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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge

JEFFREY THOMAS BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000709

APPENDIX

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1 STATE OF SOUTH CAROLINA)

2) IN THE COURT OF GENERAL SESSIONS

3 COUNTY OF FLORENCE)

4
5 STATE OF SOUTH CAROLINA)

6 Plaintiffs,)

7 Vs.) CASE NO. 2013-GS-21-0320

8 JEFFREY THOMAS BROWN,)

9 Defendant)

10
11 SEPTEMBER 19, 2013

12 FLORENCE, SOUTH CAROLINA

13
14 HONORABLE D. CRAIG BROWN, JUDGE

15
16 A P P E A R A N C E S:

17 BY: JOHN C. JEPERTINGER, ESQUIRE

18 Attorney for the Plaintiffs

19 BY: DANIEL T. JORDAN, ESQUIRE

20 Attorney for the Defendant

21
22
23 KESHIA REED

24 OFFICIAL COURT REPORTER

25

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1 THE COURT: Ladies and gentlemen, we have two jurors
2 that aren't here that was suppose to be here. As soon as
3 we get a deputy in here, I am going to have them locate
4 those jurors. But we are going to move forward of
5 selecting a jury this morning. Where are my defense
6 lawyers.

7 MR. JORDAN: Okay.

8 THE COURT: All right. Is the State ready to
9 proceed, Mr. Jepertinger?

10 MR. JEPERTINGER: The State's ready, your Honor.

11 THE COURT: Is defense counsel ready to proceed?

12 MR. JORDAN: I was going to make a motion to
13 continue at this time, your Honor.

14 THE COURT: We'll do that after we select a jury.
15 We're going to move forward in selecting a jury at this
16 time.

17 MR. JORDAN: Yes, sir. I'm ready to proceed.

18 THE COURT: Mr. Jepertinger, call your next -- Call
19 your case, please, sir.

20 MR. JEPERTINGER: Yes. This would be the State
21 verses Jeffrey Thomas Brown on 2013-GS-21-320. That's
22 it, Judge.

23 THE COURT: Can I have the -- I do have the
24 indictment. Ladies and gentlemen, the State has called
25 the case of the South Carolina verses Jeffrey Thomas

1 Brown. Mr. Brown is charged in an indictment that
2 alleges that Mr. Jeffrey Thomas Brown did in Florence
3 County on or about October 31, 2012 while armed with
4 deadly weapon attempt to take and carry away the personal
5 property from or in the immediate presence of the
6 Kangaroo Express with the intent to deprive them of
7 possession by use of force, threats, or intimidation in
8 violation of Section 16-11-330(B).

9 Ladies and gentlemen, the indictment that I hold in
10 my hand charging Mr. Brown with this offense is not
11 evidence in this case. It is not evidence in this case.
12 Mr. Brown has pled not guilty to this charge, therefore,
13 the State of South Carolina bears burden of proving his
14 guilt beyond a reasonable doubt. Before we move forward
15 in selecting a jury in this case, there are several
16 questions that I must ask of you. Please listen very
17 carefully to these questions.

18 Is there any member of the jury panel that's ever
19 been related by blood, connected by marriage, or had a
20 close personal, business, or social relationship with
21 Mr. Jeffrey Thomas Brown? If so, please stand.

22 Yes, ma'am. Your name and number, please.

23 MS. GALLOWAY: Stephanie Galloway, number 39.

24 THE COURT: Can you approach, please.

25 MR. JEPERTINGER: There's no reason -- She did make

1 -- She was the bondsman on this case.

2 THE COURT: I'm going set you aside for the trial of
3 this case. Tell me your name and number again.

4 MS. GALLOWAY: Number 39, Stephanie Galloway.

5 THE COURT: Okay. I'm going to set her aside for
6 the trial of this case. Thank you, ma'am. They should
7 have put you in Civil Court. Should have just
8 transferred you to common pleas.

9 All right. The following, ladies and gentlemen, is
10 a list of potential witnesses in this case. They include
11 Ron Douglas from the Johnsonville Police Department;
12 Teresa Swanson; Mike Christian; Donny Howell of the
13 Johnsonville Police Department; and Matthew Venters. Is
14 there any member of the jury panel that's ever been
15 related by blood, connected by marriage, or had a close
16 personal business, or social relationship with any of the
17 potential witnesses in this case? If so, please stand.

18 All right. Mr. Jupertinger, if you would introduce
19 yourself and those members of your staff that maybe
20 involved in this case followed by you, Mr. Jordan.

21 MR. JEPERTINGER: Good morning ladies and gentlemen
22 of the jury. My name is John Jupertinger, I'm the deputy
23 solicitor for the twelfth circuit which includes Florence
24 and Marion counties. I have my administrative assistant
25 Ms. Knight, Donna Knight sitting with me today.

1 THE COURT: Mr. Jordan.

2 MR. JORDAN: Good morning. My name is Daniel
3 Jordan, I'm the assistant public defender here in
4 Florence County. This is Karen Parrott, she is also an
5 assistant public defender here in Florence and Marion
6 counties. Obviously, with the public defender's office
7 for the defense.

8 THE COURT: All right. Ladies and gentlemen, any
9 member of the jury panel that's ever been related by
10 blood, connected by marriage, had a close personal,
11 business, or social relationship with any of the
12 attorneys involved in this case? If so, please stand.

13 (WHEREUPON, no one stood)

14 THE COURT: All right. Is any member of the jury
15 panel formed or expressed an opinion about any issue in
16 this matter in this case? If so, please stand.

17 (WHEREUPON, no one stood)

18 THE COURT: Okay. All right. Is any member of the
19 jury panel aware of any bias or prejudice toward either
20 the State or the defendant in this case? If so, please
21 stand.

22 (WHEREUPON, no one stood)

23 THE COURT: Okay. All right. Is any member of the
24 jury panel who is a member of or contributor to any group
25 which has at this primary concern the promotion of law

1 enforcement these groups might include but certainly are
2 not limited to MADD, SADD, or CAVC, Citizens Against
3 Violent Crime? If so, please stand.

4 (WHEREUPON, no one stood)

5 THE COURT: Okay. All right. Is any member of the
6 jury panel know of any reason, any reason whatsoever why
7 he or she should not serve as a juror in this case with
8 particular emphasis being placed upon your ability to be
9 fair and impartial to both the State and the defense? If
10 so, please stand.

11 (WHEREUPON, no one stood)

12 THE COURT: Okay. Any further voir dire from the
13 State?

14 MR. JEPERTINGER: No, sir.

15 THE COURT: Defense counsel?

16 MR. JORDAN: Nothing further, your Honor.

17 THE COURT: All right. Madame Clerk, five and five
18 on strikes?

19 MR. JORDAN: Yes, sir.

20 THE COURT: All right.

21 (WHEREUPON, a pause in the proceedings)

22 THE COURT: Yes, ma'am.

23 THE CLERK: All right. Just like on 11, bring
24 yourself up front and stand in the middle of the
25 courtroom. Forty-nine (49), Wanda Graham. What say the

1 State?

2 MR. JEPERTINGER: We excuse this juror for purposes
3 of this trial only.

4 THE CLERK: You've been excused from this trial
5 only. You may return to your seat. One hundred two
6 (102), Betsy Evans. What say the State?

7 MR. JEPERTINGER: Please present the juror.

8 THE CLERK: What say the defendant?

9 MR. JORDAN: Please seat this juror.

10 THE CLERK: Please have a seat in the juror box.
11 One thirty-six (136), Phillip Ward? What say the State?

12 MR. JEPERTINGER: Please present this juror.

13 THE CLERK: What say the defendant?

14 MR. JORDAN: Please excuse this juror from this
15 trial.

16 THE CLERK: You've been excused from this trial, so
17 you may return to your seat. Thirty-six (36), Sandra
18 Flynn. What say the State?

19 MR. JEPERTINGER: Please present this juror.

20 THE CLERK: What say the defendant?

21 MR. JORDAN: Please seat this juror.

22 THE CLERK: Please have a seat in the jury box. One
23 hundred one (101), Joshua Newman. What say the State.

24 MR. JEPERTINGER: Please present this juror.

25 THE CLERK: What say the defendant?

1 MR. JORDAN: Please seat this juror.

2 THE CLERK: Please have a seat in the jury box, sir.
3 One hundred seven (107), William Phillips. What say the
4 State?

5 MR. JEPERTINGER: Please present this juror.

6 THE CLERK: What say the defendant?

7 MR. JORDAN: Please excuse this juror from the trial
8 of this case.

9 THE CLERK: You've been excused from this trial
10 only, sir. You may return to your seat. One hundred six
11 (106), Dorothy Parrott. What say the State?

12 MR. JEPERTINGER: Please excuse this juror for the
13 purposes of this trial only.

14 THE CLERK: You've been excused from this trial
15 only. You may return to your seat. Seventy-seven (77),
16 Tauseef Malik. What say the State?

17 MR. JEPERTINGER: Please present this juror.

18 THE CLERK: What say the defendant?

19 MR. JORDAN: Please seat this juror.

20 THE CLERK: Please have a seat in the jury box, sir.
21 Sixty-six (66), Mary Johnson. What say the State?

22 MR. JEPERTINGER: Please present this juror.

23 THE CLERK: What say the defendant?

24 MR. JORDAN: Please seat this juror.

25 THE CLERK: Please have a seat in the jury box,

1 ma'am. One hundred thirty-four (134), Swail Walker.

2 What say the State?

3 MR. JEPERTINGER: Please present this juror.

4 THE CLERK: What say the defendant?

5 MR. JORDAN: Please seat this juror.

6 THE CLERK: Please have a seat in the jury box, sir.

7 One fifty (150), Howard Worrell. What say the State?

8 MR. JEPERTINGER: Please present this juror.

9 THE CLERK: What say the defendant?

10 MR. JORDAN: Please seat this juror.

11 THE CLERK: Please have a seat in the jury box, sir.

12 Fifty-eight (58), Patrick Hines. What say the State?

13 MR. JEPERTINGER: Please present this juror.

14 THE CLERK: What say the defendant?

15 MR. JORDAN: Please seat this juror.

16 THE CLERK: Please have a seat in the jury box, sir.

17 Ninety-six (96), Lloyd Moore. What say the State?

18 MR. JEPERTINGER: Please present this juror.

19 THE CLERK: What say the defendant?

20 MR. JORDAN: Please seat the juror.

21 THE CLERK: Please have a seat in the jury box, sir.

22 Seventy-two (72), Nicole Franklin. What say the State?

23 MR. JEPERTINGER: Please present this juror.

24 THE CLERK: What say the defendant?

25 MR. JORDAN: Please excuse this juror for the trial

1 of this case.

2 THE CLERK: You've been excused from this trial
3 only, ma'am. You may return to your seat. Sixty-two
4 (62), Christie Hyman. What say the State?

5 MR. JEPERTINGER: Please present this juror.

6 THE CLERK: What say the defendant?

7 MR. JORDAN: Please excuse this juror for the trial
8 of this case.

9 THE CLERK: You've been excuse from this trial only.
10 You may return to your seat. One twenty (120), Amber
11 Scott. What say the State?

12 MR. JEPERTINGER: Please present this juror.

13 THE CLERK: What say the defendant?

14 MR. JORDAN: Please seat this juror.

15 THE CLERK: Please have a seat in the jury box,
16 ma'am. Number three (3), Kaitlin Alfred. What say the
17 State?

18 MR. JEPERTINGER: Please present this juror.

19 THE CLERK: What say the defendant?

20 MR. JORDAN: Please seat this juror.

21 THE CLERK: Please have a seat in the jury box,
22 ma'am. Eighty-five (85), Jessica McDaniel. What say the
23 State?

24 MR. JEPERTINGER: Please present this juror.

25 THE CLERK: What say the defendant?

1 MR. JORDAN: Please seat this juror.

2 THE CLERK: Please have a seat in the jury box,
3 ma'am. One alternate juror?

4 THE COURT: Yes, ma'am. One alternate.

5 THE CLERK: Seventy-three (73), Mary Leahey. What
6 say the State?

7 MR. JEPERTINGER: Please present this juror.

8 THE CLERK: What say the defendant?

9 MR. JORDAN: Please excuse this juror for the trial
10 of this case.

11 THE CLERK: You've been excused from this trial.
12 You may return to your seat. Forty-one (41), Johnny
13 Gaskins. What say the State?

14 MR. JEPERTINGER: Please present this juror.

15 THE CLERK: What say the defendant?

16 MR. JORDAN: Please seat this juror.

17 THE CLERK: Please have a seat in the jury box, sir.

18 THE COURT: Any matters at all we need to take up
19 with regard to the jury selection from the State?

20 MR. JEPERTINGER: Not from the State, your Honor.

21 THE COURT: Defense counsel?

22 MR. JORDAN: Nothing from me, your Honor.

23 THE COURT: All right. Can the lawyers approach for
24 a minute with regards to the scheduling.

25 (WHEREUPON, a bench conference was held in the

1 presence of the jury, but out of the hearing of the jury)

2 THE COURT: Ladies and gentlemen, I'm going to ask
3 that you all step to the jury room for just a minute.
4 I'll get you back out here as quickly as possible. Do
5 not discuss this case. Do not discuss the case at all.

6 (WHEREUPON, the jury retired to the jury room)

7 THE COURT: All right. Ladies and gentlemen, those
8 of you who are seated out in the audience, you all were
9 not selected as jurors in this particular case. I will
10 tell you that when I release you here today you will be
11 done for the balance of the week. You'll be done for the
12 balance of the week. There's no necessity in calling
13 back tonight after six o'clock. This is our third week
14 of General Sessions Court, we're winding down here the
15 end of this week.

16 I want to thank you personally for your service this
17 week. I know that jury service never ever comes at a
18 convenient time. But it is an opportunity for you all as
19 citizens to have a say-so in what goes on out in this
20 community in Florence County.

21 I hope that you learned this not television. It is
22 not television at all. I believe that television has
23 done an injustice to our judicial system. Because people
24 have a perception that this is suppose to be like TV, but
25 it's not. It's not like television at all. I want to

1 thank you -- Like I said, I want to thank you for your
2 service. We can't get you back up here to serve at least
3 for the next three years. I doubt very seriously any of
4 you jumped up and down with joy when you got your jury
5 summons to be up here. But I can promise you, if you
6 were seated at one of these tables or your family members
7 were seated at one of these tables whether it be on the
8 civil side or on the criminal side that you would want an
9 individual such as yourselves serving as jurors and not
10 being put into a situation wherein we send out law
11 enforcement to pick up first twelve people you find on
12 the street and bring up here and let's try this case.

13 It takes people from all walks of life to serve as
14 jurors. And as you were qualified as I qualified you all
15 on Monday morning, you heard that. You heard each person
16 that stood up during that qualification process, you
17 heard what they did for a living, what their spouses did,
18 and I hope, recognized that all of you are from different
19 backgrounds. And that's what you bring in this courtroom
20 when you sit on these juries. You bring your common
21 sense, and your background, and your experiences in life
22 to serve on these juries.

23 Our judicial system is not perfect, but I can
24 promise you it's the best in your civilized world. It's
25 the best in the civilized world. It has its hiccups so

1 to speak, and I hope you've seen that it takes a lot of
2 people, a lot of people to make our judicial system work.
3 From the lawyers to the Court reporter, to the bailiff,
4 to security, to the clerk's office, to judicial staff,
5 it's not one person that makes this system work. But you
6 all as jurors, in my opinion, are the most important part
7 of this process. Because as I said a minute ago, you all
8 as jurors have an opportunity to say what goes on in this
9 community from a judicial standpoint.

10 So, thank you again for your service. You will get
11 a check in the mail for being here. I can promise you
12 that that check in no way, shape, or form can compensate
13 you for what your service is worth. And I can't do
14 anything about that. Okay. There's no way that we could
15 pay you for what your service is actually worth. Our
16 government from the local level on up to the federal
17 level would be in worse condition than it's in now if we
18 tried to pay you for that. But I hope, again, if you're
19 summoned again to serve up here or whether it be in this
20 Court, Magistrate's Court, City Court, or Federal Court,
21 that you will come and serve understanding the great
22 responsibility that you have as a citizen of this
23 country. This is really the only, only last
24 responsibility or service that we're called to serve as
25 citizens. It's not a situation wherein you are drafted

1 into the military and have to go away for a couple of
2 years or more. This is really the only service that you
3 all have to perform.

4 Thank you again for being here. That check and any
5 work excuse will be included with that check if you need
6 it for your employment will be when it's mailed to you.
7 You should get it within a few days. If not, by the end
8 of -- How long does it take?

9 THE CLERK: We'll probably do them tomorrow.

10 THE COURT: You should get them by the end of next
11 week. If not, you call the clerk's office and they can
12 address it accordingly. Thank you again for being here.
13 You all are free to go.

14 (WHEREUPON, the jury panel is excused)

15 THE COURT: All right. It's my understanding
16 defense counsel's got a motion at this time. Mr. Jordan,
17 I will be happy hear from you, sir.

18 MR. JORDAN: Thank you, your Honor. Your Honor, at
19 this time we'd like to move for a continuance in this
20 matter. Your Honor, I'm not trying to make excuses in
21 anyway shape or form, although it may sound like it. I
22 was contacted by the public defender's office on Monday.
23 Mr. Jepertinger intended to bring Mr. Brown up here to
24 discuss with me a potential plea on Wednesday, but it
25 turns out we discussed that and decided it was going to

1 be a trial. However, I did not know it was going to be a
2 trial today. I thought he was coming to discuss a plea
3 and if it was going to be a trial then it would be later.
4 I didn't find that out.

5 Your Honor, after meeting with Mr. Brown, he was
6 taken back to the terminal. I had to make some special
7 concessions and beg for some favors to get over there to
8 see him to show him videos that were given to me on
9 August 29th that I assume are going to be used into
10 evidence here today and to discuss the case with him and
11 to prepare it for trial. The last time I saw him was at
12 his docket appearance, I believe, back in January. He's
13 been in the Department of Corrections since April, we
14 haven't had an opportunity to adequately discuss trial,
15 any defenses that he may have. We have discussed it
16 some. He's identified three to four new witnesses who we
17 are still attempting to contact. Either it would be, I
18 believe essential for him going forward to trying this
19 case.

20 Your Honor, based on that, I feel that Mr. Brown
21 would benefit from a continuance even just to the next
22 term. I'm not asking for months and months, but just
23 until the next term to continue to get these witnesses in
24 to interview them. You know, and make sure that he gets
25 a fair trial so to speak. I mean ---

1 THE COURT: I'm going to give him a fair trial since
2 I ordered he go forward. I'm going to give him a fair
3 trial.

4 MR. JORDAN: I understand that, your Honor. My
5 issue is to continue and attempt to contact these
6 witnesses that I didn't find out about until yesterday.
7 You know, evaluating what they have to say and
8 realistically helping him to evaluate whether or not he
9 should go forward with the trial or whether he should
10 plea.

11 THE COURT: All right. Anything else, Mr. Jordan?

12 MR. JORDAN: That's all on the motion for a
13 continuance.

14 THE COURT: All right. Mr. Jepertinger?

15 MR. JEPERTINGER: Your Honor, obviously you have to
16 make this call in terms of Rule Seven of the South
17 Carolina Rules of Criminal Procedure whether you're going
18 to grant a continuance. I will point out for the record,
19 the offense happen on October 31, 2012. His date of
20 arrest was November 2, 2012. He made bond with in and
21 out of bonding on November 20, 2012. His initial
22 appearance was set up for December 19, 2012 and docket
23 appearance was January 31, 2013. Between the initial
24 appearance and the docket appearance is when the
25 defendant is suppose to discuss, I guess, defenses with

1 his counsel especially since he was out on bond, your
2 Honor, at that time. I'm confident that he found the
3 Department of Corrections between December 19, 2012 and
4 January 13, 2013. If he was somewhere else or said he
5 was alibi he would have been able to provide the names
6 and addresses of everybody that where he was at. You
7 would think from Halloween October 31, 2012 to his
8 counsel.

9 So I think he would have had an opportunity to
10 present any defense at that time, Judge, because I think
11 Mr. Jordan just said that the last time he saw him was
12 either the initial or the docket, I can't remember which
13 one he just said.

14 THE COURT: When was it, Mr. Jordan?

15 MR. JORDAN: I believe it was at his docket
16 appearance, your Honor, but if I could rebut for just one
17 moment in regard to ---

18 THE COURT: When was he locked back up, in April?

19 MR. JORDAN: In April, I believe, your Honor. In
20 regard to, you know, I believe their motion, a crucial
21 piece of evidence which is going to be the video of this
22 actually occurring, I didn't receive any surveillance
23 camera photos or video until August 29th when Mr. Brown
24 was in the Department of Corrections, your Honor.

25 THE COURT: Have you been able to sit with him since

1 you got it?

2 MR. JORDAN: We just went over it yesterday. Your
3 Honor, the only other thing that I would point out here
4 is the SCDC guy sitting behind him. I don't know that
5 the jury made any sort of connections to why they were
6 there, but they were seated and they did look directly at
7 him with the SCDC guy behind him.

8 THE COURT: Anything, Ms. Parrott, you want to add
9 anything?

10 MS. PARROTT: No, your Honor.

11 THE COURT: Anything else, Mr. Jепertinger?

12 MR. JEPERTINGER: Judge, once again, I mean, in
13 terms if he's going to present an alibi defense, the
14 situation if he had been locked up, I think, in April if
15 I'm not mistaken. Obviously, he's not precluded from
16 corresponding with his counsel in providing that
17 information. I've had ---

18 THE COURT: What's his record? Does he have a
19 record?

20 MR. JEPERTINGER: Yes, sir. He's currently -- He's
21 got a burglary second degree, I guess he's serving a YOA
22 sentence. I don't know if that was on a parole
23 revocation now. And I don't know what -- Let me see what
24 else he has. I beg the Court's indulgence, I did not
25 start off with this case. Yes, I have it here. He had a

1 burglary second nonviolent original sentence to be
2 converted to a YOA not to exceed six years. Court date
3 on that was August 14, 2009. He had reckless driving in
4 2009. He had a driving under suspension in 2010.
5 Uninsured motor vehicle in 2010. The driving suspension
6 in 2010. And then it says received burglary second
7 convicted violation of probation YOA not to exceed six
8 years. That was in December of 2009. Obviously, this
9 crime happened in 2012, so i do not know what he's doing
10 his time for now.

11 MR. JORDAN: YOA got revoked, your Honor.

12 THE COURT: Again?

13 MR. JORDAN: I believe it was on this, your Honor,
14 these charges here.

15 THE COURT: Okay.

16 MR. JORDAN: Your Honor, he wanted me to clarify, he
17 has only been revoked on this one time.

18 THE COURT: Okay. Well, I am going to respectfully
19 deny your motion for a continuance. As previously stated
20 on the record, he was arrested on this particular charge
21 in November of 2012, bonded out in November of 2012 as
22 well. Initial appearance December 17. At that time,
23 that initial appearance was discovery was suppose to have
24 been provided to defense counsel for review and
25 discussion with the defendant. And any discussions that

1 defendant may have with you regarding potential defenses
2 in this case. Docket appearance was in January of 2013,
3 the end of January 2013, I understand that he has been
4 incarcerated since April of this year. However, there is
5 nothing, nothing that would have precluded him from being
6 in touch with you or your office concerning these current
7 charges. As you've been practicing law, I don't know how
8 long, Mr. Jordan, but I know well enough to know that you
9 get letters quite often from clients who are
10 incarcerated. I know when I practiced law, I got letters
11 quite often from clients who were incarcerated, talking
12 to me, conveying information about their case, and leads
13 for potential witnesses that maybe necessary for their
14 case.

15 Mr. Brown has chosen for whatever reason to wait
16 until yesterday to convey potential witnesses to you when
17 he has had from November 2 when he was arrested until
18 yesterday. He has a responsibility to cooperate with
19 you. He has a responsibility to cooperate with you. If
20 he has chosen not to do so until yesterday, that is his
21 choice. That is his choice. And he has not going to
22 come in here on the day of trial having given you a list
23 of witnesses yesterday and request a continuance when
24 he's had approximately nine months to do it.
25 Approximately nine months to do it.

1 But your motion for a continuance is certainly noted
2 for the record. But we're going to go forward and try
3 this case. Anything else at this time?

4 MR. JEPERTINGER: Yes. Your Honor, real quickly. I
5 have Ron Douglas here. Mr. Douglas gave this gentleman
6 Miranda warnings on the date of -- I don't know if it was
7 the date of arrest, but I think when he was talking to
8 him prior to arresting him. The same day of the incident
9 and he -- Basically he denied being in Johnsonville
10 during the previous day or night even though he was
11 identified, I think identification. I'm not intending to
12 introduce this statement where he says, you know, I
13 wasn't there.

14 THE COURT: Okay.

15 MR. JEPERTINGER: It would be self-serving and it's
16 not inculpatory, but they know it's out there and I think
17 that can be subject to cross examination.

18 THE COURT: If he takes the stand?

19 MR. JEPERTINGER: If he takes it or when Officer
20 Douglas takes the stand if they so choose, I guess. But
21 it would be hearsay at that point, your Honor.

22 THE COURT: Mr. Jordan?

23 MR. JORDAN: Your Honor, I haven't been provided
24 with any sort of waiver of Miranda or anything like that
25 from ---

1 MR. JEPERTINGER: It was all oral.

2 THE COURT: Well, we'll cross that bridge if we need
3 to. I mean, I don't see the necessity of even bringing
4 it up.

5 MR. JEPERTINGER: I'm not going to bring it up, but
6 I just wanted to make sure the Court was aware that if I
7 say, what did you do next and he begins that I'm
8 instructing there's no reason to bring it up.

9 THE COURT: Right. You understand that, Mr.
10 Douglas?

11 MR. DOUGLAS: I'm not really here on that.

12 MR. JEPERTINGER: There's no reason to bring up
13 saying I talked to him about Miranda or anything. Okay.

14 MR. DOUGLAS: You don't want me to testify to that
15 reading the Miranda rights to him in the interview prior
16 to this -- I mean, after the incident, but prior to ---

17 (WHEREUPON, there was a discussion off the record)

18 THE COURT: You understand, Mr. Jordan?

19 MR. JORDAN: I do, your Honor.

20 THE COURT: Anything else at this time?

21 MR. JEPERTINGER: No, sir. We're ready to proceed.

22 THE COURT: Mr. Jordan, are you ready to proceed
23 now?

24 MR. JORDAN: Your Honor, at this point, I would like
25 to move to suppress the surveillance camera photos -- Or

1 I'm sorry, the surveillance camera videos. Your Honor,
2 they're not date and time stamped in terms of the actual
3 video. So I just believe there's some sort of
4 authentication issue that it's written on the outside of
5 the CD's as to what it's supposedly or purportedly is
6 contained therein.

7 THE COURT: Well, it's not into evidence right now
8 pending whether or not they can lay a foundation for it,
9 I will certainly hear any objections that you have --

10 MR. JORDAN: Yes, sir.

11 THE COURT: -- on whether or not they can lay a
12 foundation for it. But right now make a ruling on the
13 suppression of it, I don't think it would be proper at
14 this point. The State's got to lay a foundation to have
15 it shown and introduced. Okay.

16 MR. JORDAN: Yes, sir. The only other thing I'd ask
17 for is a ten minute recess to go over the final things
18 with him and to confer with our investigator in terms of
19 the witnesses that he has spoken to so far.

