's instruction.

13 While both the State and the defense have rested
14 their cases, it is absolutely essential that you
15 maintain your impartiality and you not discuss this
16 case among yourselves or with anyone else until you
17 have heard the closing arguments and the Court's
18 instructions and until I release you to deliberate in
19 your jury room in the privacy of your jury room.

20 I know it might seem simple to discuss what
21 you've heard with someone but to do that, by its very
22 nature, is deliberations because it requires you to
23 think about what you've heard, it requires you to
24 process it and to draw conclusions upon it. And that,
25 by its very nature, as I've explained, is a part of

Jackson v. Denno Hearing
Tykeem May
Cross-Examination by Mr. Bell

1 the deliberative process. And it is essential that
2 you do that among your fellow jurors so that you will
3 have the give-and-take of one another's thought
4 process, as well as having been equipped with the
5 Court's instructions on the law, as well as the
6 parties' positions in argument.

7 Please do not -- and I'm aware that there are
8 some media reports about this case probably in the
9 paper and other forms of media. I would instruct you
10 that you strictly guard yourselves against reading,
11 watching, or listening to any of those reports, as
12 well as doing any independent research on the internet
13 and reading any older reports regarding this case.

14 As I've explained, as the fact-finders you are
15 charged with determining what the facts are in this
16 case, which means you must do that according to the
17 testimony that you have heard from the sworn witnesses
18 and the other evidence that has been introduced. So I
19 would ask that you strictly guard yourselves in that
20 regard.

21 And please don't make any comments regarding
22 your status on any social networking sites. And
23 please don't have any contact with anyone in or about
24 the courthouse when you return in the morning. You're
25 going to come directly to your jury room and as soon

Jackson v. Denno Hearing
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Cross-Examination by Mr. Bell

1 as all of you arrive, we will then resume with closing
2 argument and instruction.

3 You-all have been so very good-natured with
4 us, and very patient, and we appreciate it. I hope
5 you-all have a wonderful afternoon. Have a good
6 lunch. We'll see you in the morning at 9:30.

7 If you would leave your notepads, leave them in
8 your chairs, the bailiffs will collect them and we'll
9 secure them during the recess.

10 [Whereupon, the jury exits the courtroom at
11 1:09 p.m.]

12 THE COURT: [Off the record momentarily]
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Renewed Motion for a Directed Verdict
By Mr. Stevens
August 13, 2014

1 RENEWED MOTION FOR A DIRECTED VERDICT

2 THE COURT: Are there any motions, now that the
3 defense has rested their case?

4 MR. STEVENS: Yes, ma'am.

5 We would simply renew our prior motion for
6 directed verdict.

7 THE COURT: Any response from the State?

8 MR. BELL: Your Honor, we would stick to our
9 prior response to the motion.

10 THE COURT: And the Court will deny the motion
11 based on its previous ruling and incorporate it in
12 this portion of the record.

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State v. Tykeem May
Charge Conference
August 13, 2014

CHARGE CONFERENCE

[Whereupon, Court's Exhibit Number 1 is marked
by the court reporter]

[Whereupon, Court's Exhibit Number 2 is marked
by the court reporter]

THE COURT: Okay. We'll do charge conference
and then we'll move along.

[Off the record momentarily]

THE COURT: I will give the jury a general
instruction regarding their responsibility and my
responsibility.

How they are to judge witness credibility and
believability.

Will give them a general instruction regarding
the fact that the defendant did not testify.

Will give them a general instruction regarding
direct versus circumstantial evidence, and I will
use -- employ that new language about circumstantial
evidence. Although I don't think it's particularly
different from what we generally used. And in this
case, and normally where there is a great amount of
direct evidence, I don't use it. But in this case
it's a combination of both direct and circumstantial
evidence so I will use that additional language.

I will give them an instruction, a general

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1 instruction, that the charge, the arrest and the
2 indictment are not evidence, as well as on the
3 presumption of innocence.

4 I will instruct Victor vs. Nebraska on
5 reasonable doubt.

6 And then I will charge the elements of 16-11-
7 330, which I think we're all familiar with so I won't
8 belabor the time to go through each and every one of
9 those.

10 I will then instruct on the elements of
11 possession of a firearm during -- well, possession of
12 a weapon during the commission of a violent crime,
13 which is 16-23-90 -- 490, which also incorporates the
14 definitional section of 16-1-60. And, again, we're
15 all familiar with those elements, so I'm not going to
16 go through those again.

17 I also will instruct on identification, as well
18 as alibi.

19 I will then give a general instruction regarding
20 multiple charges and the responsibility of the State
21 to prove each beyond a reasonable doubt.

22 And I will then give a general instruction on
23 the form of the verdict.

24 As regards the State's request, which in Court's
25 Number 2 on reasonable doubt, I'll use the standard

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1 instruction, which is Victor vs. Nebraska.

2 On the defendant's request Number 1, which is
3 marked as a group, their request, Court's 1, I will
4 use my standard instruction on direct and
5 circumstantial evidence, as I've already shared with
6 you-all.

7 I will use my standard instruction on
8 identification, which is request number 2. I will use
9 my standard instruction, which is Victor vs. Nebraska,
10 which is reasonable doubt. And I will use my standard
11 instruction on alibi, which is request number 4.
12 Number 5 is inapplicable because the statement of the
13 defendant was not introduced, nor utilized in the
14 course of the trial.

15 Are there any exceptions to the charge as
16 proposed? From the State?

17 MR. BELL: None from the State, Your Honor.

18 THE COURT: From the defense?

19 MR. STEVENS: So long as, you know,
20 circumstantial evidence from Logan is utilized, as
21 well, as the Court indicated it will be, we have no
22 problem with that, Judge.

23 Regarding identity as an element of the offense

24 --

25 THE COURT: I can't hear you. I'm sorry.

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1 MR. STEVENS: I apologize, Judge.

2 THE COURT: That's okay.

3 MR. STEVENS: Regarding our request number 2,
4 I'm unfamiliar with the Court's standard charge.

5 THE COURT: Mine is far more detailed than yours
6 and it's a reflection of the accurate statement of
7 South Carolina law.

8 MR. STEVENS: Thank you, Judge.

9 And regarding reasonable doubt --

10 THE COURT: And it does state that the State
11 must prove identity beyond a reasonable doubt.

12 MR. STEVENS: Thank you, Judge.

13 And regarding reasonable doubt, does the Court's
14 general charge also include --

15 THE COURT: I don't like that language because I
16 think it's confusing. I use Victor vs. Nebraska,
17 straight from the case.

18 MR. STEVENS: Thank you, Judge.

19 We would just simply, you know, renew our
20 request for that charge.

21 THE COURT: And I'll note it for the record.

22 MR. STEVENS: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 MR. STEVENS: And the Court has indicated that
25 request number 4 is granted -- we appreciate that --

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1 the alibi instruction.

2 THE COURT: Yeah. I'm going to use my standard
3 instruction.

4 MR. STEVENS: Thank you, Judge.

5 And it's clear that, you know, the Denno
6 instruction is not necessary, so we would respectfully
7 withdraw that form.

8 THE COURT: Yeah. I've already had it marked,
9 so I'll just mark it withdrawn for the record.

10 MR. STEVENS: Thank you, Judge.

11 THE COURT: You're welcome.

12 All right. Give me one moment. And I assume
13 there are no requests for any lessor-included
14 instructions. That's why I didn't include that. Is
15 that accurate?

16 MR. STEVENS: That's correct, Judge.

17 MR. BELL: That's correct.

18 THE COURT: And if y'all will give me just one
19 second, we have the verdict forms for you-all. If
20 you-all could approach for me to review those.

21 [Off the record momentarily]

22 MR. BELL: Your Honor, I'm sorry. I just
23 thought of one other thing that --

24 THE COURT: What's that?

25 MR. BELL: -- that the State would not object

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1 to, because I think I said in my opening statement --
2 and I think you could also add the language that -- I
3 mean, if they don't find him guilty of armed robbery,
4 I mean, there is no need to consider the --

5 THE COURT: My instructions already encompass
6 that.

7 MR. BELL: Okay.

8 MR. STEVENS: Thank you, Judge.

9 THE COURT: It's one of those conditional things
10 that --

11 MR. BELL: Right.

12 THE COURT: -- unless he's guilty of a violent
13 crime, he can't be guilty of --

14 MR. BELL: Exactly.

15 THE COURT: -- and if they were to, I would just
16 sit as the thirteenth juror and nullify it --

17 MR. BELL: Right.

18 THE COURT: -- because you can't have one
19 without the other.

20 MR. BELL: That's correct.

21 THE COURT: Yeah. And, again, we'll fix those
22 scribner's errors, so you can just ignore those.

23 [Whereupon, counsel review documents]

24 THE COURT: Any exception to the form of the
25 verdict? From the State?

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1 MR. BELL: None from the State, Your Honor.

2 THE COURT: From the defense?

3 MR. STEVENS: No, ma'am.

4 THE COURT: All right. Is there anything else
5 we need to take up before we adjourn for the
6 afternoon? From the State?

7 MR. BELL: Your Honor, I would state that just
8 for tomorrow, I think what I anticipate is opening on
9 the law and then allowing the defense to do their
10 argument and --

11 THE COURT: Yeah. I'm going to get to that in
12 just a second. But other than -- I'm talking about
13 like charge conference or --

14 MR. BELL: No, Your Honor.

15 THE COURT: -- or exhibits.

16 Anything else that we need to cover? Because
17 I'm going to have to make an estimate of how long it's
18 going to take us so I can determine when I mean going
19 to have lunch for the jury.

20 I assume the State is going to open and close?

21 MR. BELL: That's correct, Your Honor.

22 THE COURT: How long do you think your argument
23 will be? Just give me an estimate. I'm not going to
24 necessarily hold you to it.

25 MR. BELL: Total, I would say forty minutes or

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1 so.

2 THE COURT: Altogether?

3 MR. BELL: Altogether.

4 THE COURT: How long will the closing for the
5 defense be?

6 MR. STEVENS: Probably between thirty to forty
7 minutes, Judge. Perhaps -- it depends on how I can
8 actually measure the rate of the speech.

9 THE COURT: It's hard sometimes. I have to
10 catch myself because some days I'm --

11 MR. STEVENS: Yes, ma'am.

12 THE COURT: Yeah. When you're used to saying
13 stuff --

14 I think we'll order lunch for the jury and plan
15 to have it by noon. It looks like -- you know, give
16 or take, you always have a late juror. I think
17 conservatively we're looking at like 11:30 getting it
18 to the jury. So I'll just plan to have the clerk
19 bring their lunch in at noon, then we'll go from
20 there.

21 I need you-all to get with the court reporter
22 for me and make sure all the exhibits are there that
23 she has marked -- and make sure you think, I guess,
24 the technical term, the notes, make sure y'all's stuff
25 is accurate according to what she has.

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1 If you're going to use any technical equipment
2 during closing, I would ask that you test that this
3 evening or this afternoon and make sure it's working
4 as it should, and be ready to roll at 9:30 in the
5 morning.

6 MR. STEVENS: Thank you, Judge.

7 THE COURT: All right. Thank y'all. Have a
8 good afternoon.

9 [JURY TRIAL ADJOURNS AT 1:19 P.M.]

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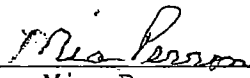
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcription of the jury trial held before the Honorable Deadra L. Jefferson, on August 13, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 1st day of November, 2014.


Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

-557-

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG) CASE NO.: 2014-GS-38-00189

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 TYKEEM MAY,)
)
 DEFENDANT.)

JURY TRIAL

VOLUME 4 OF 5

held before the Honorable Deadra L. Jefferson
 Hilda Jordan, Circuit Court Reporter, 1st Judicial Circuit
 in the Orangeburg County Courthouse
 Orangeburg, South Carolina
 on August 14, 2014, Commencing at 9:38 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
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PROCEEDINGS

THE COURT: Is the State ready to proceed?

MR. BELL: Yes, Your Honor.

THE COURT: Is the defense ready?

MR. STEVENS: We are, Your Honor.

THE COURT: Y'all bear with me just one moment
so I can check something.

And did y'all go through all the exhibits with
the court reporter and make sure everything was in
place?

THE COURT REPORTER: Yes, ma'am.

MR. BELL: Yes, Your Honor.

THE COURT: And you have all the exhibits, Miss
Hilda?

THE COURT REPORTER: Yes, ma'am.

THE COURT: Is there any technology that's going
to be utilized in closing arguments that needed to be
tested to make sure it's working?

MR. BELL: Yes, Your Honor.

I was going to use Power Point. I set it up and
have tested it.

THE COURT: And you tested it?

MR. BELL: I tested it first thing this morning,
ran through it, and it was working then. That's all I
can promise the Court.

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1 [Off the record momentarily]

2 THE COURT: Do you have the original indictment,
3 Mr. Bell?

4 MR. BELL: Your Honor, I think they're kept in
5 the clerk's file.

6 THE COURT: Do we have the original indictment?
7 Ready to proceed with argument? From the State?

8 MR. BELL: Yes, Your Honor, the State is ready
9 to proceed.

10 THE COURT: From the defense?

11 MR. STEVENS: Yes, Your Honor.

12 THE COURT: Please bring in the jury.

13 [Whereupon, the jury enters the courtroom at
14 9:55 a.m.]

15 THE COURT: Does everybody have their notebooks
16 and their pens?

17 All right. Good morning, ladies and gentlemen.
18 I hope that everyone had a pleasant afternoon and
19 evening.

20 As I indicated on yesterday, both the State and
21 the defense have rested their cases. We have now
22 reached the stage of the trial where we will have
23 closing argument and the Court's instruction.

24 I would ask that you give the attorneys your
25 undivided attention.

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1 You may proceed.
2 MR. BELL: Thank you, Your Honor.
3 THE COURT: You're welcome.
4 MR. BELL: Please the Court?
5 THE COURT: Yes, sir.
6 MR. BELL: Mr. Stevens?

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Closing Statement by Mr. Bell
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CLOSING STATEMENT

MR. BELL: Madam Forelady, ladies and gentlemen of the jury, at this juncture of the trial, these are closing arguments. The State has an opportunity to open and talk to you a little bit about how we see the law. Then I'll be sitting down and Mr. Stevens will be getting up and arguing about the facts, and he will sit down and I will have another chance to come up and argue the State's version of the facts.

At this juncture, before I start talking about the law, I would just like to take this opportunity to thank each and every one of you for your participation this week in jury service. Believe me, we're painfully aware that you had rather be somewhere else this week than sitting in the Orangeburg County courthouse and sitting on a jury. But I hope you understand your importance in our criminal justice system because without you, without your participation, we would have no criminal justice system. You are the basis, you are the bedrock, of the criminal justice system. And I also hope that you've learned something this week, learned how it works, and can take that from it. So, again, from the First Judicial Circuit of Orangeburg County, State of South Carolina, we thank you kindly for your

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1 participation this week.

2 Now, ladies and gentlemen, as you're aware, in
3 this case the defendant is charged with two crimes.
4 He's charged with the crime of armed robbery and he's
5 charged with the crime of possession of a firearm
6 during the commission of a violent crime. And the
7 State, of course, has the burden of proving those
8 charges and has the burden of proving each element of
9 those charges.

10 And let me start talking about those charges.
11 First of all, armed robbery. As I stated, armed
12 robbery is taking goods from someone with the intent
13 to deprive them, goods, money, property, whatever.
14 That's larceny. That's stealing. The added thing is
15 you have to do it by force, threats, intimidation, by
16 putting another person in fear in the taking of those
17 goods. And, of course, the final one is you use a
18 deadly weapon to do that force, intimidation. Those
19 are the elements the State must prove each element
20 beyond all reasonable doubt.

21 The next crime, possession of a firearm during
22 the commission of a violent crime. This one is pretty
23 easy, that it's unlawful for a person to be in
24 possession of a firearm, or visibly display what
25 appears to be a firearm, during the commission of a

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1 violent crime. And that's defined by statute and Her
2 Honor will define that for you. But armed robbery is
3 defined as a violent crime in that statute. And,
4 fairly simply, if you don't find the defendant guilty
5 of armed robbery, you don't even have to worry about
6 this charge. This charge is if you decide that the
7 State has proven its case beyond all reasonable doubt
8 that the defendant is guilty of armed robbery, then
9 you consider this charge.

10 Ladies and gentlemen, we also have to talk about
11 some terms in a legal sense during -- for this case.
12 And the one that's thrown around, and the one I've
13 just talked about, reasonable doubt. Reasonable doubt
14 is one of those terms in the law that's hard to
15 define. It's kind of what some people have said, you
16 know, you can't define it but you kind of know it when
17 you see it. One attempt at a definition in this is,
18 as I said earlier, there are few certain things in
19 life. And the State is not required to prove a person
20 one hundred percent guilty. It generally can't be
21 done. Sometimes you can get close, but there's always
22 some uncertainty in it. And we don't have to prove a
23 person beyond a shadow of a doubt. If some of y'all
24 like old movies, when you hear shadow of a doubt,
25 that's about the same thing. It's reasonable doubt is

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1 the standard we must prove.

2 And what the law has said about reasonable doubt
3 is that proof of reasonable doubt is proof that leaves
4 a person, a reasonable person, searching for the truth
5 firmly convinced of the guilt of the defendant.
6 That's what reasonable doubt is in our state. Think
7 about that while you're listening to all the
8 arguments.

9 We're also talking -- I've also talked about,
10 and Her Honor talked about at the beginning of the
11 trial, roles in this trial. Her Honor, Judge
12 Jefferson, is the judge of the law. And as I told you
13 earlier, you took an oath that you will follow the law
14 as charged to you, regardless of what you think about
15 it. You have to follow the law as she charges you,
16 because she is the judge of the law.

17 But you, ladies and gentlemen, are the judges of
18 the facts. You've listened to testimony from the
19 witness stand. You've seen exhibits. These exhibits
20 go back with you to the jury room during your
21 deliberations. You have the opportunity to look
22 through them as much as you want -- and nobody can
23 tell you how to do that -- until you're satisfied with
24 what you're looking for. You can look at the videos
25 as much as you want, you can look at the pictures as

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1 much as you want. And what you do is you take that,
2 you apply the law that Her Honor would charge you at
3 the end of the trial after we're finished arguing, you
4 put them together and you reach a verdict. And as I
5 told you, we're looking for the truth in this case.

6 You're also going to hear a charge, and you will
7 hear some argument about direct evidence and
8 circumstantial evidence. Direct evidence and
9 circumstantial evidence aren't really two types of
10 evidence. They're just ways you get to the evidence.
11 And they're equal-weighted. There's no difference
12 between them.

13 Direct evidence is evidence that you get through
14 your senses, that you see, that you hear, that you
15 touch, that you taste, that you feel, I saw that.
16 Circumstantial evidence is a little different. It's
17 some fact that you find that leads you to another fact
18 or another conclusion.

19 I'll give you an example. Especially the last
20 week or so, you come to the courthouse, you get out,
21 there's water falling. You're getting wet, there's
22 puddles forming, there's steam rising on the road.
23 You see and you feel and you know it's raining because
24 you see it, you feel it, you hear it, you can even
25 smell it sometimes. Now, this week you've been in the

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1 courtroom. There are no windows here. Like you left
2 yesterday. You come in in the morning, it's sunny,
3 bright, dry, everything. Three hours later you go to
4 lunch, you go outside, it's cloudy, the road and
5 sidewalk is wet, there are puddles, there's steam
6 rising from the road. Now, you know that it's wet,
7 there are puddles, there's steam rising from the road,
8 it's cloudy. You put those facts together: it must
9 have rained. That's circumstantial evidence. It's
10 just as good as if you saw it yourself, because you
11 can put those together and, oh, it rained.

12 So ladies and gentlemen, those are the major
13 types of the law that you'll be dealing with in this
14 case.

15 At this time I'm going to sit down and allow
16 Mr. Stevens to come up and give his argument on the
17 facts, and I will be back up after his argument.
18 Thank you very much.

19 THE COURT: Mr. Stevens, you may proceed when
20 you're ready.

21 MR. STEVENS: Thank you, Judge. May it please
22 the Court. Mr. Bell.

23 THE COURT: Yes, sir.

24 MR. STEVENS: Just a moment.

25 THE COURT: Yes, sir.

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CLOSING ARGUMENT

MR. STEVENS: Inconsistencies are reasonable doubts. At the time we started our discussion at the beginning of this trial, this is what we've seen throughout the State's circumstantial evidence on the critical issue on the identity of the robber.

Now, the State just opened on the law, but what's really interesting is that he did not even touch on how the law teaches you on how to interpret and apply circumstantial evidence. You're going to hear that from the judge. Just to give you a preview, this is what it says. To the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other and, when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt and if these circumstances merely portray the defendant's behavior as suspicious, proof has failed.

It's not an instruction about the weight between direct and circumstantial evidence, the value, it's how you interpret your decision. Again, noticeably absent from the State's opening on the law because they know there are many inconsistencies in the circumstantial evidence.

Let's take a look. We were first presented with

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1 Mr. Quantavious Montgomery, the clerk. Right? Okay.
2 What did he actually say about the identity of the
3 robber? He said he couldn't see; right? Why? His
4 face was covered. It was covered with a red shawl or
5 a bandana or a red cloth, right, and sunglasses. Oh.
6 And the hat, too. Right? Okay. Well, he was
7 actually right about that. But we also know that that
8 red cloth had tassels on it. Right? We do. We also
9 know that he said that there was a gray hoodie -- we
10 also know that he said that there were clothes worn --
11 red cloth with tassels. We know gray hoodie. Right?
12 Gloves. And it's not just -- we can actually look.
13 For example, that's the evidence that's going to be on
14 the video provided, of course, by the State --

15 But if he was wrong about the gray hoodie, if he
16 was wrong about the gloves, would it be a surprise if
17 he was wrong about the dreadlocks? This is Defense
18 Exhibit 2. It shows from the back. Yeah, we can see
19 the tassels. We don't see any dreadlocks. This is the
20 evidence you will have to look at it while you're back
21 there. Use it. So what we know is identification was
22 off. He couldn't identify the guy.

23 What else do we know? We know from Mr.
24 Montgomery that he didn't see a white car. I asked
25 him. He said so. Right? We know that when Mr.

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1 Montgomery was actually outside and the -- he was
2 actually -- why was he outside? He was outside
3 because it was Sunday and if it was Sunday, he wanted
4 to make sure people knew that they were open. Right?
5 That's why he was sitting outside. There were no
6 customers in there. How do you know? He acknowledged
7 that. Right?

8 Now, what do we know? I understand that the
9 side camera, the color is off. It was bleached out.
10 The State acknowledges that they're the ones that put
11 that into evidence. And it's a fact. Right? But
12 what we do know is that when he saw the guy go by him,
13 what did he do? He got up and he went. He went away,
14 didn't he? Smart move. But when he did, what did he
15 do, where did he go? This is a better color picture
16 than State's 2. He went over in that direction,
17 toward Highway 301 that cuts right in front of the
18 Keg. And, yes, even after that, there's a fence. And
19 when he was walking -- in other words, if this is the
20 Keg, he went this way. Past this alleyway. And
21 there's a fence over here, too. And it was over by
22 that fence is where he stopped. And that's where he
23 turned around and walked diagonally back toward the
24 door of the Keg.

25 Now, knowing that, the evidence is here. It's

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1 for you to see, for you to infer. You have peripheral
2 vision. He says he didn't look in that direction.
3 But you have peripheral vision. I asked him, did you
4 see a white car. No.

5 Look here. This is not just a small little
6 space. That car, according to the State's theory, if
7 it was there at that time, would have been right here.
8 Right here. And yet, he didn't see it, did he?
9 Didn't see it.

10 What's another opportunity he would have had to
11 see a white car? Well, we also know that when he was
12 actually sitting out front, he was there. Basically
13 open for business -- wanted to let them know they're
14 there. Highway 301 goes right in there. Defendant's
15 Exhibit 9 shows a still frame of the video. And that
16 white car comes turning around that corner. Came off
17 of 301. It would have passed right in front of him.
18 Now, he didn't ask him, did you see a car pass in the
19 road in front of you. Answer, no. Any time before
20 the robbery? No, he didn't. No white car --

21 Inconsistencies in the State's circumstantial
22 evidence. And inconsistencies are reasonable doubts.

23 What else do we know? We know that he was
24 inside the store after the robbery. Right? He said
25 the robber left out the door. Did you follow him?

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1 No. Smart again. What did he do? He locked the
2 door. Smart guy. What did he do? He called his boss
3 and he called 911. But if you remember from this
4 witness stand, he waited five minutes. Five minutes
5 before he made calls. That's a heck of a head start
6 for someone on foot.

7 Speaking of on foot, that's how the evidence
8 from the State shows the burglar arrived. Again, the
9 color is washed out. I understand. Nonetheless, the
10 robber is walking on in from the side on foot. And
11 there is the -- you'll have those back there to look
12 at.

13 What else? We know that not only did the robber
14 come from that direction on foot, we also know that
15 the robber left that direction on foot, don't we? We
16 certainly do. We have even more about that. Again,
17 in the evidence for you to see.

18 Leaving again. We'll get to the times later.

19 What happened next? An officer responded. The
20 responding officer did not testify. That officer
21 contacted the shift supervisor. Why not? That's a
22 smart idea, too. Right? Lieutenant Robinson, we
23 heard from Lieutenant Robinson, didn't we? He was the
24 shift supervisor that day. Why didn't the State bring
25 him up?

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1 The State is trying to cover up the fact that
2 there was a five-minute gap. They're trying to show
3 you that it was immediate, that they immediately
4 looked in the area and no one could have been on foot
5 because the lieutenant drove around the whole
6 neighborhood. We know that's untrue. We know Mr.
7 Montgomery waited five minutes to call officer -- the
8 shift supervisor. Over five minutes. Big concern.
9 That's when Lieutenant Robinson started driving
10 around.

11 Lieutenant Robinson got there. And what did he
12 do after he got there? Smart man. He called for K-9
13 assistance, a dog, a tracking dog. Very smart. What
14 else do we know that he actually said? Did the dog
15 track? Yeah, the dog tracked. My co-counsel, Doug
16 Mellard, asked, did he track out the gloves? No, he
17 didn't track out the gloves, he got the scent from the
18 area. From the area. Now, I understand Sargent Dukes
19 testified, no, he got it off the gloves. But let's
20 also be very clear. Lieutenant Robinson called K-9
21 and Lieutenant Robinson testified to us that K-9
22 tracked off the area, not the gloves.

23 And that dog did hunt. Where did it go? It
24 tracked. It racked on foot, not in the car, not in a
25 pick-up truck. The dog was walking, and so was the K-

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1 9 handler, and they went on foot, followed that track,
2 followed that scent, to where? A trail in Mell's
3 Court Trailer Park behind Metz Laundry. Not far.

4 They get there. Anybody answer? Yes. Who
5 answered? A man. Did you arrest him? No. Why?
6 Well, didn't match the description. Well, we know the
7 clerk's description was off.

8 Also, another question. Hey, did you think to
9 check inside? No, nobody checked inside. Didn't
10 check inside. Great. Didn't look for -- even if they
11 don't think he looked like the description, they
12 didn't look for a guy inside that may match the
13 description because, after all, that's where the dog
14 tracked. Nope. Didn't look for a gun in there.
15 Nope. Didn't look for a red tasseled shawl? No.
16 Didn't look for sunglasses? No. Didn't look for
17 jeans with very faded fronts? No. Didn't look. That
18 was the day of the robbery.

19 So what do we know? They looked after over five
20 minutes. Right? We also know that the K-9 tracked to
21 a trailer. And we know what? They didn't search the
22 trailer. Not my evidence. The State's evidence. Not
23 our witnesses. The State's witnesses. Officers. The
24 one who was there on the scene that day. That's
25 what's in evidence. Those are inconsistencies, and

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1 inconsistencies are reasonable doubts.

2 What else do we know? We know a couple of days
3 later that now Sargent Dukes went over there. A
4 little while after that, he got some videos. Great.
5 The problem is we know that the videos are
6 inconsistent. How do we know that? Let's look at the
7 time stamps -- we know that there's a robber seen --
8 that someone similarly matching the description of the
9 robber is seen walking on foot between Mr.
10 Montgomery's car and the Keg. And, again, I
11 apologize. This is the bleached-out camera.
12 Everything is lighter and off-color. Nonetheless,
13 that's what we've got. Time stamped 9:47. What else
14 do we know? We also know that the robber enters the
15 store at about 9:47. Actually, 9:47 and 43 seconds.
16 Right? We also know that the robber exited the store
17 when? 9:48 and 48 seconds. There he is walking out.
18 You'll have these back there with you. We also know
19 that at 9:48 and 51 seconds the robber walks out of
20 the store, right across the front, on foot. What else
21 do we know? We know that at 9:48 we see the robber is
22 actually walking back through there again. Not just
23 in one picture, but we've got two. One shows the
24 reflection in the mirror of the vehicle and the other
25 the actual picture of his face. Here. There's his

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1 arm. His face is going to be in the next one.

2 What else do we know? We know that the car did
3 not even arrive, on its own videos, until afterwards.
4 In fact, it's at 9:49. The picture I've already shown
5 you, when you see the car coming in around the corner
6 off of 301, the same one that he said he didn't see
7 when he was standing out front. That one. Okay?

8 What else do we know? We see that at 9:49 and
9 51 seconds, Dodge Caliber is setting in. We see at 9
10 minutes, 50 seconds, that it's still going in. We see
11 at 9 minutes 54 -- I'm sorry -- 9:54 and 50 seconds,
12 it's coming out. We see at 9:54 and 55 seconds, it's
13 driving out. Now, all of that is after the robbery.
14 All of that is after the robber left on foot.

15 Now, the State knows these are a problem.
16 Really does. All right? That's why the video footage
17 isn't just of a single video. Watch the whole time.
18 No. The evidence in the record that you see of the
19 videos shows video footage of this camera over here,
20 and magically over here following to the car, and then
21 over here again following the car. And then, wait a
22 second. It goes back in time. And then it follows,
23 different cameras, of the guy walking in between the
24 car and the Keg and then going around inside. And
25 then come back out and it goes back over to a

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1 different time stamp. Video. They want you to look
2 past the obvious. They want you to look past the time
3 stamps. They want you to believe their time line,
4 despite the fact the time stamps are off, according to
5 them.

6 So what do they do? Oh, I'll just try and fix
7 that. Well, they got the video guy, Mr. Hall. Right?
8 Well, he could conclusively say they were off by about
9 four hours, all of them. Great. Well, what about the
10 actual differential in difference in minutes? He
11 could not give you an opinion. He's not an expert.
12 He didn't do any math for that. He didn't personally
13 check to see a differential in the minutes themselves
14 and tell you conclusively they are off by this many
15 minutes each and therefore it should go along with the
16 State's time line. Couldn't do that because he
17 didn't. And he couldn't give an opinion on it because
18 he's not an expert.

19 What did he finally agree to at the end of my
20 cross with him? The time stamp is what it is.
21 Frankly, that's what the State is left with. Again,
22 not our burden. It's the State's. Not our
23 inconsistencies. The State's. And inconsistencies
24 are reasonable doubts.

25 What happened next? We know that there were

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1 pics taken from those videos. Right? Notice is sent
2 out. What does the notice say? The officers who
3 actually had notice said, oh, yeah. Said be on the
4 lookout for what? A white or silver Dodge Caliber. A
5 white or silver. They didn't know. They know this is
6 off. Right? They don't even know.

7 What else do we know? We know that on the 14th
8 the car was stopped. It was stopped by Lieutenant
9 Culler. He testified right here. That was great.
10 His reason? The description matched. But what does
11 he say to the driver? Window tint. I hate to break
12 it to you, but some police do lie. You saw it and
13 heard it on that stand.

14 Now, he called Officer Pifer from the Department
15 of Public Safety. Okay. What did Pifer say? He
16 testified here, as well. He said it matched the
17 description of a possible suspect we were looking for.
18 And what was his basis? Light-skinned male. In
19 Orangeburg, South Carolina, Claflin University --
20 South Carolina State University. Orangeburg, South
21 Carolina. His basis. He matched the description.
22 Why? Light-skinned male. That's what you heard in
23 the evidence. You didn't hear other reasons. You
24 didn't hear anything else tacked on. His reason,
25 light-skinned male.

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1 Now, what are we going to do with that
2 information? Once we have information, they have --
3 they're going to need Tykeem May. They have the
4 address of Emonie Ford, his partner. Once they have
5 that, they just confirmed where they lived, got a
6 warrant and executed it --

7 Kicked the door in. Know they're home in the
8 middle of the night. Guns drawn, on the ground,
9 cuffed -- searched the place. Not just one person,
10 but a lot of people in that home searching.
11 Professional people. In fact, we even heard from
12 Lieutenant Mr. Shultz up here. He testified he's got
13 a lot of experience with this, he's really good at it.
14 Okay. He is.

15 Let's talk about the search. What are they
16 looking for? I mean, to search, obviously they're
17 searching for something. They were searching for an
18 assault rifle with a banana clip, stone-washed-looking
19 jeans with faded fabric in front, black-and-white
20 stripped tennis shoes, a red shawl or bandana, red
21 sunglasses. Oh, and don't forget, a skull cap with a
22 circular design running around it. All right?

23 Let's break those down. What did they find?
24 Let's talk about the assault rifle. This is what they
25 found. Now, the best thing about this is it has -- on

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1 the State's own evidence that it admitted -- it has a
2 serial number. This is not a one-of-a-kind item,
3 handmade and crafted by some craftsman up in New
4 England. Nope. This is a product that is made by the
5 thousands in China. How do we know? It's stamped.
6 It says 004082, and then -- so at least 4,082 of these
7 that we know of -- it's all right there. It's got
8 room for more right there. It's like this. That
9 means at the bare minimum, there are another 4,081 of
10 these, of this model, out there. The State has proven
11 no evidence in this record whatsoever, there couldn't
12 be other rifles like this out there. It's an assault
13 rifle made in China. Mass production, out there by
14 the thousands.

15 What else do we know? Thousands of rifles like
16 that. No evidence that things on there are unique.
17 Not from any expert witness on the stand. Nothing.

18 What else? Nike sneakers. Really? Another
19 product made in China. Right? I think commonsense
20 tells us thousands, if not more. Right? Nike
21 sneakers. Thousands of them. Thousands. In fact, we
22 know they're so common, even his girlfriend has a
23 pair. And yet, even though they claim that this is
24 one of the things they were looking for, and even
25 though we know the robber took off in between, there's

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1 a fence there, I don't know if he jumped it, don't
2 know if he didn't. But what we do know is that
3 there's at least some dirt around there. Where are
4 the footwear impressions? How do we know that those
5 sneakers were the ones specifically worn by the
6 robber? No footwear impressions. But someone wearing
7 black shoes make the same footwear impression as mine.
8 No evidence in there from the State that those
9 sneakers were the ones used by the robber. They just
10 seemed to look alike. Thousands of them.

11 What else do we know? Oh, yeah. The red
12 sunglasses. That's good. Red sunglasses. How do we
13 know? The State's witness said so. Emonie Ford,
14 right here. Not only that, she doesn't even remember
15 if she actually got them before or after the case --
16 the offense. We do know she got them from a photo
17 shoot. The State didn't conclusively prove that she
18 had those beforehand. Inconsistencies.
19 Inconsistencies are reasonable doubts.

20 And that's what they found. What else? Oh,
21 yeah. Comments. What didn't they find? Let's ask
22 ourselves. They knew what they were looking for.
23 They had professionals looking for it. They had
24 Lieutenant Shultz, who's got years of experience on
25 this matter. What did they not find? Well, they

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1 didn't find a skullcap, right, at all. Not only that,
2 we heard from Emonie Ford that Tykeem May is not a hat
3 person, he's not a hat guy, he doesn't wear hats.

4 What else did we learn? Oh, that's right.

5 Let's talk about stone-washed-looking faded jeans or
6 jeans with faded fabric on the front. All right? The
7 State tried to make a big deal about those, saying,
8 well, there were lots around there. Right? Not only
9 were there a lot around there but, you know, if --
10 they could have been similar-matched. Right? Really?

11 Let's talk about that. These are acid-washed
12 jeans. Very, very, very bright, vivid colors. And
13 the other ones, no fading whatsoever. Was there other
14 clothing around there? Yeah. But what did Sargent
15 Shultz say? He didn't collect them. Why? Well, he
16 didn't collect them. And then on redirect, when they
17 tried to rehabilitate the witness when he said he
18 didn't collect them, what did he say? There were lots
19 others around there. Why didn't you collect them?
20 Well, they were trying to get him to corroborate what
21 the other guy said. Well, there were just too many.
22 First time I ever heard that, not collect the
23 evidence just because there's too many pair of jeans.
24 Really?

25 Now, Lieutenant Shultz said something very

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1 different. Lieutenant Shultz said, and I quote him,
2 they didn't look exactly like that. The jeans that
3 were there in [REDACTED] Wilkinson Street didn't look exactly
4 like the ones in the robbery. And the State's own
5 witness, who was there executing the search warrant,
6 who's got years of experience executing search
7 warrants and looking for stuff to use in evidence,
8 said they didn't look exactly like that. You know,
9 which corroborates what Emonie Ford said: those are
10 her jeans. She said that, State's witness.

11 And, finally, did they find the red shawl was
12 collected here? Red shawl with tassels. We know that
13 it was worn by the robber in the video. Didn't find
14 it. Didn't find it at all. We know that she does
15 have a large piece of cloth like that but it's not
16 red, it's pink. Right? She said so. And not only
17 that, it's not like it was hiding. It was there on
18 her window. A door going to the outside, used as a
19 window shade. And what else did Ms. Ford tell us?
20 She said, no, I didn't notice that anything was
21 missing; that shawl, I didn't notice it was missing at
22 all on the 8th. It was there. In fact, it was there
23 for the police and yet the police, with all those
24 years of experience on searching and knowing what to
25 look for, didn't even collect that. Why? It didn't

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1 match. No red shawl at all with tassels. Doesn't
2 exist, not in that house. And these are all
3 inconsistencies in the State's circumstantial evidence
4 regarding identity. As we know, inconsistencies are
5 reasonable doubts.

6 I love this. The shawl is great. You know why?
7 They had the witness up there. Honest to goodness, I
8 don't think they showed this. Well, she confirmed her
9 shawl's not red, it's pink. It also corroborates why
10 officers would have neglected it. They were looking
11 for a red shawl with tassels. Officers with years of
12 experience, they didn't find a red shawl with tassels.
13 You know why? She doesn't have one. She has a pink
14 shawl used as a window covering.

15 And the State also tried to make a deal about,
16 oh, well, the officers were getting directions from
17 Corporal -- or from Sargent Dukes. Sargent Dukes is
18 talking to her at the station. Even with the
19 direction of her through Dukes, the people on the
20 scene still didn't find a red shawl with tassels. It
21 was pink. It doesn't exist. These are all
22 inconsistencies. And inconsistencies are reasonable
23 doubts. You know why they didn't find it? It's not
24 there.

25 Let's also talk about what happened that day.

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1 Alibi. State's witness, Ms. Ford, was up here. What
2 did she say? About 1:40 p.m. they left. To go where?
3 Walmart. What did they do? Some shopping. After
4 that, where did they go? They went to Sonics for
5 Sonic happy hour. Who doesn't like Sonic happy hour?
6 Discounted slushies, right? They like them. After
7 they stopped there at Sonics for Sonic happy hour,
8 they went back home. About 3:40 p.m. is about the
9 time they got back.

10 Now, just think about alibi. The defense
11 doesn't have to prove it. The State has to disprove
12 it. There's no burden on us. No burden on Tykeem
13 May. Don't you put one there. You keep it where it
14 belongs, on the State.

15 What else do we know? We know that he worked
16 two jobs. What about those two jobs? What's
17 interesting about them are the details. He worked one
18 the day and one the night. Tykeem May is a
19 hardworking young man. He has a daytime job at Dollar
20 General. He was excited because he recently picked up
21 a job, according to Ms. Ford, as well, at TKL Security
22 -- about two weeks before, as well -- in other words,
23 whether or not he was still in school, S.C. State
24 University, the man worked. So what I'm trying to
25 tell you is contrary to the State's first words to

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1 you, there was no lure of easy money pulling at Tykeem
2 May because the evidence shows that Tykeem May is a
3 hardworking young man with no motive to steal.

4 Now, as we said, all of these inconsistencies
5 are present in the State's circumstantial evidence.
6 All right? And as we said, inconsistencies are
7 reasonable doubts. In other words, each one of these
8 by themselves, or maybe a few of them, or all
9 together, amount to reasonable doubt. All of them.
10 Not quite Baskin-Robbins. We've got twenty-three.
11 Baskin-Robbins has thirty-one. But, still, you can
12 pick your plate. Twenty-three individual reasons, and
13 more if you look at the evidence even harder.

14 Now, this isn't horseshoes. Close doesn't
15 count. We have the highest standard for the burden of
16 proof in the -- actually, in the justice system at
17 all, is beyond a reasonable doubt.

18 Now, I won't have an opportunity to speak to you
19 again. What I ask is that you apply the law to the
20 facts. And, yes, including the section of law the
21 State conveniently left out and didn't provide to you
22 at the beginning but that you will hear from the judge
23 regarding how to analyze and apply circumstantial
24 evidence. It's the heart of this case regarding
25 identity.

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1 I want you to hold the State to its burden
2 because it's the State's burden, not ours. Because if
3 you do, I'm confident that you will find, for one or
4 more or all of these reasons, not guilty.

5 Let's also talk about this. Even though your
6 decision is supposed to be unanimous for the burden,
7 it doesn't say it has to be unanimous for your reason
8 of doubt. One person could have one or more reasons
9 that are different from another person's reasons that
10 are different from another person's reasons. What is
11 necessary is that you just agree, yeah, there's
12 reasonable doubt in this case.

13 We have reasonable doubts and reasonable doubt
14 means not guilty, period. If you apply the law, the
15 facts in this case, I'm confident you'll find that
16 Tykeem May is not guilty, because Tykeem May is not
17 guilty of armed robbery and he is not guilty of
18 possession of a firearm during the commission of a
19 violent crime. Thank you.

20 THE COURT: You may proceed when you're ready.

21 MR. BELL: Thank you.

22 THE COURT: You're welcome.

23 MR. BELL: May it please the Court.

24 THE COURT: Yes, sir.

25 MR. BELL: Mr. Stevens.

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CLOSING ARGUMENT

MR. BELL: Ladies and gentlemen of the jury, as I stated when I started out with this case, the lure of easy money leads people to do strange things. Leads people to do armed robbery. Leads people to do all kinds of crazy things to try to find money. And that's why we're here this week. And I'll talk about that more a little later. I want to go to that.

The first thing that we know in this case, the one thing we know, is an armed robbery happened back on September 8th, 2013. We know it from the testimony of Quantavious Montgomery and we know it from the videos that we presented from September 8th at the Keg on John C. Calhoun Drive, [REDACTED], approximately 2:00 p.m. in the afternoon. That we know.

But first of all, I've got to talk a little bit about the videos. I'll talk about Mr. Montgomery. And all of these are from these bad -- these inconsistencies. But what Mr. Stevens has also overlooked are the consistencies. And he's overlooked a lot of evidence to get to those inconsistencies. And he's also confused direct and circumstantial evidence because, ladies and gentlemen, direct evidence is Quantavious Montgomery getting up on the stand saying, I was there; a person, a light-skinned

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1 black male with a gray skullcap or gray hoodie, with
2 dreadlocks -- and remember, he's at ground level with
3 the man. These camera angles are at an angle above.
4 He got to see them. He got to experience it -- who
5 had red sunglasses, who had a shawl or bandana around
6 his face, who had an assault rifle. That's direct
7 evidence, that's not circumstantial evidence. The
8 video cameras, that's direct evidence, not
9 circumstantial evidence. So the State's case is not
10 all founded on circumstantial evidence. We're founded
11 mostly on direct evidence. And I'll tell you that.

12 But let's talk about the cameras. He wants to
13 make a big thing about the cameras: they're off,
14 therefore it's an inconsistency. It's not, ladies and
15 gentlemen. I'll be willing to bet -- let's just talk
16 about the little time, the five increments. I'll bet
17 if we were to go around the courtroom, people that
18 have got watches, I'll bet you maybe three people
19 might have the exact time on a watch. And remember,
20 this is two different camera systems. Mr. Hall got up
21 here, the guy that installed the system, who maintains
22 these systems, two different systems -- so it's not
23 one system that keeps time for all of them. There was
24 the Green's Liquor Store part, there was the outside
25 cameras, and the Keg's part that has the other outside

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1 cameras and inside cameras.

2 We also know that the robbery happened after
3 12:00 p.m. on Sunday, because they didn't open until
4 12:00 p.m. Who testified to that? Mr. Montgomery and
5 Mr. Graham. So the robbery had to occur between 12:00
6 p.m. and 2:00 p.m. when the police arrived, after they
7 were called. We know that. So we know the cameras
8 are off. Judge from that. But we had Mr. Hall. He
9 wasn't an expert but he was the guy that installed the
10 system, knows the system, and says they can be off.
11 That was his example, like watches can be off a minute
12 or two. And that's not -- that's not outside the
13 realm of possibility. We're not asking you to make a
14 big leap of faith, a big factual leap. That's
15 something -- anything built by man is not perfect.

16 But, also -- let's talk about it. Let's talk
17 further about it, about the car. He wants to make a
18 big thing, inconsistency, oh, Mr. Montgomery ran up
19 the street and he didn't see a car behind there.
20 Well, number one, his car was parked there. We can
21 see it in the pictures. Look at that from the Keg and
22 look at the side. His car is parked there. And,
23 number two, a man just walked by him with an assault
24 rifle. Is he looking to see if a white car is around
25 this building? He's keeping his eye on that man with

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1 that assault rifle. Wouldn't you? Wouldn't anybody?

2 And notice where the individual walks on that
3 side camera that he makes a big deal about. This
4 camera [indicates]. That's Mr. Montgomery's car on
5 the side of the business, on the right side as you're
6 looking at it from 301. He walks this way -- or he
7 walks this way when he's going, and this way when he's
8 back. Where does the video show that that car is
9 parked? Back here. Why didn't he just walk up the
10 road? It's an easier getaway. Either side. Across
11 the street. But he goes specifically back to that
12 car. And the further thing, there is no evidence that
13 there was a car after the robbery there. Why did the
14 -- why did that car just pull in, sit there for a
15 couple of minutes, and pull out? Nobody came in. If
16 it's after the robbery, as they want you to say, Mr.
17 Montgomery locked it up, called his boss, called the
18 police. Why is that car there? That's the only car
19 that's there, other than Mr. Montgomery's. Oh, well,
20 he didn't see a white car drive by or drive away when
21 he was sitting outside. Look at the video. What was
22 he doing? He was playing with his phone. He's not
23 noticing. He has no reason to notice what cars are
24 coming. Cars are coming up and down the thing. He
25 probably couldn't tell you if a red, blue, green,

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1 yellow car came. He had his attention elsewhere.
2 That's not an inconsistency.

3 Now, he gave you a description. He did -- I'll
4 give him that. The gloves. I'll give you the gloves
5 as an inconsistency, because I'll flat out say -- you
6 can see the video -- that person who robbed is not
7 wearing gloves. They're not wearing gloves. Oh, but
8 the dog tracked somebody when the police got there and
9 they just went and knocked on the door. Okay.

10 I mean, we were given some specific -- Sargent
11 Dukes was given some specific, oh, they tracked with
12 the gloves. Well, okay. Let's take what Mr. Stevens
13 suggested. They just sniffed the air. Okay. It's a
14 store, ladies and gentlemen. How many people have
15 been there on Saturday? How many people have been
16 there Sunday morning? They could have -- that dog
17 could have tracked anybody. And we've got Lieutenant
18 Robinson that came. He looked around to see if
19 anybody was on foot with the description they had. He
20 didn't see anybody. He tried.

21 So, ladies and gentlemen, we have Mr.
22 Montgomery's description. Then -- oh, and remember.
23 I forgot. Let me go back to the dog. Yes, they went
24 to the trailer that day. But he overlooked another
25 time. Sargent Dukes followed up, as good police work

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1 you should, a couple of days later. He went to that
2 trailer and talked to the people. Did y'all see
3 anything? You know, trying to find out. Because they
4 had gone cold. They didn't know. They were working
5 every angle they could find. And that was about the
6 only one they had at the time. But then he got the
7 video and looked at the video. And he got the
8 description, too, when he talked to Mr. Montgomery.
9 And they got the description.

10 And here's where we are, ladies and gentlemen.
11 By September 12th, we've got a black male with light
12 skin with dreadlocks who's driving a white Dodge
13 Caliber. Oh, and something else. If you look at the
14 video, you look at this picture -- let me find it.
15 One moment. Anyway, you can look at the picture in
16 evidence. But look at the video, too. You can notice
17 when the vehicle comes in, it backs in and comes
18 straight to the camera. And if you look at the white
19 corner of the windshield, you see something irregular.
20 It looks like a little white sticker. Look at it.
21 Look at it hard, because it's important. I'll get to
22 that in just a few minutes. Not inconsistent.

23 But the robber was wearing red sunglasses, a
24 gray hat or hoodie. Red sunglasses, gray hat or
25 hoodie, scarf or bandanna, jeans with fading, white-

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1 and-black athletic shoes -- look at the shoes -- with
2 a rifle with a banana clip, a wood stock with strap
3 goes to the description of the robber of the Keg on
4 September 8th. And what do the police do? What do
5 they do? He gets a picture of the Caliber, because he
6 knows it's involved. We know it's involved. It's got
7 to be. There's no other explanation. It's not an
8 inconsistency. And he gets a picture of the robber
9 and he puts it out, puts it out to his department and
10 Orangeburg County to be on the lookout, let's look for
11 a white or silver. The only reason he says he put
12 silver is because of the different things. But we
13 know it's a white Dodge Caliber. There's no question
14 it's white.

15 What happens next? Good police work.
16 Lieutenant Culler, with the county, he's coming --
17 he's coming from the complex on Ellis and he happens
18 to see, right there at the intersection of Chestnut
19 and Ellis, low and behold it's a white Dodge Caliber.
20 Peaks his interest; I've got the picture, let's check
21 it out. So he goes and he sees the vehicle stopped on
22 Ellis and he goes up to see what's going on. He sees
23 people getting out. He sees something -- somebody get
24 out that looks -- oh, kind of fits the description; I
25 think we need to check this out.

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1 So he waits. He waits. It leaves. He goes and
2 he stops. And he's only stopping him for one reason.
3 And don't -- we're not kidding you, we're not trying
4 to lie to you. We're not trying to lie to you. He
5 was stopping him because they wanted to check out that
6 white Dodge Caliber to see who was driving. It might
7 have been -- it might have been somebody of interest
8 or it might not have been. And when they stop it,
9 they get the license tag number. You saw that in the
10 video. And the individual gets out, it's Tykeem May.
11 He's a black male, light-skinned, with dreadlocks.
12 Alarms are now going off a little bit; this needs to
13 be checked out.

14 So what do they do? They get his address,
15 which, as it turns out, was a lie. They get the
16 license tag, they get the registration. They find
17 that Emonie Ford is one of the co-owners. Sargent
18 Dukes goes over to South Carolina State, checks him
19 out, gets his information, gets her information, where
20 she lives, [REDACTED] Wilkinson. And what do they do? They
21 don't run and make an arrest or anything. They do
22 more good police work: let's go check this out; let's
23 see what's going on. They check the Brandon Street
24 address. He sat there for six hours to see if
25 somebody came. Nobody came. Lieutenant Caddell

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1 testified he went to the [REDACTED] Wilkinson Street. What
2 was there? A white Dodge Caliber. Who was there?
3 Mr. May. He saw him. He identified him. He was
4 there. He was going in and out.

5 So Mr. Dukes comes, after they determine that he
6 didn't live at Brandon Street, and they watched a
7 little more. Sargent Dukes watched. Saw him come out
8 and smoke a cigarette. Saw Ms. Ford walk up the
9 street with the dog.

10 Lieutenant Caddell went back to the office and
11 they decided it's worth getting a search warrant.
12 It's a lead. It's a hot lead. We've got to check it
13 out. So they got a search warrant. They got a search
14 warrant and they went to the house. And they took the
15 county SRT team because it's a county address. And
16 they're going to check out a possible armed robbery
17 suspect who had an assault rifle in this robbery. How
18 do you think the police are going to go in there?
19 They're just going to walk in, hey, how you doing?
20 No. They're going to make sure that they're safe and
21 everybody else is safe.

22 So they go in and they have to do it by
23 surprise, just so you get the jump on them to make
24 sure nothing bad happens. And I'm sorry they had to
25 handcuff them, but they didn't know what they were

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1 walking into. Sorry they had to put a gun to their
2 head. That's no big deal. That's police work.
3 That's to make sure people are safe, the police
4 officers and the citizens, that nothing bad happens.
5 And, fortunately, nothing did.

6 So we have a couple of things going on at the
7 same time, ladies and gentlemen. We've got Sargent
8 Dukes and another officer taking Mr. May and Ms. Ford
9 back to their police station, and we've got officers
10 who are searching.

11 Well, Sargent Dukes testified -- and then
12 Ms. Ford herself testified, they took me back to the
13 police station and showed me a video. And what did
14 she say? Oh, that looks like my car. Oh, those look
15 like my sunglasses. Oh, that looks like my shawl
16 that's in my house. And, oh, that gun looks like a
17 gun that Tykeem has had, I thought he sold it. And
18 they do the search warrant. What did they find in the
19 house? They find red sunglasses, that Ms. Ford said
20 were hers, that the robber was wearing. They find a
21 pair of Nike shoes. They had found her pair and she
22 said, oh, my boyfriend Tykeem has got a pair just like
23 them, I bought them. And the significant part is if
24 you look at State's 4 and you look at those shoes, you
25 can see the Nike switch on the bottom.

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1 And, oh, they found an assault rifle, if you
2 look in the picture, that's like that, with a wood
3 stock, with a banana clip. And if you look at those
4 pictures, this is the rifle with a strap. Because it
5 keeps getting hung up with him. And they found it
6 loaded. So apparently he came to the robbery ready
7 for business.

8 They didn't find the scarf. They saw jeans that
9 were similar to what they saw. They saw, as I said,
10 the white Dodge Caliber that, guess what, has a
11 sticker in the left corner, the driver's side corner,
12 the same vehicle.

13 Ladies and gentlemen, don't be fooled by the
14 defense. We have all these items. Black male, light-
15 skinned, with dreadlocks. He was driving a white Dodge
16 Caliber, white window sticker, red sunglasses. We'll
17 give in. We didn't find the gray hat or hoodie. You
18 had Ms. Ford identifying, oh, that's my scarf, in the
19 video, jeans at the house that had faded fronts or
20 acid washed or whatever -- however the defense wants
21 to character [phonetic] -- they're going to -- they're
22 going to split that hair. White-and-black athletic
23 shoes, with a rifle with a banana clip, a wood stock,
24 and a strap. You put all those together, ladies and
25 gentlemen, they line up one trail to that man, the

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1 defendant. No inconsistencies, no circumstantial.
2 But all those together can only lead one way, straight
3 to that man.

4 Oh. But Emonie said that they didn't go to --
5 they left at 1:40 to go to Sonics and Walmart. Well,
6 she said it was around there. She didn't say, upon
7 cross or upon further questioning, it could have been
8 2:00, it could have been 2:15, it could have been
9 2:40. Her main focus was getting to Sonic between
10 2:00 and 4:00 for happy hour. You heard. That's what
11 she was wanting to do. And she got there. Twenty
12 minutes at Walmart, then we went to Sonic, then we
13 came home.

14 Now, I think the defense attorney said, well,
15 she said they got home at 3:40. She may or may not
16 have said that. I can't -- I don't remember. But, I
17 mean, if it was 3:40, I mean, we're talking an hour if
18 they left at 2:40. And we don't have it on the map,
19 but they live maybe five minutes away from the Keg.

20 But he's a hardworking man. She said he's a
21 hardworking man, he doesn't need the money. Well,
22 that's not all she said. She said he had two jobs.
23 He had told the police that he was a student at State.
24 But he wasn't. Or he had been. That's where she met
25 him. But he wasn't a student. Well, why wasn't he a

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1 student? Because he didn't have money. He didn't
2 have money for tuition. That's why he got a second
3 job. That's what she said. He needed money. Let's
4 get rid of that inconsistency, too. He needed money,
5 quick money, easy money.

6 Make no mistake, ladies and gentlemen. The only
7 way that you can find the defendant not guilty is to
8 pick apart little things here and there. But you have
9 to -- you can't do it -- it's like a puzzle. You have
10 to put all these pieces together. And it's like a
11 jigsaw puzzle. If you put enough pieces together, you
12 don't have to have a hundred percent of the pieces
13 together to understand what the picture is about. You
14 just have to have a goodly number. And that's what
15 the State has presented you, ladies and gentlemen. We
16 presented you a goodly number of all the identifying
17 factors of the individual that robbed the keg on
18 September 8th, 2013.

19 Now, I talked a little bit about reasonable
20 doubt and circumstantial evidence. And the defense
21 said, oh, well, they were scared to talk about
22 circumstantial or direct evidence because there's so
23 many inconsistencies. Well, the only reason I didn't,
24 because I can't -- I couldn't talk about the facts.
25 Well, here are the facts, ladies and gentlemen. The

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1 direct evidence, plus what circumstantial evidence
2 there is, points in only one direction, as I said,
3 conclusively: the guilt of the defendant.

4 Now, about reasonable doubt. As I told you,
5 it's proof that leaves a person looking for the truth
6 firmly convinced of the defendant's guilt. For
7 instance, you came into this courtroom earlier this
8 week, Tuesday, not knowing a thing about this case
9 except maybe it was an armed robbery. And now you
10 have to ask yourself has the State given you enough
11 evidence where you are firmly convinced that the
12 defendant is guilty of the charges. And I argue that
13 we have.

14 It is not your duty, ladies and gentlemen, as
15 jurors, to search for reasonable doubt, but to test
16 the State's case whether we have proven it beyond all
17 reasonable doubt. That's the test. And I disagree
18 with the defense. Inconsistencies, they're not
19 necessarily reasonable doubt. For instance, people
20 can see the same thing. You, ladies and gentlemen,
21 will go back in the jury room here in a few minutes
22 and talk about this case, and you will have heard and
23 seen things differently. We perceive things
24 differently as human beings. We see something that
25 somebody else doesn't, or they hear something that we

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1 don't. Those are inconsistencies. But that doesn't
2 mean anybody is lying. That doesn't mean it's
3 reasonable doubt. It just means we're human. So not
4 all inconsistencies are reasonable doubt. I'll give
5 them -- he said the gloves. Fine.

6 And, ladies and gentlemen, I will also tell you
7 as jurors, and reasonable doubt, you can have
8 reasonable doubt about a particular fact that has been
9 brought out or not brought out. You can have a
10 reasonable doubt as to that fact. But because you
11 have reasonable doubt about one fact does not rise to
12 reasonable doubt about guilt. You can just dismiss
13 that fact and consider other facts. That's your
14 prerogative as jurors. But I'm just trying to give
15 you guidance that if you think there's one fact that's
16 inconsistent and is reasonable doubt, you can ignore
17 it. But you still can consider other factors towards
18 guilt.

19 Ladies and gentlemen, the State has given you
20 more than enough evidence. We have proven beyond all
21 reasonable doubt Tykeem May is guilty of armed robbery
22 and guilty of possession of a firearm during the
23 commission of a violent crime. What are the
24 probabilities? Think about it. What are the
25 probabilities that all these factors came together to

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1 him? You can think about it, as the defense did. Oh,
2 there's four million of these made. Okay. You've got
3 one out of four million. Okay. There are 100,000
4 Dodge Calibers made. Well, he had access to one Dodge
5 Caliber. So what are the chances that a person that
6 owns a Dodge Caliber owns a Chinese assault rifle?
7 Okay? What is the chance that that individual is a
8 black male who's light-skinned with dreadlocks? You've
9 got to multiply those together. Who had access to red
10 sunglasses, a scarf or bandana, and jeans? Those are
11 all factors. That takes the odds less and less than
12 it's not him. But it is him. That's what the State
13 has done to prove beyond a reasonable doubt by those
14 factors that he is the person that robbed the Keg on
15 September 8th, 2013.

16 Ladies and gentlemen, all we ask, as I said, on
17 behalf of the State of South Carolina, Orangeburg
18 County, Quantavious Montgomery and the Keg, is that
19 you do justice.

20 I'll leave you with this last thought. Smart
21 man, Albert Einstein, once said the world is a
22 dangerous place to live not because of the people who
23 are evil, but because of the people who don't do
24 anything about it. Ladies and gentlemen, do something
25 about it. Do justice. Find Tykeem May guilty of

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1 armed robbery. Find him guilty of possession of a
2 firearm during the commission of a violent crime.
3 Thank you.

4 THE COURT: Madam Forelady, ladies and
5 gentlemen, we're going to take a very brief restroom
6 break, after which we will have -- we will have the
7 Court's instruction.

8 During this break, please do not discuss the
9 case in any manner whatsoever. And please leave your
10 notepads in your seats. You can go with your
11 caretaker, please.

12 [Whereupon, the jury exits the courtroom at
13 11:07 a.m.]

14 THE COURT: We'll be at ease for however long it
15 takes for the jury to use the restroom.

16 [Whereupon, a recess is taken from 11:07 to
17 11:18 a.m.]

18 THE COURT: Is the State ready to proceed?

19 MR. BELL: The State is ready.

20 THE COURT: Is the defense ready to proceed?

21 MR. STEVENS: The defense is ready, Judge.

22 THE COURT: Please bring in the jury.

23 [Whereupon, the jury enters the courtroom at
24 11:20 a.m.]

25 - - -

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CHARGE OF THE COURT

1
2 THE COURT: During this trial, ladies and
3 gentlemen, you and I have certain duties to perform. As
4 the trial judge, it is my responsibility to preside over
5 the trial of this case. I also have the duty to rule upon
6 or pass upon the admissibility of evidence offered during
7 this trial. You are to consider only the competent
8 evidence that is before you. You are to consider only the
9 testimony which has been presented from this witness
10 stand, together with any other exhibits which have been
11 made a part of the record in this case.

12 I have the additional duty to charge or instruct
13 you on the law applicable to this case. As the presiding
14 judge, I'm the sole judge of the law of this case and it
15 is your duty as jurors to accept and apply the law as I
16 now state it to you. If you have a preconceived idea as
17 to what the law is or what the law ought to be in a case
18 or in this case, and it should not agree with what I now
19 tell you the law is, you are obligated under your oath to
20 abandon this preconception on your part because you are
21 sworn to accept the law and apply the law precisely as I
22 now state it to you.

23 In every case tried in this court before a jury,
24 the jury becomes the sole and exclusive judges of the
25 facts in a case. You, the jury, are the judges of the

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1 facts in this case. This Court is the judge of the law.
2 The constitution of our state has declared that a trial
3 judge shall not intimate, state, comment upon, or make any
4 statement to a trial jury about the facts in a case.
5 Since you, the jury, are the sole judges of the facts in
6 this case, you are not to infer anything from what I've
7 said during the progress of this trial in ruling upon the
8 admissibility of evidence or otherwise, or anything that I
9 say now to you during the course of this instruction, that
10 I have any opinion about the facts. The law does not
11 allow me to have an opinion about the facts. This is a
12 matter solely for you, the jury, to determine.

13 As jurors, then, it is your duty, as I have
14 instructed you, to determine the effect, the value, the
15 weight, and the truth of the evidence presented during
16 this trial.

17 Necessarily, you must assess the credibility of
18 witnesses who have testified in this case. Credibility is
19 simply a legalistic term which means believability. It
20 becomes your duty as jurors to analyze and to evaluate the
21 evidence and determine that evidence which convinces you
22 of its truth. Some of the things you may consider as you
23 decide whether or not to believe a witness' testimony
24 about a particular matter include: what was the manner
25 and appearance of the witness who testified; was he or she

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1 straightforward or hesitate in answering; was the
2 testimony of a witness consistent or inconsistent; how did
3 the witness come to know the facts that he or she
4 testified to or what was his or her ability to know these
5 facts; if there is some reason a witness would want to
6 give testimony which would help or hurt one side or the
7 other -- in other words, was the witness biased or
8 prejudiced -- and was the testimony of a witness
9 strengthened or weakened by other testimony or evidence.

10 I further instruct you that in determining the
11 question of the credibility or believability of witnesses
12 who have testified, you may believe one witness as against
13 several witnesses or several witnesses as against one
14 witness. You may believe a part of the testimony of a
15 witness and reject the remaining part of the testimony of
16 that same witness. And if you have a good and sound
17 reason, you may believe the testimony of a witness in its
18 entirety or reject the testimony of a witness in its
19 entirety. You may consider the demeanor of a witness,
20 that is, the manner and appearance of the witness from the
21 witness stand. You can believe as much or as little of
22 each witness' testimony as you think proper.

23 Ladies and gentlemen, throughout this process
24 you have but one objective, to seek the truth regardless
25 of its source.

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1 I further instruct you that there are two types
2 of evidence which are presented during a trial: direct
3 evidence and circumstantial evidence. Direct evidence is
4 the testimony of a person who asserts or claims to have
5 actual knowledge of a fact, such as an eyewitness.
6 Circumstantial evidence is proof of a chain of facts and
7 circumstances indicating the existence of a fact. The law
8 makes absolutely no distinction between the weight or
9 value to be given to either direct or circumstantial
10 evidence, nor is a greater degree of certainty required of
11 circumstantial evidence than of direct evidence.

12 As I've already instructed, there are two types
13 of evidence which are generally presented during a trial:
14 direct evidence and circumstantial evidence. Direct
15 evidence directly proves the existence of a fact and does
16 not require deduction. Circumstantial evidence is proof
17 of a chain of facts and circumstances indicating the
18 existence of a fact. Crimes may be proven by
19 circumstantial evidence and the law makes no distinction
20 between the weight or value to be given to either direct
21 or circumstantial evidence. However, to the extent the
22 State relies on circumstantial evidence, all of the
23 circumstances must be consistent with each other and, when
24 taken together, point conclusively to the guilt of the
25 accused beyond a reasonable doubt. If these circumstances

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1 merely portray the defendant's behavior as suspicious, the
2 proof has failed.

3 Ladies and gentlemen, you should weigh all of
4 the evidence in this case. The State has the burden of
5 proving the defendant guilty beyond a reasonable doubt.
6 This burden rests with the State, regardless of whether
7 the State relies on direct evidence, circumstantial
8 evidence, or some combination of the two. After weighing
9 all of the evidence, if you are not convinced of the guilt
10 of the defendant beyond a reasonable doubt, you must find
11 the defendant not guilty. Conversely, if you are
12 convinced of the guilt of the defendant beyond a
13 reasonable doubt, then you must find him guilty.

14 I instruct you, ladies and gentlemen, that the
15 fact that the defendant was arrested, charged, and
16 indicted in this case is not evidence in this case and
17 cannot be considered by you as evidence of guilt in this
18 case, nor does it create any presumption or inference of
19 guilt. This documentation, ladies and gentlemen, is
20 simply the formal written instrument or instrument which
21 contain the charge or charges made against a defendant.
22 They simply serve as the formal documentation by which a
23 case is brought or processed through the court system.

24 The defendant has pled not guilty to the
25 indictment and that plea casts the burden on the State to

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1 prove the defendant guilty, because a person charged with
2 committing a criminal offense in South Carolina is never
3 required to prove himself innocent.

4 I instruct you, Madam Forelady, ladies and
5 gentlemen, that it is a cardinal and important rule of the
6 law of evidence that a defendant in a criminal trial, no
7 matter what the seriousness of the charge made against him
8 may be, will always be presumed to be innocent of the
9 crime for which he is indicted unless his guilt has been
10 proven by evidence satisfying you of that guilt beyond a
11 reasonable doubt. This presumption of innocence does not
12 cease when you retire to deliberate but it accompanies the
13 defendant from the time of his appearance throughout the
14 trial, until you reach a verdict in this case. Our
15 Supreme Court has said that the presumption of innocence
16 is like a robe of righteousness placed about the shoulders
17 of the defendant and it remains with him and assigns him
18 to that class, the innocent, until that presumptive robe
19 of righteousness has been stripped from his person by
20 evidence satisfying you of that guilt beyond a reasonable
21 doubt.

22 Madam Forelady, ladies and gentlemen, the
23 presumption of innocence is not mere legal theory. It is
24 not just a legal phrase. It is a substantial right to
25 which every defendant is entitled unless you, the jury,

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1 are satisfied, from the evidence, of his guilt beyond a
2 reasonable doubt.

3 The State has the burden of proving the
4 defendant guilty beyond a reasonable doubt. Some of you
5 may have served as jurors in civil cases where you were
6 told that it is only necessary to prove that a fact is
7 more likely true than not true, such as by the greater
8 weight or the preponderance of the evidence. In criminal
9 cases, the State's proof must be more powerful than that.
10 It must be beyond a reasonable doubt. Proof beyond a
11 reasonable doubt is proof that leaves you firmly convinced
12 of the defendant's guilt. There are very few things in
13 this world that we know with absolute certainty and in
14 criminal cases the law does not require proof that
15 overcomes every possible doubt. If, based on your
16 consideration of the evidence, you are firmly convinced
17 that the defendant is guilty of the crime charged, you
18 must find the defendant guilty. If, on the other hand,
19 you think there is a real possibility that the defendant
20 is not guilty, you must give him the benefit of that doubt
21 and find him not guilty.

22 The defendant is charged with armed robbery. In
23 order to prove this offense, the State must first prove
24 beyond a reasonable doubt that the defendant took personal
25 property from the person or presence of another person.

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1 Property is in the presence of a person if it is within
2 the person's reach, inspection, observation or control, so
3 that the person could, if not overcome with violence or
4 prevented by fear, keep possession of the property. The
5 State must also prove beyond a reasonable doubt that the
6 defendant carried the property away, intending to
7 permanently deprive the owner of the property and keep the
8 property for the defendant's own use. The slightest
9 removal of the property or the complete possession of the
10 property, even for an instant, by the defendant is
11 sufficient to show a taking and carrying away of the
12 property. The taking and carrying away of the property
13 must have been done with violence or by putting the owner
14 of the property in fear of violence. Finally, the State
15 must prove beyond a reasonable doubt that the defendant
16 was armed with a deadly weapon or that the defendant,
17 either by action or words, while using a representation of
18 a deadly weapon or object, during the robbery. A deadly
19 weapon is any article, instrument, or substance which is
20 likely to cause death or great bodily harm. Whether an
21 instrument has been used as a deadly weapon depends on the
22 facts and circumstances of each case. The following are
23 examples of instruments which may be deadly weapons: a
24 pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a
25 slingshot, metal knuckles, a firebomb, a Molotov cocktail,

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1 gasoline, a razor, and lighter fluid. A gun may be a
2 deadly weapon even if it is not operating.

3 Ladies and gentlemen, I instruct you that these
4 are simply evidentiary facts to be considered by you along
5 with the other evidence in the case -- in the case and
6 it's for you, the jury, to give it the effect, value and
7 weight you decide it should receive. So in summary, the
8 State may prove armed robbery by establishing the
9 commission of a robbery and either of these two additional
10 elements: that the robber was armed with a deadly weapon
11 or that the robber alleged that he or she was armed with a
12 deadly weapon, either by action or words, while using a
13 representation of a deadly weapon or any object which a
14 person present during the commission of the robbery
15 reasonably believed to be a deadly weapon.

16 The defendant is charged with possession of a
17 weapon during the commission of or attempt to commit a
18 violent crime. The State must prove beyond a reasonable
19 doubt that the defendant was in the possession of a
20 firearm or visibly displayed what appeared to be a firearm
21 during the commission of a violent crime. A firearm means
22 any machine gun, automatic rifle, revolver, pistol, or any
23 weapon which will, is designed to, or may be readily
24 converted to expel a projectile. In order to find the
25 defendant guilty of possession of a weapon during the

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1 commission of a violent crime, you must first find the
2 defendant guilty of either committing a violent crime or
3 attempting to commit a violent crime. I instruct you that
4 armed robbery is a violent crime as defined by South
5 Carolina Code Section 16-1-60.

6 Ladies and gentlemen, an issue in this case is
7 the identification of the defendant as the person who
8 committed the crime charged. The State has the burden of
9 proving identity beyond a reasonable doubt. You must be
10 satisfied beyond a reasonable doubt of the accuracy of the
11 identification of the defendant before you may convict the
12 defendant. Identification testimony is an expression or
13 belief of impression by a witness. You must determine the
14 accuracy of the identification of the defendant. You must
15 consider the believability of each identification witness
16 in the same way as any other witness. You may consider
17 whether the witness had an adequate opportunity to observe
18 the offender at the time of the offense. This will be
19 affected by things like how long or short a time was
20 available, how far or close the witness was, the lighting
21 conditions, and whether the witness had a chance to see or
22 know the person in the past. Once again, I instruct you
23 the burden of proof on the State extends to each and every
24 element of the crime charged. And this specifically
25 includes the burden of proving beyond a reasonable doubt

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1 the identity of the defendant as the person who committed
2 the crime. If after examining the testimony you have a
3 reasonable doubt as to the accuracy of the identification,
4 you must find the defendant not guilty.

5 Bear with me just one moment. I apologize,

6 The defendant has raised the defense of alibi.
7 In order to establish an alibi, it must be shown that the
8 defendant was at another specified place at the time the
9 crime was committed and that it was therefore impossible
10 for the defendant to have been at the scene of the crime.
11 Mere denial of presence at the scene of a crime does not
12 constitute an alibi. There is no burden on the defendant
13 to prove an alibi. The burden is on the State to prove
14 beyond a reasonable doubt that the defendant was actually
15 present at the scene of the crime, actually participated
16 in it, and was not somewhere else. In other words, the
17 State has the burden of disproving the defendant's alibi
18 defense.

19 Ladies and gentlemen, I instruct you and
20 emphasize that the fact that the defendant did not testify
21 is not a factor to be considered by you in any way in your
22 deliberative process and in your consideration on the
23 question of the guilt or innocence of the defendant. It
24 must not be considered by you in any manner whatsoever. A
25 defendant has the constitutional right to remain silent

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1 and the assertion of this right must not be considered by
2 you in your deliberation. I repeat, under your oath you
3 are to draw absolutely no conclusion whatsoever from the
4 fact that the defendant in this case did not testify. The
5 fact that this defendant did not testify is not to be
6 discussed in any manner whatsoever during your jury
7 deliberation. The burden of proof, as I have stated to
8 you, is on the State. The defendant is not required to
9 prove his innocence. The burden of proof remains on the
10 State to prove guilt beyond a reasonable doubt.

11 There are two indictments in this case and they
12 allege two separate and distinct offenses against the
13 defendant. And these indictments are as follows: 2014-
14 GS-38-189, armed robbery, and 190, possession of a weapon
15 during the commission of a violent crime. Each indictment
16 alleges and charges a separate and distinct offense. You
17 must decide each indictment separately on the evidence,
18 and the law applicable to it, uninfluenced by your
19 decision as to any other indictment. The defendant may be
20 convicted or acquitted on any or all of the offenses
21 charged, and you will be asked to write a separate verdict
22 of guilty or not guilty for each indictment.

23 Ladies and gentlemen, there are several options
24 of verdicts in this case and I will go over those with
25 you. You don't need to try to write those down, because

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1 the verdict forms go into the jury room with you. And
2 they are as follows. As to indictment 2014-189, we, the
3 jury, by unanimous consent find the defendant guilty of
4 armed robbery or not guilty. And as to indictment 190,
5 we, the jury, by unanimous consent find the defendant
6 guilty of possession of a weapon during the commission of
7 a violent crime, or not guilty.

8 Ladies and gentlemen, I emphasize that there is
9 absolutely no significance whatsoever to the order in
10 which I've stated these potential verdicts. It is simply
11 that one must be stated first.

12 Ladies and gentlemen, your verdict must be a
13 unanimous one, which means that all twelve of you must
14 agree in order to reach a verdict in this case.

15 Madam Forelady, when the jury has agreed on a
16 verdict, you should fill out the verdict form, sign and
17 date the form, knock on the door and advise the bailiffs
18 that the jury has reached a verdict in this case. Also,
19 if the jury has any questions during deliberations, it is
20 your responsibility to write out those questions and
21 follow the same process by signing and dating the question
22 and also knocking on the door and advising the bailiff
23 that the jury has a question.

24 Ladies and gentlemen, if you have any questions
25 during deliberations, I need to advise you that there will

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1 be a delay in our response and that is because there is a
2 process that we must follow in answering your questions.
3 So know if you have a question, there will be a delay
4 because we have to follow that procedure in order to
5 answer your question.

6 And, again, ladies and gentlemen, your verdict
7 must be a unanimous one.

8 I'm going to ask that you return to your jury
9 room but do not yet begin your deliberations. And please
10 leave your notepads in your seats. There are some brief
11 matters of law that I need to take up with the attorneys
12 that may require further instruction or additional
13 instruction. If you would go with the bailiff. And after
14 we resolve those matters, I'll let you know when you will
15 be allowed to begin deliberations and when the alternates
16 will be excused.

17 [Whereupon, the jury exits the courtroom at
18 11:40 a.m.]

19 THE COURT: Any exceptions from the State?

20 MR. BELL: None from the State, Your Honor.

21 THE COURT: From the defense?

22 MR. STEVENS: No, ma'am.

23 THE COURT: All right. Can y'all make sure that
24 all of the evidence is in place?

25 And then I need you to sit tight so I can excuse

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1 the alternates.

2 And I think there's a gun -- there's a lock on
3 the gun, isn't there?

4 MR. BELL: Yes, there is. And the bullets are
5 being --

6 THE COURT: I think the bullets can go as long
7 as there's -- if there's a lock on it. There's no way
8 it can be loaded or --

9 MR. BELL: There's a clip in it.

10 THE COURT: Yeah. As long as there's a lock on
11 it, that can go back.

12 [Off the record momentarily]

13 THE COURT: I'm going to -- actually, I'm going
14 to excuse the alternates and I'm going to have the
15 foreperson come out and let her know that we have the
16 video and they have to ask to watch it because we
17 don't have the equipment to send back to them to watch
18 it.

19 Is there any exception from the State?

20 MR. BELL: No, Your Honor.

21 THE COURT: From the defense?

22 MR. STEVENS: None, Your Honor.

23 THE COURT: I need you to get all the evidence
24 together. Who does that? Okay. I need you to get
25 all the evidence together.

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1 [Off the record momentarily]

2 THE COURT: When you come back, bring me the
3 alternate and leave the foreperson on the other side
4 of the door until I'm done talking to the alternate.
5 But tell them don't begin their deliberations yet.

6 [Whereupon, the alternate jurors enter the
7 courtroom]

8 THE COURT: We want to thank you for your time
9 and attention to this case. Being an alternate can
10 really be thankless but when we need you, it's so very
11 essential. And I've watched you both. You've been
12 timely and you've been incredibly attentive. I hope
13 that jury service has been educational for you, even
14 though you didn't get to deliberate.

15 And we -- your lunch -- the bailiffs have
16 already gone to get your lunch, so if you could
17 accommodate us by hanging around with us so that at
18 least you can take your lunch with you if you would
19 like to.