20 THE COURT: All right. We'll stand down for ten
21 minutes.

22 MR. JORDAN: Thank you, your Honor.

23 (WHEREUPON, a short break was taken)

24 THE COURT: Is the State ready to proceed?

25 MR. JEPERTINGER: Yes, sir.

1 THE COURT: Mr. Tucker, will you tell Mr. Jordan?

2 MR. TUCKER: Yes, sir.

3 THE COURT: Is defense counsel ready to proceed?

4 MR. JORDAN: We're ready to go, your Honor.

5 THE COURT: All right. Bring me the jury, please,
6 ma'am.

7 (WHEREUPON, the jury came into open Court)

8 THE COURT: All right. Madam Clerk, would you swear
9 the jury, please.

10 (WHEREUPON, the jury was sworn)

11 THE COURT: All right. Ladies and gentlemen, we are
12 about to try the case of the State of South Carolina
13 verses Jeffrey Thomas Brown. Before we begin this trial,
14 I want to tell you that this trial probably will be
15 different from what you might expect. Many people do not
16 have the chance to attend actual Court sessions as you're
17 doing now and may think from watching television or
18 movies or reading books, the trials are always full of
19 high drama, intense action, and riveting circumstances.
20 Now, while all of these things maybe true at times, this
21 trial, ladies and gentlemen, is not for entertainment.
22 It is a fundamental part of our democracy. A search for
23 the truth in an effort to make sure that justice is done
24 between the parties before the Court. Searching for the
25 truth and making sure that justice is done is often slow,

JURY CHARGE BY THE COURT

1 deliberate, and repetitive. The opposite of what you may
2 have seen on television or in movies or read in books.
3 This courtroom is a place of honor dedicated to the
4 protection and preservation of citizen's rights through
5 what many have called the greatest justice system ever
6 created.

7 The attorneys appearing before you are advocates for
8 the parties that they represent. But first and foremost,
9 they are Officers of the Court sworn to uphold the
10 integrity and fairness of our judicial system and to help
11 you search for the truth. You should expect them to be
12 professional, competent, and ethical in the
13 representation of their client's interest.

14 Now, what I will now say to you is intended to serve
15 as an introduction into the trial of this case. These
16 remarks are not a charge on the law in this case. I will
17 instruct you on the law applicable to this case at the
18 end of the trial before you retire to consider your
19 verdict. This is merely an explanation of the procedure
20 that we will follow in the trial of this case so that you
21 may better understand what maybe happening.

22 Now, the defendant is charged by an indictment filed
23 in this Court with the crime of attempted arm robbery.
24 The elements of which will explained to you later. The
25 indictment, ladies and gentlemen, is simply the charge by

JURY CHARGE BY THE COURT

1 which the case is brought into this Court and it is not
2 in any sense evidence of any of the allegations that it
3 contains. The defendant has pled not guilty to this
4 indictment. Therefore, the State of South Carolina bears
5 the burden of proving each of the elements in the
6 indictment beyond a reasonable doubt. And it will be
7 your duty, ladies and gentlemen, to decide whether the
8 State has met that burden. Your purpose as jurors is to
9 find and determine the facts. You are the sole judge of
10 the facts. If at anytime I make any comment regarding
11 the facts, you must disregard it. You are to determine
12 the facts from the testimony that you hear and the other
13 evidence introduced in Court. It is up to you to
14 determine the inferences which you feel may properly be
15 drawn on from the evidence. It is especially important
16 that you perform your duty of determining the facts
17 diligently and conscientiously. Because ordinarily there
18 is no way to correct an erroneous determination of the
19 facts by a jury.

20 On the other hand, and with equal emphasis, the same
21 law that makes you judge of the facts, make me the judge
22 of the law. The law is given by the Court is the only
23 law that you may consider. You must accept and follow it
24 even though you may disagree with it. I cannot tell you
25 all, ladies and gentlemen, what the facts are and you

JURY CHARGE BY THE COURT

1 cannot disagree with me about what the law is or should
2 be. Your job is to take the law as I give it to you and
3 apply it to the facts as you find them from the testimony
4 of the witnesses and any other evidence that is
5 introduced. After doing that, you will render your
6 verdict a true and just verdict under the solemn oath
7 that you just took as jurors.

8 Now, until I tell you to begin your deliberations,
9 you must not discuss this case with anyone including your
10 fellow jurors, friends, family members, and anyone
11 involved in this case. The attorneys and parties in this
12 case have been advised that they are not to talk to you
13 at all. So if you see anyone involved in this case and
14 they do not speak to you, they aren't being unfriendly.
15 They are simply following this Court's instructions.

16 Now, during your deliberations, you may only discuss
17 the case in the jury room with your fellow jurors because
18 they have seen and heard the same evidence that you have.
19 However, you must not discuss the case with anyone other
20 than your fellow jurors until you have returned a verdict
21 in this case and it is at its end. I remind you that you
22 must decide this case, ladies and gentlemen, based solely
23 on the evidence presented here in this courtroom. This
24 means that during the trial you must not conduct any
25 independent research about this case, the facts of the

1 case, the evidence presented in the case, or people, or
2 organizations involved in anyway in the case. Please do
3 not try to find out information from any source outside
4 this courtroom. In other words, you must not look at
5 dictionaries or other reference material, search the
6 internet, website's, or blogs, or use any other
7 electronic tools to get information about this case to
8 help you decide the case. You may not use computers,
9 telephones, cell phones, smart phones, tablets, the
10 internet, or other tools of technology with communication
11 capabilities at anytime while you are in the courtroom or
12 during your deliberations. During your breaks for meals
13 or overnight if necessary you may use these devices.
14 However, you must not use them to communicate with anyone
15 about the case until the case is over. This means you
16 must not use phone calls, emails, texts, instant message,
17 or twitter, or any blog, chat room, or website including
18 Facebook, Google Plus, Myspace, Link, YouTube, or any
19 social media website to send or receive information about
20 this case. This includes information about a party, a
21 witness, an attorney, or a Court officer, news accounts
22 about the case if any, research on topics raised, any
23 topics you may think would be helpful in deciding the
24 case or any testimony presented by any witness.

25 During the trial, do not read and I don't think

JURY CHARGE BY THE COURT

1 you're going to see anything, but you're instructed not
2 to read, listen to, or watch any news reports about the
3 case. This includes what maybe in the newspapers,
4 internet, radio, or television. You must not consider
5 anything that you may have heard or read about the case
6 outside the courtroom whether before or during the trial.
7 Information on television, radio, the internet, or from
8 other sources might be wrong or incomplete.

9 In our judicial system, ladies and gentlemen, it is
10 important that you are not influenced by anything or
11 anyone outside of this courtroom. If you become aware of
12 another jurors' violation of these instructions, please
13 inform the Court, that being me, immediately.

14 It's important, ladies and gentlemen, that you keep
15 an open mind and not decide any issue in the case until
16 all of the evidence has been presented, the parties have
17 made their closing arguments, and I have instructed you
18 on the law in this case. It is your solemn
19 responsibility to determine the guilt or innocence of the
20 defendant and your verdict must be based solely on the
21 evidence as it is presented to you in this trial and on
22 the law as I instruct you during and at the close of the
23 trial.

24 Now, in just a moment, the solicitor will make what
25 is called an opening statement in which the solicitor

1 will explain to you the issues in this case or at least
2 what he thinks the issues are in this case. The attorney
3 for the defendant may also make an opening statement,
4 although he is not required to do so. What the attorneys
5 tell you during their opening statements is not evidence
6 in the case. It is only their contention as what they
7 believe the issues are. The evidence in this case will
8 be presented to you by the testimony of sworn witnesses
9 from this witness stand and/or by exhibits that maybe
10 introduce into evidence.

11 Now, from time to time during trial, ladies and
12 gentlemen, you may hear one of the attorneys say
13 something like, your Honor, I believe that we have a
14 question of law or a matter of law to discuss with you.
15 Or, your Honor, may we approach the bench? Or sometimes,
16 I myself might find it necessary to excuse you from the
17 courtroom for a short while so the attorneys and I can
18 discuss a matter of law. The reason for this is because
19 you are the judge of the facts in this case and sometimes
20 when I am discussing matters of law with the attorneys,
21 it may be necessary for me to make some comment as to the
22 facts in connection with ruling whether or not a
23 particular law applies. I am not suppose to tell you,
24 ladies and gentlemen, what I think the facts are, so I
25 will excuse you from the courtroom while these

JURY CHARGE BY THE COURT

1 discussions take place so that in no way will you be
2 influenced by anything that I might say or do in
3 connection with the facts.

4 Now, in determining what the true facts are in this
5 case, you must decide whether or not the testimony of the
6 witness is believable. It will be my responsibility to
7 rule as a matter of law as to whether certain testimony
8 is admissible at all or not. But once the testimony is
9 admitted, whether or not you believe it, is solely for
10 you to determine. Now, in deciding whether to believe a
11 witness, you have the right to consider the interest of
12 any witness, the bias of any witness, the prejudice of
13 any witness, the opportunity for the witness to have seen
14 the matters and things about which the witness may
15 testify, and the way the witness acts on the witness
16 stand. You have the right to consider anything that is
17 in the record that will help you evaluate the testimony
18 of the witnesses. That means that it is your duty to pay
19 close attention to these witnesses, to observe the
20 witnesses, to listen to the witnesses, and to pay close
21 attention to the attorneys and to the Court.

22 Please do not let your thoughts wonder, but give
23 strict attention to the testimony in this case so that at
24 the end of all the testimony, after the arguments of
25 counsel, and the charge on the law by the Court, you will

OPENING STATEMENT BY MR. JEPERTINGER

1 then be in a position to determine what the true facts
2 are and to apply the law to those facts and thus render a
3 true and just verdict.

4 Now, later in this case, a foreperson will be
5 selected to preside over deliberations in the jury room.
6 It will be the foreperson's added responsibility to
7 preside in the jury room, and be the jury spokesperson
8 here in Court. It will also be the foreperson's
9 responsibility to write the verdict. But I will give the
10 foreperson further instructions at the conclusion of this
11 case. Now, in order to preserve everyone's rights, I'll
12 give the parties an opportunity to object to anything
13 that I have said.

14 Any exceptions or objections or anything that I have
15 said to jury by the State?

16 MR. JEPERTINGER: No, sir.

17 THE COURT: Defense counsel?

18 MR. JORDAN: No, sir.

19 THE COURT: All right. Mr. Jepertinger, you're
20 recognized for opening statements, sir.

21 MR. JEPERTINGER: Thank you. The year was about
22 1967, I, too, as a child. It was Halloween time, October
23 31, and my older brother Mark decided to make a costume
24 for me. So here I am about five years old and he sends
25 me out dressed as Satan, a pitchfork, and all. And, of

OPENING STATEMENT BY MR. JEPERTINGER

1 course, at that time, I was raised up north and you can
2 tell by my accent, that the best places to go were, I
3 hate to say this, but bars. He'd send me in. Trick or
4 treat. You'd get candy, Judge, and you'd get money. And
5 that was the best thing in the world.

6 You know, this crime that we're here for today
7 happened on Halloween, October 31, 2012. And Jeffrey
8 Brown didn't go into a bar to get candy or money. He
9 went into the Kangaroo Express with a knife to get money.
10 However, he didn't meet up with a helpless patron at a
11 bar with Satan, about this tall, standing with a
12 pitchfork asking for candy. He met Teresa Swanson. And
13 when he came into that store on October 31, 2012 at
14 approximately 4:45 in the morning, a quarter to five in
15 the morning, and he pulled that knife on her, counter,
16 and basically told her she's getting robbed, the store's
17 getting robbed, Teresa pulled out a club and ended that
18 robbery right there. When he saw that club, he left.

19 Now, when he came into that store, he had a hoodie
20 on, what I call floral shorts. I don't know if you'll be
21 able to see them on a video. And the vantage point to
22 the counter won't allow you to see his face, but she is
23 eyeballing him, looking directly at him in his face. And
24 she's going to tell you that Jeffrey Thomas Brown was the
25 guy that came into that Kangaroo Express. The only one

1 they have there at the red light in Johnsonville. The
2 man that tried to rob the Kangaroo Express.

3 It doesn't end there. He leaves the store. And he
4 runs to get into an extended white pickup truck that's
5 being driven by a guy name Matthew Venters. Who has some
6 sort of a relationship to Jeffrey Brown. In fact, in the
7 video that you are going to see that happened about a
8 quarter to five on Halloween, 2012, you will see that
9 pickup truck as he gets out, walks to the store, and gets
10 in the store.

11 Now, about an hour earlier that day around 3:52 in
12 the morning, Mike Christian who also works in the
13 Kangaroo Express in Johnsonville, this young man here
14 with the plaid shirt on was the cashier at the same
15 Kangaroo Express. Guess who comes into the store at
16 3:52, an hour earlier? Jeffrey Thomas Brown. No
17 disguise. You'll be able to see him on the video.
18 Different clothing that he had when he came in an hour
19 later. Same guy.

20 What else does Mike Christian see? You'll hear that
21 he got into an extended Ford pickup. The same vehicle he
22 sees an hour later when Venters and Brown try to flee
23 from the area.

24 Two days later, you're going to hear from Ms.
25 Swanson. Guess who comes in the store saying, whoa, I

OPENING STATEMENT BY MR. JEPERTINGER

1 didn't do it! Jeffrey Brown. You'll hear from Chief
2 Douglas that he got up to the store after he conducted
3 his investigation and he arrests Jeffrey Thomas Brown at
4 that Kangaroo Express on Friday, November 2. And low and
5 behold, what does he have on him? That same pocketknife
6 that he had on Halloween.

7 And here's the cherry on top on of the ice cream
8 Sunday, folks. How do we know he did it? And that it
9 isn't some misidentification or just something wrong
10 about this? Mr. Getaway driver, Matthew Venters is
11 scheduled to testify in the course of this trial to tell
12 you who went in that store and tell you his part and tell
13 you his part.

14 Folks, in each and every case in the State of South
15 Carolina across this country of ours, it's incumbent upon
16 the government, the State, the people, to prove guilt
17 beyond a reasonable doubt. It's not guilt based on
18 conjecture, opinion. It's not based on any of that
19 business. It's based on what His Honor has already told
20 you. The testimony that you will hear from this witness
21 stand and any items and exhibits that come in. That's
22 it.

23 Folks, in this case, it's my contention that there
24 will be evidence to prove this gentleman's guilt beyond a
25 reasonable doubt. Thank you.

1 THE COURT: Thank you, Mr. Jepertinger. Mr. Jordan?

2 MR. JORDAN: Thank you, Your Honor. I want thank
3 you, ladies and gentlemen, for being here. My name is
4 Daniel Jordan, part-time assistant public defender here
5 in Florence County, so, I have an office here on West
6 Evans Street. Today I'm here representing Mr. Jeffrey
7 Brown. I want to thank you all for being here. You all
8 have as Judge Brown's already told you, the most
9 important job really here today or if it goes into
10 tomorrow, tomorrow. You get to sit here and listen to
11 the evidence presented by the solicitor's office and
12 potentially by the defendant. You all get to determine
13 what the truth is. You determine whether or not the
14 solicitor's office has met their burden of proving that
15 Mr. Brown is guilty beyond a reasonable doubt.

16 My opinion, and I believe that Mr. Brown is innocent
17 until he's proven guilty. Mr. Jepertinger, he tells a
18 good story. I hope one day he writes a book. Frankly,
19 I'd buy it. And I hope you all paid attention to the
20 story that Mr. Jepertinger put out to you. What I want
21 you all to do is listen. Listen to each witness.
22 Everything that they have to say. Evaluate the evidence
23 on your own and then come to a decision about whether or
24 not Mr. Brown committed a crime. Whether or not he is in
25 fact guilty.

TERESA SWANSON - DIRECT EXAMINATION BY MR. JEPERTINGER

1 Folks, I appreciate everything that you're doing.
2 That you have better places to be. Lord knows I have
3 better places to be. My wife's 38 weeks pregnant and
4 we're going to find out whether or not we're going to the
5 hospital today. You know, so I understand you all have
6 better places to be. We appreciate you being here. I
7 hope you keep an open mind. Hope you listen to
8 everything that's said and make your own decision about
9 Mr. Brown's guilt or innocence here. Thank you.

10 MR. JEPERTINGER: Your Honor, the State would call
11 Teresa Swanson to the stand.

12 TERESA L. SWANSON,
13 being first duly sworn, was examined and testified as
14 follows:

15 THE CLERK: Please be seated and state your full
16 name for the record.

17 MS. SWANSON: Teresa LynnAnn Swanson.

18 DIRECT EXAMINATION BY MR. JEPERTINGER:

19 Q Okay. Ms. Swanson, where do you work?

20 A Kangaroo Express.

21 Q Okay. And where is the Kangaroo Express?

22 A 104 North Georgetown Highway in Johnsonville, South
23 Carolina.

24 Q Okay. Is Johnsonville in Florence County, South
25 Carolina?

1 A Yes, sir.

2 Q All right. Were you working back on October 31, of
3 2012?

4 A Yes.

5 Q All right. Can you tell the ladies and gentlemen of
6 the jury what your job responsibilities there at Kangaroo
7 Express were?

8 A I'm a store manager.

9 Q All right. And how long been store manager?

10 A At that location, over a year.

11 Q All right. When did you become store manager? Was
12 it in 2012? Which part of 2012? You said it is over a
13 year.

14 A Are you talking about originally or for that store?

15 Q For that store.

16 A May of 2012.

17 Q Okay. So you'd been the manager there for -- When
18 this incident happened approximately how long?

19 A Six months or so.

20 Q Okay. What time did your shift start?

21 A 4:30 a.m.

22 Q All right. So you had just gotten to the Kangaroo?

23 A Yes.

24 Q Okay. Did anything unusual happen to you shortly
25 after your shift began at the Kangaroo?

TERESA SWANSON - DIRECT EXAMINATION BY MR. JEPERTINGER

1 A Yes. About quarter to five is when Mr. Brown
2 entered the store.

3 Q A.m. or p.m.?

4 A A.m.

5 Q Okay. Go ahead.

6 A He entered the store with a bag telling me to put
7 the money from the register in the bag.

8 Q All right. Did he have anything on his person? In
9 his hands?

10 A His pocketknife.

11 Q Okay.

12 A And the bag.

13 Q A plastic bag?

14 A Yes, sir.

15 Q Okay. I am going to show you State's Exhibit One
16 for identification purposes at this point. Do you
17 recognize that object?

18 A Yes, I do.

19 Q And what is that object?

20 A It's a pocketknife.

21 Q And is that the pocketknife that Mr. Brown had when
22 he entered the Kangaroo Express at 4:45 in the morning on
23 October 31, 2012?

24 A Yes, sir.

25 Q All right.

TERESA SWANSON - DIRECT EXAMINATION BY MR. JEPERTINGER

1 MR. JEPERTINGER: At this time, your Honor, I would
2 move State's Exhibit One into evidence.

3 THE COURT: Any objection?

4 MR. JORDAN: Your Honor, I do object. Your Honor,
5 there is some questions as to ---

6 THE COURT: Hold on a minute. Can you approach?

7 (WHEREUPON, a bench conference was held in the
8 presence of the jury, but out of the hearing of the jury)

9 THE COURT: Over defense counsel's objection it's
10 admitted into evidence as State's Exhibit number what,
11 Mr. Jepertinger?

12 MR. JEPERTINGER: One.

13 THE COURT: As State's Exhibit No. One.

14 (WHEREUPON, State's Exhibit No. 1 was marked and
15 entered)

16 Q Okay. When he came into the store with State's
17 Exhibit One, that's into evidence, and you say he had a
18 plastic bag in another hand?

19 A Yes. One of the Thank You bags from the store.

20 Q All right. And what did he say to you?

21 A "Put the money in the bag, bitch, or I'll come over
22 the counter and kill your fucking ass."

23 Q All right. What had you been doing at that
24 particular time when he entered the store?

25 A I had opened up the safe because I was going to get

TERESA SWANSON - DIRECT EXAMINATION BY MR. JEPERTINGER

1 the money out to count it and I had stopped to talk to
2 Mike and that's when he had come in the store.

3 Q Now, where was Mike located when he came into the
4 store?

5 A On register one is on this side. And register two
6 is on this side. He was over here.

7 Q Okay. And at that point when he said that to you,
8 what did you do?

9 A I sort of looked at him and I looked at the knife
10 and I thought all's he could do is give me stitches, so I
11 told him it wasn't happening.

12 Q And then what did you do?

13 A I reached down and got the club -- Well, should I
14 say what he said first?

15 Q Did he say anything?

16 A Yes. He asked me why not. And that's when I
17 reached down and got the club and I brought the club up
18 and he said, oh shit! And I reached back over and pushed
19 the panic alarm and he took off.

20 Q All right. Now, how was he dressed when he came
21 into the store at 4:45 with knife in hand and a Thank You
22 bag in the other and said those things and asked for
23 money?

24 A A light colored hoodie that he had it closed up.

25 Q All right.

1 A Like beach shorts. I can't remember the color of
2 the beach shorts. No shoes.

3 Q Okay. Was -- Did he have any sort of bandanna over
4 his face anything like that?

5 A No.

6 Q Okay. Did you get a good look at his face?

7 A Yes, I did.

8 Q Can you tell the ladies and gentlemen of the jury
9 who came into the store with a knife in his hand
10 demanding money at 4:45? Do you see him in the courtroom
11 today?

12 A Yes. Right over there.

13 Q Is it the gentleman in the short blue shirt?

14 A Yes, sir.

15 Q Okay.

16 MR. JEPERTINGER: Let the record reflect that she
17 has identified the perpetrator of the crime as being
18 Jeffrey Thomas Brown the defendant in this case.

19 THE COURT: So noted for the record.

20 Q All right. Now, when you grabbed the club and
21 pushed the panic button, what did he do?

22 A He sort of stood there and looked at me for a second
23 and said, shit! And turned around and ran out the door.

24 Q Okay. What did you do?

25 A I had hit the club on the counter and told him to

TERESA SWANSON - DIRECT EXAMINATION BY MR. JEPERTINGER

1 come back, I had something for him.

2 Q All right. And then what did you do?

3 A Followed Mike out the door to see which way they
4 were going.

5 Q Okay. Did you see which way he went?

6 A He went out beside the store and behind it and then
7 over to the car wash.

8 Q Did you see anything at that car wash?

9 A We seen the white truck take off.

10 Q Okay. Was it an extended cab white pickup?

11 A Yes.

12 Q All right. And at that point, once it took off,
13 what did you do?

14 A He was on the phone to 911, so I went back in the
15 store. I had a job to do.

16 Q When you say, "he," was that Mike Christian?

17 A Mike.

18 Q Okay. Did you wait for the police to arrive?

19 A Yes.

20 Q Okay. And did the police arrive?

21 A Yes.

22 Q All right. Was Mike -- Did Mike Christian from your
23 vantage point see the white truck?

24 A Yes.

25 Q All right. When you got back into the store, was

1 there any -- Was there any video that you wanted to look
2 at?

3 A Yes, from an hour before.

4 Q All right. And did you look at that video from an
5 hour before?

6 A Yes.

7 Q All right. And who was dealing with that individual
8 when you looked at that video?

9 A Mike was waiting on him.

10 Q And who was the individual that you saw on that
11 video?

12 A Jeffrey Brown.

13 Q Okay. All right. Was that the same individual once
14 again that came in with hoodie?

15 A Yes, it was.

16 Q All right. Now, I am going ask Mike about the video
17 from an hour earlier. Okay. So we're only going to talk
18 about these two videos on State's Exhibit Three. All
19 right. Have you had chance to review these videos from
20 4:44 or 4:45 -- In the morning, 4:45?

21 A Yes, I made those videos.

22 Q Okay. Do those videos fairly and accurately portray
23 what occurred on October 31, 2012 at approximately
24 quarter to five in the morning?

25 A Yes.

TERESA SWANSON - DIRECT EXAMINATION BY MR. JEPERTINGER.

1 MR. JEPERTINGER: At this time, I would move State's
2 Exhibit Three into evidence.

3 THE COURT: Any objection?

4 MR. JORDAN: No objection. He laid a proper
5 foundation.

6 THE COURT: Without objection so admitted into
7 evidence is State's Exhibit Number Three. Right, Number
8 Three?

9 MR. JEPERTINGER: Yes, Number Three.

10 (WHEREUPON, State's Exhibit No. 3 was marked and
11 entered)

12 MR. JEPERTINGER: At this time, we would like to
13 publish this to the jury, your Honor. And we need to get
14 Mr. Godbolt.

15 THE COURT: All right. Ladies and gentlemen of the
16 jury, in layman's term when he says, "publish to the
17 jury," that means, show it to you. We're fixing to show
18 you that video that he's just admitted into evidence.
19 Okay. Enter into evidence.

20 (WHEREUPON, a pause in the proceedings)

21 (WHEREUPON, video being played for the jury)

22 Q Ms. Swanson, these events happened on October 31,
23 2012, Halloween; is that correct?

24 A Yes.

25 Q All right. Did you have an opportunity to see the

1 accused in this case after October 31, 2012?

2 A On that Friday.

3 Q Friday. So if Wednesday was October 31, 2012;
4 correct?

5 A Yes. You mean, November 2?

6 Q That be Friday, November 2, two days after the
7 incident. Where did you see Jeffrey Thomas Brown?

8 A Back in my store.

9 Q All right. Did he have a conversation with you?

10 A Yes.

11 Q All right. And after his conversation with you, or
12 during his conversation, did you do anything in terms of
13 contacting law enforcement?

14 A When he left the store, went out the door, finished
15 pumping the gas with his girlfriend or whoever it was, I
16 called the police.

17 Q All right. And did Chief Douglas come out there or
18 was it Officer Howell?

19 A I think it was Chief Douglas.

20 Q All right. And at that point did you tell him who
21 was at your store?

22 A Well, I called up to the office and I told him he
23 was in the parking lot.

24 Q All right. And they came?

25 A Yes.

TERESA SWANSON - CROSS EXAMINATION BY MR. JORDAN

1 Q And they arrested him; correct?

2 A Yes.

3 Q All right. Okay. Thank you. Please answer any
4 questions that the defense attorney may have for you.

5 A Okay.

6 THE COURT: Cross examination.

7 MR. JORDAN: Thank you, your Honor.

8 CROSS EXAMINATION BY MR. JORDAN:

9 Q All right. Ms. Swanson, you say you started with
10 Kangaroo in Johnsonville in May of 2012?

11 A Yes, sir.

12 Q Prior to that, were you working there or is that
13 just when you became the manager or ---

14 A I've been a manager at the Kangaroo since 2004.

15 Q What other Kangaroo stations have you worked at?

16 A The one in Surfside, Garden City, Murrells Inlet,
17 Pamplico. All in Georgetown.

18 Q So you're quite familiar with running a convenient
19 store?

20 A Yes, sir.

21 Q Okay. What are your normal hours as a manager?

22 A My normal hours are 4:30 in the morning until 2:30
23 in the afternoon.

24 Q What are your duties consistent of?

25 A Money accountability, accountability for inventory,

1 making schedule, several things.