20 You are welcome to discuss this case but I would
21 ask that you not do it until after Friday when the
22 entire panel is dismissed. You're also welcome to
23 hang around, if you would like, to see how the verdict
24 comes out. But I would imagine you have some other
25 things you might need to do today. But if you would

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1 like to stay, please let the bailiff know and we'll
2 accommodate you. We'll put you in a comfortable spot.

3 [Off the record momentarily]

4 THE COURT: If you need a work excuse today, you
5 can get it in the clerk's office. Otherwise, we'll
6 mail those to you along with your check.

7 I hope that you-all had a good experience. I
8 hope it's been educational for you. You are excused
9 with the Court's profound thanks.

10 [Off the record momentarily]

11 [The evidence goes to the jury at 11:45 a.m.]

12 [Whereupon, the foreperson enters the courtroom]

13 THE COURT: Madam Forelady, I wanted you to
14 advise the jury that the bailiffs have already gone to
15 pick up their lunch and that it will be here shortly,
16 and also that they can begin their deliberations.

17 There is one piece of evidence, the video. We
18 don't have the equipment to send into the jury room
19 with you so if you-all would like to watch it, just
20 let us know and we'll bring you back in to accommodate
21 that request.

22 THE FOREPERSON: Okay.

23 THE COURT: Thank you very much.

24 Okay. The record should reflect that the jury
25 has begun its deliberations at 11:45.

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1 Is there anything we need to take up before
2 recess of these proceedings until we get further
3 instructions from the jury? From the State?

4 MR. BELL: Nothing from the State, Your Honor.

5 THE COURT: From the defense?

6 MR. STEVENS: No, ma'am.

7 THE COURT: And I would ask that y'all stay
8 close in the event we have any questions.

9 MR. BELL: Yes, Your Honor.

10 THE COURT: And I'll let you know when you're
11 free to go get some lunch.

12 MR. STEVENS: Thank you, Judge.

13 THE COURT: You're welcome.

14 [Whereupon, a recess is taken from 11:46 a.m. to
15 1:15 p.m.]

16 THE COURT: I don't know why the Keg part didn't
17 process into my head. I'm sorry. The one of the
18 robbery and the one of the -- the one of the robbery
19 and the one of the robber going into the Keg and
20 leaving. Yeah, so that's the one from the convenience
21 store.

22 THE COURT: Any exception from the State?

23 MR. BELL: None, Your Honor.

24 THE COURT: From the defense?

25 MR. STEVENS: No, ma'am.

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1 THE COURT: Please have the note marked as a
2 Court's Exhibit.

3 [Whereupon, State's Exhibit Number 3 is marked
4 by the court reporter]

5 MR. BELL: Your Honor, the bailiff retrieved
6 that State's 23 so I can cue it up.

7 THE COURT: Okay. Are we ready? Have we got
8 everything all cued up?

9 MR. BELL: Yes, Your Honor.

10 THE COURT: Please bring in the jury.

11 THE BAILIFF: Thank you, Your Honor.

12 [Whereupon, the jury enters the courtroom]

13 THE COURT: Ladies and gentlemen, in response to
14 your note, we're going to replay the video. I've
15 instructed the solicitor to pull the monitor as close
16 as possible to the jury box so that you-all will have
17 a clear view. If you need to replay it again, just
18 let us know and we will accommodate you.

19 You may proceed, Mr. Bell.

20 [Off the record momentarily]

21 THE COURT: Ladies and gentlemen, I need to
22 advise you that you cannot talk while you're watching
23 the video, or make any attempts to deliberate.

24 You may continue.

25 [Whereupon, States Exhibit Number 23, video, is

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1 played for the jury]

2 [Whereupon, the video is not transcribed by the
3 court reporter]

4 THE COURT: Does the jury wish to see the video
5 again, or is that sufficient? If you wish to see it
6 again, raise your hand.

7 Play it again. Thank you.

8 [Whereupon, State's Exhibit Number 23, video, is
9 played for the jury]

10 [Whereupon, the video is not transcribed by the
11 court reporter]

12 THE COURT: Is that it? Okay.

13 Thank you, ladies and gentlemen. If you need
14 anything further, do not hesitate to let us know.

15 [Whereupon, the jury exits the courtroom at
16 1:18 p.m.]

17 [Off the record momentarily]

18 THE COURT: We'll be at ease until we get
19 further instructions from the jury.

20 [Whereupon, a recess is taken from 1:20 p.m. to
21 2:30 p.m.]

22 THE COURT: Madam Forelady, ladies and
23 gentlemen, I received your note and the response to
24 that note, I'm going to give you an additional
25 instruction. And it has to do with continuing to

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1 deliberate. And, again, my comments will be very
2 brief and by way of further instruction.

3 [Whereupon, Court's Exhibit Number 4 is marked
4 by the court reporter]

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ALLEN CHARGE

1
2 THE COURT: As I've already instructed you, you
3 are the sole finders and judges of the facts and evidence
4 in this case. As the judge, I've already instructed you
5 that I'm not permitted to even give a hint as to how I
6 might feel about any factual matter in this case. And, in
7 fact, I have no opinion factually about this case and
8 certainly could give you no hint as to what verdict ought
9 to be brought in this case. It is my duty to state the
10 law of the case, as I have done, and it is your duty to
11 deliberate regarding this case.

12 But I can say this, that when a matter is in
13 dispute, it is not always easy for even two men to agree,
14 or two persons, or two men or two women to agree. When
15 twelve must agree, it becomes obviously correspondingly
16 more difficult. But it is important that litigation and
17 this litigation be ended if it may be ended without a
18 single one of you doing violence to your own conscience.
19 No juror is expected to give up an opinion based on
20 reasoning satisfactory to himself or herself merely for
21 the purpose of being in agreement. And I want to be very
22 clearly understood on that. You are not called upon often
23 to try cases. There are forty-nine circuit judges whose
24 work it is to try cases from day to day throughout the
25 year. It is very unusual, almost unheard of, for a jury

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1 to go out and promptly return with a verdict. This is
2 what would happen if a jury normally was in agreement to
3 begin with. At the same time, we usually are able to get
4 a verdict. What that means is that it is normal for
5 jurors to disagree at first. But the fact that we
6 normally get a verdict also means that after reasonable
7 persons lay aside all extraneous matters and determine to
8 decide a case on the basis of the law and the evidence,
9 they are able to come to a common understanding and are
10 able to write a verdict.

11 It has never been intended that the verdict of a
12 jury should be the verdict of any one person. On the
13 other hand, the verdict of the jury is the collective
14 reasoning of all persons put together. And that is why we
15 have a jury, so that we may have the benefit of collective
16 thought and collective reasoning. It becomes your duty to
17 tell the other jurors how you feel about the case and why
18 you think as you do. And I'm sure that each of you have
19 been doing that. On the other hand, it becomes the other
20 juror's duty to exchange views with you. And you should
21 listen to each other and give to the other's thought such
22 meaning as you think it should have. And so to some
23 degree, it can be said that jury service is a matter of
24 give and take.

25 If you are not able to agree on a verdict, it

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1 just means that at some future term of court, before some
2 other judge perhaps, that some other jury will sit where
3 you are. The same participants will come and the same
4 lawyers probably will come, and they ask basically the
5 same question and presumably and probably they will get
6 much the same answers and we will go through the whole
7 process again. And I have no reason now to think that any
8 other twelve citizens of Orangeburg County will be able
9 and more capable of solving this controversy than the
10 twelve of you.

11 And so I am going to ask you at this time to
12 deliberate further and see if you can reach a verdict in
13 this case. And I want to close this part of this added
14 instruction by reminding each of you that while it is
15 important that litigation be ended, it should not be ended
16 in the form of a verdict by a juror doing violence to his
17 own conscience. No juror is expected to give up an
18 opinion based on reasoning satisfactory to himself or
19 herself merely for the purposes of being in agreement.

20 And with that added instruction, I'm going to
21 ask that you retire and deliberate further.

22 Madam Forelady, if the jury is after this point
23 still unable to reach a unanimous verdict, please advise
24 the Court of that but do not provide the Court with any
25 numerical breakdown.

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1 You-all may go with the bailiff, please.

2 [Whereupon, the jury exits the courtroom at 2:34
3 p.m.]

4 THE COURT: Any exceptions from the State?

5 MR. BELL: None from the State, Your Honor.

6 THE COURT: From the defense?

7 MR. STEVENS: No, ma'am.

8 THE COURT: All right. We'll wait for
9 instructions from the jury.

10 MR. BELL: Thank you.

11 THE COURT: You're welcome.

12 [Whereupon, a recess is taken from 2:34 p.m. to
13 3:02 p.m.]

14 THE COURT: I'm going to allow one of their
15 members to attend a doctor's appointment. Is there
16 any -- and they will resume their deliberations in the
17 morning at 9:30. Is there any objection to that from
18 the State?

19 MR. BELL: None from the State, Your Honor.

20 THE COURT: From the defense?

21 MR. STEVENS: None from the defense, Judge.

22 THE COURT: Would you ask her to bring in the
23 jury for me, please.

24 [Whereupon, the jury enters the courtroom at
25 3:03 p.m.]

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1 THE COURT: Madam Forelady, ladies and
2 gentlemen, one of your member needs to attend a
3 doctor's appointment on today. And I knew there was
4 somebody else on the panel, I just couldn't remember
5 who it was and so I apologize. But we're going to
6 adjourn for the evening so that he can take care of
7 that responsibility, and we will resume jury
8 deliberations in the morning at 9:30.

9 During the break, please do not discuss the case
10 among yourselves or with anyone else. Please do not
11 have any contact with anyone in or about the courtroom
12 when you return in the morning.

13 Please do not watch, read or listen to any media
14 accounts about this case. I will tell you in advance
15 that there are several articles in the Times and
16 Democrat. There has been a writer here who's been
17 following the story. So guard yourselves not to read
18 any of those articles. And I'm not aware of anything
19 on radio or television but if there is, please do not
20 watch or listen to it, and please do not do any
21 independent research on the internet. And please do
22 not make any comments regarding your jury service on
23 any social networking site.

24 I hope that you-all have a great evening. We'll
25 see you in the morning at 9:30. And come directly to

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1 your jury room at that time.

2 [Whereupon, the jury exits the courtroom at 3:05
3 p.m.]

4 THE COURT: Any exceptions from the State?

5 MR. BELL: None from the State, Your Honor.

6 THE COURT: Any exceptions from the defense?

7 MR. STEVENS: No, ma'am.

8 THE COURT: We'll see y'all in the morning at
9 9:30.

10 [Whereupon, a recess is taken from 3:05 p.m. to
11 3:12 p.m.]

12 [Whereupon, Juror Number 36 and Juror Number 17
13 enter the courtroom]

14 JUROR 1: -- up there, you know, up here, giving
15 their testimony --

16 THE COURT: Yes, ma'am.

17 JUROR 1: -- someone in the audience waved at
18 someone that was on the jury and they waved back.

19 THE COURT: Okay.

20 JUROR 1: And so that's what we was wondering.

21 THE COURT: How do you know that person that
22 waved was affiliated with the case?

23 JUROR 1: There was -- the witness that was
24 here. The witness --

25 JUROR 2: We don't necessarily know what

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1 affiliation they had with the witness --

2 JUROR 1: Yeah. There was just --

3 JUROR 2: -- but they came with the witness.

4 THE COURT: Okay. Why does that make you -- I
5 guess I'm trying to figure out -- because some people
6 are just friendly and they just know each other. They
7 may know each other in passing. And because somebody
8 knows someone that's affiliated with a witness doesn't
9 mean that that person knows --

10 JUROR 2: And we don't have -- that's all the
11 information we have, so we don't know -- we don't
12 really know.

13 THE COURT: Yeah. And I didn't see that happen,
14 so I don't really know how to gauge that.

15 Okay. What else did you want to tell me?

16 JUROR 2: That was it.

17 JUROR 1: Yeah.

18 THE COURT: That was it. You-all think -- are
19 you trying to tell me that that's affecting the
20 impartiality of the jury?

21 JUROR 2: Maybe. I can't really give you a
22 definite answer on that. I feel like it --

23 THE COURT: I --

24 JUROR 2: But I can't tell you for sure because
25 I don't know what -- I don't know if -- I don't know

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1 what relation they had to the juror, I don't know what
2 relation they had to the witness. I don't know.

3 THE COURT: Which juror is it that you're
4 indicating waved back?

5 JUROR 2: I don't know his number.

6 THE COURT: Do you know his name?

7 JUROR 2: Gantt.

8 THE COURT: Okay. You-all can go back to your
9 jury room, but do not discuss what you've discussed
10 with me, with anyone, okay?

11 [Whereupon, Juror Number 36 and Juror Number 37
12 exit the courtroom]

13 THE COURT: I need the juror that has some
14 travel problems tomorrow.

15 [Whereupon, Juror Number 22 enters the
16 courtroom]

17 THE COURT: Ma'am, you indicated -- tell me your
18 name and your juror number.

19 MS. BUTLER: Kayla Butler, Number 22.

20 THE COURT: And you indicated you had some
21 concerns with the bailiff?

22 MS. BUTLER: No. I had a concern about
23 tomorrow. I actually had a trip planned for tomorrow.
24 I have to leave Orangeburg by 12:00 noon. I didn't
25 expect it to last --

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1 THE COURT: I wish you had told me that, yeah,
2 during jury qualification. At this time, I can't
3 excuse you because I've already let the alternates go,
4 so I'm going to need you to hang in there with us and
5 I'll try my best to accommodate you so that you're
6 able to go on your trip, because vacations are
7 important. And we'll do our best to accommodate you.
8 Thank you.

9 [Whereupon, Juror Number 22 exits the courtroom]

10 THE COURT: Now I need Mr. Gantt, if he's still
11 here.

12 THE BAILIFF: He went to his appointment. That
13 was the reason you --

14 THE COURT: Oh. Mr. Gantt went to -- oh. I'm
15 thinking about Mr. Moorer instead of -- who am I
16 thinking about.

17 THE BAILIFF: Mr. Moorer was on yesterday.

18 THE COURT: Mr. Moorer was yesterday.

19 THE BAILIFF: And Mr. Gantt today.

20 THE COURT: Okay. I will voir dire him in the
21 morning.

22 Is there any exception to that from the State?

23 MR. BELL: Excuse me, Your Honor. I was --

24 THE COURT: I said I'm going to have to voir
25 dire him in the morning. Is there any exception from

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1 the State? He's already left for his appointment.

2 MR. BELL: No, Your Honor.

3 THE COURT: From the defense?

4 MR. STEVENS: No, Your Honor.

5 THE COURT: And what I will do is I'm just going
6 to ask him if this, in fact, happened, who it was that
7 waived to him. He may say, nobody waived at me. If
8 he does, that ends it. If he does, then I'll ask who
9 was it, is that person any relationship to you, and
10 I'll just go from there, and then ask if it affects
11 his partiality. Okay?

12 Any exception from the State?

13 MR. BELL: None from the State, Your Honor.

14 THE COURT: From the defense?

15 MR. STEVENS: No, ma'am.

16 Just for my own records, if I may know the
17 number of the juror who had travel plans for tomorrow
18 at noon?

19 THE COURT: Number 22.

20 MR. STEVENS: Thank you, Judge.

21 THE COURT: Have a good evening.

22 MR. BELL: Thank you, Your Honor.

23 [JURY TRIAL ADJOURNS AT 3:16 P.M.]

24

25

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcription of the jury trial held before the Honorable Deadra L. Jefferson, on August 14, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 1st day of November, 2014.

Mia Perron

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

-570-

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG) CASE NO.: 2014-GS-38-00189

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 TYKEEM MAY,)
)
 DEFENDANT.)

JURY TRIAL

VOLUME 5 of 5

held before the Honorable Deadra L. Jefferson
 Hilda Jordan, Circuit Court Reporter, 1st Judicial Circuit
 in the Orangeburg County Courthouse
 Orangeburg, South Carolina
 on August 15th, 2014, Commencing at 9:28 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
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Court's Exhibit Number 5
[Note From The Jury]

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PROCEEDINGS

THE COURT: I understand one of the jurors would like to speak to me.

Is there any exception from the State?

MR. BELL: None from the State.

THE COURT: From the defense?

MR. STEVENS: No, Your Honor.

THE COURT: Please bring in the jury.

They have not started deliberating; correct?

THE BAILIFF: That's correct, Your Honor.

THE COURT: Thank you, ma'am.

[Whereupon, Mr. Gantt, Juror Number 65, enters the courtroom]

THE COURT: Yes, sir. How are you?

THE BAILIFF: Your Honor, the juror is requesting privacy.

THE COURT: Well, I can't speak with you without everybody hearing it. So I don't know any other way to tell you that. Everybody is entitled to hear what you're going to tell you. I would ask that you be as candid as possible, and I will give you every consideration necessary.

If you would give us your name for the record, and your juror number.

MR. GANTT: Frank Gantt. The juror number.

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1 is 65.

2 THE COURT: Yes, sir, Mr. Gantt. Is there
3 something you wanted to share with the Court?

4 MR. GANTT: Not really. I don't want to discuss
5 it out loud --

6 THE COURT: Well, can you tell me in general
7 what it concerns? Don't tell me anything about the
8 jury deliberations, however, because those are
9 confidential and they can't be disclosed pursuant to
10 the Rules. But is it something involving jury
11 deliberations, or what does it involve? Something
12 personal?

13 MR. GANTT: It was something also involved with
14 the trial. It was something also involved in
15 deliberations.

16 THE COURT: Involving the deliberations. Is it
17 involving something specific about deliberations,
18 meaning discussions in the deliberations?

19 MR. GANTT: Yes.

20 THE COURT: Okay. Then you can't disclose that
21 to me because that's confidential.

22 What is it about the trial that you wanted to
23 disclose to me?

24 MR. GANTT: A gesture that was made.

25 THE COURT: Okay. Tell me what that gesture was

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1 and who was it made towards?

2 MR. GANTT: It was made -- I think it was made
3 towards me, and it was somebody that -- I don't really
4 know the person like that. I don't know them from
5 being around.

6 THE COURT: And who was it? Do you know the
7 person's name?

8 MR. GANTT: Not their full name.

9 THE COURT: And do you remember who they came
10 with, or were they just in the gallery with someone
11 else who was here on the case?

12 MR. GANTT: That was in the gallery with someone
13 else.

14 THE COURT: Who was here on another case or on
15 this case?

16 MR. GANTT: No. On this case.

17 THE COURT: And they -- when you said gesture,
18 tell me, what did they do?

19 MR. GANTT: It was just a single, hey, just like
20 seeing me --

21 THE COURT: Like in passing?

22 MR. GANTT: -- like they sat in the beginning or
23 the front of the -- at the beginning of the trial you
24 asked you if you was to know anybody in the case, that
25 you have a certain decision about it and would that

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1 help you base your decision. And my answer is no. I
2 don't know that person like that.

3 THE COURT: Okay. So let's back up. Do you
4 know who the person came to court with?

5 MR. GANTT: Yes.

6 THE COURT: Who did they come with?

7 MR. GANTT: One of the witnesses.

8 THE COURT: And which witness? Do you remember
9 the name of which witness it was?

10 MR. GANTT: Emonie Ford.

11 THE COURT: Now, do you know how this person
12 knows Ms. Ford?

13 MR. GANTT: Obviously, they are roommates.

14 THE COURT: Did you know that before we started
15 the trial?

16 MR. GANTT: No, I did not know that. I did not
17 know -- all of my answer was already based on it.
18 That was at the end of, what, Wednesday, and I already
19 had my own thoughts in my head. And that person came
20 to me and that's what happened -- that's really what
21 affect deliberation.

22 THE COURT: Because somebody saw this person
23 motion to you?

24 MR. GANTT: Yes.

25 THE COURT: And you think that they feel now

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1 that you're predisposed because of that gesture?

2 MR. GANTT: Yeah. Yeah.

3 THE COURT: Do you know this person's name?

4 MR. GANTT: No, I do not know their first --

5 I don't know their full name. I know their first

6 name --

7 THE COURT: What's their first name?

8 MR. GANTT: Alexis.

9 THE COURT: Okay. And how do you know Alexis?

10 MR. GANTT: Her and my girlfriend, they used to

11 work together. But, I mean, we never had no

12 friendship. I never hold a conversation with this

13 girl. I just seen her around.

14 THE COURT: Like in passing?

15 MR. GANTT: Yeah.

16 And where does your girlfriend -- or where does

17 your girlfriend work?

18 MR. GANTT: She's a dancer.

19 THE COURT: And here in Orangeburg?

20 MR. GANTT: No. Outside of Orangeburg.

21 THE COURT: And does she still work there?

22 MR. GANTT: Yes.

23 THE COURT: And does Alexis still work there?

24 MR. GANTT: No. They only worked together for a

25 short period of time.

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1 THE COURT: And about how long ago would you
2 estimate that was?

3 MR. GANTT: Oh. About a year. At least around
4 a year.

5 THE COURT: Around a year ago?

6 MR. GANTT: Yes.

7 And like I say, I never had any ties with this
8 girl. I've never had any -- hold a full conversation
9 with her. Because, I mean -- point me out like that.

10 THE COURT: So you're saying you had no
11 friendship with her? You just saw her --

12 MR. GANTT: No, I didn't --

13 THE COURT: -- in passing a few times?

14 MR. GANTT: Yeah. That's it.

15 THE COURT: And so when she motioned or waved to
16 you, you just did an automatic reflex and you just
17 waved back to her?

18 MR. GANTT: Yeah. That's all it was. Like I
19 said, we don't have any kind of friendship.

20 THE COURT: And would you -- how long ago would
21 you say is the last time you saw her in passing?

22 MR. GANTT: She goes to State. One day I was
23 riding towards State and I seen her walking down the
24 street.

25 THE COURT: How long ago was that?

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1 MR. GANTT: Probably like two months ago. I
2 just seen her walking on the street. She didn't even
3 see me. I just looked and I was like, is that her.

4 THE COURT: But you didn't have any interaction
5 with her?

6 MR. GANTT: No, I didn't have no interactions
7 with her.

8 THE COURT: Sir, as a result of this motion, I
9 guess is a better way, or gesture, has that in any way
10 affected your ability to be fair and impartial in this
11 case?

12 MR. GANTT: No, it has not.

13 THE COURT: Do you still feel you can remain
14 fair and impartial?

15 MR. GANTT: Yes, I can.

16 THE COURT: Do you feel you can render a fair
17 and impartial decision in this case based solely on
18 the evidence as it has been presented in this court
19 and on the law as the Court has instructed you?

20 MR. GANTT: Yes.

21 THE COURT: Do you feel as a result of this
22 gesture that you have formed any fixed opinions about
23 this case?

24 MR. GANTT: No. I already have -- I got my own
25 thoughts.

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1 THE COURT: If you would step into the hallway
2 with the bailiff for me. And please do not discuss
3 anything that I have discussed with you with any of
4 your fellow jurors.

5 MR. GANTT: All right.

6 [Whereupon, Mr. Gantt, Juror Number 65, exits
7 the courtroom]

8 THE COURT: Anything from the State? Any
9 further questions of the -- any voir dire of the
10 juror?

11 MR. BELL: I think we just need to ask him one
12 question. And, I mean, I think we gleaned it from the
13 information, but I think we just need to ask him if he
14 knows Emonie Ford because of that relationship with
15 her roommate.

16 THE COURT: Okay. I'll ask that.

17 Any exception from the defense?

18 MR. STEVENS: Not the question, Judge. My
19 position is simply --

20 THE COURT: I don't want any position. I want
21 to know if you have any further questions.

22 MR. STEVENS: Not for the voir dire questions.

23 THE COURT: Okay.

24 [Whereupon, Mr. Gantt, Juror Number 65, enters
25 the courtroom]

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1 THE COURT: And, sir, I have one additional
2 question for you. Do you know Emonie Ford?

3 MR. GANTT: No, I do not know her.

4 THE COURT: Have you ever had any contact with
5 her?

6 MR. GANTT: No, never did.

7 THE COURT: Okay. Thank you, sir. If you would
8 step right back into the hallway.

9 [Whereupon, Mr. Gantt, Juror Number 65, exits
10 the courtroom]

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State v. Tykeem May
Motion For a Mistrial
August 15, 2014

MOTION FOR A MISTRIAL

1
2 THE COURT: In light of the fact that the juror
3 has indicated he can remain fair and impartial, that
4 he has had no relationship with this individual, that
5 the gesture that was made to him came as a bit of a
6 surprise to him, and that it was an automatic reflex
7 in responding to her, that he has formed no fixed
8 opinions regarding this case, is there any exception
9 to him remaining on the panel? From the State?

10 MR. BELL: No, Your Honor.

11 THE COURT: From the defense?

12 MR. STEVENS: Yes, Judge.

13 THE COURT: Okay.

14 MR. STEVENS: Based upon the notes we received
15 yesterday, it was an eleven-one split. It's clear --

16 THE COURT: And that's enuring to your benefit.
17 It's very clear from the note, yeah, that he's your
18 hold up.

19 MR. STEVENS: I understand, Judge, and that's
20 our point. Jurors Number 36 and 17 obviously were
21 both using -- I believe our position is that -- trying
22 to have the Court pressure him, as well. It's a clear
23 intimidation to try to either have him cave or have
24 him kicked off.

25 THE COURT: The jurors are very steadfast in

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1 their positions. I've had jurors hold out for three
2 or four days. You know, people don't like being
3 bullied. It's not something they respond to
4 positively. I can tell you, based on what I have
5 observed of him, that he is -- he's not somebody that
6 would be subject to being intimidated. And if he were
7 going to cave, he would have caved long before they
8 told me what they told me yesterday if he's going to
9 be subject to any --

10 And I have had a situation once where one juror
11 turned all eleven jurors.

12 MR. STEVENS: Just such --

13 THE COURT: Strange dynamics. You never know
14 what a jury is going to do.

15 MR. STEVENS: Yes, ma'am.

16 THE COURT: They're very unpredictable. They're
17 twelve individuals armed with, most importantly,
18 common sense, which lawyers I find through the legal
19 education process seem to come to -- you know, they
20 just kind of flesh it out of our brains when they
21 educate us and we tend to look at things in a very
22 sterile, legal way.

23 But jurors, in their lay capacity, have an
24 inordinate amount of common sense. They have what I
25 feel is a very clear moral compass about what they

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1 feel. And once they have listened to the facts of the
2 case, they formulate their opinions, they apply the
3 law to it.

4 Very clearly, if he were going to be pressured
5 or intimidated, it would have been long before now.
6 And it has been my experience, through the years of
7 having dealt with jurors, I can honestly say I've
8 never had a situation where a juror was intimidated in
9 that way such that they felt compromised in being able
10 to deliberate.

11 What generally happens is jurors have a give and
12 take and then at some point, either it's going to be a
13 hung jury or they're going to come to some mutual
14 consensus. And generally, of course, if it is a
15 guilty verdict, I'm sure you-all will poll the jury
16 and we would then know individually how each juror
17 felt. And, again, based on my years of experience,
18 I've had jurors during the poll say, no, that's not my
19 decision.

20 So I have a great deal of confidence in jurors
21 and their ability to be fair and impartial. It has
22 been my experience that when they cannot be they are
23 very straightforward and they tell you that, because
24 they have nothing to gain or benefit from the process.
25 They are truly objective in their view of the facts of

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1 a case. And they undertake their oath very seriously.

2 Based on prevailing case law, as well as the
3 statute, what I have to determine from an objective
4 standpoint and, in some ways, subjective standpoint,
5 is whether he can be fair and impartial, whether he
6 has formed some fixed opinion about the facts in this
7 case as a result of some outside influence, that being
8 something he may have heard, read, or had some
9 involvement in prior to his involvement in the case or
10 during the presentation of the case or during the
11 deliberation.

12 The internal operations of the deliberative
13 process, there's always pressure in the deliberative
14 process because people are expressing their opinions
15 with one another. Some people are more
16 confrontational than others. And that's just a part
17 of the human dynamic. And that does not rise to the
18 level of the kind of intimation that is contemplated
19 by case law.

20 I questioned him really very -- in a very
21 detailed way as to what his -- as to what exactly --
22 and I missed it. And I watched -- I mean, I was fixed
23 on watching Ms. Ford's testimony. I watched the
24 people she came with. I watched them when they left
25 the courtroom, and I did not see this gesture.

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1 Apparently some other folk did. I would imagine a
2 gesture of that kind was very quick and fleeting. But
3 he has no control over someone waiving at him or
4 motioning at him. And he has no control over -- you
5 know, she may have just said, oh, I know him from
6 working with his girlfriend.

7 And most people -- again, lay people who are not
8 involved in the process do not understand the
9 significance of making a gesture at someone, such as
10 not to do it.

11 But he was very clear and very up-front, and
12 that's -- he does not know Ms. Ford. He now knows
13 this Alexis person to apparently be a roommate of
14 Ms. Ford's. His only interaction with Alexis was that
15 she used to work at a dance club with his girlfriend,
16 which was over a year ago, that he has no ties to her,
17 he's never had a conversation with her, he doesn't
18 have any friendship with her, the last time he saw her
19 was walking down the street two months ago and at that
20 time he had no interaction with her, that he was very
21 adamant that he has his own thoughts about this case
22 and he's formed no fixed opinions about it, and that
23 he can remain fair and impartial, and therefore I have
24 no basis to remove him from the panel.

25 Quite frankly, although the jury is not supposed

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1 to give me a numerical breakdown, they did. And it
2 appears that any break in it enures to your client's
3 benefit. I can discern no prejudice from what has
4 been disclosed.

5 But, again, jurors are -- juries are interesting
6 sociological studies. You just never know what's
7 going to happen.

8 But even if he changes his mind, that doesn't
9 mean that he was pressured to do it. As I indicated
10 to them -- and I'm assuming that's his impression or
11 his opinion. I have no idea. He might not be the
12 eleven-to-one that they referred to.

13 But if they follow my instructions, being the
14 Allen charge, it is their responsibility to give and
15 take. And which -- to share their opinions, the basis
16 of those opinions, which may -- somebody may be
17 inordinately persuasive and may -- and, by the same
18 token, there may be some of the eleven that they've
19 referred to during that process that may well change
20 their opinions. That's why the deliberative process
21 is -- that's why the Rules provide that no portion of
22 it is to be disclosed to anyone and that the Court
23 certainly can't act on it. Because perception is
24 reality and what one person may perceive, the other
25 twelve -- or eleven may not perceive, or what eight

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1 may perceive, the others may not perceive. So it's a
2 very complex dynamics.

3 But I can discern no basis to remove the juror
4 from the panel, so the motion to remove him is denied.

5 MR. STEVENS: Thank you, Judge.

6 THE COURT: You're welcome.

7 Now, I guess we'll await and see what their
8 preference is for us.

9 [Off the record momentarily]

10 THE COURT: So why don't we see where they are
11 at 11:00 and at 11:00 have the bailiff ask them if
12 they want us to get lunch for them. Let them know
13 that it's going to take an hour. And then if they say
14 yes, go ahead and give their orders and go ahead and
15 order their lunch.

16 MR. STEVENS: Judge, one more thing, please.

17 THE COURT: Uh-huh.

18 MR. STEVENS: If I may, just for clarification
19 of our position when we're saying, you know, our
20 belief is that the eleven are trying to intimidate the
21 one hold-out, I think our motion was one for a
22 mistrial rather than to remove the juror.

23 THE COURT: I'm sorry. I misunderstood you.

24 MR. STEVENS: I apologize.

25 THE COURT: Well, it's all about the same.

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August 15, 2014

1 MR. STEVENS: Yes, ma'am.

2 THE COURT: It would be the same effect. To
3 remove him or to grant a mistrial is all the same
4 thing.

5 MR. STEVENS: And so you really get the --

6 THE COURT: Yes. There is no basis for a
7 mistrial. A mistrial is an extreme remedy that should
8 only be invoked when there is no other remedy.

9 But, again, there is no basis to remove the
10 juror, which would be the only basis to grant a
11 mistrial.

12 I suspect they're going to remain hung, but
13 we'll see.

14 MR. STEVENS: Thank you, ma'am.

15 THE COURT: I've been wrong. Like I said, I had
16 a jury out one time in Charleston where similar -- not
17 similar -- well, actually, it was a little more
18 because the jurors told me that one was being hostile
19 toward the other eleven. But two hours later, she had
20 convinced the eleven. You just never know. It's a
21 complicated dynamic.

22 MR. STEVENS: Thank you, Judge.

23 THE COURT: Yes. You're welcome.

24 But I have no reason to believe that the twelve
25 of them cannot be fair and impartial and that they'll

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Motion For a Mistrial
August 15, 2014

1 engage in the give-and-take that jurors are supposed
2 to do in the deliberative process.

3 So we'll be at ease until we get further
4 instructions from them.

5 THE BAILIFF: Your Honor, it's okay to take the
6 exhibits now?

7 THE COURT: Yeah. And their notebooks.

8 And let Mr. Gantt go on back in the jury room.
9 Well, actually, bring him out here for me just one
10 more second. I just need to reinforce he doesn't need
11 to discuss anything.

12 [Whereupon, Mr. Gantt, Juror Number 65, enters
13 the courtroom]

14 THE COURT: Sir, we appreciate your candor with
15 the Court and I would just ask that you not discuss
16 anything you've discussed with the Court with your
17 fellow jurors.

18 MR. GANTT: Yes.

19 THE COURT: Okay?

20 MR. GANTT: All right.

21 THE COURT: Thank you, sir.

22 [Whereupon, Mr. Gantt, Juror Number 65, exits
23 the courtroom]

24 THE COURT: The record should reflect that the
25 jury resumed their deliberations at 9:51.

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Motion For a Mistrial
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1 [Whereupon, a recess is taken from 9:51 to
2 10:44 a.m.]

3 THE COURT: Do we have equipment that can go
4 into the jury room for them to watch this video?

5 MS. CORNWELL: We may have to send one of our
6 laptops back there, and I don't know if you want to do
7 that.

8 THE COURT: Does it have other stuff on it?

9 MS. CORNWELL: Yes, Your Honor. As well as
10 internet access and all that.

11 MR. BELL: If I can get the disk and test it and
12 see if it'll play on --

13 THE COURT: Yeah.

14 MR. BELL: But I'm not --

15 THE COURT: Why don't we see if it does.
16 Because they want to watch it and they really want to
17 deliberate about it and I don't think they should have
18 to do that in here with us.

19 MR. BELL: Could you ask them for the disk? Of
20 course, I'm not sure how well this DVD player works.

21 [Whereupon, a recess is taken from 10:45 to
22 10:51 a.m.]

23 THE COURT: -- of the car. We want to be able
24 to stop the video at certain points.

25 And I've marked that as Court's 5.

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Motion For a Mistrial
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1 [Whereupon, Court's Exhibit Number 5 is marked
2 by the court reporter]

3 [Whereupon, a recess is taken from 10:52 a.m. to
4 11:09 a.m.]

5 THE COURT: All right. Is the State ready to
6 proceed?

7 MR. BELL: The State is ready, Your Honor.

8 THE COURT: Is the defense ready to proceed?

9 MR. STEVENS: The defense is ready, Judge.

10 THE COURT: You can bring in the jury.

11 THE BAILIFF: Yes, Your Honor.

12 THE COURT: Thank you, ma'am.

13 [Whereupon, the jury enters the courtroom at
14 11:12 a.m.]

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State v. Tykeem May
Verdict
August 15, 2014

VERDICT

1
2 THE COURT: Madam Forelady, is it correct that
3 the jury has reached a verdict?

4 THE FOREPERSON: Yes, ma'am.

5 THE COURT: If you would give the verdict form
6 to the bailiffs, please.

7 THE BAILIFF: Your Honor, may I approach?

8 THE COURT: Yes, ma'am.

9 [Whereupon, the bailiff proffers documents to
10 the Court]

11 THE COURT: Thank you, ma'am.

12 Sir, if you would stand.

13 [Whereupon, Mr. May complies]

14 THE COURT: Madam Clerk, if you would publish
15 the verdict.

16 THE CLERK OF COURT: In the matter of indictment
17 number 2014-GS-38-0189, State of South Carolina versus
18 Tykeem Kalami May, we, the jury, by unanimous consent,
19 find the defendant guilty of armed robbery on this
20 date, August the 15th, 2014, by the Madam Forelady.
21 As to the indictment number 2014-GS-38-0190, we, the
22 jury, by unanimous consent, find the defendant guilty
23 of possession of a weapon during the commission of a
24 violent crime. And this is also dated August 15th,
25 2014, by Madam Forelady.

State v. Tykeem May
Verdict
August 15, 2014

1 THE COURT: Ladies and gentlemen, if this be
2 your verdict, please indicate by raising your right
3 hand.

4 Sir, are you not raising your right hand because
5 it's not your verdict? Okay. Let the record indicate
6 that all twelve raised their right hand.

7 You may be seated.
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State v. Tykeem May
Polling of the Jury
August 15, 2014

POLLING OF THE JURY

1
2 THE COURT: Is there any request to poll the
3 jury? From the State?

4 MR. BELL: None from the State, Your Honor.

5 THE COURT: From the defense?

6 MR. STEVENS: Yes, Judge, we request to poll the
7 jury.

8 THE COURT: Madam Clerk, if you would begin the
9 poll of the jury.

10 Ladies and gentlemen, if you would give the
11 clerk your attention. And she's going to ask you two
12 questions. She's going to call out your juror number.
13 You should indicate by raising your right hand that
14 that is, in fact, you. And she will ask you is this
15 your verdict and is this still your verdict, in which
16 you will provide an answer for the record.

17 THE CLERK OF COURT: Ida Crosby --

18 THE COURT: Actually, do it by juror number.
19 Number 36.

20 THE CLERK OF COURT: Number 36, is this your
21 verdict?

22 JUROR NUMBER 36: Yes, ma'am.

23 THE CLERK OF COURT: Is it still your verdict?

24 JUROR NUMBER 36: Yes, ma'am.

25 THE CLERK OF COURT: Thank you. You may be

State v. Tykeem May
Polling of the Jury
August 15, 2014

1 seated.

2 Juror Number 155, is this your verdict?

3 JUROR NUMBER 155: Yes.

4 THE CLERK OF COURT: Is it still your verdict?

5 JUROR NUMBER 155: Yes.

6 THE CLERK OF COURT: Thank you.

7 Juror Number 17, is this your verdict?

8 JUROR NUMBER 17: Yes.

9 THE CLERK OF COURT: Is it still your verdict?

10 JUROR NUMBER 17: Yes.

11 THE CLERK OF COURT: Thank you.

12 Juror Number 174, is this your verdict?

13 JUROR NUMBER 174: Yes.

14 THE CLERK OF COURT: Is it still your verdict?

15 JUROR NUMBER 174: Yes.

16 THE CLERK OF COURT: Thank you.

17 Juror Number 200, is this your verdict?

18 JUROR NUMBER 200: Yes.

19 THE CLERK OF COURT: Is it still your verdict?

20 JUROR NUMBER 200: Yes.

21 THE CLERK OF COURT: Thank you.

22 Juror Number 22, is this your verdict?

23 JUROR NUMBER 22: Yes.

24 THE CLERK OF COURT: Is it still your verdict?

25 JUROR NUMBER 22: Yes.

State v. Tykeem May
Polling of the Jury
August 15, 2014

1 THE CLERK OF COURT: Thank you.
2 Juror Number 101, is this your verdict?
3 JUROR NUMBER 101: Yes.
4 THE CLERK OF COURT: Is it still your verdict?
5 JUROR NUMBER 101: Yes.
6 THE CLERK OF COURT: Thank you.
7 Juror Number 81, is this your verdict?
8 JUROR NUMBER 81: Yes.
9 THE CLERK OF COURT: Is it still your verdict?
10 JUROR NUMBER 81: Yes.
11 THE CLERK OF COURT: Thank you.
12 Juror Number 14, is this your verdict?
13 JUROR NUMBER 14: Yes.
14 THE CLERK OF COURT: Is it still your verdict?
15 JUROR NUMBER 14: Yes.
16 THE CLERK OF COURT: Thank you.
17 Juror Number 121, is this your verdict?
18 JUROR NUMBER 121: Yes.
19 THE CLERK OF COURT: Is it still your verdict?
20 JUROR NUMBER 121: Yes.
21 THE CLERK OF COURT: Thank you.
22 Juror Number 65, is this your verdict?
23 JUROR NUMBER 65: Yes.
24 THE CLERK OF COURT: Is it still your verdict?
25 JUROR NUMBER 65: Yes.

State v. Tykeem May
Polling of the Jury
August 15, 2014

1 THE CLERK OF COURT: Thank you.

2 Juror Number 90, is this your verdict?

3 JUROR NUMBER 90: Yes.

4 THE CLERK OF COURT: Is it still your verdict?

5 JUROR NUMBER 90: Yes.

6 THE CLERK OF COURT: Thank you.

7 THE COURT: The record shall reflect that the
8 jury has been polled and the verdict stands.

9 Ladies and gentlemen, we thank you for your time
10 and your attention to this case. I know that jury
11 service is thankless, but I hope that it has been an
12 educational experience for you. I hope that you've
13 learned that it is nothing like television.
14 Television is far more dramatic, far more bells and
15 whistles and technology. But I hope that y'all have
16 learned firsthand how the system works, how very
17 essential you are to its operation.

18 Orangeburg County is a little smaller than
19 Charleston County, which is my resident circuit, which
20 is Charleston and Berkeley. Berkeley is probably a
21 little more like Orangeburg than Charleston. But in
22 Charleston, we hold four trial courts every week in
23 the circuit court, two civil and two criminal. And so
24 as you can well imagine, just as in Orangeburg during
25 a jury trial term, while there are many things that a

State v. Tykeem May
Polling of the Jury
August 15, 2014

1 circuit judge hears where I am the fact-finder, which
2 means I find the facts and render verdicts in cases,
3 it is more -- the majority of the time it -- I require
4 a jury to hear the facts of the case and apply the law
5 to those facts and render verdicts. So I hope you
6 know how very essential you are to the operation of
7 the process and that we could not have jury trials
8 without your willingness really to donate your time to
9 us.

10 South Carolina is one of the busiest states in
11 the nation. We only rank second to one other state in
12 terms of case filings per capita per judge, at 5,000
13 per judge. We have -- and with that, we still dispose
14 of cases faster than most states. We have forty-nine
15 circuit judges. We travel throughout the state and
16 hear cases.

17 Pursuant to our constitution, we're actually
18 supposed to live in another county for six months of
19 the year and then come home for six months of the
20 year. But because -- and that's another unique
21 feature of our system. It is really the envy of the
22 nation when I meet other judges. They think that it
23 really keeps the system healthy rotating judges
24 throughout your state. But because of significant
25 budget cuts, for a while we didn't have any travel at

State v. Tykeem May
Polling of the Jury
August 15, 2014

1 all. But we've resumed some limited travel where each
2 of us travel about a week a month which really,
3 frankly, is kind of a really good balance in terms of
4 being home and being away.

5 Just to give you some point of reference, I have
6 several friends who are judges in the city of
7 Philadelphia. In the city of Philadelphia, they have
8 nine judges who only hear homicide and murder cases.
9 That's all they do all year long. Nine for one city.
10 We have forty-nine for our entire state. So that
11 should give you some idea really just of the sheer
12 caseloads that are handled throughout our country.

13 But, again, even with that, we still dispose of
14 most cases civically in eighteen months and most
15 criminal cases in less than a year, where other states
16 who have far greater resources than we do often take
17 four to five years to dispose of cases.

18 So, again, I just give you these statistics
19 antidotally so you'll know how very important you are
20 to us and to our ability to dispose of caseloads
21 throughout the state.

22 If you need a work excuse, we will provide that
23 for you in the clerk's office. Otherwise, we will
24 mail those to you along with your checks.

25 You are welcome to discuss this case if you

State v. Tykeem May
Polling of the Jury
August 15, 2014

1 would like, now that I'm going to dismiss you.
2 Lawyers will often contact you because they want to
3 get your feedback. We call it the practice of law
4 because it is never perfected. And so oftentimes
5 lawyers will contact you because they want to know how
6 they could have done something better. And as I was
7 talking with the lawyers earlier, I was telling them
8 that as lawyers, when we go to law school they kind of
9 erase all of our common sense. We tend to look at
10 things in a real sterile kind of a way in what we call
11 a -- there's a method that they teach us how to think.
12 And so we tend to ignore lots of things that the
13 average layperson pays attention to.

14 And so oftentimes lawyers will contact you so
15 that they can get your feedback so that they can
16 perfect their craft and do it a little bit better. So
17 if someone should contact you and you wish to discuss
18 the case, you are welcome to. If you don't want to,
19 you don't have to. And if someone should intrude into
20 your privacy and it makes you uncomfortable, please
21 contact the clerk's office so that we can take the
22 appropriate action to protect your privacy.

23 We're going to move into sentencing of Mr. May.
24 If you would like to remain for that process, you are
25 welcome to. Please just let the bailiffs know. We'll

State v. Tykeem May
Polling of the Jury
August 15, 2014

1 allow you to remain in the jury box for that process.

2 However, if you do not wish to remain, you are
3 excused with the Court's profound thanks.

4 We'll hear post-trial motions and sentencing in
5 a moment.

6 [Off the record momentarily.

7 THE COURT: Do we have a sentence sheet?

8 MR. BELL: Yes, Your Honor.

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State v. Tykeem May
Sentencing
August 15, 2014

SENTENCING

1
2 THE COURT: And as I understand it, on the armed
3 robbery it's a minimum of ten years, a maximum of
4 thirty years, classified as most serious and violent,
5 no probation, no suspension of sentence. Correct?

6 MR. BELL: That's correct, Your Honor.

7 THE COURT: On possession of a weapon, zero to
8 five, which is mandatory, however it is not mandatory
9 that it be run consecutively. Correct?

10 MR. BELL: I believe so. That's correct.

11 MR. STEVENS: That's my understanding, as well,
12 Judge.

13 MR. BELL: Here are the sentencing sheets.

14 THE COURT: Do you know what? And we also --
15 Madam Forelady, before you leave today, we will need
16 you to sign the indictments. So if you would -- even
17 once the jury is excused, if you would remain so that
18 we could complete that process.

19 Okay. As I understand it, the defendant does
20 not have any record; correct?

21 MR. BELL: I'm reviewing --

22 THE COURT: Doesn't have any criminal record.
23 At least as an adult.

24 - - -

25 - - -

State v. Tykeem May
Motion for Directed Verdict and New Trial
August 15, 2014

MOTION FOR A DIRECTED VERDICT AND NEW TRIAL

THE COURT: And are there any post-trial motions while we are reviewing that, Mr. Stevens?

MR. STEVENS: I simply renew our motions for directed verdict and also make a motion for new trial, Judge.

THE COURT: Does the State wish to respond to that motion?

MR. BELL: Your Honor, I think our response is the same as before. I think there was sufficient evidence for the jury to find -- reach a verdict.

THE COURT: The Court would rely on its previous ruling, and incorporate those in the record for purposes of the motion, and deny the motion.

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State v. Tykeem May
Sentencing, Continued
August 15, 2014

SENTENCING, CONTINUED

1
2 THE COURT: Does the State have any position
3 regarding sentencing --

4 MR. BELL: Your Honor, I --

5 THE COURT: -- or want to be heard on
6 sentencing?

7 MR. BELL: Your Honor, I would -- I've gone back
8 to review the defendant's record. I do note that
9 there are a couple of misdemeanor convictions out of
10 Tennessee.

11 THE COURT: For what?

12 MR. BELL: It looks like possession of
13 marijuana. I assume it's our simple possession of
14 marijuana and --

15 THE COURT: Magistrate level?

16 MR. BELL: Magistrate.

17 -- and a possession with altered or missing ID
18 plate and an unlawful possession of a weapon. They're
19 all misdemeanor, Tennessee misdemeanor, charges.

20 THE COURT: Is that your understanding of your
21 client's previous record?

22 MR. STEVENS: Judge, my understanding is that
23 it's simple possession and a misdemeanor charge
24 offense.

25 I'm not certain if it was a conviction or not

State v. Tykeem May
Sentencing, Continued
August 15, 2014

1 for the altered plates, Judge.

2 THE COURT: Was it missing or altered? I
3 thought I heard him just say that it was a missing --

4 MR. BELL: Altered slash missing, is how it's
5 printed on the --

6 THE COURT: All right. Does the State have any
7 argument regarding sentencing?

8 MR. BELL: Your Honor, the only thing the State
9 would say is this is a serious crime and our
10 legislatures made it a serious crime and he used a
11 serious weapon to commit this crime, force and
12 intimidation. We think that the punishment ought to
13 be severe. We understand he has no serious criminal
14 record but, you know, armed robbery is serious. And,
15 you know, it's -- there's always the potential it
16 could have gotten worse. And that's the State's
17 position. We think that it ought to be a fairly stiff
18 sentence, just to send a message, as well, to the
19 community, that Orangeburg County won't tolerate this.

20 THE COURT: When you say stiff, I need you to
21 quantify that for me, please.

22 MR. BELL: The State would ask somewhere in the
23 range of twenty to thirty years.

24 THE COURT: Anything further from the State?

25 MR. BELL: No, Your Honor.

State v. Tykeem May
Sentencing, Continued
August 15, 2014

1 THE COURT: All right. Be glad to hear from
2 you, Mr. Stevens.

3 MR. STEVENS: Thank you, Judge. If I may?

4 THE COURT: Yes, sir.

5 MR. STEVENS: I would like to talk a little bit
6 about my client's past and his family, as well. I'll
7 be brief, but I still would like to talk about it.

8 First of all, Tykeem is twenty-four years of
9 age, Judge. He's single, although he does have a
10 long-term girlfriend. He also has no children. He
11 was born in the Norfolk area of Virginia, where he
12 does have his parents over in the Tidewater area
13 there, Judge. His mother lives there. She's a
14 caretaker. His father lives in Norfolk. He's a
15 handyman and caretaker of his great aunt.

16 I've had a chance to hear from his great aunt.
17 She's ninety-three years of age, Judge, and extremely
18 supportive. In fact, it was the great aunt who was
19 actually helping pay his way through South Carolina
20 State University.

21 He also has aunts and uncles and cousins in the
22 Bamberg area here in South Carolina, Judge. In the
23 way of siblings, he has six brothers and four sisters.

24 Regarding his education, Judge, Tykeem, I've
25 gotten to know him. He's a smart young man, he's --

State v. Tykeem May
Sentencing, Continued
August 15, 2014

1 and our position is that should the Court be willing
2 to show mercy, he does have a future and a way to help
3 contribute to society in a positive manner, Judge.

4 He graduated high school in Chesapeake,
5 Virginia. He's attended South Carolina State
6 University. Business and economics is his major.
7 And, in fact, he only had about nine to twelve classes
8 left, is my understanding after reviewing his records
9 as well as speaking with him.

10 He was a hardworking man, Judge, when he was not
11 incarcerated in pre-trial incarceration. He worked at
12 Dollar General for over two years. He worked for TKL
13 Security at nights, as well. And even before that, he
14 worked at Cook Out and he worked at Wendy's. He's not
15 afraid of work, Judge.

16 Regarding his priors, they're minor, Judge.

17 We understand the jury has spoken. We simply
18 ask for whatever mercy this Court may be willing to
19 show. We specifically request that if possible, the
20 Court sentence to the mandatory minimum of ten years,
21 knowing full well it's not parolable. We believe that
22 ten years would be sufficient for correction. We
23 believe --

24 Actually, I've also had the chance to speak with
25 some folks in law enforcement in this community, as

State v. Tykeem May
Sentencing, Continued
August 15, 2014

1 well. I think when we actually gauge it in comparison
2 to some other actions -- activity in the area,
3 although, yes, it is a serious offense, even the
4 mandatory minimum indicates that ten years is serious
5 time for such a serious offense, Judge. And I don't
6 think that it would be out of line for a mandatory
7 minimum sentence on a charge like this, given his
8 background, given his lack of a serious record, given
9 all the factors that make Tykeem May a young man that
10 can contribute positively to society. He's not
11 disposable, Judge, and we ask that the Court show
12 mercy. Thank you.

13 THE COURT: You're welcome.

14 Sir, is there anything you would like to say for
15 the record on your own behalf?

16 MR. MAY: I would like everyone to know, the
17 jurors --

18 THE COURT: Sir, I can't hear you.

19 MR. MAY: I would like everyone to know, the
20 jurors, and everyone in the court, that I am innocent,
21 that I didn't do this. There are such things as
22 coincidents. There are such things as this person
23 looks like that person.

24 And I feel like I have a lot of vows, that I
25 vowed to God, that I have failed in the lines of

State v. Tykeem May
Sentencing, Continued
August 15, 2014

1 helping other people like my great aunt, which Mr.
2 Stevens talked about. She is ninety-two. Her
3 birthday is the [REDACTED] of this month. She's going to be
4 ninety-three. And I would have took a plea for seven
5 and a half, or whatever, ten, a long time ago but I
6 had the intention of getting back to my great aunt.
7 So I told her and I vowed to myself I would fight this
8 so that I could win so I could go back to her and help
9 her, because she doesn't have anybody to help her.

10 And I just feel like I'm not a bad person, I'm
11 not an evil person. I never did anything to hurt
12 anybody. I always seek to help people. That was my
13 intention. I even, on the lines of helping people,
14 put myself in trouble and hurt myself by helping
15 others. And I just ask for mercy.

16 THE COURT: Where are your parents?

17 MR. MAY: In Chesapeake, Virginia. Well, my
18 father was in Chesapeake after my aunt -- I just
19 talked to her before we came and they deliberated.
20 And my aunt reassured me that my father isn't around
21 anymore, and that she isn't getting around the way she
22 needs to. And that was my intention of fighting this
23 so I can get back and help her.

24 My mother, she never really was around, so I
25 don't really know too much where she is right now.

State v. Tykeem May
Sentencing, Continued
August 15, 2014

1 But my whole intention was just to get back and
2 help my aunt, finish my college.

3 To be honest, Judge, as far as prison goes, I
4 don't think I'll make it. I'm just being honest from
5 my heart. This is not just an opinion, because I've
6 never been to prison. I don't know anything about
7 prison. But this is just an opinion from others that
8 have been around in jail that told me, you know, you
9 too kindhearted, you too green. I was told this just
10 the other day, you too green, they'll use you in
11 prison, soon as they see that you doing something,
12 they'll come to you and get whatever they want from
13 you, they'll ask you -- they see your kindheartedness
14 within the first couple of weeks, the first couple of
15 months. I just -- I just ask for mercy.

16 THE COURT: Thank you very much.

17 Anything further from the defense or the State?

18 MR. BELL: Your Honor, I would just like to say
19 I was looking up the statute, the possession of a
20 weapon. It reads it's five years. It's no less than
21 five years.

22 THE COURT: Well, yeah. It's a mandatory
23 imposition. It used to be consecutive but it's not
24 anymore.

25 MR. BELL: It can be done consecutively or

State v. Tykeem May
Sentencing, Continued
August 15, 2014

1 concurrently, but it's five years.

2 THE COURT: Yes. Exactly.

3 MR. BELL: Nothing further from the State.

4 THE COURT: Anything further from the defense?

5 MR. STEVENS: No, Your Honor. Thank you.

6 THE COURT: You're welcome.

7 Based on what has been presented to the Court,
8 sir, you are sentenced on indictment --

9 Sir, if you would stand for pronouncement of
10 sentence.

11 [Whereupon, Mr. May complies]

12 THE COURT: On the armed robbery, sir, you are
13 sentenced to fifteen years. On the possession of a
14 weapon during the commission of a violent crime,
15 you're sentenced to five years. These sentences are
16 concurrent with one another. You'll get credit for
17 any time that you've served, to be calculated and
18 applied by the Department of Corrections pursuant to
19 24-13-40.

20 The Court is taking into consideration, as
21 mitigation, your age and your lack of substantial
22 criminal history.

23 Thank you-all very much.

24 MR. STEVENS: Judge, for the record, he was
25 taken into custody on the evening of September 15th,

State v. Tykeem May
Sentencing, Continued
August 15, 2014

1 2013.

2 THE COURT: They'll calculate it.

3 MR. STEVENS: Yes, ma'am.

4 THE COURT: I don't calculate it. That's why
5 they have the statute.

6 MR. STEVENS: Thank you, Judge.

7 THE COURT: Because I might give him less time
8 than he's entitled to. They'll get his records and
9 they'll give him -- he'll meet with his counselor at
10 Corrections and they'll go over every day he's
11 entitled to.

12 MR. STEVENS: Thank you, Judge.

13 THE COURT: If I write a time on here they're
14 going to honor it, and if he's entitled to more, he
15 won't get it.

16 MR. STEVENS: Yes, ma'am. Thank you, Judge.

17 THE COURT: You're welcome.

18 THE COURT: Ladies and gentlemen, you're excused
19 with the Court's profound thanks.

20 Madam Forelady, if you could -- we'll get you a
21 pen and I just need you to write guilty, the date, and
22 sign. Thank you so much.

23 [Off the record momentarily]

24 THE COURT: Any further business? From the
25 State? Mr. Bell, is there any further business from

State v. Tykeem May
Sentencing, Continued
August 15, 2014

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the State?

MR. BELL: No, Your Honor.

THE COURT: Court is adjourned.

[JURY TRIAL CONCLUDES AT 11:34 A.M.]

State v. Tykeem May
Sentencing, Continued
August 15, 2014

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcription of the jury trial held before the Honorable Deadra L. Jefferson, on August 15, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 1st day of November, 2014.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

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STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
COUNTY OF ORANGEBURG	)	CASE NO. 2014-001827
The State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	
	)	
Tykeem K. May,	)	Date: August 31, 2015
	)	
Defendant.	)	

* * * * *

B E F O R E:

The Honorable DEADRA JEFFERSON

* * * * *

Denise J. Lauder, RPR
Ninth Judicial Circuit

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1 (The following proceedings were held,
2 August 31, 2015, Orangeburg County Courthouse,
3 Orangeburg, SC, in re the State vs. Tykeem K. May.)

4 (APPELLANT EXH. 1 in evidence.)

5 (APPELLANT EXH. 2 in evidence.)

6 MR. ALEXANDER: Your Honor, I'm sorry
7 to pull you up here for something like this.

8 THE COURT: Well, that's okay. I was
9 going to tell you all, in the future just ask the
10 Court Reporter to transcribe it. I took a minute
11 to schedule this hearing because I had her track
12 down her records and she had it; you all just
13 didn't request it.

14 Once she produces the transcript, she
15 waits 30 days, and once you didn't request it, she
16 destroyed the tapes.

17 MR. ALEXANDER: Okay.

18 THE COURT: And so what happened was,
19 if Hilda had -- Hilda had to -- and I don't mean to
20 be informal calling her by her first name.

21 MR. ALEXANDER: That's all right.

22 THE COURT: She had to give some of her
23 typing away, so she gave it to Miss Mia. If Miss
24 Hilda had it, she would have automatically
25 transcribed it, but since she gave her tapes to

1 somebody else who didn't know, she just didn't
2 transcribe it.

3 So I had them both tracking down --
4 trying to find it, and since Mrs. Hilda was like,
5 no -- she thought on the outside chance she may
6 have kept her original notes and sent a copy to
7 Mia, but she sent her originals to Mia.

8 So then I had Miss Mia track down hers.
9 And she said, once I produced it, I gave them
10 30 days to request anything else, and once they
11 didn't, I destroyed it because I didn't have the
12 room to store it.

13 But I always -- I don't ever have bench
14 conferences that are not recorded, so that you know
15 that for the future for this very reason.

16 MR. ALEXANDER: That's what Mr. Stevens
17 had told me.

18 THE COURT: Yeah, just because -- I
19 think -- well, you know every courthouse is
20 designed differently, and in Charleston, it's
21 easier for me than other places to send a whole
22 panel out and hear a motion and bring them back in.
23 In places that are small, you don't have that
24 luxury, so I always instruct the court reporter to
25 put a mic on the bench to record everything.

1 MR. ALEXANDER: Right.

2 THE COURT: So that -- because we just
3 don't have the luxury of sending people in and out,
4 but I kept -- I always keep good notes just on the
5 outside chance that something happens, something
6 gets destroyed, or otherwise. So I have my notes
7 from the Batson hearing.

8 MR. ALEXANDER: Your Honor, one quick
9 note, are we on the record?

10 THE COURT: Oh, yes.

11 MR. ALEXANDER: Let me have my client
12 come in. Get Mr. May.

13 THE COURT: Oh, I apologize. Yeah, you
14 can go ahead and get Mr. May.

15 And you can communicate to him what
16 I've said, unless you want me to repeat it again.

17 MR. ALEXANDER: Exhibit 1 is the strike
18 sheet that came up with the transcript, Your Honor.

19 THE COURT: Okay.

20 MR. ALEXANDER: I had that marked as
21 Exhibit 1 for purposes of this hearing, and the
22 jury selection is Exhibit 2 in case the attorneys
23 need it.

24 THE COURT: I'm not sure that we're
25 going to need to take testimony because, again, I

1 have my notes, and I will tell you all what my
2 notes reflected took place. And if we agree on
3 that, I think we'll be done.

4 You can take your seats. And as I
5 understand it, you all have had marked -- is this
6 without objection, Mr. Bell?

7 MR. BELL: Yes, Your Honor.

8 THE COURT: And Number 1, which is the
9 clerk's strike sheet, which I assume she has her
10 own methods to doing this, and -- oh, I guess I see
11 what she did. And then Number 2, is the transcript
12 of the actual jury selection; is that correct?

13 MR. BELL: Yes, Your Honor.

14 MR. ALEXANDER: Yes, Your Honor.

15 THE COURT: And you all have marked
16 that as 2 without objection; is that correct?

17 MR. BELL: That is correct, Your Honor.

18 THE COURT: Okay. And, for the record,
19 this is the State v Tykeem Kalani May,
20 2014-GS-38-189 and 190. This trial originally took
21 place August 12th through August 14, 2014. The
22 jury selection was conducted from 10:55 to 11:40 on
23 August 12th.

24 The original court reporter was Hilda
25 Jordan; however, her records were transcribed by

1 Mia Perron. Mr. Harrison Bell and Ashley Cornwell
2 represented the State and Doug Miller and Breen
3 Stevens represented the Defendant.

4 My record reflects that we selected a
5 jury of 12 with two alternates, that both the State
6 and the defense made a Batson motion. My records
7 reflect that the State struck juror number 15,
8 juror number 164, and juror number 50. And that
9 the defense struck jurors 133, 39, 2, 29, and 193,
10 with the level of offence the State had five
11 strikes and the defense had ten strikes.

12 Again, at the conclusion of jury
13 selection, the Court asked if there were any
14 motions, both sides indicated they did. The State
15 had a Batson motion which was heard first, and then
16 the defense likewise had a Batson motion which was
17 held subsequently.

18 The following reasons were given in
19 support of the defense's strikes. Number 133 was a
20 black female. He indicated he struck her because
21 she was a school employee. Number 39 was a white
22 female. He indicated that he struck her because
23 she worked at a bank. Number 2 was a white female,
24 and I have that the reason they struck her was
25 because she was a wife and a teacher. Number 29

1 was a white male, they indicated they struck him
2 because he was a bank supervisor. And number 193
3 was a white male, and they said they struck him
4 because it appeared he did not want to be here.

5 The State then conceded that those were
6 race neutral reasons and withdrew its Batson
7 motion.

8 We then moved to the defense's Batson
9 motion and the State indicated they struck number
10 15 who was a black male, because he was unemployed
11 and single, number 164 because he had a record for
12 shoplifting in Georgia, and number 50, a black male
13 because he was unemployed and single.

14 The burden then shifted to the defense
15 to show that these reasons were not race neutral
16 and they were pretext, and my records reflect that
17 there was no representation regarding pretext and,
18 therefore, the motion was denied, as they could not
19 meet that burden of showing that the State's
20 strikes were anything other than race neutral and
21 were not pretextual.

22 MR. ALEXANDER: Your Honor, do your
23 records reflect Mr. Stevens making any argument
24 about pretext at all?

25 THE COURT: He could not meet the

1 burden on pretext. He could not show that there
2 were similarly-laterally situated people on the
3 panel. And so once he could not, the burden
4 shifted to him at that point. And once he could
5 not show that there were similarly jurors, the
6 inquiry ends.

7 MR. ALEXANDER: I think I have to call
8 Mr. Stevens at this point because what he told me
9 is he made an argument concerning similarly
10 situated.

11 THE COURT: I mean, I'll be glad to
12 hear his testimony, but, you know, hindsight is
13 20/20. I don't know how much weight I can give
14 that in light of hindsight and the fact now that
15 he's had a chance to study the venire. Again, I
16 take meticulous notes for a reason. If he had made
17 an argument, I would have noted it.

18 MR. ALEXANDER: I would still like to
19 call him, Your Honor.

20 THE COURT: Sure.

21 And I guess I need to ask, Mr. Bell,
22 what is your -- are my notes an accurate recitation
23 of what took place?

24 MR. BELL: Yes, Your Honor, according
25 to my notes. Honestly, I'm sure we're not worried

1 about the State's motion. We're more worried about
2 the defense's motion, and those reasons are what is
3 reflected of my notes from the time that I have
4 them kept as well; that's why I struck those
5 individual jurors.

6 THE COURT: Thank you. You may
7 proceed.

8 MR. ALEXANDER: Call Breen Stevens.

9 THE COURT: Sir, if you would come to
10 the stand to be sworn.

11 BREEN STEVENS,
12 being first duly sworn, testified as follows:

13 THE COURT: You can put your right hand
14 down. If you will be seated and state your full
15 name and spell your last name for the Court
16 Reporter.

17 THE WITNESS: Breen Richard Stevens,
18 S-T-E-V-E-N-S.

19 THE COURT: You may proceed.

20 MR. ALEXANDER: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. ALEXANDER:

23 Q. Mr. Stevens, you represented Mr. May?

24 A. Yes, sir.

25 Q. And you were just sitting here for

1 Judge Jefferson's recitation of the events at the
2 bench conference?

3 A. That's correct.

4 Q. And up to the point where the
5 discussion about pretext and similarly situated,
6 did Judge Jefferson's recitation match your memory
7 of what occurred at the bench conference?

8 A. Yes, sir.

9 Q. What can you tell me about the argument
10 you made concerning pretext?

11 A. What I did was, I just pointed out that
12 there were two -- at least two white females that
13 were also on the jury that were unemployed, to
14 which my recollection was the Judge said, well,
15 they're not -- she found that they weren't
16 similarly situated and ruled, and I asked to be
17 noted.

18 She's really good about making sure
19 that all of our conversations at the bench are
20 typically recorded for judicial economy to make
21 sure that the case keeps rolling. She's usually
22 really good about that, not just from the trials
23 I've been in with her, but also from many
24 transcripts I've seen. She's very efficient.

25 Q. Do you remember which two white females

1 that you made an argument about?

2 A. Let's see, I think one was an
3 unemployed housewife and -- let's see here, Ms.
4 Sweatman I think was one and Ms. Jeffcoat was the
5 other, 174 and 190.

6 Q. Do you remember any response from
7 Mr. Bell?

8 A. Not that I can recall.

9 Q. Did Judge Jefferson rule immediately
10 after that argument?

11 A. Yeah. I mean, she was quite clear
12 about her ruling, that they weren't similarly
13 situated. And once Judge Jefferson makes the
14 ruling, she's -- she means it; Rule 18 is in full
15 force and effect in Judge Jefferson's court, and I
16 respect that.

17 Again, it's how she moves cases along
18 very efficiently.

19 MR. ALEXANDER: I don't think I have
20 any more questions.

21 THE COURT: Any questions, Mr. Bell?

22 MR. BELL: Yes, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. BELL:

25 Q. Mr. Stevens, you stated that one said

1 was an unemployed housewife. Was that her terms or
2 your terms? Didn't you just say she was a
3 housewife?

4 A. I think that's what I had noted on my
5 notes, but, in fact, when we were at the bench I
6 remember, you know, saying that my wife might
7 disagree with me, but I don't think a housewife is
8 employed officially when it comes to it.

9 Q. Well, I mean, I think there's -- well,
10 it's semantics, too, but --

11 A. Well, I don't think the IRS considers
12 them to be gainfully employed in the workforce.

13 Q. But it's how they also present
14 themselves as well, isn't it?

15 A. I don't understand your question.

16 Q. I'll withdraw that.

17 If I remember correctly, according to
18 my notes, number 90 stated that they were
19 retired --

20 A. Yes.

21 Q. -- is that correct?

22 A. Which, again, means you're out of the
23 work force.

24 Q. But it doesn't mean they're unemployed,
25 it means they have taken themselves out of the work

1 force, correct?

2 A. Well, regardless, if someone is out of
3 the work force, I think they're unemployed.

4 Q. But there's a difference between
5 unemployed, somebody seeking a job, and somebody
6 that is taken voluntarily themselves out of the
7 work force to be retired or to be a housewife;
8 isn't that correct?

9 A. I think that would be semantics. In my
10 view, unemployed is unemployed. You're --

11 Q. It's a life choice, too, isn't it?

12 A. Well, I think that a person not holding
13 a steady job, they're unemployed.

14 Q. Okay. All right.

15 A. And, finally, there was also Ms. Steel,
16 I think, but she was an alternate, 163, alternate
17 juror.

18 Q. Who also said she was a housewife?

19 A. Okay.

20 MR. BELL: Nothing further, Your Honor.

21 THE COURT: Any redirect?

22 MR. ALEXANDER: Nothing, Your Honor.

23 THE COURT: Sir, you may step down.

24 THE WITNESS: Thank you, Judge.

25 THE COURT: You're welcome. Anything

1 further?

2 MR. ALEXANDER: Nothing, Your Honor. I
3 would just ask the Court to find that the record is
4 adequately reconstructed and Court of Appeals can
5 conduct meaningful appellate review on this record.

6 THE COURT: And just for the benefit of
7 Mr. May, because he was not in here when we first
8 began talking, Mr. May, I took additional time to
9 reconvene this hearing because I typically -- not
10 typically, I mandate that my court reporters record
11 all bench conferences. And so what I did was track
12 down the Court Reporters to find out where their
13 original records were so that that hearing could be
14 transcribed.

15 Ms. Hilda, who did the original
16 transcript, had to -- the Chief Justice is very
17 adamant about people getting their typing done
18 quickly so that people's can be heard quickly. So
19 if a court reporter has more typing than she can
20 handle, she's required to give that typing away.

21 So Ms. Hilda had to give her typing
22 away to Ms. Mia Perron, who was required to
23 transcribe the record. And what happened was she
24 didn't transcribe the bench conferences because she
25 wasn't asked to. And her general position is, she

1 transcribes them if she's asked to, whereas, Ms.
2 Hilda probably would have went ahead and
3 transcribed it because she knew.

4 And Ms. Mia used to be my court
5 reporter, so she -- and that had been years, so she
6 probably just forgot, but, nonetheless, in doing
7 that for somebody else she just didn't look at the
8 bench conferences.

9 So I had them track down their records,
10 but, unfortunately, what happens under the court
11 reporter rules, is that once a record is
12 transcribed, in other words, once the State and the
13 defense have requested whatever portions of the
14 transcript, or requested the whole transcript, they
15 have 30 days after that to request anything else.
16 And if they don't request anything else, then the
17 court reporter can destroy the original records,
18 because technically she has already transcribed the
19 record, certified it.

20 And most court reporters don't have the
21 room to maintain all of those records, so they are
22 allowed to destroy them and that's what happened in
23 this case. And what Ms. Mia indicated to me was,
24 she wished it had been requested during the 30 days
25 because she would have transcribed it. It is her

1 memory that it was available, but since nobody
2 requested it she didn't transcribe it. So it was
3 destroyed within that 30 days and so as a result we
4 had to reconstruct the hearing today.

5 And I just wanted to share that with
6 you because that's what I shared with the lawyers
7 prior to you coming into the courtroom.

8 THE WITNESS: Thank you, Judge.

9 THE COURT: You're welcome. Okay. The
10 Court will stand by the original records regarding
11 the hearing, which is that the reasons given by the
12 State in support of its strikes -- that being
13 number 15, a black male, unemployed and single;
14 number 164, black male had a record for shoplifting
15 in Georgia; and number 50, a black male,
16 unemployed, the Court finds as it did at that time,
17 that these were race neutral reasons, that there
18 was no argument that rose to the level of -- and I
19 don't have a record of pretext, no harm, no foul,
20 I'll rule on it alternatively, although my records
21 do not reflect the argument was made, but,
22 nonetheless, the Court would find that the
23 arguments raised by defense counsel do not rise to
24 the level of creating a situation where the State's
25 reasons given were pretextual and, therefore, would

1 not have been able to sustain its burden once it
2 shifted to them regarding pretext.

3 Number 36 -- and my notes -- this is
4 weird. 36 says, N-F. I don't know what that
5 means. I would have known at the time I guess. I
6 don't know what N-F means. I guess female. I
7 don't have any recollection -- let's see, 36 N-F.

8 MR. BELL: That's what's on the strike
9 sheet, Your Honor.

10 THE COURT: Yeah. I don't know --

11 MR. BELL: I think it means none.

12 THE COURT: She may not have listed
13 anything, and I don't have an independent
14 recollection of what her race was, but she was
15 female. I tend to think probably white female or I
16 would have made some other designation on my note
17 sheets -- on my jury strike sheet regarding that.

18 Number 155 was a black female employed
19 with South Carolina; number 17 was a black female
20 who ran a Methodist program at a church; number 174
21 was a white female who was a housewife, number 200
22 was a black female who worked in family health
23 care, number 22 was a black female who worked at
24 the veterans medical center, number 7 was a black
25 male who worked in a trucking occupation, 101 was a

1 white female who worked at Daniel's Pharmacy, 81
2 was a black female who worked as an administrative
3 assistant in state government, number 14 was a
4 white female employed at Zeus as an accountant;
5 number 121 was a black male employed at Sedexo;
6 number 65 was a black male employed at Husquavana;
7 number 90 was a white female retired teacher; and
8 number 163 was a housewife, white female.

9 In total, there were eight black
10 citizens who served on the jury and five white,
11 five black females and three black males, five
12 white females and no white males. Which, quite
13 frankly, proportionally is very unusual for the
14 makeup of a jury under these circumstances.

15 Taking into account Mr. Stevens'
16 argument that there were other similarly situated,
17 that being those unemployed, I find that that
18 argument, again, does not shift pretext.

19 I do not believe or find that a
20 housewife falls into the category of being
21 unemployed. Generally, a person who is in the
22 unemployed population is someone who was employed
23 and who is actively seeking employment, who is able
24 bodied and capable of employment, and a man is
25 generally very dissimilarly situated from a woman

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TYKEEM KALANI MAY,

APPELLANT

APPELLATE CASE NO. 2014-001827

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying appellant's Batson challenge to the State's use of all of its peremptory strikes against black males, where the State claimed "unemployment" as the reason for its strikes, but did not strike unemployed white jurors?

STATEMENT OF THE CASE

On February 10, 2014, an Orangeburg County grand jury indicted appellant Tykeem May for armed robbery and possession of a weapon during the commission of a violent crime. R. 577, R. 580. On August 11, 2014, appellant was tried before the Honorable Deadra L. Jefferson and a jury. R. 1. Harrison Bell and Ashley Cornwell represented the State. R. 2. Breen Stevens and Doug Mellard represented appellant. R. 2. The jury convicted appellant on both counts. R. 498, l. 14 – 499, l. 7. Judge Jefferson sentenced appellant to concurrent terms of fifteen years' imprisonment for armed robbery and five years' imprisonment for the weapons charge. R. 517, ll. 12 – 19. Pursuant to an Order of this Court, a reconstruction hearing was held before Judge Jefferson on August 31, 2015. R. 555. This appeal follows.

STATEMENT OF FACTS

Sometime shortly before 2:00 PM on Sunday, September 8, 2013, a man robbed a convenience store called "The Keg" in Orangeburg. R. 131, l. 23 – 133, l. 7. The robber had a rifle and wore a disguise. State's Ex. 23. The store's surveillance cameras showed the robbery. State's Ex. 23. The robber came from around a corner, surprising the clerk who was sitting outside. State's Ex. 23. The clerk noticed the gun and ran. R. 77, l. 10 – 78, l. 4. The clerk heard a noise, turned around, and went back into the store. R. 77, l. 10 – 78, l. 4. State's Ex. 23.

The video shows the robber wearing a cap with a design, red sunglasses, and a red, checkered scarf around his face. State's Ex. 23. The clerk gives the robber the money from the registers and the robber leaves. State's Ex. 23. The clerk waited five minutes, then locked the door. R. 79, ll. 2 – 4. R. 90, ll. 6 – 10. He first called his boss. R. 79, ll. 10 – 11. He then called the police. R. 79, ll. 11 – 12. The clerk did not watch the robber to see where he went after leaving the store. R. 89, ll. 20 – 23.

The video introduced by the State shows a white or silver Dodge Caliber behind the store. State's Ex. 23. The video does not show anyone entering or leaving the car. State's Ex. 23. Despite the video showing the clerk running past where the Dodge Caliber was parked, the clerk did not see the Dodge Caliber at any time during the robbery. R. 91, l. 19 – 92, l. 5. State's Ex. 23. The surveillance videos were taken from two different systems and the time stamps did not match. R. 125, ll. 3 – 13. The security company employee was unable to remember exactly how much the time stamps varied. R. 129, ll. 9 – 16. R. 125, ll. 11 – 13. According to the time stamps, the Dodge Caliber arrived after the robber left the store. State's Ex. 23.

Several days later, a police officer used dark window tint as a pretext to stop a white Dodge Caliber. R. 164, l. 9 – 165, l. 21. Appellant Tykeem May (“May”) was the driver. R. 168, ll. 4 – 7. May told the officer the car belonged to his girlfriend. R. 168, ll. 15 – 20. The officer testified that May gave an address on Brandon Street in Orangeburg as his home address. R. 169, ll. 10 – 11. The police surveilled the Brandon Street address, but did not see May. R. 183, l. 8 – 184, l. 7. The police contacted the owner of the apartments on Brandon Street and determined that May did not live at that address. R. 232, l. 16 – 233, l. 2.

The Dodge Caliber that May was driving when he was stopped belonged to Emonie Ford (“Ford”). The police surveilled Ford’s house and saw May and the Dodge Caliber. R. 185, l. 11 – 187, l. 20. The county SWAT team executed a search warrant at Ford’s house. R. 193, ll. 7 – 18. Ford testified that she “was sleeping and then they bust in the door. Somebody put a gun to the back of my head, put their knee in my back, had me down on the floor. Put me in handcuffs, took me outside, sat me down.” R. 276, ll. 19 – 24. May was also “detained” while the police searched Ford’s home. R. 238, ll. 1 – 12. During the search, the police found a rifle, red sunglasses, and tennis shoes. R. 239, ll. 7 – 20. The police did not find a scarf or hat. R. 308, ll. 8 – 20.

Ford testified for the State. R. 272, l. 14. She was a senior at South Carolina State University. R. 274, ll. 10 – 18. May was her boyfriend and was living with her. R. 275, ll. 11 – 15. May worked two jobs. R. 289, l. 3 – 290, l. 18.

Ford provided an alibi for May. R. 280, l. 18 – 282, l. 11. During the time of the robbery, May and Ford went to Wal-Mart and then to Sonic. R. 293, l. 18 – 294, l. 20. Ford knew the time because they went to “happy hour” at Sonic, which starts at 2:00 PM. R. 293,

ll. 22 – 24. R. 281, ll. 1 – 2. She said they left her house at approximately 1:40 PM. R. 293, ll. 20 – 21. The call from the store clerk about the robbery came into dispatch “around about almost two o’clock.” R. 131, l. 23 – 133, l. 7.