2 Q Okay. On this particular day, we've seen the video
3 someone attempting to get the money from you; correct?

4 A Yes, sir.

5 Q All right. You came in at 4:30?

6 A Yes.

7 Q Do you have a lot of regular customers?

8 A Yeah, in the mornings we do. Yes.

9 Q How often do you see Mr. Brown?

10 A I don't remember see him before that.

11 Q Okay. So you don't remember seeing him one time
12 before this incident?

13 A Well, I also wait on 4- to 500 people per shift and
14 I work five days a week.

15 Q Ms. Swanson, tell me what made you think that you
16 needed to look back an hour at some video?

17 A Because Mike recognized him from an hour before.

18 Q And so you took his word and you looked back at it
19 and that's the only I guess two times maybe you've seen

20 --

21 A Yes.

22 Q -- or claimed to have seen Mr. Brown?

23 A Other than that Friday, yes.

24 Q Okay. So you're not friends with him? Friends with
25 the family? Intimately aware of who this gentleman is?

TERESA SWANSON - CROSS EXAMINATION BY MR. JORDAN

- 1 A No.
- 2 Q And his comings and goings?
- 3 A I have no idea.
- 4 Q You say you wait on 4- or 500 people a day; correct?
- 5 A Yes, sir.
- 6 Q And yet you remember this one person?
- 7 A Wouldn't you?
- 8 Q How many times have somebody walked in? I mean,
- 9 you've been working in convenient stores since 2004, how
- 10 many times has this happened to you, Ms. Swanson?
- 11 A Once.
- 12 Q That's it?
- 13 A Once.
- 14 Q Pretty calm, cool, and collected for a lady who's
- 15 only been held up one time?
- 16 A That's all.
- 17 Q Okay. Have you ever met the defendant's stepbrother
- 18 Matthew?
- 19 A Not that I know of.
- 20 Q Did the police ever show you any photos, give you a
- 21 lineup or anything like that?
- 22 A No.
- 23 Q Okay. So you have no idea what Matthew looks like,
- 24 do you?
- 25 A I've seen him in the mugshots magazine.

TERESA SWANSON - CROSS EXAMINATION BY MR. JORDAN

1 Q Okay. So you do know what he looks like?

2 A Sorta. Kinda. I don't know. I wouldn't know him
3 if he was in here.

4 Q You ever talked with him?

5 A No.

6 Q Okay. The gentleman that you saw that you
7 physically saw in the store, did you see his ears?

8 A No.

9 Q Okay. Did you see his hair?

10 A He had a little bit of his hairline and that was
11 just like a couple little things.

12 Q Was he wearing a hat?

13 A He was wearing a hoodie.

14 Q Okay. But you didn't see his ears?

15 A No.

16 Q About how tall was he?

17 A Oh, about as tall as I am. A little bit taller.

18 Q Okay. How tall are you?

19 A Five six.

20 Q So may be 5'8", 5'9"?

21 A I don't know.

22 Q How -- How much do you figure he weighs?

23 A I wasn't looking at how much he weighed.

24 Q Okay. You weren't looking at how much he weighed or
25 really how tall he was?

TERESA SWANSON - CROSS EXAMINATION BY MR. JORDAN

1 A I was looking right over at his face because he was
2 speaking to me and, you know, this stuff doesn't happen
3 to you every day.

4 Q Okay. You were looking at his face?

5 A Yes.

6 Q So you were looking at his face the whole time?

7 A Well, and then thinking about what to do.

8 Q Okay. You were looking at his face the whole time?

9 A Yeah, I don't remember everything. I mean, but that
10 was him.

11 Q Okay. Now, I believe Mr. Jepertinger asked you if
12 this is the knife?

13 A Yeah.

14 Q Okay. If you were looking at his face the whole
15 time, how did you see the knife?

16 A Because when I was looking down thinking whether or
17 not I should give him the money, I was thinking, well, I
18 looked down at the knife and I thought all's he could do
19 is give me stitches.

20 Q And you're 100 percent sure that's the knife?

21 A It was about that long and brown. I didn't see the
22 end of it.

23 Q Okay. You're 100 percent sure that it could not
24 have been anyone other?

25 A No, it was him.

TERESA SWANSON - CROSS EXAMINATION BY MR. JORDAN

1 Q One hundred (100) percent without a doubt?

2 A I'm positive.

3 Q You weren't scared?

4 A Well, I really wasn't scared. I wasn't really
5 afraid of them because I really didn't think he would
6 hurt me that day bad.

7 Q Didn't know how much he weighed? What color was his
8 shorts?

9 A He was probably about 160 pounds. About as much as
10 I did at the time.

11 Q Okay. So you were scared?

12 A In a way. But then in a way I wasn't because what
13 could he do with me with a pocketknife?

14 MR. JORDAN: Beg the Court's indulgence.

15 THE COURT: Yes, sir.

16 MR. JORDAN: I have no further questions at this
17 time.

18 THE COURT: Any redirect?

19 MR. JEPERTINGER: No, sir.

20 THE COURT: You may step down, ma'am. Thank you.

21 MR. JEPERTINGER: And I would ask, your Honor, if
22 Ms. Swanson could be excused to -- From any further
23 responsibilities here in Court?

24 THE COURT: Any objection?

25 MR. JORDAN: No objection.

MICHAEL CHRISTIAN - DIRECT EXAMINATION BY MR. JEPERTINGER

1 THE COURT: Without objection, ma'am, you're
2 excused, free to leave, you have no further
3 responsibilities under your subpoena. Thank you for
4 being here.

5 (WHEREUPON, the witness leaves the witness stand)

6 MR. JEPERTINGER: Your Honor, we'd call Mike
7 Christian.

8 MICHAEL J. CHRISTIAN,
9 being first duly sworn, was examined and testified as
10 follows:

11 THE CLERK: Please be seated and state your full
12 name for the record.

13 MR. CHRISTIAN: Michael Jerome Christian.

14 DIRECT EXAMINATION BY MR. JEPERTINGER:

15 Q Okay. Mike, where do you work?

16 A Kangaroo.

17 Q Okay. And which Kangaroo do you work at?

18 A The one in Johnsonville. The one on North
19 Georgetown Highway.

20 Q Okay. What I'm going to do and don't get offended,
21 I'm going to move this microphone because you're a little
22 soft spoken. Can you get up there like you're Johnny
23 Cash or something. Okay. All right. And how long have
24 you been working at the Kangaroo in Johnsonville?

25 A About five years.

MICHAEL CHRISTIAN - DIRECT EXAMINATION BY MR. JEPERTINGER

1 Q Okay. And what do you do at the Kangaroo in
2 Johnsonville?

3 A I'm a cashier. When I work nightshift I stock up
4 ---

5 THE COURT: Sir, you've got to speak up.

6 Q You can yell at me brother. Just go ahead. Speak
7 as loud as you can.

8 A I'm a cashier and I stock the store, clean,
9 day-to-day operation.

10 Q Okay. Just keep your voice up, please.

11 THE COURT: Hold on a minute. See that young man by
12 the backdoor back there?

13 A Yes, sir.

14 THE COURT: Talk as though you talking to him back
15 there for me. Okay.

16 A Yes, sir.

17 THE COURT: All right.

18 MR. JEPERTINGER: Thank you, Judge. I appreciate
19 it.

20 Q I'm going to take you back to Halloween, 2012,
21 October 31; were you work that morning?

22 A Yes, sir.

23 Q Do you remember what time your shift started?

24 A Yes, sir.

25 Q What time did your shift start?

MICHAEL CHRISTIAN - DIRECT EXAMINATION BY MR. JEPERTINGER

1 A Eleven o'clock. P.m.

2 Q P.m. The night before which would have been October
3 30; correct?

4 A Yes, sir.

5 Q All right. Now, did anything -- How was the traffic
6 -- Store traffic that evening if you recall?

7 A It was normal traffic.

8 Q Okay. Did you have an opportunity to see the
9 defendant in this case Jeffrey Thomas Brown during your
10 shift?

11 A Yes, sir.

12 Q Okay. Can you tell the ladies and gentlemen of the
13 jury if you saw him during your shift?

14 A Yes, sir.

15 Q Okay. At what -- About what time did you see him
16 during your shift?

17 A He came in the first time about 3:50, 3:52.

18 Q All right. And did you wait on him?

19 A Yes, sir.

20 Q Okay. Did you happen to see how he either got to
21 the Kangaroo or left from the Kangaroo in terms of
22 transportation?

23 A Yes, sir.

24 Q And what did you observe?

25 A He was riding in a white extended cab Chevrolet

MICHAEL CHRISTIAN - DIRECT EXAMINATION BY MR. JEPERTINGER

1 truck. How I remember because I had a Black and Mild and
2 he bought one. He took mine, so I took the one he
3 bought. I had done smoked the one I had. It was like a
4 half of one. And I walked outside and that's how I
5 knowed the truck.

6 Q All right. And that was -- You saw him in the
7 parking lot?

8 A Yes, sir.

9 Q All right. And was he driving or did he get in the
10 passenger seat; do you remember?

11 A I think he was a passenger seat at that time. I'm
12 not sure. I think he got in the passenger side.

13 Q Okay. If you're not sure, don't volunteer. But if
14 you're not sure, you're not sure. All right. After
15 3:52, did Ms. Swanson wind up getting to the store for
16 her shift?

17 A Yeah, she came in like 30 minutes after.

18 Q All right. And then did anything unusual happen
19 while Ms. Swanson was there?

20 A Yes, sir.

21 Q All right. Where were you standing when Ms. Swanson
22 was dealing with the attempted armed robbery?

23 A I was on the other side of register two, standing
24 right there.

25 Q Okay. And what did you see?

MICHAEL CHRISTIAN - DIRECT EXAMINATION BY MR. JEPERTINGER

1 A I saw him came in there with the knife and then he
2 told her what he said. And at first I was about to run
3 and leave her. But then I saw he just had a little
4 knife, so I stood there because she stood there. I
5 didn't want to leave her in there by herself, so I just
6 stood there and ducked down and looked at him.

7 Q Okay. When you stood down there and ducked down and
8 looked at him, who did you see?

9 A Jeff.

10 Q The defendant in this case?

11 A Yes, sir.

12 Q All right. Was he dressed the same way as when he
13 came into the store an hour earlier?

14 A No, sir.

15 Q How was his clothing different?

16 A He had on short pants with a sweatshirt. No socks
17 and shoes.

18 Q All right. And he was dressed differently an hour
19 beforehand?

20 A Yes, sir.

21 Q All right. Now, on State's Exhibit Three we see an
22 individual running out after the guy with the no shoes
23 on, who was that individual?

24 A It was me.

25 Q All right. And what did you see when you got on the

1 outside of the store?

2 A When I ran outside the store, he was running around
3 the building. He was going around the car wash the
4 backside. So I ran out front because I figured they was
5 coming out to the highway. It was only two ways out. He
6 would had to cut through peoples yard to come out the
7 backside, so I ran to the road to see. And when I first
8 ran to the road, the truck krunk up, he didn't even make
9 it to the truck yet. The truck krunk up and then moved
10 and that's what I told the 911 people. I said, it's got
11 to be two people. He ran to the driver side and I guess
12 the other guy was driving, so he ran right in front of
13 the truck and ran the passenger side. The truck took off
14 down the road.

15 Q All right. Now, at that point, did you go back into
16 the store and wait for the police?

17 A Yes, sir.

18 Q Did you ask or tell Ms. Swanson about seeing this
19 guy an hour beforehand?

20 A Yes, sir.

21 Q All right. And was there a video of him coming into
22 the store an hour beforehand?

23 A Yes, sir.

24 Q Okay. Did you look at that video?

25 A Yes, sir.

MICHAEL CHRISTIAN - DIRECT EXAMINATION BY MR. JEPERTINGER

1 Q Did that video fairly and accurately portray what
2 happened at about 3:52 at the Kangaroo on Halloween at
3 the Johnsonville Kangaroo Express?

4 A Yes, sir.

5 Q All right.

6 MR. JEPERTINGER: At this time, your Honor, I would
7 move State's Exhibit Two into evidence.

8 THE COURT: Any objection?

9 MR. JORDAN: No objection, your Honor.

10 THE COURT: Without objection, State's Exhibit
11 Number Two admitted into evidence.

12 (WHEREUPON, State's Exhibit No. 2 was marked and
13 entered)

14 MR. JEPERTINGER: May I publish State's Exhibit Two
15 to the jury?

16 THE COURT: Yes, sir.

17 (WHEREUPON, video played for the jury)

18 Q Okay. Mike, after you got back and you had a
19 chance to look at the video, did you tell the police
20 about the videos?

21 A Yes, sir.

22 Q Okay. And was that your only involvement in this
23 case?

24 A Yes, sir.

25 Q Okay. Thank you so much. Please answer any

MICHAEL CHRISTIAN - CROSS EXAMINATION BY MR. JORDAN

1 questions the defense attorney may have.

2 THE COURT: Cross examination.

3 MR. JORDAN: Thank you.

4 CROSS EXAMINATION BY MR. JORDAN:

5 Q Mr. Christian, I'm going to be brief. Okay. What
6 are your normal hours?

7 A Eleven p.m. to seven a.m.

8 Q Okay. So you typically work a nightshift. How long
9 you been doing that?

10 A About five years.

11 Q All right. When this customer was in the store, the
12 one on this video here, did you notice any identifying
13 marks? Tattoos? Ear piercing's? Anything like that?

14 A No. Not really, no.

15 Q Okay. You said that you saw the perpetrator,
16 whoever it was that came in and tried to rob the store;
17 is that correct?

18 A Yes, sir.

19 Q Okay. And I believe you said you saw him with a
20 knife?

21 A Yes, sir.

22 Q Did you get good look at his hand? Holding the
23 knife?

24 A I saw the knife. Because I looked to see what he
25 had in his hand first because if he had a gun, I was

MICHAEL CHRISTIAN - CROSS EXAMINATION BY MR. JORDAN

1 going to run and leave Teresa.

2 Q I don't blame you. I certainly don't blame you.

3 I'd been right behind you. Tell me, did you notice any
4 tattoos on his hands?

5 A No, sir.

6 Q Okay. How about his legs? Was he wearing shorts?

7 A Yes, sir.

8 Q Any tattoos on his legs?

9 A I don't know. I just know he didn't have on no
10 shoes so I figured he couldn't go but so far because it
11 was cold that morning.

12 Q All right. But you didn't notice any tattoos on his
13 hands?

14 A No, sir.

15 Q Okay. No tattoos on his legs?

16 A No, sir.

17 Q Okay.

18 MR. JORDAN: One moment, your Honor.

19 THE COURT: Yes, sir.

20 MR. JORDAN: No further questions, your Honor.

21 THE COURT: Any redirect?

22 MR. JEPERTINGER: No, sir.

23 THE COURT: Sir, you may step down. Thank you, sir.

24 MR. JEPERTINGER: And the same thing about Mr.

25 Christian and ask he be excused.

RON DOUGLAS - DIRECT EXAMINATION BY MR. JEPERTINGER

1 THE COURT: Any objection to him being excused, Mr.
2 Jordan?

3 MR. JORDAN: No objection, your Honor.

4 THE COURT: Sir, you're excused. You're free to go.
5 Thank you for being here today.

6 MR. JEPERTINGER: We'd call Ron Douglas.

7 RON DOUGLAS,
8 being first duly sworn, was examined and testified as
9 follows:

10 THE CLERK: Please be seated and state your full
11 name for the record.

12 MR. DOUGLAS: My name is Ron Douglas.

13 DIRECT EXAMINATION BY MR. JEPERTINGER:

14 Q Okay. Mr. Douglas, tell us what you do for a
15 living.

16 A I'm the Chief of Police for the City of
17 Johnsonville.

18 Q And how long have you been the Chief of Police for
19 the City of Johnsonville?

20 A Eleven years.

21 Q All right. And prior to that, what did you do?

22 A I retired from the Florence Police Department.

23 Q How long were you there?

24 A I was there 18 years.

25 Q Until -- How long have you been in law enforcement?

RON DOUGLAS - DIRECT EXAMINATION BY MR. JEPERTINGER

1 A Thirty-two (32) years total.

2 Q All right. Did you get a call to go out to the
3 Kangaroo Express in Johnsonville?

4 A I did.

5 Q Okay. Is that -- I know Johnsonville is a small
6 city. Is that the only service station there or do you
7 have other ones?

8 A That's the only 24 hour convenient store we have.

9 Q Okay. So you got the call to go out there on
10 Halloween?

11 A I did not respond at the initial incident.

12 Q In fact, the initial officer that responded was this
13 gentleman?

14 A Correct.

15 Q Okay. And he was on scene when you got there?

16 A Yes, sir. I did not respond. Actually, this was
17 during the nighttime and obviously I work the daytime
18 most of the time.

19 Q All right.

20 A So Officer Howell did the initial investigation
21 during the nighttime. I followed up.

22 Q All right. Did you have a chance to speak with any
23 of the victims later that day?

24 A I did.

25 Q Okay. After you spoke with them, were you informed

RON DOUGLAS - DIRECT EXAMINATION BY MR. JEPERTINGER

1 about the videos that we've seen in State's Exhibit Two
2 and Three?

3 A I was. I spoke to Ms. Swanson who like myself was
4 on duty during that time and received the videos and
5 placed them into evidence.

6 Q All right. Did you get any potential names of any
7 possible suspects?

8 A I did. At that point she had told me that she had
9 learned through her own checking out the information that
10 the defendant who robbed the store was actually Jeffrey
11 Brown.

12 Q All right. And at that point, did you immediately
13 go arrest -- Try to find Jeffrey Brown and arrest him?
14 Or did you want to conduct somewhat of an investigation?

15 A I wanted to conduct an investigation to make sure
16 that I was convinced and could convenience other
17 reasonable people that he was in fact the person who
18 robbed the store.

19 Q All right. And were you also interested in finding
20 the second individual?

21 A That's correct.

22 Q All right. So did you have an opportunity to go
23 speak with a Matthew Venters?

24 A Yes, sir. I spoke to Jeffrey Brown first and then I
25 went and spoke to Matthew Venters. It's a small

RON DOUGLAS - DIRECT EXAMINATION BY MR. JEPERTINGER

1 community. We know everyone. And so it's not very
2 difficult to find people and know what their patterns and
3 where they work and where they live and things like that.

4 Q All right. When you spoke with them, did you arrest
5 him right off the bat?

6 A I did not. I spoke with Jeffrey briefly and did not
7 arrest him at that point.

8 Q Okay. Did you speak the same thing with Matthew
9 Venters?

10 A I spoke with Matthew Venters and I did not arrest
11 him at that point.

12 Q Okay. Now, this is Halloween/November 1, did you
13 draw some conclusion at that point about arresting them?

14 A I did. After speaking with both the individuals and
15 the witnesses, I contacted our municipal judge and asked
16 for and received arrest warrants for two individuals, one
17 being the defendant today Jeffrey Brown.

18 Q And?

19 A And Matthew Venters.

20 Q And Matthew Venters. Okay. Now, did you get a call
21 from Ms. Swanson to go back to the Kangaroo Express?

22 A I did. That was on Friday morning at about
23 8:45 a.m.

24 Q All right. And when you got there, who did you find
25 in parking lot?

1 A Jeffrey Brown.

2 Q All right. Did you tell him he was under arrest for
3 the attempted armed robbery of this convenient store?

4 A I did.

5 Q All right. And pursuant to arresting someone, what
6 do you do when you arrest somebody? Do you just put the
7 cuffs on them and put them in the back of a patrol car?
8 Or do you do something prior to doing that?

9 A Well, obviously identify the person to make sure
10 it's the right person we're intending to arrest and we
11 determined it was Jeffrey Brown. He was in the passenger
12 side of a Chevy Tahoe vehicle. And so, in fact, Officer
13 Howell had responded being there as well at that time, he
14 responded with me and we placed Mr. Brown in custody in
15 handcuffs and then searched his person which is a search
16 incident to arrest which is legal procedure.

17 Q Okay. I'm going to show you State's Exhibit One
18 that's in evidence. Can you tell the ladies and
19 gentlemen of the jury what you found on Jeffrey Brown?

20 A The pocketknife as been discussed previously which I
21 sealed in this evidence bag with my initials and the date
22 and placed it into our evidence room where it has been up
23 until this point.

24 Q And I think there are a pack of cigarettes in there
25 as well?

RON DOUGLAS - CROSS EXAMINATION BY MR. JORDAN

1 A Right.

2 Q And those cigarettes have no significance in this
3 case; right?

4 A Not in this case.

5 Q Okay. Thank you. All right. And that was pretty
6 much your involvement in this case; correct?

7 A Correct.

8 Q All right. Thank you. Please answer any questions
9 that the defense may have for you.

10 THE COURT: Cross examination.

11 MR. JORDAN: Thank you.

12 CROSS EXAMINATION BY MR. JORDAN:

13 Q Chief, you said, I think when you got involved
14 with this investigation you talked with Ms. Swanson,
15 you learned that she made the identification?

16 A She's the one who gave me the name.

17 Q Do you know how she got the name?

18 A It's my understanding that she got it from talking
19 to her coworkers. Apparently someone recognized him on
20 the video and I can't say specifically, but I just know I
21 can tell you that she gave me that name.

22 Q Okay. And you said you did your own investigation;
23 is that correct?

24 A That's correct.

25 Q What other suspects did you talk to?

1 A There were no other suspects identified.

2 Q So you didn't identify any other suspects, you just
3 went and talked to the ones that they gave you?

4 A Well, looking at the video first to make sure that
5 what they were telling me was adding up. And as I said,
6 I've been doing this about 32 years now, at that point I
7 had probable cause to seek an arrest warrant based on her
8 identification, but obviously that's not good police
9 practice, so I decided to do my own followup and go and
10 convince myself first so that I could later convince you
11 or you that this is the person who robbed the store.

12 Q But in essence, you didn't question any other
13 suspects?

14 A Had I had other suspects, I would have questioned
15 them, but there were no other suspects. I determined
16 that there were no other suspects other than the two
17 involved who have already been named in this case.

18 Q Tell me again when you spoke with both of these
19 individuals?

20 A I went out I think this was on a Wednesday, early
21 a.m. I went to Jeffrey Brown's residence on Devox
22 Highway out of Johnsonville Wednesday afternoon as soon
23 as I had learned that he was the suspect. I immediately
24 went to his house and made contact with him.

25 Q And then I believe Mr. Jepertinger asked you about

RON DOUGLAS - CROSS EXAMINATION BY MR. JORDAN

1 another individual, the second suspect; correct?

2 A I developed him as a suspect, Matthew Venters.

3 Q And where did you speak with Mr. Venters?

4 A At the Johnsonville High School where he was a
5 student at the time.

6 Q Now, was he enrolled as a regular student or was he
7 in some sort of alternative school?

8 A He was at the Johnsonville High School. To the best
9 of my knowledge he was a regular student as our
10 alternative school was in a different location.

11 Q Okay. When did you obtain your arrest warrant?

12 A I obtained the arrest warrant on Thursday. And the
13 reason for the delay is I had spoken to -- I know these
14 gentlemen and their families, they come from good
15 families. I had spoken to them and as a curtesy with
16 Mr. Venters being in -- Still in school, as a curtesy to
17 the family I agreed to wait until Saturday and let them
18 -- Let their families turn them in on Saturday morning to
19 receive a bond at the county jail so that he would not
20 miss any school in hopes that we could work something out
21 here to help these kids out to get on the right track.
22 But because of Mr. Brown's decision to go to the Kangaroo
23 and confront Ms. Swanson, I decided at that time it was
24 our best interest to go ahead and take them into custody
25 since the warrant had been issued. And so that's the

1 decision I made.

2 Q Chief, what was Mr. Brown wearing at the time you
3 interrogated him?

4 A I didn't actually interrogate him. A few simple
5 questions ---

6 Q I mean questioning him.

7 A And to be honest with you I think he was wearing a
8 pair of short pants. It was at his house, we were
9 standing under the garage of the house and it was a very
10 brief conversation as he indicated to me that I would
11 need to ask any further questions to his attorney. So I
12 immediately left the premises and decided I would have go
13 a different route rather than seek his cooperation.

14 Q As you were talking with the attendance there at the
15 store, did they tell you about identifying marks on the
16 suspect?

17 A No, sir. There was no communication about any
18 tattoos or marks. They've told basically what we've
19 heard here in Court today.

20 Q Did you when you questioned Mr. Brown notice any
21 identifying marks?

22 A I think I saw some tattoos and obviously I've been
23 privileged to look at him today, but that was irrelevant
24 to me. Basically had any of that been anything that
25 would lead me to believe that it was some other suspect

RON DOUGLAS - CROSS EXAMINATION BY MR. JORDAN

1 or we had the wrong person or misidentification, I would
2 have interviewed him or interrogated him with a fine
3 tooth comb. But those had no significance. I was not
4 looking for a person with tattoos or marks. I was
5 looking for Jeffrey Brown whom I know and whom I found
6 and that was ---

7 Q Jeffrey Brown, the only suspect that you knew of at
8 that time?

9 A Only suspect that had been identified.

10 Q Only suspect that you had been told of at that time?

11 A And again, that was based on my viewing ---

12 Q Suspect that you did not ---

13 THE COURT: Hold on a minute.

14 MR. JORDAN: I'm sorry, Judge.

15 THE COURT: Let him finish his answer and then you
16 may continue your question. Give him an opportunity to
17 explain his answer.

18 A Yes, sir. To make it very clear, that was the only
19 person I was looking at at the time because I had no
20 reason to look for anybody else. No one else had been
21 named. I had no one else to look for or I can assure you
22 that I would have made diligent effort to look for
23 someone else.

24 Q When you questioned Mr. Brown, you said he had on
25 short pants to the best of your memory?

RON DOUGLAS - REDIRECT EXAMINATION BY MR. JEPERTINGER

1 A Correct.

2 Q Did you notice any tattoos on his legs or anything?

3 A I think I do remember a long tattoo down his leg,
4 but I can't stand here and tell you, describe it. If the
5 case depended on it, I can't tell you what his tattoo is.
6 That was again irrelevant to me.

7 Q But the tattoos kind of stood out?

8 A Sir, I see a lot of people with tattoos and I had
9 watched the video at the Kangaroo and I saw where he was
10 standing on opposite side of the counter which his
11 tattoos on the legs if he had them would not be visible.

12 Q No hands and arms and things like that that
13 potentially would have been?

14 A Would have been visible, but again, I had no reason
15 to look for tattoos. I had not been told about tattoos.
16 As you can tell from the video it's not a real close up
17 zoomed in shot so you can see any kind of detail, so no,
18 I didn't go to his house looking for a guy with tattoos.
19 I went to the house looking for Jeffrey Brown.

20 MR. JORDAN: No further questions, your Honor.

21 THE COURT: Questions?

22 MR. JEPERTINGER: Just one quick thing.

23 REDIRECT EXAMINATION BY MR. JEPERTINGER:

24 Q If he had tattoos, would you have known when he got
25 those tattoos?

1 A I wouldn't have a clue because they were irrelevant
2 to my investigation.

3 Q Does he -- He has tattoos on his right arms today,
4 you can see that?

5 A I think I have spotted tattoos there.

6 Q Okay. Do you know when he would have gotten that
7 tattoo?

8 A Don't have a clue.

9 Q Been after this crime, before this crime, doesn't
10 matter to you?

11 A No, sir.

12 Q Thank you so much.

13 THE COURT: Any recross?

14 MR. JORDAN: No, your Honor.

15 THE COURT: Sir, you may step down. Thank you.

16 MR. JEPERTINGER: May we approach?

17 THE COURT: Yes, sir.

18 (WHEREUPON, a bench conference was held in the
19 presence of the jury, but out of the hearing of the jury)

20 THE COURT: Ladies and gentlemen, we're going to
21 take a break for about ten minutes. I'm going to ask
22 that you step to the jury room. Do not discuss the case.
23 Do not discuss the case. I'll get you back out here as
24 quickly as possibly.