ARGUMENT

The trial court erred in denying appellant's Batson challenge to the State's use of all of its peremptory strikes against black males, where the State claimed "unemployment" as the reason for its strikes, but did not strike unemployed white jurors.

Jury Selection and the Reconstruction Hearing

Following jury selection, the trial judge asked if the State had any motions. R. 39, ll. 5 – 6. The solicitor stated he had a motion and the court asked the attorneys to approach. R. 39, ll. 7 – 8. The trial transcript then indicates: “[Whereupon, an off-the-record bench conference is held].” R. 39, ll. 9 – 10. Appellant filed a motion to reconstruct the record regarding motions made at the bench pursuant to Batson v. Kentucky, 476 U.S. 79 (1986) which the State did not oppose.¹ R. 523; R. 553. This Court granted appellant's motion. R. 554.

On August 31, 2015, Judge Jefferson held a reconstruction hearing. R. 555. Using her notes, Judge Jefferson found that the State made a Batson motion first. R. 562, ll. 12 – 17. The State withdrew its Batson motion after appellant gave race-neutral reasons for his strikes. R. 563, ll. 5 – 7.

¹ In appellant's reconstruction motion, appellant related trial counsel's recollection that Judge Jefferson placed a recording device on the bench to hear the motion. Attempts to obtain this recording from the court reporter were unsuccessful. R. 523. Judge Jefferson explained at the reconstruction hearing that her usual court reporter would have known to “automatically” transcribe the bench conferences. R. 558, l. 18 – 559, l. 2.

Appellant then made a Batson motion. R. 563, ll. 8 – 13. The State used three strikes, all against black males.² R. 563, ll. 8 – 13. R. 520. These jurors were: (1) Aaron Briggman, number 15; (2) Xavier Stephens, number 164; and (3) Stephen Eaddy, number 50. R. 563, ll. 8 – 13. R. 520.

According to Judge Jefferson's notes, the solicitor stated he struck Juror Briggman "because he was unemployed and single." R. 563, ll. 8 – 13. He struck Juror Stephens "because he had a record for shoplifting in Georgia." R. 563, ll. 8 – 13. He struck Juror Eaddy "because he was unemployed and single." R. 563, ll. 8 – 13. The solicitor, who represented the State at the reconstruction hearing, agreed with Judge Jefferson that her notes accurately reflected the reasons he gave for striking these three black male jurors. R. 564, l. 24 – 11, l. 5.

Judge Jefferson stated:

The burden then shifted to the defense to show that these reasons were not race neutral and they were pretext, and my records reflect that there was no representation regarding pretext, and, therefore, the motion was denied, as they could not meet that burden of showing that the State's strikes were anything other than race neutral and were not pretextual.

R. 563, ll. 14 – 21. Counsel for appellant then asked Judge Jefferson whether her records reflected whether trial counsel made any argument about pretext. R. 563, ll. 22 – 24. Judge Jefferson replied, "He could not meet the burden on pretext. He could not show that there were similarly-laterally situated people on the panel. And so once he could not, the burden shifted to him at that point. And once he could not show that there were similarly jurors, the inquiry ends." R. 563, l. 25 – 564, l. 6.

² Appellant is a black male.

At the beginning of the hearing, the trial judge indicated she did not think testimony would be needed because of her notes. R. 560, l. 24 – 561, l. 3. After Judge Jefferson's statement regarding arguments concerning pretext, appellant indicated he wanted to call trial counsel as a witness. R. 564, ll. 7 – 10. Before hearing trial counsel's testimony, the trial judge questioned his credibility, stating that she would "be glad to hear his testimony, but, you know, hindsight is 20/20. I don't know how much weight I can give that in light of hindsight and the fact now that he's had a chance to study the venire." R. 564, ll. 11 – 17. The trial judge added that she takes "meticulous notes" and that if trial counsel "had made an argument, I would have noted it." R. 564, ll. 11 – 17. Appellant then called trial counsel. R. 565, l. 8.

Trial counsel agreed that Judge Jefferson's recitation of the bench conference matched his recollection up until the point of his pretext argument. R. 566, ll. 4 – 7. Trial counsel then testified:

Q. What can you tell me about the argument you made concerning pretext?

A. What I did was, I just pointed out that there were two—at least two white females that were also on the jury that were unemployed, to which my recollection was the Judge said, well, they're not—she found that they weren't similarly situated and ruled, and I asked to be noted.

She's really good about making sure that all of our conversations at the bench are typically recorded for judicial economy to make sure that the case keeps rolling. She's usually really good about that, not just from the trials I've been in with her, but also from many transcripts I've seen. She's very efficient.

Q. Do you remember which two white females that you made an argument about?

A. Let's see, I think one was an unemployed housewife and—let's see here, Ms. Sweatman, I think was one and Ms. Jeffcoat was the other, 174 and 190.

Q. Do you remember any response from Mr. Bell?

A. Not that I can recall.

Q. Did Judge Jefferson rule immediately after that argument?

A. Yeah. I mean, she was quite clear about her ruling, that they weren't similarly situated. And once Judge Jefferson makes the ruling, she's—she means it; Rule 18 is in full force and effect in Judge Jefferson's court, and I respect that.

Again, it's how she moves cases along very efficiently.

R. 566, l. 9 – 567, l. 18.

The State then asked trial counsel about whether the juror had used the term “unemployed housewife” or whether he had only argued at the bench that she “was a housewife.” R. 567, l. 25 – 568, l. 3. Trial counsel replied that “when we were at the bench I remember, you know, saying that my wife might disagree with me, but I don't think a housewife is employed officially when it comes to it.” R. 568, ll. 4 – 8. After the solicitor completed his cross-examination, appellant asked for the trial judge to find that the record had been adequately constructed for this Court's review. R. 570, ll. 2 – 5.

The trial judge stated:

The Court will stand by the original records regarding the hearing, which is that the reasons given by the State in support of its strikes—that being number 15, a black male, unemployed and single; number 164, black male had a record for shoplifting in Georgia; and number 50, a black male unemployed, the Court finds as it did at that time, that these were race neutral reasons, that there was no argument that rose to the level of—and I don't have a record of pretext, no harm, no foul, I'll rule on it alternatively, although my records do not reflect the argument was made, but, nonetheless, the Court would find that the arguments raised by defense counsel do not rise to the level of creating a situation where the State's reasons given were pretextual and, therefore, would not have been able to sustain its burden once it shifted to them regarding pretext.

R. 572, l. 9 – 573, l. 2. The trial judge stated that a housewife does not fall “into the category of being unemployed.” R. 574, ll. 19 – 575. The court defined “unemployed” as someone who was “actively seeking employment” and also stated that “a man is generally very dissimilarly situated from a woman who is home, acting in a housewife capacity, taking care of her children, and in my estimation, is employed. She’s just employed in her house taking care of her kids.” R. 574, l. 19 – 575, l. 4. The court found that because a housewife was not similarly situated, the burden regarding pretext did not shift back to the State. R. 575, ll. 5 – 16.

Discussion

The trial judge erred in finding appellant did not prove pretext and racial discrimination. A defendant has “the right to be tried by a jury whose members are selected pursuant to nondiscriminatory criteria.” Batson v. Kentucky, 476 U.S. 79, 85-86 (1986). “The Equal Protection Clause guarantees the defendant that the State will not exclude members of his race from the jury venire on account of race” Id. at 86 (internal citation omitted). The Equal Protection Clause “forbids the prosecutor to challenge potential jurors solely on account of their race or on the assumption that black jurors as a group will be unable impartially to consider the State’s case against a black defendant.” Id. at 89.

Courts use a three-step inquiry “for evaluating whether a party executed a peremptory challenge in a manner which violated the Equal Protection Clause.” State v. Inman, 409 S.C. 19, 26, 760 S.E.2d 105, 108 (2014). First, the party making the challenge must make a prima facie showing of racial discrimination. Appellant did so in this case. Appellant showed that the State used its strikes only against black males.

The trial court followed the next step in the Batson analysis and required the State to give its reasons for its strikes. If the State gives race-neutral reasons, the defendant must then prove purposeful discrimination. Id. at 26, 760 S.E.2d at 108 (*quoting State v. Giles*, 407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014)). The State's explanation for its strikes "must only be clear and reasonably specific such that the party asserting the Batson challenge has a full and fair opportunity to demonstrate pretext in the reason given and the trial court to fulfill its duty in step three to assess the plausibility of the reason in light of all the evidence with a bearing on it." Id. (internal quotations omitted).

While the State gave the superficially race-neutral reason of unemployment as its reason for striking Jurors Briggman and Eaddy, the use of unemployment is "highly suspect" because strikes based solely on unemployment "are especially subject to abuse." Carter v. State, 603 So.2d 1137, 1139 (Ala. Crim. App. 1992). In Carter, much like in this case, the prosecutor made two strikes based on unemployment. Id. The court examined the prosecutor's other strikes and found that two white unemployed jurors were not struck. Id. Importantly, the court noted that one of these unemployed jurors was a housewife. Id. Using this evidence of disparate treatment between unemployed blacks and an unemployed white (albeit, a housewife), the Carter court held that the defendant proved discriminatory intent and reversed. Id. 603 So.2d at 1139-40. See also Berry v. State, 728 So.2d 568, 571-73 (Miss. 1999) (upholding Batson challenge where prosecutor struck black female because she was an unemployed housewife, but did not strike a white female who was an unemployed housewife).

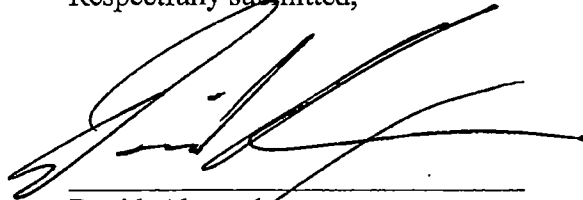
In this case, the trial judge erred in finding that the State's strikes—all against black males—were not pretextual. The defense showed that two unemployed white jurors were

not struck by the State. Jurors Sweatman and Jeffcoat were white and unemployed. The trial judge drew an artificial distinction in separating housewives from the class of unemployed people in general. As in Carter, the use of unemployment as a factor is subject to abuse. In this case where the State only struck jurors who were of the identical race and sex of the defendant, its explanation of “unemployment” was pretext. Prejudice is presumed and the proper remedy is a new trial. Inman at 29-30, 760 S.E.2d at 110. This Court should reverse and remand for a new trial.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's convictions and grant him a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

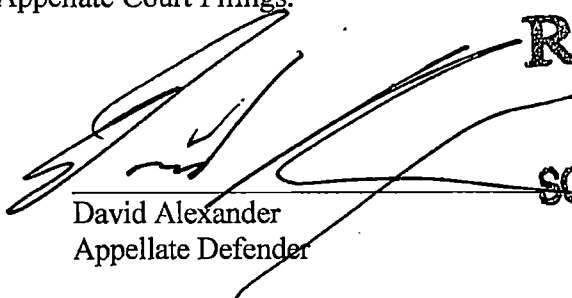
ATTORNEY FOR APPELLANT

This 12th day of April, 2016.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 12, 2016


David Alexander
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STATE OF SOUTH CAROLINA
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THE STATE,

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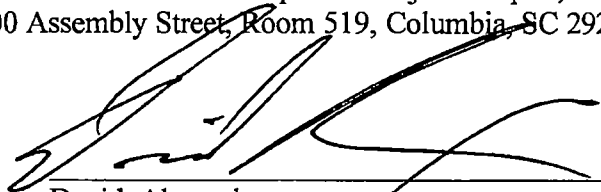
TYKEEM KALANI MAY,

APPELLANT

APPELLATE CASE NO. 2014-001827

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of April, 2016.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of April, 2016.

Christian Ford (L.S.)

Notary Public for South Carolina

My Commission Expires: March 1, 2026.

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STATE OF SOUTH CAROLINA
In The Court of Appeals

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Court of General Sessions **SC Court of Appeals**

The Honorable Deadra L. Jefferson, Circuit Court Judge

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THE STATE,

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v.

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STATEMENT OF ISSUES ON APPEAL**I.**

The trial judge did not err in denying Appellant's Batson motion where Appellant failed to make a showing that the State's reason for the strikes (that two prospective jurors were struck for being unemployed and single) was mere pretext to engage in purposeful racial discrimination.

STATEMENT OF THE CASE

Tykeem May was indicted at the February 2014 term of the grand jury for Orangeburg County for armed robbery (2014-GS-38-0189) and possession of a weapon during the commission of a violent crime (2014-GS-38-0140). May proceeded to a trial by jury from August 11-15, 2014 in Orangeburg, South Carolina. At the conclusion of trial, May was found guilty as indicted. He was sentenced by the Honorable Deadra L. Jefferson to imprisonment for a term of fifteen years for armed robbery and five years for possession of a weapon during the commission of a violent crime, with all sentences running concurrently. May timely filed a notice of appeal and subsequently submitted a brief. This Brief of Respondent follows.

STATEMENT OF FACTS

On September 8, 2013, The Keg in Orangeburg, South Carolina was robbed. ROA. pp. 75-76. Quantavious Montgomery was employed as the manager of The Keg. ROA. p. 75. Montgomery was standing outside of the store when he noticed someone walking towards him with a gun. ROA. p. 77. Montgomery initially tried to run, however the individual with the gun told him to stop so he turned around. ROA. p. 77. Montgomery then emptied the cash register and gave the money to the man with the gun. ROA. p. 78. While he was filling a bag with money, the man urged Montgomery to hurry up and put the money in the bag. ROA. p. 80. Montgomery testified the man who robbed the store had dreadlocks, ROA. p. 80. Montgomery also noticed that the gun used in the robbery looked like an AK-47. ROA. p. 78. The amount of money stolen in the robbery was \$281.65. ROA. p. 103. Montgomery also testified that there are video cameras that are all around the store. Tr. p. 244. Montgomery did not remember the specific time of the robbery. ROA. p. 77. Lieutenant Anthony Robinson later testified that he received the dispatch saying a robbery just occurred a little before 2:00 PM. ROA. p. 132.

Lieutenant Randall Culler, a lieutenant in the patrol division of the Orangeburg County Sheriff's department, was working on September 14, 2013. ROA. p. 164. Lieutenant Culler had previously received pictures of a vehicle involved in an armed robbery as well as a picture of the suspect involved. ROA. p. 164. Lieutenant Culler spotted a white Dodge Caliber that looked like the vehicle in the picture from the armed robbery. ROA. p. 165. Lieutenant Culler eventually stopped the vehicle and wrote the driver a warning ticket for a window-tint violation. ROA. p. 167. Lieutenant Culler testified the actual reason for the stop was because the vehicle looked like the one used in

the robbery. ROA. pp. 167-168. The driver of the vehicle was Appellant. ROA. p. 168. Appellant stated the car belonged to his girlfriend. ROA. p. 168. After writing the warning ticket, Lieutenant Culler let Appellant leave and informed investigators about the stop. ROA. p. 169.

Law enforcement officers later obtained a search warrant for a home on Wilkinson Street in Orangeburg. ROA. pp. 235-236. Police established Appellant was living at that particular residence by conducting surveillance on the address. ROA. p. 233. Lieutenant John Caddell testified that the police were looking for items spotted in the video recording of the armed robbery. ROA. p. 238. Specifically, in the video, police were able to observe the clothing the perpetrator was wearing, as well as the rifle he was carrying, which was an SKS type assault rifle which a wooden stock and a long banana clip hanging from it, ROA. p. 238. During the search of the home, Investigators found a pair of black and white striped tennis shoes that matched the shoes seen in the video recording. ROA. p. 239. Investigators also found a pair of red framed sunglasses, an SKS type assault rifle with a banana clip magazine, and \$50 in U.S. currency. ROA. p. 239.

Following the search of the home, Investigators spoke with Emonie Ford. ROA. p. 277. Ford is Appellant's girlfriend. ROA. p. 275. Investigators showed Ford the video surveillance from the robbery. ROA. p. 277. Ford told Investigators that she recognized the car as one that looked like her 2009 Dodge Caliber. ROA. pp. 277-278. Ford also stated that she recognized a pair of her red-framed glasses and a checkerboard scarf in the video. ROA. p. 278. Ford also recognized the gun in the video as belonging to Appellant. ROA. p. 278.

Ford testified Appellant had her vehicle sometime on September 8th. ROA. p. 282. It was not out of the ordinary for Appellant to drive Ford's vehicle. ROA. p. 281. Ford remembered going to Walmart then going to happy hour at Sonic on the day of the robbery. ROA. p. 278. Happy hour at Sonic lasts from 2:00 PM until 5:00 PM. ROA. p. 281. Ford initially told Investigators she and Appellant left around 1:40 PM to go to Walmart and Sonic, however she conceded at trial that was an estimate on her part and that the actual time could have been 2:00 PM or 2:15 PM. ROA. pp. 299-300.

ARGUMENT

I.

The trial judge did not err in denying Appellant's Batson motion where Appellant failed to make a showing that the State's reason for the strikes (that two prospective jurors were struck for being unemployed and single) was mere pretext to engage in purposeful racial discrimination.

Relevant Facts

At the conclusion of jury selection, the Solicitor indicated he had a motion. ROA. p. 39. The trial judge asked counsel to approach. ROA. p. 39. The trial transcript then indicates that an off-the-record bench conference was held. ROA. p. 39. Appellant subsequently filed a motion to reconstruct the record of the arguments made in support of motions by both the State and Appellant pursuant to Batson v. Kentucky, 476 U.S. 79 (1986) and the trial judge's rulings denying both the State and Appellant's motions. R. p. * (Appellant's Motion to Reconstruct the Record). This Court subsequently granted Appellant's motion. R. p. * (Order of the Court of Appeals granting Motion to Reconstruct dated July 16, 2015).

On August 31, 2015, Judge Jefferson held a reconstruction hearing. ROA. p. 555. At the reconstruction hearing, the trial judge consulted her notes and recalled that during the Batson hearing, the State explained that it struck juror number 15, who was a black male, because he was unemployed and single. ROA. p. 563. The State struck juror number 164 because he had a record for shoplifting in Georgia. ROA. p. 563. Finally, the State struck juror number 50, a black male, because he was unemployed and single. ROA. p. 563. The trial judge stated that the burden then shifted to the defense to show

that these reasons were pretextual, which the defense failed to do. ROA. p.563. This led to the denial of the defense's Batson motion. ROA. p.563

At the reconstruction hearing, Defense Counsel testified that he made an argument that the State's strikes were pretextual because there were two housewives on the jury who were unemployed. ROA. p.566. Defense Counsel stated that his argument was based on his belief that "a housewife is not employed officially when it comes to it." ROA. p.568. Defense Counsel elaborated "Well, I think that a person not holding a steady job, they're unemployed. ROA. p.569. Following Defense Counsel's testimony, the trial judge found:

The Court will stand by the original records given by the State in support of its strike - - that being number 15, a blacks male, unemployed and single; number 164, a black male had a record for shoplifting in Georgia; and number 50, a black male, unemployed, the Court finds as it did at that time, that these were race neutral reasons, that there was no argument that rose to the level of pretext, no harm, no foul. I'll rule on it alternatively, although my records do not reflect the argument was made, but, nonetheless, the Court would find that the arguments raised by defense counsel do not rise to the level of creating a situation where the State's reasons given were pretextual and, therefore, would not have been able to sustain its burden once it shifted to them regarding pretext. . . Number 155 was a black female employed with South Carolina; number 17 was a black female who ran a Methodist program at a church; number 174 was a white female who was a housewife, number 200 was a black female who worked in family health care, number 22 was a black female who worked at the veterans medical center, number 7 was a black male who worked in a trucking occupation, 101 was a white female who worked at Daniel's Pharmacy, 81 was a black female who worked as an administrative assistant in state government, number 14 was a white female employed at Zeus as an accountant; number 121 was a black male employed at Sedexo; number 65 was a black male employed at Husqavana; number 90 was a white female retired teacher; and number 163 was a housewife, white female. In total, there were eight black citizens who served on the jury and five white, five black females and three black males, five white females and no white males. Which, quite frankly, proportionally is very unusual for the makeup of a jury under these circumstances.

ROA. pp. 572-574

The trial judge continued:

Taking into account Mr. Stevens' argument that there were other similarly situated that being those unemployed, I find that that argument, again, does not shift pretext. I do not believe or find that a housewife falls into the category of being unemployed. Generally, a person who is in the unemployed population is someone who was employed and who is actively seeking employment, who is able bodied and capable of employment, and a man is generally very dissimilarly situated from a woman who is home, acting in a housewife capacity, taking care of her children, and in my estimation, is employed. She's just employed in her house taking care of her kids. . . I find that those reasons given were appropriate and race neutral under those circumstances.

ROA. p. 575.

Discussion

Appellant asserts the trial court erred in denying Appellant's Batson motion because the State claimed "unemployment" as the reason for its strikes, but did not strike unemployed white jurors. Appellant's argument is predicated on his assertion that the trial judge drew an "artificial distinction" in separating housewives from the class of unemployed people in general. On the contrary, the trial judge properly concluded that the State's strikes were not pretextual because the two "housewives" seated on the jury were not similarly situated to the two men who were "unemployed and single" who were stricken from the jury.

When determining whether a Batson violation has occurred, the reviewing court must examine the totality of the facts and circumstances in the record. State v. Rogers, 405 S.C. 520, 524, 748 S.E.2d 247, 250 (Ct. App. 2013) (citing State v. Shuler, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001)). "Appellate courts give the trial judge's finding great deference on appeal, and review the trial judge's ruling with a clearly erroneous

standard.” Shuler, 344 S.C. at 615, 545 S.E.2d at 810. “A finding is clearly erroneous if it is not supported by the record.” Id. at 620, 545 S.E.2d at 813.

“The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a venire person on the basis of race or gender.” Shuler, 344 S.C. at 615, 545 S.E.2d at 810. “The purposes of Batson and its progeny are to protect the defendant's right to a fair trial by a jury of the defendant's peers, protect each venire person's right not to be excluded from jury service for discriminatory reasons, and preserve public confidence in the fairness of our system of justice by seeking to eradicate discrimination in the jury selection process.” State v. Haigler, 334 S.C. 623, 628–29, 515 S.E.2d 88, 90 (1999) (internal citations omitted). “When one party strikes a member of a cognizable racial group or gender, the trial court must hold a Batson hearing if the opposing party requests one.” Shuler, 344 S.C. at 615, 545 S.E.2d at 810.

In Purkett v. Elem, 514 U.S. 765, 767(1995), the Supreme Court of the United States explained the proper procedure for a Batson hearing as follows:

Under our Batson jurisprudence, once the opponent of a peremptory challenge has made out a prima facie case of racial discrimination (step one), the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation (step two). If a race-neutral explanation is tendered, the trial court must then decide (step three) whether the opponent of the strike has proved purposeful racial discrimination.

514 U.S. at 767.

Step two of this process does not demand an explanation that is persuasive or even plausible. State v. Cochran, 369 S.C. 308, 314, 631 S.E.2d 294, 298 (Ct. App. 2006) (quoting Purkett, 514 U.S. at 767–68). In step two, “the proponent of the strike does not carry ‘any burden of presenting reasonably specific, legitimate explanations for the

strikes.” Id. (internal citations omitted). “Therefore, ‘[u]nless a discriminatory intent is inherent’ in the explanation provided by the proponent of the strike, ‘the reason offered will be deemed race neutral’ and the trial court must proceed to the third step of the Batson process.” Id. (quoting Purkett, 514 U.S. at 768).

“At step three, the opponent of the strike must show the reason offered, though facially race-neutral, was actually mere pretext to engage in purposeful racial discrimination.” Cochran, 369 S.C. at 315, 631 S.E.2d at 298 (internal citation omitted). “The burden of persuading the court that a Batson violation has occurred remains at all times on the opponent of the strike.” Haigler, 334 S.C. at 629, 515 S.E.2d at 91. “This burden is generally established by showing similarly situated members of another race were seated on the jury.” Cochran, 369 S.C. at 315, 631 S.E.2d at 298. However, the uneven application of a neutral reason does not automatically result in a finding of invidious discrimination if the strike's proponent provides a race or gender neutral explanation for the inconsistency. State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995) (finding the State provided a racially neutral explanation for why the solicitor did not strike a juror with similar characteristics to one previously stricken); see Purkett, 514 U.S. at 768, (during step three, “persuasiveness of the justification becomes relevant.”); see also State v. Geddis, 313 S.C. 37, 437 S.E.2d 31 (1993); State v. Wilder, 306 S.C. 535, 413 S.E.2d 323 (1991).

Appellant's assertions that the reasons offered for the strike were mere pretext are without merit. The trial judge correctly found that the two white females who listed their occupation as “housewife” were not similarly situated to two black males who listed their occupation as “unemployed.” Appellant's attempt to classify housewives as

“unemployed” is illogical, offensive, and contrary to the definition of “unemployment.” The Bureau of Labor Statistics of the U.S. Department of Labor defines unemployed persons as those who “do not have a job, have actively looked for work in the prior four weeks, and are currently available for work.”¹ One who is a housewife is distinguishable from one who is unemployed because they are not actively looking for outside employment; they are working full-time within their home. The class of persons who claim employment as a “housewife” are thus not similarly situated to those who claim “unemployment.” The trial judge’s determination that the State’s stated reasons for the strikes were race-neutral and appropriate is thus not clearly erroneous, and should not be disturbed on appeal.

¹ How the Government Measures Unemployment, Bureau of Labor Statistics, http://www.bls.gov/cps/cps_htgm.htm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

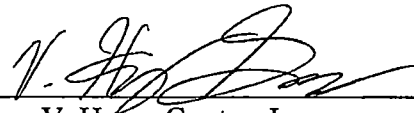
Respectfully submitted,

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

BY:



V. Henry Gunter, Jr.
Bar # 102259

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ATTORNEYS FOR RESPONDENT

April 4, 2016

RECEIVED
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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Orangeburg County
Deadra J. Jefferson, Circuit Court Judge

THE STATE,

Respondent,

vs.

TYKEEM KALANI MAY,

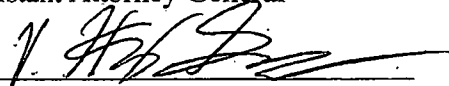
Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

By: 

V. HENRY GUNTER, JR.
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

April 4, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Orangeburg County
Deadra L. Jefferson, Circuit Court Judge

RECEIVED

APR 04 2016

SC Court of Appeals

THE STATE,

Respondent

vs.

TYKEEM KALANI MAY,

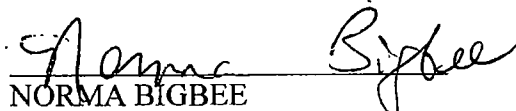
Appellant.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to: David Alexander, Esquire, Appellate Defender, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211.

I further certify that all parties required by Rule to be served have been served.

This 4th day of April, 2016.


NORMA BIGBEE
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Tykeem Kalani May, Appellant.

Appellate Case No. 2014-001827

Appeal from Orangeburg County
Deadra L. Jefferson, Circuit Court Judge

Unpublished Opinion No. 2017-UP-138
Submitted January 1, 2017 – Filed April 5, 2017

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Vann Henry Gunter, Jr., both of
Columbia; and Solicitor David Michael Pascoe, Jr., of
Orangeburg, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *Batson v. Kentucky*, 476 U.S. 79, 89 (1986) ("[T]he State's privilege to
strike individual jurors through peremptory challenges . . . is subject to the

commands of the Equal Protection Clause."); *State v. Cochran*, 369 S.C. 308, 312, 631 S.E.2d 294, 297 (Ct. App. 2006) ("In the typical appeal from the granting or denial of a *Batson* motion, the appellate courts give deference to the findings of the trial court and apply a clearly erroneous standard."); *State v. Kelley*, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("In a *Batson* hearing, the [State] must present a racially neutral explanation for the challenges." (footnote omitted)); *Purkett v. Elem*, 514 U.S. 765, 768 (1995) ("Unless a discriminatory intent is inherent in the [State]'s explanation, the reason offered will be deemed race neutral." (quoting *Hernandez v. New York*, 500 U.S. 352, 360 (1991) (plurality opinion))); *Cochran*, 369 S.C. at 318, 631 S.E.2d at 300 ("The employment status of a prospective juror is a race-neutral reason for using a peremptory challenge."); *Kelley*, 319 S.C. at 176, 460 S.E.2d at 370 ("The defendant has the burden to prove the [State]'s allegedly neutral reasons are pretext."); *Cochran*, 369 S.C. at 315, 631 S.E.2d at 298 ("This burden is generally established by showing similarly situated members of another race were seated on the jury."); *State v. Haigler*, 334 S.C. 623, 629, 515 S.E.2d 88, 91 (1999) ("Whether a party's proffered reason for exercising a peremptory strike is discriminatory must be determined by examining the totality of the facts and circumstances in the record."); *id.* at 630, 515 S.E.2d at 91 ("The composition of the jury panel is a factor that may be considered when determining whether a party engaged in purposeful discrimination."); *Kelley*, 319 S.C. at 177, 460 S.E.2d at 370 (finding the State provided a racially neutral explanation for why it did not strike a juror with similar characteristics to one previously stricken).

AFFIRMED.¹

LOCKEMY, C.J., and KONDUROS and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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April 24, 2017

The Honorable Winnifa Brown-Clark
PO Box 9000
Orangeburg SC 29115-9000

REMITTITUR

Re: The State v. Tykeem K. May
Lower Court Case No. 2014GS3800189, 2014GS3800190
Appellate Case No. 2014-001827

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

The exhibit being returned is: State's exhibit #23 (Store Video Surveillance)

Please sign attached copy of this letter and return to acknowledge receipt of this item.

Very truly yours,

V. Claire Allen

DEPTUY CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
David Alexander, Esquire
Vann Henry Gunter, Jr., Esquire
David Michael Pascoe, Jr., Esquire

Receipt Acknowledgement:

Name _____ Date _____

Name: _____
Please print

FORM 5

2017-CP-38-01599

STATE OF SOUTH CAROLINA)

County of Orangeburg)Tykeem Kalani May #361073)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEF2017-CP-38-01599
A.D. 06FILED FOR RECORD
MICHAEL B. CLARK
JAN 11 2018INSTRUCTIONS - 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 Lieber Correctional Inst., P.O. Box 205
Ridgeville, South Carolina 29472
2. Name and location of Court which imposed sentence Orangeburg County
Court of General Sessions, Orangeburg South Carolina
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-38-0189 (Armed Robbery)
 - (b) Poss. of Weapon during a violent crime

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) August 15, 2014. (15) years violent/most serious
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty XX
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. April 5, 2017
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Opinion No. 2017-UP-138 (Appellate Case No. 2014-001827)
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

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CLERK OF COURT
ON 12/27/17

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of trial counsel, Violation of
my Fifth, Sixth and Fourteenth Amendment Rights, and
 (b) _____
 (c) Judicial errors of law
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached brief and memorandum
 (b) _____
 (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? direct appeal to S.C. Court of Appeals
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. State Court of Appeals
 ii. State Court of Appeals
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Court of Appeals, Columbia, S.C.
 ii. same
 iii. _____
 iv. _____

(c) the disposition thereof:

i. **Conviction Affirmed**

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. **April 5, 2017**

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. **Opinion No. 2017-UP-138**

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

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2017 APR 20 11:31
CLERK OF COURT
JANET L. HARRIS

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) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes
 (b) your trial, if any? YES
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

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. Breen Stevens, Esq. (Address unknown)
 ii. Same
 iii. Same
 (b) the proceedings at which each such attorney represented you:
 i. _____
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

Sentence and conviction vacated/reversed, new trial granted

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

FILED FOR RECORD
VIRGINIA B. CLARK
JUL 13 2011 A 11:31
CLERK OF COURT
CRIMINAL DIVISION

I, Tykeem Kalani May, #361073, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this _____
day of _____, _____.

Notary Public (L.S.)

My Commission Expires: _____

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Tykeem Kalani May #361073, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, _____.

Notary Public

My Commission Expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Tykeem Kalani May #361073,
Applicant,

Case No.

Vs.

State of South Carolina,
Respondent.

APPLICANT'S BRIEF IN SUPPORT
AND MEMORANDUM OF LAW

FILED FOR RECORD
WINNIEFA, OR
2017 NOV 30
CLERK OF COURT
ORANGEBURG, SC
A 11:34

This matter comes before the Court by way of an Application for Post-Conviction Relief filed by the Applicant listed above.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to the orders of commitment issued by the Clerk of Court for Orangeburg County. The Applicant was indicted by an Orangeburg County Grand Jury for the crimes of Armed Robbery (2014-GS-38-0189), and Possession of a weapon during the commission of a violent crime.

Applicant was represented at trial by Breen Stevens, Esq. On August 15, 2014, the Applicant proceeded to trial before the Honorable Deadra L. Jefferson. At the close of the trial in this case, the Applicant was found guilty and sentenced to a term of imprisonment for (15) years.

A timely Notice of Appeal was filed and thereafter, Applicant's appeal was initiated by the South Carolina Commission on Indigent Defense (SCCID), whereas he was represented by a Mr. David Alexander Esq. Following the submission of final briefs in the appeal, the South Carolina Court of Appeals affirmed Applicant's conviction.

Thereafter, on December 1, 2017, the Applicant filed his Application for Post-Conviction Relief. In his application, the Applicant alleges that he is being held in custody unlawfully based on the following grounds:

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

1. My trial attorney failed to conscientiously discharge his professional responsibilities while handling the trial of my case. "Attorney's are required to render services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the profession." Smith v. Hastie, 367 S.C. 410, 626 S.E.2d 13(Ct.App.2005).

2. My trial attorney failed to act as my diligent conscientious advocate by failing to present any type of strategic defense during the trial. There were key material witnesses and physical evidence available that would have exonerated the Applicant. "If not for trial counsel's errors, there's a reasonable probability the outcome of Applicant's trial would have been different".

3. My trial attorney did not have my best interest in mind and failed to conduct any pretrial investigation to prepare for the trial of my case. "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation, reasonably necessary for the representation". Rule 1.1, SCACR.

Ordinarily, when an attorney engages in the practice of law and contracts to prosecute an action on behalf of a client, there is an expectation by the client that as his advocate, 1) he possesses the requisite degree of learning, skill, and ability necessary in the practice of his profession; 2) He will exert his best judgment during the prosecution of the litigation entrusted to him; and 3) He will exercise reasonable ordinary care and diligence to the best interest of his client's cause.

4. My trial attorney failed to serve my cause in good faith and he never attempted or intended to offer any type defense for the jury's consideration.

5. My trial attorney, knowing I was illiterate regarding the complexities of the law, never ascertained whether or not I actually understood or comprehended all the issues and aspects of my case.

6. My trial attorney failed to explain to me the advantages or disadvantages of offering forth a defense verses not doing so. He failed to discussed trial strategy or available defenses.

7. My trial attorney did not subject the prosecutions case-in-chief, to any adverse forensic testing and failed to oppose the prosecution's case with any adverse defense litigation.

WAS APPLICANT'S TRIAL ATTORNEY INEFFECTIVE DURING THE TRIAL OF APPLICANT'S CASE?

[STANDARD OF REVIEW]

"A deficient performance by counsel is prejudicial when there is a reasonable probability that, but for counsel's errors, the outcome would have been different". Lowry v. State, 376 S.C. 499, 657 S.E.2d 760(2008).

"In order to establish a claim of ineffective assistance of counsel, the post-conviction relief (PCR) Applicant must show that; (1) counsel's performance was deficient; and (2) there is a reasonable probability that, but for counsel's errors the results of the trial would have been different." Lorenzen v. State, 376 S.C. 521, 657 S.E.2d 771(2008).

"For the purposes of a claim of ineffective assistance of counsel, a "reasonable probability" that the outcome would have been different, absent counsel's deficient performance, is a probability sufficient to undermine confidence in the outcome of the trial." Sellers v. State, 362 S.C. 182, 607 S.E.2d 82(2005).

In the instant case, Applicant's trial attorney made numerous errors in his judgment and his lack of trial strategy causing the Applicant to suffer the pitfalls of a wrongful conviction.

C O N C L U S I O N

A convicted defendant's claim that counsel's assistance was so deficient as to require reversal of a conviction requires that the defendant show that the deficient performance prejudiced him and deprived him of a fair defense. The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the

United States Constitution and Article 1, Section 14 of the South Carolina Constitution. Therefore, the Applicant has met the burden required of him under Strickland v. Washington, 466 U.S. 668 and all progeny.

S/ _____
Tykeem K. May #361073, pro-se

Dated: December 1, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	
	)	
Tykeem Kalami May, #361073,	)	Case No.: 2017-CP-38-1599
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

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WHITFIELD, CLAYTON
JAN 11 2018
CLERK OF COURT

Respondent, making its Return to the application for Post-Conviction Relief ("PCR") filed on November 30, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. In February 2014, the Orangeburg County Grand Jury indicted Applicant for armed robbery (2014-GS-38-0189) and possession of a weapon during the commission of a violent crime (2014-GS-38-0190). The charges resulted from a September 2013 incident in which Applicant robbed an Orangeburg establishment called The Keg with a rifle. (Tr. p. 61, ll. 8-15). Breen Stevens, Esquire, and Robert Douglas Mellard, Esquire, of the First Circuit Public Defender's Office represented Applicant at trial. Harrison Bell, Esquire, and Ashley Cornwell, Esquire, prosecuted the case. Applicant proceeded to trial before the Honorable Deadra L. Jefferson. The jury found Applicant guilty as indicted. On August 15, 2014, Judge Jefferson sentenced Applicant to imprisonment for fifteen years for armed robbery and five years for possession of a weapon during the commission of a violent crime, to be served concurrently.

Applicant filed a timely notice of appeal. Appellate Defender David Alexander, Esquire,

perfected the appeal on whether the trial court erred in denying Applicant's Batson challenge to the State's use of all of its peremptory strikes against black males. The South Carolina Court of Appeals affirmed Applicant's in an unpublished opinion filed April 5, 2017. State v. May, Op. No. 2017-UP-138 (Ct. App. 2017). The remittitur was returned to the circuit court on April 24, 2017.

Attached to this Return and incorporated by reference are the records of the Orangeburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. "Trial Counsel failed to conscientiously discharge his professional responsibilities while handling the trial of my case."
 - b. "[Failure] to present any type of strategic defense during the trial. There were key material witnesses and physical evidence available that would have exonerated Applicant."
 - c. "Trial Counsel did not have my best interest in mind and failed to conduct any pretrial investigation to prepare for the trial of my case."
 - d. "Trial Counsel failed to serve my cause in good faith and he never attempted or intended to offer any type of defense for the jury's consideration."
 - e. "Trial Counsel, knowing I was illiterate regarding the complexities of the law, never ascertained whether or not I actually understood or comprehended all the issues and aspects of my case."
 - f. "Trial Counsel failed to explain to me the advantages or disadvantages of offering forth a defense versus not doing so. He failed to discuss trial strategy or available defenses."

- g. "Trial Counsel did not subject the prosecution's case-in-chief to any adverse forensic testing and failed to oppose the prosecution's case with any adverse defense litigation."

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant

such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

V.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

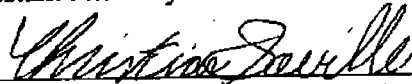
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHRISTIAN SAVILLE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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3/19, 2018

Tykeem Kalami May,
Plaintiff,
vs.
The State of South Carolina,
Defendant.

St. George, South Carolina

The Honorable D. Craig Brown, Judge

Jonathan L. Waller, Esquire
Attorney for the Plaintiff

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>

-- NO EXHIBITS ENTERED --

1 (On the record at 10:57 a.m.)

2 MR. SAVILLE: May it please the Court, Your Honor?

3 THE COURT: Yes.

4 MS. SAVILLE: This is the case of *Tykeem May vs The*
5 *State of South Carolina*, Docket No. 2017- Common Pleas -
6 38-1599.

7 In February, 2014, the Orangeburg County Grand Jury
8 indicted Mr. May for armed robbery and possession of a
9 weapon during the commission of a violent crime. Breen
10 Stevens, Esquire and Robert Douglas Mellard of the First
11 Circuit Public Defenders Office represented him at trial.
12 The case was prosecuted by Ashley Cornwell and Harrison
13 Bell.

14 Mr. May proceeded to trail before The Honorable
15 Deidra L. Jefferson, and the jury found him guilty as
16 indicted.

17 On August 15, 2014, Judge Jefferson sentenced Mr. May
18 to imprisonment for 15 years for armed robbery and 5 years
19 for possession of a weapon during the commission of a
20 violent crime to be served concurrently.

21 Mr. May filed a timely notice of appeal, and
22 Appellate Defender David Alexander perfected the appeal
23 regarding a *Batson* challenge. The South Carolina Court of
24 Appeals affirmed the conviction in an unpublished opinion,
25 and the remittitur was returned to the Circuit Court on

1 April 25, 2017.

2 Mr. May filed a application for post-conviction
3 relief on November 30, 2017, alleging ineffective
4 assistance of counsel; raises a few broad allegations
5 regarding his representation.

6 He is present and in court today represented by Mr.
7 Jonathan Lee Waller, and at this time, the State will turn
8 it over to Mr. Waller. Thank you.

9 THE COURT: Mr. Waller?

10 MR. WALLER: Thank you, Your Honor. Your Honor, the
11 Applicant would call Tykeem May.

12 THE COURT: He's serving a 15 year sentence; is that
13 right?

14 MR. WALLER: That's correct, Your Honor.

15 THE COURT: Yes, sir.

16 TYKEEM MAY, having been first
17 duly sworn, testifies as follows:

18 DIRECT EXAMINATION

19 BY MR. WALLER:

20 Q Good morning, Mr. May. How are you today?

21 A I'm all right.

22 Q All right. Mr. May, I need to ask you to speak
23 loudly and clearly so that court reporter can take down
24 everything you say.

25 A All right.

1 Q And let me do this, when you were first arrested,
2 what -- what charges were you arrested for?

3 A I was told I was arrested for a armed robbery charge
4 and then I -- later I found out about the weapon during a
5 violent crime charge.

6 Q Okay. So you were later charged with possession of a
7 weapon during a violent crime?

8 A Yes.

9 Q Okay. But not -- the day you were arrested you
10 didn't have that charge.

11 A The day I was arrested I wasn't aware of any charges.
12 I asked the officers what the charges were, and they
13 basically just continued to stall, and I didn't find out
14 until I was in the county jail what my -- what the charges
15 were.

16 Q What your charges were.

17 A Yes, sir.

18 Q Okay. Well, let's do this, what -- what's your
19 understanding of the allegations against you as far as the
20 armed robbery goes?

21 A My understanding was -- could you --

22 Q What did the State say happened?

23 A Oh. The State said that a person wearing --
24 according to the State, a person wearing a mask of some
25 sort -- or or some type of bandana or shawl or something --

DIRECT EXAMINATION BY MR. WALLER - TYKEEM MAY

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1 went into a establishment and deprived them of money, as
2 it said, with some type of assault rifle of some sort; and
3 then they said that the guy fled -- well, a witness
4 statement said the guy fled on foot.

5 The State was attempting to prove that the guy left
6 in some type of vehicle or something of that nature, but
7 the -- all the evidence didn't really point at the same
8 things.

9 Q All right. So let -- let me just -- sorry to cut you
10 off. The State alleged that -- that a store called "The
11 Keg" was robbed at gunpoint; is ---

12 A Yes.

13 Q --- that right?

14 A Yes, sir.

15 Q Okay. And the -- the suspect was not apprehended
16 that day.

17 A No.

18 Q Okay. When were you arrested?

19 A I was arrested, I believe it was September 15, and
20 they said that this incident happened on September 9th I
21 believe or the 8th.

22 Q I think it was the 8th. But -- so about a week
23 later; is that correct?

24 A Yeah. It was about a week later that they said that
25 the incident happened from the day that they locked me up.

1 Q Okay. And you were arrested when a search warrant
2 was conducted; is that right?

3 A Yes, yes.

4 Q Okay. You were arrested at the same time as the
5 search warrant. Were you ever -- did you ever leave the
6 detention center after that?

7 A No. Actually the next day, I did leave briefly, but
8 it was to go to -- I believe it was Public Safety court.
9 It was a courthouse that was in the Public Safety Office
10 where the police were --

11 Q Okay.

12 A -- for a bond hearing.

13 Q Sorry. Let me -- let me -- and I didn't ask a very
14 good question. I apologize. You were never released from
15 custody.

16 A Oh, no. No, sir.

17 Q Okay. All right. Who was your lawyer on these
18 charges?

19 A Mr. Breen Stevens.

20 Q Okay. After you were arrested, when did you first
21 meet with Mr. Stevens?

22 A It was roughly two to three months after I was
23 arrested. I didn't -- I -- he wasn't appointed my lawyer
24 -- I have the paperwork to verify he wasn't appointed by
25 lawyer until October the 4th or 2nd, and I was -- like I

DIRECT EXAMINATION BY MR. WALLER - TYKEEM MAY

9

1 said, I was arrested the -- September the 15. So it was a
2 month until after he was appointed.

3 And he didn't put in a request for my Rule 5 motion
4 until three months after that. So I feel as if, as far as
5 him working on my case and really coming to see me, us
6 meeting for the first time, it had to have been roughly
7 three months after I was arrested.

8 Q Okay.

9 A And it was about four to five months after I was
10 arrested that he really got into my case.

11 Q Okay. And -- and we're going to -- we're going to
12 get to that in just a minute.

13 The paperwork that you have said he was appointed as
14 your lawyer several weeks after you were arrested --

15 A Yes.

16 Q -- is that right? Okay. And you don't know what was
17 happening -- you don't -- no knowledge of what was
18 happening in that -- in the meantime?

19 A No, sir.

20 Q Okay. When you and Mr. Stevens first met, do you
21 recall that meeting?

22 A Slightly.

23 Q Okay. Do you remember what y'all talked about?

24 A It was more of a reassurance meeting I would say. He
25 reassured me that my case had no -- nothing, you know,

1 major that -- he said it looked to him like it was a case
2 of mistaken identity and that soon as he got my motion,
3 that he would look into it and -- and this and the other.
4 So I feel as if he didn't really look at my case at all.
5 He was just reassuring me that he could handle the case,
6 that everything would be alright just to see -- you know,
7 to feel me out to see, you know, what type of person I
8 was. We talked really about, like, my family and stuff
9 like that.

10 Q Okay.

11 A My upbringing.

12 Q At that time had you been charged with the weapons
13 charge yet?

14 A To be honest, I wasn't -- I wasn't -- I didn't really
15 know. I wasn't aware because I didn't have my Rule 5. I
16 didn't have any details in my case.

17 Q Okay. Eventually you -- you were -- were you
18 provided with some discovery materials, some Rule 5 and
19 *Brady* materials?

20 A Yes, I was.

21 Q Okay. Did you and Mr. Stevens have an opportunity to
22 go over those items?

23 A Yes.

24 Q Okay. There was a search warrant conducted in your
25 case.

DIRECT EXAMINATION BY MR. WALLER - TYKEEM MAY 11

1 A Yes, sir.

2 Q Okay. Did you and Mr. Stevens discuss that search
3 warrant?

4 A Yes, we discussed it. I believe it was about -- I
5 want to say seven months after I was incarcerated, after I
6 was locked up because I wanted to questions the search
7 warrant because I feel like some of the fruits of the
8 search warrant weren't valid, and I felt as if the search
9 warrant should've been contested.

10 Q Okay.

11 A So we discussed it.

12 Q And -- and ultimately it -- it was contested at your
13 trial; is that right?

14 A Yes.

15 Q Okay. What did you and Mr. Stevens talk about the
16 search warrant? When you say there are some things you
17 wanted to challenge, what did you -- what did you tell
18 him?

19 A I wanted to challenge the hearsay that was in the
20 affidavit of the search warrant. According to *Franks vs*
21 *Delaware*, I believe it is, it talks about the affidavit of
22 a search warrant not being truthful or being misleading,
23 and I didn't know that at that point.

24 Mr. Steven never brung (sic) that to me or anything.
25 That was research I did after I was, you know,

1 incarcerated. But at that time, I felt like the hearsay
2 in the search warrant was really stuff that the officer
3 made up his self (sic), like things he added on to make
4 the case seem more credible than it was.

5 Because in my case, like, according to the -- the
6 Rule 5 and everything, there were no witnesses saying that
7 I did anything or anything of that nature. So it was all
8 based off of the officer, the arresting officer who said
9 that this looked like that and I looked like this person
10 and so on and so forth.

11 Q Okay. Just a couple things. So when you say the
12 research that you did and your understand, that came after
13 you'd been in the Department of Corrections --

14 A Yes.

15 Q -- after your conviction?

16 A Yes.

17 Q Okay. And to clarify, the -- the -- the clerk at the
18 store, who was the victim of this robbery, never
19 identified you or -- or anyone as the person who -- who
20 committed this crime; is that right?

21 A No, sir, he did not.

22 Q Okay. All right. What else did you and Mr. Stevens
23 discuss about your case?

24 A Well, we further discussed some things about the
25 search warrant where -- well, this didn't really come

DIRECT EXAMINATION BY MR. WALLER - TYKEEM MAY 13

1 until the week of my trial, and I didn't know about that.
2 So I didn't know if Mr. Stevens was -- it was a spur of
3 the moment thing or if he had already did a whole bunch of
4 research on it. But I seen that it was 10 days after the
5 search warrant -- it was no return filed on the search
6 warrant, and Mr. Stevens brung (sic) it to my attention
7 because I wasn't aware of that at the time.

8 Q Okay.

9 A And he had -- he brung (sic) it to the judge, the
10 judge turned it down because she said it wasn't prejudice
11 -- it didn't prejudice me in any way.

12 But we also talked about other details of my case.
13 And the details that I feel Mr. Stevens presented at trial
14 were all the details -- for the five months before my
15 trial, I was telling him to press those details --

16 Q Okay.

17 A -- and it was like -- at the time, he would tell me,
18 "That's not a good idea. Oh, I'm not -- that's not this,
19 that's not that."

20 But once the trial started, that was the main stuff
21 that he kind of leaned towards. Like, he didn't do his
22 own research. He just leaned on the stuff that I gave him
23 that he told me was of no relevance.

24 Q Okay. Let -- let's talk about some of those details.
25 You -- at your trial and also throughout the course of

1 this case, you -- you've maintained that you had an alibi.

2 A Yes.

3 Q Is that right?

4 A Yes, sir.

5 Q Okay. And actually, your -- your girlfriend at the
6 time testified -- testified for the State, but testified
7 that you were with her at the time that the crime took
8 place; is that right?

9 A Yes, sir.

10 Q Okay. Where were you -- where were you and your
11 girlfriend supposed -- supposedly when this incident took
12 place?

13 A When this incident took place, we were on route to
14 Walmart.

15 Q Okay.

16 A So within minutes, we were at Walmart where I feel as
17 if the video at Walmart would have -- would atone (sic) to
18 my alibi that that's where we were.

19 Q Okay.

20 A But --

21 Q Did you and Mr. Stevens talk about the video at
22 Walmart?

23 A Yes, we did.

24 Q Okay. What did y'all -- what did y'all discuss?

25 A Well, I told him -- and this is one of the issues

1 that -- about my case that I was pushing on him to get
2 done that he never, you know, got done, all the way up
3 'til the day of my trial where the judge ordered him to go
4 back and look into it.

5 And I felt like it was kind of late because we were
6 in pre-trial, now we're in trial, and I asked you to do
7 these things four/five months ago and you never did them.
8 And then you waited to the last minute, and the only
9 reason you went to do them is because I brung (sic) it up
10 to the judge that -- and I was attempting to relinquish
11 him as counsel. And the judge ordered him to go and do
12 those things at the last minute --

13 Q Okay.

14 A -- and he never got them done.

15 Q The -- the judge ordered him to investigate some more
16 information from Walmart on the -- on the Monday your
17 trial was starting; is that right?

18 A Yes. Yes, sir.

19 Q Okay. What other investigation regarding Walmart --
20 let me back up. What did y'all discuss about the
21 surveillance video from Walmart?

22 A Well, I -- when I asked him about -- told him to get
23 the surveillance video from Walmart because that would
24 verify my alibi, he told me that he would do it. That --
25 that was originally, before the trial and everything, he

1 said he would do it, he would do it. He never did it. He
2 drug -- he drug his feet on it.

3 So when the trial started and the judge ordered him
4 to do so, he said that he went to do it, and he found out
5 that the -- that Walmart -- the video deletes after 30
6 days or 60 days I believe it was. It automatically
7 deletes.

8 Q Okay. Let me ask you this: What was the date the
9 alleged incident took place?

10 A The alleged incident took place I believe they said
11 -- when was that -- August 8th or September 8th.

12 Q Okay.

13 A September 8th I believe.

14 Q When did you first meet with Mr. Stevens?

15 A I would want to say it was the end of October or the
16 beginning of November.

17 Q Okay. When were you made aware that Mr. Stevens
18 became appointed to represent you?

19 A I believe it was the middle of October when I had the
20 form that I have in my --

21 Q Okay

22 A -- that verified that this is my lawyer. But the way
23 that they did things in Orangeburg County was you would
24 call the Public Defender's Office and they would tell you
25 who -- that you were appointed a lawyer basically.

DIRECT EXAMINATION BY MR. WALLER - TYKEEM MAY

17

1 Q Okay.

2 A And they would tell you automatically who it was, and
3 it would be weeks before you met with the person.

4 Q Okay.

5 A So after I called and find out who he was, you know,
6 then it was more of going to other individuals in the
7 county jail to see what type of lawyer this person is
8 because it's going to be a long time before I meet him
9 because we already knew that. So we could only go off of
10 hearsay of, "Oh, yeah. He's a good lawyer; he -- he's --
11 he's a bad lawyer; she's a good lawyer," so on and so
12 forth.

13 Q Okay. So the surveillance video was not available at
14 the time of your trial or the time Mr. Stevens looked into
15 it; is that right?

16 A No, it was not available --

17 Q Okay.

18 A -- the surveillance video from Walmart.

19 Q Okay. How about some other records from Walmart?
20 Did you -- did you buy anything at Walmart?

21 A Yes. The day that -- the day in question, I actually
22 purchased a phone card because I had a -- I had a Galaxy,
23 like, one of the first Galaxy phones; and I had a \$45 pre-
24 paid phone card which I bought from the electronics
25 department. At this time, it wasn't a lot of traffic in

1 Walmart.

2 Q Okay.

3 A It's video cameras all over electronics department.
4 It wasn't being a lot of purchases made when I was there
5 because I'd separated from my girlfriend, I went over
6 there, and I bought the phone card. And then me and her
7 got back together in the produce department, and we went
8 and continued to grocery shop.

9 So I told Mr. Stevens to get the receipt from the
10 electronics department to verify I bought the phone card
11 at that time. I told him he could get phone records. I
12 even said something about -- I believe about a tower. I
13 was like, "If -- you -- you can trace a cell phone or
14 trace somebody location off of the pinging of the towers,
15 you know, from the different towers, that would verify
16 where I was at."

17 But I was, like, get the phone records from Walmart,
18 you can get the video cameras from Walmart, you can get my
19 phone records, you can get all of these things to verify
20 my alibi.

21 Q Let me -- let me ask you about the receipt. So when
22 you say you purchased it from the electronics department
23 and then met your girlfriend again in the produce and
24 y'all kept shopping --

25 A Yes.

DIRECT EXAMINATION BY MR. WALLER - TYKEEM MAY 19

1 Q -- you made a separate purchase from the electronics
2 department?

3 A Yes.

4 Q Okay. After y'all were at Walmart, y'all went to
5 Sonic; is that right?

6 A Yes, sir.

7 Q Okay. Did y'all buy anything at Sonic?

8 A Yes, sir. It was Happy Hour, so she got the little
9 slushies or whatever it was. I don't like Sonic, so I
10 remember because I was mad. I bought everything she
11 wanted, and I ain't eat anything because I don't eat
12 Sonic.

13 Q Okay. Did you and Mr. Stevens discuss trying to get
14 any records or anything from Sonic?

15 A No, sir.

16 Q Okay.

17 A No, sir.

18 Q How about credit card records or anything like that?

19 A No. I'm not -- I'm not familiar with requesting -- I
20 don't remember asking him to request anything from Sonic
21 credit card wise or anything like that.

22 Q Okay. Was anybody -- did anybody see you in Walmart
23 or anybody see you at Sonic that you -- that you knew,
24 other than your girlfriend, that you and Mr. Stevens might
25 have talked about?

1 A I seen a couple people that I was -- that I knew from
2 State because I went to South Carolina State University.
3 So I seen a few people that were in Orangeburg that went
4 to South Carolina State.

5 One person in particular was a young lady, Alexis --
6 what was her last name? I can't remember her last name
7 right now. But Alexis, she actually -- we actually picked
8 her up after we came back from Sonic --

9 Q Okay.

10 A -- because she ended up staying with me and my
11 girlfriend for about a week before they came and locked me
12 up over the ---

13 Q Okay. All right. I want to ask you a little bit
14 about -- about your trial. You -- you remember your trial
15 obviously.

16 A Yeah.

17 Q Okay. There was -- if you'll recall, there was some
18 surveillance video from the -- the store that was robbed.

19 A Yes.

20 Q You remember that? It was introduced into evidence.

21 A Yes.

22 Q Okay. That surveillance video was cut up into, I
23 believe, eight different -- there was eight different
24 cameras that captured bits and pieces of the whole
25 incident. Is that right, is that what you remember?

DIRECT EXAMINATION BY MR. WALLER - TYKEEM MAY 21

1 A Yes, that's correct.

2 Q Okay. How -- first of all, did -- did you have a
3 chance to view that video ---

4 A Yes, actually --

5 Q --- before your trial?

6 A Actually, when -- after my Rule 5 was obtained by Mr.
7 Stevens, he started showing me bits and pieces of it and
8 he showed me the video. And the way he showed it to me,
9 it was from this angle from this camera, and then he
10 showed me another angle from another camera. So that's
11 how I knew that it was different angles from different
12 cameras.

13 And then once I got my Rule 5 motion, a copy of it,
14 after I asked Mr. Stevens for it repeatedly and he finally
15 sent it to me, I saw that it was documented in the Rule 5
16 the different times from the different cameras and what
17 was going on at that time. And at this time, this was
18 happening; at that time, that was happening, so on and so
19 forth from the different cameras, and it told you which
20 camera was videoing this, which camera was videoing that,
21 and what it saw.

22 Q Okay. How was it presented at trial? How was it
23 shown to the jury?

24 A At trial -- and this isn't just what I believe, this
25 is what anyone -- Mr. Stevens, I'm pretty sure he saw it

1 as well. But I feel as if the video was doctored because
2 they didn't show the clips of how it was originally
3 presented, how it was shown on the camera. They made it
4 so that it was doctor -- doctored so that this clip led up
5 to this clip which led up to this clip which portrayed, in
6 general what they wanted you to believe to be true: That
7 a man pulled up in a white car. He -- somebody gets out
8 because on the video, you don't see anybody getting out.
9 But a man pulls up in a white car, the car backs in. Next
10 thing you know you see a guy on another camera.

11 The clips all go in line with each other. So next
12 thing you know they take that image off and -- and the
13 next image is a guy on the side of the store with his face
14 covered up and a assault rifle. Then the next image is
15 the guy going into the store and so -- so on and so forth.
16 And coming out, getting back into the car, and then the
17 car pulls off.

18 But the whole time you never see anybody getting in
19 or out of the car. You just assume, according to the way
20 it's showed, that the guy pulled up in the car, he gets
21 out, he robs the store, gets back in the car, the car
22 leaves.

23 Q Okay. So it -- it was -- it was cut up where it was
24 all played in one video.

25 A Yes.

DIRECT EXAMINATION BY MR. WALLER - TYKEEM MAY 23

1 Q Okay. So it wasn't, "We're playing camera No. 1 for
2 five minutes straight; and then we're going to go over to
3 camera No. 2, start back at the beginning, play that for
4 five minutes straight ---

5 A Yeah. The ---

6 Q --- it wasn't like that?

7 A The way they -- they did it, it was in a way where it
8 was about 60 seconds of camera No. 1, but then they
9 wouldn't show you everything of what happened in camera 1.
10 They would go to camera 4 and then camera 3. And -- but
11 as soon as camera 1 was shown, they would take it off and
12 it would be camera 4.

13 Q Okay.

14 A Then when they'd take it off, it'd be camera 3. And
15 then they took it in the -- in a way where you would have
16 to believe the way that it was shown was the way that it
17 happened.

18 Q So it was -- it was more like watching a movie than
19 watching one camera all the way through and then another
20 camera all the way through.

21 A Yeah. It was like watching a movie.

22 Q Okay. All right. I want to talk to you a little bit
23 about -- some more about your trial. You did not testify.

24 A No, sir, I did not.

25 Q Okay. You and your lawyers put in evidence during

1 the State's case, some pictures.

2 A Yes.

3 Q Do you -- do you recall that?

4 A Yes, I do.

5 Q Did -- did you and Mr. Stevens have a chance to
6 discuss whether the -- the advantages or disadvantages of
7 entering evidence?

8 A We talked about the advantages and disadvantages of
9 me testifying. As far as entering evidence, it wasn't too
10 much of a conversation about it because I didn't think
11 that he was going to enter evidence because once we talked
12 about my testimony, it was, like, if you testify we lose
13 last argument, so on and so forth. So I didn't want to
14 lose last argument because I seen how important it was to
15 Mr. Stevens.

16 But at the same time, I wanted to voice my words so
17 that the -- the jury could see, and like, get to know me
18 and see that I had no motive. I had no reason to commit a
19 robbery.

20 And Mr. Stevens really inferred (sic) to me that it
21 wasn't -- it might not be smart for me to testify. So I
22 wasn't as lenient -- you know, I -- I wasn't really
23 feeling like, you know, testifying because of his words,
24 but I really wanted to get my point across. So I really
25 kind of told him, "Imma testify, Imma testify."

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1 And then at the last minute, it was like, I don't
2 know. I'm ---

3 Q You initially told -- I apologize. You initially
4 told the judge you wanted to testify.

5 A Yes.

6 Q And then you -- you changed your mind and did not
7 testify ---

8 A Yes.

9 Q --- is that right? Okay.

10 Now, let me back you up just a little bit more.
11 There was some -- at the search warrant and also on the
12 scene, there was some -- some evidence collected. Did you
13 and Mr. Stevens have a chance to discuss that evidence?
14 A Yes. It was about, I would like to say, three to
15 four months before my trial that we discussed it. I
16 wasn't aware of all the evidence that was collected
17 because when I was -- I went to a preliminary hearing in
18 about -- I want to say it was about four months after I
19 was arrested, and -- three or four months. And at my
20 preliminary hearing, the arresting officer, he made his --
21 he trumped this case up to seem like more than what it
22 was. He attempted to say he had evidence that he didn't
23 have.

24 But according to the -- the evidence custody sheet,
25 you can look up there and see that someone entered that

1 evidence, like, went into the evidence and checked the
2 evidence the day before my preliminary hearing. So for
3 him to go into trial the next day and to infer that he had
4 things that he didn't have, knowing that the day before he
5 went and checked into the evidence, lying -- lying in open
6 court about evidence he had, I didn't know what he had for
7 real or not.

8 Q Right.

9 A Because I was going off of what he said at my
10 preliminary hearing.

11 Q Let me back you up because I asked a -- a poor
12 question there. I apologize. There were some gloves
13 recovered at the scene --

14 A Yes.

15 Q -- is that right? Okay. Those gloves were never --
16 no forensic testing or anything was ever done on those
17 gloves; is that right?

18 A No DNA testing was done.

19 Q Okay. Did you and Mr. Stevens ever discuss hiring a
20 expert or having those gloves independently tested?

21 A Mr. Stevens had a investigator, Danny McDaniels, I
22 believe, and Mr. McDaniels came and visited me in
23 Orangeburg County Jail. And me and Mr. McDaniels talked,
24 and he told me about the gloves. That's when I first
25 found out about the gloves. I didn't hear it from Mr.

1 Stevens, I found out from Mr. McDaniels, but I knew that
2 he worked for Mr. Stevens.

3 So Mr. McDaniels told me that they found some gloves
4 at the scene. I looked in my booking report in my motion
5 and I seen the gloves he was talking about -- in question.
6 And I saw the witness statement that the guy had on gloves
7 and I saw everything that had to do with the gloves. I
8 started to pay more attention to the gloves.

9 So Mr. McDaniels told me that if they test the gloves
10 for DNA, he said, you know if they test the -- his words,
11 and I quote, "You know if they test these gloves for DNA
12 and your DNA is up there, you looking at 30 years."

13 And I told him, "I didn't do this. Test the gloves
14 for DNA."

15 So he told me, "All right. We're going to test them
16 for DNA, but I'm telling you whatever we find out, we have
17 to give to the prosecution -- we have to give to the
18 State." I'm like, "All right. Test them for DNA."

19 Q Okay.

20 A And once we left that meeting, I was in --
21 understanding that they were going to test the gloves for
22 DNA, but I don't believe any tests were done.

23 Q Okay. And the -- the victim in the case, his
24 statement said that the -- the perpetrator was wearing
25 gloves. Is that ---

1 A Yes. His statement ---

2 Q --- right?

3 A --- said that -- in the -- in the cop's synopsis, it
4 shows that the -- him and the victim went behind the store
5 and found some gloves out back in the direction which the
6 -- the perp went in. And they found some gloves, and the
7 victim identified the gloves.

8 Before the victim identified the gloves, he told the
9 cops that the guy had on gloves. So when they found the
10 gloves, they got the witness and they brung him out there
11 and he say, "Yeah, those the gloves the guy had on right
12 there."

13 Q Okay. Now, there was no testing done of any of the
14 items obtained during the search warrant; is that right?

15 A No.

16 Q The shoes, the -- the weapon. I believe there was --
17 well, there were a couple of other items, but there were
18 some items that were not -- that they were looking for
19 they didn't find during the search warrant.

20 A Correct.

21 Q So none of that was ever tested because those items
22 were yours or your girlfriend's; is that right?

23 A Correct.

24 Q Okay. Were there any other items that were not
25 tested that you and Mr. Stevens discussed?

DIRECT EXAMINATION BY MR. WALLER - TYKEEM MAY

29

1 A Well, I asked about some -- 'cause I -- I -- I
2 technically went into looking into every aspect of the
3 evidence that he collected, and I seen (sic) they had
4 latent fingerprints and I wanted to see if -- you know,
5 see if those my prints that would verify I was not there.

6 Then I also went to see if they had any shoe
7 impressions at the scene. I talked to Mr. Stevens about
8 that. I said if they say that the guy had on shoes that
9 were similar to the ones that you found at my house, then
10 see if my shoe pattern on the bottom of my shoes match the
11 ones that the guy had on at the -- at the place. Look for
12 shoe prints.

13 Look for tire tread impressions. If you think that
14 the car on the video -- which the guy never got into --
15 which arrived after the robbery happened and left long
16 after the guy was gone, see if that car got -- and if the
17 tire treads match my girlfriend (sic) car.

18 Do some forensic evidence to see if -- you know, the
19 stuff that they attempting to use against me to say that I
20 was there and I did this, test it to see if it's a match
21 for what was at the scene, but none of those things were
22 done.

23 Q Okay. Is there anything else you and Mr. Stevens
24 discussed about his investigation in your case?

25 A To be honest, I -- it's a lot of stuff I remember

1 presenting to Mr. Stevens, and it was more like until the
2 day of the trial, he blew me off. It was like, "Oh,
3 that's not going to -- that's not going to do nothing.
4 That don't matter. That don't matter," until the week of
5 the trial, and then it was those four things that I -- you
6 know, I brung to the judge when I attempted to relinquish
7 him as counsel that she forced him to do. And I feel like
8 he been too late. I asked him to do that four, five
9 months ago. He ain't never do it in a timely fashion, so
10 ...

11 Q Okay. A couple things, you -- you mentioned meeting
12 with an investigator, Danny McDaniel.

13 A Yes.

14 Q How many times do you think you met with Mr.
15 McDaniel?

16 A I believe it was twice. The one -- the first time
17 was the time we talked about the gloves, and then the
18 second time he basically told me -- it -- I believe it was
19 a outright lie.

20 I don't know if it -- if it started with Mr. -- Mr.
21 Stevens or if it was just Mr. McDaniels lying, but it was
22 a character witness that I gave Mr. Stevens to, you know,
23 present at the trial. Mr. McDaniels lied to me and told
24 me that the character witness said, and I quote, "They
25 don't want anything to do with the trial. They just want

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1 to pay they taxes and be law abiding citizens."

2 And I found that odd because that character witness -
3 - we were in discussion, like, I would write them, they
4 would write me back. And they was writing me asking me --
5 and they would come see me when I was in the county and
6 they was asking me, "Let me know what day the trial
7 supposed to be so that I can be there so I can take off
8 from work because it's a shame how they trying to do you.
9 Imma be there. I can attest to your character."

10 And Mr. McDaniels made it seem like the witness
11 didn't want anything to do with it when the witness was
12 telling me something totally different. So when I talked
13 to the witness after I was convicted of this, the witness
14 told me that some of the things that Mr. McDaniels said
15 were in turn lies. Mr. McDaniels said that --

16 MR. SAVILLE: Objection, Your Honor. Hearsay.

17 THE COURT: Objection sustained.

18 Q All right. And -- and I'll move on. You presented -
19 - or -- or through your lawyer, presented at trial that
20 you were working; is that right? You had more than one
21 job. You had two jobs.

22 A Yes, sir.

23 Q Okay. Did you and Mr. Stevens ever discuss getting
24 any records or anything like that from your employment?

25 A Yes. I attempted to get him to get my records from

1 Dollar General that I was working at that, you know, I was
2 working and that I -- you know, I spent a lot of time in
3 there.

4 And I attempted to also get him to go and talk to my
5 current employer for -- that I was doing -- I was doing
6 security at nights, but it was -- I was getting paid under
7 the table.

8 Q Okay.

9 A So I don't know if their business was legitimate as
10 far as they went through SLED and was paying the proper
11 taxes or whatever. But I know that I was working for them
12 at nights, I was getting paid under the table, and I know
13 that my boss man at the time -- I ain't going to say he
14 was a "shady character" 'cause I didn't really know him
15 like that. I had just got that job.

16 Matter of a fact, the morning in question that they
17 said that the robbery happened, I went to meet him that --
18 that Sunday morning. And they -- the State attempted to
19 use that as a window of opportunity, me having my
20 girlfriend's car, saying that I went and committed a
21 robbery at that time when the time frames didn't add up at
22 all because it was around 9 o'clock in the morning when I
23 went to meet him to talk about me starting work that week.

24 Q Okay. And then Doug Mellard also represented you at
25 your trial. What was his involvement in your case?

1 A He was second chair to Mr. Stevens.

2 Q Okay. Did you ever meet with him alone?

3 A No. It was -- during my trial, I might've been
4 in the room with him alone briefly, but before that, no.

5 Q Okay. He was -- he was there to assist Mr.
6 Stevens in the trial.

7 A Yes.

8 Q Okay. All right. Mr. May, I've asked you all
9 the questions that I have. Is there anything you think
10 I've left out the judge needs to be aware of Mr. Stevens's
11 or Mr. Mellard's representation of you?

12 A I just believe that with -- it was just a
13 plethora of things that were done that I feel like if they
14 were done in a timely fashion, that it would've changed
15 the outcome of the case tremendously. From my due process
16 being violated, and them not getting me a lawyer in a
17 timely fashion so I could obtain the video from Walmart,
18 to Mr. Stevens actually doing the things I asked him to do
19 at the time I asked him to do it so it wasn't right in the
20 week of my trial, so he would've had more time to
21 accomplish it; to even Mr. Mellard, during my trial,
22 catching little things that he just let slide past, like
23 perjury that was committed by the officers and things of
24 that nature that when I said something to him about it
25 during trial, he just tried to hush me, and "Shh, yeah."

1 Like, tried to sweep it under the table like it didn't
2 happen.

3 So I just feel like if those things was done properly
4 and in a timely fashion, I just feel like the whole case
5 -- the whole trial would've went differently.

6 Q Okay. Thank you. Please answer any questions Mr.
7 Saville has.

8 THE COURT: Cross-examination.

9 CROSS-EXAMINATION

10 BY MR. SAVILLE:

11 Q Good morning, Mr. May. I appreciate you being
12 here today.

13 Mr. May, this is just kind of a housekeeping matter.
14 In -- in your application, you had alleged that Mr.
15 Stevens didn't adequately explain to you your charges and
16 whatnot. I -- I don't think I heard any testimony about
17 that, but I just wanted to make sure that we -- we did
18 address that in case you're concerned about that. Do you
19 remember telling Judge Jefferson that your lawyers had
20 fully explained to you the elements of armed robbery?

21 A Yes, I remember telling her that.

22 Q And do you remember telling Judge Jefferson you
23 understood the potential sentence for armed robbery?

24 A Yes. But the whole -- the whole thing had
25 happened because I had studied into it because I was

1 attempting to get Mr. Stevens at the time to get my charge
2 dropped to a lesser charge, and he would insist that it
3 couldn't be done because of this or it couldn't be done
4 because of that. And that's when I learned about the
5 weapon -- the weapon during a violent crime and how it
6 affected the case when he said you couldn't drop it to a
7 strong-armed robbery because a weapon during a violent
8 crime would stop that from happening.

9 And then during the trial, I found out that they
10 dropped the whole weapon during a violent crime for me to
11 plea, but I didn't take the plea.

12 Q Okay. And from -- from the gist of your testimony
13 with Mr. Waller, is it your position that Mr. Stevens kind
14 of drug his feet at the beginning and didn't really
15 represent you very well from the get-go?

16 A Yes, I believe that. I believe in the very
17 beginning it was more of a -- if I may say a -- more of a
18 boxing match where he was attempting to feel me out, see
19 what -- what all, you know, I knew and all of that. And
20 it went from that, with the slight reassurances to,
21 alright, this is what's going to happen. You take this
22 plea or -- I feel like he never really
23 had my best interest in mind.

24 He really didn't expect me to go to trial. So when I
25 told him that I was ready for trial, that the only way I

1 was going to take a plea was if he -- no. I -- I believe
2 I told Mr. Mellard the only way I would take a plea is if
3 he did 5 years because they was attempting to get me to
4 take a plea for 10 years at 85 percent and I had did a
5 year. And I told Mr. Mellard if he do (sic) five years,
6 I'll do the other three and Mr. Mellard laughed at me.
7 And I just wanted to let him know how serious I was about
8 going to trial.

9 At that time it was a week before my trial, so I felt
10 like if y'all not serious about me going to trial now,
11 y'all need to get serious 'cause the whole time I felt
12 like it was a game.

13 Q Sure. But despite that fact that you now say that
14 Mr. Stevens was not very diligent from the beginning, do
15 you remember telling Judge Jefferson that Mr. Stevens had
16 been a very good lawyer from the beginning?

17 A Yes. Because like I said in the beginning, it was
18 more of a -- I didn't -- I wasn't wise to the fact of
19 everything that was going on, and it was more he played
20 into my weaknesses. He knew -- I -- I'm not going to say
21 that he was evil -- had evil intentions from the
22 beginning, but it was more of he knew I was a college
23 student, he knew I had a great-aunt who helped raise me
24 who was in her -- on her death bed. He -- he wanted to
25 know more about my family, and I saw that as him being a

1 nice person, like, he wanted to know about my family, my
2 upbringing and all that, but that really didn't have
3 anything to do with my case. So I felt like, you know, at
4 the time, yeah, he -- he's concerned about me as a person,
5 but is he concerned enough to do his job? And when it
6 came down to it, he wasn't.

7 Q Sure. And you alleged, kind of, moments ago, that
8 you had possible alibi witnesses that Mr. Stevens failed
9 to reach out to?

10 A Actually it was a character witness that I informed
11 him about, and it was another witness that I informed him
12 about which neither of them he called at trial. So I felt
13 like he could've called those witnesses. Danny McDaniels
14 came up with a myriad of excuses why they weren't going to
15 be there, and they didn't want to take part in it, just to
16 find out that it was a lie.

17 So -- and then when the actual trial came and I seen
18 they (sic) name on the witness sheet but he never called
19 them, I kind of felt like I was taken (sic) advantage of,
20 but ...

21 Q Yes, sir. Are any of those witnesses here today?

22 A No.

23 MR. SAVILLE: That's all the questions I have Mr.
24 May. Thank you very much.

25 THE WITNESS: All right.

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1 MR. SAVILLE: Nothing further, Your Honor.

2 THE COURT: Sir, you may step down. Thank you.

3 (The witness complies.)

4 MR. WALLER: Nothing further from the Applicant, Your
5 Honor.

6 MR. SAVILLE: Your Honor, the State would call Mr.
7 Breen Stevens to the stand, please.

8 BREEN STEVENS, having been first
9 duly sworn, testifies as follows:

10 DIRECT EXAMINATION

11 BY MR. SAVILLE:

12 Q Good morning, Mr. Stevens. How are you doing?

13 A I'm doing well today. Thank you.

14 Q Good. Thank you for being here. How long have you
15 been practicing criminal law?

16 A Since I was licensed. So that would be, wow, since
17 2010.

18 Q All right. And do you remember about how many times
19 you met with Mr. May before this trial?

20 A A lot. I cannot -- if -- if it's alright for me to
21 refer to my notes --

22 Q Absolutely.

23 A -- I can tell you. Okay. Thank you, sir. All
24 right.

25 (Brief pause.)

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1 A And -- okay. Let's see here. At a minimum, and we
2 have more on our digital print-out from Defender Data --

3 Q Sure.

4 A -- but I know I have in here ---

5 Q And just a general -- just a general -- you know,
6 approximate number's fine, too. I don't need the ---

7 A About 17 times at least.

8 Q Okay.

9 A Sixteen to seventeen I think --

10 Q Yes, sir.

11 A -- if memory serves. Based off of ---

12 Q Now, do you recall going through the discovery with
13 Mr. May?

14 A Multiple occasions, yes, sir.

15 Q Okay. Speaking of the discovery, what -- what was
16 the evidence that the State was ready to present at trial
17 that y'all discussed?

18 A Oh, boy. It was a lot of circumstantial evidence.
19 Some would say substantial circumstantial evidence.

20 I -- if you're -- I wrote a letter to my client. It
21 was about seven pages, single spaced/eight pages, single
22 spaced, something like that, where I -- I sent it to him
23 and it kind of detailed or highlighted some of the most
24 dangerous stuff I thought the Government was prepared to
25 present.

1 Let me see here. Ah, here we go. Yes, sir. Do you
2 want to go through it point by point as far as what I was
3 -- some of my main concerns were?

4 MR. SAVILLE: And Your Honor, actually, I'd like to
5 attempt to present this as a State's Exhibit.

6 MR. WALLER: Your Honor, if I can add or submit, I
7 haven't seen this before.

8 MR. SAVILLE: This was shared with me prior to the
9 hearing today by Mr. Stevens.

10 (Brief pause.)

11 MR. SAVILLE: Your Honor, we'll withdraw that. We're
12 just going to just proceed with the examination.

13 BY MR. SAVILLE:

14 Q Oh, I'm sorry. Mr. Stevens, did you not have a copy?

15 A Oh, I -- I do. Do you want me to continue forward
16 with what -- some of my concerns were regarding the
17 Government's evidence?