25 (WHEREUPON, the jury retired to the jury room)

MATTHEW VENTERS - DIRECT EXAMINATION BY MR. JEPERTINGER

1 (WHEREUPON, a short break was taken)

2 THE COURT: Thank you. Be seated please. Is the
3 State ready to proceed?

4 MR. JEPERTINGER: Yes, sir.

5 THE COURT: Is the defense counsel ready to proceed?

6 MR. JORDAN: Yes, your Honor.

7 THE COURT: All right. Bring the jury, please,
8 ma'am.

9 (WHEREUPON, the jury came into open Court)

10 THE COURT: Mr. Worrell, I'm going to appoint you as
11 the foreman of this jury. If you'll sit at this first
12 seat where this young man is standing, that will be your
13 assigned seat throughout the trial of this case. Okay.

14 MR. WORRELL: Yes, your Honor.

15 THE COURT: Mr. Jepertinger, you're recognized.
16 Call your next witness, please.

17 MR. JEPERTINGER: Please the Court. The State would
18 call Matthew Venters to the stand.

19 MATTHEW VENTERS,
20 being first duly sworn, was examined and testified as
21 follows:

22 THE CLERK: Please be seated and state your full
23 name for the record.

24 MR. VENTERS: Matthew Lawrence Venters.

25 DIRECT EXAMINATION BY MR. JEPERTINGER:

MATTHEW VENTERS - DIRECT EXAMINATION BY MR. JEPERTINGER

1 Q Mr. Venters, what relationship are you to the
2 defendant in this case Jeffrey Brown?

3 A My stepbrother.

4 Q All right. Is his mom married to your dad or how
5 does that work?

6 A His mom is married to my dad.

7 Q Okay. All right. Now, you were charged with
8 attempted armed robbery in this case; correct?

9 A Yes, sir.

10 Q And you have pled guilty to that attempted armed
11 robbery in this case; is that correct?

12 A Yes, sir.

13 Q All right. And you're currently in our detention
14 center?

15 A Yes, sir.

16 Q Are you waiting to be sentenced?

17 A Yes, sir.

18 Q All right. You have also pled to separate breaking
19 and entering of a motor vehicle; is that correct?

20 A Yes, sir.

21 Q Are you waiting to be sentenced on that case as
22 well?

23 A Yes, sir.

24 Q In addition, I have dismissed a burglary second and
25 two other breaking and entering motor vehicles against

MATTHEW VENTERS - DIRECT EXAMINATION BY MR. JEPERTINGER

1 you; is that correct?

2 A Yes, sir.

3 Q You also have a breaking and entering of a motor
4 vehicle down at the beach; is that correct, in Horry
5 County?

6 A A dwelling.

7 Q A dwelling?

8 A Yes, sir.

9 Q Okay. Did they charge you with that?

10 A Yes, sir.

11 Q All right. Have you pled guilty do that already?

12 A Yes, sir.

13 Q All right. Now, have I offered you besides the
14 dropping of the cases, have I told you or offered you a
15 particular sentence for your testimony against your
16 stepbrother in this case?

17 A No, sir.

18 Q What is the only thing that I told you I would be
19 with you should you testify for the State in this case?

20 A Fair.

21 Q Okay. Now, I want take to you back Halloween,
22 October 31, 2012, what type of vehicle were you driving?

23 A A white Chevy.

24 Q Was it an extended cab pickup?

25 A Yes, sir.

MATTHEW VENTERS - DIRECT EXAMINATION BY MR. JEPERTINGER

1 Q Whose vehicle was it?

2 A My dad's.

3 Q All right. Were you driving the vehicle early that
4 morning?

5 A Yes, sir.

6 Q Who was your passenger?

7 A My brother.

8 Q Would that be Jeffrey Brown?

9 A Yes, sir.

10 Q Where did you all go?

11 A Up town, through town.

12 Q Okay. Did you have an occasion to stop at the
13 Kangaroo Express in the early morning hours of October
14 31, 2012?

15 A Yes, sir.

16 Q Who got out of the vehicle?

17 A My brother.

18 Q Who was driving the vehicle?

19 A Me.

20 Q And what was the plan to do at the Kangaroo Express?

21 A To rob it.

22 Q And how was -- What was Jeffrey Thomas Brown armed
23 with?

24 A A pocketknife.

25 Q And did he go into the Kangaroo Express?

MATTHEW VENTERS - DIRECT EXAMINATION BY MR. JEPERTINGER

1 A Yes, sir.

2 Q What did you do when he went into the Kangaroo
3 Express?

4 A Drove off.

5 Q Did you park anywhere?

6 A Yes, sir.

7 Q Where did you park?

8 A The Washroom or car wash.

9 Q All right. You parked at the car wash. Did Jeffrey
10 Thomas Brown come back out of the Kangaroo Express?

11 A Yes, sir.

12 Q Did he get in the vehicle?

13 A Yes, sir.

14 Q Did y'all drive off?

15 A Yes, sir.

16 Q All right. Did Jeffrey Thomas Brown get any money
17 from the Kangaroo?

18 A No, sir.

19 Q All right. Did you talk to the police the next day?

20 A Yes, sir.

21 Q Did you speak with them at Johnsonville High School?

22 A Yes, sir.

23 Q What did you tell Officer Douglas about your
24 involvement with the Kangaroo Express?

25 A That I did it.

MATTHEW VENTERS - DIRECT EXAMINATION BY MR. JEPERTINGER

1 Q And did you tell him who was with you?

2 A Yes, sir.

3 Q And who did you tell Investigator Douglas -- Excuse
4 me, Chief Douglas who was with you?

5 A My brother.

6 Q Which brother?

7 A Jeffrey Brown.

8 Q Is he your only brother?

9 A No, sir.

10 Q Okay. Was that the brother you said was with you?

11 A Yes, sir.

12 Q All right. And did you turn yourself into the
13 police that Saturday?

14 A We got detained before then.

15 Q All right. And you are represented by Jay Jordan?

16 A Yes, sir.

17 Q And you had a chance to speak with your attorney
18 this morning?

19 A Yes, sir.

20 Q Okay. I believe your attorney maybe in the viewing
21 room; is that correct?

22 A Yes, sir.

23 Q All right. Thank you so much. Please answer any
24 questions that the defense may have for you.

25 THE COURT: Cross examination.

MATTHEW VENTERS - CROSS EXAMINATION BY MR. JORDAN

1 CROSS EXAMINATION BY MR. JORDAN:

2 Q Matthew, how old are you?

3 A Eighteen (18).

4 Q You graduated high school yet?

5 A Yes, sir.

6 Q You graduated from Johnsonville?

7 A Yes, sir.

8 Q When did you start getting into trouble, Matthew?

9 A My senior year.

10 Q You got a little crowd you run with?

11 A Yes, sir.

12 Q Okay. How old are those boys?

13 A Same age.

14 Q Eighteen?

15 A Yes, sir.

16 Q What kind stuff do y'all do?

17 A Drink, smoke pot.

18 Q On the night of October 31, 2012, were you hanging

19 out with that crowd?

20 A No, sir.

21 Q You weren't drinking or smoking pot with your

22 buddies?

23 A No, sir.

24 Q On Halloween?

25 A At the house.

MATTHEW VENTERS - CROSS EXAMINATION BY MR. JORDAN

1 Q Okay. Nobody was throwing a party or anything?

2 A There was.

3 Q You didn't go?

4 A No, sir.

5 Q Why not?

6 A Parents are strict.

7 Q Really. I believe you told Mr. Jepertinger you got
8 to drive around town at 3:30 in the morning?

9 A Yes, sir.

10 Q Parents let you do that?

11 A No, sir.

12 Q So you really don't care what your parents think, do
13 you?

14 A To an extent, yes, sir.

15 Q You don't care what they think about you driving
16 around at 3:30 in the morning, do you?

17 A I did, but I wasn't thinking at the time.

18 Q Matthew, you've been in a little bit of trouble as
19 you Mr. Jepertinger talked about. Have you ever been in
20 any serious trouble? Prison trouble?

21 A No, sir.

22 Q What do you think prison is like?

23 A Harsh.

24 MR. JEPERTINGER: I would object to the relevancy of
25 that question, your Honor.

1 MR. JORDAN: I'm ---

2 THE COURT: Hold on a minute.

3 MR. JEPERTINGER: I just object to relevancy.

4 MR. JORDAN: I'm getting there with my next
5 question, your Honor.

6 THE COURT: I'll allow it. Go ahead to the next
7 question.

8 Q Matthew, you pled guilty and you said that you
9 were involved with these crimes. Could it be possible
10 that you implicated your brother in hopes that he too
11 would be convicted of these crimes and he would be
12 there to protect you if something were to happen to you
13 in prison?

14 A No, sir.

15 Q All right. Wouldn't have anything to do with it?

16 A No, sir.

17 Q The fact that you're out running with a crowd,
18 drinking and smoking pot, and doing, you know, all kind
19 of different stuff, then you get caught, you wouldn't be
20 scared to go to prison on your own?

21 A If I did it then I wouldn't be.

22 Q You've already said you did it?

23 A I'm not.

24 MR. JORDAN: Beg your indulgence, your Honor.

25 THE COURT: Yes, sir.

MATTHEW VENTERS - REDIRECT EXAMINATION BY MR. JEPERTINGER

1 MR. JORDAN: No further questions, your Honor.

2 THE COURT: Anything else, Mr. Jepertinger?

3 MR. JEPERTINGER: Yes, sir.

4 REDIRECT EXAMINATION BY MR. JEPERTINGER:

5 Q At 3:30 in the morning when you were driving around,
6 did you stop at the Kangaroo Express before he tried to
7 rob it?

8 A Yes, sir.

9 Q All right. And who suggested to rob the Kangaroo
10 Express?

11 A My brother.

12 Q All right. Thanks. That's all I have.

13 THE COURT: Any recross?

14 MR. JORDAN: Nothing further at this time, your
15 Honor.

16 THE COURT: All right. Sir, you may step down.
17 Thank you.

18 MR. JEPERTINGER: Your Honor, that would be the
19 State's case.

20 THE COURT: All right. Ladies and gentlemen, the
21 State has rested its case. What we're going to do now is
22 I'm going to let you go to lunch there's some matters of
23 law that we need to take up outside of your presence.
24 I'm going to ask you to be back in your jury room at two
25 o'clock. At two o'clock and we will resume the trial of

1 this case at that time or as promptly or as close to that
2 time as we can. Do not discuss the case until you're
3 instructed to do so. Please be back at two o'clock.
4 Everybody else remain seated while the jury exits the
5 courtroom.

6 (WHEREUPON, the jury was excused for lunch)

7 THE COURT: Any motions at this time?

8 MR. JORDAN: Your Honor, at this time I'd like to
9 move for a directed verdict. The evidence
10 Mr. Jepertinger put up fails to prove without that
11 Mr. Brown would be guilty beyond a reasonable doubt. We
12 feel that it's proper to rule in his favor at this time.

13 THE COURT: Speak up, please. Mr. Jepertinger,
14 anything in response?

15 MR. JEPERTINGER: Well, can I say I disagree with
16 the defense attorney. I believe in taking the evidence
17 like most favorable to the State, I think there is
18 overwhelming evidence based on the identification
19 testimony of two witnesses, both Teresa Swanson and Mike
20 Christian that this individual was the perpetrator at the
21 attempted armed robbery, your Honor.

22 Also, your Honor, she's identified the weapon, that
23 would be Ms. Swanson, the weapon used. And plus, we had
24 a codefendant who also implicated his stepbrother in the
25 commission of this crime.

JEFFREY BROWN - BY THE COURT

1 THE COURT: All right. Base upon what I've heard
2 heard today, the Court's simply concerned with the
3 existence, with the existence of evidence not its weight.
4 If there is any direct nor substantial circumstantial
5 evidence reasonably tending to prove the guilt of the
6 defendant or from which guilt may fairly and logically
7 maybe deduced the case should go to the jury. And I
8 believe that all of that is here. That there is
9 substantial -- Circumstantial as well as direct evidence
10 in this case. There's certainly existence of evidence in
11 this case based upon the three witnesses testimony which
12 would warrant the case going to the jury; therefore, I'm
13 going to respectfully deny your motion for a directed
14 verdict.

15 All right. At this time, what I am going to do is
16 I'm to advise the defendant of his constitutional rights
17 before we break for lunch. Sir, if you'll stand and be
18 sworn, please.

19 JEFFREY THOMAS BROWN,
20 being first duly sworn, was examined and testified as
21 follows:

22 EXAMINATION BY THE COURT:

23 THE COURT: All right. Sir, you are Jeffrey Thomas
24 Brown?

25 A Yes, sir.

1 THE COURT: All right. We have now reached the
2 stage of the case and I am -- Where you may present your
3 defense and I'm going to explain to you certain rights
4 that you have. If you do not understand anything I say,
5 please let me know. If you want me to explain anything
6 in further detail, please let me know as well; you
7 understand that?

8 A Yes, sir.

9 THE COURT: Now, we've now reached the stage of the
10 trial where you may present your defense. You have the
11 right to claim the protections given to you by the Fifth
12 Amendment to the Constitution of the United States. This
13 amendment states in part that no person, no person shall
14 be compelled in any criminal case to be a witness against
15 himself. This means that you cannot be required to
16 testify in this case. You have the right to testify on
17 your own behalf. However, no one can make you testify.
18 This is a personal right and no one can waive this right
19 except you.

20 If you decide to testify, you will be subject to the
21 same rules that govern other witnesses and you may be
22 examined and cross examined on any relevant issues in
23 this case. In addition, if you have any convictions
24 involving dishonesty or false statement or for crimes
25 punishable by imprisonment for more than a year and this

JEFFREY BROWN - BY THE COURT

1 Court determines that the probative value of admitting
2 this evidence outweighs its prejudicial affect to you.
3 The solicitor will be able to introduce your record to
4 attack your credibility. If you decide to testify, this
5 decision on your part must be freely, voluntarily, and
6 intelligently made with knowledge of the protections
7 given to you by the Fifth Amendment and the consequences
8 of your decision to testify.

9 If you decide not to testify, I will instruct the
10 jurors that they cannot, that they cannot give the fact
11 that you did not testify any consideration whatsoever and
12 that there is to be absolutely no prejudice to you
13 because you did not testify.

14 Now, it is left entirely, entirely up to you whether
15 or not you testify. You may talk with your family, your
16 friends, your attorney, or anyone else, but the final
17 decision as whether or not you testify is left entirely
18 up to you. Do you understand, sir, what I've explained
19 to you?

20 A Yes, sir, I do.

21 THE COURT: Do you have any questions about what
22 I've explained to you?

23 A No, sir, I don't.

24 THE COURT: Have you talked with your lawyer about
25 whether or not you should testify?

JEFFREY BROWN - BY THE COURT

1 A Yes, sir, I have.

2 THE COURT: Do you wish to talk to your lawyer
3 anymore at this time?

4 A Yes, sir, I do.

5 THE COURT: You do?

6 A Yes, sir.

7 THE COURT: I'm going to give you over the lunch
8 break to talk to him. When we resume or immediately
9 prior to resuming the trial of this case at two o'clock,
10 I will expect a response from you at that time as to
11 whether or not you are going to testify. Do you
12 understand, sir?

13 A Yes, sir.

14 THE COURT: All right. We'll stand at ease. I'd
15 ask the lawyers be back in here at ten till two. Yes,
16 sir.

17 MR. JEPERTINGER: I do have another matter here. We
18 have not received personally to Mr. Ozment's request for
19 notice of alibi that was filed with the Rule 5 disclosure
20 back on December 21, 2012 or receipt or the attorney for
21 the defendant signed off on that. Any alibi witnesses or
22 that they were going to rely on the defense of alibi. So
23 if he's going to put it up, I'd like to deal with that
24 matter, Judge, pursuant to Rule 5.

25 And the other matter, Judge, if you should allow him

JEFFREY BROWN - BY THE COURT

1 to present alibi witnesses, we need to get their socials
2 and dates of birth, your Honor, in order to run a rap
3 sheet.

4 THE COURT: Mr. Jordan?

5 MR. JORDAN: Your Honor, I don't believe we're going
6 to be putting up any alibi.

7 THE COURT: All right.

8 MR. JEPERTINGER: Thank you.

9 THE COURT: Y'all be back here about ten till two,
10 we'll resume or I'll at least get a response from
11 Mr. Brown at that time and then we'll go forward.

12 MR. JEPERTINGER: Yes, sir.

13 (WHEREUPON, a lunch break was taken)

14 THE COURT: All right. Mr. Brown, stand up, please,
15 sir. Before we broke for lunch, I advised you of your
16 constitutional rights to a trial -- To testify as well as
17 your right to remain silent. You communicated that you
18 wanted some additional time to talk to your lawyer. Have
19 you had some additional time to talk to your lawyer?

20 MR. BROWN: Yes, sir.

21 THE COURT: Do you need anymore time to talk to him?

22 MR. BROWN: No, sir.

23 THE COURT: Is it your desire to testify in the
24 trial of your case?

25 MR. BROWN: No, sir.

JEFFREY BROWN - BY THE COURT

1 THE COURT: No, sir?

2 MR. BROWN: Yes, sir.

3 THE COURT: Now, is that decision your decision and
4 your decision alone after consultation with your lawyer?

5 MR. BROWN: Yes, sir.

6 THE COURT: Anybody made any threats or put any
7 pressure on you, force or intimidation to get you to make
8 that decision that you announced in this Court?

9 MR. BROWN: No, sir.

10 THE COURT: Okay. And, again, that's your decision
11 and your decision alone?

12 MR. BROWN: Yes, sir.

13 THE COURT: All right. Anything else right now, Mr.
14 Jepertinger?

15 MR. JEPERTINGER: No, sir.

16 THE COURT: Let me ask this question. Is the
17 defense intending to call any witnesses?

18 MR. JORDAN: No, sir, your Honor.

19 THE COURT: All right. When I bring the jury back
20 out, if defense wants to rest at that time, I will
21 instruct the jury certainly that the case is over that
22 all we have left is closing arguments and my charge on
23 the law. When you rest, I would ask that you and Mr.
24 Jepertinger come up here, side bar, and simply renew your
25 motions, prior motion for the record purposes of

JEFFREY BROWN - BY THE COURT

1 protecting your client's interest. Once that is done
2 then we will move into closing arguments and charging the
3 law.

4 Now, I have prepared a jury charge -- My law clerk
5 has prepared a jury charge which I have reviewed. Mr.
6 Brown, you can sit down, sir. Which includes the charge
7 arresting indictment is not evidence, presumption of
8 innocence, reasonable doubt, direct and circumstantial
9 evidence, duties of Judge and jury, police officer
10 charge, prior record of witness, identification, failure
11 of the defendant to testify, intent, attempted armed
12 robbery, and a conclusion brief. I think is pretty
13 straight forward.

14 MR. JORDAN: Judge, was there credibility of
15 witnesses charge in there?

16 THE COURT: Yes, that's part of my standard on the
17 role of what the duties of Judge and jury.

18 MR. JORDAN: Okay.

19 THE COURT: Which says, you know, determining what
20 the facts in this case are, you must judge the
21 credibility which simply means the believability.

22 MR. JORDAN: Thank you, your Honor.

23 MR. JEPTERTINGER: Your Honor, I do have one thing.
24 It was either Supreme's or the Court of Appeals that just
25 came out with State against Logan in terms of the

1 circumstantial evidence charge. And if maybe I can go
2 upstairs and get a copy of it if the Court doesn't have
3 it.

4 THE COURT: I don't think I do have that.

5 MR. JEPERTINGER: Can I go get it?

6 THE COURT: Yes.

7 (WHEREUPON, off the record).

8 THE COURT: Can you approach, Mr. Jepertinger?

9 MR. JEPERTINGER: Yes.

10 (WHEREUPON, a bench conference was held off the
11 record)

12 THE COURT: All right. Anything else before I bring
13 in the jury?

14 MR. JEPERTINGER: Nothing from the State, your
15 Honor.

16 MR. JORDAN: Nothing from defense, your Honor.

17 THE COURT: All right. If you'll bring me the jury,
18 please.

19 (WHEREUPON, the jury came into open Court)

20 THE COURT: All right. Mr. Foreman, ladies and
21 gentlemen of the jury, I appreciate you being back here
22 when I asked you to be here. At this time, I'm going to
23 recognize Mr. Jordan, defense counsel. Mr. Jordan?

24 MR. JORDAN: Your Honor, defense rests.

25 THE COURT: All right. Will the lawyers approach,

CLOSING ARGUMENTS BY MR. JEPERTINGER

1 please.

2 (WHEREUPON, a bench conference was held in the
3 presence of the jury, but out of the hearing of the jury)

4 THE COURT: All right. Ladies and gentlemen, the
5 only remaining thing to be done in this case is counsel's
6 closing arguments, my charge on the law, and your
7 deliberation, and rendering a verdict in this case. I am
8 going to recognize Mr. Jepertinger and he'll go first in
9 closing arguments followed by Mr. Jordan and then my
10 charge on the law.

11 I will remind you all, ladies and gentlemen, that
12 arguments of counsel is not evidence in this case. It is
13 not evidence in this case. Mr. Jepertinger, you are
14 recognized for closing arguments.

15 MR. JEPERTINGER: May it please the Court, Mr.
16 Jordan. During the course of this trial which as been
17 very short, Mr. Jordan asked Ms. Swanson if she was
18 afraid. And, you know, I heard something many years ago
19 and it's all stuck with me. That courage is not the
20 absence of fear. Courage is being able to act in spite
21 of being afraid or in spite of having fear.

22 I think Teresa Swanson was very courageous that
23 evening. She didn't fall prey. So many other folks in
24 our community to being a victim of crime, she fought
25 back. Whether there was wisdom in that, I don't know.

1 But she prevented her employer from getting robbed that
2 evening.

3 And there's no question in my mind and this is not
4 opinion, it's not conjecture, it's nothing else but
5 sheer evidence that she identified the individual who
6 robbed her or attempted to rob her. What did he do? He
7 came into the store, without a mask, had a hoodie on, but
8 she didn't recognized the face, and it's the same face
9 that she had seen in that video where the person came in
10 the store an hour previously. Who else testified to
11 that, corroborated that, and made it stronger? It was
12 Mike Christian who was right there when the store was in
13 the process of getting robbed. The same guy, been in
14 there an hour earlier, saw him in an extended cab, Ford,
15 white left -- Or Chevy, excuse me, left same vehicle an
16 hour later.

17 Then you have Matthew Venters, stepbrother, and I
18 want you to -- We're going to look at the video again one
19 more time. Video of the 4:45 timeframe, but you know the
20 Judge is going to tell you in a little bit that one of
21 the things when you're determining the credibility or the
22 believability of the witnesses, he's going to say, look
23 if they have any bias or motive or prejudice in order
24 when you're evaluating their testimony. Whether they've
25 got something to win, something to loose.

CLOSING ARGUMENTS BY MR. JORDAN

1 I'm going to suggest to you that Matthew Venters had
2 nothing to loose by testifying in this case. Oh, yeah,
3 we charged him with the same thing. I dropped a couple
4 of cases against him. He pled to a couple of cases.
5 Waiting sentencing. Had a charge down at the beach. But
6 I'm going ask you this, when you look at the video, we're
7 going to look at it carefully, both the inside and the
8 out, where do you see Matthew Venters on any of those
9 videos? You'll see a white truck. You'll see the person
10 identified as the defendant in this case, but you didn't
11 see Matthew Venters. Matthew Venters could have walked
12 away from this thing clean as a whistle. There was no
13 proof that Matthew Venters had done this crime, but for
14 the fact, I think his conscience got to him. Because
15 when Ron Douglas went to talk to him, he talked to him
16 about this case, and he admitted he had done this case.
17 No proof except his conscience which is the only proof he
18 needed. He testified he was there. He was driving. He
19 was the get-to driver and the getaway driver if you want
20 to look at it that way. And the passenger in the vehicle
21 with the knife who went in the store was who? His
22 stepbrother. Not some random stranger, not some name he
23 pulled out of the air, but his stepbrother. His father's
24 wife's son. And there you go. They were together. He
25 did the crime.

CLOSING ARGUMENTS BY MR. JORDAN

1 Now, everything in the case points to one
2 conclusion. And the fact is Jeffrey Thomas Brown had
3 this knife on Halloween at about 4:45 and wanted to rob
4 the Kangaroo Express. Don't know why he wanted to do it,
5 but he did it. And that is the cold hard fact in this
6 case. I'm going to have to show the video one more time
7 and then I'm going to be seated. I think the evidence
8 points conclusively to the guilt of this accused.

9 (WHEREUPON, the video being played for the jury)

10 MR. JEPERTINGER: Let me just close by saying, what
11 you just observed was this defendant committing an armed
12 robbery on October 31, 2012. I'm going to ask you to
13 find him guilty and I appreciate it.

14 THE COURT: Mr. Jordan?

15 MR. JORDAN: Thank you, your Honor. May it please
16 the Court. Folks, we've been quick here today. Probably
17 a good thing for everybody. I'd like to start by talking
18 about Mr. Jepertinger brought up bias, motive, and
19 prejudice as it goes to Matthew Venters. I don't how
20 many there were, big brothers, big sisters. Matthew
21 Venters is an 18 year old kid. He's young. He's scared.
22 Came in here, and to me, in my opinion, pretty meek and
23 mild. Matthew Venters told us that he runs with a crowd,
24 18 year old or high school age children who drink and
25 smoke pot. Many of us have been right there with them.

CLOSING ARGUMENTS BY MR. JORDAN

1 Matthew Venters, scared, 18 year old who had pled guilty
2 to this and is awaiting sentencing. And he has a big
3 brother, a person that he would look up to for quite
4 sometime. A person who's always protected him. A person
5 who may not have always shown him the right path to go
6 down, but always was there for him and always had his
7 back.

8 If you were a big sister or a big brother as I have
9 the pleasure of being, you know that younger siblings
10 figure out pretty quickly at least mine did that they
11 were doing something wrong. And they got you in trouble
12 along with them. Momma and daddy were going to punish
13 them just a little bit less. They could spread that
14 punishment around. As well, they had someone to
15 commiserate with. Someone else to punish. Someone else
16 who could understand what they were going through and
17 help them.

18 In this case, we have Matthew Venters. We also have
19 the identification from the store clerk. The Chief told
20 us the defendant here has got tattoos. Pretty visible
21 tattoos which we didn't see here. The store clerk didn't
22 mention anything about seeing any tattoos. Couldn't
23 really tell us what size -- Ms. Swanson couldn't really
24 tell us what size the person was. What their build was.
25 She even tells us he goes and talks with Mr. Brown here,

JURY CHARGE BY THE COURT

1 he's got very visible tattoos on his legs. I didn't see
2 any on the video. I didn't see a tattoo on his hand.
3 Didn't see anything identifiable in the video that
4 Mr. Jepertinger just showed you.

5 Folks, I believe the Judge is going to charge you
6 under the law you must find the defendant guilty beyond a
7 reasonable doubt after having heard all the evidence. In
8 this case, I think what we have is we have Jeffrey Brown
9 clearly going into the store around 3:52 in the morning.
10 And he purchases some stuff and then he leaves. I don't
11 know what vehicle he gets into. I don't know how he got
12 there. I don't know how he got home. I don't know where
13 he went. But he goes into a store and he buys stuff.
14 All right. And then without question, an individual
15 enters that store about 4:45 and attempts to steal money.
16 Attempts to hold the place up.