18 Q Yes, sir. That would be great. Thank you.

19 A All right. I was concerned about the whole matter.

20 First of all, they had evidence of -- on video, of a
21 white Dodge Caliber with tinted windows and a rectangular
22 sticker inside the front windshield. For those who've
23 been in northern climates, this typically were
24 registration stickers. Elsewhere, if you've been to a
25 military base, it's one of those locations. Sometimes in

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1 a military base they'll put them up by the mirror or down
2 by the front driver's side. I believe this was down by
3 the front driver's side.

4 Q Yes, sir.

5 A It looked at least to be some type of South Carolina
6 plate. And the way they had their videos, they were
7 actually from two stores inside the same building, and so
8 the time frames were off a little bit; but nonetheless, it
9 showed it coming from a road across the street from The
10 Keg, which was the corner store that was robbed, into the
11 side parking lot and around the back of the building and
12 then over to the side.

13 And then out from there came an individual. Very
14 tall, thin, had on a -- well, a redish checkered shawl.
15 Covered the face up to the -- here at the bridge of the
16 nose, and then red-rimmed sunglasses that were a little
17 effeminate, and then had one of those types of hats where
18 someone with dread locks would try and put their hair.

19 Q Okay.

20 A And then they also had what looked to me to be and
21 SKS assault Rifle. It had a banana clip and it had, like,
22 a black strap on it. And a sack in the other hand with
23 black and white tennis shoes and some discolored jeans.
24 Now, some might say "acid wash." If you lived through the
25 80's, if you didn't, just discolored, right?

1 Then walked from the car over into -- toward The Keg.
2 The clerk of The Keg, I believe, Quantavious, I forget his
3 last name. But Quantavious -- he was sitting there, kind
4 of in the front, smoking a cigarette. The person -- the
5 robber walks past him and he goes, "What?" And then he
6 seems to get ready to walk away, then the robber steps
7 back out the door and says something. On the video you
8 can't tell 'cause there's no audio. Goes inside, the
9 robbery occurs, the gun is being pointed directly at him;
10 gets cash from the till put in there by the -- by the
11 clerk, takes it and leaves.

12 Goes back out to the car, backs the car out, goes out
13 of The Keg the -- similar to the way he came in. I
14 believe it turned -- I don't know if it went directly back
15 across the street again or if it turned left. Regardless,
16 it -- it exited the area.

17 Quantavious -- hold on. Probably here in my letter.
18 Montgomery, that's his last name. He indicated some
19 things too. He basically filled in what the guy actually
20 said. Basically, when he poked his head on out here, "I
21 know you work here. Bring yo' -- excuse me. Bring
22 yourself, we'll just say, so we don't curse in court.

23 Again, quote, "I don't want to kill you."

24 Also said that robber said, "I don't want to shoot
25 you, but I will. Hurry up," on and on. And then also a

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1 threat of future dangerousness when he said -- when the
2 clerk told police that after the robber was given money in
3 the bag, robber said to have more when he returns.

4 I think all that occurred on the 8th of September
5 beyond -- then on the 14th, Tykeem was seen driving the
6 car of Emony [phonetic] Ford, his girlfriend at the time,
7 which was also a white Dodge Caliber with tinted windows,
8 a sticker in the front and South Carolina tags that was
9 similar.

10 Prior to this point, we learned through investigation
11 that the police department had taken still photos of that
12 vehicle and circulated it to local law enforcement. And
13 so -- who was it? I believe it was Randy Culler from the
14 Sheriff's --

15 THE COURT REPORTER: Randy Culler?

16 THE WITNESS: Culler, C-u-l-l-e-r. Yes, ma'am.

17 A I think he's the one, and -- as was another officer
18 that was with him, made a traffic stop, allegedly for
19 tinted windows and that's -- they also said, you know,
20 looks similar to it. They got his information from his
21 driver's license.

22 Later on, I think it was -- let me think. It was
23 Public Safety Sergeant Dukes and Lieutenant John Cadell
24 then sat on two locations. One was where he was living at
25 the time, allegedly on his license, the other one was Ms.

1 Emony Ford's address because that's, you know, who was --
2 the owner of the car was.

3 Q Right.

4 A Or who had the car.

5 They saw no activity over at the address that was on
6 his license, but there was activity over at Ms. Ford's.
7 They saw him going in there.

8 After that, they turned around and got a warrant
9 which was signed, and then they executed the warrant and
10 made the arrest. When they actually went through -- in
11 the search warrant, were going through Ms. Ford's house,
12 that's when things went from bad to really bad.

13 Q Okay.

14 A They -- they found, in the closet where his
15 belongings were located, a loaded SKS assault rifle with a
16 30-round banana clip, after market, with 30 rounds in the
17 clip, and also with a black nylon bookbag strap attached
18 to it.

19 They found black and white sneakers that were his.
20 They found -- at least by the photographs, they found
21 jeans that were similar. I'm not saying that they were
22 the ones at all, in fact we argued, I believe, at a
23 suppression hearing to try to keep that out, if they
24 didn't actually get it in --

25 Q Yes, sir.

1 A -- because the return was late.

2 Regardless, they also spoke with his girlfriend, Ms.
3 Emony Ford, at the time. She gave both a written
4 statement and a verbal statement acknowledging that -- I'm
5 not -- refer to my notes -- one refers to more than the
6 other.

7 Q Okay.

8 A I think the verbal statement to police allegedly
9 refers -- or acknowledges more than her written statement
10 did.

11 Q Okay.

12 A Nonetheless, given both of those in sum, she
13 acknowledged the car did look like hers, the one that was
14 on the video at The Keg, in which the robber is seen
15 getting out of the car and then getting back into the car
16 during the time.

17 She also acknowledged that, yes, the sunglasses did
18 look like hers that they did also find at that -- at her
19 address, and that the shawl did look similar to the one
20 that she had at her house as well.

21 And so did the gun -- the rifle, the -- the assault
22 rifle. She identified that as -- I'm not saying
23 identical, but very similar to the one it was.

24 I didn't think any of that was good for us, so we --
25 we -- I just basically walked through, in my letter that I

1 sent to him several months before the trial, explaining
2 everything that I thought was bad. So it's that and --
3 and then some. I also discussed -- under the elements of
4 the defenses we were looking at, I went through some of
5 the collateral consequences including, you know, most
6 serious offenses, including what's a violent offense.

7 In that letter I also went into types of evidence,
8 direct evidence versus circumstantial evidence and how
9 that's treated. And then I went and explained to him that
10 if it is a tremendous amount of circumstantial evidence or
11 a chain of facts and circumstances indicating the
12 existence of a fact, which was militating against him, and
13 we went through all of it.

14 I went through, at least to that point, some of the
15 follow-up we had with my private investigator that we did
16 retain regarding potential alibi witnesses that he
17 provided, specifically Ms. Emony Ford, whom he indicated
18 would vouch for his whereabouts all day; Mr. Johnny Owens,
19 whom he said that he saw on the day of the incident; and
20 Ms. Alexis Prior, whom he said that Ms. Ford and he helped
21 move into a different residence later on that day.

22 We did get -- I also did -- told him everything, you
23 know, that we did get a short affidavit from Ms. Ford
24 indicating that she was actually with him on September 8th
25 and they both went to Walmart around the time of the

1 robbery of The Keg and then I put in the contents of that
2 affidavit as well.

3 I also let him know that not too long after that, Ms.
4 Ford became uncooperative with us and his -- her mother
5 specifically referred us to an attorney if we wanted to
6 speak to her again. So that was not exactly a good sign.

7 I will add though that later on, leading up to the
8 trial, we were finally able to speak with her again, but
9 it was the -- excuse me, the conversation would have had
10 to have been at the Prosecutor's office and that's where
11 we were able to kind of glean a bit more details at the
12 time as well.

13 Q Yes, sir.

14 A Mr. Daniels, my -- my private investigator, looked
15 for Mr. Owens, but was not able to locate him and we had
16 no telephone number or residential address. He also
17 looked for Ms. Prior, Alexis Prior, but he was unable to
18 locate her either as we had no telephone number or
19 residential address for her either, and no one willing to
20 assist us with that.

21 Q Yes, sir.

22 A I explained the viability of his alibi defense was
23 diminishing. If he decided to take this case to trial,
24 which is his right, I believed that there was a high
25 probability that he would be convicted.

1 I also discussed that there was a plea offer in the
2 case, I explained what it was, that the State would
3 recommend a mandatory minimum of 10 years if he pled
4 solely to the charge of armed robbery.

5 I also explained to him that the -- you know, as
6 request, we filed both the speedy trial motion and the
7 motion to seek bond. We filed both of those on May 27th.

8 Q Yes, sir.

9 A And explained we'd --

10 Q In fact, he -- did -- did y'all actually put on the
11 record that he -- he was proceeding to trial against the
12 advice of counsel?

13 A I'm not certain if I said I -- it was against my
14 advice. I'm of the mind where, if a client wants to take
15 it to trial, it's totally his choice.

16 Q Sure.

17 A His -- specifically if it's there and it's in front
18 of it and I'm told to answer that question by the judge,
19 I'm kinda compelled to. If it's in the transcript, it's
20 in the transcript. All I can say is please refer to the
21 transcript.

22 Q Sure, sure. It's page -- on Volume 1 of the
23 transcript, it's page 7, line 9. That's where he ---

24 A Certainly.

25 Q --- he interjects a --

1 A Oh, at the *Frye* hearing.

2 Q He rejects a recommended 10 years against -- against
3 your --

4 A Yes, sir. I ask the Court's indulgence while I kind
5 of go through -- oh, here it is.

6 (Brief pause.)

7 A Yes.

8 Q You see --

9 A I -- I do see it. Yeah. Starting on line 19, page
10 7.

11 Q And Mr. May did move -- he did try to -- he moved to
12 relieve you as counsel --

13 A Uh-huh.

14 Q -- during the trial. And as a result, they kind of
15 -- they kind of fleshed out a few things that he was
16 alleging you were failing to investigate.

17 Could you -- could you walk us through the situation
18 with the Walmart receipt?

19 A Certainly. Regarding Walmart, there were a couple of
20 things going on. Specifically as to the receipt, what --
21 did you want to talk about the receipt first or a
22 potential video?

23 Q We'll start with the video.

24 A Okay. When it comes to video, my understanding,
25 after not only talking with personnel at Walmart, the

1 managers, but also with another attorney in Orangeburg
2 whom I know recently had a civil case against that same
3 Walmart, my understanding is that their policy is that
4 they do not keep any recorded information longer than 30
5 days. And that's -- was pretty much their policy, unless
6 they were given notice of, you know, pending litigation on
7 the -- on a specific given date and time.

8 The incident would've allegedly occurred on -- well,
9 I mean, the place was robbed. The question was, was it
10 him?

11 Q Right.

12 A It occurred on September 8th, early to mid-afternoon,
13 and by the time I was appointed, it was already October
14 8th.

15 Q Okay.

16 A And by the time I was first able to meet with him, it
17 was October 30th.

18 I met with him, we discussed the law, we discussed
19 his exposure, we discussed potential defenses of -- you
20 know, in general, whether it was -- you know, if he had
21 any potential alibi witnesses, I would need to know about
22 that; just think about it, let me know. As well as, you
23 know, misidentification, things like that.

24 And the only thing I really had to go off of were his
25 arrest warrants because there was still no discovery

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1 provided at the time. We did file -- our office just does
2 file, as a matter of course, as soon as we're appointed
3 and as soon as that appointment sheet hits our office and
4 we open the file, that date we file both a Rule 5 motion
5 as well as a *Brady* motion as well as our letter to the
6 summary court seeking a prelim hearing.

7 Q Yes, sir.

8 A And so essentially by the time we can even get any
9 knowledge of a person potentially being at Walmart, the
10 video was already lost.

11 Q Sure. Sure.

12 A And we did ask.

13 Q Let me ask you this, Mr. Stevens: Is -- was the
14 Walmart a long way away from The Keg?

15 A Not to my knowledge. I don't have a Google printout
16 for you in my file, but not to my knowledge.

17 More concerning was how close it was to Emony Ford's
18 home. I know that leading up to the trial, one of the
19 things we always do is always visit the site of an
20 incident, and I always make sure my own private
21 investigator's with us as well as the second chair, if
22 possible, as long as the schedule's not conflicting.

23 And we drove it, and it was exceptionally close. And
24 so that -- that was very, very concerning to us and we
25 definitely wanted to stay away from any of that getting in

1 front of the jury.

2 Q And do you think it would've -- so do you think it
3 would've been helpful to show that Mr. May had gone to
4 Walmart that afternoon?

5 A No, I did not. My concern was this: Even though I
6 know Ms. Ford said what she did, in my many conversations
7 with Tykeem, it was pretty clear that his presence at
8 Walmart would have likely been after the specific incident
9 occurred, that the robbery occurred.

10 Q Yes, sir.

11 A In addition, the robbery wasn't of -- you know, it
12 wasn't of plastic or anything. It wasn't of, like, rolled
13 coins. It was cash, \$281 and some odd cents, if memory
14 serves. And what I did not want to do -- and I know he
15 wanted me to turn around and get a copy of a receipt from
16 Walmart wherein he told me and acknowledged it was cash
17 that he paid.

18 And one thing I did not want to do, at least in my
19 mind -- and I might be wrong for it, to this day I still
20 think I was right. I did not want to actually have and
21 produce additional evidence in front of the jury that
22 would actually assist the State in showing he used a large
23 amount of cash, toughly, you know, maybe about a third or
24 more of what was purportedly stolen. Just shortly after,
25 you know, \$281 was stolen, he's seen -- he used at least

1 \$100 of that to buy -- in cash, to use -- to purchase a
2 card for minutes on a phone.

3 Q Yes, sir.

4 A Additionally, regarding the phone, we did have
5 discussions about that. I wanted to refer to my notes
6 again when you brought that to my attention. I apologize.

7 Because what I did I -- I tried getting information
8 about his account and we couldn't do it ourselves because
9 you had to have specific account information to access it,
10 and if we had that, would could've gotten it in -- in no
11 time flat.

12 And so I brought my laptop up to the room where --
13 where we meet clients at the courthouse when we're not in
14 court. And we sat there, we tried to go through it, and
15 he didn't know the information that would've been
16 necessary to get what we wanted or needed if we were going
17 to try and access: A, if he did purchase a phone card and
18 activated it later that day well afterward. Any of that
19 information regarding a potential phone account because I
20 believe it was -- I don't remember. It was Cricket or one
21 of those burner phones, I think.

22 THE COURT REPORTER: What kind of phones?

23 THE WITNESS: A burner phone essentially.

24 THE COURT: Cricket.

25 A I think it was Cricket.

1 Q Mr. May testified a little bit about wanting you to
2 recover some of his work records. And did you look into
3 the security job that he was purportedly working on?

4 A Yes, we did. We looked into the security job as well
5 as -- I believe we made contact with his -- someone at the
6 Dollar General as well.

7 If you don't mind, let me go ahead and -- I think I
8 have -- here we go. Yes, we did.

9 Mr. McDaniel was looking everywhere for it, basically
10 trying to track down this person who -- the only name we
11 had was Hawk, H-a-w-k, Hawk.

12 We had the cell phone number I believe that the --
13 that Tykeem gave to us. Then he gave me a letter in
14 response, after finally trying to track down everything,
15 he indicated to me that the number given to us was already
16 disconnected. He contacted a person at SLED as to TKO
17 Security and Hawk Security. He learned that no company
18 existed under each name registered to SLED.

19 Danny then traveled to the general address of TKO
20 Security that was provided by Tykeem, in order to try and
21 speak to whoever might be there, be in charge. He went
22 all over there and actually did not see any privately
23 marked security vehicles whatsoever. He's got the
24 addresses on here and everyone as well.

25 As a result, he concluded that TKO Security was not,

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1 in fact, a legitimate company registered to the Secretary
2 of State or licensed and regulated by SLED as required by
3 -- by regulation. We've also got printouts of his
4 searches on SLED itself, too.

5 Q And did you look into the Dollar General employment
6 records like he requested?

7 A I had concerns when it comes to the Dollar General
8 'cause after speaking with the manager, it was quite clear
9 that it was only a part-time job, and it was not going to
10 really -- it -- I did not think it was going to be of good
11 benefit to show the jury that, yes, my client was employed
12 daytime, but it was only part-time and she was not going
13 to say good things, especially regarding his work habits.

14 And it essentially would've shown that he was
15 actually not doing very well financially. And what I did
16 not want to do was actually give them a picture of someone
17 struggling with finances, when I'm trying to fend off the
18 charge of armed robbery against my client.

19 Q Yes, sir. And did the Dollar General records
20 indicate that he was working the day of the incident?

21 A I -- I don't know that I have the records, but what I
22 do know is, after speaking with the manager, I -- I don't
23 remember her at all saying that he was working that day.

24 Q Did you look into any allegations of perjury that --
25 by the police at the preliminary hearing?

1 A I remember Tykeem indicating what the police saying
2 was false.

3 Q Okay.

4 A And anytime we're fighting against charges or
5 allegations, you know, I -- I -- I -- I try and tell my
6 clients, or remind my clients, I'm not saying what the
7 police allege is true. I'm not saying what's in his
8 incident report is true or what they're saying, you know,
9 in the preliminary hearing is true.

10 What I'm saying is we have to be prepared to try and
11 push back on this, or -- or be aware that that's what
12 they're going to try and put in front of a jury, and from
13 that perspective, figure out how we're going to try and
14 fight the case.

15 And so, yeah. We -- we had looked and try and see if
16 there's any way we can, you know, try and show that
17 someone's not being forthright. I think we tried to do
18 some of that, at least with -- when we finally got the
19 *Denno* hearing in the middle of the trial, in addition,
20 when we tried to cross them about matters regarding the --
21 the search warrant, as well as the search warrant's
22 return. We went into all that.

23 But I -- I -- I -- I don't know how I can turn around
24 and tell this -- an officer, in the middle of a trial,
25 "You're lying. You're committing perjury right now," when

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1 literally I -- I -- I would not have the physical evidence
2 to say, "Oh, no? Really?"

3 Well, especially even -- for example, when -- I
4 believe when Mr. Mellard was cross-examining Randy Culler
5 with the Sheriff's Office regarding the stop, Mr. Culler
6 was quite blunt I think, revealing that, yeah, he stopped
7 him, not really just for tint, but he really wanted to
8 turn around and -- and see what was going on and if this
9 really was at least a potential suspect in that robbery
10 case because of the vehicle similarity descriptions, as
11 well as the similar descriptions with the purported --
12 with -- with -- between Tykeem and -- and the purported
13 robber, in that, you know, slender build, high-arching
14 eyebrows, light skin.

15 Q Yes, sir. Did the -- did the individual in the
16 surveillance video of the robbery have high-arching
17 eyebrows?

18 A Pretty much so, yes. And if I may, that was actually
19 part of our concern as well regarding Tykeem testifying.

20 Initially, you know, I -- I didn't want Tykeem to
21 testify, and -- and I think most attorneys will say
22 they'll love to have last argument if given the
23 opportunity or given the chance.

24 Q Sure.

25 A That said, he did vacillate, and you know,

1 understandably so. It's his right to testify if he wants
2 to; he doesn't have to if he doesn't want to. I'm a firm
3 believer that the law is that way for good reason, and we
4 respect that.

5 Going into trial, our goal was to try and bring out
6 most of our version of events in our defense through the
7 Government's witnesses, hoping to preserve last argument.

8 I believe at some point in the -- in -- in the trial
9 that came up when we were talking with -- in front of the
10 judge. And it was shortly after that -- I can't remember
11 if it was later that afternoon or the next morning --
12 Tykeem indicated unequivocally, yeah, yeah. He certainly
13 wanted to testify now.

14 And again, I mean, please understand, I mean,
15 obviously the man was trying to fight to stay out of
16 prison. I got it.

17 Q Yes, sir.

18 A I affectionately call Tykeem "my contrarian" as far
19 as one of my clients 'cause it just seems we -- we push
20 one way, he wants to pull back the other.

21 Q Okay.

22 A Which is his right, if that's what he wants to do.

23 So based on that, I was speaking with the judge --
24 not judge, but with Doug, and we decided look, if he's
25 going to testify for real and there's going to be this

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1 avalanche of circumstantial evidence militating toward
2 him being the person who actually did this -- this
3 incident, let's try and see what we can pull from the
4 Government's evidence, whether they're still photographs
5 or whatnot, that actually show our -- our view -- our
6 version of the facts and show that there are
7 inconsistencies with what they're trying to for -- push
8 forward.

9 Q Yes, sir.

10 A And so that's why we turned around and we pulled off
11 still photographs from the incident, from -- you know, the
12 -- or whatever the exhibits were. And even when it came
13 time to the question of the very moment before we put
14 those into evidence or not. And yes, we had been over
15 that with Tykeem, if we put anything in there, we lost
16 last argument, right?

17 Q Yes, sir.

18 A It was -- I can remember it clear as day. I leaned
19 over, I had them in my hands, they were already labeled.
20 I said, you're sure you're going to testify, right? You
21 know, leaning on -- at the table, straight with him.
22 Yeah, he's going to testify.

23 I leaned over and looked directly at Doug and said,
24 what do you think? He said, "Yep. Let's do it."

25 So we turned around and entered them into evidence,

1 and it -- that way my thought was, at the bare minimum,
2 the jury will have at least something tangible in the jury
3 room with them that would support our theories. Not just
4 us saying things, there's at least something from the
5 physical evidence there.

6 And that was our theory. Our theory was
7 inconsistencies are reasonable doubts, and we basically --
8 we crafted our argument, we crafted our defense toward *The*
9 *State v Logan* circumstantial jury instruction 'cause after
10 speaking with the judge and -- we're -- we're very
11 confident we're going to get it, based upon the language
12 in that case. And you know, sure enough, the judge gave
13 that to us as well as our alibi defense request to charge
14 and identity as a material element.

15 So that was based upon those jury instructions that
16 we were really trying to gear our defense.

17 Q Yes, sir. And so at the time -- when you entered the
18 -- the photos --

19 A Uh-huh.

20 Q -- you figured you were already going to forsake
21 closing argument.

22 A I figured it was highly likely. I also knew that --
23 you know, like I said, Tykeem, he was -- he was kind of
24 erratic. You know, it's understandable. I mean, the
25 man's nervous and he's facing a lot of time if things go

1 badly.

2 Q Sure.

3 A But my thought was I -- I can't count 100 percent on
4 him not testifying. So let's go ahead, and you know, if
5 there's a pretty good chance he's going to testify or he's
6 not, I'm -- I'm all right with that either way. So let's
7 just go ahead and have this get in there, and that way,
8 like I said, at least the jury will have something in
9 their hands, tangible, that -- you know, at least somebody
10 -- if somebody's going to be on our side, they can at
11 least point to that to support their position if they're
12 going to support us.

13 Q Yes, sir. And do you recall -- just kinda going back
14 to the video briefly, do you recall if Judge Jefferson
15 actually noting, when she was denying your directed
16 verdict motion, that the individual in the video looked
17 strikingly similar to Mr. May?

18 A Yes, he did.

19 MR. SAVILLE: For the -- for the Court's reference,
20 that's Transcript Volume 3, and it is overall, page 485 of
21 the transcripts.

22 A Yeah. Well, overall, our concern was that Tykeem was
23 not only tall and slender, such as the person there, I
24 never wanted him to have -- be in front of the jury, see
25 him walk into the courtroom because his walk was similar.

1 But more importantly, when he testified and he was
2 under stress, I mean, I'll be darned, his eyebrows did
3 arch up quite high and his skin became flush and reddish,
4 as a light-skinned African American male. I -- I did not
5 want the jury to see that.

6 I'm not saying it's him even to this very day. What
7 I will say is it would have been one extra striking
8 similarity in the case against him that I did not want to
9 have in front of a jury.

10 Q Sure. Do you feel that the SKS rifle, as seen in the
11 surveillance footage, was distinctive?

12 A Aside from what I've -- I argued to the jury, I
13 wanted to say, "Millions and million served," like
14 McDonald's, but I believe I already made one food
15 reference. I didn't want them to think I was hungry.

16 Yeah, I mean, look, there are thousands if not
17 millions of SKS assault rifles, right? Nonetheless, it
18 was an SKS assault rifle with an after-market banana clip,
19 and an SKS assault rifle with an after-market banana clip
20 and a black strap, all of which was found in his closet.

21 I mean, I -- that -- that alone was -- what we were
22 trying to fight against that we knew the Government would
23 go at would be, look, one coincidence, okay. Two
24 coincidences, we'll see. Three? You're pushing it, but I
25 mean, a stack of however many?

1 Q Sure.

2 A Either he's the unluckiest person on planet earth, or
3 the -- as the Government would argue, he did it. And
4 that's why we wanted to turn around and flip that argument
5 on it's head and say, look, if they want to talk about
6 these consistencies, let's talk about their
7 inconsistencies and really highlight that.

8 Q Sure. Speaking of -- I got some possible
9 inconsistencies. We -- we heard testimony that the time
10 stamps on the videos were all a little off, seemed to be
11 showing different --

12 A Yes.

13 Q -- different times. Do you recall any discussion
14 about that with ---

15 A Yes.

16 Q --- Mr. May?

17 A Absolutely. We had a lot of different discussions
18 regarding circumstantial evidence, including the time
19 stamps. The problem with the time stamps is that just
20 because they're a little off doesn't mean it totally
21 happened at different times.

22 Q Okay.

23 A And I remember even talking about this, you know, in
24 our own office when we were, you know, discussing this
25 theory. A lot of juries -- jurors are -- pardon me --

1 well, they are, they're regular folks. And I know even in
2 my own house, if I'm standing in my kitchen, I can see a
3 least five clocks that are electronic or digital clocks,
4 none of which had the exact same time -- or time going on,
5 right? The clock on the -- on the stove is different from
6 the clock in the microwave, which is different from the
7 one hanging from the wall, which is different from the one
8 on the VCR. And so it's not an uncommon experience for a
9 person to recognize that reality.

10 Q Yes, sir.

11 A And then at trial, the inevitable was going to come
12 out, which it did, in that the -- even though it's -- it's
13 a system, they're actually for two different stores inside
14 the same building, right?

15 Q Okay.

16 A And because of that the -- over time, they kind of go
17 off a little bit. And so, yeah, the Government was able
18 to explain that; nonetheless, we still pushed it on how
19 there were inconsistencies. I mean, just because they
20 claim to have evidence doesn't mean we just, you know,
21 roll over and quit.

22 Q Yes, sir.

23 A Now, I will also say that there was a lot of video
24 footage from many different cameras. We knew the
25 Government was going to turn around and try to input a

1 cleaner version of it in instead of just having here's all
2 the video footage from one camera from this time frame,
3 here's all the video from the second camera, here's all
4 the video ...

5 Just for example, if you want 1 through 4, instead of
6 just putting all of it into evidence and having the jury
7 just slog through it bit by bit by bit, over and over and
8 over again, they did put something that would show the
9 relevant portion of the car arriving into the parking lot,
10 and on and on, and all the way over and all the way back
11 using cameras 1, 2, 3, 4 and then 4, 3, 2, 1 if you will,
12 okay?

13 I thought it was highly likely the Court would allow
14 them to do that. My concern -- whether I'm right or
15 wrong, I don't know, my concern was I think Rule of
16 Evidence 1006, or somewhere in that neighborhood, where
17 compilations are allowed to be put together, even for
18 recordings, and based on what we're looking at and -- and
19 how things were rolling, I thought it was likely to get
20 in.

21 Could I or should I have objected? Yeah, I could
22 have. I certainly could have to at least preserve that
23 for appellate review.

24 Q Sure.

25 A Whether it's successful or not, I don't know, but

1 what I do know is that, (a) I thought it was likely to
2 come in; and (b) what we did, I think -- and I haven't
3 looked at this, but I think -- if memory serves, I think
4 we at least tried to argue that to the jury that the
5 Government "even turned around and is trying to tamper
6 with things by splicing things together so it fits their
7 theory. That's how weak it was."

8 Q Certainly.

9 A I don't remember my exact language, but if I did, it
10 would've been in the closing argument section of the
11 record.

12 Q There is some -- some testimony about gloves that are
13 found near The Keg. Did --

14 A Right.

15 Q -- did you look into the gloves?

16 A We did. And I gotta go back and look at the video.
17 To my mind, I don't think the video showed the armed
18 robber wearing gloves, and they went back on out.

19 Mr. Montgomery, Quantavious Montgomery, the clerk,
20 after he was shown gloves by the officer, "Oh, yeah.
21 Yeah, gloves. Okay."

22 So I don't know if it was, you know, just, "Oh, hey.
23 He said here's the gloves," and is that, you know, like a
24 suggestion type of, I think, memory. Memory's a very
25 tricky thing sometimes.

1 Q Right.

2 A And so we used that, along with the fact that they
3 used dogs to do a search to a different location, I
4 believe at Mel's Court Place [phonetic], not too far
5 behind there, to say that the police again failed to
6 follow through with their investigations.

7 However, after -- like I said, watching that video
8 multiple occasions, I don't remember -- I don't think that
9 the -- the armed robber was actually wearing gloves. If
10 he was, I'm wrong, you know, but to my knowledge, I thinks
11 that's what was going on.

12 Q Yes, sir. And there was some testimony from Mr. May
13 about character witnesses --

14 A Uh-huh.

15 Q -- in this case. Did you reach out to any of the
16 character witnesses he requested you to?

17 A We -- we reached out to everybody we possibly could.
18 Court's indulgence. There was -- okay. Court's
19 indulgence. Okay. Yes.

20 D'lissa Simmons. We reached out to her -- hold on --
21 'Cause it was on the -- right around the 29th of July when
22 we were informed about her by Tykeem.

23 That day I made an investigation request, sent that
24 to Mr. McDaniel, and within two days he was back to me
25 indicating that he did make contact to -- there -- said

1 she would be there on the morning for court.

2 I think he had difficulty in getting a hold of her,
3 you know, and tried before. He only gave me a day in
4 between. Left a card there, was not getting favorable
5 replies or responses from people inside the home who would
6 refuse to come to the door, that kind of thing.

7 Q Okay.

8 A Eventually he was able to get to her. I did speak
9 with her in fact. I believe that was August 4. She was
10 willing to testify.

11 My concern is this: Whenever I have a good character
12 witness or potential good character witness, I want them
13 to be all in for my client. In my view, it was pretty
14 clear D'lissa, (a) not only did not want to be there, but
15 after -- in my conversation with her, it was not the full
16 -- of ringing endorsement I would want if it was going to
17 be a person up on the witness stand as a character
18 witness, and the last thing you want to do is have a good
19 character witness that is kinda more like a -- like a damp
20 kitchen wash -- washcloth on my client's case in front of
21 the jury. I just don't want that.

22 Q Yes, sir.

23 A And so I had concerns when it comes to that.

24 Q Sure. I just have a -- I just have one more topic
25 'cause I just want to make sure you get a chance to -- to

1 put everything on the record. Did you challenge the --
2 did you move to suppress the results of the search warrant
3 in this case?

4 A Yes. I believe we did that in the record in a
5 hearing. I think we tried to do it -- both suppress the
6 search warrant itself and -- on two grounds. Number 1,
7 based on what we typically do, and then, you know, as far
8 as, you know, saying, "Look, the search is invalid. The
9 search warrant itself is invalid for the reasons we just
10 went into."

11 Additionally, we also attacked the -- the search
12 warrant and -- and -- and the information gleaned
13 therefrom based upon their failure to comply with the
14 statute and case law, saying it had to actually be done
15 within the -- the 10-day period.

16 Q Sure.

17 A I know about this issue. I -- I've researched it. I
18 used to be an Appellate Defender for two and a half years
19 before, you know, I went back to the -- the PD's Office to
20 push cases at trial. I know these issues pretty well. I
21 also know that they're typically very challenging to win.

22 Q Okay.

23 A And so whenever I counsel clients regarding the type
24 matters such as this, I'll let them know exactly that.
25 Yeah. I know what you're talking about, but you gotta

1 understand, you can't count on this being successful when
2 we're plotting our defense.

3 I know it might sound like a Debbie Downer at times
4 when -- when I advise people about this, but my job -- I
5 view as myself is to make sure we're being very candid
6 about matters rather than just blowing smoke in someone's
7 face.

8 Q Yes, sir. Was there anything else you'd like the
9 Court to know about your representation of Mr. May?

10 A You know, I'm sorry that he's in the situation. He's
11 in a place no human being would want to be. I wouldn't
12 want to be there. I did not want him to be there. I
13 didn't want it. I wish to goodness gracious it was for a
14 shorter time period. I think that, you know, had we been
15 able to get strong-armed robbery as an offer, like we
16 tried on many occasions, you know, obviously he would've
17 taken that like he's already said and like he's already
18 told me multiple times before.

19 We even had -- well, shoot. We had the jury out in
20 this case, we -- we ended, I think, early afternoon, and
21 they came back asking multiple questions and they were in
22 deliberations up until, like, 6 p.m. that night. And then
23 -- then we broke and then started again their
24 deliberations for the next day as well.

25 That night I was able to turn around and speak with

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1 the prosecutor in his office again. He still was not
2 willing to come on down to strong arm; but nonetheless, he
3 was willing to put the offer for armed robbery for 10
4 years back on the -- back on the table.

5 I communicated that to Tykeem that evening, he said
6 he wanted to think about it. Came on back the next day,
7 didn't want to take it. I said, "Okay. You know, that's
8 your choice."

9 It's regrettable that it turned out the way it did.
10 I know I'm not perfect. I know that there things I could
11 have done better, and frankly, I've said it before, I'll
12 say it again, if -- if someone's in prison because of a
13 mistake I made, please give them a new trial. Thank God
14 for the Sixth Amendment because it allows me to do my job
15 with confidence, and I don't have to worry that someone's
16 going to, you know, spend the rest of their lives in
17 prison because of my mistakes if -- if they're there
18 because of something I did wrong.

19 Q Yes, sir.

20 A I think that's about all I got for right now.

21 Q Well, thank you very much for your time, Mr. Stevens.
22 Please answer any questions Mr. Waller has.

23 A Yes, sir.

24 CROSS-EXAMINATION

25 BY MR. WALLER:

1 Q Good -- it's afternoon now. Good afternoon, Mr.
2 Stevens.

3 A Good afternoon, Mr. Waller. How can I help you
4 today?

5 Q You testified that you didn't want the jury to see a
6 receipt of Mr. May using cash to purchase a phone card or
7 to -- to make any purchase on -- on the -- around the same
8 time as the robbery.

9 A No. It was -- my concern was that shortly after the
10 robbery occurred, the receipt was going to show him making
11 a relatively large cash purchase, not during the time of
12 the robbery. If it was during the time of the robbery,
13 I'd be all for it. My concern is that everything he
14 indicated to me is that this purchase would've occurred
15 shortly after -- like, within 30 minutes or so after the
16 robbery occurred.

17 Q Okay. Did you ever get a copy of a receipt?

18 A I did not, but we did file a subpoena. We were in
19 constant contact with Walmart, not only throughout the
20 trial, but even after the trial.

21 Q Okay. How much was the -- the phone card that Mr.
22 May said he'd purchased?

23 A He indicated approximately \$100.

24 Q Okay. All right. How far, if you recall or if you
25 know, how far was Ms. -- excuse me -- Ms. Ford's home from

1 the Walmart?

2 A I -- I don't recall that. I've got -- I just don't.
3 I would -- I mean, if you look up Google maps, that's one
4 way to do it, but I genuinely don't know.

5 Q All right. Well, if she testified that they left
6 their -- left their home at 1:40 and got to Walmart about
7 two o'clock --

8 A Uh-huh.

9 Q -- does that sound about right to you?

10 A Yeah, like I say, I -- I genuinely don't know how
11 long it takes to go from her house to Walmart. So I don't
12 want to -- I -- I'm not going to question her to say that
13 she was wrong about that. What I am going to say is I --
14 I don't personally know.

15 Q Okay. Does that time period sound correct about how
16 -- what her testimony was?

17 A Yeah. I mean, she was -- she was there, she
18 testified to -- she acknowledged what she told us in that
19 affidavit. I've got a copy of that if you'd like to see
20 it.

21 We've got -- and -- and like I said, she did testify
22 consistent with that. But at the same time, she also
23 acknowledged, unfortunately, on cross-examination by the
24 prosecutor, that it was an approximation regarding her
25 time and that it could've been later.

1 That's, I mean, something we had to deal with, but
2 nonetheless, if -- if memory serves, Mr. Harrison Bell was
3 able to get her to concede that on cross-examination.

4 Q Okay. Well, you talked about Mr. May and -- and you
5 didn't want the jury to see that he was in, I guess,
6 financial distress.

7 A Correct.

8 Q Okay. He had a part-time job.

9 A Uh-huh.

10 Q He had a -- a second part-time job that -- that y'all
11 may or may not have able to have been able to confirm the
12 details of.

13 A That's right. We were able to get that information
14 out in front of the jury through Ms. Ford.

15 Q Okay. He was living with Ms. Ford --

16 A Correct.

17 Q -- at the time and I believe there was a -- a third
18 person living there as well.

19 A Alexis Prior, which, according to Tykeem, they moved
20 her out of Ms. Ford's residence that same evening.

21 Q Okay. But she had been living there.

22 A My understanding, based on what ---

23 Q Okay.

24 A --- I was told, yes.

25 Q Did Mr. May have a vehicle that you're aware of?

1 A Not to my knowledge, no.

2 Q Okay. Okay. So he didn't -- what expenses do you
3 know that he had?

4 A My understanding is he just had basic living
5 expenses. You know, I don't know how much he contributed
6 to rent or to the electric bill or to food purchases for
7 the house or -- or anything like that. You know, some
8 folks -- I -- I did not ask in -- in depth about what his
9 level of contribution was to the household.

10 Q Okay. Did you attempt to get any records from Sonic
11 or inquire as to how the -- whatever was purchased at
12 Sonic?

13 A Not from Sonic, no

14 Q Okay. Did -- did you inquire of Mr. May how they
15 paid at Sonic?

16 A I don't remember asking him that question.

17 Q Okay.

18 A I do remember us getting into whether or not we could
19 try and track things down through either an ATM card or
20 credit cards, but that's when he indicated that,
21 especially when it comes to Walmart, they were just using
22 cash.

23 Q Okay. Mr. Stevens, how long was the jury out in this
24 case?

25 A They were out for a long while. Like I said, it was

1 -- I think it was that Thursday afternoon, after closing
2 argument was done, after charging was done, they went out
3 and they were out for a long while.

4 I know they came back to, you know, do different
5 views of different type, you know, of different evidence.
6 I want to say it was about six. I know it might be in the
7 record, it might not. If it is, please go by that, by all
8 means, not some rusty memory from several years ago.

9 But -- but yeah, I know it was -- it was early
10 evening when the judge let them -- broke for the night and
11 then came on back the next day and they were still
12 deliberating. I know we even had an Allen charge, if
13 memory serves. And then -- and it was not too terribly
14 long after that, that unfortunately, jury came down with
15 the verdict they did.

16 Q Okay. Just to recap, Ms. Ford testified that -- that
17 her and Tykeem left her residence at approximately 1:40
18 and went to Walmart.

19 A Uh-huh.

20 Q After Walmart, they went to Sonic, and they had to be
21 at Sonic and completed with Sonic by four o'clock because
22 that's when the happy hour ended.

23 A I think -- that's how I understand it. But I think
24 what she was saying then is at the time, happy hour was 2
25 to 5. Now it's 2 to 4 I think is what she told the

1 prosecution on cross.

2 Q Okay. Would you question me if I -- if I told you
3 her testimony was the opposite? That it's 2 to 5 now and
4 it -- it was 2 to 4 at the time ---

5 A I'll go with you, man. If that's what it was. I
6 just remember there was some conversation like that
7 between her and -- and Harrison.

8 Q Regardless, her testimony was that, at some point, at
9 the same time the robbery was taking place, which that was
10 approximately two o'clock --

11 A Yeah.

12 (Mr. Waller and Mr. Breen speak simultaneously.)

13 Q -- is that correct? Law ---

14 A It was a little before two to -- yeah. It was --

15 Q Law enforcement arrived ---

16 A -- about 10 'til 2 until about -- you know, until law
17 enforcement arrived.

18 Q Okay.

19 A And so in that time frame. So a little bit before
20 two I think is about roughly when you could say things --
21 a car would arrived, that kind of thing.

22 Q Okay.

23 A But yeah. Yeah, yeah. And -- and based on her --
24 based on at least part of her testimony and what we -- you
25 know, what we brought out from her on cross, that -- I'm

1 sorry. It was -- it would've been on redirect from when
2 they had that. I apologize.

3 But yeah. On our cross-examination, she did
4 acknowledge those time frames of which you're speaking.

5 Q Okay.

6 A And again, they did try and re -- and were able to
7 try and rehabilitate her a little bit -- I'm sorry, on
8 their redirect -- as it was the Government when it's not
9 ours -- that, you know, she's just approximating times.

10 Q. But her testimony at trial was consistent with her --
11 her statement she'd given law enforcement as well as her
12 -- her affidavit that she -- was in your possession; is
13 that right?

14 A Yeah. I think her affidavit to us was actually more
15 strong than what she gave to law enforcement. I do.

16 Q Right. But the time's --

17 A Yeah.

18 Q -- consistent.

19 A I think relatively consistent, yes.

20 MR. WALLER: Beg the Court's indulgence, please.

21 (Brief pause.)

22 MR. WALLER: Nothing further, Mr. Stevens. Thank
23 you.

24 THE WITNESS: Yes, sir.

25 MR. SAVILLE: Okay. Just a couple of follow-up

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1 questions as to the timing, Your Honor.

2 THE COURT: All right. Go ahead.

3 REDIRECT EXAMINATION

4 BY MR. SAVILLE:

5 Q Mr. Stevens, do you remember testimony that Mrs. --
6 Ms. Ford's home was less than a mile away from the Walmart
7 in question?

8 A I don't -- I'll be blunt. I don't remember specific
9 testimony to it, but I would not be surprised. I know by
10 us driving it ourselves, with myself and my private
11 investigator and with Mr. Mellard, it was exceptionally
12 close.

13 Q Okay. And do you recall that the robbery only took
14 approximately three to four minutes?

15 A Again, I don't know the specific amount of time, but
16 I do know it was very fast.

17 Q Sure.

18 MR. SAVILLE: And for the Court's record, that would
19 be transcript page 373, line 10 is the summary of the
20 duration of the robbery.

21 That's all the questions I have Mr. Stevens. Thank
22 you very much.

23 THE WITNESS: Yes, sir.

24 THE COURT: Mr. Waller?

25 MR. WALLER: Nothing further, Your Honor.

1 THE COURT: Sir, you may step down.

2 THE WITNESS: Thank you, judge.

3 (The witness complies.)

4 MR. SAVILLE: Your Honor, at this time, the State
5 rests.

6 THE COURT: All right. Anything by way of argument?

7 MR. WALLER: Just briefly, Your Honor. Your Honor,
8 Mr. Stevens has testified that -- and -- and Ms. Ford
9 testified as well that -- that she was Mr. May's alibi.

10 THE COURT: Who testified?

11 MR. WALLER: Mr. Stevens today and Ms. -- Ms. Ford at
12 the trial, I apologize --

13 THE COURT: Okay. Thought I may have missed
14 something up here, Mr. Waller.

15 MR. WALLER: -- that -- that Mr. May and Ms. Ford
16 were together from 1:40 until later in the afternoon.
17 This robbery occurred shortly before two o'clock, law
18 enforcement responding quickly and got there right at or
19 -- or just after two o'clock p.m.

20 Your Honor, Mr. Stevens testified that he did not
21 want to present the jury with a receipt from Walmart that
22 may have shown that he had a -- that Mr. May had a
23 significant amount of -- of cash, but Your Honor, he never
24 obtained that receipt. That receipt could've been at 2:05
25 for him purchasing whatever it may be, which would've made

1 it physically impossible for Mr. May to have committed
2 this crime.

3 Despite the circumstantial evidence, of which there
4 was many instances of circumstantial evidence, that
5 receipt would have absolved Mr. May from -- from these
6 allegations; and for Mr. Stevens to not obtain a copy of
7 the receipt makes it impossible for him to definitively
8 prove the alibi.

9 Ms. Ford tested consistently with the alibi defense,
10 but that receipt would've been -- even if it was just for
11 cash, would have been definitive proof that Mr. May had
12 been physically unable to commit this crime.

13 And so, Your Honor, we would ask you to consider that
14 as well as the other evidence presented here today and
15 grant Mr. May post-conviction relief.

16 THE COURT: Mr. Saville.

17 MR. SAVILLE: Thank you, Your Honor. I think the
18 fact that the jury was deliberating for such a long time,
19 in light of the substantial amount of evidence in this
20 case, is really a reflection of the diligent work that Mr.
21 Stevens and Mr. Mellard also put into this trial.

22 I -- I would -- I would note just about the -- the
23 Walmart receipt, that their -- Ms. Ford gave approximate
24 times as to when they left the home and approximate times
25 in general that day. And she also did testify they were

1 at Walmart for about an hour, which also leaves quite a
2 gap in the timing of the receipts and the robbery.

3 Notwithstanding, we -- we've heard testimony today
4 that that receipt was not able to be obtained in the first
5 place, and we have heard no evidence from any other
6 purported alibi witnesses; therefore, the State would
7 respectfully request that you deny the application. Thank
8 you.

9 THE COURT: I believe that Mr. Stevens did testify
10 that they attempted to -- by subpoena, to obtain receipts.

11 MR. SAVILLE: Yes, Your Honor.

12 THE COURT: And -- and they were in contact with
13 Walmart.

14 As each of you all know, and I hate to just keep
15 repeating the standard here, Plaintiff must prove -- or
16 Applicant must prove counsel failed to render reasonably,
17 reasonably effective assistance under prevailing
18 professional norms.

19 Based upon the testimony and evidence that I heard in
20 this courtroom regarding Mr. Stevens's representation of
21 Mr. May, the Court finds that his representation was far
22 and above any reasonable professional prevailing norms.

23 The Court finds that he did an outstanding job in his
24 representation of this Defendant, that everything that he
25 did in this case were and is viewed by this Court as

1 legitimate trial strategy, trial strategy. I do not find
2 that anything that Mr. Breen Stevens -- or Mr. Stevens did
3 or failed to do in any way prejudiced the Defendant's
4 case, that there is nothing that I've heard here today
5 that would in any way, in any way undermine the confidence
6 and the outcome of this trial.

7 While it is certainly arguable concerning these
8 issues as it relates to this receipt and what it may or
9 may not have shown, without video evidence of Mr. May
10 purchasing anything at Walmart and without any other way -
11 - maybe there's something on the receipts that documents
12 the fact that it was a phone card and he was in the
13 possession of the phone card at the time of the arrest,
14 maybe that show's something. But that does not do
15 anything as it relates to all other -- as termed by Mr.
16 Stevens, all other substantial circumstantial evidence in
17 this case.

18 Ms. Ford, based upon -- and I haven't specifically
19 looked in the transcript, but from what was testified to
20 in here, the testimony of Ms. Ford wasn't there -- there
21 were approximate times that could not with substantial
22 certainty specify the exact time that he was at Walmart.

23 So after having heard the testimony and after having
24 observed the witnesses, the Court is respectfully denying
25 the Defedant's (sic) application for post-conviction

1 relief.

2 Good luck to you, sir.

3 MR. SAVILLE: Thank you, Your Honor.

4 (Off the record at 12:33 p.m.)

5

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-- END OF TRANSCRIPT OF RECORD --

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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the First Circuit Court for Orangeburg County, South Carolina, on the 3rd day of October, 2018.

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

E/Bonnie H. Kelly

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

June 3, 2019

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Tykeem Kalami May, #361073

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
IN THE FIRST JUDICIAL CIRCUIT

2017-CP-38-1599

ORDER OF DISMISSAL

ORANGEBURG, SC

2018 DEC 12 AM 11:28

FILED FOR RECORD
WINNIE J. CLARK

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on November 30, 2017. An evidentiary hearing into the matter was convened on October 3, 2018, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by Jonathan D. Waller, Esquire. Respondent was represented by Assistant Attorney General Christian Saville of the South Carolina Attorney General's Office.

Before this Court were the records of the Orangeburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the record on appeal, Applicant's appellate records, the State's return, and Applicant's PCR application. Based on these records and the testimony presented, the Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Orangeburg County Clerk of Court's orders of commitment. In February 2014, the Orangeburg County Grand Jury indicted Applicant for armed robbery (2014-GS-38-0189) and possession of a weapon during the commission of a violent crime (2014-GS-38-0190). Breen R. Stevens, Esquire ("Trial Counsel"), represented Applicant at trial. Harrison Bell, Esquire, and Ashley Cornwell, Esquire, prosecuted the case. On August 11, 2014, Applicant proceeded to a

jury trial before the Honorable Deadra L. Jefferson. The jury found Applicant guilty as indicted. On August 15, 2014, Judge Jefferson sentenced Applicant to confinement for fifteen years for armed robbery and five years for possession of a weapon during the commission of a violent crime, to be served concurrently.

Applicant filed a notice of appeal. An appeal was perfected on his behalf by Appellate Defender David Alexander. In the appeal, Applicant argued the trial court erred in denying his Batson challenge regarding the use of peremptory strikes against black males. The South Carolina Court of Appeals affirmed Applicant's conviction on April 5, 2017. State v. May, Op. No. 2017-UP-138 (Ct. App. 2017). The remittitur was issued April 24, 2017.

II. ALLEGATIONS

At the PCR hearing, Applicant enumerated his allegations as follows:

1. Ineffective Assistance of Trial Counsel

- a. "Trial Counsel failed to conscientiously discharge his professional responsibilities while handling the trial of my case."
- b. "Trial Counsel failed to act as my diligent conscientious advocate by failing to present any type of strategic defense during the trial. There were key material witnesses and physical evidence available that would have exonerated the Applicant."
- c. "Trial Counsel did not have my best interest in mind and failed to conduct any pretrial investigation to prepare for the trial of my case."
- d. "Trial Counsel failed to serve my cause in good faith and he never attempted or intended to offer any type of defense for the jury's consideration."
- e. "Trial Counsel, knowing I was illiterate regarding the complexities of the law, never ascertained whether or not I actually understood or comprehended all the issues and aspects of my case."
- f. "Trial Counsel failed to explain to me the advantages or disadvantages of offering forth a defense versus not doing so. He failed to discuss trial strategy of available defenses."
- g. "Trial Counsel did not subject the prosecution's case-in-chief to any adverse forensic testing and failed to oppose the prosecution's case with any adverse defense litigation."

III. SUMMARY OF TESTIMONY PRESENTED

Trial Counsel testified at the PCR hearing, and Applicant testified on his own behalf.

Applicant

Applicant testified Trial Counsel "blew him off" until the day of trial. He also testified he first met with Trial Counsel roughly two or three months after the arrest. Applicant felt Trial Counsel did not have his best interests in mind from the beginning. Nevertheless, Applicant acknowledged this contradicts his statement to the trial judge when he was initially moving to have Trial Counsel relieved that Trial Counsel had "been a very good lawyer from the beginning," but faltered. Tr. p. 17, l. 12.

Regarding trial strategy, Applicant testified Trial Counsel told him it looked like a case of mistaken identity, acted like everything was going to be alright, and this made Applicant feel as though Trial Counsel did not look into anything. According to Applicant, Trial Counsel wanted to preserve last argument, but introduced evidence at trial which forfeited his opportunity for last argument.

Applicant recalled he met with Trial Counsel's investigator perhaps twice. Applicant testified he gave the name of two character witnesses to Trial Counsel who should have been called at trial, and had also just started a second job he wanted Trial Counsel to present evidence of at trial in order to show he did not have the motive to rob the store. Applicant recalled he was being paid "under the table" at this job. Applicant conceded the character witnesses in question were not present at the PCR hearing. Applicant testified Trial Counsel never investigated or tried to obtain a receipt from Walmart from Applicant's cash purchase of a receipt for phone minutes the afternoon of the robbery to show Applicant could not have been at The Keg.

Applicant alleged Trial Counsel did not make a Rule 5 motion, but as he recalled, the State had footage of a person "wearing a shawl or something" with some kind of assault rifle

robbing The Keg store. Applicant testified he did eventually get discovery and they did go through it.

Regarding the search warrant, Applicant recalled he wanted to challenge hearsay contained in the search warrant as he alleged it was based on another officer's words. Applicant noted there was no testing done of the shoes, rifle, or other evidence found pursuant to the search warrant.

Trial Counsel

Trial Counsel testified he met with Applicant many times in preparation for trial. Trial Counsel described Applicant's case as a very strong case for the State. The evidence against Applicant included video footage of an individual who looked very much like Applicant with distinctive high-arching eyebrows robbing an Orangeburg store "The Keg" wearing red sunglasses, a red shawl-like cloth covering his face, and black and white Nike shoes. Furthermore, Trial Counsel described the distinctive SKS-style rifle with wooden accents and black strap as seen on the surveillance footage. Trial Counsel recalled the SKS-style rifle with black strap, and black and white Nike shoes were found in a closet with Applicant's belongings in Applicant's girlfriend's house during the execution of the search warrant. Moreover, the police also found identical red sunglasses in the home. Trial Counsel recalled it seemed the red shawl was being used to cover a window in the home at the time the search warrant was executed, but the shawl was not presented at trial. Trial Counsel testified the individual in the surveillance footage also walked with a distinctive gait similar to Applicant. Trial Counsel recalled the footage also showed the perpetrator leaving in a white Dodge Caliber with tinted windows and a square sticker on the rear windshield, identifiable as the car police later stopped which was registered to Applicant's girlfriend. In light of the substantial evidence against

Applicant, Trial Counsel urged him to take a plea deal for a recommended ten years, and even had this placed on the record. Tr. p. 6.

Trial Counsel explained he entered photos into evidence at a time Applicant, despite Trial Counsel's wishes, had indicated he wished to testify, so he was not concerned with foregoing last argument at that time. Trial Counsel testified he had to comb through the pictures from the surveillance footage to find a picture that did not show the dreadlocks. Trial Counsel explained he did not want Applicant to testify because they had practiced and Applicant's demeanor would not have been favorable. In fact, Trial Counsel described Applicant's skin turning a reddish color when angered during questioning, and this made Applicant look all the more similar to the surveillance footage. Trial Counsel was also concerned with the jury recognizing the similarities between Applicant's distinctive walk and that of the individual in the surveillance footage if Applicant took the stand. Despite the understanding Applicant was going to testify at the time Trial Counsel entered the photos into evidence, Applicant later decided he did not want to testify.

Trial Counsel recalled following up and speaking with the purported alibi witnesses provided by Applicant as well as the character witnesses. Trial Counsel explained some could not be found for lack of identifying information and some would not have been helpful. As Trial Counsel recalled, one witness's name provided by Applicant actually informed Trial Counsel that Applicant was trying to get him to say certain things.

Trial Counsel recounted his attempts to find evidence of Applicant's second job and was told by Applicant his new employer's name was "Hawk." Trial Counsel was unable to find any information legitimizing the security company Applicant purported to work with, and he was also unable to locate "Hawk." Regarding Applicant's other employment records, Trial Counsel did investigate the Dollar General where Applicant had been employed, but the pay

documentation would have shown Applicant was only a part-time employee. Trial Counsel did not want to introduce a part-time pay statement for a relatively modest amount of money in an attempt to show Applicant did not have motive to rob a store. Furthermore, Applicant was not working the day of the incident.

Trial Counsel testified Applicant also went to Walmart with his girlfriend the afternoon of the incident, and Applicant wanted Trial Counsel to present a receipt for phone minutes Applicant purchased from the Walmart to show he was at Walmart as an alibi. Trial Counsel explained he attempted to obtain the receipt, but Walmart did not keep their receipts that long and he was never able to find a record of the purchase. Furthermore, Applicant paid in cash for the phone minutes, and Applicant was at Walmart *after* the time of the incident. Trial Counsel explained even if he were able to obtain the receipt, he would not want to introduce a receipt from after the incident purporting to show Applicant bought phone minutes with a substantial amount of cash after an alleged robbery.

Trial Counsel testified he did challenge the validity of the search warrant on multiple grounds including lack of probable cause. Pretrial, Trial Counsel argued the warrant affidavit contained overbroad descriptions of the suspect and automobile and cited Franks v. Delaware, 438 U.S. 154, (1978). Moreover, Trial Counsel moved to suppress on the basis law enforcement failed to timely file the search warrant as required by S.C. Code § 17-13-140. Nevertheless, as Trial Counsel explained, his motions were denied, and the statutory issue has been held to be a ministerial rule.

Regarding his closing argument, Trial Counsel testified he tailored his closing argument to coincide with the trial judge's jury charge on reasonable doubt. Accordingly, Trial Counsel prepared a visual aid to map out what he saw to be the arguable inconsistencies in the State's

case and pointing to reasonable doubts.

Trial Counsel recalled thoroughly explaining to Applicant the elements and nature of Applicant's charges as well as the State's evidence against him. In fact, Trial Counsel had provided Applicant with a packet of information prepared by Trial Counsel explaining the elements of his charges as well as how the State's substantial evidence coincided with his charges. Trial Counsel testified Applicant did not seem to have difficulty understanding their conversations.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient

performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witness 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).

First, after observing the witnesses and closely passing on their credibility, this Court finds Trial Counsel's testimony to be credible and persuasive. By contrast, this Court finds Applicant's testimony to be self-serving and not credible.

INEFFECTIVE ASSISTANCE OF COUNSEL

This Court finds Applicant has failed to prove he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. This Court finds Applicant has failed to satisfy his burden of proof as Trial Counsel was neither deficient, nor was Applicant prejudiced by any alleged deficiencies.

Allegation A: Trial Counsel failed to conscientiously discharge his professional responsibilities while handling the trial of my case."

Applicant alleges Trial Counsel was ineffective for conscientiously discharge his professional responsibilities while handling Applicant's case. This Court finds this allegation to be meritless. In fact, this Court finds Trial Counsel's representation was far and above the reasonable prevailing norms despite the towering amount of evidence against Applicant. This Court finds Trial Counsel credibly testified he met with Applicant many times prior to trial,

reviewed the evidence with Applicant, procured Applicant a favorable plea deal which Applicant rejected against the advice of counsel, and investigated all leads provided to him. Despite a substantial amount of evidence against Applicant in this case and Applicant's decision against the advice of counsel to proceed to trial, Trial Counsel vigorously challenged the State's case. Trial Counsel thoroughly challenged the search warrant in this case to include arguments from lack of probable cause to law enforcement's failure to timely file the search warrant return. Trial Counsel credibly testified he investigated the witnesses provided by Applicant and followed up with the witnesses he was able to locate. Trial Counsel credibly testified he attempted to locate the receipt from Walmart but was unable to as Walmart did not keep the receipt long enough and, regardless, the receipt would have been harmful to the defense because it showed Applicant made a substantial purchase of phone minutes with cash shortly after the time of the robbery.

Trial Counsel also prepared an informative packet explaining the elements and nature of Applicant's charges, Applicant's plea offer, the evidence against Applicant and how it coincided with the allegations, as well as the issues concerning various possible witnesses. Clearly, Trial Counsel went above and beyond the reasonable professional norm in his representation of Applicant to include his investigation, his communication to Applicant, and his strategic decisions made at trial. See Cherry, 300 S.C. at 117 (Under the first prong of Strickland, attorney performance is measured by its "reasonableness under professional norms.")

The testimony and record reflects Trial Counsel rendered outstanding representation guided by legitimate trial strategy. Applicant has provided no credible evidence to satisfy his burden of proving Trial Counsel was deficient in discharging his professional responsibilities. Furthermore, Applicant has failed to present any evidence that, but for, Trial Counsel's performance, there is any reasonable probability the outcome of the proceedings would have

been different. Accordingly, this allegation is dismissed with prejudice.

Allegation B: Trial Counsel failed to act as my diligent conscientious advocate by failing to present any type of strategic defense during the trial. There were key material witnesses and physical evidence available that would have exonerated the Applicant.

Applicant alleges Trial Counsel was ineffective for failing present any type of strategic defense at trial as there were key material witnesses and physical evidence that would have exonerated Applicant. This Court finds this allegation to be meritless.

Applicant's allegation that Trial Counsel failed to present any type of strategic defense is refuted by the record as well as testimony at the PCR hearing. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Caprood v. State, 338 S.C. 103, 525 S.E.2d 514 (2000). Here, Trial Counsel credibly testified he attempted to attack perceived inconsistencies in the State's case and argue that these inconsistencies give rise to reasonable doubt for which the jury should find Applicant not guilty. This is evidenced by the visual aid Trial Counsel prepared and used during his closing argument which diagramed arguable inconsistencies in the State's case and pointed to reasonable doubt. Trial Counsel repeatedly asserted, "Inconsistencies are reasonable doubts," during his closing argument. Tr. p. 502, l. 1 – p. 521, l. 19. Trial Counsel testified he tailored his closing argument to suit the trial judge's charge on reasonable doubt. This Court therefore finds Trial Counsel did present a strategic defense in this case, and his trial strategy was reasonable. Therefore, Applicant has failed to satisfy his burden of proving Trial Counsel was deficient in presenting a defense. Moreover, as Trial Counsel did pursue a reasonable defense strategy in challenging the imposing amount of circumstantial evidence against Applicant, Applicant has failed to satisfy his burden of proving that but for Trial Counsel's performance in this regard, the result of the proceedings would have been different. Accordingly, this allegation is dismissed

with prejudice.

As to witnesses, at the evidentiary hearing, Applicant alleged Trial Counsel failed to properly investigate various alibi and character witnesses. This Court finds this allegation to be meritless as Trial Counsel credibly testified he followed up on all leads provided to him by Applicant. Furthermore, Trial Counsel credibly testified the leads were either not helpful or unable to be located due to insufficient information. For example, Trial Counsel recounted one specific purported witness who was not going to be helpful and even admitted to Trial Counsel that Applicant had told him to say untruthful things to protect Applicant. Furthermore, Trial Counsel credibly testified he was unable to locate an individual identified only as "Hawk" who Applicant purported to work for while being paid under the table. Trial Counsel recalled looking into whether the purported company was registered in the state of South Carolina and having no success finding this individual or other evidence of Applicant working for such a company. Applicant has provided no competent evidence to support his assertion Trial Counsel failed to investigate potential relevant witnesses of any kind in this case, and has therefore failed to satisfy his burden of proving Trial Counsel was deficient as to this allegation.

Furthermore, in order to show prejudice from the alleged failure to call a witness, the Applicant must provide competent evidence of the testimony the alleged alibi witness would have provided. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992). In this case, Applicant conceded he had no alibi or character witnesses present to testify at his PCR hearing. Applicant provided no competent evidence as to what these witnesses would have said at trial. Moreover, this Court finds Trial Counsel's testimony credible that the witnesses he was able to reach would not have been helpful to Applicant's defense. Therefore, Applicant has also

failed to satisfy his burden of proving prejudice as to this allegation. Accordingly, this allegation is dismissed with prejudice.

Applicant likewise alleges Trial Counsel failed to present material physical evidence at trial. At the PCR hearing, Applicant testified he asked Trial Counsel to obtain a receipt from Walmart from the day of the incident to serve as an alibi. Trial Counsel credibly testified that by the time he was appointed to this case and able to meet with Applicant, the receipt would have no longer been in the system. Notwithstanding, this Court also finds Trial Counsel's testimony credible that he did attempt to obtain the receipt but Walmart was unable to produce it. This Court therefore finds Applicant has failed to prove deficiency as to this allegation as Trial Counsel made adequate and reasonable attempts to investigate this evidence. Notwithstanding, this receipt would not have been helpful to Applicant's defense. Applicant paid cash for phone minutes at a nearby Walmart in the time shortly after he allegedly robbed the store. Surveillance footage from the Walmart revealed Applicant was at Walmart in the time following the robbery. The receipt would not have shown it was impossible for Applicant to have been at The Keg during the robbery. Furthermore, this Court agrees with Trial Counsel's assertion it would have been harmful to the defense to show the jury a cash receipt for phone minutes purchased shortly after Applicant was alleged to have robbed The Keg of a sum of cash. Therefore, Applicant has also failed to establish prejudice from Trial Counsel's inability to obtain the receipt. This allegation is accordingly dismissed with prejudice.

This Court also finds Trial Counsel was not deficient for not presenting evidence of Applicant's employment at Dollar General. Trial Counsel credibly testified he spoke with the staff at Dollar General and found pay statements but they would only reflect Applicant worked there part-time and, in his opinion, the amount of pay was not enough to convince a jury

Applicant had no motive to rob The Keg. Furthermore, the records indicated Applicant was not working the day of the robbery. For these reasons, Applicant has failed to establish deficiency as to this allegation as Trial Counsel adequately investigated the issue. Furthermore, Applicant has failed to prove prejudice therefrom as the information obtained by Trial Counsel would not have been helpful at trial. Accordingly, this allegation is also dismissed with prejudice.

Allegation C: Trial Counsel did not have my best interest in mind and failed to conduct any pretrial investigation to prepare for the trial of my case.

Applicant alleges Trial Counsel did not have his best interest in mind and failed to conduct any pretrial investigation in preparation of his trial. This Court finds this allegation to be meritless. As noted above, Trial Counsel credibly testified to following up with all relevant witnesses provided to him and speaking with those who could be reached. Trial Counsel made reasonable efforts to obtain more information about Applicant's purported second employment yet was unsuccessful due to lack of provided information and only having the name "Hawk" to research for Applicant's alleged boss. Trial Counsel credibly recounted his efforts to obtain the Walmart receipt from Applicant's purchase the day of the incident. Trial Counsel also spoke with Applicant's employers at the Dollar General. Trial Counsel combed through surveillance pictures to find a picture which looked the least like Applicant to enter as evidence and also investigated the differences in timestamps on the various surveillance cameras. This Court finds Trial Counsel investigated this case in an exemplary manner and Applicant has offered no competent evidence of deficiency in this regard.

Notwithstanding, Applicant has failed to satisfy his burden of proving prejudice from Trial Counsel's alleged failure to investigate. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417

(1998). Here, Applicant has provided no credible evidence of what further investigation on the part of Trial Counsel would have discovered. To the contrary, this Court finds Trial Counsel's testimony credible that even if he had been able to obtain the receipt from Walmart, it would have been harmful to the defense. Moreover, Trial Counsel credibly testified various witnesses provided by Applicant would not have testified favorably. For these reasons, Applicant has also failed to prove prejudice from this allegation, and the allegation is dismissed with prejudice.

Allegation D: Trial Counsel failed to serve my cause in good faith and he never attempted or intended to offer any type of defense for the jury's consideration.

Applicant alleges Trial Counsel failed to serve his cause in good faith and never attempted or intended to offer any type of defense for the jury's consideration. This Court finds this allegation to be meritless and decisively refuted by the record as well as testimony at the PCR hearing. As mentioned above in this Order, Trial Counsel pursued the reasonable enumerated trial strategy of pointing the jury to inconsistencies in the State's case and arguing these inconsistencies create reasonable doubts and therefore the jury should not convict Applicant. Trial Counsel created a visual aid and argued this principle *at length* in his arguments to the jury. This Court also notes Trial Counsel's testimony revealed an exhaustive investigation into both the evidence and legal issues involved in Applicant's case. There is absolutely no evidence in the record or presented at the PCR hearing to support the allegation Trial Counsel did not represent Applicant in good faith. To the contrary, Trial Counsel rendered strategic and exemplary representation of Applicant at every stage of this trial. Accordingly, this Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient regarding this allegation.

Moreover, this was a case involving a *substantial* amount of circumstantial evidence of Applicant's guilt. This included surveillance footage of an individual who looks and walks strikingly similar to Applicant. Furthermore, the perpetrator left in a white Dodge with tinted windows which appeared to be the white Dodge registered to Applicant's girlfriend, which Applicant was pulled over approximately six days following the incident. Also, the distinctive SKS rifle with wooden accessories and a black strap was found in a closet with Applicant's belongings in Applicant's girlfriend's home. This, of course, is in conjunction with the distinctive red sunglasses shown in the surveillance footage which were also found in the home. Especially considered in light of this significant amount of evidence against Applicant, Applicant cannot satisfy his burden of proving that, but for any error on the part of Trial Counsel in offering a defense, the result of the proceedings would have been different. Therefore, this allegation is dismissed with prejudice.

Allegation E: Trial Counsel, knowing I was illiterate regarding the complexities of the law, never ascertained whether or not I actually understood or comprehended all the issues and aspects of my case.

Applicant also alleges Trial Counsel never ascertained whether he understood the issues and aspects of his case. This Court also finds this allegation to be meritless. Trial Counsel credibly testified he explained the elements and nature of the charges to Applicant. This is corroborated by the fact Trial Counsel also provided a packet to Applicant which thoroughly explained the elements of his charges, the evidence against him, the witnesses involved in the case, and how the evidence related to the elements of his offenses. Trial Counsel credibly testified Applicant seemed to understand their discussions and was involved in this trial. This Court also observes Applicant actually told the trial judge Trial Counsel had fully explained the

elements of armed robbery as well as the potential penalties with him. Tr. p. 17, ll. 5-16. Therefore, this Court finds the assertion that Applicant did not understand the elements of the charges against him or the issues involved in his case to be not credible. This Court finds the record and testimony demonstrates Trial Counsel was not deficient in this regard as Applicant was well-apprised of the elements of his charges and evidence against him and was able actively participate in his trial. Furthermore, because Applicant did understand the issues involved in this case and was well-apprised of them, Applicant cannot establish prejudice from Trial Counsel's alleged failures to ascertain whether he fully understood them. Accordingly, this allegation is dismissed with prejudice.

Allegation F: Trial Counsel failed to explain to me the advantages of disadvantages of offering forth a defense versus not doing so. He failed to discuss trial strategy of available defenses.

Applicant alleges Trial Counsel failed to explain the advantages and disadvantages of offering a defense as opposed to not doing so and likewise failed to discuss available defenses. This Court finds this allegation to be meritless. Trial Counsel credibly testified he thoroughly reviewed the evidence against Applicant as well as potential defenses such as misidentification with Applicant. Trial Counsel testified they discussed potential alibi defenses, but the purported alibi witnesses who were able to be located would not have provided favorable testimony. They also discussed attempting to show Applicant had no motive to commit the robbery because of his two jobs, but Trial Counsel thoroughly investigated this avenue and was only able to find documentation from Applicant's part-time job at Dollar General which would not have been helpful to the defense as it did not show a substantial amount of pay or that Applicant was working the day of the robbery.

Trial Counsel also credibly testified to his preparation of Applicant in case Applicant wanted to testify. It was Trial Counsel's opinion, after viewing Applicant's demeanor when asked questions which would likely be posed at trial, it was in Applicant's best interest not to testify. Trial Counsel explained Applicant became angry at the questioning, Applicant's skin turned a "reddish" hue strikingly similar to that in the surveillance footage, and Applicant also had a very similar gait to that of the individual in the surveillance footage. All these things led to Trial Counsel's advice for Applicant not to testify, but the decision was left to Applicant. Tr. p. 539, l. 14. Applicant was also read a thorough colloquy explaining his right to testify and the risks involved. Tr. p. 488, l. 1.

Furthermore, Trial Counsel discussed the strategy of having last argument with Applicant. In fact, Trial Counsel testified he entered evidence in this case which forfeited last argument only when Applicant had indicated he wanted to testify. It was only later that Applicant decided not to testify after all. At the PCR hearing, Applicant recalled Trial Counsel explaining that he valued having the last argument. Trial Counsel's discussion of last argument is corroborated by the trial judge's colloquy with Trial Counsel, "You told me earlier one of your strategies was last argument; I assume you've talked about the change in strategy?" Both Trial Counsel and Applicant told the trial judge they had indeed discussed the change in strategy. Tr. p. 495, l. 5.

Therefore, the record refutes Applicant's allegation as Trial Counsel clearly discussed and explored defenses at length with Applicant and also adequately represented Applicant regarding Applicant's decision whether to present a defense. This Court finds no probative evidence Trial Counsel was deficient regarding his explanations to Applicant. Furthermore, Applicant who initially wanted to testify against the advice of counsel but changed his mind after

Trial Counsel had entered evidence, has failed to establish how the proceedings would have been any different had he been advised differently. Accordingly, this allegation is dismissed with prejudice.

Allegation G: Trial Counsel did not subject the prosecution's case-in-chief to any adverse forensic testing and failed to oppose the prosecution's case with any adverse defense litigation.

Applicant finally alleges Trial Counsel did not subject the State's case to "adverse forensic testing" or "adverse defense litigation." This Court finds this allegation to be meritless. Applicant has provided no evidence as to how it would be unreasonable for Trial Counsel not to subject the State's evidence to forensic testing when the physical evidence was found in his girlfriend's home and in a closet in that home where Applicant's belongings were located. It follows that Applicant's DNA would very likely be found on the materials and therefore it would not be beneficial to prove this through forensic testing. Furthermore, Applicant has failed to prove prejudice from this allegation because he offered no evidence as to what the forensic testing would have revealed and it is reasonable to conclude the forensic testing would have simply confirmed his contact with evidence such as the SKS rifle with black strap and wooden accents found in the closet with his belongings and matching the SKS rifle with black strap and wooden accents shown in the surveillance footage of the robbery. Furthermore, Trial Counsel was actually able to raise the fact there was no DNA evidence in this case in his argument about reasonable doubt to the jury. Tr. p. 232, ll. 1-3.

Likewise, this Court finds Applicant has failed to prove Trial Counsel was deficient for failing to "oppose the prosecution's case with any adverse defense litigation." The record reveals abundant and reasonable challenges to the State's case from Trial Counsel. Trial Counsel moved to suppress the search warrant which led to the physical evidence in this case and argued at

length on the grounds of lack of probable cause, insufficiency of the affidavit, unreliability of information in the affidavit, and even made the procedural argument that the search warrant return was filed late. Tr. pp. 140-149. Nevertheless, the trial judge ruled there was clearly probable cause to support the search warrant and the statutory rule was ministerial. Tr. p. 160, l. 1. Thereafter, Trial Counsel vigorously attacked what he perceived to be inconsistencies in the State's case and argued these should lead the jury to conclude there existed reasonable doubt. Trial Counsel also argued there was no true identification of Applicant, and Applicant had two jobs at the time. The record reveals Trial Counsel challenged the admission of the video recording of the traffic stop where Applicant was pulled over with his girlfriend in the white Dodge matching automobile from the surveillance footage. Tr. p. 310, l. 16. Trial Counsel also cross-examine the State's witnesses at length on issues from the inconsistent time-stamps between the surveillance cameras, and the quality of the investigation. Trial Counsel also moved for a directed verdict following the State's presentation of its case but was understandably denied. Tr. p. 481. Trial Counsel also argued against the admission of Applicant's voluntary statement at a Jackson v. Denno hearing. Tr. p. 530.

Clearly, Trial Counsel was not deficient in his challenges to the State's case and the tremendous amount of circumstantial evidence of Applicant's guilt for armed robbery and possession of a weapon during the commission of a violent crime. Applicant has failed to present any evidence of deficiency in this regard, and likewise has failed to provide any evidence as to how different performance from Trial Counsel in pursuing his defense would have changed the outcome of the proceedings. Accordingly, this allegation is dismissed with prejudice.

[Conclusion and signature on following page]

VI. 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 that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice in regard to all allegations; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 6 day of Dec., 2018.


 D. CRAIG BROWN
 Presiding Judge
 First Judicial Circuit

Flourence, South Carolina

WITNESSES

Kevin Dukes

Orangeburg Police Department

ARREST WARRANT NUMBER
2013A3820800492

Arrested: September 16, 2013

ACTION OF GRAND JURY

Guilty

Laurie Brenn

Foreperson of Grand Jury
Date: 8/15/14

VERDICT

TRUE BILL

Michelle Shaw

Date **FEB 05 2014**

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS38-0189

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

February 10, 2014 TERM

THE STATE
vs.

Tykeem Kalami May

Indictment for
ARMED ROBBERY

ATTEST: TRUE COPY
Winnifred Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-11-330(A)

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.

2014 FEB -5 A 10 19
FILED FOR RECORD
WINNIFRED CLARK
CLERK OF COURT
ORANGEBURG, SC

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

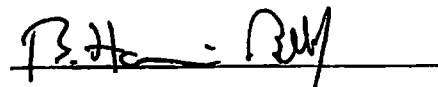
INDICTMENT
2014GS38-0189

At a Court of General Sessions, convened on February 10, 2014 the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That on or about September 8, 2013, in Orangeburg County, the defendant, Tykeem Kalami May did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim, Quantavious Montgomery and/or The Keg, with the intent to permanently deprive the victim of possession of the goods or monies. Such weapon or alleged weapon described as a rifle. This offense being in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Harrison Bell, Solicitor

WITNESSES

Kevin Dukes

Orangeburg Police Department

ARREST WARRANT NUMBER
2013A3820800493

Arrested: September 16, 2013

ACTION OF GRAND JURY

Guilty
Laurie Brenn
Foreperson of Grand Jury 8/15/14
Date: January 13, 2014

VERDICT

TRUE BILL

Michelle Shaw
Date **FEB 05 2014**

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS38-0190

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

February 10, 2014 TERM

THE STATE
vs.

Tykeem Kalami May

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF AVIOLENT
CRIME

SC Code: 16-23-490

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.

ATTEST: TRUE COPY
Winnifred B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

FILED FOR RECORD
WINNIFRED B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2014 FEB -5 A D 19

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

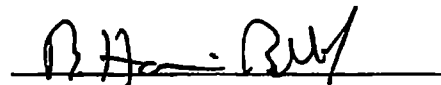
INDICTMENT
2014GS38-0190

At a Court of General Sessions, convened on February 10, 2014 the Grand Jurors of Orangeburg County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
CRIME**

That in Orangeburg County on or about September 8, 2013, the defendant, Tykeem Kalami May did visibly display or have in his possession, a rifle during the commission of a violent crime, as defined by Section 16-1-60, Code of Laws of South Carolina, 1976, as amended, to wit: Armed Robbery. This offense being in violation of Section 16-23-490, of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Harrison Bell, Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Orangeburg

VS.

Tykeem Kalami May

AKA:

Race: BLACK Sex: M Age: 24

DOB: SS#:

Address:

City, State, Zip: Orangeburg, SC 29115

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS38-0189

A/W#: 2013A3820800492

Date of Offense: 9/8/2013

S.C. Code § : 16-11-330(A)

CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Bell, Harrison

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014 GS-38-190☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

2128
8/15/14

ATTEST: TRUE COPY

Wimpy B. Clark

CLERK OF COURT

ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg
STATE VS.Tykeem Kalami May

AKA:

Race: BLACK Sex: M Age: 24DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Orangeburg, SC 29115DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Poss. Weapon During Violent Crime, If not Also Sentenced to Life without Parole or Deathin violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Bell, Harrison

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014-GS-38-189
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
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§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>135.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Hilda Jordan

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

873

INDICTMENT/CASE#: 2014GS38-0190A/W#: 2013A3820800493Date of Offense: 9/8/2013S.C. Code § : 16-23-490CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. Winnie B. ClarkMay serve W/E beginning Substance Abuse Counseling ORANGEBURG COUNTY, SCRandom Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Presiding Judge Al JeffersonJudge Code: 2128Sentence Date: 8-15-14