17 I believe that the evidence that was shown here, the
18 evidence that was shown by or stated by Mr. Douglas does
19 not prove anyone here guilty beyond a reasonable doubt.
20 There's plenty of reasonable doubt. It's the big brother
21 that he's wanting to help protect him is the younger
22 brother who has already admitted he was part of this. I
23 don't know if he was alone. I don't know if he was with
24 a gang member. I don't know not necessarily a street
25 gang member, but just a member of his friends. I don't

JURY CHARGE BY THE COURT

1 know what happened here. And I don't think that the
2 evidence shows that Mr. Brown, the defendant here, was
3 the person who enter the Kangaroo station beyond a
4 reasonable doubt.

5 Folks, I thank you and Mr. Brown thanks you for
6 being so attentive, for listening to all the witnesses,
7 and we're going to thank you in advance for taking
8 everything into consideration as you go back into that
9 jury room once the Judge charges you with the law.
10 Bearing in mind, that you, if you feel that the evidence
11 has not proven Mr. Brown guilty beyond a reasonable
12 doubt, that you should return a verdict of not guilty.
13 Thank you.

14 THE COURT: All right. Ladies and gentlemen, it is
15 now my duty as the trial Judge under the Constitution of
16 this State to charge and instruct you on the law
17 applicable to this case. It is your duty as jurors to
18 accept and apply the law as I will now state it to you.
19 Furthermore, it is your exclusive duty to decide all the
20 issues of fact in this case and to determine the effect,
21 value, weight, and truth of the evidence.

22 Both the State and the defendant have a right to
23 expect that you will carefully consider and evaluate the
24 evidence and apply the law of this case to it. So that
25 in the end, both the State of South Carolina and the

JURY CHARGE BY THE COURT

1 defendant will receive a fair and impartial trial. I
2 want you understand that when I use the word defendant, I
3 refer to Jeffrey Thomas Brown. And the charge alleged in
4 the indictment is attempted armed robbery.

5 To this charge, the defendant has entered a plea of
6 not guilty. This plea of not guilty places the burden of
7 proof on the State to prove the guilt of the defendant to
8 you the jury beyond a reasonable doubt. Now, the fact
9 that the defendant was arrested, charge, and indicted in
10 this case is not evidence in this case and cannot be
11 considered by you as evidence of guilt in this case. Nor
12 does it create any presumption or inference of guilt.
13 The indictment is simply the formal written instrument
14 which contains the charges made against the defendant.
15 It is the formal document by which this case is brought
16 into this Court.

17 Now, it is vital to understand that the defendant is
18 presumed under the law to be innocent of this charge.
19 The defendant has no obligation to prove his innocence.
20 It is a fundamental rule of our law that a defendant
21 irrespective of the seriousness of the charge against him
22 is always presumed innocent of the crime for which he is
23 charged unless and until his guilt has been proven by
24 evidence that satisfies you the jury beyond a reasonable
25 doubt.

JURY CHARGE BY THE COURT

1 Now, the presumption of innocence is not mere legal
2 theory or a legal phrase. The presumption of innocence
3 is very important and you all need to understand that
4 this presumption accompanies the defendant from the time
5 of his arrest and the appearance of his attorney on his
6 behalf in this Court and continues with the defendant
7 even after you retire to the jury room to deliberate. In
8 other words, the defendant receives the benefit of the
9 presumption of innocence until the very end of this trial
10 when you the jury will deliberate upon the evidence and
11 decide whether the State has proven his guilt beyond a
12 reasonable doubt.

13 Thus in summary, it is important to understand that
14 a defendant is not required to prove his innocence.
15 Instead the State is required by law to prove every
16 essential element of the offense charged against the
17 defendant by evidence which satisfies you of his guilt
18 beyond a reasonable doubt. Only then can you convict the
19 defendant and find him guilty.

20 Now, what is a reasonable doubt in the law? A
21 reasonable doubt is the kind of doubt that would cause a
22 reasonable person to hesitate to act. Proof beyond a
23 reasonable doubt is proof that leaves you firmly
24 convinced of the defendant's guilt. Now, there are very
25 few things in this world that we know with absolute

1 certainty. So even in criminal cases, the law does not
2 require proof that overcomes every possible doubt.

3 However, if based on your consideration of the
4 evidence you are firmly convinced that the defendant is
5 guilty of the crime charged, you must find him guilty.
6 If on the other hand you think there is a real
7 possibility that he is not guilty, you must give him the
8 benefit of the doubt and find him not guilty.

9 Jurors, please understand that reasonable doubt may
10 arise from evidence which has been presented in the case
11 or from the lack of evidence in the case. It is your
12 responsibility to determine whether or not reasonable
13 doubt exists as to guilt of this defendant. I charge you
14 that the defendant is entitled to every reasonable doubt
15 arising in the whole case. If upon any issues of fact
16 essential to conviction and a verdict of guilty, you have
17 a reasonable doubt as to how that issue should be
18 resolved it would be your duty to resolve that reasonable
19 doubt in favor of the defendant.

20 Now, there are two types of evidence which are
21 generally presented during a trial. Direct evidence and
22 circumstantial evidence. Direct evidence directly proves
23 the existence of a fact and does not require deduction.
24 Circumstantial evidence is proof of a chain of facts and
25 circumstances indicating the existence of a fact. Crimes

JURY CHARGE BY THE COURT

1 maybe proven by circumstantial evidence. The law makes
2 absolutely no distinction between the weight or value to
3 be given to either direct or circumstantial evidence.
4 However, to the extent the State relies on circumstantial
5 evidence, all of the circumstances must be consistent
6 with each other. And when taken together, point
7 conclusively to the guilt of the accused beyond a
8 reasonable doubt.

9 If these circumstance merely portray the defendant's
10 behavior as suspicious, the proof has failed. The State
11 has burden of proving the defendant guilty beyond a
12 reasonable doubt. This burden rests with the State
13 regardless of whether the State relies on direct evidence
14 and circumstantial evidence or some combination of the
15 two.

16 Now, during this trial, you and I have had separate
17 duties to perform. As the trial Judge, it is my
18 responsibility to preside over this trial. And I also
19 have duty to rule upon the admissibility of the evidence
20 offered during the process of this trial. In that
21 regard, you are to consider only the competent evidence
22 before you. And you are to disregard from your mind any
23 testimony ordered stricken from the record of this case
24 during the progress of this trial if there was any. And
25 you are to consider only the testimony which has been

JURY CHARGE BY THE COURT

1 presented from this witness stand together with any
2 exhibits admitted into the record of this case and any
3 stipulations of counsel made into the record.

4 Furthermore, I have the additional duty to charge
5 you on the applicable law of this case and in that
6 regard, I am the sole Judge of the law of this case. It
7 is your duty to accept and apply the law as I state it to
8 you. If you have any preconceived ideas as to what the
9 law is or what the law ought to be, and it does not agree
10 with what I tell you the law is, you are obligated under
11 your oath to abandon these preconceptions because you are
12 sworn to accept the law precisely as I state it to you.

13 In this trial, you, ladies and gentlemen, are the
14 sole and exclusive judge of the facts and I am the Judge
15 of the law. Do not infer that I have any opinion about
16 the facts in this case from anything that I have said
17 during the course of this trial in ruling upon the
18 admissibility of evidence or otherwise or from anything
19 that I say during the course of this charge to you. In
20 this regard, the law simply does not permit me to have an
21 opinion about the facts. As jurors, it is your duty
22 alone to determine the effect, value, weight, and truth
23 of the evidence presented during the course of this
24 trial.

25 In determining what the facts in this case are, you

JURY CHARGE BY THE COURT

1 must judge the credibility which simply means the
2 believability of the witnesses and the value of weight to
3 be given to their testimony. You alone must decide the
4 force, effect, truth of the testimony.

5 Now, in making this decision, there are many things
6 that you may and should take into consideration such as
7 the appearance and manner of the witness on the stand, a
8 characteristic often referred to as the demeanor of the
9 witness. Was the witness forthright or hesitant? Was
10 the witness' testimony consistent or did it contain
11 discrepancies? What was the ability of the witness to
12 know the facts about what he or she testified? Did the
13 witness have a cause or reason to be biased and
14 prejudiced in favor of the testimony he or she gave? Was
15 the testimony of the witness corroborated or made
16 stronger by other testimony and evidence? Or was it made
17 weaker or impeached by such other testimony and evidence?

18 As jurors, please understand you have the right to
19 believe a small portion of a witness' testimony and
20 discard the larger portion or vice versa. You may
21 believe all of a witness' testimony or none. You may
22 believe the testimony of a single witness against that of
23 many witnesses or the other way around. In exercising
24 your mental processes and attempting to decide the truth,
25 the law simply requires that you exercise your good

1 judgment, your common sense, your sense of logic and
2 reason and your experiences in life. You then apply
3 these attributes to the evidence and apply the law as I
4 state it to you and thus arrive at a verdict.

5 Now, ladies and gentlemen, during the course of this
6 trial, you heard the testimony of a police officer.
7 Please understand that the testimony of a police officer
8 is not entitled to more weight than that of any other
9 witness. You are the sole judges of the credibility of a
10 witness and you are not to give more weight to a police
11 officer's testimony solely because he or she is a police
12 officer. Rather you should judge an officer's testimony
13 by the same standards that you apply to all other
14 witnesses. You also heard the testimony of an individual
15 who had a prior or who has a prior criminal record. A
16 person who has prior or a past criminal record is
17 competent to testify during trial. A past record does
18 not effect the ability of that witness to testify. The
19 past record may only be considered by you if at all in
20 determining the witness' believability. Remember, you
21 are the sole judges of the facts in this case and of the
22 believability of any and all of the witnesses.

23 Now, an issue in this case is the identification of
24 the defendant as the person who committed the crime
25 charged. The State has the burden of proving identity

JURY CHARGE BY THE COURT

1 beyond a reasonable doubt. You must be satisfied beyond
2 a reasonable doubt of the accuracy of the identification
3 of the defendant before you may convict the defendant.
4 Identification testimony is an expression of belief or
5 impression by a witness. You must determine the accuracy
6 of the identification of the defendant. You must
7 consider the believability of each identification witness
8 in the same way as any other witness. You may consider
9 whether the witness had an adequate opportunity to
10 observe the offender at the time of the offense. This
11 will be effected by things like how long or short a time
12 was available. How far or close the witness was. The
13 lighting conditions and whether the witness had the
14 chance to see or know the person in the past.

15 Once again, I instruct you, the burden of proof on
16 the State extends to every element of the crime charged
17 and this specifically includes the burden of proving
18 beyond a reasonable doubt the identity of the defendant
19 as the person who committed the crime. If after
20 examining the testimony you have a reasonable doubt as to
21 the accuracy of the identification, you must find the
22 defendant not guilty.

23 I instruct you, ladies and gentlemen, and emphasize
24 that the fact that this defendant did not testify is not
25 a factor to be considered by you in anyway in your

JURY CHARGE BY THE COURT

1 deliberations and in your consideration on the question
2 of the guilt or the innocence of the defendant. It must
3 not be considered by you in any manner whatsoever. I
4 repeat, under your oath, you are to draw no conclusions
5 whatsoever from the fact that the defendant in this case
6 did not testify. The fact that this defendant did not
7 testify should not even be discussed in the jury room.
8 The burden of proof as I have stated to you is on the
9 State. The defendant is not required to prove his
10 innocence. The burden of proof remains on the State to
11 prove guilt beyond a reasonable doubt.

12 Now, in order to establish criminal liability,
13 criminal intent is required. For example, the mental
14 state required to be proven by the State for a particular
15 crime might be purpose, intent, knowledge, recklessness,
16 or criminal negligence. Criminal intent must be proven
17 by the State beyond a reasonable doubt. Criminal intent
18 is always a matter that must be determined by the jury
19 from the circumstances surrounding the situation. There
20 is no way to prove intent, ladies and gentlemen, to a
21 mathematical certainty. There is no way that medical
22 science can dissect a person's brain and determine what
23 the person had in mind. So the law says that criminal
24 intent maybe inferred from the circumstances shown to
25 have existed. This is how you make a determination of

JURY CHARGE BY THE COURT

1 whether or not the element requiring intent was present.
2 It is not necessary to establish intent by direct and
3 positive evidence. But intent maybe established by
4 inference in the same way as any other fact by taking
5 into consideration the acts of the parties and all the
6 facts and circumstances of the case.

7 Criminal intent is a mental state, a conscience
8 wrongdoing. It is up to you to determine what the
9 defendant intended to do based on the circumstances shown
10 to have existed. Criminal intent can arise from action
11 or a failure to act. It may arise from negligence,
12 recklessness or an indifference to duty or to
13 consequences that is considered by the law to be the
14 equivalent of criminal intent.

15 Now, ladies and gentlemen, the defendant is charged
16 with attempted armed robbery. Armed robbery is the
17 taking and carrying away of the personal property from
18 the person of another without that person's consent while
19 armed with a deadly weapon. An attempt is an effort to
20 accomplish a crime which does not succeed. An attempt
21 includes a specific intent to do a particular criminal
22 act along with an act falling short of the act intended.
23 The State must show more than mere preparation and
24 intent. There must be some overt act committed in the
25 effort to commit the crime. Intent means intending. The

JURY CHARGE BY THE COURT

1 result which actually occurs, not accidentally or
2 involuntary. Intent maybe shown by acts and conduct of
3 the defendant and other circumstances from which you may
4 naturally and reasonably infer intent.

5 To prove attempted armed robbery, the State must
6 show beyond a reasonable doubt that the defendant
7 attempted to carry away the property with the intent to
8 permanently deprive the owner of the property and to
9 convert the property to defendant's own use. The
10 attempted taking and carrying away of the property must
11 have been done while the defendant was armed with a
12 deadly weapon. A deadly weapon is any article,
13 instrument or substance which is likely to cause death or
14 great bodily harm. Whether an instrument has been used
15 as a deadly weapon depends on the facts and circumstances
16 of each case. The following are examples of instruments
17 which maybe deadly weapons. A pistol, a shotgun, a
18 riffle, a dirk, a dagger, a knife, a slingshot, metal
19 knuckles, a razor, gasoline, a firebomb, or Molotov
20 cocktail, and lighter fluid, a gun maybe a deadly weapon
21 even if it is not operating.

22 Now, ladies and gentlemen, I am now drawing near the
23 end of my charge and I want you to clearly understand
24 that you are not partisans or advocates for the State of
25 South Carolina or the defendant. You do not serve as

JURY CHARGE BY THE COURT

1 juror to reward your friends or punish your enemies. In
2 this regard, you have been selected by both the State and
3 the defendant to be fair and impartial jurors. It is
4 your duty by your joint deliberations to determine the
5 truth in this case. Giving to the defendant the benefit
6 of every reasonable doubt on each and every issue. Then
7 to the facts which you determine to be true, you should
8 take and apply the law which has been given to you by
9 this Court and thus arrive at a verdict which speaks the
10 truth in this case.

11 In fact, the word verdict which has a Latin
12 derivative means, "a true saying". Thus when you have
13 accomplished these responsibilities, you will have
14 satisfied your oath as jurors and you will have
15 discharged your duty to this Court.

16 Mr. Foreman, once you all retire to the jury room,
17 the bailiff will give the verdict form to you. When you
18 the jury arrives at a verdict as to the offense charged
19 in this case, you will write the verdict on the verdict
20 form. If the State has failed to prove the guilt of the
21 defendant beyond a reasonable doubt, your verdict will be
22 two words, "not guilty". Likewise, if the State has
23 proved the guilt of the defendant beyond a reasonable
24 doubt, your verdict will be one word, "guilty". Once a
25 decision has been made, Mr. Foreman, check whichever

JURY CHARGE BY THE COURT

1 choice is the verdict of the jury. The verdict that you
2 render in this case, ladies and gentlemen, must be the
3 verdict of each and every juror. It must be your
4 unanimous verdict. All 12 jurors must agree on the
5 verdict which you authorize the foreman to write for the
6 jury.

7 Now, Mr. Foreman and members of the jury, I want you
8 to further understand that the order in which the choice
9 is a verdict to appear on the verdict form are not
10 suggestive of any verdict on the part of this Court. The
11 verdict in this case is to be determined by you, the
12 jury, not the Court. Furthermore, ladies and gentlemen,
13 please understand that even though I will give the
14 verdict form to foreman, it is not his verdict alone. It
15 is the verdict all 12 of you. And I emphasis again that
16 it must be unanimous.

17 Now, ladies and gentlemen, I'm also going to give
18 you a copy of these instructions in written form. During
19 your deliberations you may refer to the instructions to
20 guide your decision making. You must consider the
21 instructions as a whole and not follow some and ignore
22 others. Please return the instructions to the Court at
23 the time that your verdict is rendered, Mr. Foreman. I
24 now ask you all, ladies and gentlemen, to retire to the
25 jury room, but do not begin your deliberations until

1 you're told to do so. The law requires that I now
2 consult with the attorneys to make sure that I have not
3 left anything out of these instructions. After I have
4 checked with the attorneys, the bailiff will bring in a
5 copy of these instructions along with the evidence that's
6 been introduced and the verdict form. During your
7 deliberations, should you have any questions, pen and
8 paper will be provided to you and it will be your
9 responsibility Mr. Foreman to reduce any questions that
10 you all may have to writing, sign, and date on that piece
11 of paper, knock on the door, let the bailiff know that
12 you have a question, give it to them, they will provide
13 it to me, and I will in turn respond to it however I deem
14 fit. Okay.

15 Now, at this time, I am going to ask that you all
16 return to the jury room, but before you go, does
17 everybody on the jury feel okay?

18 (WHEREUPON, no response)

19 THE COURT: Do not begin your deliberations,
20 Mr. Foreman, until you're instructed to do so, all of
21 you. Once you reach a verdict, knock on the door, let
22 the bailiff know that you've reached a verdict and I will
23 get you back in the courtroom as quickly as possible.
24 Okay. Please retire to the jury room, but do not discuss
25 the case until you're instructed to do so.

1 (WHEREUPON, the jury retired to the jury room at
2 2:55 p.m.)

3 THE COURT: As the jury is exiting, can the lawyers
4 approach, please.

5 (WHEREUPON, a bench conference was held as the jury
6 was exiting the courtroom)

7 THE COURT: Any exception on the judgement of the
8 charge by the State?

9 MR. JEPERTINGER: Just real quickly in terms of the
10 -- When you began the attempt. This part of the second
11 paragraph where it says, "attempt is an effort to
12 accomplish crime which does not succeed." No problem
13 there. "An attempt includes a specific intent to do a
14 particular criminal act." I'm not sure if it requires a
15 specific intent. I would think, you know, there maybe
16 some case law that it's only a general intent. My mind
17 went back many years to the case of State vs. Foust. And
18 I don't have the cite here with me. I was trying to find
19 it in the young lawyer's desk book. It's spelled F O U S
20 T. If I'm not mistaken, there might be some question
21 whether it's a specific intent or a general intent. I
22 think it was Bradley Foust if I'm not mistaken. But it's
23 been many years ago.

24 THE COURT: Any exception on the judgement of the
25 charge?

1 MR. JORDAN: I don't have any problem with it.

2 MR. JEPERTINGER: Other than that little portion,
3 I'm fine with the rest, Judge.

4 THE COURT: All right. Your objection is so noted
5 for the record. I'm going to leave it as is,
6 Mr. Jepertinger.

7 MR. JEPERTINGER: Yes, sir.

8 THE COURT: But I will look at that. Did y'all look
9 at all the evidence?

10 MR. JEPERTINGER: Yes, sir. And once again, if they
11 need to see any of the videos, Judge, obviously we got
12 the video players here.

13 THE COURT: Mr. Jepertinger, I don't -- You are
14 right, but I think that applies more specifically to and
15 it addresses in this case murder and assault and battery
16 with intent to kill.

17 MR. JEPERTINGER: Right. I know it ---

18 THE COURT: I think as it relates to attempted armed
19 robbery, I think it is a specific intent in an attempt to
20 commit armed robbery. So I think it is a specific intent
21 here as opposed to a general intent on a murder ---

22 MR. JEPERTINGER: And I assume the lay juror is not
23 going to know that there's more than one type of intent.
24 I didn't know there was more than one type of intent
25 before I went to law school. I know now.

1 THE COURT: You have the verdict form?

2 THE CLERK: Yes, sir.

3 MR. JEPERTINGER: Thank you, Judge.

4 THE COURT: Thank you. Get Mr. Gaskins out, please.

5 (WHEREUPON, the clerk complies)

6 THE COURT: Mr. Gaskins, if you'll come around here,
7 please.

8 (WHEREUPON, a discussion with Mr. Gaskins was held
9 off the record)

10 (WHEREUPON, alternate was excused)

11 (WHEREUPON, deliberations began at 3:02 p.m.)

12 THE COURT: I need to get the defendant in this, Mr.
13 Brown back in here. Can the lawyers approach a minute,
14 please.

15 (WHEREUPON, a discussion off the record)

16 THE CLERK: You want me to get her to mark it?

17 THE COURT: Yes, ma'am.

18 (WHEREUPON, Court's Exhibit No. 1 and 2 were marked
19 and entered)

20 THE COURT: If possible -- Well, they want to see
21 the two videos from inside the store. That's these two
22 videos that are up right now; right?

23 MR. JEPERTINGER: Uh-huh.

24 THE COURT: The only capability and you tell me if
25 I'm wrong, you can have them up, but you can't play and

1 talking at the same time. That's what it appears they
2 want. Any objection to that Mr. Jepertinger?

3 MR. JEPERTINGER: No, if that's what they want.

4 MR. JORDAN: I would object to that. I think it
5 explains the evidence differently than it did during the
6 trial.

7 THE COURT: Well, it's in evidence. They're both in
8 evidence. Subject to your objection, so noted for the
9 record, I'm going to allow it. Bring the jury, please,
10 ma'am.

11 (WHEREUPON, the jury came into open Court at
12 approximately 3:39 p.m.)

13 THE COURT: Mr. Jepertinger and Mr. Jordan, can you
14 all approach a minute.

15 (WHEREUPON, a bench conference was held in the
16 presence of the jury, but out of the hearing of the jury)

17 THE COURT: Mr. Foreman, I have received your two
18 notes. Mr. Godbolt can you raise that. And we have two
19 videos side by side. All right. Now, my interpretation
20 of your notes and you tell me if I'm wrong, Mr. Foreman.
21 Is that we will play each one individually to where
22 there's talking is involved. Then we will play the next
23 one where talking is involved. Is that correct?

24 MR. WORRELL: Yes, your Honor.

25 THE COURT: Mr. Godbolt, if you will do that.

VERDICT OF THE JURY

1 (WHEREUPON, the video was played for the jury)

2 THE COURT: Mr. Godbolt, if you will stop it there.

3 Is that sufficient, Mr. Foreman?

4 MR. WORRELL: Yes, your Honor.

5 THE COURT: Now, play the other one, please.

6 (WHEREUPON, the video was played for the jury)

7 THE COURT: Mr. Godbolt, stop it. Is that

8 sufficient, Mr. Foreman?

9 MR. WORRELL: Yes, your Honor.

10 THE COURT: All right. I'm going to ask that you

11 all return to the jury room and continue your

12 deliberations, please.

13 (WHEREUPON, the jury retired to the jury room at

14 3:45 p.m.)

15 THE COURT: All right. We'll stand down.

16 (WHEREUPON, there was a break taken)

17 THE COURT: All right. It's my understanding that

18 the jury's got a verdict in the case?

19 THE CLERK: Yes, sir.

20 THE COURT: I'll remind everybody in the courtroom

21 whatever the verdict is, keep your emotions in check.

22 Your failure do so could result in you being held in

23 contempt of Court and sentenced to a term or a period of

24 incarceration. Anything from the State before I bring

25 the jury in?

VERDICT OF THE JURY

1 MR. JEPERTINGER: No, sir.

2 THE COURT: Defense counsel?

3 MR. JORDAN: No, sir.

4 THE COURT: Bring me the jury, please, ma'am.

5 THE CLERK: Yes, sir.

6 (WHEREUPON, the jury came into open Court at 3:55
7 p.m. with a verdict)

8 THE COURT: Madam Clerk.

9 THE CLERK: Mr. Foreman, have you reached a verdict?

10 MR. WORRELL: Yes, ma'am.

11 THE COURT: You may publish the verdict.

12 THE CLERK: The State of South Carolina County of
13 Florence in the Court of General Sessions Indictment
14 Number 2013-GS-21-320, the State of South Carolina vs.
15 Jeffrey Thomas Brown. As to charge of attempted armed
16 robbery, we the jury unanimously find the defendant
17 Jeffrey Thomas Brown guilty. Dated September 19, 2013
18 signed Howard Worrell, Foreperson.

19 Members of the jury, if this is your verdict, please
20 raise your right hand.

21 (WHEREUPON, everyone complied)

22 THE CLERK: That is everybody.

23 THE COURT: All right. Anything from the State at
24 this time?

25 MR. JEPERTINGER: No, sir.

1 THE COURT: Defense counsel?

2 MR. JORDAN: Not at this time, your Honor.

3 THE COURT: All right. Ladies and gentlemen, I want
4 to thank you for your service this week. When I release
5 you here today, you are free for the balance of the week.
6 All right. You do not have to come back. But I want to
7 personally thank you for your service this week. I know
8 that jury service never comes at a convenient time. It
9 never comes at a convenient time, but jury service is
10 really the only remaining service that we have that we
11 are called upon to perform as citizens of this country
12 anymore. It's not a situation wherein we are drafted
13 into the military like individuals such as Mr. Propps
14 who's seated by that backdoor who's a bailiff up here.
15 Mr. Propps served in our War World II and he is 92, Mr.
16 Propps?

17 MR. PROPPS: Ninety-one (91).

18 THE COURT: Ninety-one (91) and he's still up here
19 everyday that we have Court serving as a bailiff in this
20 courthouse. But because of individuals like him and
21 those who currently serve in the military, we have the
22 rights that we have in this country. I want to thank you
23 again for your service. We can't get you back up here to
24 serve again as jurors at least not for the next three
25 years. Now, if you're summoned for jury duty over in

City Court, Magistrate's Court or Federal Court, there's not a thing I can do to help you. But I hope you all have had a good experience up here this week. I hope you've learned that this is not television. This is not television at all. Takes a lot of people for our judicial system to work and it cannot -- It cannot work without people such as yourselves serving as jurors.

Now, you all will get a check in the mail for your service this week. I will go ahead and tell you, don't plan on buying any large ticket items. It is not something that you can use to buy any large ticket item. We can't -- The truth of the matter, we can't pay you for what your service is worth. Just can't do it. You will also have in there a work excuse if you need that, but those checks should go out tomorrow.

Now, you all as it relates to this case, you all performed your responsibilities. You all are free to go at this time. What will take place now is sentencing and that will be done by me by the Court. You all are free to go, but you may stay if you so desire. You may stay. If you wish to leave, you're free to go at this time.

Is the State ready to proceed with sentencing?

MR. JEPERTINGER: The State is, your Honor.

THE COURT: Mr. Foreman and ladies and gentlemen of the jury, let me tell you this before you leave. You can

1 now talk about the case if you so desire. However,
2 nobody can make you talk about the case. If somebody
3 approaches you to talk about the case and you tell them
4 you don't want to talk about the case and they do not
5 leave you alone, and you let the Court know and we'll
6 handle it. Okay. But you can talk about it now if you
7 so desire, but you don't have to. Okay.

8 THE COURT: All right, Mr. Jepertinger?

9 MR. JEPERTINGER: Please the Court, your Honor.
10 This young man ---

11 THE COURT: Mr. Jordan, if you'd bring your client
12 around for sentencing.

13 MR. JEPERTINGER: This young man had a conviction
14 for burglary second, your Honor. He's currently doing --
15 And it was converted to where he could do a youthful
16 offender sentence. What I had was a burglary second
17 degree. Original sentence and he converted to YOA not to
18 exceed six years, that was in 2009. He's had some other
19 little piddly stuff in Magistrate's Court, your Honor.
20 And currently he's in the Department of Corrections doing
21 a youthful offender, I guess parole violation sentence,
22 your Honor. He's currently at Turbeville Correctional
23 Institution, your Honor.

24 In talking to law enforcement, your Honor, even
25 though this is a serious crime, we don't try to minimize

1 it. Normally, you know, it's easy for me to come up here
2 and ask to throw the book at him, he's just been
3 convicted, your Honor. But I'm not going to do that in
4 this case.

5 I talked to law enforcement, originally I think we
6 had offered him ten years, Chief? And he does come from
7 a good family. And we'd ask that as the State, we'd ask
8 you to take that into consideration. We know he has to
9 be punished and has to be punished severely. But I guess
10 on behalf of the State, we don't think it would benefit
11 him. I think what the Chief said during the course of
12 the trial that he's trying to get young people's
13 attention in the Johnsonville community, your Honor.

14 And, you know, the distinction between what Mr. Brown did
15 and Mr. Venters, as Mr. Venters as soon as he approached
16 -- The Chief approached him at Johnsonville High School,
17 he fessed up to his involvement in this, to the burglary
18 that I think they were involved with, and the breaking
19 and entering motor vehicles that they were also involved
20 with that evening. So, I mean, there is that
21 distinction, your Honor.

22 But at the same time, I told Chief, I think it's a
23 serious offense, but the State doesn't want their pound
24 of flesh, so to speak. Thank you, your Honor.

25 THE COURT: The offer was ten years?

1 MR. JEPERTINGER: The offer was ten years.

2 THE COURT: All right. Mr. Jordan, anything you
3 wish to tell me, sir?

4 MR. JORDAN: Your Honor, just briefly. Mr. Brown is
5 21 years old, he was born and raised in Johnsonville and
6 he's from a good family up here, your Honor. He has the
7 support of his wife Candice and his mother Lucinda. They
8 have been here today in the courtroom. Your Honor, he
9 has a, I believe she's five years old today, a daughter.
10 He attends Johnsonville Freewill Baptist Church. Your
11 Honor, obviously in light of the jury finding him guilty,
12 we are here, appears that he made a terrible mistake. A
13 lapse in judgment, what have you, and understands the
14 penalty for it. We would ask you to be as considerate as
15 possible, lenient as possible, but Mr. Jepertinger has
16 made a very kind recommendation and we would ask that you
17 consider that going forward as you sentence him.

18 THE COURT: Mr. Brown, anything you want to tell me,
19 sir?

20 MR. BROWN: Your Honor, I do feel like this trial's
21 went the opposite direction of what it was suppose to. I
22 do feel like some of the evidence was so, say pushed on
23 to the jury. I do and I would ask for your sympathy
24 since now I am found guilty that you take as much
25 sympathy on me as you possibly could. Thank you.

1 THE COURT: Mr. Jordan, I noticed that he's got some
2 family here, do any of them wish to speak? If so, I will
3 give them an opportunity to speak.

4 MR. JORDAN: Your Honor, I don't believe they wish
5 to speak.

6 THE COURT: How much time is he -- Will he be
7 entitled to credit here, Mr. Jepertinger?

8 MR. JEPERTINGER: Your Honor, his date of arrest
9 obviously was November 2. He made bond November 20, so
10 that's at least 11 days, I guess, we calculated. And
11 then, I don't know when he got -- It was pending that he
12 got the YOA revocation, your Honor. But he has at least
13 11 days of service that I counted up.

14 THE COURT: Have you totaled it up, Mr. Jordan?

15 MR. JORDAN: Well, he was picked up on April 18 --
16 Well, he was placed in Turbeville April 18 on the YOA
17 revocation.

18 MR. JEPERTINGER: Which would be different, your
19 Honor, because that arises from the burglary.

20 THE COURT: Right. What did he do to violate? Was
21 it this charge right here?

22 MR. BROWN: Yes, sir.

23 THE COURT: And they waited from October of last
24 year until April to violate you?

25 MR. BROWN: Yes, sir.

1 THE COURT: How far did you go in school?

2 MR. BROWN: I went to the eighth grade, high school
3 dropout.

4 THE COURT: Why did you drop out of school?

5 MR. BROWN: I had a lot of drug problems. And when
6 I went and got incarcerated my last time, I did get my
7 GED. And I passed it, so I do have a high school
8 equivalency.

9 THE COURT: You ever worked anywhere?

10 MR. BROWN: Yes, sir, I have.

11 THE COURT: Where?

12 MR. BROWN: I worked with M&M Construction and LLC
13 for a little while until work got delayed. I done
14 construction just about all my life. You know, welding
15 and fabricating. Mostly cleaning at labor work. Cut
16 grass a lot. Basically everything that a convicted felon
17 can do. That's all I have to say, Judge, your Honor.

18 THE COURT: You find anything?

19 PROBATION AGENT: Yes, sir. Marion County case on
20 4/4/2012. No. 1252 dated 5/9/13, the officer revoked
21 him. And it was also recommended that Mr. Brown receive
22 any available substance abuse -- Counseling substance
23 abuse, education program while incarcerated.

24 THE COURT: Why was he revoked? Is it because of
25 this charge is what I am asking?

RULING OF THE COURT

1 PROBATION AGENT: Failed to refrain from using
2 cocaine and marijuana. Violated the local laws from
3 breaking and entering into a motor vehicle, burglary,
4 attempted armed robbery.

5 THE COURT: It is part of it?

6 PROBATION AGENT: Yes.

7 MR. JEPERTINGER: Yes.

8 PROBATION AGENT: Part of it and other drug charges
9 and money.

10 THE COURT: All right. Anything else, Mr. Jordan?

11 MR. JORDAN: Nothing further, your Honor.

12 THE COURT: Anything further, Mr. Jepertinger?

13 MR. JEPERTINGER: No, sir.

14 THE COURT: All right. On Indictment
15 2013-GS-21-320, give me the -- Ms. Manning, would you
16 give me the warrant number or indictment number on the
17 YOA he's currently doing because I need to know that for
18 purposes of this sentence sheet. Or do you have that,
19 Mr. Jepertinger?

20 MR. JEPERTINGER: Let me see if it's on the NCIC,
21 Judge. The warrant for which he was convicted, your
22 Honor, was K245560, that was the burglary.

23 THE COURT: All right. On Indictment 2013-GS-21-320
24 the defendant be committed to the State Department of
25 Corrections for a period of 15 years giving credit for 11

1 days. It's to run concurrent with what he's currently
2 doing. Good luck to you, Mr. Brown.

3 MR. JEPERTINGER: Thank you, your Honor.

4 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

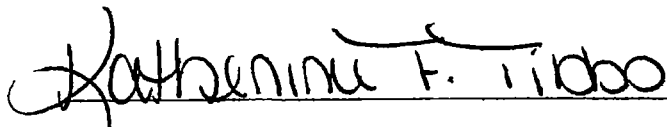
COUNTY OF FLORENCE)

I, KATHERINE F. TIBBS, Registered Professional Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 19th of September, 2013.

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

(This transcript was transcribed from the record taken by Keshia Reed)

February 12, 2014

A handwritten signature in cursive script that reads "Katherine F. Tibbs". The signature is written in dark ink and is positioned above the printed name.

Katherine F. Tibbs

Registered Professional Reporter

FORM 5
FILED

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

2015 MAR 27) PM 1:58

THE COURT OF COMMON PLEAS

JEFFREY Thomas BOWEN
Full name and prison number (if any) of Applicant.CORRIE REE - SHERIFF
CCCP & GS
FLORENCE COUNTY, SC

2015 CP 21-904

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention NCI 990 Wiscoky Highway, Bishopville S.C. 29010
2. Name and location of Court which imposed sentence FLORENCE COUNTY
3. Name(s) of co-defendant(s) (if any) MATTHEW LAWRENCE VESTERS
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-21-00320 Att. Robbery & Attege Robbery
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Sept 19, 2013
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty TRIAL
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. UNPUBLISH OPINION 2015-UP-062
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. UNPUBLISH SUBMITTED DEC 1, 2014, FILE FEB 04, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UNPUBLISH OPINION
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
 (b) MOTION FOR RECONSIDERATION
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) STRICKLAND vs. WASHINGTON
 (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? N/A
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 (d) any other petitions, motions or applications in this or any other Court? N/A

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. NONE
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. NONE
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. NONE
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. NONE
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. NONE
- 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?
- NONE
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. NONE
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. NONE
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. DANIEL T. JORDAN, ESQUIRE Public Defender
 - ii. WANDA H. CARTER
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Public Defender
 - ii. APPELLATE COUNSEL
 - iii. _____

19. State clearly the relief you seek in filing this application:

Motion for Reconsideration

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of FLORENCE)

VERIFICATION

I, _____, 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.

Jeffrey T. R.

SWORN to and subscribed before me this 25
day of March, 2015.

Diana Surges (L.S.)
Notary Public

My Commission Expires: 11-4-2015

FILED
2015 MAR 27 PM 1:59
CONNIE REEL-SHEPARD
CCLP & GS
FLORENCE COUNTY, SC

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , 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

25 day of March, 2015.


Notary Public

My Commission Expires: 11-4-2015

FILED
2015 MAR 27 PM 1:59
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Jeffrey Thomas Brown, #338329,

Applicant,

Vs.

State of South Carolina

Respondent.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

**AMENDMENT TO APPLICATION FOR
POST CONVICTION RELIEF**

Case No. 2015-CP-21-0904

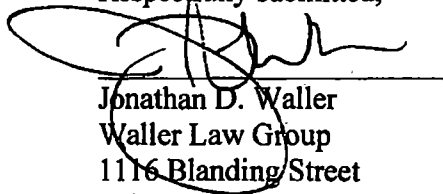
Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post Conviction Relief filed on March 27, 2015, by adding the claims of ineffective assistance of to question 10 and by adding the following specific prayers for relief to his original allegations:

1. As to representation rendered by Daniel Jordan, Esquire:

- a. Counsel was ineffective for failing to disclose a potential conflict of interest, based on a familial relationship, with counsel for Applicant's cooperating codefendant.
- b. Counsel was ineffective for failure to properly prepare for Applicant's trial, specifically by not visiting Applicant for the five (5) months prior to Applicant's trial, while Applicant was incarcerated in the Department of Corrections.
- c. Counsel was ineffective for failure to object to impermissible hearsay testimony during the direct examination of Ron Douglas.

- d. Counsel was ineffective for failure to object to impermissible comments on Applicant's right to remain silent during the testimony during the direct examination of Ron Douglas.
- e. Counsel was ineffective for failure to file applicable post-trial motions.

Respectfully submitted,



Jonathan D. Waller
Waller Law Group
1116 Blanding Street
Suite 2B
Columbia, South Carolina 29201
ATTORNEY FOR APPLICANT

February 1, 2018

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	TWELFTH JUDICIAL CIRCUIT
	)	
Jeffrey Thomas Brown, #338329,	)	2015-CP-21-0904
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION
	)	FOR A MORE DEFINITE STATEMENT
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on March 27, 2015, the Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the March 2013 term of the Florence County Grand Jury for one count of Attempted Armed Robbery (2013-GS-21-0320).¹ Applicant was represented by Daniel T. Jordan, Esquire. At a jury trial on September 19, 2013, Applicant was convicted of one count of Attempted Armed Robbery and sentenced by the Honorable D. Craig Brown to fifteen years.

Applicant filed a timely notice of appeal. The appeal was perfected by Wanda H. Carter, Esquire, of the South Carolina Office of Appellate Defense pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction on February 4, 2105. State v. Brown, Op. No. 2015-UP-062 (S.C. Ct. App. 2015). The Remittitur was

¹ Applicant was also indicted on three counts of Breaking and Entering a Motor Vehicle and one count of Burglary

returned on February 20, 2015.

II.

In his application for post conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. "Strickland v. Washington."
2. "Motion for Reconsideration"

Attached herewith and incorporated herein by reference are the records of the Florence County Clerk of Court regarding the subject convictions, Applicant's records from the Department of Corrections, Applicant's appellate records, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

For purposes of this Return, Respondent interprets Applicant's allegations as claims of ineffective assistance of counsel. Applicant's claim of ineffective assistance of trial counsel is without merit. In a PCR action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v.

Second Degree. Those charges were ultimately dismissed.

Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of trial counsel probably raises questions of fact 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.

Respondent also moves for a more definite statement. In his Application, Applicant has wholly failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985) (emphasis added).

It is incumbent upon Applicant, through counsel, to amend his application well in advance and set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

V.

Each and every allegation contained within the application not hereinbefore, either expressly admitted, qualified or explained is hereby denied. 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. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCF. Pro se filings will not be considered at the PCR hearing.

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCF.

VI.

WHEREFORE, Respondent requests an evidentiary hearing solely for the purpose of determining whether Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

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Senior Assistant Deputy Attorney General

By: 
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7 Sept., 2016

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2015-CP-21-00904
	)	
Jeffrey Thomas Brown,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
The State of South Carolina,	)	
	)	
Respondent.	)	
	)	

April 6, 2018
 Florence, South Carolina

B E F O R E:

The Honorable George M. McFaddin, Judge

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

Jonathan Waller, Esquire
 Attorney for the Applicant

Lindsey McCallister, Esquire
 Attorney for the State

Krystal J. Smith
 Circuit Court Reporter

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22	ellipses . . .	trailing off		
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24	[sic]	written as said		
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1 APRIL 6, 2018

2 (WHEREUPON, the proceedings began at 11:06 a.m.)

3 THE COURT: Whenever you're ready, Ms. McCallister.

4 MS. MCCALLISTER: Thank you.

5 THE COURT: If you're waiting on me.

6 MS. MCCALLISTER: This is Jeffrey Thomas Brown versus

7 the State of South Carolina, 2015-CP-21-0904. Your Honor,

8 Mr. Brown was indicted in March of 2013 by the Florence

9 County Grand Jury for one count of attempted armed robbery.

10 He was represented on that charge by Daniel Jordan. At
11 a jury trial on September 19th, 2013, he was convicted of one
12 count of attempted armed robbery and sentenced by Judge Brown
13 to 15 years.

14 He filed a timely notice of appeal and an appeal was
15 perfected by Wanda Carter of the South Carolina Office of
16 Appellate Defense, who filed a brief pursuant to Anders. The
17 South Carolina Court of Appeals affirmed applicant's
18 conviction on February 4th, 2015, and the remittitur was
19 returned to the Circuit Court on February 20th, 2015.

20 He timely filed this application for post-conviction
21 relief on March 27th, 2015. Mr. Jonathan Waller has been
22 appointed to represent him in this matter, and both Mr.
23 Waller and Mr. Brown are in the courtroom today.

24 Your Honor, there has been some amendments to Mr.
25 Brown's application since it was filed, and I would just ask

1 Mr. Waller to enumerate the allegations on the record before
2 we go forward today.

3 THE COURT: Mr. Waller?

4 MR. WALLER: Thank you, Your Honor. May it please the
5 Court.

6 Your Honor, I filed an amendment to Mr. Brown's
7 application as far as ineffective assistance of counsel goes.
8 Your Honor, the first allegation is actually that counsel was
9 ineffective for failure to disclose a potential conflict of
10 interest. When it was filed, it was -- my amendment says
11 that it was based on a familial relationship with counsel for
12 applicant's cooperating co-defendant. That actually was in
13 error. It's actually a professional relationship is what
14 we're going forward on.

15 The next allegation is that counsel was ineffective for
16 failure to properly prepare for applicant's trial.

17 The third allegation is that counsel was ineffective for
18 failure to object to impermissible hearsay testimony during
19 the direct examination of Ron Douglas.

20 The fourth was that counsel was ineffective for failure
21 to object to impermissible comments on applicant's right to
22 remain silent during the testimony, the direct examination of
23 Ron Douglas.

24 And finally, that counsel was ineffective for failure to
25 file applicable post-trial motions in this matter.

1 THE COURT: All right, ma'am. Are you ready?

2 MS. MCCALLISTER: Your Honor, we actually procedurally
3 need to take a witness out of order. The State had
4 subpoenaed Mr. Jay Jordan to be here today to testify on the
5 conflict of interest issue, and we're running out of time
6 with him. So I would like to call him on that issue first.

7 THE COURT: Is that okay?

8 MR. WALLER: I have no objection, Your Honor. Mr.
9 Jordan is actually a member of the legislature and he doesn't
10 have to be here.

11 THE COURT: Sure.

12 MR. WALLER: So he's doing us a favor. So I have no
13 objection.

14 THE COURT: Well, by all means. By all means. That's
15 fine.

16 How are you, sir?

17 THE CLERK: Mr. Jordan, if you will, place your left
18 hand on the Bible and raise your right hand? I'm sorry.

19 Do you swear or affirm that the testimony you give will
20 be the truth, the whole truth, and nothing but the truth, so
21 help you God?

22 THE WITNESS: I do.

23 THE CLERK: Thank you.

24 THE COURT: Proceed, ma'am.

25 MS. MCCALLISTER: Thank you.

WALLACE "JAY" JORDAN - DIRECT BY MS. MCCALLISTER

1 WALLACE JORDAN, being first
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. MCCALLISTER:

5 Q: Your Honor -- I'm sorry. Mr. Jordan, you -- you
6 represented a co-defendant in this case; is that correct?

7 A: That's correct. I believe Mr. Venters.

8 Q: Mr. Venters, who would actually end up testifying at the
9 trial against Mr. Brown; is that right?

10 A: Also correct.

11 Q: Okay. And you've heard the allegations here today that
12 Mr. Brown is raising a conflict of interest allegation
13 against Mr. Jordan based on Mr. Jordan's practice with you
14 at that time of this representation. Can you explain a
15 little bit about how your -- your practice was set up at the
16 time?

17 A: Sure. At the time of this case, my law office had been
18 established for a number of years. Mr. Daniel Jordan had
19 been practicing with me for about a year, I believe, prior to
20 this case. That was separate and apart completely from both
21 of our independent roles as part-time public defenders within
22 the Florence County Public Defender's Office. I guess you
23 could say while I had a supervisory capacity of Mr. Jordan in
24 the private practice, I had no such capacity in the Public
25 Defender Office.

WALLACE "JAY" JORDAN - DIRECT BY MS. MCCALLISTER

1 Q: Okay.

2 A: We keep those cases -- I still keep those cases. I'm
3 assuming Daniel does in his own private practice now, as he's
4 on his own. You know, the PD cases are the PD cases and the
5 private practice cases are the private practice cases, and
6 those are totally separated and walled off. We don't even
7 keep files in the same places.

8 Q: Okay. So the -- so, for example, Mr. Venters' file
9 would not have been kept in your private office; is that
10 correct?

11 A: No. It would stay in the PD office and, of course, we
12 both have office space within the Public Defender's Office,
13 and all that would stay in the county courthouse.

14 Q: Okay. And you said that you have a contract to be a
15 part-time -- or at the time, at least, you had a contract as
16 a part-time public defender?

17 A: That's right. I was a part-time public defender, yes.

18 Q: Okay. And Mr. Daniel did as well?

19 A: We're technically -- we --

20 Q: I'm sorry. You're both Mr. Jordan. So Daniel Jordan
21 did as well?

22 A: We are technically both part-time employees of Florence
23 County.

24 Q: Okay.

25 A: So it's not as if he was operating in his role as a --

WALLACE "JAY" JORDAN - DIRECT BY MS. MCCALLISTER

1 you know, a member of the private practice and then
2 fulfilling the terms of that contract. We are separate
3 employees, receive a W-2 from Florence County for the role of
4 part-time public defender.

5 Q: Okay. So you didn't pay Daniel Jordan any money for his
6 representation of this co-defendant or that didn't come
7 through your private practice?

8 A: No. All of that would be handled by way of Florence
9 County and, like I said, you would even get a W-2 as supposed
10 to a 1099 or something like that.

11 Q: Okay. And you -- you didn't have any ability to direct
12 his representation of Mr. Brown in any way?

13 A: No. I have no supervisory capacity when it comes to the
14 public defender aspect.

15 Q: Did -- did you have any -- any involvement in assigning
16 that case to Daniel?

17 A: No. Mr. Scott Floyd, who is the head public defender,
18 he assigns all the cases.

19 Q: Okay. And had you made the Public Defender's Office
20 aware that Daniel Jordan worked for you in private practice?

21 A: I mean it was common knowledge.

22 Q: Okay. So every -- so you're confident that the Public
23 Defender's Office was aware that you guys had this private
24 practice together on the side?

25 A: Absolutely.

WALLACE "JAY" JORDAN - DIRECT BY MS. MCCALLISTER

1 Q: Okay. And that office, the Public Defender's Office, is
2 the people who would've assigned these cases to you?

3 A: Correct.

4 Q: Okay. And did you ever have any discussions with Daniel
5 about -- about these two cases?

6 A: None.

7 MS. MCCALLISTER: I think that's all the questions I
8 have, Your Honor.

9 THE COURT: Mr. Waller?

10 MR. WALLER: Very briefly, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. WALLER:

13 Q: Mr. Jordan, you testified that you had a supervisory
14 role in your private practice of Mr. Daniel Jordan?

15 A: He was an associate in my firm. So I guess technically
16 under the rules, I'm responsible for him while he's employed
17 at the firm, yes.

18 Q: Okay. And the date of this trial was September 19th,
19 2013. I believe you testified that he been working for you
20 for about a year at that point?

21 A: To the best of my recollection, I believe Daniel came in
22 with the firm in early 2012 and stayed until sometime late
23 '13, if I remember correctly.

24 Q: Okay.

25 MR. WALLER: Nothing further. Thank you, Mr. Jordan.

JEFFREY THOMAS BROWN - DIRECT BY MR. WALLER

1 THE COURT: Ms. McCallister?

2 MS. MCCALLISTER: I have nothing further, Your Honor.

3 THE COURT: May he be released?

4 MS. MCCALLISTER: I'm sorry?

5 THE COURT: May he be released?

6 MR. WALLER: Yes, Your Honor.

7 MS. MCCALLISTER: Yes.

8 THE COURT: Have a good day, sir.

9 THE WITNESS: Thank you, Your Honor. Good to see you.

10 THE COURT: All right. Back to you, Mr. Waller.

11 MR. WALLER: Thank you, Your Honor. The applicant would
12 call Jeffrey Thomas Brown.

13 THE CLERK: Mr. Brown, place your left hand on the Bible
14 and raise your right hand as much as you can.

15 Do you swear or affirm that the testimony you give will
16 be the truth, the whole truth, and nothing but the truth, so
17 help you God?

18 THE APPLICANT: I do.

19 MR. WALLER: May it please the Court, Your Honor.

20 THE COURT: Yes, sir.

21 JEFFREY THOMAS BROWN, being
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. WALLER:

25 Q: Good morning, Mr. Brown. How are you today?

JEFFREY THOMAS BROWN - DIRECT BY MR. WALLER

1 A: All right. Good morning.

2 Q: All right. Mr. Brown, if I can get you to speak loudly,
3 clearly and slowly so the court reporter can take down
4 everything you say?

5 A: Yes, sir.

6 Q: Mr. Brown, what were you arrested for?

7 A: Charge is attempted armed robbery.

8 Q: Okay.

9 A: I had four other indictments, which was burglary second
10 and three counts of breaking in motor vehicles at the time.

11 Q: Okay. And those were separate and distinct from this
12 charge at the store?

13 A: No, sir. They were actually filed at the same time and
14 I was indicted on all five of them, which I was -- I was to
15 be incarcerated on all five indictments.

16 Q: Okay. Let me ask you this way. You -- the trial you
17 had --

18 A: Yes, sir.

19 Q: -- was only on the attempted armed robbery of the store?

20 A: Yes, sir.

21 Q: Okay. When you -- but you had four other indictments
22 you said that you were served with at the same time?

23 A: Yes, sir.

24 Q: Okay. When you were arrested on, I guess, all five of
25 those charges, but particularly the one that you went to

JEFFREY THOMAS BROWN - DIRECT BY MR. WALLER

1 trial for --

2 A: Yes, sir.

3 Q: Who was your attorney?

4 A: Mr. Daniel Jordan.

5 Q: All right. And how did he come to be your attorney?

6 A: Well, at the time, he was state represented. He was
7 represented by the State of South Carolina, and I had spoke
8 to him the day of my trial.

9 Q: Okay. So he was appointed to represent you; is that
10 right?

11 A: Yes, sir.

12 Q: Okay. Now, when you were first arrested, where were you
13 housed?

14 A: I was housed in Johnsonville City Police Department.

15 Q: Okay. And after that, did you go anywhere else?

16 A: I went to the Florence County Detention Center.

17 Q: Okay. When you were in Florence County, did you and Mr.
18 Daniel Jordan have an opportunity to meet and discuss your
19 case?

20 A: No, sir.

21 Q: Okay. After Florence County but before your trial, did
22 you go anywhere else?

23 A: No, sir.

24 Q: Okay. Were you ever in the Department of Corrections?

25 A: Yes, sir.

JEFFREY THOMAS BROWN - DIRECT BY MR. WALLER

- 1 Q: Okay.
- 2 A: I apologize. I -- actually, I thought you meant from
3 the county to trial. Excuse me. I was in the Department of
4 Corrections at Turbeville Correctional Center.
- 5 Q: Okay. Why were you at Turbeville?
- 6 A: I was under a violation of parole on a YOA sentence.
- 7 Q: Okay. So you -- picking up these charges was a
8 violation --
- 9 A: Violation of my --
- 10 Q: -- YOA parole?
- 11 A: Yes, sir.
- 12 Q: Okay. So you were sent back to Turbeville for 10 months
13 or so?
- 14 A: Yes, sir.
- 15 Q: Okay. While you were at Turbeville, did you and Mr.
16 Daniel Jordan have an opportunity to discuss your case?
- 17 A: No, sir.
- 18 Q: Did he ever come to Turbeville and meet with you?
- 19 A: No, sir.
- 20 Q: Okay. How many times do you think you met with Mr.
21 Daniel -- Daniel Jordan in preparing your case for trial?
- 22 A: Once and the day of my trial.
- 23 Q: Okay. Once before the date of your trial or --
- 24 A: No, sir. The day of my trial.
- 25 Q: Okay. That was the first time you ever met him?

JEFFREY THOMAS BROWN - DIRECT BY MR. WALLER

1 A: A few -- about a few moments before my trial, yes.

2 Q: Okay. Had y'all communicated by letter or phone call or
3 anything like that?

4 A: No, sir, not that I can recall.

5 Q: Okay. When you showed up to court that day, what did
6 you think you were going there for?

7 A: Well, the first -- the first -- the first conversation
8 that we had was to ask of a plea hearing of a cap of 10
9 years, to plead to a cap of 10 years for attempted armed
10 robbery, and which I told him, no, I did not want to plead.
11 I wanted to go to trial. And that is when I further told him
12 that's what I wanted and we went to trial.

13 Q: Okay. When did that conversation happen?

14 A: Moments before my trial.

15 Q: Okay. So right before the trial, that's the
16 conversation y'all had? That he wanted you to plead and you
17 said no and so y'all started your trial?

18 A: Yes, sir.

19 Q: What did you think your defense was going to be at the
20 trial?

21 A: At that point, I did not know. I was -- I was going --
22 I went into trial blind.

23 Q: Okay. The State alleged that you and your co-defendant
24 pulled up to a gas station and one person got out and went in
25 the gas -- went into the gas station and attempted to rob the

JEFFREY THOMAS BROWN - DIRECT BY MR. WALLER

1 gas station; is that right?

2 A: Yes, sir.

3 Q: Okay. And after that took place, both of y'all were

4 approached by law enforcement; is that right?

5 A: Yes, sir. At different -- different times.

6 Q: Sure. Different times, but your co-defendant gives a

7 statement to law enforcement, I believe at his school; is

8 that right?

9 A: I'm sure that he -- I'm sure that I read in my

10 transcript that he did talk to Mr. Donnie Howell, if that's

11 his name.

12 Q: Okay.

13 A: About what happened.

14 Q: Okay. And you did not give a statement to law

15 enforcement; is that right?

16 A: No, sir.

17 Q: Okay. Were you aware of who your co-defendant's

18 attorney was?

19 A: Not at the time.

20 Q: Okay. Did you -- your co-defendant was related to you;

21 is that right?

22 A: No, sir. Not as far as being -- in relations to being

23 married to my mother, yes.

24 Q: Okay. He was your stepbrother; is that right?

25 A: Yes, sir.

JEFFREY THOMAS BROWN - DIRECT BY MR. WALLER

1 Q: Okay. Because he wasn't blood related, but he was
2 related by marriage?

3 A: Yes, sir.

4 Q: Okay. So you were not aware of who his attorney was?

5 A: No, sir.

6 Q: Okay. He testified at trial against you; is that right?

7 A: Yes, sir.

8 Q: Okay. You testified a second ago that you went into
9 trial blind and didn't know what your -- didn't know what
10 your defense was going to be. Did you ask Mr. Daniel Jordan
11 about that?

12 A: Well, I asked. Let me get my words correct. I asked
13 him to call witnesses at first. I told him that, you know, I
14 was trying to prove my alibi, where I was at at points in
15 times, and the second thing that I asked was for my motion to
16 the videos to be suppressed before trial, and those were the
17 two things that I asked for beforehand in a small room.
18 After that, no, that was it. That was the only two things
19 that I asked him, that I talked to him about.

20 Q: Okay.

21 A: Other than him telling me about my plea hearing.

22 Q: Okay. Let me ask you this. When did you find out that
23 Mr. Jordan represented you?

24 A: It would have been -- it would have been the letter that
25 I got, I believe, that was stating that the state

JEFFREY THOMAS BROWN - DIRECT BY MR. WALLER

1 representative, Mr. Jordan Daniels [sic], would be
2 representing me at court, if I'm not mistaken. I'm not sure
3 if I got a letter or I'm not sure if it was in my -- I can't
4 remember clearly what it was, but I know that if it wasn't a
5 letter, it was in --

6 Q: Let me ask you this. Were you still in Effingham or
7 were you at Turbeville at that point?

8 A: No, sir. I was at Turbeville at that point. I know
9 that nothing -- while I was in Florence County, I never seen
10 or received any mail stating that my representation would
11 have been Mr. Jordan Daniels.

12 Now, while I was in SCDC, Department of Corrections, I
13 cannot recall if I had got a letter stating that I would have
14 been represented by him or that it was the day of my trial
15 that he would be representing me, but I'm not sure. So I
16 can't recall. I do not want to state anything that is not
17 true.

18 Q: How long were you at Florence County before you went to
19 Turbeville?

20 A: I stayed in Florence County for 11 days before I bonded,
21 if I'm not mistaken, and then I caught a violation of my
22 parole because of the charges.

23 Q: Okay. Do you remember how long after you were first
24 arrested until you had to go to Turbeville?

25 A: I believe it was April.

JEFFREY THOMAS BROWN - DIRECT BY MR. WALLER

1 Q: Okay. And when were you arrested, if you recall? Does
2 October sound right? Or early November?

3 A: And you're speaking on the attempted armed robbery?

4 Q: Yes, sir.

5 A: I was arrested shortly after October 31st.

6 Q: Okay. So early November is when you would have been
7 arrested?

8 A: Yes, sir.

9 Q: And you were -- did 11 days in Florence County and then
10 made bond?

11 A: Yes, sir.

12 Q: And then in April you think you went to Turbeville?

13 A: Yes, sir.

14 Q: Okay. Did you and Mr. Daniel Jordan ever discuss the
15 video, the surveillance video at the store?

16 A: No, sir. We never -- we never spoke about the video.
17 The only thing that I spoke to him about was asking him about
18 it being date and time stamped and being removed or
19 suppressed from the trial itself, and that's when the judge
20 motioned when we get to that point, we would -- that's -- I
21 mean that's all he said. Then that was at -- that was during
22 trial.

23 Q: That was during the trial?

24 A: Yes, sir.

25 Q: Okay. Did y'all ever discuss an expert for the video or

JEFFREY THOMAS BROWN - DIRECT BY MR. WALLER

1 anything like that?

2 A: No, sir.

3 Q: Okay. Mr. Brown, did you and Mr. Jordan ever discuss
4 that your co-defendant was represented by a lawyer that he
5 worked with and actually worked for?

6 A: No, sir. It was never discussed.

7 Q: Did y'all ever talk about any waiver of a conflict of
8 interest?

9 A: No, sir.

10 Q: Okay. Did y'all discuss after the trial was over any --
11 any post-trial motions that you wanted him to file?

12 A: Repeat the question?

13 Q: Did you ever ask can Mr. Jordan, Mr. Daniel Jordan, to
14 file any motions after the trial was over for you?

15 A: No, sir. I didn't ask him anything at trial.

16 Q: Okay. Mr. Brown, I've asked you all the questions that
17 I have. Is there anything you think that I've left out the
18 judge needs to be aware of Mr. Daniel Jordan's representation
19 of you?

20 A: The only thing that bothered me was the suppression of
21 the videos at trial.

22 Q: Okay.

23 MR. WALLER: Please answer any questions Ms. McCallister
24 has.

25 THE APPLICANT: Yes, sir.

JEFFREY THOMAS BROWN - CROSS BY MS. MCCALLISTER

1 THE COURT: All right, ma'am.

2 MS. MCCALLISTER: Just briefly.

3 CROSS-EXAMINATION

4 BY MS. MCCALLISTER:

5 Q: Mr. Brown, I want to clarify this timeline that you're
6 talking about. You were arrested on this charge and you were
7 in the Florence County Detention Center for some period of
8 time?

9 A: I was arrested right after in November.

10 Q: Okay.

11 A: And I was -- I know I was in there 11 days and I bonded
12 out.

13 Q: Okay.

14 A: Okay. And I stayed out until, I believe, it was April
15 of the next.

16 Q: Okay. So that's where I was getting confused. Okay.
17 So you were actually bonded out and you were -- and you're
18 saying you were in Florence County. You just mean you were
19 out on your own because this is -- this is where you live?

20 A: Yes, sir. Yes, ma'am.

21 Q: Okay. Okay. Gotcha. Okay. And is it your testimony
22 -- and so then you bonded out and you were out until April,
23 and that's when you got sent back to Turbeville for this
24 parole violation of a YOA sentence?

25 A: Yes, ma'am. But don't take me as that correct as being

JEFFREY THOMAS BROWN - CROSS BY MS. MCCALLISTER

1 correct on April.

2 Q: Okay.

3 A: But it was in that --

4 Q: In that time frame?

5 A: It was in that order.

6 Q: Okay.

7 A: I want to say it was in that time frame, but it was in
8 that order.

9 Q: Okay. But you were out for some period of time? Would
10 you estimate a couple months?

11 A: Yes. That's it. Only a few months.

12 Q: A few months?

13 A: Yes, ma'am.

14 Q: After? Okay. And then is your testimony that when you
15 went to -- when you got sent to Turbeville sometime, whenever
16 that was, April, May, whenever, that spring --

17 A: Yes, ma'am.

18 Q: That was the first time you found out that Mr. Jordan
19 was representing you?

20 A: I cannot state clearly when I found out that he was
21 representing me because of -- I mean I do not -- I cannot
22 state exactly when, but I know that I never spoke to him
23 until the day of trial.

24 Q: Okay. So you didn't speak to him at a docket
25 appearance? Do you recall having a docket appearance?

JEFFREY THOMAS BROWN - CROSS BY MS. MCCALLISTER

- 1 A: No, ma'am.
- 2 Q: In January?
- 3 A: No, ma'am.
- 4 Q: Okay. And you didn't talk to him at any point before
- 5 trial?
- 6 A: No, ma'am.
- 7 Q: Not the day before trial?
- 8 A: No, ma'am. The day of.
- 9 Q: Did you see the videos the day before trial?
- 10 A: No, ma'am.
- 11 Q: And you said that when you met with Mr. Jordan, one of
- 12 the first things you discussed was a plea offer?
- 13 A: Yes, ma'am.
- 14 Q: And you decided you didn't want to take the plea offer?
- 15 A: No, ma'am.
- 16 Q: But at that point you decided you didn't want to take
- 17 the plea, but you were going to go into this trial and you
- 18 had no idea what your defenses were, you didn't know what
- 19 they had against you or anything like that?
- 20 A: No, ma'am. Because I -- I was appointed an attorney, a
- 21 public defender, and that is what I thought that was going to
- 22 happen was him defend me in the utmost stance of him doing
- 23 his job correctly.
- 24 Q: Okay.
- 25 A: Yes, ma'am.

JEFFREY THOMAS BROWN - CROSS BY MS. MCCALLISTER

1 Q: And had you -- when you got this letter or whatever kind
2 of notification when you were in Turbeville telling you who
3 he was and that he was going to be representing you, did you
4 attempt to contact him and say, hey, this is my side of the
5 story?

6 A: Ma'am, I cannot surely say that I was contacted or even
7 briefed that he was going to be my lawyer until -- like I
8 said, the only time that I can affirm that he was going to be
9 my lawyer was the day of trial.

10 Q: Okay.

11 MS. MCCALLISTER: Thank you. That's all I have, Your
12 Honor.

13 THE COURT: Mr. Waller?

14 MR. WALLER: Nothing further, Your Honor.

15 THE COURT: Mr. Brown, you can step down. Thank you.

16 Mr. Waller?

17 MR. WALLER: Your Honor, the applicant would call Daniel
18 Jordan.

19 THE CLERK: Mr. Jordan, if you'll -- thank you.

20 Do you swear or affirm that the testimony you give will
21 be the truth, the whole truth, and nothing but the truth, so
22 help you God?

23 THE WITNESS: Yes, ma'am.

24 MR. WALLER: May it please the Court, Your Honor.

25 THE COURT: Yes, sir.

DANIEL JORDAN - DIRECT BY MR. WALLER

1 DANIEL JORDAN, being first duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. WALLER:

5 Q: Good morning, Mr. Jordan. How are you today?

6 A: I'm well. Thank you, Mr. Waller.

7 Q: Mr. Jordan, how did you come to represent Jeffrey Brown?

8 A: Through my employment with the Florence County Public
9 Defender's Office.

10 Q: Okay. And when you were appointed to represent him, was
11 it only on the incident that went to trial or was there other
12 charges as well?

13 A: There were other charges as well.

14 Q: Okay. When you were appointed to represent him, how
15 long after that were you able to meet with him?

16 A: I believe I met with him at -- I believe I met with him
17 at both his initial and his docket appearances.

18 Q: Okay. Do you know how long he was in the Florence
19 County Detention Center?

20 A: I mean just from hearing him here today, he said 11
21 days.

22 Q: Okay.

23 A: You know, I know at the very least I met with him in
24 January.

25 Q: Okay.

DANIEL JORDAN - DIRECT BY MR. WALLER

1 A: At one of his appearances.

2 Q: At one of those appearances, would you have had -- how
3 many cases did you typically have at an appearance?

4 A: I'd say maybe ten.

5 Q: Okay. Would you have had time to really discuss his
6 case with him or would you deal with other clients and get
7 through the appearance process?

8 A: I would have met with him for about 10 minutes or so.

9 Q: Okay. When he was violated on his YOA parole and sent
10 to Turbeville, did you meet with him in Turbeville?

11 A: Yes.

12 Q: Okay. What was that -- if you can, what were the
13 general allegations against Mr. Brown, as well as his co-
14 defendant?

15 A: In regard to this case?

16 Q: The trial. Yes, sir.

17 A: The trial? In essence, the allegations were that Mr.
18 Brown and his co-defendant -- the co-defendant I believe was
19 basically alleged to be the wheel guy -- went into a gas
20 station over in Johnsonville and tried to rob it with a
21 pocketknife.

22 Q: Okay. And how was -- how were they identified, if you
23 recall?

24 A: Through -- I mean, you know, Johnsonville is not a large
25 area. Mr. Brown and his co-defendant were living around that

DANIEL JORDAN - DIRECT BY MR. WALLER

1 area. I believe that there were two clerks in the store; one
2 was male, one was female. I believe the male clerk may have
3 known who he was, had seen him in there earlier, and the
4 female clerk was actually the one being held up by the knife
5 and her statement said that, you know, she could see his
6 face. And I believe he was later identified by her after he
7 came into the store again a few days later.

8 Q: Okay. What was -- what was your theory of defense when
9 you went to trial?

10 A: Well, basically, my representation went like this. I
11 saw him at his appearance in January. We met for about 10
12 minutes or so. And then I believe it was -- it may have even
13 been at the initial appearance, but in any event, he did end
14 up being violated on his YOA parole.

15 He was brought over the week before trial by the
16 solicitor from SCDC. We discussed the plea offer that he
17 testified about, which was the 10 years and the remaining
18 charges that he was facing would be nolle prossed.

19 At that point in time, he -- we talked about the
20 evidence in regard to the armed robbery case and he said that
21 it was -- you know, his theory was that the police chief over
22 in Johnsonville was railroading him because he had been in
23 trouble before and that his stepbrother was just pointing the
24 finger at him because, you know, it would get him a deal.

25 Q: Okay. Mr. Jordan, do you have a copy of the transcript

DANIEL JORDAN - DIRECT BY MR. WALLER

1 by any chance up there?

2 A: I don't.

3 MR. WALLER: Your Honor, may I approach?

4 THE COURT: Yes, sir.

5 BY MR. WALLER:

6 Q: Mr. Jordan, if I could get you to turn to page 68? It's
7 the testimony of Ron Douglas, the chief of police for
8 Johnsonville. And if I can get you to look at line -- his
9 answer beginning on line 8 and continuing to line 11.

10 Mr. Jordan, at that time, Ms. -- the female victim, Ms.
11 Swanson, had not yet identified Mr. Brown by name. Was there
12 a strategy behind not objecting to the police chief saying
13 that she had?

14 A: I mean I would have to go back and look at Ms. Swanson's
15 testimony, but I would direct you to page 48, line 12, where
16 she did, in fact, identify him by name.

17 Q: All right. Mr. Brown was approached by law enforcement
18 following the incident. Is that your understanding?

19 A: Yes.

20 Q: Okay. He did not give a statement to law enforcement?

21 A: No.

22 Q: Okay. If I could get you to turn to page 74 during your
23 cross-examination of the same witness, Ron Douglas?

24 Generally, the entire page. Did you feel that the comments
25 about him not cooperating were impermissible and warranted an

DANIEL JORDAN - DIRECT BY MR. WALLER

1 objection?

2 A: I didn't feel they were. You know, the theory that we
3 had that Mr. Brown wanted me to put out was basically that,
4 you know, the local law enforcement there in Johnsonville was
5 basically railroading him. And so these questions were meant
6 to kind of show the animus that Chief Douglas actually had
7 towards Mr. Brown and why, you know, we felt that Mr. Brown
8 was being railroaded, basically.

9 Q: Okay. Did you and Mr. Brown ever discuss the video in
10 this case?

11 A: Yes. I guess to go back to something that I started
12 earlier, Mr. Brown was brought over during the plea week in
13 September. We met, discussed the plea offer, and he said,
14 no, that he wanted a trial if it's going to be sort of a
15 he said/she said situation.

16 And he was brought, if memory serves me again, on the --
17 I believe it was the Monday before the trial began on
18 Tuesday. We talked again and he said, no, he did not want to
19 take the plea offer.

20 At that point in time, I told him that the solicitor
21 intended to call the case for trial, I thought in October. I
22 was notified later that afternoon that it would, in fact, be
23 the following day. As such, my office had to fax a request
24 over to Turbeville because he had been taken to Turbeville
25 rather than Florence.

DANIEL JORDAN - DIRECT BY MR. WALLER

1 Q: Okay. And that was going to be my question. You said

2 --

3 A: I'm getting to it. And that's when I was allowed in and
4 I took my computer, took the DVDs, and showed him the video
5 footage.

6 Q: Okay. So he was brought over from Turbeville to
7 Florence the week prior or days prior to the trial?

8 A: Yes. That's -- that's from my memory and from what's in
9 this transcript.

10 Q: Who -- who, if you recall, arranged for that transport?

11 A: That would have been the Solicitor's Office.

12 Q: Okay. So they -- they got an order to transport him
13 from SCDC to court?

14 A: It was during the plea week. So yes.

15 Q: All right. Did you ever discuss with Mr. Brown your
16 working relationship with Jay Jordan?

17 A: No.

18 Q: Okay. Did you ever discuss him waiving any conflict of
19 interest?

20 A: I discussed with him -- the way and with the quickness
21 in which this was brought on, I discussed with him -- I guess
22 to answer your first question better, I don't recall
23 discussing any sort of relationship with Jay other than that
24 Mr. Brown's co-defendant was represented by an attorney in
25 the Florence Public Defender's Office.

DANIEL JORDAN - DIRECT BY MR. WALLER

1 I cannot recall whether I mentioned Jay's name or not.
2 I can't recall whether I knew it was Jay at that time. And I
3 remember him, you know, asking about that, you know, if I
4 knew anything about it or what have you, and I didn't.

5 The Commission on Indigent Defense has basically told
6 the public defenders to create sort of a Chinese firewall
7 system, and that's what we've done. We don't go into each
8 other's file drawers and things like that.

9 Q: Okay. At the time the trial came about though, you were
10 aware there was Jay Jordan?

11 A: Yes. By then, yes.

12 Q: Okay. Did you have Mr. Brown sign any sort of waiver of
13 conflict of interest or anything like that?

14 A: No. I don't believe there was one.

15 MR. WALLER: I beg the Court's indulgence, please.

16 THE COURT: Yes, sir.

17 MR. WALLER: Nothing further. Thank you, Mr. Jordan.

18 THE COURT: Ms. McCallister?

19 CROSS-EXAMINATION

20 BY MS. MCCALLISTER:

21 Q: Mr. Jordan, is it fair to say that you had been -- by
22 the time of this trial, you had been appointed on this case
23 for Mr. Brown for several months?

24 A: Yes, ma'am.

25 Q: Okay. And it was just the issue that you thought the

DANIEL JORDAN - CROSS BY MS. MCCALLISTER

1 trial was going to be a few weeks later than it actually
2 ended up being; is that right?

3 A: Yes, ma'am.

4 Q: Okay. So you only received notice that this was going
5 to trial the next day the day before? Is that what you said
6 to Mr. Waller?

7 A: Yes, ma'am.

8 Q: Okay. But you were able to get into Turbeville to show
9 your client the videos that the State was going to use; is
10 that correct?

11 A: Yes, ma'am.

12 Q: So he had -- he -- he had seen those videos before he
13 arrived at the courthouse for his trial?

14 A: Yes, ma'am.

15 Q: Okay. And you had talked about those videos and the
16 implications of them?

17 A: Yes, ma'am.

18 Q: And were they pretty -- were those videos pretty clear,
19 clear shots of the robbery on the videos?

20 A: There were clear shots of the parking lot. There were
21 clear shots of the robbery. There was not a clear shot of
22 the assailant --

23 Q: Okay.

24 A: -- in terms of being able to really identify him. The
25 videos were your standard security videos. I mean they were

DANIEL JORDAN - CROSS BY MS. MCCALLISTER

1 pretty grainy.

2 Q: Okay. So you couldn't see his face, but the clerk's
3 testimony was that she could see his face?

4 A: Yes, ma'am.

5 Q: And then she sometime later, I guess -- actually, there
6 were two clerks; correct?

7 A: That's correct.

8 Q: And they both saw him --

9 A: Yes, ma'am.

10 Q: -- during the robbery, even though he was really kind of
11 only holding up the female clerk; is that right?

12 A: That was their testimony, yes.

13 Q: Okay. And they were able to identify him at some point
14 later?

15 A: Yes, ma'am.

16 Q: And they identified him at trial?

17 A: Yes, ma'am.

18 Q: Okay. And did you know that they were going to be able
19 to identify him when you talked to your client about whether
20 he wanted to plea or go to trial?

21 A: Yes, ma'am.

22 Q: Okay. So he was aware of that evidence against him?

23 A: Yes, ma'am.

24 Q: Mr. Brown testified earlier that he wanted you -- he
25 wanted you to call some witnesses for an alibi. Did you --

DANIEL JORDAN - CROSS BY MS. MCCALLISTER

1 do you recall talking to Mr. Brown about that?

2 A: Yes, ma'am. And I can't remember whether it was the
3 week before trial or whether it was the evening before trial,
4 but he -- Mr. Brown provided me with a list of potential
5 witnesses and, based on the truncated time period, I asked
6 the investigator with our office, Thomas McKenzie, to contact
7 as many as he could and I took some. They were contacted and
8 none of them provided information that would have been
9 helpful.

10 Q: Okay. And Mr. Brown also testified that he wanted you
11 to suppress these videos. Do you recall having that
12 conversation with him?

13 A: We had that conversation and then he looked at the
14 videos and I remember, you know, him expressing something of,
15 you know, oh, well, they don't even show me, good, sort of a
16 situation. And I think there was some discussion of it.
17 However, you know, they -- they laid the proper foundation.
18 I think I may have objected or I may have made a motion
19 earlier on in the trial. I can't -- I don't recall off the
20 top of my head.

21 Q: Okay. But you felt like when they were actually offered
22 into evidence that a proper foundation had been laid for
23 their admission?

24 A: Oh, yeah.

25 Q: Okay. And if you -- if you hadn't felt that way, would

DANIEL JORDAN - CROSS BY MS. MCCALLISTER

1 you have objected?

2 A: Yes, ma'am.

3 Q: Okay. Okay. And on this issue of the conflict of
4 interest, I think you testified that you knew that it was --
5 you knew that Jay represented the co-defendant by the time
6 you went to trial, but you're not sure exactly when you found
7 that out; is that fair?

8 A: Yeah. I mean it would -- it would have been the morning
9 of trial that I actually found out who was representing the
10 co-defendant.

11 Q: Okay.

12 A: And part of that is because Jay and I did practice
13 privately together and he made a comment about having a
14 client of his testify at a hearing in a trial that day, and
15 that's when I realized, oh, you know, I'm the one trying the
16 case.

17 Q: Okay.

18 A: I hadn't even had a conversation about the fact that I
19 was going to be in trial.

20 Q: Okay. And was that the only comment that was made back
21 and forth between the two of you when he was --

22 A: Yeah.

23 Q: -- mentioning that?

24 A: I mean that was it.

25 Q: Okay. And in your opinion, did you have a conflict of

DANIEL JORDAN - CROSS BY MS. MCCALLISTER

1 interest that needed to be waived?

2 A: No.

3 Q: Okay.

4 MS. MCCALLISTER: Okay. Your Honor, I think that's all
5 I have.

6 THE COURT: Mr. Waller?

7 MR. WALLER: Very briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. WALLER:

10 Q: Mr. Jordan, do you take notes of your meetings with
11 clients?

12 A: Generally, yes.

13 Q: Do you have any notes about when Mr. Brown was given an
14 opportunity to view the surveillance videos?

15 A: I don't. Actually, my office provided me with the wrong
16 file on Jeffrey Brown. I know that -- I mean you could
17 probably pull the video surveillance from the Turbeville
18 Correctional facility and they can show when I came in and
19 what I was carrying, things like that.

20 Q: Okay.

21 A: You know, I don't think there were any cameras in the
22 room that we were in, you know --

23 Q: Okay.

24 A: -- that showed me playing it.

25 Q: And you testified that was the day before the trial?

DANIEL JORDAN - REDIRECT BY MR. WALLER

1 A: If memory serves, yes.

2 Q: Okay. That would have been after he rejected the plea
3 offer?

4 A: Yes.

5 Q: Okay. You testified that he provided you with some
6 names of some witnesses that you and Mr. McKenzie attempted
7 to contact everybody?

8 A: Yes.

9 Q: Was every -- did y'all reach every single one on the
10 list?

11 A: I can't recall whether we reached every single one. I
12 believe we did. I believe there was a girlfriend who gave
13 some wavering, maybe potentially helpful information, but she
14 wasn't willing to testify and I really can't recall whether
15 she was going to be helpful or not. But I know the others
16 did not back up the story that he had.

17 Q: Okay. Given the late time and the logistics behind
18 getting a subpoena issued, did you ever consider making a
19 motion for a continuance to further investigate or to secure
20 her testimony?

21 A: Well, I mean at the outset of the case, I made a motion
22 to continue, but then I believe it was based on that.

23 Q: Okay.

24 A: And it was denied.

25 Q: Okay.

DANIEL JORDAN - RECROSS BY MS. MCCALLISTER

1 MR. WALLER: Nothing further. Thank you, Mr. Jordan.

2 THE COURT: Ms. McCallister?

3 MS. MCCALLISTER: Yes. Can I just follow up on that?

4 RECROSS-EXAMINATION

5 BY MS. MCCALLISTER:

6 Q: Mr. Brown only gave you the names when you went out to
7 Turbeville the day before; is that right?

8 A: That -- it was either the day -- yeah, I believe it was
9 the day that I went to Turbeville.

10 Q: Okay. So you had -- you had met with him several times
11 before that day; is that correct?

12 A: Yes, ma'am.

13 Q: So he had an opportunity to give you those names?

14 A: Absolutely.

15 Q: Okay.

16 MS. MCCALLISTER: Thank you.

17 THE COURT: Mr. Waller?

18 MR. WALLER: Nothing further, Your Honor.

19 THE COURT: You can step down. Thank you, sir. Thank
20 you.

21 MS. MCCALLISTER: Nothing further from the State, Your
22 Honor.

23 MR. WALLER: Nothing further from the applicant.

24 THE COURT: All right. If y'all would kindly give me
25 just a few minutes, let me go review, and I'll be back.

1 MR. WALLER: Thank you, Your Honor.

2 THE COURT: Yes, sir.

3 MR. WALLER: Your Honor, are we allowed to make an
4 argument at all?

5 THE COURT: Sure.

6 MR. WALLER: Would you like to hear any argument in
7 summation?

8 THE COURT: Mindful of what you say, I will nevertheless
9 be happy to entertain that. Yes, sir.

10 MR. WALLER: And, Your Honor, I will keep it brief and
11 I'll just address the two issues.

12 THE COURT: Take your time. Take your time.

13 MR. WALLER: Your Honor, the issue of the conflict of
14 interest, I understand the testimony. I certainly think it's
15 a waivable conflict of interest because I've found myself in
16 that situation before.

17 THE COURT: Uh-huh.

18 MR. WALLER: But it is something I believe that needs to
19 be addressed with Mr. Brown at least to have an opportunity
20 to waive or not waive that conflict. It is not so much that
21 Mr. Daniel Jordan or Mr. Jay Jordan may have had access to
22 each other's files or to information they would not have had,
23 but it's the fact that Mr. Daniel Jordan worked for Mr. Jay
24 Jordan and had had a monetary interest in -- in that firm.
25 And so that's why I believe it is a waivable conflict of

1 interest, but it's something that only Mr. -- Mr. Brown can
2 waive.

3 THE COURT: Yes, sir.

4 MR. WALLER: Your Honor, there was no testimony
5 regarding my last allegation. I believe the transcript
6 speaks for itself that there were no post-trial motions made
7 or filed and there was no motion for a new trial. There were
8 no law motions.

9 Your Honor, when the appeal was done, it was done as an
10 Anders appeal and -- and was dismissed. So there were no
11 preservable [sic] issues -- preserved appealable issues that
12 were submitted to the Court of Appeals. So I think, Your
13 Honor, there were no post-trial motions made.

14 THE COURT: Yes, sir.

15 Ma'am?

16 MS. MCCALLISTER: Thank you. Your Honor, I think the
17 testimony from both Daniel Jordan and Jay Jordan about the
18 conflict issue was clear that this -- this -- both of them
19 handled these cases. Mr. Daniel handled Mr. Brown and Mr.
20 Jay Jordan handled Mr. Venters through their contracts with
21 the Public Defender's Office.

22 The Public Defender's Office was aware that they
23 practiced together and there were steps taken to make sure
24 that neither had access to the other file. They didn't keep
25 them in the private law office.

1 And I think Mr. Jordan was very clear that he had no
2 supervisory authority or ability to direct Mr. Daniel
3 Jordan's work on this case and that he did not pay any -- any
4 kind of money. There was no money transaction involving the
5 private law firm and Mr. Jordan for this case. That all was
6 done through Florence County.

7 Your Honor, on the last issue about the post-trial
8 motions, I think Mr. Brown testified he didn't ask for any
9 post-trial motions to be made and, you know, Mr. Jordan did
10 file an appeal. It was an Anders brief, but that's a
11 decision that's made by appellate defense, not made by Mr.
12 Jordan.

13 And, Your Honor, I don't think he's -- I don't think Mr.
14 Jordan is required to make motions if he doesn't see, you
15 know, a reason to. I think this was a fairly uncomplicated
16 and simple, you know, trial with not a lot of rulings to be
17 made at all, Your Honor. So we submit that Mr. Jordan
18 provided effective assistance and this application should be
19 denied.

20 THE COURT: All right, ma'am. Anything else?

21 MR. WALLER: Nothing further, Your Honor.

22 THE COURT: All right, y'all. Bear with me a few
23 minutes, please.

24 (WHEREUPON, there was a break in the proceedings from
25 11:56 a.m. until 12:03 p.m., after which the proceedings

1 resumed as follows.)

2 RULING

3 THE COURT: All right. In this matter regarding Mr.
4 Brown here today, I have reviewed my notes, certain portions
5 of the transcript, and I am and I ask that you be mindful of
6 all that information contained in Section 3 of the State's
7 return as to the standards and the review process and so
8 forth by this Court.

9 There were several issues offered at the outset, which I
10 will address now in no particular order though.

11 As for the lack of no post-trial motions, I heard no
12 testimony from the defendant as to how that prejudiced his
13 case or hurt him in any way. I grant no relief there.

14 There was a listing or it was added to the list at the
15 outset about counsel did not object to the defendant's right
16 to remain silent. That's what I wrote down.

17 Right, Mr. Waller? At the outset?

18 MR. WALLER: That's correct, Your Honor.

19 THE COURT: I heard nothing about that during the
20 hearing though. So I don't grant any relief in that regard.

21 Counsel did not object to hearsay testimony about what,
22 I think, the sheriff or law enforcement said about him being
23 identified as the robber or one of them, but in earlier pages
24 the store owner or storekeeper identified him. So I see no
25 harm there.

1 Then there's the allegation that counsel did not prepare
2 for trial. I heard Mr. Brown's testimony in that regard. I
3 also heard the testimony of his trial lawyer that there were,
4 indeed, meetings. That defense counsel did go to Turbeville
5 Prison to meet with him, that did share with him information,
6 videos. He did get from him a list of potential alibi
7 witnesses that they did check out.

8 And I am also mindful of the trial court's denial of the
9 continuance motion after it was made by counsel, and that
10 motion was based on the fact that the trial was called sooner
11 than defense counsel thought it would be called for trial.

12 But I did hear from Mr. Brown also about the amount of
13 time he was out on bond before he violated his probation. I
14 never heard from Mr. Brown during that testimony testifying
15 about him contacting his attorney or going to see his
16 attorney to share this information that he had. In fact,
17 according to the transcript, some of this information wasn't
18 given to Mr. Jordan until the night before or the day before
19 trial from the defendant.

20 So I don't find where Mr. Jordan's performance fell
21 below the standard set forth that I mentioned earlier.

22 Now, I come to this issue about that counsel failed to
23 disclose a conflict. I heard testimony about that. As for
24 the actual possible harm that occurred, I don't see where any
25 occurred in that regard. As to whether or not Mr. Jordan

1 should have disclosed that, I find that might be and could be
2 an issue for another forum to address and not this Court
3 here.

4 I don't find that there was any collusion or crossing
5 over or sharing of information that prejudiced Mr. Brown, but
6 again, as to whether it should have been disclosed, as Mr.
7 Waller mentioned, perhaps that's for another forum to address
8 and not this one.

9 Mr. Waller, you did all you could. I thought you did a
10 good job, and you also, Ms. McCallister.

11 And that's my ruling.

12 MR. WALLER: Thank you, Your Honor.

13 THE COURT: Thank y'all.

14 MS. MCCALLISTER: Thank you.

15 (WHEREUPON, the proceedings ended at 12:09 p.m.)

16

17 --- END REQUESTED TRANSCRIPT ---

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1 State of South Carolina)
2) Certificate
3 County of Florence)

4
5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 44, constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 Common Pleas for Florence County, South Carolina, on the 6th
13 day of April, 2018.

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

16

17 s/Krystal J. Smith

18 Court Reporter

19

20 Florence, South Carolina

21 July 29, 2019

22

23

24

25

RECEIVED

APR 30 2019

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Jeffrey Thomas Brown, #338329,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

C.A. No. 2015-CP-21-0904

ORDER OF DISMISSALDORIS POULOS CHAMBERLAIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

2019 APR 22 AM 10:41

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Jeffrey Thomas Brown (Applicant) on March 27, 2015, and amended February 1, 2018. Respondent made its Return and Motion for a More Definite Statement on September 7, 2016. An evidentiary hearing into the matter was convened on April 6, 2018, at the Florence County Courthouse before the undersigned. Jonathan D. Waller, Esquire, represented Applicant. Lindsey A. McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Applicant's original counsel at trial, Daniel Jordan, Esquire, also testified, along with William "Jay" Jordan (Jay Jordan), Esquire, who represented Applicant's codefendant. This Court had before it a copy of the records of the Florence County Clerk of Court and the South Carolina Department of Corrections, the PCR application, Respondent's Return, the trial transcript, and Applicant's appellate records.

CERTIFIED: A TRUE COPY
[Signature]
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

PROCEDURAL HISTORY

Applicant is incarcerated in the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the March 2013 term of the Florence County Grand Jury for one count of attempted armed robbery (2013-GS-21-0320).¹ Applicant was represented by Daniel T. Jordan (Counsel), Esquire. At a jury trial before the Honorable D. Craig Brown on September 19, 2013, Applicant was convicted of one count of attempted armed robbery. Judge Brown sentenced him to fifteen years' imprisonment.

Applicant filed a timely notice of appeal. The appeal was perfected by Wanda H. Carter, Esquire, of the South Carolina Commission on Indigent Defense - Appellate Defense Division pursuant to Anders v California, 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction on February 4, 2015. State v. Brown, Op. No. 2015-UP-062 (S.C. Ct. App. 2015). The remittitur was returned to the circuit court on February 20, 2015.

ALLEGATIONS

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. "Strickland v. Washington."
2. "Motion for Reconsideration"

Through counsel, Applicant amended his application on February 1, 2018, alleging further claims of ineffective assistance of counsel. Specifically, Applicant alleges:

¹ Applicant was also indicted on three counts of breaking and entering a motor vehicle and one count of second-degree burglary. Those charges were ultimately dismissed.

1. Counsel was ineffective for failing to disclose a potential conflict of interest, based on a familial relationship, with counsel for Applicant's cooperating codefendant;
2. Counsel was ineffective for failing to properly prepare for Applicant's trial, specifically by not visiting Applicant for the five months prior to trial, while Applicant was incarcerated in the Department of Corrections;
3. Counsel was ineffective for failure to object to impermissible hearsay testimony during the direct examination of Ron Douglas;
4. Counsel was ineffective for failure to object to impermissible comments on Applicant's right to remain silent during the direct examination of Ron Douglas;
5. Counsel was ineffective for failure to file applicable post-trial motions.

At the call of the case, counsel for Applicant clarified the conflict of interest allegation was based on a professional relationship, not a familial relationship. Additionally, counsel for Applicant stated Applicant was going forward only on the claims contained in the amended application. Therefore, this Court finds Applicant has abandoned all other allegations to the extent the allegations in the original application can be construed as separate issues from those contained in the amendment. Those allegations are waived and are hereby denied and dismissed with prejudice.

SUMMARY OF FACTS ADDUCED AT TRIAL

Around 4:45 a.m. on the morning of October 31, 2012, a man entered the Kangaroo Express gas station in Johnsonville, armed with a knife. Tr. pp. 41-43. One of the clerks on duty, Teresa Swanson (Swanson), testified the man demanded she put money into the plastic bag he was carrying. Tr. pp. 43-44. Both Swanson and a second clerk, Michael Christian (Christian), recognized the man as a customer Christian had waited on about an hour earlier. Tr. pp. 48, 59. Swanson hit the store's panic button and grabbed a club from under the counter, causing the man to flee. Tr. p. 45. Swanson and Christian followed the man outside and watched him get into the passenger's side of a white pickup truck, which then drove off. Tr. pp. 47, 61-62.

Swanson identified Applicant on the surveillance video from inside the store, and the investigating officer testified she provided law enforcement with Applicant's name. Tr. pp. 48, 68. Swanson and Christian also identified Applicant as the attempted armed robber at trial. Tr. pp. 46, 61. Swanson testified she noticed Applicant in the store again two days after the attempted robbery, and she alerted law enforcement. Tr. pp. 49-50. When law enforcement placed Applicant under arrest, he had a pocketknife in his pocket. Tr. pp. 69-70.

Applicant's codefendant, his stepbrother, Matthew Venters (Venters), also testified for the State and identified Applicant as the robber. Tr. pp. 81-82. Venters admitted to being the getaway driver of the white pickup truck and testified he knew Applicant was planning to rob the Kangaroo when he dropped Applicant off there. Tr. pp. 80-82.

SUMMARY OF TESTIMONY AT EVIDENTIARY HEARING

Applicant testified he was arrested for the attempted armed robbery, and Counsel was appointed to represent him. Applicant testified he did not speak with Counsel while he was in the detention center, and then he was sent to Turbeville Correctional Institution for ten months on a YOA violation. Applicant testified he was notified of Counsel's appointment while at Turbeville, but Counsel never came to visit him. According to Applicant, he only met with Counsel on the day of trial, and they did not exchange any letters or phone calls. Applicant testified he thought he was at court because the State had made a plea offer of a cap of ten years, which he rejected.

Applicant testified he "went in blind" to trial and did not know what his defense would be. Applicant further testified he wanted Counsel to call alibi witness and for the surveillance videos

to be suppressed. Applicant testified he asked about the video being suppressed because of the date and time stamp, but the first time he actually saw the video was during trial.

Finally, Applicant testified he was not aware his codefendant was represented by another attorney in Counsel's firm, and he was never asked to waive any potential conflicts. Applicant also testified Counsel did not file any post-trial motions on his behalf.

Jay Jordan, who represented Venters, the codefendant, testified for the State and explained the relationship between himself and Counsel. According to Jay Jordan, Counsel had been practicing with him for about a year at the time of this case. Both Jay Jordan and Counsel had contracts with Florence County's Public Defender's Office, and both also had a private practice as well. Jay Jordan testified neither he nor the firm paid any money to Counsel for this case, all money came from Florence County, and he and Counsel received separate W2s – one from Florence County and one from the private practice. Jay Jordan testified he did not exert any supervisory capacity over Counsel on this case, the firm did not keep public defender files in the office, and all cases were kept separate. Finally, Jay Jordan testified they did not discuss these cases with each other.

Counsel testified he met with Applicant multiple times at court appearances and went to Turbeville to speak with him. Counsel testified Applicant was brought back to Florence a week before trial, and they met to go over the evidence, possible defenses, and to discuss the State's plea offer. Counsel further testified he informed Applicant his case would be on the trial roster, but Counsel only found out it was being called for trial the day before. Counsel testified he immediately went to see Applicant, and he was allowed to bring the surveillance video to show



Applicant as well. Counsel testified Applicant was aware of the existence of the surveillance videos and that the clerks would identify him when he decided he wanted to go to trial. Counsel testified he and Applicant discussed the possibility of suppressing the videos, but the State laid the proper foundation for their admission during trial. Counsel also testified Applicant provided the names of potential witnesses, and the Public Defender's Office investigator, Thomas McKenzie, tracked those people down, but ultimately none of them could offer helpful testimony. Counsel testified he moved for a continuance in order to continue to look for witnesses, but the motion was denied. According to Counsel, Applicant did not give him the names of any potential witnesses until the day before trial, even though they had met several times previously, and Applicant had an opportunity to do so earlier.

Counsel further testified to the strategy behind some of his decisions at trial. Counsel testified Applicant's theory was he was being "railroaded" because he had been in trouble before, and his stepbrother pointed the finger at him to get a deal. Counsel testified he did not object to the officer's testimony the store clerk informed him of Applicant's name because the clerk had already referred to Applicant by his given name during her own testimony. Counsel also explained he did not object to the officer's testimony regarding Applicant's decision not to give a statement because part of the defense theory was that law enforcement jumped to conclusions about Applicant's guilt, and he felt the testimony helped Applicant's argument.

Finally, Counsel testified he did not discuss his relationship with Jay Jordan with Applicant because he did not believe a conflict existed. Counsel testified he was not even aware Jay Jordan was the codefendant's attorney until the morning of trial, and they never had any conversations

about the two cases. Counsel also testified he and Jay Jordan created a "firewall" around their respective cases and had a policy not to go into the other person's files.

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 PCR hearing. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance

by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688 (1984)). 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." Id. at 117-18, 386 S.E.2d at 625.

Further, the standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 668.

1. Potential conflict of interest

Applicant alleges Counsel had a conflict of interest because he had a private practice arrangement with the attorney who represented Applicant's testifying codefendant. Applicant argues Counsel had an incentive to keep Jay Jordan happy in order to continue their private practice agreement. This Court disagrees.

"An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). The South Carolina Supreme Court has further stated that a conflict of interest occurs when "a defense attorney places himself in a situation inherently conducive to divided loyalties." Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008). Until a defendant shows his counsel actively represented conflicting interests, he has not established the constitutional predicate for a claim of ineffective assistance of counsel. Langford v. State, 310 S.C. 357, 359, 426 S.E.2d 793,

795 (1993) (citing Cuyler v. Sullivan, 446 U.S. 335, 350 (1980)). "The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." State v. Gregory, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005).

Counsel testified he did not believe his practice arrangement constituted a conflict of interest, and both Counsel and Jay Jordan testified they did not discuss these cases with each other. Further, although they practiced in the same firm together, Jay Jordan had no supervisory capacity over Counsel on this case, and each were paid for these cases via their separate contracts with Florence County, not with funds from the private practice. Further, the Court finds Applicant was unable to articulate any prejudice which resulted from this alleged conflict of interest. Therefore, this Court finds in this instance, there was no possible harm to Applicant, and there was no collusion or sharing of information between Counsel and Jay Jordan which could have prejudiced Applicant. Accordingly, this allegation is denied and dismissed.

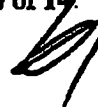
2. Deficient investigation and trial preparation

Applicant alleges Counsel rendered deficient investigation and trial preparation. Specifically, Applicant alleges Counsel failed to interview potential witnesses, and failed to contest the State's introduction of the Kangaroo surveillance video. For the reasons stated below, the Court disagrees.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014)). Failure to conduct an independent investigation does not constitute ineffective assistance

of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). To establish counsel failed to adequately prepare for trial, Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. See Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (finding trial counsel not ineffective for failing to timely request discovery because the contents of the documents were not presented at the PCR hearing); Moorehead, 329 S.C. at 334, 496 S.E.2d at 417 (holding trial counsel's 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); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 217, 481 S.E.2d 129, 133 (1997) (finding applicant was not entitled to relief where no evidence was presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Here, Applicant has not presented any evidence, witnesses, or defense theory he was unable to present at trial due to Counsel's alleged deficiency. See, e.g., Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) ("This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. . . ."). Counsel testified Applicant gave him the names of potential witnesses the day before trial. This Court finds Applicant had



ample opportunity to provide Counsel with these witnesses well in advance of trial, and Applicant failed to do so. Nevertheless, Counsel testified the investigator was able to speak with all of them, but none proved helpful to Applicant's defense. Further, Counsel testified he played the surveillance video for Applicant, and the State was able to lay a proper foundation for its admission at trial. Counsel also testified Applicant was aware the store clerks would identify him.

Therefore, this Court finds Counsel was not deficient as he undertook a reasonable investigation based on the available evidence, the defense theory of the case, and the late notice regarding potential witnesses. The Court also finds Applicant has failed to meet his burden of proof regarding prejudice because he did not present the testimony of any witnesses at the evidentiary hearing to establish an alibi or other viable defense. Because Applicant has failed to meet his burden of proof as to either deficiency or prejudice, Counsel was not ineffective, and this allegation shall be denied and dismissed.

3. Missed objections at trial

In this case, Applicant alleges Counsel missed objections at trial which prejudiced Applicant. For the reasons stated below, this Court disagrees.

"Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Strickland, 466 U.S. at 690. There is a strong presumption that counsel's decisions are based on tactical strategy rather than neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (quoting Massaro v. United States, 538 U.S. 500 (2003)). No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate

decisions regarding how best to represent a criminal defendant. Strickland, 466 U.S. at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

Counsel testified he did not believe the testimony regarding the store clerk giving Applicant's name to law enforcement was objectionable because she identified him by name earlier in the trial. Further, he testified he felt the officer's testimony regarding Applicant's decision not to give a statement was helpful to Applicant's theory of the case because it showed law enforcement jumped to conclusions about Applicant's guilt.

The Court finds Counsel's reasoning sound, and will not, in hindsight, second guess Counsel's tactic not to object. See Stone v. State, 419 S.C. 370, 383, 798 S.E.2d 561, 568 (2017) ("Trial counsel is repeatedly required during any trial. . . to make split-second decisions on many subjects, including whether to object to testimony. There are a variety of reasons counsel may soundly choose not to make such an objection, including the reality that not all evidence offered by the State is harmful to the defendant."). The Court also finds Applicant was not prejudiced because neither of the instances he now alleges were deficient caused harmful testimony to be admitted. This allegation is therefore denied and dismissed.

4. Post-trial motions

Applicant further alleges Counsel was ineffective for failing to make any post-trial motions. However, Applicant did not present any testimony as to this issue during the hearing, and he has failed to establish how he was prejudiced by this alleged failure. Further, Counsel filed a timely notice of appeal, and an appeal was perfected on Applicant's behalf. Therefore, this Court finds Counsel was not deficient, nor was Applicant prejudiced by the lack of post-trial motions. Because this Court finds Counsel was not ineffective, the allegation shall be denied and dismissed.

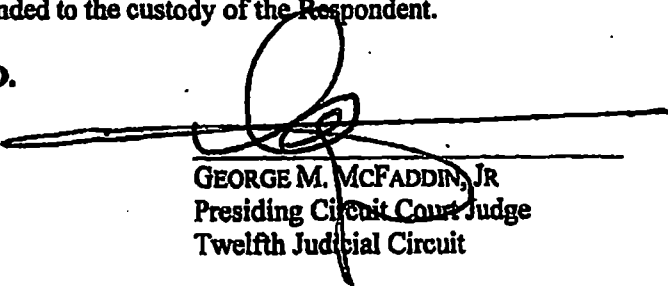
CONCLUSION

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. Counsel was not deficient in any manner, nor was Applicant prejudiced by his representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.

GEORGE M. MCFADDIN, JR.
Presiding Circuit Court Judge
Twelfth Judicial Circuit

April 16, 2019

FILED**2019 APR 22 AM 10:41****DORIS POULOS O'HARA
C.C.P. & G.S.
FLORENCE COUNTY, SC**

Donna Parks O'Hara
CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

WITNESSES

Ron Douglas Johnsonville Police Department

Matthew R Ozment

ARREST WARRANT NUMBER

2012A2120300034 2012A2120300039

ACTION OF GRAND JURY

TRUE BILL

County Clerk
Foreperson of Grand Jury
Date: 2/22/13

VERDICT

Foreperson of Petit Jury Date:

DOCKET NO. 2013-GS-21-00324

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

MARCH TERM 2013

THE STATE

vs.

JEFFREY THOMAS BROWN

MATTHEW LAWRENCE DASCH VENTERS

Indictment for

BREAKING AND ENTERING A MOTOR
VEHICLE

FILED

2013 FEB 28 AM 11:15

CONNIE REEL-SHEARIN
CLERK & OS
FLORENCE COUNTY, SC

Noted Prose 2/12/13 Connolly

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF FLORENCE)

BREAKING AND ENTERING A MOTOR VEHICLE

At a Court of General Sessions, convened on FEBRUARY 28, 2013 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- BREAKING AND ENTERING A MOTOR VEHICLE

That JEFFERY THOMAS BROWN and MATTHEW LAWRENCE VENTERS did in Florence County on or about October 31, 2012, break into the motor vehicle of one LASHAWN CROUCH with intent to steal the same or anything of value there from, in violation of Section 16-13-0160, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

WITNESSES

Ron Douglas Johnsonville Police Department

Matthew R Ozment

ARREST WARRANT NUMBER

2012A2120300033 2012A2120300038

ACTION OF GRAND JURY

TRUE BILL

Caution Murphy
Foreperson of Grand Jury

Date: 2/22/13

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-21-00323

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

MARCH

TERM

2013

THE STATE

vs.

JEFFREY THOMAS BROWN

MATTHEW LAWRENCE DASCH VENTERS

*not pro ss
9/18/2013
JC Jeppert*

Indictment for

BREAKING AND ENTERING A MOTOR
VEHICLE

2013 FEB 28 AM 11:15
CONNIE REEL-SHEARIN
CCJP & GS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR
BREAKING AND ENTERING A MOTOR VEHICLE

At a Court of General Sessions, convened on FEBRUARY 28, 2013 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- BREAKING AND ENTERING A MOTOR VEHICLE

That JEFFERY THOMAS BROWN and MATTHEW LAWRENCE VENTERS did in Florence County on or about October 31, 2012, break into the motor vehicle of one LIANNA WATTS with intent to steal the same or anything of value there from, in violation of Section 16-13-0160, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

WITNESSES

Ron Douglas Johnsonville Police Department

Matthew R Ozment

ARREST WARRANT NUMBER

2012A2120300032 2012A2120300037

ACTION OF GRAND JURY

TRUE BILL

Courtney Murphy
Foreperson of Grand Jury
Date: 2/27/13

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-21-00322

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

MARCH TERM 2013

THE STATE

vs.

JEFFREY THOMAS BROWN

MATTHEW LAWRENCE DASCH VENTERS

hol pro ss,
K. K. K. K. K.
9/18/2013

Indictment for

BREAKING AND ENTERING A MOTOR
VEHICLE

FILED

2013 FEB 28 AM 11:15

CORRIE REEL-SHEARIN
COP & GS
FLORENCE COUNTY, SC

*Note Pro for
connected other cases
9/19/13*

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

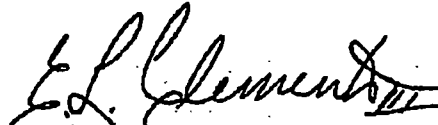
INDICTMENT FOR
BREAKING AND ENTERING A MOTOR VEHICLE

At a Court of General Sessions, convened on FEBRUARY 28, 2013 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- BREAKING AND ENTERING A MOTOR VEHICLE

That JEFFERY THOMAS BROWN and MATTHEW LAWRENCE VENTERS did in Florence County on or about October 31, 2012, break into the motor vehicle of one GERALD STONE with intent to steal the same or anything of value there from, in violation of Section 16-13-0160, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

WITNESSES

Ron Douglas Johnsonville Police Department

Matthew R Ozment

ARREST WARRANT NUMBER

2012A2120300031 2012A2120300036

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 2/22/13

VERDICT

Foreperson of Petit Jury Date:

DOCKET NO. 2013-GS-21-00321

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

MARCH TERM 2013

THE STATE

vs.

JEFFREY THOMAS BROWN

MATTHEW LAWRENCE DASCH VENTERS

L nol pross
JC Jefferies 9/18/2013

Indictment for

BURGLARY SECOND DEGREE

2013 FEB 28 AM 11:16
CONNIE REEL-SHEARIN
CCJP & GS
FLORENCE COUNTY, SC.

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

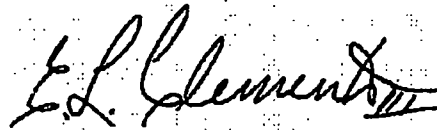
INDICTMENT FOR
BURGLARY SECOND DEGREE

At a Court of General Sessions, convened on FEBRUARY 28, 2013 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- BURGLARY SECOND DEGREE

That JEFFREY THOMAS BROWN and MATTHEW LAWRENCE VENTERS did in Florence County on or about October 31, 2012, enter without consent and with the intent to commit a crime therein, the business of EVANS BROTHERS SPECIALTY STORE, located at 119 South Railroad Avenue, Johnsonville, South Carolina, in violation of Section 16-11-0312, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

WITNESSES

Ron Douglas Johnsonville Police Department

Matthew R Ozment

ARREST WARRANT NUMBER

2012A2120300030 2012A2120300035

ACTION OF GRAND JURY

TRUE BILL

Courtney Murphy
Foreperson of Grand Jury
Date: 2/28/13

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-21-00320

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

MARCH

TERM

2013

THE STATE

vs.

JEFFREY THOMAS BROWN

MATTHEW LAWRENCE VENTERS

Indictment for

ATTEMPTED ARMED ROBBERY

2013 FEB 28 AM 11:16
CONNIE REEL-SHEARIN
GCCP & GS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR
ATTEMPTED ARMED ROBBERY

At a Court of General Sessions, convened on FEBRUARY 28, 2013 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ATTEMPTED ARMED ROBBERY

That JEFFREY THOMAS BROWN and MATTHEW LAWRENCE VENTERS did in Florence County on or about October 31, 2012, while armed with a deadly weapon, attempt to take and carry away the personal property from or in the immediate presence of the KANGAROO EXPRESS with intent to deprive them of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR