

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Thomas A. Russo, Circuit Court Judge

TERRY COOPER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001197

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

The State,)
-vs-) TRANSCRIPT OF RECORD
Terry Cooper,) 2015-GS-42-3353
Defendant.) March 14 - 15, 2016
Spartanburg, South Carolina

B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE; and a jury

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

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Linda D. Moffitt
Circuit Court Reporter

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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1 (Proceedings March 14, 2016)

2 THE COURT: Mr. Morin, do you have a witness list?

3 MR. MORIN: Your Honor, the only witness we would have
4 is the defendant.

5 THE COURT: Okay. Any matters we need to address
6 before we have the jury panel brought around?

7 MR. BARNETTE: Your Honor, I believe we have some
8 motions, but that'd be after the jury.

9 THE COURT: The jury is here.

10 MR. MORIN: Yes, sir.

11 THE COURT: And rather than having --

12 MR. MORIN: That's fine.

13 THE COURT: -- to bring them come back after lunch,
14 we'll go ahead and do it.

15 MR. MORIN: Yes, sir.

16 THE COURT: All right. Bring the jury panel around,
17 please.

18 MR. BARNETTE: And, Judge, I asked the witnesses to
19 come after lunch because I figured that's when we'd start
20 the trial. So I do have the officer here at this time.

21 THE COURT: Okay. Where is this bank located?

22 MR. BARNETTE: A block away from us, Your Honor, right
23 here on the corner of North Church Street and Daniel Morgan
24 right across from the Marriott.

25 THE COURT: Okay.

Jury qualification

1 (The following takes place in the presence of the jury
2 venire.)

3 THE COURT: Good morning, ladies and gentlemen of the
4 jury panel.

5 My name is Derham Cole. I'm a resident judge here in
6 the Seventh Judicial Circuit. I will be presiding over a
7 term of general sessions court this week just as Judge
8 Couch is across the hall.

9 The first case that we have that's going to require
10 some of your participation is the case of the State vs.
11 Terry Cooper.

12 Mr. Cooper has been accused by the prosecutor by way
13 of an indictment -- an indictment is like an arrest
14 warrant. It's the charging paper. It's the means by which
15 any person accused of a crime where the jurisdiction lies
16 in this Court is brought to this Court. An indictment has
17 to be returned, and that's the charge that is brought
18 against the defendant.

19 In this particular case the defendant, Terry Cooper,
20 is charged with the crime of bank robbery. And the
21 indictment alleges that on or about June the 3rd of 2015
22 Mr. Cooper did enter a building occupied as a bank, that
23 particular bank being B B & T located at 280 North Church
24 Street here in Spartanburg. And the indictment alleges
25 that he entered that bank with the intent to steal money,

Jury qualification

1 securities or property by either force, intimidation or
2 threats, and that he did, in fact, receive U.S. currency by
3 demanding it from the bank teller, Kimberly Cash, with the
4 intention of depriving the true owner of its property and
5 to convert that property to the taker's own use.

6 Now, as to those allegations and as to that charge the
7 defendant has entered a plea of not guilty. A plea of not
8 guilty places upon the state the burden of proving the
9 allegations that they have made, the burden of proving each
10 of the essential elements that constitutes the crime that
11 they allege against the defendant; and therefore the burden
12 is upon the state to prove the defendant's guilt to the
13 satisfaction of a jury beyond a reasonable doubt before any
14 such verdict could be returned.

15 So we're going to be selecting 13 of you. There'll be
16 12 primary jurors and one additional juror to serve as an
17 alternate. And by way of your participation you're going
18 to be called upon to listen to testimony, to consider other
19 evidence introduced during the trial.

20 At the trial's conclusion you'll be instructed on the
21 law that's applicable in a case such as this. And when the
22 jury goes back to deliberate you'll be called upon to
23 examine all of the evidence, to determine the facts as they
24 relate to these allegations, to apply the law as I will
25 have provided it to you, and then to determine whether or

Jury qualification

1 not the defendant's guilt has been proven beyond a
2 reasonable doubt.

3 Before we begin with that jury selection I've got some
4 questions that I'm going to be asking you as a group. The
5 purpose of the questions is to determine whether or not
6 there is a reason why any one of you jurors should not be
7 selected to participate in the trial of this particular
8 case. And so as those questions are asked should you need
9 to respond to them, I'll ask that you please stand, and
10 I'll address those matters with you individually should
11 that need arise.

12 Now, the first thing I'm going to do is to introduce
13 some people to you. These are people that are involved in
14 the trial of this case.

15 That includes the defendant, that includes the
16 purported victim, that includes the lawyers and that
17 includes any potential witness that might be called during
18 the trial of the case.

19 The purpose of these introductions is to find out if
20 any juror is connected by blood or by marriage to any
21 person involved in the trial of this case. And so if you
22 have any connection, whether it be by blood or marriage or
23 whether it be because you are associated with a person or
24 some member of your family is associated with one of these
25 people either by employment, by church attendance, by

Jury qualification

1 school attendance, or socially in some fashion, I just
2 simply need to find out if you or some member of your
3 family has any connection with anybody involved in the
4 trial of this case also.

5 If you do, I'll ask that you please stand when that
6 person's name is announced, and then we'll determine what
7 that connection is and whether it would have any bearing
8 upon your decision in the case if you were selected to
9 participate as a juror.

10 Now, first of all, as I told you, the defendant, the
11 person who is accused of having committed the crime of bank
12 robbery, is Terry Cooper.

13 Mr. Cooper, if you will, please stand and face the
14 jury panel.

15 (Whereupon, the defendant stood.)

16 THE COURT: Seated with Mr. Cooper at the defense
17 table is Michael Morin. Mr. Morin is his lawyer. He'll be
18 assisting him in the trial of the case.

19 (Whereupon, Mr. Morin stood.)

20 THE COURT: Presenting the case on behalf of the state
21 is Barry Barnette. He's the circuit solicitor for the
22 Seventh Judicial Circuit.

23 (Whereupon, Mr. Barnette stood.)

24 THE COURT: I'm going to recite a list of potential
25 witnesses. Most are not present in the courtroom because

Jury qualification

1 the trial will begin after lunch. But, in any event, as I
2 recite these potential witnesses' names if you or a family
3 member has any connection with them or you think you know
4 them, I would ask that you please stand so that we can
5 address that.

6 If you're not sure whether you know them or not since
7 you can't see them but you know somebody by that name, if
8 you'll stand and let me know of that fact we'll try to
9 narrow down the identification to be certain whether or not
10 you have that connection with the person who is going to be
11 testifying in this particular case.

12 Now, I'm going to recite a potential witness list.
13 That doesn't necessarily mean all of these witnesses will
14 be called to testify during the trial, but they will
15 potentially be called because they have some information
16 perhaps to share.

17 But the list of potential witnesses include Officer
18 Adorno with the Spartanburg City Police Department.

19 In fact, all of these witnesses that I'm going to call
20 right now are employed by the Spartanburg Public Safety
21 Department.

22 They also include Officer Lopez, Officer McClure,
23 Officer Edwards, Officer Renneker, Officer Mabry, Officer
24 Tapp, Officer Banks, Officer Norkett, Officer Bagwell,
25 Officer Kirby, Officer Gallman, Officer Jones, Officer

Jury qualification

1 Guthro, Officer Giolia.

2 And the next five witnesses are employees of B B & T.
3 They include Jessica Horton, Kelly Ruff, Melissa Blazer,
4 Kimberly Cash and Natsha Cheeks.

5 Two additional witnesses who are residents of Inman,
6 South Carolina, include Stephen Steading.

7 And is Mrs. Steading his wife?

8 MR. BARNETTE: His wife, yes, sir.

9 THE COURT: And his wife. Stephen Steading and his
10 wife. I'm not sure of her first name.

11 All right. If you know any of those people or you
12 have any connection with them or a family member does, I
13 would ask that you please stand so that we can identify
14 what that connection is.

15 All right. No. You just stay right there. Your name
16 and number, please, ma'am.

17 JUROR NO. 157: Alaina Steading, No. 157.

18 THE COURT: All right. And how does that question
19 relate to you?

20 JUROR NO. 157: Steve Steading is my uncle by
21 marriage. I assume it's the same Steve Steading.

22 THE COURT: Okay. From Inman?

23 JUROR NO. 157: Yes.

24 THE COURT: All right. And would that connection have
25 any bearing upon your ability to be fair and impartial in

Jury qualification

1 the trial of this case if you were called upon to serve as
2 a juror in it?

3 JUROR NO. 157: No.

4 THE COURT: All right. Thank you. You may be seated.
5 That's juror 157.

6 Yes, ma'am.

7 JUROR NO. 4: I'm Julie Ard. I'm Juror No. 4. I
8 know, kind of acquaintance, with Michael Morin from Boiling
9 Springs High School. My son, Jacob Meadows, is a color
10 guard director there, and he would have associations with
11 him.

12 THE COURT: All right.

13 JUROR NO. 4: It doesn't have any bearing on me but --

14 THE COURT: Okay. Well, would that have any bearing
15 in your decision in the case if you were called upon to
16 serve?

17 JUROR NO. 4: No.

18 THE COURT: All right. Thank you. You may be seated.
19 Anyone else need to respond to that question?

20 Yes, ma'am.

21 JUROR NO. 148: My name is Diane Smith, No. 148. I
22 used to work with Kelly Ruff at another bank.

23 THE COURT: Your number was what?

24 JUROR NO. 148: 148.

25 THE COURT: All right. Is there anything about that

Jury qualification

1 connection that would have any bearing upon your decision
2 in this case?

3 JUROR NO. 148: No.

4 THE COURT: Thank you. Be seated.

5 Anybody else?

6 (No response.)

7 THE COURT: All right. Now, as I told you, this is an
8 event which the state alleges by way of this indictment
9 occurred on June the 3rd of 2015.

10 They allege that the defendant, Mr. Cooper, entered
11 the bank, a B B & T location, at 280 North Church Street,
12 which is right at the corner of Daniel Morgan Avenue and
13 North Church Street across the street from the Marriott
14 Hotel. They allege that he entered the bank on that day
15 and demanded money and received monies from a teller by way
16 of force or intimidation or threats.

17 Does any juror think that you have heard, seen or read
18 something about this case from any source -- television,
19 radio, newspaper, some individual that you talked to? Do
20 you think you've heard something about the case itself? If
21 so, please stand.

22 JUROR NO. 158: I've just read and saw it published.

23 THE COURT: You read and saw?

24 JUROR NO. 158: The crime.

25 THE COURT: You read about it in the newspaper?

Jury qualification

1 JUROR NO. 158: Yes, sir.

2 THE COURT: And how recent did you read about that?

3 JUROR NO. 158: Right after the crime was committed.

4 THE COURT: Okay. Back in June of 2015?

5 JUROR NO. 158: Yes, sir.

6 THE COURT: Is there anything about what you've seen
7 or read about the case that would influence your judgment,
8 your decision in the case, if you were called upon to serve
9 as a juror?

10 JUROR NO. 158: No, sir.

11 THE COURT: Of course it's not important that you have
12 been exposed to information, but it is important as to
13 whether or not you would allow it to influence your
14 judgment.

15 In other words, what I'm trying to convey is that any
16 decision that a jury makes in a case has to be based
17 strictly upon the testimony and the evidence received
18 during the course of the trial. And you can't allow
19 yourselves to be influenced by any outside consideration or
20 outside information because that information might be
21 incorrect. And that's why we try the cases in court and
22 not in the newspaper.

23 So you have been exposed to some information, but you
24 tell me that that would not impair your ability to be fair
25 and impartial?

Jury qualification

1 JUROR NO. 158: All I would like to listen to today is
2 the facts.

3 THE COURT: Okay. Thank you.

4 And your juror number again was what?

5 JUROR NO. 158: Excuse me. 158, John Strength.

6 THE COURT: 158. Thank you, sir.

7 All right. Yes, ma'am.

8 JUROR NO. 102: Tamara Lyles, Juror 102. Read it in
9 the newspaper.

10 THE COURT: How recent?

11 JUROR NO. 102: June of 2015.

12 THE COURT: All right. And is there anything about
13 what you read in the paper that would have any bearing upon
14 your decision in the case?

15 JUROR NO. 102: No, sir.

16 THE COURT: In other words, could you put it aside and
17 not allow it to influence your decision?

18 JUROR NO. 102: Yes, sir.

19 THE COURT: All right. Thank you, ma'am. You may be
20 seated.

21 Yes, sir.

22 JUROR NO. 64: Michael Green, No. 64.

23 THE COURT: All right, sir.

24 JUROR NO. 64: I saw it on television shortly after it
25 happened, and that'd have no influence on me.

Jury qualification

1 THE COURT: Okay. It would not affect your ability to
2 be fair and impartial if you were selected?

3 JUROR NO. 64: No, sir.

4 THE COURT: All right. Thank you. You may be seated.
5 Has any member of the jury panel or any members of
6 your immediate family -- let me define an immediate family
7 member as a parent, a spouse or a child or a sibling --
8 a parent, spouse, child or sibling. Have you or any
9 members of your immediate family as I just defined it ever
10 been the victim of any type of crime which might be
11 described or characterized as a violent crime?

12 And that would include any type of serious assault and
13 battery, or robbery, burglary, or any similar type of an
14 offense that could be characterized as a violent offense.

15 Have you or any members of your immediate family ever
16 been the victim of such a crime or have you or some member
17 of your immediate family ever been accused of having
18 committed any type of similar offense? Ever been the
19 victim of such or accused of having committed such? If so,
20 I would ask that you please stand.

21 (No response.)

22 THE COURT: Does any member of the jury panel have any
23 relative who is now or has ever been employed as any type
24 of law enforcement officer? Do you have any relative who
25 is now or ever been employed as a law enforcement officer?

Jury qualification

1 If so, please stand.

2 All right. I'll start on this side and I'll work my
3 way back, and then I'll jump the aisle. I'll start with
4 you, ma'am.

5 JUROR NO. 167: Teresa Washington, Juror No. 167.
6 Derrick Canada is my cousin by marriage. My uncle's
7 stepson.

8 THE COURT: And he's employed with what agency?

9 JUROR NO. 167: He used to be employed with the
10 sheriff's office, I believe, public safety.

11 THE COURT: Okay. All right. Would that have any
12 bearing on your decision?

13 JUROR NO. 167: No, sir.

14 THE COURT: Thank you. Be seated.

15 Next. Next row.

16 JUROR NO. 67: Lawren Hall, Juror 67. My brother is
17 currently an M.P. in the Army.

18 THE COURT: All right. Would that have any bearing in
19 your decision?

20 JUROR NO. 67: No, sir.

21 THE COURT: Thank you. Be seated.

22 JUROR NO. 119: 119, Michael Odom. My first cousin
23 works for the Spartanburg County Detention Center -- Ronald
24 Garrett.

25 THE COURT: Would that have any bearing in your

Jury qualification

1 decision?

2 JUROR NO. 119: No, sir.

3 THE COURT: Thank you. Be seated.

4 Yes, ma'am.

5 JUROR NO. 4: Julie Ard, No. 4. My cousin works for
6 the sheriff's office, or I think it's the sheriff's office.
7 He's a detective. And also my exhusband -- he was recently
8 ex -- three years ago he was a policeman. He's retired
9 now.

10 THE COURT: And would either of those connections have
11 any bearing in your decision?

12 JUROR NO. 4: No.

13 THE COURT: Thank you. Be seated.

14 Yes, sir.

15 JUROR NO. 15: Michael Bowers, No. 15. My first
16 cousin, Jeff Bowers, was the chief in Wellford -- police
17 chief -- for a while.

18 THE COURT: Would that have any bearing on your
19 decision?

20 JUROR NO. 15: No, sir.

21 THE COURT: Thank you. Be seated.

22 Yes, sir.

23 JUROR NO. 80: James Howell, No. 80. My uncle is a
24 current U.S. marshal.

25 THE COURT: Would that have any bearing on your

Jury qualification

1 decision?

2 JUROR NO. 80: No, sir.

3 THE COURT: Thank you. Be seated.

4 Yes, ma'am.

5 JUROR NO. 140: Jennifer Sanchez, No. 140. My cousin
6 works for the Greenville Sheriff's Department.

7 THE COURT: Would that have any bearing in your
8 decision?

9 JUROR NO. 140: No, sir.

10 THE COURT: Thank you. Be seated.

11 Yes, ma'am.

12 JUROR NO. 153: Alissa Snow, 153. My first cousin was
13 a highway patrolman, I think, for Spartanburg County.

14 THE COURT: Would that have any bearing in your
15 decision?

16 JUROR NO. 153: No, sir.

17 THE COURT: Thank you. Be seated.

18 Yes, sir.

19 JUROR NO. 128: Stuart Powell, 128. Two cousins on
20 the Spartanburg city police.

21 THE COURT: Would that have any bearing on your
22 decision?

23 JUROR NO. 128: No, sir.

24 THE COURT: Thank you. Be seated.

25 MR. MORIN: Your Honor, could I have that number

Jury qualification

1 again? I'm sorry.

2 THE COURT: 128.

3 MR. MORIN: Thank you, Your Honor.

4 JUROR NO. 158: John Strength, No. 158. My
5 grandfather's a jailer for Bay County, Florida. I have two
6 cousins who are both retired from corrections facilities in
7 Florida. My father was an M.P. I have several more.

8 THE COURT: Would any of those connections have any
9 bearing in your decision?

10 JUROR NO. 158: No, sir.

11 THE COURT: Thank you. Be seated.

12 Has any member of the jury panel ever been called to
13 testify as a witness in a criminal case? Whether you've
14 testified because the prosecutor called you or because you
15 testified because the defense counsel called you, has
16 anybody ever been called to testify as a witness in the
17 trial of a criminal case? If so, please stand.

18 All right. Your name and number, please.

19 JUROR NO. 181: Amanda Chapman, 181.

20 THE COURT: Was it you or a family member?

21 JUROR NO. 181: It was me.

22 THE COURT: And did you testify in the trial?

23 JUROR NO. 181: It was two different times, two
24 separate cases when I was subpoenaed, because I worked at
25 the hospital. And then lawyers talked to me. But I never

Jury qualification

1 went to trial or court or anything because I didn't know.
2 And then the second time I witnessed an accident and they
3 did call me as a witness.

4 THE COURT: Okay.

5 JUROR NO. 181: It was in Florida.

6 THE COURT: All right. And is there anything about
7 that fact that would influence your decision here?

8 JUROR NO. 181: No, sir.

9 THE COURT: Thank you. Be seated.
10 Yes, ma'am.

11 JUROR NO. 36: Ruby Cromer, No. 36. I was subpoenaed
12 to testify in 1998, '99 and --

13 THE COURT: Did you testify?

14 JUROR NO. 36: I did.

15 THE COURT: Was that a criminal case?

16 JUROR NO. 36: It was a criminal case.

17 THE COURT: All right. Is there anything about that
18 experience that would affect your judgment in this case?

19 JUROR NO. 36: No, sir.

20 THE COURT: Thank you. Be seated.

21 Yes, ma'am.

22 JUROR NO. 71: Schene'll Hawkins, 71. It was a
23 hospital case, but I was just subpoenaed.

24 THE COURT: Okay. Is there anything about that fact
25 that would influence your judgment?

Jury qualification

1 JUROR NO. 71: No.

2 THE COURT: Thank you. Be seated.

3 Does any member of the jury panel have any family
4 member or close personal friend who has ever suffered with
5 any type of drug addiction or any type of mental health
6 condition or mental illness? If so, please stand.

7 You are Juror 36, again?

8 JUROR NO. 36: Yes, sir.

9 THE COURT: All right. And was it drug addiction or
10 some other mental illness?

11 JUROR NO. 36: In my family, immediate family, I have
12 two family members who have suffered with drug addiction.
13 I have a brother who suffers now with alcoholism.

14 THE COURT: If during this trial that was brought up
15 or became an issue or a question would your personal
16 experience have any bearing upon your decision in the case,
17 or could you allow that personal experience -- could you
18 put it aside and not allow it to influence your judgment?

19 JUROR NO. 36: I can't say for sure.

20 THE COURT: You can't say for sure?

21 JUROR NO. 36: I can't.

22 THE COURT: Okay. All right. I'm going to excuse
23 Juror No. 36 from service in the trial.

24 All right. Yes, ma'am.

25 JUROR NO. 107: Renae McCormick.

Jury qualification

1 THE COURT: Don't leave yet -- don't leave yet.

2 Ma'am?

3 JUROR NO. 107: Renae McCormick, 107.

4 THE COURT: All right.

5 JUROR NO. 107: I do have two family members that
6 suffer from mental illness.

7 THE COURT: Okay. And if that came up in the course
8 of the trial would your personal experience have any
9 bearing upon your decision in the case, or could you put it
10 aside?

11 JUROR NO. 107: I could set it aside.

12 THE COURT: You could set it aside?

13 JUROR NO. 107: Yes.

14 THE COURT: All right. Thank you, ma'am.

15 That's 107.

16 Yes, sir.

17 JUROR NO. 64: Michael Green, No. 64. I've had two
18 uncles who were alcoholics and I have a brother who suffers
19 from mental retardation.

20 THE COURT: And would that have any bearing on your
21 decision should it come up in the trial of this case?

22 JUROR NO. 64: No, sir.

23 THE COURT: All right. Thank you. Be seated.

24 Yes, sir.

25 JUROR NO. 89: Juror No. 89, Thomas Knauff. I've had

Jury qualification

1 treatment for drug addiction.

2 THE COURT: And is there anything about that that
3 would impair your ability to be fair in this case if that
4 were to come up during the trial?

5 JUROR NO. 89: I'm not sure, Your Honor.

6 THE COURT: Okay. All right. I'll excuse Juror
7 No. 89 from service in the trial of this case. But don't
8 leave yet.

9 Anybody else need to respond to that question?

10 (No response.)

11 THE COURT: Does any member of the jury panel belong
12 to, or do you contribute time or money to, any type of
13 organization that might be described or characterized as a
14 law enforcement support organization or victim's rights or
15 victim's advocacy groups? Do you belong to any such or do
16 you contribute time or money to any type of those groups?
17 If so, please stand.

18 If you need an example, Mothers Against Drunk Drivers
19 would be one; Citizens Against Violent Crimes would be one;
20 the fraternal order of police, the honorary sheriffs'
21 association, the troopers' association; or any other
22 similar type of organization -- rape crisis organization.

23 Anybody belong to those or contribute time or money to
24 them? If so, please stand.

25 (No response.)

Jury qualification

1 THE COURT: None responding.

2 Is any member of the jury panel opposed to the
3 possession of firearms, or do you belong to any
4 organizations that favor or disfavor possession of firearms
5 in any fashion? If so, please stand.

6 All right. Your name and number, please.

7 JUROR NO. 6: Kacy Barfield, Juror No. 6.

8 THE COURT: And what type of organization do you
9 belong to?

10 JUROR NO. 6: N.R.A.

11 THE COURT: The N.R.A. Okay. Would that have any
12 bearing on your decision in this case?

13 JUROR NO. 6: I can't say that it wouldn't honestly.

14 THE COURT: Okay. Let me see the lawyers just a
15 minute.

16 (Bench conference held off the record in the presence
17 of the jury but out of the hearing of the jury.)

18 THE COURT: All right. Juror No. 6, there may be
19 testimony in the trial of this case that there was a weapon
20 or the threat of the use of a weapon or a statement
21 regarding possession of a weapon. That may come out during
22 the course of the testimony.

23 Is there anything about that fact that would prevent
24 you from being able to be fair and impartial if you were
25 selected as a juror?

Jury qualification

1 JUROR NO. 6: No, sir.

2 THE COURT: Okay. Thank you. You may be seated.

3 Does anyone else need to respond to that question as
4 I've just stated?

5 (No response.)

6 THE COURT: All right. Has anybody on the panel
7 already formed an opinion as to what you think the outcome
8 of the trial ought to be based upon what you've heard up to
9 this point or based upon any other consideration? In other
10 words, have you already made up your mind as to the
11 decision? If so, please stand.

12 (No response.)

13 THE COURT: Does any juror know of any reason
14 whatsoever why you think you could not be fair and
15 impartial if you were called upon to serve as a juror in
16 the trial of this particular case? If you have any reason
17 whatsoever why you think you could not be fair and
18 impartial, I would ask that you please stand.

19 (No response.)

20 THE COURT: All right. None responding.

21 Any other questions requested by the state?

22 MR. BARNETTE: None from the state, Your Honor.

23 THE COURT: By the defendant?

24 MR. MORIN: No, sir.

25 THE COURT: All right. Draw us a jury please, ma'am.

Jury qualification

1 As your name is drawn -- the computer selects a list.
2 From that list we will be calling jurors up. And each side
3 has a chance to have you seated for service in the case or
4 to have you excused from serving in the case.

5 When your name is called you'll simply be asked to
6 come forward. You come towards me. You'll see where the
7 lawyers are seated at their desks.

8 Just pass them, come through, probably about three
9 steps. Turn and face your fellow jurors. As I say, each
10 side has a chance to have you seated or to have you excused
11 from serving in the case.

12 If either side asks that you be excused, you can
13 simply go back and have a seat where you are now. If both
14 agree to have you seated for serving in the case, you'll be
15 having a seat in the jury box to your right and to my left.

16 So please simply come forward as your name is called,
17 and you'll be instructed as to whether you've been accepted
18 for service in the case or excused from serving in the
19 case.

20 All right. Please come forward as your name is
21 called. You'll be instructed if you're to be seated or
22 excused.

23 THE CLERK: Juror No. 153, Alissa Snow.

24 What say the state?

25 MR. BARNETTE: Please present the juror.

Jury qualification

1 THE CLERK: What say the defense?
2 MR. MORIN: Please swear the juror.
3 THE CLERK: Juror No. 8, Wayne Beatty.
4 what say the state?
5 MR. BARNETTE: Please present the juror.
6 MR. MORIN: Please swear Mr. Beatty.
7 THE CLERK: Juror No. 109, Stephen Melville.
8 what say the state?
9 MR. BARNETTE: Please present the juror.
10 THE CLERK: What say the defense?
11 MR. MORIN: Please swear the juror.
12 THE CLERK: Juror No. 44, Kathy Edwards.
13 what say the state?
14 MR. BARNETTE: Please present the juror.
15 THE CLERK: What say the defense?
16 MR. MORIN: Please swear the juror.
17 THE CLERK: Juror No. 183, Daniel Benshoof.
18 what say the state?
19 MR. BARNETTE: Please excuse this juror from service.
20 THE CLERK: Juror No. 167, Theresa Washington.
21 what say the state?
22 MR. BARNETTE: Please present the juror.
23 THE CLERK: What say the defense?
24 MR. MORIN: Please swear the juror.
25 THE CLERK: Juror No. 180, Michael Zimdahl.

Jury qualification

1 what say the state?

2 MR. BARNETTE: Please present the juror.

3 THE CLERK: What say the defense?

4 MR. MORIN: Please excuse the juror.

5 THE CLERK: Juror No. 72, Nicole Hicks.

6 what say the state?

7 MR. BARNETTE: Please present the juror.

8 THE CLERK: What say the defense?

9 MR. MORIN: Please swear the juror.

10 THE CLERK: Juror No. 166, Camille Wallace.

11 what say the state?

12 MR. BARNETTE: Please present the juror.

13 THE CLERK: What say the defense?

14 MR. MORIN: Please swear the juror.

15 THE CLERK: Juror No. 55, Freddy Franco.

16 what say the state?

17 MR. BARNETTE: Please excuse this juror from service.

18 THE CLERK: Juror No. 168, Tracy White.

19 what say the state?

20 MR. BARNETTE: Please present the juror.

21 THE CLERK: What say the defense?

22 MR. MORIN: Please swear the juror.

23 THE CLERK: Juror No. 14, Kathy Bowen.

24 what say the state?

25 MR. BARNETTE: Please present the juror.

Jury qualification

1 THE CLERK: What say the defense?
2 MR. MORIN: Please swear the juror.
3 THE CLERK: Juror No. 135, Anna Richey.
4 What say the state?
5 MR. BARNETTE: Please present the juror.
6 THE CLERK: What say the defense?
7 MR. MORIN: Please swear the juror.
8 THE CLERK: Juror No. 140, Jennifer Sanchez.
9 What say the state?
10 MR. BARNETTE: Please excuse this juror from service.
11 THE CLERK: Juror No. 119, Michael Odom.
12 What say the state?
13 MR. BARNETTE: Please present the juror.
14 THE CLERK: What say the defense?
15 MR. MORIN: Please swear the juror.
16 THE CLERK: Juror 145, Phillip Shoemaker.
17 What say the state?
18 MR. BARNETTE: Please present the juror.
19 THE CLERK: What say the defense?
20 MR. MORIN: Please excuse the juror.
21 THE CLERK: Juror No. 171, Melissa Williams.
22 What say the state?
23 MR. BARNETTE: Please present the juror.
24 THE CLERK: What say the defense?
25 MR. MORIN: Please swear the juror.

Jury qualification

1 THE CLERK: Juror No. 64, Michael Green.

2 THE COURT: This is for the alternate.

3 THE CLERK: What the state?

4 MR. BARNETTE: Please present the juror.

5 THE CLERK: What say the defense?

6 MR. MORIN: Please swear the juror.

7 THE COURT: Let me ask those who have been selected,
8 please go with the bailiff to a jury room, and I'll bring
9 you back in just a few minutes.

10 (The following takes place outside the presence of the
11 jury.)

12 THE COURT: Are there any matters that need to be
13 addressed regarding jury selection by the state?

14 MR. BARNETTE: None from the state, Your Honor.

15 THE COURT: By the defendant?

16 MR. MORIN: No, sir.

17 (Whereupon, the remaining members of the jury venire
18 were excused.)

19 THE COURT: All right. Bring the jury back, please.

20 (The following takes place in the presence of the
21 jury.)

22 THE COURT: Ladies and gentlemen, I've got some other
23 matters to address that don't relate to this case, but I've
24 got some matters to address that I have to do before we can
25 begin with this trial. So you're going to be excused now

1 for lunch.

2 We will resume with this trial at 3:00 o'clock this
3 afternoon, 3:00 o'clock this afternoon. So right now
4 you're going to be excused. You'll be asked to report back
5 to that jury room that you've just been introduced to.
6 Report back to that jury room at 3:00 o'clock this
7 afternoon.

8 In the meantime, I know we haven't started the case
9 and you don't really know much about it, but you can't
10 discuss it. At no time are you permitted to discuss this
11 case until you've been asked to begin deliberations, and
12 that won't be until the end of the trial after all of the
13 evidence has been received and I've instructed you on the
14 law that's applicable in the case.

15 Also, you're never permitted to conduct any research
16 or do your own investigation into any issue that might
17 arise during the trial, and you cannot permit yourselves to
18 be exposed to any type of media coverage that might relate
19 to the case, whether it be television, radio or newspaper.

20 You have to base your decision upon what is presented
21 during the trial. You can't allow yourselves to be
22 influenced by any outside or extraneous information.

23 So keep those cautions in mind. Do have a good lunch,
24 and please report to your jury room at 3:00 o'clock,
25 3:00 o'clock this afternoon. Have a good lunch.

1 (The following takes place outside the presence of the
2 jury.)

3 (One large black glove marked State's Exhibit No. 1 for
4 Identification; one large black Halloween mask marked
5 State's Exhibit No. 2 for Identification; one large black
6 glove marked State's Exhibit No. 3 for Identification; one
7 black hoodie marked State's Exhibit No. 4 for
8 Identification; dye pack marked State's Exhibit No. 5 for
9 Identification; handwritten note used in the bank robbery
10 marked State's Exhibit No. 6 for Identification; waiver and
11 statement marked State's Exhibit No. 7 for Identification;
12 D.V.D. of interview marked State's Exhibit No. 8 for
13 Identification; map of B B & T marked State's Exhibit No. 9
14 for Identification; photographs marked State's Exhibits No.
15 10 through 41 for Identification; defendant's back pack
16 marked State's Exhibit No. 42 for Identification; D.V.D.
17 marked Court's Exhibit No. 1 for Identification.)

18 THE COURT: All right. Mr. Morin, do you have any
19 motions to address?

20 MR. MORIN: Yes, Your Honor.

21 One of the pieces of evidence the state intends to
22 allege is that my client gave a statement. We challenge
23 the voluntariness of that statement under Jackson vs.
24 Denno, United States Supreme Court, as well as South
25 Carolina cases requiring voluntariness of the statement

Jason Earl Tapp (In-camera)
Direct examination by Mr. Barnette

1 given by a defendant.

2 THE COURT: All right. Mr. Barnette.

3 MR. BARNETTE: Thank you, Your Honor. I'd like to
4 call Investigator Tapp to the stand, please.

5 JASON EARL TAPP, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. BARNETTE

8 Q If you would, sir, please give your full name for the
9 record.

10 A Jason Earl Tapp.

11 Q And what's your position at the Spartanburg Police
12 Department, sir?

13 A I'm an investigator.

14 Q And how long have you been in law enforcement, sir?

15 A Just shy of nine years.

16 Q Back on June 3rd of 2015, was you working that day,
17 sir?

18 A I was.

19 Q And was you called in to do an interview with the
20 defendant in this case, Terry Cooper?

21 A I was.

22 Q And was this after he was captured after the bank
23 robbery?

24 A Yes, sir.

25 Q And in that, let me show you what's been marked as

Jason Earl Tapp (In-camera)
Direct examination by Mr. Barnette

1 State's Exhibit No. 7. Let me get you to open that, sir,
2 for the purpose of this hearing. Just take your notes, or
3 you can have your notes there. Keep your notes with you.
4 Did you give him his Miranda rights, sir?

5 A I did.

6 Q And did you go through a form with him with that, sir?

7 A I did.

8 Q Part of this Exhibit 7, is this the waiver form that
9 you went through it with him, sir?

10 A It is.

11 MR. BARNETTE: Your Honor, I'd like to enter this, as
12 well as the statement, at the appropriate time for purposes
13 of this hearing to be entered into evidence for the
14 hearing, Your Honor. I think Mr. Morin has seen it.

15 MR. MORIN: I think I have. Yeah.

16 (Waiver of defendant marked State's Exhibit No. 7.)

17 Q And on the waiver form, did you go through each one of
18 his five rights with him?

19 A I did.

20 Q Could you read those rights to us, please?

21 A Yes. "You have the right to remain silent. Anything
22 you say can and will be used against you in a court of law.
23 You have the right to talk to a lawyer and have the lawyer
24 present while you're being questioned. If you cannot
25 afford to hire a lawyer, a lawyer will be appointed free of

Jason Earl Tapp (In-camera)
Direct examination by Mr. Barnette

1 any cost to represent you before questioning begins. And
2 you have the right to stop answering questions at any
3 time."

4 Q Did he initial as you read those rights to him?

5 A He did.

6 Q And did he sign that he understood those rights?

7 A He did.

8 Q Did you threaten him in any way?

9 A I did not.

10 Q Did you promise him anything?

11 A No, sir.

12 Q Did he freely and voluntarily talk to you after that?

13 A He did.

14 Q Did you let him know what you was talking to him
15 about?

16 A I did.

17 Q What did you let him know what y'all was talking
18 about?

19 A It was about a bank robbery.

20 Q Okay. Did you write that on the form, sir?

21 A I did.

22 Q And did he indicate to you what his education level
23 was, sir?

24 A Eighth grade.

25 Q Okay. And did he sign the form once you explained all

Jason Earl Tapp (In-camera)
Direct examination by Mr. Barnette

1 of these rights to him?

2 A He did.

3 Q Let me show you what's been marked as Court's
4 Exhibit 1. Was there a video tape of the interview, sir?

5 A There was.

6 Q And did this video tape entail reading him his rights
7 and everything going through this with him?

8 A It does.

9 Q And does this also contain the statements that he gave
10 to you concerning this event?

11 A Yes, sir.

12 Q And the written statement, 3-page statement, I believe
13 he went -- he told you what happened originally.

14 A Yes.

15 Q And did y'all go back through his statement again?

16 A We did. We went back and wrote this statement out.

17 Q And did you -- did you write that statement for him?

18 A I did.

19 Q And after you wrote the statement to him did you let
20 him see that statement?

21 A I did.

22 Q And did you read it back to him?

23 A I did.

24 Q And did he understand it?

25 A Yes.

Jason Earl Tapp (In-camera)
Direct examination by Mr. Barnette

1 Q Did he indicate that was what he told you?

2 A Yes.

3 Q And did he also sign it?

4 A He did, each page.

5 MR. BARNETTE: Your Honor, I'd like to move State's
6 Exhibit 7 in for purposes of this hearing, into evidence at
7 this time and present it to the Court. It's a waiver of
8 the statement.

9 MR. MORIN: Yes, Your Honor. I have a copy.

10 MR. BARNETTE: And, Your Honor, I'd like to move
11 Court's Exhibit 1, which is a video of the statement that
12 was given, Miranda rights. Everything was done on that,
13 Your Honor. A copy has been provided to the defense.

14 I will put this for the record, Your Honor. We marked
15 it as Court's Exhibit 1 because, actually, I have State's
16 Exhibit No. 8 that's going to be the video that would be
17 played for the jury.

18 We had to redact some parts because he mentioned his
19 prior record concerning events that happened in Florence
20 County, and had to have that redacted, Your Honor, so there
21 wouldn't be any issues.

22 And then there was stuff brought up about his
23 codefendant. There is some information, codefendant, still
24 in the redacted version, but there is a lot in that was by
25 the codefendant that we're not going to play either at that

Jason Earl Tapp (In-camera)
Cross-examination by Mr. Morin

1 point.

2 It will be basically what he told the investigator on
3 the redacted copy, as well as when they went through the
4 statement together, Your Honor.

5 I'd like to move to -- this is the unredacted copy for
6 the Court's Exhibit 1 that we're entering for the purpose
7 of this hearing. I don't think there's any objection to
8 that, Your Honor.

9 THE COURT: Okay.

10 MR. MORIN: We have a copy of the unredacted
11 statement, and my client and I both have viewed it.

12 MR. BARNETTE: And, Your Honor, I don't know if
13 there's anything else at this time.

14 I'm not going to have him read the statement. I
15 believe the Court can read the statement for itself. Plus,
16 it has the video for its -- to view it.

17 (D.V.D. marked Court's Suppression Exhibit No. 1.)

18 MR. BARNETTE: I don't have any further questions at
19 this point.

20 Q Any questions that the Court would like to ask you,
21 sir, or Mr. Morin.

22 CROSS-EXAMINATION

23 BY MR. MORIN

24 Q Officer Tapp, during the interview with Mr. Cooper,
25 this was what time? This was, like, June 3rd, right?

Jason Earl Tapp (In-camera)
Cross-examination by Mr. Morin

- 1 A Yes.
- 2 Q Were you dressed as you are right now?
- 3 A I think I had a blue button-up shirt on in the video.
- 4 Q Okay. How was my client dressed?
- 5 A No shirt.
- 6 Q Was there air conditioning running at the city?
- 7 A I'm sure it was. It was June.
- 8 Q So he sat in that room with you for over an hour
- 9 without a shirt while you're asking these questions?
- 10 A Yes.
- 11 Q Did he mention the fact that he had been under mental
- 12 health care?
- 13 A Yes.
- 14 Q Did you ask him about that prior to going over his
- 15 rights, or later on?
- 16 A I don't recall, but it was mentioned in -- during our
- 17 interview.
- 18 Q Okay. During the interview were y'all interrupted at
- 19 any point?
- 20 A There was -- I think there was people in and out at
- 21 some point. Another investigator came and sat in to listen
- 22 for a while.
- 23 Q Officer Kirby came in and asked some questions and
- 24 left.
- 25 A Yes.

Jason Earl Tapp (In-camera)
Cross-examination by Mr. Morin

1 Q Also during the time that you were doing that he was
2 also, Mr. Cooper was also, photographed, is that correct?

3 A Yes, sir.

4 Q Was that before or after the Miranda rights?

5 A Before.

6 Q Okay. And was he in shackles at that time?

7 A He was. Well, he was in handcuffs, and I was putting
8 him in shackles at -- at the beginning of the video, of the
9 interview.

10 Q Prior to his talking to you.

11 A Yes.

12 Q Okay. So if I understand correctly, you had him in an
13 air conditioned room with no shirt on, and during the time
14 that you were questioning him other officers came in and
15 took photographs and jumped in and asked questions and
16 left. All that occurred during that time, is that correct?

17 A Yes.

18 Q And at some point -- but you're not sure when -- he
19 mentioned that he had been under mental health care.

20 A Yes.

21 Q Do you recall if you even asked him if he was taking
22 medication or what the medication was?

23 A I asked him. I asked him what was -- you know, what
24 was wrong with him, and he said he gets depressed and
25 confused.

Jason Earl Tapp (In-camera)
Cross-examination by Mr. Morin

1 Q Okay. Now, you stated that you wrote the statement, I
2 mean, you went over the statement and then you went back
3 and rewrote it, correct, the statement that's been
4 introduced for purposes of this, the 3-page thing?

5 A Yes.

6 Q That's a statement written by Investigator Tapp for
7 him, correct?

8 A Yes.

9 Q All right. Now, he was given -- he was shown it, and
10 you read it. Can you take me through that part that you
11 recall? I mean --

12 A We talked about -- we talked about what happened. We
13 went back through. He talked me through his statement as I
14 wrote. As I finished I showed it to him and read it back
15 through to him, and he signed it, I believe.

16 Q Have you got the original?

17 A Yes.

18 Q Is that what we have?

19 MR. MORIN: I mean, can I?

20 THE COURT: Sure.

21 MR. MORIN: Thank you, Your Honor.

22 If I may have just a moment.

23 (Pause.)

24 MR. MORIN: That's all the questions I have, Your
25 Honor.

Jason Earl Tapp (In-camera)
Redirect examination by Mr. Barnette

1 MR. BARNETTE: Just a couple on followup, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. BARNETTE

4 Q The reason why he didn't have a shirt on, that's the
5 way he was captured, is that right?

6 A Yes.

7 Q He didn't have a shirt or anything on, did he?

8 A The dye pack exploded, and it was burning on his
9 clothing. He had some burn-like, reddish, from the dye
10 pack. And he took his shirt off and was running.

11 Q Okay. Those are the pictures that were taken of the
12 mark on his stomach.

13 A Yes, sir.

14 Q Dye pack. And also was there dirt on the back of his
15 pants?

16 A There was.

17 Q And during the interview did you get him a bottle of
18 water to drink?

19 A I don't recall.

20 Q Was he holding the bottle of water and going through
21 that? That would be shown on the video, is that right?

22 A I'm not sure but if -- it could be on the video. I'm
23 not sure.

24 Q But you would have gave him water if he asked for
25 water, is that right?

Jason Earl Tapp (In-camera)
Redirect examination by Mr. Barnette

- 1 A Yes.
- 2 Q And he would have had water if he wanted water, is
3 that correct?
- 4 A Yes.
- 5 Q He never asked for an attorney the whole time.
- 6 A He did not.
- 7 Q And he answered everything freely and voluntarily.
- 8 A He did.
- 9 Q Did he appear to understand what was going on?
- 10 A He did. He was able to talk about his past history
11 and tell me the time, exact time, he served for his past
12 crimes and everything.
- 13 Q Okay. So he even told you how much time he had served
14 on each crime, isn't that right?
- 15 A Yes.
- 16 Q That's not on -- that's not on the redacted version.
17 But on this version given the Court it is, is that right?
- 18 A Yes.
- 19 Q And he even told you about a codefendant that y'all
20 didn't know about.
- 21 A He did, yes, sir.
- 22 Q And that led onto, I think, his bag being found in the
23 codefendant's vehicle.
- 24 A Correct.
- 25 Q Okay. Thank you, sir.

Terry Cooper (In-camera)
Direct examination by Mr. Barnette

1 A Yes, sir.

2 MR. MORIN: Nothing further.

3 THE COURT: Step down.

4 MR. BARNETTE: Your Honor, that'd be the state's
5 showing, including the video tape. And you can hear
6 everything that is said on the video tape -- or the video
7 tape, yes, sir.

8 THE COURT: Mr. Morin.

9 MR. MORIN: Thank you, Your Honor. Your Honor, I'd
10 call Mr. Cooper.

11 TERRY COOPER, having been
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. MORIN

14 Q would you state your name for the judge?

15 A Terry Cooper.

16 Q Mr. Cooper, were you arrested in June of 2015?

17 A Yes, sir.

18 Q And did law enforcement take you -- where did law
19 enforcement take you to?

20 A To the city police department, city hall.

21 Q Okay. And once you got to city hall -- well, prior to
22 getting to city hall did you see Officer Tapp?

23 A Yes. I think I did.

24 Q All right. Did you speak to him?

25 A Not exactly.

Terry Cooper (In-camera)
Direct examination by Mr. Barnette

1 Q Okay. Now, when you got to city hall, can you tell
2 the judge what happened?

3 A Well, when I got into city hall I was sick, you know.
4 I was nervous; I was scared. Well, some of that due to the
5 fact, the way they was handling me.

6 Q All right. Well, what -- what does that mean?

7 A Well, I had a gun drawn on me, and I didn't know
8 whether the officer was going to shot me or what. So I had
9 to, you know, get down on the ground on the cement like he
10 tell me to. You know what I'm saying?

11 Q Uh-huh.

12 A Because like it's June, and it was hot, you know, and
13 everything, and I was sweating already. So I had jumped
14 down on the concrete like he said. Put my hands behind my
15 back. So that way I won't get shoot [sic].

16 Q Right. So then you got to the city police department.

17 A Yeah.

18 Q And where did you go when you got to the city police
19 department as best you can describe?

20 A They took me to a little room -- a little room. I can
21 remember, that was it.

22 Q All right. Who all -- who was in that room?

23 A Well, at first it was two male officers in there, that
24 I think they was officers, you know.

25 Q Uh-huh.

Terry Cooper (In-camera)
Direct examination by Mr. Barnette

1 A They had on plain clothes. They didn't have on no
2 police uniform.

3 Q Okay.

4 A And then later on a female came in there, and then
5 somebody else came in there. I don't remember who he was.

6 Q Do you recall if they put -- if you had handcuffs on?

7 A When I first went in there I had handcuffs on.

8 Q All right.

9 A And then they take the handcuffs off me and put belly
10 chains on me and then put the handcuffs on the belly chains
11 on me.

12 Q All right. And did you have anything on? Did they
13 confine your legs as well or just --

14 A Yeah, yeah. They confined my legs in leg shackles.

15 Q All right. And at that time what were you wearing?

16 A I was only wearing a pair of pants, tennis shoes.
17 That's it.

18 Q All right. Do you recall when Officer Tapp read you
19 the rights to which he's referring?

20 A Yeah. I think I do remember him reading me my rights.

21 Q Was that before or after they took pictures of you?

22 A I think that was after they took the pictures of me.

23 Q Okay. Did Officer Tapp ask you about where you had
24 stayed, where you were staying?

25 A Yes, he did.

Terry Cooper (In-camera)
Direct examination by Mr. Barnette

1 Q And what did you tell him?

2 A I told him I stayed at the shelter.

3 Q Okay. And did he ask you if you took any medication?

4 A No, sir, he didn't.

5 Q Did you ever tell him that you took some medication?

6 A Yes, sir. Later on as we was speaking I told him I
7 was up under mental health observation and everything.

8 Q And what kind of medication did you take?

9 A I take Ramrod, Seroquel and Neurontin. Gabapentin.
10 That's what it is. Them's the three I was getting from
11 mental health.

12 Q And what were those three for? Why were --

13 A Well, one of them was for depression; one of them for
14 nerves; and the uddon [sic] for anxiety.

15 Q Okay. Depression, anxiety basically is why you were
16 taking them?

17 A Yeah.

18 Q Okay. Now, Officer Tapp says that he read you the
19 written statement. Do you recall that?

20 A No, I don't recall it.

21 Q Okay. Do you remember if you were asked questions by
22 any other officers that day?

23 A Well, I remember F.B.I. man came in there, and he said
24 he didn't want to question me. And they asked him did he
25 want to go to the bank, and he said he didn't want to go to

Terry Cooper (In-camera)
Direct examination by Mr. Barnette

1 the bank. But he'd tell me he was going to the federal
2 prosecutor and if the federal prosecutor wanting to take
3 out a warrant on me, he would be serving me with a warrant.
4 He said but if he don't came back for me not to worry.

5 Q Okay. Was that before or after you went through the
6 belly chains and the shackles and all of that?

7 A That was after.

8 Q Okay. Now, you -- you sat there and they did -- you
9 did have some water, is that correct?

10 A That's all I had. I haven't ate nothing since
11 breakfast that day.

12 Q Okay. And this was about 4:30 or 5:00 o'clock in the
13 afternoon?

14 A Yeah.

15 Q Did you ever ask them for anything?

16 A I let them know I was hungry.

17 Q Okay.

18 A But I thought they would get me some food, but they
19 never did. The only thing I got was a bottle of water.

20 Q Okay. And do you remember the temperature there in
21 the room?

22 A It was cold.

23 Q After you got done talking to them, where did they
24 take you?

25 A Well, they took me to the sheriff's department.

Terry Cooper (In-camera)
Direct examination by Mr. Barnette

1 Q Uh-huh. And did they give you something to wear
2 there?

3 A Well, when I got there they give me a shirt to put on.

4 Q All right.

5 A And then, yeah, they gave me a shirt to put on.

6 Q Now, do you recall how long you were in that room with
7 officer Tapp about, or can you even say?

8 A I know it's been a long time. I don't know.

9 Q Okay.

10 A I don't know. You know, I know it's been a long time.

11 Q All right. Is there anything else that you recall
12 during that time that we need to know about while they were
13 talking to you regarding why you were there?

14 A Well, I couldn't focus too good because, you know,
15 different people keep coming in and out of the room and
16 stuff doing different things to me and, you know. And I
17 know I done seen people get in a room by theirself like
18 that there with a bunch of officers and get beat up on and
19 stuff like that. So I didn't know what to think. You
20 know, I didn't know what to do. You know what I'm saying?
21 The only thing I know, I didn't want to get hurt and I
22 didn't -- you know -- so, you know, I -- you know, I guess
23 I did what they wanted me to do, you know.

24 Q Okay. Now, you -- you'd been in small rooms like that
25 with officers before.

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

1 A Not quite like that, no.

2 Q You ever been hurt by an officer while you were in a
3 room like that?

4 A I have been jumped on by the officers, yeah.

5 Q They asked you about your record, right?

6 A Yeah.

7 Q And you told them about it.

8 A Yes, I did.

9 Q Is that -- is that during the times that you had
10 run-ins with the law?

11 A Yes. I have.

12 Q And is that the time you've been hurt?

13 A Yeah.

14 Q They asked you about that?

15 A No.

16 Q Okay. Answer any questions Mr. Barnette has.

17 MR. BARNETTE: May it please the Court, Your Honor.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. BARNETTE

21 Q Well, sir, you just robbed a bank, isn't that right?

22 A No.

23 MR. MORIN: Objection, Your Honor. We're here for the
24 voluntariness of the statement.

25 MR. BARNETTE: No, sir.

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

1 THE COURT: I understand.

2 Go ahead.

3 Overruled.

4 MR. BARNETTE: Thank you, Your Honor. No problem.

5 Q You had just robbed a bank, hadn't you?

6 A No.

7 Q You'd just went inside the bank and robbed it with the
8 dye pack. Didn't you?

9 A No.

10 Q You handed a note up saying you had a weapon, didn't
11 you?

12 A No.

13 Q When the officers pulled you over, it wasn't this
14 officer that arrested you. It was another officer, wasn't
15 it?

16 A It was a officer. I don't think it was him. But it
17 was a officer, I guess.

18 Q And allegedly you had robbed a bank with a gun, or had
19 said had a gun.

20 A No.

21 Q When you pull a weapon on somebody -- if they said a
22 bank robbery?

23 A Say will I pull a weapon on somebody?

24 Q Yeah, when an officer -- when a guy comes up saying
25 they'd robbed a bank. Wouldn't that be logical?

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

1 A I wouldn't -- I wouldn't know that. Not for hearsay.

2 Q Well, you're saying that this officer was just
3 horrible to you, went in. You just talked. Have you seen
4 the video tape?

5 A I seen the video tape.

6 Q You saw how easygoing he was, how he talked to you.
7 You talked to him without no problem telling him about what
8 happened, everything.

9 A There was other officers in there too that you didn't
10 see outta the camera's view.

11 Q Well, Jeff Kirby comes in, and he asked you about it,
12 and you tell him about your codefendant, Brandon Johnson,
13 don't you?

14 A I did that.

15 Q You did tell them about Brandon Johnson, didn't you?

16 A Yeah, I did.

17 Q That's how they knew about him. That's what you told
18 Kirby about. That's where Kirby goes and arrests him or
19 checks on the backpack. Is this your backpack, State's
20 Exhibit 42?

21 A Yeah, that's my backpack.

22 Q And you told them where it was, didn't you?

23 A I told them I had a backpack.

24 Q You told them where it was, and that's where they got
25 it from, wasn't it? It was Brandon Johnson's vehicle he

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

1 was driving, he drove you over in that day.

2 A Yeah. I do know Brandon Johnson. I do know him.

3 Q And you told them about him. You've seen the video
4 tape. Do we have to get the video tape and play it the
5 whole time for you here and go through it every piece by
6 piece?

7 A Excuse me, sir. Like I said before, I was up under
8 distress.

9 Q Under distress?

10 A Yes. I am that day, yeah, I am.

11 Q You told him everything that happened. Do you want me
12 to play the video for you? We can do that right now.

13 A I only did that to keep from getting hurt. I don't
14 know. You look like you might want to jump on me the way
15 you snapping at me.

16 Q So everybody's jumping on you. Every police officer
17 jumped on you that day, right?

18 A I ain't said every police officer.

19 Q This officer didn't jump on you, did he?

20 A I didn't say he jumped on me.

21 Q Well, you said you was nervous, intimidated.

22 A I said he -- yeah. He might have jumped on me. I
23 didn't know.

24 Q Did Jeff Kirby jump on you?

25 (Pause.)

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

- 1 Q Do you want me to repeat the question, sir?
- 2 A Excuse me?
- 3 Q Do you need me to repeat the question?
- 4 A What was that?
- 5 Q Did Jeff Kirby jump on you?
- 6 A Did Jeff Kirby?
- 7 Q Yes. Investigator Kirby.
- 8 A No.
- 9 Q Did Investigator Tapp ever jump on you?
- 10 A No.
- 11 Q Did the F.B.I. agent ever jump on you?
- 12 A No.
- 13 Q Did the female officer ever jump on you?
- 14 A No.
- 15 Q As a matter of fact, they readjusted -- they had the
- 16 handcuffs behind your back, and they readjusted to the
- 17 front where it was more comfortable even, isn't that
- 18 correct?
- 19 A I still wasn't comfortable. I don't know what you
- 20 mean by comfortable.
- 21 Q Well, tell us what -- you say you don't know anything
- 22 about it. Why was you out there that day then?
- 23 A Why I was out there that day?
- 24 Q Yes. Why was you out there that day if you said that
- 25 you wasn't involved in that bank robbery and everything

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

1 else?

2 A First of all, I was going over to mental health that
3 day. Mental health supposed to be in that area, that area
4 mental health on Dewey Avenue. That's where I was on my
5 way to about my medication. I just ran out of my
6 medication, and I was trying to get another description
7 [sic] so I can go over and get my medication. That's all
8 it is.

9 Q Well, that's kind of curious because Investigator Tapp
10 went over and got your medication so he could take it over
11 to you at the jail.

12 A He got my diabetic --

13 Q From --

14 A My diabetic medication from the mission, that's right.
15 My insulin.

16 Q He went to the mission. He went by the mission and
17 picked up your medication to drop off at the jail for you,
18 didn't he?

19 A My insulin, my insulin, yes. He got my insulin, and
20 that's what he got. That don't mention my mental health
21 medication.

22 Q Okay. Well, what medications are you on? Mr. Morin
23 asked you what medications you're on. What medications are
24 you on? Please let us know.

25 A I just -- do you want me to name them again? I done

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

1 named them. Neurontin.

2 Q You didn't name insulin, did you, earlier? Now you're
3 naming insulin because that's the reason why he went over
4 and got that.

5 A Because he -- insulin is not mental health medication.

6 Q Okay. What medications are you on, sir, then? Please
7 tell us.

8 A Do you want all of my medications?

9 Q Yes, sir. I want all of them.

10 A Well, I'm on medication for high blood pressure
11 medication for number one. There's another one. I can't
12 name them all because I don't know them all by name right
13 now. But I do know I'm on Neurontin, Seroquel, Ramrod.
14 Them three is from the mental health right there. I do
15 know about them three. And the insulin.

16 Q Uh-huh.

17 A That's what I'm on. I'm on more medication than that,
18 but I just can't name them all right now because I'm on so
19 much medication.

20 Q Uh-huh. Was you prescribed all of those on June the
21 3rd of 2015?

22 A No.

23 Q You weren't prescribed all of those then?

24 A No.

25 Q What was you prescribed on June 3rd of 2015?

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

1 A I didn't see no doctor on that day. I was on my way
2 to mental health, like I said, to get my prescription
3 refilled.

4 Q Okay. What prescriptions were you on June 3rd of
5 2015?

6 A You saying what -- say that again.

7 Q What medicines were you on June 3rd of 2015?

8 A Ramrod.

9 Q Okay.

10 A Insulin, Gabapentin. That's the same thing as
11 Neurontin. That's the same the nerves -- for nerves and
12 stuff like that. And aspirin for blood thinner. I know
13 that. And I'm on a lot of medications. I can't name them
14 all, but I got -- I'm on a lot of them.

15 Q Okay. And how long have you been on this medication,
16 sir?

17 A Well, the mental health medication, I done been on the
18 mental health medication most all of my life. I've been
19 having mental problems ever since I been a child.

20 Q Okay. How long? What age?

21 A Around eight. I done tried to commit suicide. I done
22 ran out in the road for 18-wheeler to run over me. All
23 kind of stuff. If I had a gun right now instead of you
24 hounding me the way you hounding me now, I'd blow my own
25 brains out right here.

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

1 Q Well, I'm assuming you was on this medication when you
2 committed the conspiracy bank robbery in Florence County.

3 A I didn't do no bank robbery in no Florence County. No
4 conspiracy of no bank robbery in Florence County.

5 Q Well, did you shoot somebody in Florence County?

6 A No. I ain't never owned a gun to shoot nobody.

7 Q Well, you've been convicted of ABWIK, served 18-year
8 sentence. You've been convicted of common-law robbery.
9 I'm assuming you was taking medications when all of that
10 was going on.

11 A Common-law robbery.

12 Q Uh-huh. You received 15 years for that, didn't you?

13 A Yes, I did, yeah.

14 Q I mean, you went through everything that you've been
15 convicted of with Investigator Tapp on the video. Do you
16 want me to play it for you?

17 A Well, I can remember everything I been locked up for,
18 sure, but that ain't got nothing to do with my mental
19 health or, you know, my medication. There's certain times
20 if I ain't got my medication I act a certain way.

21 Q Well, I'm assuming --

22 A The only thing you gotta do is ask my mental health
23 doctors. That's all you gotta do -- that's all you gotta
24 do. They'll tell you what happened with me if I don't get
25 my medicine on time or how I react and stuff like that.

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

1 You know what I'm saying?

2 Q Well, my question, sir, was you on the medication when
3 you did the common-law robbery.

4 A I took -- I took the last little bit of medication. I
5 took one of the pills that morning. One of them I've been
6 out of.

7 That's why I tell you I was on my way back to mental
8 health that day to try to get a refill where I can get the
9 other one refilled.

10 I'm on different, three different, mental health
11 medications. I only had one that morning. Two of them I'm
12 out of. So I only took the one I had. That's the only
13 reason I was up in the area, go over there and get my
14 prescription so I can get it refilled.

15 Q Well, how did you get the red dye on your chest then,
16 sir?

17 A Red dye on my chest?

18 Q On your stomach area.

19 A I don't remember having no red dye on me.

20 Q Let me show you State's Exhibit 34, sir. That's a
21 picture they took of you that day, isn't it?

22 A Yeah. That's a picture of me and --

23 Q Is that the red dye?

24 A That ain't no red dye, but that's a red mark from the
25 hot concrete when they laid me down on -- on my stomach and

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

1 they pulled me up and I scraped it on the concrete. That's
2 what it is.

3 Q where did you get the mud from on your pants?

4 A where did I get the mud from on my pants?

5 Q Yes. Let me just show you here. Show you State's
6 Exhibit 37. where did that mud come from on your pants?

7 A That don't look like mud. That looks like dirt.
8 That's all.

9 Q well, dirt. where did the dirt come from?

10 A Because I was on the concrete. The concrete do have
11 dirt on it.

12 Q But you agree that Investigator Tapp gave you your
13 rights.

14 A He read some rights.

15 Q And you signed them waiver forms, is that correct?

16 A Yeah. I think I did sign one.

17 MR. BARNETTE: May I approach, Your Honor?

18 Q Show you State's Exhibit 7, sir. Is this the form
19 that he showed you that day?

20 A Yeah.

21 Q Are these your initials beside the five rights?

22 A Yeah. I did that.

23 Q Did he read those rights to you?

24 A Yeah, he did.

25 Q And did you sign?

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

- 1 A Yeah, I signed.
- 2 Q And that's your signature, is that correct?
- 3 A Yeah.
- 4 Q Okay. And he told you it was about a bank robbery.
- 5 A Excuse me?
- 6 Q He told you it was about a bank robbery.
- 7 A About a bank robbery?
- 8 Q Yes, sir.
- 9 A I guess that's what he was telling me. I don't know.
- 10 Q Okay. But that's what he told you on the video and
- 11 that's what he told you on the sheet, isn't that correct?
- 12 A If that's what you say.
- 13 Q Okay. And that -- is that your signature there too,
- 14 sir, or right there? I'm sorry.
- 15 A Yeah.
- 16 Q And the interview began at 4:26 p.m., is that correct?
- 17 A I don't know what time it began. I ain't had on no
- 18 watch and I ain't seen no clock.
- 19 Q Okay. And it ended 5:31 p.m.
- 20 A I don't know.
- 21 Q Well, you watched the video. The video is
- 22 approximately one hour and five minutes on it.
- 23 A I never watched all of it.
- 24 Q Oh, you haven't watched your whole video?
- 25 A No.

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

1 Q But you've had it available to you, isn't that
2 correct? That's been provided to you in defense -- I mean,
3 discovery, and you've been able to view it, isn't that
4 correct? You've obviously seen the video.

5 A Yeah.

6 Q But you haven't watched the whole video?

7 (Pause.)

8 Q Do you want me to repeat the question again, sir?

9 A What's that?

10 Q You've had an opportunity to watch the whole video, is
11 that correct?

12 A Uh-huh.

13 Q But you decided not to watch the whole video?

14 A I guess. That's what you say.

15 Q That's what you said, sir. I'm just repeating what
16 you said. Have you -- let me rephrase the question. Have
17 you watched the whole video?

18 A That's what you say.

19 Q I'm just asking. Did you watch the whole video?

20 A That's what you say. Man, I got a headache, man. I
21 got a headache.

22 THE WITNESS: Your Honor, I got a headache, and I
23 can't take this no more, man. I got a headache.

24 Q Would you like a drink of water, sir?

25 A Yeah.

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

1 MR. BARNETTE: May I approach the witness, Your Honor?

2 (Pause for Mr. Barnette to provide water to the
3 witness.)

4 Q Mr. Cooper, can you answer any more questions right
5 now?

6 A No, I can't. I can't. I can't. I need to rest a
7 little bit. I need my medicine.

8 Q So you are telling the Court now you can't answer any
9 more questions, sir?

10 A My head hurt, Man. I got a headache, Man. Please. I
11 got a headache.

12 Q Are you on your medication right now?

13 A Yeah.

14 MR. BARNETTE: Your Honor, do you want to break for
15 lunch?

16 THE COURT: Yeah. We'll break for lunch.

17 Step down, Mr. Cooper. Go have a seat with your
18 lawyer.

19 Court's in recess until 3:00 o'clock.

20 Let me see the lawyers, please.

21 (Whereupon, a recess was taken.)

22 (Grand Jury report marked Court's Exhibit No. 2; Copy
23 of Indictment 06-GS-21-90 marked Court's Exhibit No. 3; copy
24 of Indictment 88-GS-21-583 marked Court's Exhibit No. 4;
25 copy of Indictment 84-GS-21-35 marked Court's Exhibit No. 5;

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

1 copy of Indictment 84-GS-21-186 marked Court's Exhibit No.
2 6; copy of Indictment 83-GS-21-168 marked Court's Exhibit
3 No. 7.)

4 THE COURT: All right. Mr. Barnette, do you have
5 other questions you need to ask Mr. Cooper?

6 MR. BARNETTE: Yes, sir. I have a couple of more I'd
7 like to ask him.

8 THE COURT: Mr. Cooper, come back around. You are
9 still under oath.

10 BY MR. BARNETTE

11 Q Mr. Cooper, did you have a chance to take something
12 for your headache?

13 A No. I had something, but I ate some food. It did a
14 little bit. It helped me some.

15 Q Are you fine now to answer questions?

16 A Uh-huh.

17 Q Okay. Let me go back. Let me show you.

18 I know you was talking about the prior charges and
19 everything.

20 A Uh-huh.

21 Q Let me show you what's been marked as Court's
22 Exhibits 3, 4, 5, 6 and 7. Let me start with Court's
23 Exhibit 1.

24 You pled to common-law robbery and, I believe, received
25 a 15-year sentence on that.

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

1 A Uh-huh, yeah.

2 Q Now, you was on the medication when you did that
3 crime, weren't you?

4 A Yeah.

5 Q And you was on that medication when you pled guilty on
6 this charge, is that right?

7 A I was on some of the medication, not all of it.

8 Q Okay. And that's your signature, and you pled guilty
9 to that charge, is that right?

10 A Yeah.

11 Q Okay. Court's Exhibit 4. You pled guilty to this
12 indictment, which is 88-GS-21-583. You pled guilty to
13 ABWIK or assault and battery with intent to kill, as well
14 as burglary second, is that correct?

15 A I did those, yeah. I did that.

16 Q Yeah. And you received 18 years on one and ten years
17 on the other consecutive, is that right?

18 A Yeah. I did that.

19 Q But you was on the medication while you did that crime
20 as well as when you pled guilty to these, is that right?

21 A I don't think I've been on the medication that I'm on
22 now. I think I've been on some other medication but not
23 the one I'm on now.

24 Q But you was taking medication for your -- for your
25 illness at that time?

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

1 A A different medication, yeah.

2 Q Okay. And Court's Exhibit 5. That's from Florence
3 also. 84-GS-21-35. You pled to conspiracy or --
4 conspiracy to commit armed robbery at that time, is that
5 right?

6 A I pleaded to conspiracy, yeah.

7 Q And you signed and you pled guilty. And you was on
8 the medication during that time too, weren't you, sir?

9 A What year was that?

10 Q That was -- I'm assuming you pled guilty on March 7,
11 1994.

12 A No. I wasn't on no medication then.

13 Q 1984.

14 A No. I wasn't on no medication then.

15 Q Now, you mentioned that you'd been taking this since
16 you was a child, is that correct?

17 A I -- yeah. I -- I told you I was up under mental
18 illness ever since I was a child, ever since I was eight
19 years old. Yeah. I wasn't on medication all my life, as I
20 was eight years old on up.

21 Q And when did you start taking the medication?

22 A I was taking medication on and off after I got around
23 about 17.

24 Q Okay. Since you were 17.

25 A Yeah.

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

1 Q How old was you in 1984?

2 A 1984, I was somewhere around 18 or 19, somewhere
3 around up in there.

4 Q So you was on medication at that time, weren't you?

5 A I think so.

6 Q Okay. And then Court's Exhibit 6 is 84-GS-21-186.

7 MR. BARNETTE: Your Honor, that's conspiracy to commit
8 robbery again.

9 Q Is that right?

10 A That's the same charges. They just put it in
11 separate.

12 Q They ran -- they ran concurrent, right?

13 A Yeah. Them the same charges.

14 Q But they're two -- they're two separate incidences.
15 They're two separate --

16 A No. Them the same ones. That's what I'm trying to
17 tell you. Those the same one.

18 Q Well, you realize they're two different indictments.

19 A They might be two different indictments, but them the
20 same ones. If you look at the dates you'll see they was
21 the same ones.

22 Q okay. And then 19 -- I believe 1983 you pled guilty
23 to grand larceny at that time, is that right, sir?

24 A Grand larceny? Is that when that was?

25 Q That was in '83.

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

- 1 A Yeah. I think I did.
- 2 Q Okay. But you was on medication or some type of
- 3 medication all during that time.
- 4 A Some of those charges I did plead guilty to that I
- 5 really wasn't guilty of them.
- 6 Q But you pled guilty to them.
- 7 A But the ones that I plead like the one I just told you
- 8 I was guilty of, yeah, I was guilty of that. But this one,
- 9 no. I wasn't guilty of that, but I pleaded guilty to it.
- 10 Q Okay. But you did plead guilty to all of these
- 11 charges.
- 12 A Yeah.
- 13 Q As a matter of fact, they dismissed other charges,
- 14 didn't they?
- 15 A Dismissed what charges?
- 16 Q Like when you pled to common-law robbery and you was
- 17 charged with -- this is all in Florence -- armed robbery,
- 18 possession of a weapon, pointing and presenting,
- 19 carjacking, kidnapping.
- 20 A I wasn't guilty of none of those.
- 21 Q But you pled guilty to common-law robbery.
- 22 A I pled guilty to common-law robbery.
- 23 Q And you received a 15-year sentence.
- 24 A Yeah.
- 25 Q Okay. Now, you made a comment earlier before we broke

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

1 for lunch that Investigator Tapp just went and got your
2 insulin.

3 A Say that again.

4 Q He got all of your medications because you didn't --
5 you had all of your medications.

6 A Well, he did went and got all of my medication. He
7 did.

8 Q Well, you seen this video I'm getting ready to show
9 the judge here -- judge -- show to the Court.

10 A Yeah. I seen that.

11 Q Basically, you admitted that you had all of your
12 medications there at the mission, didn't you?

13 A I told them I had my medication at the mission. I
14 tell him will he go get my medication for me, yeah. That's
15 what I asked him. But I did not specifically, told, give
16 him no name of no medication. The only thing I mentioned
17 was medication.

18 Q You said all -- you was on all kinds of medications
19 and everything else on here. And he got all of your
20 medications. You weren't out going to mental health to get
21 medications, were you?

22 A When I got back -- when I got to the jail they
23 revealed some of my medication, my mental health
24 medication. The only thing you got to do is call the --
25 the medical department at the jail. They'll tell you, yes,

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

1 they did.

2 Q He brought it over to you.

3 A The ones that they had.

4 Q So you're --

5 A The ones that they didn't have the jail refilled it
6 for me through the doctor. The only thing you gotta do,
7 call the jail and check the medical. They'll tell you
8 yeah.

9 Q So that's what you say?

10 A The only thing you gotta do is call them. I'm telling
11 you to call them.

12 Q Okay. We might get to that.

13 So you're telling -- you're telling us now that you
14 said that all of your medication. He told you about all of
15 your medication. That was at the mission, is that right?

16 A I told them all of the medication I had at the
17 mission, bring them to me. He said he will. That's what I
18 said.

19 Q Okay.

20 MR. MORIN: Is this the unredacted version that's for
21 this hearing?

22 MR. BARNETTE: It's for this hearing. This is
23 actually Court's Exhibit 1 I'm going to be playing, not the
24 redacted version.

25 (Whereupon, a portion of Court's Exhibit 1 was played

Terry Cooper (In-camera)
Cross-examination by Mr. Barnette

1 for the court.)

2 Q Basically, he's asking you what medications you're on.
3 You didn't say you were out of medications or anything, did
4 you? You never --

5 A I told him I had a whole bunch of medication there at
6 the mission, like I told you before. That's exactly what
7 that said.

8 Q But you never told him you needed to get that
9 medication or you was going to mental health to get it, did
10 you?

11 A Because he didn't ask me that.

12 Q Oh, okay. You're not going to volunteer that over
13 hour and a half, about an hour-and-six-minute interview? I
14 mean, we can play it. We're going to play the interview
15 for the jury. We'll let it speak for itself.

16 MR. BARNETTE: Thank you, Your Honor. No other
17 questions.

18 MR. MORIN: No, sir.

19 THE COURT: You may step down.

20 MR. BARNETTE: Your Honor, I have redacted -- I've
21 shared that with Mr. Morin from that standpoint. A lot of
22 this won't be played because of the issues that he
23 mentioned, his prior record. However, I may have to bring
24 parts. If he testifies I may have to bring part of it back
25 in reply. Depends on what he testifies, or if he does

1 testify. I don't know.

2 THE COURT: All right. Anything further?

3 MR. MORIN: Your Honor, just that we renew our motion
4 to suppress based on the voluntariness, based on the
5 evidence as well.

6 THE COURT: Well, based upon the testimony and
7 evidence presented, the credible and probative evidence, I
8 do find that the state has established by the greater
9 weight of the evidence that the statement given by the
10 defendant to law enforcement during the course of the
11 interview on June the 3rd of 2015 was freely and
12 voluntarily made.

13 All right. Any other matters?

14 MR. MORIN: One other thing, Your Honor, I'd like to
15 do.

16 Before we started it was my intention -- and I made
17 the -- indicated that I was going to challenge the
18 sufficiency of the indictment because of some dates.

19 The Court -- clerk of court has provided a certified
20 copy showing when the indictment was true billed, and for
21 that reason we're not going forward on that because I'm
22 satisfied that that covers the sufficiency of the
23 indictment. But I wanted to put that on the record so that
24 should it come up later we will have a record of what we
25 did.

1 THE COURT: And that -- the record from the clerk of
2 court, certified copy, has been made a part of the record
3 in this case as a court's exhibit.

4 MR. BARNETTE: Your Honor, I do have one matter I need
5 to bring up since knowing what happened in the defendant's
6 Jackson vs. Denno hearing.

7 I make a motion about any third-party guilt that he
8 may bring up now, because, obviously, I don't see any
9 evidence of third-party guilt, but I need to make that
10 motion to make sure that's perfectly clear.

11 THE COURT: Do you intend to offer that?

12 MR. MORIN: No, sir.

13 THE COURT: Okay. All right. Any others matters we
14 need to address before the jury is brought in?

15 MR. MORIN: No, sir, nothing from the defense.

16 MR. BARNETTE: No, sir.

17 THE COURT: All right. Bring the jury in, please.

18 Ask Ms. Bowen, Juror No. 14 -- Ms. Bowen. Ask her to take
19 the foreperson's seat.

20 (The following takes place in the presence of the
21 jury.)

22 THE COURT: Good afternoon, ladies and gentlemen.

23 We are ready to begin with the trial of the case for
24 which each of you have been selected.

25 Ms. Bowen, I'm going to ask you to serve as the

1 foreperson of the jury. As the foreperson you'll have
2 three specific duties than none of the other jurors will
3 have.

4 First of all, you'll be asked to serve as the
5 spokesperson for the jury. And that just means if
6 something arises during the trial that needs to be brought
7 to my attention -- you or one of your fellow jurors has
8 some difficulty, problem or question -- you let me know of
9 that fact either directly or through the bailiff, and I'll
10 address those issues or answer those questions should that
11 arise.

12 Secondly, you'll preside over jury deliberations when
13 that time comes at the end of the trial when the jury goes
14 back to the jury room to begin your deliberations in
15 arriving at your decision. You will preside over that
16 process in the jury room simply to ensure that those
17 deliberations are carried out in some orderly fashion.

18 And, thirdly, you'll be asked to actually write the
19 decision or the verdict of the jury. You'll do that on a
20 verdict form that I'll provide you at the trial's
21 conclusion on which you will indicate the jury's unanimous
22 decision.

23 The foreperson has those specific duties that I've
24 just indicated. That does not, however, mean that she is
25 any more important than any of you other jurors, and that's

1 because the decision of a jury is the unanimous consensus
2 opinion of all 12 jurors. And so each of you will have an
3 equal say and an equal vote in what the ultimate decision
4 will be in this case.

5 Someone simply has to be delegated those
6 responsibilities that I've just indicated, and I have
7 delegated those to Ms. Bowen in appointing her as the
8 foreperson. But all of you jurors are equally important so
9 far as the ultimate decision in this case is concerned,
10 because, as I've stated, the verdict has to be unanimous.
11 All of you must be in agreement.

12 Mr. Green, you've been selected as an alternate juror.
13 The function of an alternate is to take the place of one of
14 the original 12 if during this trial one of these 12 cannot
15 continue to serve for some reason.

16 So if one is called away because of an illness or an
17 emergency or some other circumstance that prevents them
18 from continuing to participate as a juror, then you become
19 the 12th juror. In that event you would participate
20 throughout the trial including jury deliberations.

21 However, when the time does come for jury
22 deliberations if all of the original 12 are able to
23 participate, then your service ends, and you don't
24 participate any further. And that's because the decision
25 of a jury is that of 12, and no more than 12 can

Jury sworn

1 participate in that deliberation process.

2 But it is important that you pay just as careful
3 attention as we ask of all of the jurors in this case
4 because it does occur from time to time for one reason or
5 another one of these 12 may be unable to continue. In that
6 event you become the 12th.

7 So we do appreciate your participation as an alternate
8 juror, just as we appreciate the participation of each of
9 you jurors who have been selected for the purpose of
10 deciding the verdict in this particular case.

11 You may swear the panel.

12 (Whereupon, the jury was duly sworn.)

13 THE COURT: All right. Ladies and gentlemen, as you
14 know, you have been selected to decide the verdict in the
15 case of the State vs. Terry Cooper.

16 As I also told you at the beginning of the trial prior
17 to your selection, Mr. Cooper has been accused by the
18 prosecutor, the solicitor, by way of this indictment with
19 having committed the crime of bank robbery, the state
20 alleging in this indictment that the defendant did on
21 June the 3rd of 2015 enter a building occupied as a bank
22 located here in Spartanburg County with the intent to steal
23 money and did either by force or intimidation or threats
24 and receive United States currency by demanding it from the
25 teller with the intent of depriving the bank of its

1 property.

2 Now, as to those allegations and as to that charge the
3 defendant has entered a plea of not guilty. As I told you,
4 that plea of not guilty places upon the state the burden of
5 proving the allegations that they have made against the
6 defendant, the burden of proving each of the essential
7 elements of the crime that's charged -- in this case bank
8 robbery -- and therefore the burden is upon the state to
9 establish the defendant's guilt to the satisfaction of you
10 12 jurors beyond a reasonable doubt before a verdict of
11 guilty could be returned.

12 Every person who is accused of a crime is always
13 presumed innocent of that charge. That presumption of
14 innocence remains with any defendant, as it does with this
15 defendant, from the time that he is placed under arrest and
16 throughout the course of the criminal process and even
17 throughout the course of the actual trial in the case.

18 That presumption of innocence will be with Mr. Cooper
19 even at the end of this trial as you go back to begin your
20 deliberations, and it'll be with him in that jury room, and
21 it'll be with him forever unless you 12 jurors determine
22 that he's no longer entitled to that presumption of
23 innocence.

24 In other words, after you've carefully considered all
25 of the evidence presented during the trial of the case,

1 from that evidence you determined the facts as they relate
2 to the allegations made, once you decide those facts you
3 apply the law that I will have provided you, and if you 12
4 jurors unanimously determine that his guilt has been proven
5 beyond a reasonable doubt, then he would no longer be
6 entitled to that presumption of innocence. But it is only
7 if, unless and until you are satisfied of his guilt beyond
8 a reasonable doubt that the presumption of innocence would
9 no longer be applicable.

10 Now, the way the trial will proceed is that in a
11 moment the lawyers are going to address you in what are
12 called opening statements. There are two occasions in the
13 trial of a case where lawyers are permitted to address the
14 jury, and that is at the beginning of the trial before any
15 evidence is introduced, then again at the conclusion of the
16 trial after all of the evidence has been received.

17 But keep in mind, as I've just indicated, the evidence
18 comes in between the opening and the closing statements.
19 And so what those lawyers tell you in their statements
20 before you are not to be considered by you as evidence upon
21 which you will base your decision.

22 The evidence comes in the form of testimony, documents
23 and photographs and other types of exhibits that might be
24 introduced during the trial. And what the lawyers tell you
25 should not be considered by you as evidence in the case.

1 And that's because the lawyers don't know anything about
2 this case of their own personal knowledge or perception
3 like witnesses will be testifying to.

4 The lawyers aren't going to take the witness stand.
5 They're not going to be placed under oath, and they're not
6 going to be subjected to direct and cross-examination like
7 each witness will be. And so what they tell is not
8 evidence. But you should listen to what they have to say
9 because those statements do serve a purpose.

10 The opening statements serve to provide you with a
11 basic understanding as to what this case is about from both
12 the perspective of the state and of the defense so that
13 you'll have some context in which to place the evidence
14 that we will be receiving shortly thereafter.

15 The closing statements occur after the evidence has
16 been received. And, again, while those statements are not
17 evidence, it does afford the lawyers an opportunity to
18 discuss with you the evidence that you have seen and heard
19 during the course of the trial. And through that
20 discussion each will have an opportunity to try to persuade
21 you or to convince you that the evidence in the case does
22 or does not support a particular decision. And it's in
23 between those opening and closing statements accomplished
24 by the lawyers that he actually receive the evidence upon
25 which you will base your decision.

1 The state, as you have been told, has the burden of
2 proof. The state has brought the charge. The state has to
3 establish the defendant's guilt beyond a reasonable doubt,
4 and so the state will go forward first in its presentation
5 of evidence.

6 Once the state has concluded in that presentation of
7 evidence a defendant can testify or call a witness or
8 introduce evidence. But please understand that in a
9 criminal case the burden is never upon the defendant or any
10 person accused of a crime to prove that they are not guilty
11 or to prove that they are innocent because in some cases
12 that might not be possible. And therefore a defendant is
13 not under any burden at all to produce any evidence.

14 A defendant doesn't have to testify or call any
15 witness. And if that occurs that's not something that a
16 jury can consider in arriving at your determination as to
17 whether or not the defendant's guilt has been proven beyond
18 a reasonable doubt. And you cannot allow such a fact to
19 weigh in the slightest degree against a defendant. But
20 every defendant is afforded an opportunity to present
21 evidence in the event he or she wished to do so.

22 After all of the evidence has been received and you
23 hear the final summations of the lawyers, I will then
24 instruct you fully on the law as it relates to the criminal
25 law generally and as it relates to this particular crime

1 specifically. And then you'll be asked to go back and to
2 begin with your deliberations.

3 Through that process you're simply going to be asked
4 through the exercise of good judgment and common sense to
5 conscientiously apply it to the testimony and evidence in
6 the case, to decide the facts as they relate to these
7 allegations.

8 Once you decide those facts you'll apply the law that
9 I will have provided you, and you will determine whether or
10 not the defendant's guilt has been proven beyond a
11 reasonable doubt. And if it has, then your verdict would
12 be guilty; and if it has not, then your verdict would be
13 not guilty.

14 Now, all that we ask for you to do is to pay careful
15 attention through the course of the trial. Don't begin
16 making up your minds or formulating your opinions as to
17 what you think the outcome ought to be until all of the
18 evidence has been received, until you've been instructed on
19 the law and until you've been asked to begin with your
20 deliberations in the case. That's the process that is
21 designed for you 12 jurors to arrive at a fair and just
22 decision in this case.

23 So I do want to thank you in advance for your
24 participation, as well as for your careful attention. I
25 would ask that you please give the lawyers your attention

Opening statements

1 now as they give you their opening statements.

2 Mr. Barnette.

3 MR. BARNETTE: May it please the Court, Your Honor.

4 Good afternoon, madam forelady, members of the jury.

5 Let me take you back to June the 3rd of 2015, actually
6 a place just about a block away from here. You know where
7 the Marriott is. There's a B B & T bank right there.

8 On this afternoon around 4:00 p.m., at that time the
9 tellers was working. People was going in and out of the
10 bank.

11 Then suddenly the defendant, Mr. Cooper, is wearing a
12 black sweater, black pants, white tennis shoes, a black
13 hoodie, looked like a scream mask, Halloween mask, if
14 you've been the movie "Scream" before. That's the type of
15 mask he was wearing.

16 He goes in. He's actually in there less than a
17 minute, and you're going to see the video of that. Comes
18 in, brings a note. And you're going to read the note
19 basically saying he had a gun, threatened with the note,
20 telling them to hurry up, hurry up, but give him all of the
21 money. And they gave him a dye pack in the middle of it.
22 You'll be hearing from the folks inside the bank telling
23 you about that.

24 He goes outside of the bank. The red dye pack
25 explodes.

Opening statements

1 Mr. Steading was at Bob Burnett's -- you know,
2 Burnett's Appliances is right there. Sees the -- missed --
3 goes everywhere. Money starts going everywhere because he
4 put the money in the pocket of the hoodie.

5 He's trailing, and eventually he just goes right down.
6 There's -- and I didn't really know this. I've lived, you
7 know, in Spartanburg most of my life.

8 There's a bridge right there when you go to the
9 auditorium. You know where the Krispy Kreme is and
10 everything there. There's an embankment over there and
11 that's about -- it's a long, steep embankment.

12 You know, I went over and looked it, and I said holy
13 cow. And you're going to see pictures of it.

14 He goes down that embankment. Money's going
15 everywhere. Mr. Steading goes there and watches him go
16 down into where the railroad tracks is.

17 He removes his hoodie which has got the red dye on it.
18 He takes off the mask, throws the gloves. He was wearing
19 gloves too at the time too. You'll see that in the video.
20 There was red dye on them.

21 And Mr. Steading watches him go down the railroad
22 tracks and has called 9-1-1 to let them know there's a
23 gentleman running down the road without a shirt on --
24 pants. And he'll be testifying to that.

25 At that time the Spartanburg City Police Department is

Opening statements

1 quickly coming in on the scene. Actually, officer McClure
2 sees him jumping. If you're familiar with that, the
3 administration building where you pay taxes at on the back
4 of where the sheriff's department used to be, there's like
5 a little wall there. He seems him jump that wall.

6 He kinda goes underneath the car, whatever, gets him
7 out and places him under arrest. Basically, he has him go
8 to the prone position. He's taken and arrested at that
9 time.

10 Investigator Tapp interviews him. In the interview he
11 tells his involvement in it, and basically it was him and
12 Brandon Johnson, was the two people involved with it.

13 Mr. Johnson has also been charged with this. He'll be
14 tried in a separate trial. He's not going to be tried
15 today. But he's the one that actually drove him over
16 there. They met at the homeless shelter. They dropped him
17 off. I guess when he saw the red dye he decided he needed
18 to get out of there and left Mr. Cooper there.

19 That's the case in a nutshell, ladies and gentlemen.
20 We give you a preview of that. You're going to see the
21 witnesses, and you're going to hear everything yourselves.

22 And the thing I want you to remember is, is watch it,
23 and listen to these witnesses. These folks lived that, and
24 you're going to be hearing from them. Keep that in mind,
25 because I'm going to be coming back after all of the

Opening statements

1 evidence is presented and going to ask you for a guilty
2 verdict of bank robbery in this case.

3 Thank y'all very much for your time.

4 Thank you, Your Honor.

5 THE COURT: Mr. Morin.

6 MR. MORIN: Thank you, Your Honor.

7 Ladies and gentlemen, Judge Cole went over my client's
8 rights. His right to remain silent basically is what he
9 covered. He covered the presumption of innocence, the need
10 for the government to prove beyond a reasonable doubt that
11 he's guilty.

12 And a lot of times today, these days, you hear of this
13 constitutional rights being violated or that constitutional
14 rights being violated or somebody's not following the
15 constitution.

16 well, Mr. Cooper has a constitutional right to these
17 things. The things that Judge Cole described to you are
18 his constitutional rights. They're what protects us from
19 government overreach.

20 During the course of this trial I'm going to be asking
21 law enforcement and the government's lawyers, I mean, the
22 government's agents. I'm going to be asking them what did
23 you do about this and what did you do about that.

24 That's my job, is to make sure that I'm confronting
25 those witnesses and making Mr. Cooper's constitutional

Kelly Ruff

Direct examination by Mr. Barnette

1 rights intact. And that's why we are here.

2 He's pled not guilty. The government says he is. And
3 all that Mr. Barnette just said is not evidence, as the
4 judge told you.

5 Maybe he's going to show some of that, maybe he's
6 going to show all of that. But during the course I'm going
7 to be asking questions and I'm going to be asking them what
8 they did and what they didn't do. And we just -- on behalf
9 of Mr. Cooper we'd ask that you listen to all of that and
10 consider what we're talking about as well.

11 And I'm not going to get into the facts because what I
12 say isn't evidence. I'm simply letting you know that the
13 reason we're here is because he's got these constitutional
14 rights to protect him from government until if and when
15 y'all decide that they've proven their case. And we
16 appreciate your attention to those facts. Thank you.

17 THE COURT: Mr. Barnette.

18 MR. BARNETTE: May it please the Court, Your Honor.
19 I'd like to call Kelly Ruff to the stand please.

20 KELLY RUFF, having been first
21 duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. BARNETTE

23 Q Ms. Ruff, if you would, state your full name for the
24 record, please.

25 A Kelly Ruff.

Kelly Ruff
Direct examination by Mr. Barnette

- 1 Q And where do you work at, Ms. Ruff?
- 2 A B B & T.
- 3 Q How long have you worked with B B & T, ma'am?
- 4 A Nineteen years.
- 5 Q And what is your position there, ma'am?
- 6 A Branch banker, team leader.
- 7 Q Back on June the 3rd of 2015 which branch of the B B &
- 8 T was you working at?
- 9 A At the Wofford branch at 208 North Church Street.
- 10 Q Is that across from the Marriott?
- 11 A Yes, it is.
- 12 Q It's right back -- probably just about a block away
- 13 from here.
- 14 A Yes, sir.
- 15 Q That afternoon around 4:00 p.m., that afternoon, can
- 16 you tell the jury what you observed and what you saw?
- 17 A I saw a gentleman enter the bank. I was in my office
- 18 which faces the teller line. He went up to the teller
- 19 line. He was dressed all in black, had on a mask. And I
- 20 could hear him in a disguised voice telling the tellers to
- 21 hurry up.
- 22 Q And was there a video of the event --
- 23 A Yes.
- 24 Q -- there? And I believe you've reviewed this.
- 25 State's Exhibit 43, is this a copy, represent what happened

Kelly Ruff

Direct examination by Mr. Barnette

1 that day at the bank, ma'am?

2 A Yes, sir.

3 MR. BARNETTE: Your Honor, I'd like to enter State's
4 Exhibit 43 into evidence at this time.

5 MR. MORIN: No objection, Your Honor.

6 THE COURT: It's admitted.

7 (D.V.D. video from B B & T marked State's Exhibit No.
8 43.)

9 MR. BARNETTE: I'd like to publish it to the jury,
10 Your Honor.

11 THE COURT: You may.

12 Let me ask those jurors. Is the rope up down here --
13 the bailiff? Is the rope up down there?

14 MR. BARNETTE: It's up, Your Honor.

15 THE COURT: Can we take the rope down so the jurors
16 can move down?

17 (Pause.)

18 (Whereupon, State's Exhibit No. 43 was started to be
19 played for the jury.)

20 Q Ms. Ruff is this the front of the bank here --

21 A Yes, it is.

22 Q -- where the tellers is?

23 A Yes, sir.

24 Q And is that the door that the gentleman came through?

25 A Yes, sir.

Kelly Ruff

Direct examination by Mr. Barnette

1 Q I'm going to speed it up. I think it's at four
2 minutes, is when he starts showing up.

3 (Pause.)

4 Q I'm going to have to let it play through. I'm afraid
5 it will slow it down if I do.

6 Ms. Ruff, your office is over in this direction, is
7 that right?

8 A Yes, sir.

9 Q Did you have a clear vision of the front?

10 A Yes. I do.

11 Q And who was the two tellers that was working at that
12 time, that time of day at the bank?

13 A Kimberly Greenway and Natsha Cheeks.

14 Q And this B B & T is in the city of Spartanburg, is
15 that right?

16 A Yes, sir.

17 Q And that's in Spartanburg County.

18 A Yes.

19 Q He comes from this direction, is that correct?

20 A Yes.

21 Q And I believe you locked the door, is that right?

22 A Yes, sir. I did.

23 (Whereupon, State's Exhibit No. 43 was ended.)

24 Q After the robbery, was the police notified
25 immediately?

Kelly Ruff

Direct examination by Mr. Barnette

1 A Yes, sir.

2 Q Okay. And did they arrive very quickly?

3 A Yes, sir, they did.

4 Q Let me just show you -- show a couple of pictures to
5 you, ma'am, here. Let me show you what's been -- I believe
6 it's marked State's Exhibit 10 through 14. Does these
7 pictures fairly represent what -- what y'all's bank looked
8 at -- looked that day, ma'am?

9 A Yes.

10 MR. BARNETTE: Your Honor, I'd like to enter these
11 into evidence and publish these to the jury, Your Honor.

12 MR. MORIN: No objection, Your Honor.

13 (Photographs marked State's Exhibits 10 through 14.)

14 MR. BARNETTE: Permission to publish these, Your
15 Honor.

16 THE COURT: Ten through 14?

17 MR. BARNETTE: Yes, sir.

18 THE COURT: They're admitted.

19 Q Is this your B B & T bank, ma'am?

20 A Yes, sir.

21 Q And is that the door he came in and came out, was on
22 this side of it?

23 A Yes, it is.

24 Q State's Exhibit 11, is this the teller area that we
25 saw?

Kelly Ruff
Direct examination by Mr. Barnette

1 MR. MORIN: Your Honor, if I may, if the witness could
2 testify to what the picture is and not Mr. Barnette. I
3 think he's leading her at this point. She's responding
4 yes, sir.

5 MR. BARNETTE: I'll rephrase it. I'll rephrase the
6 question.

7 Q This is State's Exhibit No. 11. Ma'am, if you would,
8 tell the jury what this shows.

9 A That is the teller line inside of our -- the Wofford
10 branch.

11 The first window there is the one that he actually
12 approached. Well, the middle section is where he
13 approached to begin with, and then the teller was in this
14 end window that he robbed.

15 Q Okay. So right here is where he approached first?

16 A Yes, sir, that is where he approached.

17 Q And that's where he wound up at.

18 A Yes, sir.

19 Q Showing you State's Exhibit No. 12. Can you tell us
20 what this shows, ma'am?

21 A That shows -- after the fact we put up the tape to
22 keep it protected from fingerprints and that type of thing.
23 And some money that was left behind strewn on the counter
24 there.

25 Q And so this is money that was left behind from the

Kelly Ruff
Direct examination by Mr. Barnette

1 robbery?

2 A Yes. It was.

3 Q Show you State's Exhibit 13. Can you tell me what
4 this is, ma'am?

5 A That's just an outward view from -- of the teller line
6 itself, the whole teller line.

7 Q Can you tell me what this was here?

8 A That is money laying on the floor.

9 Q And showing you State's Exhibit 14. Can you tell us
10 what this shows, ma'am, in relation to everything around
11 it?

12 A That is the traffic leading up to the red light where
13 our branch is on the corner.

14 Q Is that across from the Marriott?

15 A Yes, it is.

16 Q Now, there was a note that was given to the tellers,
17 is that right?

18 A Yes.

19 Q And did you see the actual note?

20 A I did not see the note.

21 Q I won't ask any questions from there.

22 Afterwards did you ever see this individual again?

23 A No.

24 MR. BARNETTE: One moment, Your Honor, please.

25 (Pause.)

Kelly Ruff
Cross-examination by Mr. Morin

1 Q Please answer any questions Mr. Morin may have for
2 you.

3 CROSS-EXAMINATION

4 BY MR. MORIN

5 Q Ma'am, you said that the two tellers that were working
6 that day were Natsha Cheeks -- and I didn't get the other
7 name.

8 A Kimberly Greenway.

9 Q Is Ms. Greenway the person we see for the most part
10 with her back in that video?

11 A That is the back of her head, and also you see a
12 glimpse of Natsha in the background handing cash over the
13 counter as well.

14 Q Now, are you sitting at a desk to the left, or are you
15 in one of those offices to the left?

16 A My office is to the left of the teller line.

17 Q Right. And to the left, I believe, is a desk that
18 sets not in an office.

19 A No. I was not at that desk. I was in one of the
20 offices that looks right out onto the teller line.

21 Q Okay.

22 MR. MORIN: That's all the questions I have, Your
23 Honor.

24 MR. BARNETTE: We'd ask for this witness to be
25 excused, Your Honor.

Natsha Cheeks
Direct examination by Mr. Barnette

1 THE COURT: You may step down.

2 (Whereupon, the witness was excused.)

3 MR. BARNETTE: I'd like to call Ms. Cheeks to the
4 stand, Your Honor.

5 NATSHA CHEEKS, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. BARNETTE

8 Q If you would, ma'am, please give us your name.

9 A Natsha Cheeks.

10 Q Where do you work at, ma'am?

11 A B B & T.

12 Q And what is your position there, ma'am?

13 A Business banker.

14 Q And how long have you worked there, ma'am?

15 A Twelve years.

16 Q Was you working back on June 3rd of 2015 around
17 4:00 p.m.?

18 A Yes, sir.

19 Q I know we've seen the video, but, if you would, tell
20 the jury what you remember from that, ma'am.

21 A Me and Kimberly was behind the teller line and we
22 was --

23 (Pause.)

24 Q Take your time.

25 A We was behind the teller line, and we turned around

Natsha Cheeks

Direct examination by Mr. Barnette

1 and we saw the guy come in with the mask and everything.

2 And so Kimberly, she starts to, you know, go to her
3 window because he started saying, you know, give me the
4 money and everything.

5 And so we just -- we just did what he asked, and then
6 he was, like, I said give me all the money. So I gave him
7 mine too so he can go on out the door. And then, you know,
8 he left on foot. And that was pretty much it.

9 Q The money that was given to him, was there a dye pack
10 given in that money?

11 A Uh-huh, yeah. She gave him -- she gave him her dye
12 pack.

13 Q And dye pack, is that just like money with a dye pack
14 in the middle of it?

15 A Uh-huh.

16 Q And did he also hand a note to y'all?

17 A Yeah.

18 Q Let me show you State's Exhibit 6, ma'am, if I can.
19 It's actually two parts because the original, I think, was
20 tested.

21 A Uh-huh.

22 Q Is that the original note, ma'am?

23 A Yes, sir.

24 Q And is that what it said before they did testing it?

25 A Uh-huh.

Natsha Cheeks
Direct examination by Mr. Barnette

1 MR. BARNETTE: Your Honor, I'd like to move State's
2 Exhibit 6 into evidence at this time.

3 MR. MORIN: Your Honor, can we approach?
4 (Pause.)

5 MR. MORIN: Your Honor, I don't object to what she's
6 testifying is, is the original note.

7 Mr. Barnette also has something else that I do object
8 to.

9 MR. BARNETTE: What I'll do, Your Honor, is I've got
10 the officers that the testing or involved with it. I'll
11 have them testify about the copying they made before they
12 did the testing.

13 THE COURT: All right. So the original note is being
14 offered without objection?

15 MR. MORIN: Correct.

16 THE COURT: All right. It's admitted.

17 (Handwritten note used in the bank robbery marked
18 State's Exhibit No. 6.)

19 MR. BARNETTE: Your Honor, permission to publish the
20 original note.

21 THE COURT: You may.

22 Q Obviously, it wasn't like this when you got it --

23 A Uh-uh.

24 Q -- but it had writing on it.

25 A Uh-huh.

Natsha Cheeks
Cross-examination by Mr. Morin

1 Q This is the original note though.

2 A Uh-huh.

3 THE COURT: Ma'am, could you please answer yes or no
4 to a question? Because I'm having a hard time
5 understanding your answers when you nod and grunt.

6 THE WITNESS: Okay.

7 A Yes.

8 Q Okay. And did y'all give this to the police
9 department when they arrived there at the bank?

10 A Yes.

11 MR. BARNETTE: One moment, Your Honor, please.

12 (Pause.)

13 Q Just one other thing. Do you know approximately how
14 many hundreds of dollars that were taken?

15 A No, sir.

16 Q But it was a large amount that was given to him?

17 A Yes, sir.

18 Q Okay. Please answer any questions Mr. Morin may have
19 for you. Thank you, ma'am.

20 CROSS-EXAMINATION

21 BY MR. MORIN

22 Q Ms. Cheeks, you actually saw the person enter before
23 Ms. Greenway, is that correct?

24 A No. We both turned around at the same time.

25 Q Okay.

Stephen Steading
Direct examination by Mr. Barnette

1 MR. MORIN: If I may have just a moment, Your Honor.

2 (Pause.)

3 MR. MORIN: I have no other questions.

4 THE COURT: You may step down.

5 MR. BARNETTE: Ask the witness be excused, Your Honor.

6 THE COURT: She may be.

7 (Whereupon, the witness was excused.)

8 MR. BARNETTE: Your Honor, I would like to call
9 Mr. Steading to the stand, please.

10 STEPHEN STEADING, having been
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. BARNETTE

13 Q If you would, sir, please give us your full name.

14 A Stephen Steading.

15 Q Okay. And, sir, about what -- what county do you live
16 in?

17 A Sir?

18 Q What area do you live in Spartanburg County?

19 A I live in the Boiling Springs area.

20 Q And how long have you been a resident of Spartanburg
21 County?

22 A Sixty-four years.

23 Q And do you work at this time, sir?

24 A Say that again, sir.

25 Q What kind of work do you do, sir?

Stephen Steading
Direct examination by Mr. Barnette

1 A I work for Duke Energy.

2 Q And what's your position with them, sir?

3 A I'm a C & M specialist.

4 Q Back on June 3rd of last year where was you at, sir?

5 A I was at the -- pulling in the parking lot at
6 Burnett's Appliances.

7 Q If you would, tell the jury what you observed and what
8 you saw that day, sir.

9 A I was driving into the parking lot. I was going to
10 meet my wife there to look at some appliances, and the
11 gentleman come running across the parking lot in front of
12 my truck, and he had a mask on and it looked -- I thought
13 maybe he was going to prank somebody. But then all of a
14 sudden an explosion of red dye was out in front of him. It
15 just exploded and went everywhere.

16 And so I parked. By the time I parked I saw him go
17 down the bank beside the -- beside the railroad track. So
18 I jumped out and I ran over to the bank, and there was
19 money laying everywhere, but he was gone.

20 But then here the guy come back out from under the
21 railroad track, and he had pulled off his hoodie, but he
22 still had his black pants and everything on running down
23 the railroad track.

24 And he was looking back at me like this. So I was
25 calling 9-1-1 to tell them this guy was running down the

Stephen Steading
Direct examination by Mr. Barnette

1 railroad track. And he ran across and turned up Magnolia
2 Street. And so I was giving that information to 9-1-1.

3 Q When he went by you he had on a black -- black pants
4 and a black hoodie?

5 A Black -- black pants, black hoodie and the mask. I
6 could see the mask on -- it was up on his face like this at
7 that time.

8 Q And then you saw the red dye.

9 A Yes, sir.

10 Q Then you followed him, and he went down the embankment
11 there beside the bridge?

12 A Yeah. That's a steep embankment. He fell down that
13 bank. He didn't slide down. That's for sure. He went
14 down pretty hard.

15 Q And when you saw him go down, you say he went under
16 the bridge.

17 A Yes, sir.

18 Q And when he came back out did he have a shirt on?

19 A No, sir. He'd already pulled his shirt and everything
20 off, and he was running up the railroad track toward the
21 depot.

22 Q So the only thing he had on was his black pants?

23 A His black pants and his tennis shoes.

24 Q Tennis shoes. Were they white? Do you remember that?

25 A I'm not recalling the shoes.

Stephen Steading
Direct examination by Mr. Barnette

1 Q And you did see -- see him. He looked back at you.

2 A He turned and looked back up, because I was up on the
3 bank. He turned and looked back up like this at me.

4 Q Okay. Was he black male that you saw?

5 A Yes, sir.

6 Q Was it too far for you to identify anything?

7 A Yes, sir. It was a good distance away, because he was
8 already crossing the railroad tracks. And I couldn't
9 identify him.

10 Q I understand.

11 Let me show you what's been marked as State's Exhibits
12 17, 18 and 19. These were taken afterwards. Do those
13 pictures fairly represent the area you saw him run into?

14 A Yes, sir.

15 Q If you would --

16 A That's the bank that he went down and that's the money
17 that was -- yeah, lots -- lots of money..

18 Q Okay.

19 MR. BARNETTE: Your Honor, I'd like to enter State's
20 Exhibits 17, 18 and 19 into evidence at this time.

21 A And the money had red dye on it as well.

22 Q Yes, sir.

23 MR. MORIN: No objection, Your Honor.

24 (Photographs marked State's Exhibits Nos. 17, 18 and
25 19.)

Stephen Steading
Direct examination by Mr. Barnette

1 MR. BARNETTE: And I'd like to publish these to the
2 jury at this time.

3 Q I am going to show you -- if you want to, sir, you can
4 take this laser pointer and point approximately where he --
5 and describe what these pictures show, sir, if you would.

6 A All right. This is the front of Burnett's Appliance
7 Store here. This is North Church Street.

8 I had pulled into the parking lot, and he was running
9 this way. And the dye pack went off about here and
10 actually into the parking lot area. And when I parked
11 right -- right in this area here he went down that bank
12 just -- just like he fell out of space. He was gone.
13 Money just flew up everywhere.

14 Q Let me show you --

15 A And I jumped out and I ran up to where -- you see the
16 officer standing here. And that's when he was coming back
17 out from underneath the trestle running down the railroad
18 tracks toward this way, back towards the depot.

19 Q Let me show you State's Exhibit 19. If you would,
20 describe what that picture shows to the jury, sir.

21 A Yes, sir. This is the bank area. This is actually
22 the bridge, beside of the bridge. This is actually money
23 laying on the ground here at -- I'm assuming that's at the
24 bottom. There was money strowed up and down the bank at
25 the top over in this area here as well.

Stephen Steading
Direct examination by Mr. Barnette

1 Q And I show you State's Exhibit 18. Might be a better
2 picture to show.

3 A Yes, sir. But you can see that -- that bank's
4 probably, what, 25 foot high. And there was money strawed
5 across the top, down the side and all at the bottom.

6 Q Are those the railroad tracks you're talking about
7 right there, sir?

8 A Yes, sir. These are -- this is the first set of
9 railroad -- there are several railroad tracks running
10 parallel with each other.

11 Q Yes, sir.

12 A And he'd already come back out and was over on this
13 side over here running down the far side of the railroad
14 tracks.

15 Q Let me show you State's Exhibits 32 and 33. This may
16 show up better from that standpoint. Do those pictures
17 fairly represent the railroad tracks you saw?

18 A It does, it does, yes, sir.

19 MR. BARNETTE: Your Honor, I'd like to enter State's
20 Exhibits 32 and 33 into evidence at this time.

21 MR. MORIN: No objection.

22 (Photographs marked State's Exhibits Nos. 32 and 33.)

23 MR. BARNETTE: I'd like to publish these to the jury
24 at this time, Your Honor.

25 THE COURT: You may.

Stephen Steading
Cross-examination by Mr. Morin

1 Q Let me show you State's Exhibit 32. Can you tell the
2 jury what this is, sir?

3 A Yes, sir. This appears to me to be North Church
4 Street. This is the set of railroad tracks, and the bank
5 is right here. This is the embank -- the red embankment
6 that he came down. And he was running along these -- on
7 the outside of these railroad tracks here.

8 Q Yes, sir. Let me show you State's Exhibit 33. If you
9 would, tell the jury what that is, sir.

10 A Yes, sir. This is the depot area here, and you see
11 the caboose, the two railroad tracks running parallel with
12 each other. Magnolia Street crosses right here.

13 Q And which direction did you see him go in, sir?

14 A He went into the bushes and back up North Church
15 Street right up to that area there.

16 MR. BARNETTE: One moment, Your Honor.

17 (Pause.)

18 Q Thank you, sir. Please answer any questions Mr. Morin
19 may have for you.

20 A Okay.

21 CROSS-EXAMINATION

22 BY MR. MORIN

23 Q Okay. If I understand correctly, sir, were you coming
24 from Boiling Springs to Burnett's?

25 A I had come up. Yeah. I had come up North Church

Stephen Steading
Cross-examination by Mr. Morin

1 Street and was turning right into the parking lot.

2 Q Okay. So I guess I'll just do it this way.

3 This car right here is coming the same direction you
4 came in.

5 A Yes, sir.

6 Q Now, when you turn into Bob Bennett's [sic], the
7 parking lot runs beside the building, correct?

8 A It does, uh-huh.

9 Q The -- the person that you saw running, did he run
10 directly in front of your vehicle?

11 A Yes, sir.

12 Q So you weren't parked yet.

13 A No, sir. I was --

14 Q You were still pulling in.

15 A I was pulling in. As a matter of fact, it kind of
16 startled me a little bit.

17 Q Sure. How close to the car was he when you say you
18 saw this dye pack go off?

19 A Twenty feet.

20 Q So not this close. So when you pulled in he was like
21 this close.

22 A I'd say that's probably more than 20 feet but --

23 Q Okay. Well.

24 A Come on up some more.

25 Q You're the Duke lineman. You can tell better.

Stephen Steading
Cross-examination by Mr. Morin

- 1 A Yeah. About right there.
- 2 Q All right. So he was about this far from the front of
- 3 your car.
- 4 A Uh-huh. Well, to the side of it.
- 5 Q To the side of it.
- 6 A The right side, yes, sir.
- 7 Q And then he ran in front or --
- 8 A He was just running right straight across in front of
- 9 me.
- 10 Q Right.
- 11 A Uh-huh.
- 12 Q Did any of the dye get on your car?
- 13 A No. I don't know if it did or not. I didn't look to
- 14 see.
- 15 Q Okay. Did you pull into a parking space?
- 16 A Well, I pulled up and stopped. It wasn't -- there's
- 17 not actually parking spaces. It's just a parking lot.
- 18 Q Right. But most cars, you know, like I say, if that's
- 19 Bob Burnett's --
- 20 A Uh-huh.
- 21 Q -- then the parking lot runs this way. And most
- 22 people park like this or like this?
- 23 A Right. I angled in. I angled in right over here just
- 24 like this.
- 25 Q Okay. You angled in.

Stephen Steading
Cross-examination by Mr. Morin

- 1 A Uh-huh.
- 2 Q How fast was he running?
- 3 A He was running pretty fast, yes, sir.
- 4 Q Okay. And you were on the other side of this
- 5 building --
- 6 A Well.
- 7 Q -- past this tree.
- 8 A Yeah, just past that tree. That's exactly right.
- 9 Q All right. And you got out. And I assume your car's
- 10 like this, just past the tree. So when you got out of the
- 11 driver's side did you go in the front of your truck or did
- 12 you go around the back of it?
- 13 A I went around the back of my truck.
- 14 Q You went around the back of it.
- 15 A Uh-huh.
- 16 Q And by the time you got there and came out from behind
- 17 that tree he was still running?
- 18 A No. That's when -- I was actually watching him as I
- 19 was pulling in to park, and I threw it up in park and
- 20 that's -- I was actually getting out of the truck when I
- 21 saw him go down the hill.
- 22 Q Right. But when you got out of your truck you were
- 23 going away from this part, I mean, because your car is
- 24 parked the same way I'm facing, right?
- 25 A I don't -- you're losing me.

Stephen Steading
Cross-examination by Mr. Morin

- 1 Q Okay.
- 2 A I don't know.
- 3 Q Well, here I am. I come down here. I'm driving like
- 4 this. I'm turning into Bob Bennett. Person runs in front.
- 5 I turn like this to park beside the building.
- 6 A That's right.
- 7 Q Open the door, get out and go around behind the truck
- 8 on the other side of the tree. And then you saw him
- 9 running.
- 10 A Yeah. This tree is away from the building.
- 11 Q Okay.
- 12 A And it's a crape myrtle, as you can see.
- 13 Q Uh-huh.
- 14 A There's a space between that tree and the building.
- 15 Q Okay.
- 16 A So the -- you don't lose your vision there.
- 17 Q Right. So you're saying when you parked and you got
- 18 out and you were looking across your car you could see
- 19 between the building and Bob Burnett's and you could see,
- 20 say, that first -- where those police officers, I guess,
- 21 are standing.
- 22 A Yes, sir.
- 23 Q Okay. Now, so you ran over there.
- 24 A Uh-huh.
- 25 Q And when you got there, if I understand you correctly,

Stephen Steading
Cross-examination by Mr. Morin

1 you're saying that he had already run that way under the
2 bridge.

3 A Yes, sir. By the time I got there and looked over --

4 Q Right.

5 A -- I didn't see him at the foot of the hill.

6 Q Right. So you saw him just like it is right here.

7 A Exactly.

8 Q And then you're saying he came from under the bridge
9 this way.

10 A Running back toward the depot, yes, sir.

11 Q Okay. And this is State's Exhibit No. -- that was
12 State's 19 and this is State's 32. If I understand you
13 correctly on this there's a gentleman holding an envelope
14 right here on the very left, because you said he was
15 running on the outside. So you mean the farthest away from
16 where you were standing.

17 A Right -- right here, yes, sir.

18 Q Right. And he was --

19 A And I was standing right there.

20 Q There you go.

21 Well, I don't want to belabor this point, but I want to
22 make sure I understand.

23 When you saw him come out here he was closest to you,
24 or was he on the other side of the tracks at that point too?

25 A He was on the other side of the tracks at that point

Brandy Edwards
Direct examination by Mr. Barnette

1 in time.

2 Q Okay. All right. So you're -- I see. So this
3 doesn't show where you saw him come.

4 A No.

5 Q But that's the bridge.

6 A That's the bridge.

7 Q All right. Now, when he came out from under the
8 bridge, what was he wearing then?

9 A Just pants and tennis shoes.

10 Q Okay. And he just ran that way, ran towards Magnolia.

11 A Uh-huh. He did.

12 Q Okay.

13 MR. MORIN: No further questions, Your Honor.

14 MR. BARNETTE: I have no further questions. I ask
15 this witness be excused, Your Honor.

16 THE COURT: He may be.

17 (Whereupon, the witness was excused.)

18 MR. BARNETTE: I would like to call Officer Edwards to
19 the stand.

20 BRANDY EDWARDS, having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. BARNETTE

23 Q If you would, ma'am, please state your full name for
24 the record.

25 A Brandy Edwards.

Brandy Edwards
Direct examination by Mr. Barnette

1 Q where do you work at, ma'am?

2 A Spartanburg Police Department. Excuse me. I wanted
3 to say public safety.

4 Q The name's changed.

5 A Yes, sir. It has.

6 Q And what's your position there, ma'am?

7 A I'm currently a master patrol officer on the streets.

8 THE COURT: Please get up closer to that microphone or
9 adjust it.

10 THE WITNESS: Yes, sir, yes, sir. Is that better,
11 Your Honor?

12 THE COURT: I think so.

13 THE WITNESS: Okay.

14 Q And how long have you worked in law enforcement,
15 ma'am?

16 A It'll be 11 years April the 5th of this year.

17 Q Back on June 3rd of 2015, was you working that day,
18 ma'am?

19 A Yes, sir, I was. I was on patrol.

20 Q If you would, tell the jury. Did you receive a call
21 concerning a bank robbery?

22 A Yes, sir. They -- dispatch stated that the B B & T on
23 North Church Street had been robbed. So all officers were
24 responding to the area.

25 Q Let me show you what's been marked as State's

Brandy Edwards
Direct examination by Mr. Barnette

1 Exhibit 9. I believe this is a map of the area. Let me
2 let you look at it. Do those two -- one's, I guess,
3 actual, and then one is -- do those fairly represent the
4 area around the bank?

5 A Yes, sir, they do.

6 MR. BARNETTE: Your Honor, I'd like to move State's
7 Exhibit 9 into evidence at this time. Your Honor, I think
8 it is entered without objection.

9 MR. MORIN: Yes, Your Honor.

10 THE COURT: It's admitted.

11 (Map of B B & T marked State's Exhibit No. 9.)

12 MR. BARNETTE: May I publish it to the jury, Your
13 Honor?

14 THE COURT: You may.

15 Q This is showing two different pictures real quick.
16 This actually shows the area around it. I'll just use this
17 one. It'll be better.

18 From there, on this map, can you show me where the
19 Marriott is, ma'am? You can use the laser pointer if you'd
20 like to. I believe the purple dot shows where the bank is.

21 A So the Marriott would be right across the street.
22 It's the white building right here.

23 Q And when you received the call, what direction did you
24 come in from, ma'am?

25 A I honestly don't remember.

Brandy Edwards
Direct examination by Mr. Barnette

1 Q where did you wind up?

2 A We ended up right there at the railroad tracks at
3 Magnolia Street because the caller -- dispatch had stated
4 that the person that robbed the bank had taken off running
5 from the B B & T towards Magnolia. So officers were
6 saturating that area at the time.

7 We ended up -- excuse me. I say we. I ended up at --
8 right at the railroad tracks that you had shown just a few
9 minutes ago.

10 Q Okay. Is that approximately right in that area there?

11 A Right here, yes, sir.

12 Q Okay. And what did you find there once you got to
13 that area?

14 A We found -- there was a black jacket or hoodie on the
15 left. If you're sitting at -- on Magnolia Street at the
16 railroad tracks.

17 Q Let me show you some pictures here that was taken.

18 Did you find a black hoodie, two gloves and a mask?

19 A Yes, sir. I was getting to that. Yes, sir. It was
20 to the -- from my view it was to the left of the railroad
21 tracks there on the left-hand side. But the black hoodie
22 stood out more than anything because it was just kinda out
23 there by itself. And when you got closer we discovered the
24 other items.

25 Q Let me let you look at what's been marked State's

Brandy Edwards
Direct examination by Mr. Barnette

1 Exhibits 20 through 31 and see if those fairly represent
2 what you saw that day.

3 (Pause.)

4 A Yes, sir. They do.

5 MR. BARNETTE: Your Honor, I'd like to move those into
6 evidence at this time. That's 20 through 31, Your Honor.

7 THE COURT: Twenty through 31?

8 MR. BARNETTE: Yes, sir.

9 MR. MORIN: No objection, Your Honor.

10 THE COURT: It's admitted.

11 (Photographs marked State's Exhibits Nos. 20 through
12 31.)

13 MR. BARNETTE: Permission to publish the pictures to
14 the jury, Your Honor.

15 THE COURT: You may.

16 Q Let me start. I know there's a couple of pictures
17 we've already shown the jury.

18 State's Exhibit 17. If you would, tell us what that
19 shows if you would, Officer Edwards.

20 A That's going to be Burnett's there on the left, and
21 that's the -- that's Church Street on the right-hand side.

22 So going this way is going to be Magnolia Street and
23 the depot. But those are the officers at the top where the
24 money, some of the money, was located, and the embankment
25 right down next to the railroad tracks.

Brandy Edwards
Direct examination by Mr. Barnette

1 Q Let me show you State's Exhibit No. 18.

2 A That would be the embankment that we're talking about.

3 Q And was money found along that embankment area right
4 there?

5 A Yes, it was. There was money up at the top, money
6 there on the top portion of the hill and then actually some
7 here on the embankment and then down below. And there was
8 another bill that was further down this way right there in
9 that very first section of the bridge.

10 Q State's Exhibit No. 19. Is that what you saw from the
11 top of the hill?

12 A Yes, sir.

13 Q Let me show you State's Exhibit 20. Can you tell the
14 jury what this shows?

15 A That's the embankment that we're talking about.

16 The -- there's actually a -- you can't tell, but the
17 very top of that embankment, there is a section right there
18 that's actually hollowed out that you can actually fit a
19 person underneath there. And forensics had to do that to
20 try to collect some of the money and get it knocked down,
21 because we couldn't physically climb up that to collect
22 everything that was there.

23 Q And does this look like -- like a mark going down the
24 hill?

25 A It does. Yes, Your Honor. I'm sorry.

Brandy Edwards
Direct examination by Mr. Barnette

1 Q State's Exhibit 21. Can you tell the jury what this
2 is showing, ma'am?

3 A That would be the railroad tracks, and I believe
4 that's going to be a portion of some of the items that we
5 found there.

6 Q Here. I'll let you point where these items was that
7 y'all found.

8 A Thank you, sir.

9 I believe this is going to be one of the items that we
10 discovered, because the money was originally right here
11 where the bottom of the embankment is, because we found the
12 additional items over here across the tracks.

13 Q Let me show you State's Exhibit 22. Can you tell us
14 what that picture shows, ma'am?

15 A This is to the very left from my view. Magnolia
16 Street would be on this side. But walking up this stands
17 out because it's the black hoodie that had money with the
18 dye pack. And these were the additional items that were
19 found around the hoodie.

20 Q Let me show you State's Exhibit 23. Can you tell us
21 what that picture is showing, ma'am?

22 A Those -- that -- yes, sir. This is going to be the
23 hoodie, and the mask is here. And I believe these were
24 both the gloves that had red dye on them.

25 Q And let me show you State's Exhibit 24.

Brandy Edwards
Direct examination by Mr. Barnette

1 A That would be the mask and one of the gloves. You can
2 actually see the -- there's a red dye on this glove.

3 Q And State's Exhibit 25. I believe that's just another
4 picture of the placards there.

5 A It is, yes, Your Honor, yes, sir.

6 Q And State's Exhibit 26.

7 A Same thing.

8 Q Just up a closer-up picture of that?

9 A Yes, sir. Showing the red dye from the -- the pack.

10 Q State's Exhibit 27.

11 A Another glove.

12 Q Is that the other glove?

13 A It is, yes, sir.

14 Q And State's Exhibit 28 is just another picture of that
15 glove?

16 A A closeup, yes, sir.

17 Q And State's Exhibit 29. What does that show, ma'am?

18 A This is going to be the hoodie. We did not touch the
19 hoodie. Well, I did not touch the hoodie when we -- when I
20 got there. And you can see here there was a hole in the
21 pocket, and you could actually see money there with the red
22 dye.

23 Q Let me show you State's Exhibit 30, which I think is
24 just another angle of it.

25 A Right, correct.

Brandy Edwards
Direct examination by Mr. Barnette

1 Q And then State's Exhibit 31. Can you tell us what
2 that is, ma'am?

3 A That's going to be a closeup of the -- the hoodie.
4 This is the hole the dye pack did, and this is money right
5 here with dye on it.

6 Q Let me show you some other. And you saw the items
7 that were collected by the police department, is that
8 right?

9 A Yes, sir.

10 Q Let me show you State's -- let me show you items,
11 State's 1 through 4 here. I'll let you open that there.
12 If you would, just take a look at those items. And you can
13 open the bags. And see if those are the items that you saw
14 that day.

15 A You don't want them out, correct?

16 Q No. If you want to look at them, or I can slide them
17 out.

18 (Pause.)

19 A Yes, sir. These are.

20 Q Let me let you look at this. Is this State's
21 Exhibit 4, is this the hoodie that y'all saw and found that
22 day?

23 A Yes, sir, it is. You can start to see the dye here on
24 this side. Do you want that pulled out?

25 MR. BARNETTE: Your Honor, I'd like to enter these

Brandy Edwards
Direct examination by Mr. Barnette

1 four exhibits into evidence at this time.

2 MR. MORIN: No objection.

3 THE COURT: What are the numbers?

4 MR. BARNETTE: One through four, Your Honor.

5 THE COURT: They're admitted.

6 (Glove marked State's Exhibit No. 1; Halloween mask
7 marked State's Exhibit No. 2; black glove marked State's
8 Exhibit No. 3; black hoodie marked State's Exhibit No. 4.)

9 MR. BARNETTE: May I publish them to the jury, Your
10 Honor?

11 THE COURT: You may.

12 Q If you will, step down for a second.

13 A Yes, sir.

14 (Whereupon, the witness left the stand.)

15 Q Let me show you State's Exhibit 1 first. Just to show
16 the jury, let me go back to -- let me go back to State's
17 Exhibit 23 so I can show where these items were found.
18 State's Exhibit 1. Was that found at the one placard where
19 this item was found?

20 A Yes, sir.

21 Q And this is the glove, is that right?

22 A Yes, sir.

23 Q And what does that have on it, ma'am?

24 A It has red dye on it.

25 Q Also has dirt on the other side?

Brandy Edwards
Direct examination by Mr. Barnette

- 1 A It does, yes, sir.
- 2 Q Let me show you State's Exhibit 2.
- 3 A That's the scream mask with dirt on the glove that was
- 4 recovered from the scene.
- 5 Q And that was at No. 2.
- 6 A Yes, sir.
- 7 Q Show you item three. Was this the other glove that
- 8 was found there?
- 9 A Yes, sir.
- 10 Q And No. 4. This is the hoodie that you found, is that
- 11 right?
- 12 A Yes, sir, it is.
- 13 Q I believe it has the -- where it blew out.
- 14 A It has the hole.
- 15 Q Actually inside shows where it came through too,
- 16 doesn't it?
- 17 A Yes, it does.
- 18 Q And was actually down around the stomach area.
- 19 A Yes, sir. It is in the front.
- 20 Q Thank you, ma'am. Please have a seat.
- 21 (Whereupon, the witness returned to the stand.)
- 22 Q Ma'am, you recovered, and where the pictures show
- 23 where these were recovered at, is that right?
- 24 A I didn't recover them, no. I discovered them.
- 25 Q Discovered. And you showed them --

Brandy Edwards
Direct examination by Mr. Barnette

1 A Correct, yes. We started marking -- well, we didn't
2 have to mark those off. I had to put some rocks on some of
3 the money because of the wind. It was starting to -- to
4 move -- move them when we were down there.

5 Q You helped collect the money too.

6 A Correct, yes. But we -- we were just trying to
7 maintain everything until forensics arrived and was able to
8 collect what they could.

9 Q And how much was out there?

10 A I couldn't even begin to tell you. We collected some
11 of it and put it into evidence, and that's in the
12 supplemental that you have to give you the correct amount
13 that I got, but the rest of it, I don't even know.

14 Q How much did you -- I'll be glad to hand you this.
15 This is your cell phone, is that right?

16 A It is. And I'd have to add it together to be quite
17 honest with you. I don't know.

18 Q Okay. That's how much. But there was several
19 officers out collecting money, I'm assuming.

20 A Correct. Yes, sir.

21 Q And how much did you collect yourself? And you can
22 round it off.

23 A It's four \$1 bills; nineteen \$5 bills; thirty-two \$10
24 bills; twenty-four 20's; seven 50's; and two \$100 bills.

25 Q That's what you collected.

Brandy Edwards
Cross-examination by Mr. Morin

1 A Correct.

2 Q And there was other officers collecting other amounts.

3 A Correct, yes, sir.

4 Q And did some of this money have red dye on it also?

5 A It did, yes, sir.

6 Q And you said other officers responded to Magnolia.

7 A Yes, sir. They did. We -- it happened super fast,
8 but, basically, officer McCleary [sic] had called out with
9 what he thought was the suspect right there at the
10 administration building. So several officers were already
11 responding to him. And I was already out of my vehicle.
12 And seeing what I saw, I stayed where I was to maintain the
13 evidence.

14 Q And you helped secure that evidence there.

15 A Yes, sir.

16 MR. BARNETTE: One moment, Your Honor, please.

17 (Pause.)

18 Q Please answer any questions Mr. Morin may have for
19 you.

20 A Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. MORIN

23 Q Do you still have that narrative that you --

24 A Yes, sir, I do.

25 Q Okay. So you wrote that narrative the day that this

Brandy Edwards
Cross-examination by Mr. Morin

1 happened; is that correct?

2 A Yes, sir, I did.

3 Q And when you collected the evidence, because you've
4 testified that two and three are the gloves you collected.

5 A No, sir.

6 Q Or you -- you identified.

7 A I identified, yes, sir.

8 Q Correct. And back up a minute.

9 You've testified several times about dye packs. Are
10 you -- did you conduct anything on these to confirm that
11 that's dye that was on the gloves?

12 A No, sir.

13 Q Okay. And this is the glove.

14 A Yes, sir.

15 Q And it's in this bag that states one large black
16 leather glove, is that correct?

17 A I'm -- I didn't submit it into evidence, but that is
18 what it reads, yes.

19 Q And that's this. But, now, in your report you -- you
20 wrote that there were brown gloves out there, isn't that
21 correct?

22 A No, sir.

23 Q Can you look at your report?

24 (Pause.)

25 A Yes, sir. You are correct. I put laying on -- laying

Brandy Edwards
Cross-examination by Mr. Morin

1 by the black shirt and/or jacket was a black and white
2 Halloween scream-thing face mask and a set of brown gloves.
3 I did.

4 Q Okay. And, of course, one of the gloves is right by
5 the mask, but the other one was almost by the --

6 A By the jacket, yes, sir.

7 Q Flip back for a moment.

8 Now, you testified that there was a time when y'all put
9 some rocks on some money to keep from it blowing away.

10 A Yes, sir.

11 Q Did you put anything on this glove --

12 A No, sir.

13 Q -- to keep it from blowing away?

14 A No, sir. I didn't -- I didn't touch any of that stuff
15 there. We didn't have to.

16 Q Because you've identified this as one of the gloves,
17 and it appears that there's some sticks and other things on
18 top of this glove. Can you tell that? Or maybe if I hand
19 the actual picture to you you'd be able to see it better.

20 MR. MORIN: Can I have those? Excuse me.

21 THE COURT: Why don't you let her look at the
22 photograph?

23 MR. MORIN: Yes, sir.

24 THE COURT: And then you can put it back on the
25 screen.

Brandy Edwards
Cross-examination by Mr. Morin

- 1 MR. MORIN: Yes, Your Honor.
- 2 Q This is State's Exhibit No. 27.
- 3 A Okay.
- 4 Q I mean, I'm just asking but if --
- 5 A I don't -- I don't recall putting anything on.
- 6 Q Right.
- 7 A On any of those items.
- 8 Q But State's Exhibit No. 27 seems to show a stick and
- 9 -- on top of the glove.
- 10 A Where at? Because I'm not seeing.
- 11 Q Right here.
- 12 A I'm not seeing that.
- 13 Q Right there.
- 14 A I see the finger here and here.
- 15 Q Right. And this is the side of the glove.
- 16 A Correct.
- 17 Q And isn't there a finger going right there on the
- 18 other side?
- 19 A It's right beside the stick, yes. But I don't see it
- 20 on top of that but --
- 21 Q Okay. All right. Now, just so I make sure. This
- 22 rock pile right here --
- 23 A Uh-huh, yes, sir.
- 24 Q If I'm looking at this rock pile right here, behind me
- 25 is Magnolia Street, correct? If I'm standing just like

Brandy Edwards
Cross-examination by Mr. Morin

1 this taking the picture.

2 A Correct, yes, sir.

3 Q I mean, I'm not trying to trick you. I was just
4 trying to get the facts.

5 A Yes, sir.

6 Q So up here is --

7 A Church Street.

8 Q -- Church Street.

9 A Yes, sir.

10 Q This rock pile. Okay. And that's where you found
11 these things.

12 And, finally, Mr. Barnette asked you about this right
13 here.

14 A Uh-huh, yes, sir.

15 Q And where it appears something came down. And of
16 course, again, this is -- like on this side of it is
17 towards Magnolia, and on this side is under the bridge.

18 A Correct.

19 Q And I'm trying to recall. Did you -- you approached
20 from Magnolia down there by the depot, correct?

21 A Yes, sir.

22 Q Okay.

23 MR. MORIN: That's all the questions I have, Your
24 Honor.

25 MR. BARNETTE: No further questions of this witness,

Christy Norkett
Direct examination by Mr. Barnette

1 Your Honor. I'd ask for her to be excused.

2 THE COURT: You may step down.

3 THE WITNESS: Thank you.

4 (Whereupon, the witness was excused.)

5 MR. BARNETTE: I'd like to call Investigator Norkett
6 to the stand.

7 CHRISTY NORKETT, having been
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. BARNETTE

10 Q If you would, ma'am, please give your full name for
11 the record.

12 A Christy Norkett.

13 Q And where do you work at, ma'am?

14 A Spartanburg Police Department.

15 Q And what position do you have there, ma'am?

16 A I'm the -- one of the forensic investigators with the
17 department.

18 Q And how long have you been working with law
19 enforcement, ma'am?

20 A Seventeen years.

21 Q Okay. Was you working June 3rd of 2015, ma'am?

22 A I was.

23 Q Was you called to the scene of the bank robbery?

24 A Yes, sir.

25 Q I guess it went from the bank onto the railroad

Christy Norkett
Direct examination by Mr. Barnette

- 1 tracks --
- 2 A Yes.
- 3 Q -- from there. Did you collect the four items we've
- 4 talked about -- the two gloves and the mask?
- 5 A I did. I collected all four of the items.
- 6 Q And what appeared to be on the hoodie to you, and the
- 7 gloves?
- 8 A Appeared to be a -- a red dye from a dye back.
- 9 Q Okay. And have you worked other bank robberies
- 10 involving dye packs?
- 11 A I have, sir.
- 12 Q And you entered all of that into evidence. And did
- 13 that appear to be the red dye pack like you'd seen before?
- 14 A Yes, it did.
- 15 Q Let me show you State's Exhibit 5. Let you look at
- 16 that, ma'am, if you would.
- 17 A Yes. The dye pack --
- 18 Q okay.
- 19 A -- inside the hood. It's been opened.
- 20 Q That was found inside the hoodie, is that right?
- 21 A Yes, sir.
- 22 Q If you would, go ahead and open to verify to make
- 23 sure.
- 24 A I actually sealed this.
- 25 Q So this was collected by you and sealed, is that

Christy Norkett
Direct examination by Mr. Barnette

1 right?

2 A Yes. We make the tape like that so we can tell if
3 it's tampered with.

4 Q If you would, is that the dye pack that you recovered,
5 ma'am?

6 A This is the dye pack that I recovered. It's actually
7 got -- it's money.

8 Q Hold up for one second.

9 MR. BARNETTE: Your Honor, I'd like to move State's
10 Exhibit 5 into evidence at this time.

11 MR. MORIN: No objection, Your Honor.

12 THE COURT: It's admitted.

13 (Dye pack marked State's Exhibit No. 5.)

14 Q If you would, come on. Bring it over here and let the
15 jury see it if you want.

16 (Whereupon, the witness left the stand.)

17 Q If you would, come right here so everybody can see.

18 A It's actually a stack of 20s.

19 Q Okay. Go ahead.

20 A In the middle of it there's actually like a little
21 computer chip, and it will go off if you're going so far
22 away from the -- you can't really see it as good.

23 Down here is the computer chip. It's got the dye in
24 it. So when it gets activated, that's when it explodes.
25 But it is real money on the outside and it's just cut-out

Christy Norkett
Direct examination by Mr. Barnette

1 money where there's like a square, and it is a square cut
2 out of it. And it sets down inside of it.

3 So the only real bills that will actually will be
4 useable are the first two or three on the outside on each
5 side. So it's just a little cutout where it sets down
6 inside of it.

7 Q Thank you, ma'am.

8 (Whereupon, the witness returned to the stand.)

9 A And it rubs off on your fingers just like that.

10 Q I'm sorry. I apologize.

11 A No. That's fine. Nothing a little soap and water
12 won't fix.

13 Q Okay. As we said earlier, you're familiar with these
14 dye packs. You've seen them used before from there.

15 A Yes, sir.

16 Q And that dye appears to be the dye from the dye pack.

17 A Yes, sir. It does.

18 Q How much money did y'all collect? How much money was
19 collected by you out there?

20 A I collected a total of \$3,505.

21 Q Okay. Was that placed into evidence?

22 A Yes, it was.

23 Q Okay. I know we've got it in evidence. I don't think
24 we're going to enter it into evidence. It'll be returned
25 back to the bank. But that was collected, is that right?

Christy Norkett
Direct examination by Mr. Barnette

1 A Yes, sir, it was. That's not what Officer Edwards --
2 it wasn't a part of what she got.

3 Q So that's separate from what she got from there.

4 A Yes, sir.

5 Q Okay.

6 MR. BARNETTE: One moment, Your Honor, please.

7 (Pause.)

8 Q Let me do one thing, maybe one more picture. Let me
9 show you State's Exhibits 38, 39 and 40. Do those pictures
10 fairly represent when you looked at the hoodie that day?

11 A Yes, sir, it does.

12 Q And was that the money and the dye pack that you got
13 outside the hoodie?

14 A Yes, sir, it is.

15 Q Out from the hoodie.

16 MR. BARNETTE: Your Honor, I'd like to introduce
17 State's Exhibits 38, 39 and 40 into evidence.

18 MR. MORIN: No objection.

19 (Photographs marked State's Exhibits Nos. 38, 39 and
20 40.)

21 MR. BARNETTE: May I publish them to the jury, Your
22 Honor?

23 THE COURT: You may.

24 Q Showing you State's Exhibit 38. If you would, just
25 tell us what that -- what that is, ma'am.

Christy Norkett
Cross-examination by Mr. Morin

1 A That is the black hoodie that Officer Edwards found,
2 and on top of it is the cash and I believe part of the dye
3 pack that was inside the pocket still after the explosion.

4 Q State's Exhibit 39.

5 A That's showing the -- just a closer image of the money
6 and the dye pack that we got out.

7 Q And State's Exhibit 40.

8 A That's showing the dye pack there in the very center
9 and then the actual real cash around it, the fives and the
10 twenties that you can see on the outside there.

11 MR. BARNETTE: Thank you, Your Honor.

12 Q Please answer any -- thank you, ma'am. Please answer
13 any questions Mr. Morin may have for you.

14 A Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. MORIN

17 Q These last three pictures you've talked about, those
18 are at the city police department, correct?

19 A My office, yes, sir.

20 Q You testified this black hoodie you'd never seen
21 before this day.

22 A Correct.

23 Q You're testifying that -- and there's been testimony
24 that this dye pack caused a hole in this hoodie, is that
25 correct?

Christy Norkett
Cross-examination by Mr. Morin

1 A Yes, sir.

2 Q And you're familiar with how these work.

3 A I am.

4 Q The money that's around the dye pack didn't burn.

5 A Okay.

6 Q But you're testifying that the dye pack did burn or
7 make a hole in the hoodie, is that correct?

8 A Yes, sir, it is.

9 Q Okay.

10 A It was still stuck to the burnt fibers of the hoodie
11 when I had to physically remove it from it, yes.

12 Q Right. Can you explain to the jury how it burned the
13 hoodie but it didn't burn the money?

14 A I would believe that it has to do with the fact that
15 the cloth of the -- money is not actually paper. It's
16 actually fibers. It's actually a cloth. So it's not the
17 same as paper that would burn if I stuck something there
18 and hit it. It's going to have a different burn factor as
19 far as the thinner cloth of the hoddie as opposed to what
20 is in the money.

21 So, I mean, it's -- it will burn, but it did not burn
22 like the dye pack did when it hit the side of the pocket,
23 the little kangaroo pocket.

24 Q That's all the questions I have.

25 MR. BARNETTE: Just one followup, Your Honor.

Christy Norkett
Redirect examination by Mr. Barnette

1 REDIRECT EXAMINATION

2 BY MR. BARNETTE

3 Q If you will, step down for a second, ma'am.

4 A Yes, sir.

5 (Whereupon, the witness left the stand.)

6 Q Like I say, you took the money out of this, is that
7 correct?

8 A I did. I recovered it.

9 Q Okay. You take that back down. That was where -- the
10 money we saw earlier, and the burn mark, is that right?

11 A Yes, sir.

12 Q And then also on the other side, on the inside, there
13 was a smaller burn mark.

14 A Yes, sir. Right there.

15 Q Was that where the heat to the --

16 A Yes. You can actually still see parts of where the
17 dye is. The little pieces of the thing are still actually
18 still attached from where it would only be there from
19 actually melting and burning into that type of fabric.

20 Q And that's -- that was the inside of the hoodie.

21 A Yes.

22 Q Okay. Thank you, ma'am.

23 A Yes, sir.

24 Q Please answer any questions defense may have for you.

25 MR. MORIN: No questions, Your Honor.

Stephen McClure
Direct examination by Mr. Barnette

1 THE COURT: You may step down.

2 MR. BARNETTE: Ask for this witness to be excused,
3 Your Honor.

4 THE COURT: She may be.

5 (Whereupon, the witness was excused.)

6 THE COURT: Let me see y'all just a minute.

7 (Bench conference held off the record in the presence
8 of the jury but out of the hearing of the jury.)

9 MR. BARNETTE: I would like to call Officer McClure to
10 the stand.

11 STEPHEN MCCLURE, having been
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. BARNETTE

14 Q If you would, sir, please state your full name for the
15 record.

16 A Stephen McClure.

17 Q And where do you work at, sir?

18 A I work with the Spartanburg Police Department.

19 Q And what's your position there, sir?

20 A Currently I'm assigned to the traffic unit with the
21 police department.

22 Q And how long have you been in law enforcement, sir?

23 A In May it'll be nine years.

24 Q Back on June 3rd of 2015 about 4:00 p.m., was you
25 working that day?

Stephen McClure
Direct examination by Mr. Barnette

1 A I was.

2 Q And did you receive a call about a bank robbery?

3 A Yes. I was -- I was actually conducting radar
4 observation on East Main Street when I heard the call come
5 out. Like I said, it's one of those calls that everybody
6 kinda goes to. So when the dispatch come out, I started
7 heading that way towards the bank.

8 Q Okay. Tell the jury what -- what happened once you
9 did it, once you started approaching that area.

10 A I came down St. John Street from where I was and then
11 turned onto Daniel Morgan. It took me a little bit longer
12 to get there, and some other officers had already arrived
13 there. So there was other officers that were already on
14 the scene that were giving the information out over the
15 radio.

16 Q Let me let you do this. State's Exhibit 9 is up
17 there. And, if you can, show them on the map how you went
18 and where you went.

19 A I would have came in -- it would have been over in
20 this way, but I went down Dean Street to St. John Street.
21 I took St. John Street, took a right onto Church. It would
22 have -- I'm not exactly sure where, but it would have been
23 somewhere in this general area.

24 An officer had advised that the possible suspect was
25 seen running down the railroad tracks. So I knew that way.

Stephen McClure
Direct examination by Mr. Barnette

1 I knew -- if he was going down the railroad tracks I needed
2 to adjust where I was heading to. Instead of going to the
3 bank, which is right here, I wanted to go further down the
4 railroad tracks to try to cut him off.

5 So I went down Daniel Morgan to Magnolia Street. At
6 some point when I got close to Magnolia Street other
7 officers advised they had found the shirt. So I knew at
8 that point I was looking for somebody that did not have a
9 shirt on.

10 So I went -- kept going down Magnolia Street. When I
11 got to the -- if y'all are familiar with the coroner's
12 office, it's back on the county admin building. I believe
13 that's this building here.

14 Q It is.

15 A If I'm not mistaken.

16 As I got -- I went down -- going towards College
17 Street. I was just kinda moving, looking for him. I
18 wasn't setting up a static perimeter. I noticed there was
19 two -- two gentleman that were standing in the parking lot
20 of the coroner's office.

21 So I turned my vehicle around, and I was headed this
22 way. So I turned around to go back, and I was going to
23 speak with them just to see if they'd seen anybody running
24 through the area or if they'd seen anything suspicious.

25 As I started going back in their direction I noticed

Stephen McClure
Direct examination by Mr. Barnette

1 there was a male that was running through the parking lot.
2 That would have been in this general area here. He was
3 kinda running towards Magnolia Street.

4 About the time I stopped my vehicle to get out to --
5 to speak with him, he jumped over this. It's about a two,
6 maybe two and a half, foot retraining wall. It's right
7 here along Magnolia Street.

8 I exited my vehicle. It happened very quick, because,
9 like I said, he was -- I won't say running, but probably a
10 jog at that point.

11 I stopped in the middle of the street and got out. At
12 first I was just going to walk up to him. I think I even
13 said, you know, come here, let me talk to you. He didn't
14 stop jogging. He just kinda looked at me and kept jogging.

15 At that point I got -- he got a little bit closer to
16 me, and I got closer to him. I could see that there was
17 red dye that was on his lower chest, upper abdomen area
18 there. And also he did not have a shirt on.

19 So at that point it indicated to me this was the
20 possible suspect. So at that point I did draw my firearm
21 due to the nature of the call being a robbery call and
22 ordered him to the ground, which he complied.

23 He laid down face down, and I remained -- notified
24 other officers that I had the suspect in custody. And I
25 held him at gunpoint until other officers arrived to

Stephen McClure
Direct examination by Mr. Barnette

1 handcuff him.

2 Q Did he fight or did you fight with him or anything
3 like that?

4 A No. He complied. Actually, we never -- I never
5 touched him. I don't believe we even spoke to each other
6 other than me giving him the orders.

7 When he proned out, I had him put his arms out to the
8 side like this and lay face down. And he remained that way
9 for probably no more than 30 or 45 seconds until another
10 officer could get there.

11 Q Okay. So he just laid there.

12 A He did, yes, sir.

13 Q And you said there was red dye on his stomach area.

14 A Yeah. It would have been on his left side, I believe.

15 Q Okay. Let me show you what's been marked as State's
16 Exhibits 34 and 35. Do those pictures fairly represent
17 what you saw that day?

18 A Yes, sir.

19 Q And do you see the man in the courtroom today that
20 you -- that you found in the parking lot?

21 A Yes, sir.

22 Q Can you identify him for us in the courtroom?

23 A Yes, sir. It's the gentleman sitting over here.

24 Q Can you describe what he's wearing?

25 A He's wearing the blue shirt, long-sleeve shirt, and I

Stephen McClure
Direct examination by Mr. Barnette

1 see black pants with some black dress shoes.

2 MR. BARNETTE: Your Honor, I'd like the record to
3 reflect he's identified the defendant in this case.

4 THE COURT: It shall.

5 MR. BARNETTE: And, Your Honor, I'd like to introduce
6 State's Exhibits 34 and 35 into evidence.

7 (Photographs marked State's Exhibits Nos. 34 and 35.)

8 MR. BARNETTE: Your Honor, I'd like to publish these
9 to the jury.

10 THE COURT: You may.

11 Q Is that a picture of the defendant that day, sir?

12 A Yes, sir, it is.

13 Q And I'm probably going to hand these to the jury,
14 because they're actually going to be easier to see on the
15 pictures themselves.

16 State's Exhibit 35. Is that a picture of the red spot
17 that you saw on his stomach?

18 A Yes, sir. That is a spot I identified as I got closer
19 to him on the side of the road.

20 Q And when -- did he say anything to you when you
21 arrested him?

22 A Not to me, he didn't, no.

23 Q Did he ever ask for an attorney or anything like that?

24 A No, not -- to the best of my recollection, he never
25 said a word.

Stephen McClure
Direct examination by Mr. Barnette

1 Q He complied with everything you asked him.

2 A He did, yes, sir.

3 MR. BARNETTE: Your Honor, I'd like permission to hand
4 State's Exhibits 34 and 35 to the jury, Your Honor.

5 THE COURT: You may.

6 MR. BARNETTE: One moment, Your Honor, please.

7 (Pause.)

8 Q While the jury's looking at that, what kind of car was
9 you driving that day?

10 A That day I was actually in a -- I wasn't in my usual
11 car. I was in an unmarked Crown Victoria. It was blue in
12 color.

13 Q Okay. So you weren't in a marked car.

14 A I was not in a marked car that day, no, sir.

15 Q Okay. Are you normally in a marked car?

16 A I am, yes, sir. My car was in the shop, and I was
17 borrowing another traffic guy's car.

18 Q Got you.

19 MR. BARNETTE: One moment, Your Honor, please.

20 (Pause.)

21 Q Please answer any questions that Mr. Morin may have
22 for you.

23 A Yes, sir.

24

25

Stephen McClure
Cross-examination by Mr. Morin

1 CROSS-EXAMINATION

2 BY MR. MORIN

3 Q May I approach to get the -- I just want to make sure
4 I understand your route.

5 You came from -- did you say Ezell Boulevard is where
6 you started?

7 A No, sir. It's East Main.

8 Q East Main.

9 A Around Alabama Street.

10 Q Okay.

11 A It's right -- Pine Street downtown.

12 Q Sort of over there by the church.

13 A Yes, correct, yes, sir.

14 Q Okay. So you came down St. John all the way to
15 Magnolia?

16 A No, sir. I would have -- when I turned onto St. John,
17 I initially --

18 Q Yeah. This way, right, first of all?

19 A Yes, sir.

20 Q St. John.

21 A And then I took right onto Church because my
22 initial --

23 Q Right.

24 A Initial response was to go to the bank or the general
25 area. And, like I said, about either right when I turned

Stephen McClure
Cross-examination by Mr. Morin

1 onto Church or shortly before, shortly after, somewhere in
2 there, that's when people had advised that they had seen
3 him running down the railroad tracks. So I knew I needed
4 to go to the left.

5 Q Okay. So you go in front of the Montgomery Building.

6 A Yes, sir.

7 Q And then right here?

8 A No, sir. It would have been on Daniel Morgan,
9 basically, between --

10 Q All the way down here.

11 A Yes, sir, between the bank and the appliance store.

12 Q Got you. And then you turned. Then you turned right
13 onto Magnolia.

14 A Correct, yes, sir.

15 Q All right. Now, when you saw the person running, he
16 was in front of you, he was behind you? I wasn't clear on
17 that.

18 A Initially, I rode. I was on Magnolia.

19 Q Uh-huh.

20 A Keep going up to where College Street is.

21 Q This way.

22 A That was my path of travel, yes, sir.

23 Q Okay.

24 A When I got almost to College Street I remember --

25 Q If you want to show where it is, that'll be fine.

Stephen McClure
Cross-examination by Mr. Morin

- 1 A Yes, sir.
- 2 Q I just want to make sure I'm following.
- 3 A I'm just roughly in this area.
- 4 Q Sure.
- 5 A There were -- there was two gentlemen that was
6 standing beside a pickup truck. They were just standing
7 out there talking.
- 8 Q Sure.
- 9 A So my thing was I was going to turn around to go speak
10 with them to see if, you know, they had seen anything.
- 11 Q Okay.
- 12 A So when I turned around --
- 13 Q Uh-huh.
- 14 A Pretty much about the time I started driving back to
15 this direction again is when I saw the gentleman running
16 through the parking lot there.
- 17 Q All right.
- 18 A So it would have been pretty much the same general
19 location as when I initially saw the people. I just had to
20 turn around.
- 21 Q Sure. Is he jogging toward you or away from you?
- 22 A Towards. He was going kind of in a diagonal way. I'm
23 shaking a little bit here but --
- 24 Q That's okay.
- 25 A -- going this way.

Stephen McClure
Cross-examination by Mr. Morin

1 Q Yeah.

2 A So kind of drawing a line from the corner -- imaginary
3 line -- towards the Magnolia Street. So he would've been
4 headed towards me.

5 Q Okay. So he was almost to like the building or in the
6 parking lot. Now he was cutting this way.

7 A Yeah. When I first saw him he was almost to the
8 retaining wall there at Magnolia Street.

9 Q So when he jumped the wall he wasn't jumping the wall
10 toward the building. He was jumping the wall away from the
11 building.

12 A Correct, yes. He was going from this way to this way.

13 Q Okay. And you said you asked him to stop and he
14 looked at you and he kept going. Running towards you,
15 across?

16 A When I -- when I -- when I motioned for him and told
17 him to come here, he had actually -- at that point he'd
18 already crossed the wall.

19 Q Right.

20 A And he was basically jogging on the sidewalk towards
21 College Street up this direction. So he would have been
22 coming towards me still.

23 Q Right. Okay. So when you said can you stop, he just
24 kept coming towards you.

25 A Yeah. Well, he kept running.

Stephen McClure
Cross-examination by Mr. Morin

1 Q I don't want to -- I'm trying to confuse you.

2 A No. I'm trying to make sure I'm clear. I was in -- I
3 was still in the lane of travel. I was still in the road.

4 Q You were in the right lane.

5 A Yes, correct.

6 Q Coming back towards the traffic.

7 A And he was the sidewalk running this way.

8 Q Right.

9 A So while I was coming -- I was basically going this
10 way. He was running north, so almost perpendicular kinda.

11 Q Almost towards you.

12 A Kind of, yes.

13 Q Okay. And then you got out, and he continued to
14 approach you. And that's when you did what you told the
15 solicitor you did.

16 A Yes, sir.

17 MR. MORIN: That's all the questions I have, Your
18 Honor.

19 MR. BARNETTE: No further questions, Your Honor. We'd
20 ask the witness be excused.

21 THE COURT: You may step down.

22 (Whereupon, the witness was excused.)

23 THE COURT: Ladies and gentlemen, we're going to
24 recess for the afternoon. We'll resume in the morning with
25 the state's presentation at 9:30.

1 Keep in mind, as I've already told you, during the
2 overnight recess you can't discuss the case with anybody --
3 no husbands, wives, children, friends, relatives. You
4 can't discuss it.

5 After you've reached a decision you can talk about it
6 as much or as little as you'd like to as many or as few as
7 you'd like. But until you've reached your decision you
8 cannot discuss the case in any fashion whatsoever with any
9 person whatsoever. That includes your fellow jurors. You
10 can't do it unless you're involved in deliberations.

11 Also, do not permit yourselves to be exposed to any
12 type of media coverage relating to the case. No newspaper
13 articles, no television, no radio. Do not read it; do not
14 listen to it; do not watch anything that relates to the
15 case. Also, do not conduct any research or do your own
16 investigation into any issue that might have arisen during
17 the course of the trial.

18 With that cautions in mind, do have a good evening.
19 Please report to your jury room at 9:30 in the morning, at
20 9:30 in the morning. Have a good afternoon.

21 (The following takes place outside the presence of the
22 jury.)

23 THE COURT: All right. Court is in recess until
24 9:30 in the morning.

25 END OF PROCEEDINGS MARCH 14, 2016

Josh Bagwell
Direct examination by Mr. Barnette

1 (Proceedings March 15, 2016)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Who is the next witness?

5 MR. BARNETTE: Josh Bagwell, Your Honor.

6 THE COURT: Are we ready for the jury?

7 MR. BARNETTE: Yes, sir, Your Honor.

8 MR. MORIN: The defense is ready.

9 THE COURT: Bring them in.

10 (Envelope marked State's Exhibit No. 44 for
11 Identification; envelope marked State's Exhibit No. 45 for
12 Identification.)

13 (The following takes place in the presence of the
14 jury.)

15 THE COURT: Good morning, ladies and gentlemen.

16 As you know, when we recessed yesterday the state was
17 in the midst of their presentation. So we will continue
18 with that presentation this morning.

19 Mr. Barnette.

20 MR. BARNETTE: May it please the Court, Your Honor.
21 I'd like to call Mr. Bagwell to the stand, please.

22 JOSH BAGWELL, having been
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. BARNETTE

25 Q If you would, sir, please state your name for the

Josh Bagwell
Direct examination by Mr. Barnette

1 record.

2 A Josh Bagwell.

3 Q And, Mr. Bagwell, where do you work at now?

4 A I work at Manley Brothers Heating and Air.

5 Q Okay. Back on --

6 THE COURT: Let me ask you to pull that black
7 microphone towards you.

8 Q On June the 3rd of 2015, where did you work at, sir?

9 A I worked at City of Spartanburg Police Department.

10 Q And what was your position there, sir?

11 A I was a forensic technician.

12 Q And how long was you in law enforcement, sir?

13 A Roughly ten years.

14 Q And you left to get better hours, better job from that
15 standpoint?

16 A Yes, sir.

17 Q The reason why you left from there. In the
18 investigation, did you help collect the evidence in this
19 case, sir?

20 A Yes, sir, I did.

21 Q And, as a matter of fact, all of the evidence that
22 we've entered you entered into evidence at the city, is
23 that right?

24 A Yes, sir.

25 Q Okay. Let me show you what's been entered in as

Josh Bagwell

Direct examination by Mr. Barnette

1 State's Exhibit No. 6, or at least part of it has been
2 entered in. Take a look at that if you would, sir. Was
3 this the note that y'all recovered from the bank tellers at
4 the bank that was left by the defendant?

5 A Yes, sir, this is the note.

6 Q Okay. And did you do some fingerprint testing off it
7 before?

8 A I did. I made a copy of it before we did the
9 fingerprint testing.

10 Q Okay. So that -- this is a copy of what you made
11 before the testing was done.

12 A Yes, sir, it is.

13 Q And the testing what's made the --

14 A The ink smear.

15 Q Yes, sir.

16 A Yes, sir.

17 Q No problem.

18 MR. BARNETTE: Your Honor, originally, it's already
19 into evidence. I'd like to have the copy that was made
20 before entered into evidence at this time.

21 MR. MORIN: No objection.

22 THE COURT: It's admitted.

23 MR. BARNETTE: Your Honor, may I publish this to the
24 jury?

25 THE COURT: You may.

Josh Bagwell
Cross-examination by Mr. Morin

1 (Previously entered and marked.)

2 MR. BARNETTE: Your Honor, may I publish this to the
3 jury?

4 THE COURT: You may.

5 Q And these are the two items that you entered into
6 evidence.

7 A Yes, sir, it is.

8 Q Okay. This is the original note. And, like you said,
9 you did some testing on it and that created the smearing,
10 is that right?

11 A Yes, sir. That's correct.

12 Q And this was the copy of it before you did the
13 testing.

14 A Yes, sir. That's correct.

15 Q Okay. And this is the note that was taken from the
16 tellers, is that right, sir?

17 A Yes, sir.

18 Q Please answer any questions Mr. Morin may have for
19 you, sir.

20 CROSS-EXAMINATION

21 BY MR. MORIN

22 Q You're the forensic tech at the time working on this
23 case.

24 A Yes, sir.

25 Q And you did check this piece of paper for

Josh Bagwell
Redirect examination by Mr. Barnette

1 fingerprints.

2 A That's correct.

3 Q Did you check any other evidence in this case for
4 fingerprints?

5 A I did not, no, sir.

6 MR. MORIN: That's all the questions I have.

7 MR. BARNETTE: Just one question.

8 REDIRECT EXAMINATION

9 BY MR. BARNETTE

10 Q It was found out later the defendant had gloves, is
11 that right?

12 A I'm not aware.

13 Q Okay.

14 A I did not mark that in my -- my supplemental.

15 Q Okay. But was that evidence that was taken in?

16 A I don't have the evidence list in front me, so I don't
17 know what, everything.

18 Q Yes, sir. And I believe on State's Exhibit 1 --

19 A No. 17.

20 Q And I believe that was recovered and entered by you.

21 A Yes, sir. That was -- that was one large black glove,
22 leather glove. And then item No. 16. That is one large
23 black leather glove, left hand. And the other was right
24 hand.

25 Q Yes, sir.

Josh Bagwell
Recross-examination by Mr. Morin

1 A Yes, sir.

2 Q So those were recovered by you and put into evidence
3 according to your notes.

4 A Yes, sir, according to the evidence list, yes, sir.

5 Q But you went ahead and tried to be as thorough as you
6 can and check for fingerprints on that.

7 A Yes, sir. We did two tests on that to try to get
8 fingerprints on it.

9 Q Thank you, sir.

10 A Yes, sir.

11 RECROSS-EXAMINATION

12 BY MR. MORIN

13 Q This bank robbery occurred on June 3rd, correct?

14 A Yes, sir. That's correct.

15 Q These tests were done the following day, June 4th, is
16 that correct?

17 A That is correct. I tested the note on June 4th.

18 Q You were the evidence tech that collected the
19 evidence.

20 A That's correct.

21 Q Including the gloves.

22 A I never collected the gloves. I took possession of
23 the gloves after someone else collected them, yes, sir.

24 Q Okay. And if the person who wrote the note wasn't
25 wearing gloves when he wrote the note, wearing gloves when

Josh Bagwell

Redirect examination by Mr. Barnette

1 he delivers a note wouldn't matter on the -- or wouldn't
2 necessarily reduce the fingerprints, would it?

3 A I did not find any prints on the note.

4 Q I understand that. But what I'm saying is somebody
5 wrote this note, but you don't know if they were wearing
6 gloves when they wrote it.

7 A I have no --

8 Q Thank you.

9 MR. BARNETTE: Your Honor, just one followup. I think
10 he already answered my question.

11 REDIRECT EXAMINATION

12 BY MR. BARNETTE

13 Q Did you find any fingerprints on the note?

14 A No, sir, I did not find any fingerprints on the note.

15 Q Thank you, sir.

16 THE COURT: All right. Step down.

17 MR. BARNETTE: Ask the witness be excused, Your Honor.

18 THE COURT: He may be.

19 (Whereupon, the witness was excused.)

20 MR. BARNETTE: Your Honor, I'd like to call
21 Investigator Tapp to the stand.

22 JASON TAPP, having been first
23 duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. BARNETTE

25 Q Sir, if you would, state your full name, please.

Jason Tapp
Direct examination by Mr. Barnette

- 1 A Jason Tapp.
- 2 Q And where do you work at, sir?
- 3 A Spartanburg Police Department.
- 4 Q And what is your position there, sir?
- 5 A I'm an investigator.
- 6 Q And how long have you been in law enforcement, sir?
- 7 A A couple of months shy of nine years.
- 8 Q Back on June 3rd of 2015, was you working that day,
- 9 sir?
- 10 A I was.
- 11 Q And did you receive information about a bank robbery?
- 12 A I did.
- 13 Q Did you actually go to the scene or go anywhere out
- 14 there at that time?
- 15 A I responded to the area where the suspect was fleeing
- 16 to and arrived as Officer McClure and other officers had
- 17 the suspect and arrested him there.
- 18 Q And was he taken to city hall right after that?
- 19 A He was.
- 20 Q And did you interview the defendant?
- 21 A I did.
- 22 Q And was there a video recording of that interview?
- 23 A There was.
- 24 Q Let me show you what's been marked as State's Exhibit
- 25 No. 8. Does State's Exhibit 8 fairly represent the

Jason Tapp
Direct examination by Mr. Barnette

1 interview that you did that day?

2 A Yes, sir.

3 MR. BARNETTE: Your Honor, I'd like to move this into
4 evidence at this time.

5 MR. MORIN: No objection.

6 THE COURT: It's admitted.

7 MR. MORIN: Well, Your Honor, I need to revise my
8 answer to that.

9 I object to this video as my previous objections
10 regarding any statement my client gave. And I believe
11 that's what this is. I'm renewing that objection.

12 THE COURT: Note your exception. It's admitted.

13 MR. BARNETTE: Thank you, Your Honor.

14 (D.V.D. marked State's Exhibit No. 8.)

15 MR. BARNETTE: I'd like to publish the video at this
16 time.

17 THE COURT: You may.

18 MR. BARNETTE: Please let me know if you can't hear.

19 (Whereupon, the video was played for the jury.)

20 Q Was that the interview that you did with the
21 defendant, Mr. Cooper, in this case?

22 A Yes, it was.

23 Q And during that time -- let me show you State's
24 Exhibit 7, the paperwork that you were filling out. Show
25 you State's Exhibit No. 7 here, sir. If you would, open

Jason Tapp
Direct examination by Mr. Barnette

1 that up and take a look at it.

2 (Pause.)

3 Q Was that the waiver and statement you filled out on
4 the video tape?

5 A Yes, it is.

6 MR. BARNETTE: Your Honor, I'd like to move this into
7 evidence at this time, which is the waiver and statement.

8 MR. MORIN: Again, Your Honor, we object based on a
9 prior, previous motion.

10 THE COURT: Note your exception. It's admitted.

11 MR. BARNETTE: Thank you, Your Honor.

12 (Waiver and statement marked State's Exhibit No. 7.)

13 MR. BARNETTE: May I publish it to the jury?

14 THE COURT: You may.

15 Q And during this time -- I believe the jury saw this
16 also a moment ago, or just to make sure -- did you read
17 these rights to him?

18 A I did.

19 Q And he gave you the information to fill out on the
20 form, is that right?

21 A Yes, he did.

22 Q He gave you his name.

23 A Yes.

24 Q Where he was, his telephone number, social security
25 number, date of birth and all of that, is that right?

Jason Tapp
Direct examination by Mr. Barnette

1 A Yes.

2 Q And the time you started this was at 1626, which is
3 4:26 p.m.

4 A Yes.

5 Q And the robbery occurred around, what, 4:00 p.m. that
6 day?

7 A Yes, sir.

8 Q Okay. And you read him his rights, and I'm not going
9 to have you read them over again, because, like I said, you
10 read them on the video tape, is that right, that day?

11 A Yes, sir.

12 Q And did he initial?

13 A He did each one.

14 Q And you witnessed it, is that right, sir?

15 A Yes.

16 Q And this is Mr. Cooper's signature.

17 A It is.

18 Q And then you explained to him it was a bank robbery
19 and that you was talking to him about it.

20 A I did.

21 Q Okay. And he signed that he understood that and he
22 wanted to talk to you.

23 A He did.

24 Q And you answered it, is that right?

25 A Yes, sir.

Jason Tapp
Direct examination by Mr. Barnette

- 1 Q And you went through and began the interview and then
2 showed when it was completed and everything. And how many
3 pages was in there or is --
- 4 A Three, yes, sir.
- 5 Q I'm not going to have you read the statement. I think
6 they've already heard you read it on the video. But is
7 this the statement that was given?
- 8 A It is.
- 9 Q And you wrote it out for him, is that right?
- 10 A I did.
- 11 Q And then you read it back to him.
- 12 A Yes, sir.
- 13 Q And he signed it. And he signed on the bottom of it,
14 is that right?
- 15 A Yes, sir.
- 16 Q And you witnessed it.
- 17 A I did.
- 18 Q And that was the first page. Page two. Again, you
19 went down and wrote down and read this back to him.
- 20 A Yes.
- 21 Q You witnessed it and he signed it, is that right?
- 22 A Yes, sir.
- 23 Q And this is on -- this is page three of that.
- 24 A Yes, sir.
- 25 Q Like I said, this is all your handwriting.

Jason Tapp
Direct examination by Mr. Barnette

1 A It is.

2 Q And then you marked out the bottom so nothing else
3 could be added to it.

4 A Yes, sir.

5 Q Then you witnessed it and then he signed it, is that
6 right?

7 A Yes, sir.

8 Q Let me show you some pictures here. There were some
9 pictures taken at the beginning, wasn't there?

10 A There were.

11 Q Let me show you State's Exhibits 34 and 35. I believe
12 those have already been entered into evidence. And I want
13 to show you two other pictures. Show you 35, 36 and 37.
14 Do those pictures fairly represent what was taken before
15 y'all started talking in this case?

16 A They do.

17 MR. BARNETTE: Your Honor, I believe 34 and 35 has
18 been entered, but I didn't know about 36 and 37. I want to
19 go ahead and enter those in at this time also.

20 MR. MORIN: No objection.

21 THE COURT: They're admitted.

22 (Photographs marked State's Exhibits Nos. 36 and 37.)

23 MR. BARNETTE: May I publish them to the jury, Your
24 Honor?

25 THE COURT: You may.

Jason Tapp
Direct examination by Mr. Barnette

1 Q And I think the jury's already seen this picture once
2 before, but this is a picture. State's Exhibit 34, is that
3 a picture of him that was taken that day?

4 A Yes, sir.

5 Q And this is like it -- actually, before 4:26 because
6 that's when you started the waiver form, is that right?

7 A Yes, sir.

8 Q It was actually before that. And there's a closer
9 picture of his stomach area, is that right?

10 A Yes.

11 Q And then State's Exhibit 36. I know you may not be
12 able to see this as well. State's Exhibit 37. I'm handing
13 it to the jury, because they can actually see it better.
14 Was these pictures of his pants on the back side?

15 A Yes, sir.

16 Q And what did they appear to have on the back side,
17 sir?

18 A Dirt or mud.

19 Q And during this interview did you threaten him in any
20 way?

21 A I did not.

22 Q Did you promise him anything?

23 A No, sir.

24 Q Did you just let him -- he did most of the talking, is
25 that right?

Jason Tapp
Direct examination by Mr. Barnette

- 1 A Yes, sir.
- 2 Q And there was some questions asked.
- 3 A Yes.
- 4 Q And you went through the story with him again, is that
- 5 right?
- 6 A Yes, sir.
- 7 Q okay. And he clearly and voluntarily gave that
- 8 information?
- 9 A He did.
- 10 Q Did he ever ask for a lawyer? Did he ever ask for
- 11 anything?
- 12 A No, sir.
- 13 Q He volunteered and talked to you freely, is that
- 14 right?
- 15 A He did.
- 16 MR. BARNETTE: One moment, Your Honor, please.
- 17 (Pause.)
- 18 Q If you would, please answer any questions Mr. Morin
- 19 may have.
- 20 MR. BARNETTE: Your Honor, I'm going to go ahead and
- 21 hand these pictures to the jury because they may can see
- 22 them better in person than on the elmo from there.
- 23 THE COURT: Okay. Mr. Morin, let's wait and let them
- 24 look at the pictures before you begin the examination.
- 25 MR. MORIN: Yes, Your Honor.

Jason Tapp
Cross-examination by Mr. Morin

1 (Pause.)

2 THE COURT: Let's take a short break before we begin
3 with cross-examination.

4 I'll ask the jurors to please go to your jury room.
5 Do not discuss the case in any fashion. I'll bring you
6 back after that break to continue with the
7 cross-examination of the witness.

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: The witness can step down from the stand.
11 You can't discuss your testimony during the break,
12 however.

13 We'll be at ease for 15 minutes.

14 (Whereupon, a recess was taken.)

15 THE COURT: All right. Bring the jury in, please.

16 (The following takes place in the presence of the
17 jury.)

18 THE COURT: All right. We'll proceed with the
19 cross-examination by the defense.

20 Mr. Morin.

21 MR. MORIN: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. MORIN

24 Q Officer Tapp, you've been seated at the counsel table
25 during the course of the trial as the lead investigator in

Jason Tapp
Cross-examination by Mr. Morin

1 this case, is that correct?

2 A Yes.

3 Q Following the statement you had Mr. Cooper do a
4 handwriting sample, is that correct?

5 A Yes.

6 Q And what was the purpose and results of the
7 handwriting sample?

8 A I am not certain that that was sent to SLED. I'm not
9 sure.

10 Q Okay. Was that your intention when you took it?

11 A Yes.

12 Q All right. And the reason being you were going to
13 compare it to the note.

14 A The note.

15 Q Okay. But you don't know if that ever happened.

16 A I don't.

17 Q All right. Also following the statement Officer
18 Gallman did a buccal swab of the defendant, isn't that
19 correct?

20 A I'm not certain.

21 Q All right. Officer Gallman's the one that took the
22 photographs that we see in the video, correct? Blonde
23 hair. Sort of came in for a moment.

24 A I thought it was a different officer, but it could
25 have been. I'm not sure.

Jason Tapp
Cross-examination by Mr. Morin

1 Q All right. What is a buccal swab?

2 A It's a swab of the inside of the cheeks for D.N.A.

3 Q D.N.A. And it takes like two minutes to just kind of
4 go like that, right? And there's quite a bit of
5 evidence -- sweatshirts, masks, D.N.A. -- being something
6 that would be transferred from sweat, saliva, say a mask or
7 something to that effect, is that correct?

8 A Yes.

9 Q And you say that you weren't present when Officer
10 Gallman did that?

11 A I'm not sure. I don't remember.

12 Q Okay. But you are aware that there are not -- there
13 was no D.N.A. test beyond that.

14 A I'm not certain. I wasn't -- I'm not aware if there
15 was a D.N.A. test done on any of the evidence collected.

16 Q When did you first come in contact with Mr. Cooper?
17 Was it in that room?

18 A No. It was on the scene when he was arrested.

19 Q All right. And what was Mr. Cooper told there on the
20 scene where he was arrested?

21 A I'm not certain. I don't recall any conversation.

22 Q Well, was he told why he was arrested? Did he tell
23 you -- was he told -- you don't know if he was told
24 anything.

25 A I don't.

Jeff Kirby

Direct examination by Mr. Barnette

1 Q You just scooped up him and took him.

2 A Yeah. He was -- I was there as they were arresting
3 him, and they put him in the car.

4 Q Okay. Officer McClure testified yesterday that he was
5 the first one on the scene, correct? I think that was his
6 name.

7 A Yes.

8 Q And when he came in here he was wearing a body camera,
9 correct?

10 A He was.

11 Q Did the city have body cameras then?

12 A I'm not certain, but I don't think so.

13 Q Okay. This would have been last June.

14 A Yes.

15 Q Okay.

16 MR. MORIN: I have no further questions, Your Honor.

17 MR. BARNETTE: No further questions of this witness,
18 Your Honor.

19 THE COURT: You may step down.

20 MR. BARNETTE: Your Honor, I'd like to call
21 Investigator Kirby to the stand.

22 JEFF KIRBY, having been first
23 duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. BARNETTE

25 Q If you would, sir, please give us your full name,

Jeff Kirby
Direct examination by Mr. Barnette

1 please.

2 A Jeff Kirby.

3 Q And where do you work at, sir?

4 A Spartanburg City Police Department.

5 Q And what's your position there, sir?

6 A Criminal investigator.

7 Q And how long have you been in law enforcement?

8 A Fourteen years.

9 Q Back on June 3rd of 2015, was you working that day,
10 sir?

11 A Yes, sir, I was.

12 Q Was you called in response of a bank robbery?

13 A Yes, sir, I was.

14 Q And I think we saw on the video. You was involved a
15 little bit in the interview with the defendant, is that
16 right?

17 A Yes, sir.

18 Q At that time did you know Brandon Johnson was a
19 suspect until the defendant told you?

20 A No, sir. We did not.

21 Q So once you found out that information did y'all go
22 searching for him?

23 A Yes, we did.

24 Q And did you find him?

25 A Yes, sir, we did.

Jeff Kirby
Direct examination by Mr. Barnette

1 Q And was he later arrested concerning this incident?

2 A Yes, he was.

3 Q And he's going to be prosecuted later, is that right?

4 A Yes, sir.

5 Q In his car -- what kind of car was he driving?

6 A It was a silver Dodge Stratus.

7 Q Okay. In his car did y'all find a book bag?

8 A Yes, sir, we did.

9 Q Let me show you what's been marked as State's
10 Exhibit -- I believe it's -- make sure I tell you right --
11 42. Is this the book bag you found, sir?

12 A Yes, sir, it is.

13 Q Okay. And did you determine if it was the defendant's
14 book bag?

15 A Yes, by the description that he provided.

16 Q Okay. And then when -- and when you went inside of
17 it -- let me let you go through it there. There's a
18 gamecock shirt.

19 A Yes, sir. There was some -- the personal effects that
20 Mr. Cooper had described were -- were located inside that
21 bag.

22 Q Have a diamond -- I mean a watch that was found in
23 there? There was a --

24 MR. MORIN: Your Honor, I would ask that the witness
25 testify to what's in the evidence, not Mr. Barnette.

Jeff Kirby
Direct examination by Mr. Barnette

1 MR. BARNETTE: I'll rephrase the question, Your Honor.

2 Q What was the item that -- if you would, go through and
3 tell us what items have been found in there, sir.

4 A Basically, we found some of the items that Mr. Cooper
5 had described that were his. There was some -- of course
6 the chain with the cross on it, the gold watch that he had
7 described in the interview. And this is a tangled-up mess
8 now.

9 Q I understand.

10 A The gamecock shirt. I'll lay that there. The
11 gamecock shirt that Mr. Cooper had described was in there,
12 which was his. I think there was -- I don't remember that.
13 And his wallet. And I think that his glasses were in there
14 as well, which were returned to him at his request to the
15 county jail.

16 Q Okay. So they were returned back to him.

17 A Yes, sir, and his wallet with his I.D. in it.

18 Q Okay. You got his driver's license.

19 A Yes, sir.

20 Q Things like that. If you would, go ahead and put
21 those back in there, sir, if you would.

22 (Pause.)

23 Q If you would, go ahead and remove his driver's license
24 if you would there for a second.

25 (Whereupon, the witness complied.)

Jeff Kirby
Direct examination by Mr. Barnette

1 Q Thank you, sir.

2 Okay. I guess this is actually an I.D. card, is that
3 right?

4 A Yes, sir, it's an I.D. card.

5 Q I'd like to mark that as evidence. You can go ahead
6 and put that back in if you would, sir.

7 (Whereupon, the witness complied.)

8 Q If you will look in the front part there, sir, if you
9 would, and are there different letters and stuff in there?

10 A Yes, sir, there is.

11 Q If you can pull those two out right there, then we'll
12 take a look at those. And what are those two items there,
13 sir, if you would?

14 A These are just two -- two miscellaneous documents with
15 Mr. Cooper's name on them, and his address, which he was
16 listed as 189 North Forest. I don't know the exact -- what
17 the exact documents are. They're just -- we basically
18 noted that in the address and the suspect's name.

19 MR. BARNETTE: Your Honor, I'd to enter these three
20 exhibits in. They're going to be State's Exhibits 44, 45.
21 And 46 will be the driver's license I believe.

22 THE COURT: Show those to Mr. Morin.

23 (Pause.)

24 MR. BARNETTE: Your Honor, I'd like to move State's
25 Exhibits 44, 45 and 46 into evidence at this time.

Jeff Kirby
Direct examination by Mr. Barnette

1 MR. MORIN: No objection.

2 THE COURT: They're admitted.

3 (Envelope marked State's Exhibit No. 44; envelope
4 marked State's Exhibit No. 45; card marked State's Exhibit
5 No. 46.)

6 MR. BARNETTE: May I publish these to the jury, Your
7 Honor?

8 THE COURT: You may.

9 Q And these items came from the book bag that you found
10 in Brandon Johnson's car.

11 A Yes, sir.

12 Q Showing you State's Exhibit 44. What is that, sir?

13 A That's a miscellaneous document that was located in
14 the book bag with Mr. Cooper's name on it.

15 Q And showing you State's Exhibit 45.

16 A And that's just another miscellaneous document with
17 his name and address on it.

18 Q And let me show you State's Exhibit 46.

19 A That's his South Carolina issued identification card.

20 Q Okay.

21 A That was inside of his wallet.

22 Q And that was found in the book bag?

23 A Yes, sir. The wallet was inside the book bag.

24 Q And that book bag was found in Brandon Johnson's car?

25 A Yes, sir. And Brandon Johnson also advised that the

Jeff Kirby
Cross-examination by Mr. Morin

1 book bag belonged to --

2 MR. MORIN: Objection. This is hearsay.

3 THE COURT: Sustained.

4 Q And they was found in --

5 A Yes, sir. It was found in the back passenger
6 floorboard of the vehicle.

7 Q Thank you, sir. Answer any questions Mr. Morin may
8 have for you.

9 CROSS-EXAMINATION

10 BY MR. MORIN

11 Q Officer Kirby, how long have you been with the city
12 police?

13 A Fourteen years.

14 Q And how long have you been an investigator?

15 A Ten and a half years narcotics; two years criminal.

16 Q Can I see the pictures of the car?

17 A Sir, I didn't -- I am not a photographer. Those
18 usually fall to the forensics technician.

19 Q Okay. You were -- went out to this -- where this car
20 was located, correct?

21 A Yes, sir.

22 Q Officer Gallman went with you, is that correct?

23 A That is correct.

24 Q One or both of you had a smart phone, is that correct?

25 A That's correct.

Jeff Kirby
Cross-examination by Mr. Morin

1 Q And with that phone you could have taken a picture of
2 the vehicle you were searching, is that correct?

3 A Yes, sir.

4 Q Now, Mr. Johnson gave consent to search, is that
5 correct?

6 A Yes, sir. He did.

7 Q Did you do an inventory of the things you found in the
8 car?

9 A No, sir. We just recovered the book bag.

10 Q All right. Did you do an inventory or a list of what
11 you found in the book bag?

12 A No, sir, I didn't.

13 Q Were you present when the book bag was filled up with
14 these things?

15 A No, sir.

16 Q Other than you and Officer Gallman, did anybody else
17 go out to search for this?

18 A Yes, sir.

19 Q Who else?

20 A That would be Deputy Brad James and Deputy Nick
21 Hullinger.

22 Q Okay. So there was four of you.

23 A Just for jurisdictional issues, yes, sir.

24 Q Sure. They were in marked cars.

25 A Yes.

Jeff Kirby
Redirect examination by Mr. Barnette

1 Q Sheriff's deputies.

2 A Yes, sir.

3 Q Those cars have video cameras in them.

4 A I can't testify to that, sir. I don't work for the
5 sheriff.

6 Q Did your car have a video in it?

7 A No, sir. It does not.

8 Q So there were four officers there, and you searched
9 this car, but you didn't take any pictures of it. You
10 didn't take any videos of it. You didn't make any list of
11 what you found in the car or in the back.

12 A No, sir.

13 MR. MORIN: I have questions, no further questions.

14 MR. BARNETTE: One or two on redirect, Your Honor.

15 MR. MORIN: Your Honor, we have a motion.

16 THE COURT: Okay. Let me see it.

17 (Bench conference held off the record in the presence
18 of the jury but out of the hearing of the jury.)

19 REDIRECT EXAMINATION

20 BY MR. BARNETTE

21 Q Investigator Kirby, was this car, Brandon Johnson's
22 car, taken into evidence or taken in for processing?

23 A From my memory, no, sir. I don't believe it was.

24 Q Okay. Was you -- did you see where the book bag was
25 in the car?

Jeff Kirby
Redirect examination by Mr. Barnette

1 A Yes, sir.

2 Q Did you take the book bag out of the car?

3 A Yes.

4 Q So you took it out of the car?

5 A Yes, sir.

6 Q Was there pictures ever taken of the car?

7 A Not -- not that -- I can't testify to that. I'm --
8 I'm sure they were, but I don't -- again, I don't -- I
9 didn't take them.

10 Q Okay.

11 MR. BARNETTE: Your Honor, I'd like to have the
12 ability to recall this witness at a later time.

13 THE COURT: Okay.

14 MR. BARNETTE: That'd be all the questions at this
15 point, Your Honor.

16 MR. MORIN: No further questions.

17 THE COURT: You may step down.

18 MR. BARNETTE: Your Honor, at this point -- Your
19 Honor, there may be another witness we need to call. I'll
20 have to check and see on that.

21 THE COURT: All right. Let me ask the jury to please
22 go to your jury room. We'll make that determination and
23 then we'll bring you back and let you know. Don't discuss
24 the case.

25 MR. BARNETTE: Thank you.

1 (The following takes place outside the presence of the
2 jury.)

3 THE COURT: Your Honor, may I step out a second?
4 (Whereupon, a recess was taken.)

5 THE COURT: Does the state wish to recall any witness?

6 MR. BARNETTE: No, sir, not at this point.

7 THE COURT: All right. So you're going to rest?

8 MR. BARNETTE: Yes, sir.

9 THE COURT: All right. Mr. Morin.

10 MR. MORIN: Your Honor, defense is going to make a
11 motion for a directed verdict on two points.

12 One is there's no evidence that the B B & T
13 qualified -- no evidence has been introduced to say that
14 the B B & T is a bank, loan institution or what have you
15 pursuant to the statute.

16 I know that it may be common parlance, but that is an
17 essential element to the crime the same as saying that it's
18 in Spartanburg County to establish jurisdiction.

19 He called two -- the state has called two witnesses
20 who worked there, and they described what happened.
21 However, the state has to prove -- and in the indictment it
22 alleges -- that it is a bank, institution or something, and
23 they haven't introduced any evidence to that effect either
24 by testimony or by documentation that I'm aware of.

25 In addition to that it lists the victim as Kimberly

1 Cash. No one named Ms. Cash has testified. No name by
2 Ms. Cash has been testified to.

3 There were two other names, if I may, Greenway and
4 cheeks, I believe.

5 THE COURT: Veronica Cheeks.

6 MR. MORIN: Yes.

7 So for that reason we would move for a directed
8 verdict on those two things -- the victim that they allege
9 is not here, nor was she referred to, and they have not
10 established that it is a bank as required by the statute.

11 THE COURT: Mr. Barnette.

12 MR. BARNETTE: Your Honor, I believe the testimony
13 will show that this was a bank. Obviously, it meets the
14 requirements of the statute -- from their testimony this
15 teller -- teller working in the bank, as an individual
16 working in the bank, Your Honor.

17 Kimberly cash was listed on there, but the actual
18 victim is B B & T. In this situation she's listed as one
19 of the tellers there, Your Honor, and from that standpoint,
20 and I think it's sufficient to go forward on it from that
21 standpoint.

22 THE COURT: All right. Motion is denied.

23 Anything else?

24 MR. MORIN: No, Your Honor.

25 THE COURT: Is -- Mr. Morin, you talked to Mr. Cooper

1 about his right to testify or not?

2 MR. MORIN: We have, Your Honor.

3 THE COURT: And has he indicated to you a preference?

4 MR. MORIN: He indicates to me that he's not going to
5 testify, Your Honor.

6 THE COURT: All right. Mr. Cooper, Mr. Morin just
7 told me that you and he have discussed your right to
8 testify, as well as not testify, and that you have made the
9 decision that you will not testify. Is that true?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you had plenty of time to discuss
12 your right to testify, as well as not testify, with Mr.
13 Morin?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Has he explained to you the advantages and
16 disadvantages of testifying, as well as not testifying?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And do you appreciate what those
19 advantages and disadvantages are?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Did he explain to you that if you take the
22 witness stand and testify you have to answer all of the
23 questions to the extent that they're relevant as to not
24 just your lawyer but also asked by the prosecutor even if
25 the responses to those questions might tend to prove you

1 guilty of the crime they claim you committed?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Did he also explain to you that if you do
4 not testify I will instruct the jury they can't consider
5 that or hold that against you?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Have you had plenty of time to reflect
8 upon your decision as to whether or not you'll testify?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And have you reached a decision?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: What is it?

13 THE DEFENDANT: I will not testify.

14 THE COURT: And is that a decision that you've reached
15 of your own free will and accord?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You're satisfied with it?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you've had plenty of time to reflect
20 upon it?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Do you have any other
23 witnesses you want Mr. Morin to call?

24 THE DEFENDANT: No, sir.

25 THE COURT: All right. Anything else?

1 MR. MORIN: No, sir, not from the defense.

2 THE COURT: All right. I'm going to bring the jury
3 back.

4 We'll break for lunch. We'll discuss the charges and
5 then proceed after lunch.

6 Bring the jury back, please, ma'am.

7 (The following takes place in the presence of the
8 jury.)

9 THE COURT: Any further evidence to be offered by the
10 state?

11 MR. BARNETTE: No, sir. The state would rest.

12 THE COURT: All right. Any additional evidence to be
13 offered by the defense?

14 MR. MORIN: No, Your Honor. The defense will rest.

15 THE COURT: All right. Ladies and gentlemen, that is
16 all of the testimony and evidence to be offered in the
17 trial of the case, and therefore what remains to be done
18 are the lawyers' final summations, after which I'll
19 instruct you on the law. And then you can begin with your
20 deliberations in the case.

21 Because of the time we're going to break for lunch
22 now. We will resume with the final summations, my
23 instruction on the law and your deliberations. That will
24 begin at 2:00 o'clock this afternoon.

25 Keep in mind during the lunch recess you can't discuss

1 the case with anybody. Don't conduct any research; don't
2 do our own investigation; do not permit yourselves to be
3 exposed to any type of media coverage that might relate to
4 the case, whether that be television, radio or newspaper.

5 Do have a good lunch. Please report to your jury room
6 at 2:00 o'clock -- 2:00 o'clock this afternoon. Have a
7 good lunch.

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: All right. Court is in recess until
11 2:00 o'clock.

12 I need to see the lawyers in chambers for a charge
13 conference.

14 (Whereupon, a recess was taken.)

15 MR. BARNETTE: Your Honor, may I approach real quick?
16 (Pause.)

17 THE COURT: All right. Ready for the jury?

18 MR. BARNETTE: The state is ready, Your Honor.

19 MR. MORIN: The defense is ready.

20 THE COURT: All right. Bring them in.

21 (The following takes place in the presence of the
22 jury.)

23 THE COURT: Good afternoon, ladies and gentlemen.

24 As you know, all of the evidence is in. You're going
25 to hear from the lawyers in their final summations. And

Closing arguments

1 after that I'll provide you the legal instruction. And
2 then you'll begin with your deliberations.

3 So please give the lawyers your attention now as they
4 give you their final summations.

5 Mr. Barnette.

6 MR. BARNETTE: May it please the Court, Your Honor.
7 Madam forelady and ladies and gentlemen of the jury, I want
8 to take a minute to thank y'all for being here, because
9 you're an important part of the system. You're basically
10 the people that make decisions. You're the judges of the
11 facts in this case.

12 Going through this case, and you've heard the evidence
13 in this case. Every piece of evidence in this case points
14 to one person that did this bank robbery -- Terry Cooper.

15 You'll have this evidence with you. You're going to
16 have his written statement. You'll the video tape that
17 showed you his statement.

18 And he tells you details that nobody else would know.
19 He tells you about going into the bank, about what he was
20 wearing, the mask, the hoodie, the gloves.

21 He goes in and tells you about going in and the two
22 tellers, a white teller and a black teller. He tells you
23 about this one lady, the first teller, giving him the
24 money. The second teller said do you want some more money
25 and gives him the money, and he reaches over.

closing arguments

1 He talks about going out of the bank, thought he was
2 shot, had the dye pack and all. He could feel the burning.

3 And you'll have the pictures there. I know you looked
4 at them a couple of times already, but you'll have them
5 back there with you showing where the red dye exploded and
6 burned his stomach.

7 You'll have the hoodie back there where the red dye
8 pack went off, where the money was still inside. And we've
9 got a picture showing you that. Also, showing where it
10 burned through the hoodie and where the red dye went on his
11 stomach.

12 And you heard Ms. Cheeks talk about the note given to
13 them. And you've got the note back there. Read it. And
14 then he handed that note to them saying, "I have a gun. I
15 will kill you." And you see how it affected her.

16 You can see watching through the video what they went
17 through. It was a short period of time. I'm sure it
18 seemed like a lifetime for them. Something that happened
19 in less than a minute probably seemed like an eternity
20 going through that. And she even showed that to you
21 through her testimony.

22 And then you had Mr. Steadings that described exactly
23 what the defendant said in his statement. Comes out, and
24 then he sees him coming out, and he saw the dye pack going
25 off. He saw this fellow. First he didn't know what it

Closing arguments

1 was. when he saw the dye pack he said I knowed it was a
2 bank robbery then.

3 He followed the defendant going down the hill just
4 like the defendant described. And the defendant had told
5 you. Brandon Johnson, the other defendant involved in this
6 case, the police didn't even know about him until he was
7 told by the defendant.

8 And they told him where to find the bag and all of the
9 items in there. You'll have three of these items back
10 there. Of course you saw the items like the gamecock
11 shirt, the cross, the watch, everything, as well as a piece
12 of identification you'll have back there, as well as his
13 license and his wallet in the car that he said they was
14 there.

15 All of the evidence, ladies and gentlemen, points to
16 only one conclusion, that the defendant committed this
17 crime. He even told you his own words.

18 The one thing Mr. Steading said. He saw him go down
19 the hillside and come back out and he took the shirt off.
20 And remember he told you he took his gamecock shirt. He
21 basically just takes his hoodie off which would be
22 consistent with the burn and everything on his chest, the
23 burn mark.

24 And Mr. Steadings said he went down the railroad
25 tracks and took a right down Magnolia Street, exactly where

Closing arguments

1 the police found him.

2 And you remember this crime happened around
3 4:00 o'clock. He started giving a statement at 4:26.
4 That's when they started writing on the waiver. And you
5 saw that on the tape.

6 I mean, this happened very quickly. They caught him
7 very quickly. They brought him in. And you can watch that
8 interview. It was one of the most kinder interviews.
9 Basically said just what happened.

10 He read him his rights, gave him the information,
11 didn't force him to do anything. That's what I like people
12 to see, to see what actually happens. You hear all of
13 these stories, but you saw what happened in the interview.
14 And you saw the defendant go not once through the story but
15 go a second time, where the officer wrote it down, read it
16 back to him and let him read over it and everything. He
17 knowed he had trouble reading, so he read it to him to make
18 sure that it was right. And you'll have that, State's
19 Exhibit No. 7.

20 Ladies and gentlemen, say if it quacks like a duck,
21 walks like a duck, it's a duck. And that's what this is,
22 ladies and gentlemen. It was a bank robbery, and it is a
23 bank robbery, and the man that committed that bank robbery
24 is Terry Cooper.

25 Like I said, I don't know what the defense -- they're

Closing arguments

1 going to get a chance to speak to you last. But you have
2 this evidence here, and all of this evidence.

3 They can talk about D.N.A. They can talk about all of
4 this, everything else. And you might say, well, you know,
5 they should have done that. Well, all of us thinks later
6 we should have done something. We can always second-guess.

7 But the problem is, ladies and gentlemen, there's no
8 question that this man committed this crime. He told you
9 in his own words. All of the evidence presented in this
10 case is consistent with everything he said. And there's no
11 way he could know this story unless he lived it. And,
12 unfortunately, he lived it that day.

13 He was the one that went in that bank, of the two
14 tellers, handed the note to them, took the money and stole
15 that money.

16 He committed bank robbery, ladies and gentlemen. Like
17 I told you earlier in my opening that I was going to return
18 back to you and ask you for that verdict, ladies and
19 gentlemen, I ask you for a verdict of guilty in this case.
20 And thank you again for your service.

21 Thank you, Your Honor.

22 THE COURT: Mr. Morin.

23 MR. MORIN: Ladies and gentlemen, when I stood up
24 before you at the beginning I said that Mr. Cooper had a
25 right to make the government prove the case against him.

Closing arguments

1 It was their burden.

2 So when Mr. Barnette says the government has proven
3 all of the evidence points to Mr. Cooper, I would expect as
4 much. That's what his burden was.

5 Now, I'm just going to go through a couple of things,
6 because during the course of the trial you might have
7 noticed most of the time I just had a few questions for
8 each person. But what I'm interested in and what I was
9 interested in at the beginning was, is what's not done.

10 Now, Mr. Barnette is correct when he says, well, I
11 know the defense is going to make things like handwriting
12 samples -- okay. I didn't make that up. They did it after
13 this statement they said they got. They did it. And then
14 they didn't do it.

15 And he says, you know, we want you to see everything.
16 Well, let's talk about Officer McClure. Officer McClure is
17 on East Main Street. And he's doing what? According to
18 his testimony he's out there working speed trap. Now, he's
19 working a speed trap. Whether he's in a marked car or not,
20 he's got a camera in his car. So you saw when he stopped
21 Mr. Cooper, right?

22 MR. BARNETTE: Your Honor, I'm going to have to
23 object. I don't think that was a fact went into in this
24 case.

25 MR. MORIN: He said he was working a speed trap.

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1 MR. BARNETTE: I don't think he mentioned anything
2 about a camera being in the car.

3 THE COURT: No, oh, yeah. Be sure -- well, be sure
4 you limit your argument to the facts in evidence.

5 MR. MORIN: So he's working.

6 Now, did he say anything? No, he didn't say anything.
7 Did you go with him. No, I didn't go with him.

8 When the statement starts the first thing Officer Tapp
9 says is you know why we're here. Now, somebody told him
10 why he was under arrest, but we don't know. I asked him
11 did anybody tell him that. I don't know. Don't know.

12 We've got 26 or 27 pictures. A lot of them are
13 repetitive. We have no pictures of the car.

14 They talk about the book bag. Okay. So Mr. Cooper
15 knew Mr. Johnson and his property. He had property at the
16 mission too. But that's not evidence that he did anything
17 in this case. That's evidence that he knows Mr. Johnson
18 who the state has repeatedly said he's not here and he's
19 not on trial.

20 So then there's other questions I have, and they might
21 be small. Detective Officer Edwards collected the gloves.
22 And said, well, didn't you write down and didn't you
23 initial and say these were brown when they're really black.
24 And she said, no, I never said that.

25 Well, then we see her report Mr. Barnette gave her.

closing arguments

1 They -- she did write that down. And we say all right.

2 I asked Officer Korkett about you say that this is dye
3 but you haven't tested it. No. And you say it burned
4 through this cloth. Yes. But it didn't burn the money.

5 This was her testimony. She said to me without any
6 other request. As you know, money is not paper. It's
7 cloth. Well, if the money is cloth why doesn't it burn the
8 same as the other cloth that they say is the hole that
9 caused it?

10 Now, in listening to the state and what they had to
11 say about off Mr. Steading, I asked him and he said, when
12 he went over there he saw someone come out from under the
13 bridge.

14 Now, this is the way I wrote it down in my notes, but
15 you go with the way you remember it. But he said it came
16 out from under the bridge. Mr. Barnette says what did you
17 say. Said he looked at me. And I asked him what was he
18 wearing, and he said he didn't have his shirt on and he ran
19 down there.

20 My questioning and in the government's testing --
21 questioning he never said I saw him throw anything down.
22 He said it came out from under the bridge, which when you
23 look at 20 something pictures you'd have to slide down,
24 take a right and go under the bridge, and back out.

25 And according to Mr. Steading, he's topless there. He

Closing arguments

1 had no shirt on. And he ran down the tracks. But
2 according to the other people they're saying, no, this was
3 where we found the stuff here by this rock pile. It's on
4 the Magnolia side of the bridge.

5 And I'm not entirely sure. I never was. And I tried
6 to get him to explain to me how he came down North Church
7 Street and turned into Bob Bennett's, parked, got out, went
8 around his truck and was still able to see this person who
9 he said was running, and I imagine at a fairly good clip,
10 and jumped down and then saw that between the building and
11 the crape myrtle. And then he got over there in time but
12 couldn't see him. But apparently he came -- he went under
13 the bridge and came back.

14 They took some fingerprints and they checked the note.
15 And the question was whether he was wearing gloves. But I
16 don't know who was wearing gloves when the note was
17 written. And they didn't look for the fingerprints
18 anywhere else other than they had a mask and they had some
19 other items.

20 They kind of just went on from there. And those
21 things were done after the statement. It's not like they
22 were looking for something. And they rely heavily on the
23 statement. And they go, well, see this and this. But then
24 they continue to do some stuff a day, two days after and
25 then stop. Why did they stop?

Jury charge

1 You know, I -- I have four children, and I ask a lot
2 of these why questions, and they say to me, you know, why
3 questions are really aggravating, daddy, and I say I know.
4 But sometimes the why question, the answers to the whys or
5 the failure to answer the whys, are much more telling than
6 anything else. And that's why I asked him. I asked him to
7 protect his rights. I asked him because they have to prove
8 it.

9 Mr. Barnette says that he didn't enter any evidence
10 that didn't prove his case. Well, yeah, but has he proven
11 his case beyond a reasonable doubt? That's what we ask,
12 that you look at the evidence and discuss these things that
13 they didn't do as well as when they did them or how this
14 happened.

15 And we appreciate your attention during this trial.
16 Thank you.

17 THE COURT: Madam forelady and ladies and gentlemen,
18 you of course have heard and seen all of the evidence.
19 You've now heard the final summations of the lawyers. And
20 therefore it now becomes my duty and obligation to instruct
21 you on the law that's applicable in this case.

22 Then you'll go back into your duty room. And through
23 the exercise of good judgment and common sense
24 conscientiously applied to the testimony and evidence in
25 the case you'll determine the facts based upon -- and

Jury charge

1 relevant to the allegations made, you'll apply the law and
2 you will arrive at a fair and just decision, whatever that
3 decision may be.

4 It is your exclusive duty to determine what the facts
5 are, and you do that through your own common sense
6 examination and evaluation of all of the testimony and the
7 other evidence received during the course of this trial.

8 You 12 jurors alone will decide what weight, value and
9 effect to give to any particular witness' testimony and
10 what weight you'll give to any other evidence that has been
11 introduced during the course of the trial. But your
12 ultimate obligation and duty is to simply reach a fair and
13 impartial decision. By doing that you will have fulfilled
14 your obligations as jurors in the case.

15 Now, as you know, in this case the defendant has been
16 accused of having committed the crime of what's referred to
17 in the indictment as bank robbery. It's actually a
18 violation of Section 16-11-380 of the Code of Laws of South
19 Carolina.

20 The state alleges that on or about June the 3rd of
21 2015 the defendant, Terry Cooper, did enter a building or
22 part of a building which was being occupied as a bank,
23 depository or savings and loan association. In particular,
24 they allege it was B B & T located on North Church Street
25 in Spartanburg.

Jury charge

1 They further allege that he entered that building with
2 the intent to steal money, securities for money or property
3 by either force, intimidation or threats and that he did,
4 in fact, receive currency by demanding it from the teller
5 with the intent to deprive the true owner of possession of
6 the property.

7 As to those allegations and as to that charge the
8 defendant has entered a plea of not guilty. As I told you,
9 that plea of not guilty has placed upon the state the
10 burden of proving the allegations that they have made by
11 way of the indictment, the burden of proving each of the
12 essential elements of the crime that is alleged in the
13 indictment; and therefore the burden is upon the state to
14 establish the defendant's guilt to the satisfaction of you
15 12 jurors beyond a reasonable doubt before any such verdict
16 could be returned.

17 Madam forelady, the indictment, along with all of the
18 other evidence, will be in the jury room, but the
19 indictment is simply going to serve as the verdict form.

20 It's not evidence of anything; it's not proof of
21 anything; it doesn't establish anything. It's merely the
22 formal method by which a person is brought into this court
23 and put to trial on a particular charge.

24 It serves to put the defendant on notice as to what
25 charge the state claims he committed, and it will serve as

Jury charge

1 the verdict form because it's on the back of the indictment
2 in the lower left-hand corner you'll see when you get it
3 back there the word verdict. And it's beneath that word
4 that you'll indicate the jury's unanimous decision in the
5 case. But other than serving as the verdict form the
6 indictment serves no purpose so far as you jurors are
7 concerned.

8 As I told you, the defendant has entered a plea of not
9 guilty, and therefore that places upon the state the burden
10 of proving his guilt beyond a reasonable doubt.

11 The burden is never upon a person accused of a crime
12 or charged with a crime to prove that they are not guilty
13 or to prove that they are innocent, because in some cases
14 that might not be possible. The burden is always upon the
15 state because they brought the charge against the defendant
16 to establish his guilt beyond a reasonable doubt.

17 Every person accused of a crime is presumed to be
18 innocent. That presumption of innocence remains with any
19 defendant, as it does with Mr. Cooper, from the time that
20 he is placed under arrest and throughout the course of the
21 criminal process and even throughout the course of the
22 actual trial that has just been had.

23 That presumption of innocence will be with Mr. Cooper
24 even as you go back into your jury room to begin with your
25 deliberations in the case. That presumption of innocence

Jury charge

1 will be with him in that jury room, and it will be with him
2 forever unless you 12 jurors determine that he's no longer
3 entitled to that presumption of innocence.

4 In other words, after you've carefully considered all
5 of the evidence in the case, and from that evidence you
6 determined the facts, and upon determining those facts you
7 apply the law that I will have provided you, if you 12
8 jurors unanimously determine that his guilt has been proven
9 beyond a reasonable doubt, then he would no longer be
10 entitled to that presumption of innocence. But it is only
11 if, unless and until you are satisfied of his guilt beyond
12 a reasonable doubt that the presumption of innocence would
13 no longer be applicable.

14 Now, while the state does have the burden of proving a
15 defendant's guilt beyond a reasonable doubt, that doesn't
16 mean that they have to prove his guilt beyond all doubt or
17 beyond any possible doubt. But it does require the state
18 to prove his guilt to your satisfaction beyond a reasonable
19 doubt.

20 The term reasonable doubt should be given its plain
21 and ordinary meaning. A reasonable doubt is the kind of
22 doubt that would cause a reasonable person to hesitate to
23 act upon the information provided.

24 A defendant in a criminal trial is entitled to any
25 reasonable doubt that arises from the evidence or lack of

Jury charge

1 evidence in a case. And if upon any factual issue
2 essential to a finding of a verdict of guilty you have some
3 reasonable doubt as to how that issue should be resolved it
4 would be your duty to resolve that reasonable doubt in
5 favor of the defendant. And therefore if upon your
6 consideration of the whole case you have a reasonable doubt
7 as to his guilt, you must resolve that reasonable doubt in
8 his favor and return a verdict of not guilty.

9 And, at the same time, after you've considered the
10 evidence, decided the facts and applied the law, if you
11 have no reasonable doubt as to his guilt, then it would be
12 your corresponding duty to find him guilty of the crime
13 where it has been established to your satisfaction beyond a
14 reasonable doubt.

15 The same law that provides that you are the judges of
16 the facts also provides that I am the judge of the law.
17 That simply means that nobody's going to tell you how to --
18 how you are to arrive at your determination of fact in this
19 case. You do that, as I've already stated, through the
20 exercise of good judgment and common sense conscientiously
21 applied to the testimony and evidence in the case.

22 You must however under your oath as a juror accept the
23 law as I provide it to you as being the law that you are to
24 apply in the case. In other words, you're never to concern
25 yourself with what you thought the law was before you came

Jury charge

1 to serve as a juror this week or what you think the law
2 ought to be.

3 You must simply accept the law as I provide it to you
4 as being the law that you are to apply in the case. And
5 then you take that law and you apply it to the facts as you
6 12 jurors determine those facts to be based upon your
7 common sense examination of all of the testimony and other
8 evidence received during the course of the trial.

9 Because you are the sole judges of the facts in this
10 case you are therefore necessarily the sole judges of the
11 credibility and the believability of any witness that has
12 testified during the course of this trial or provided any
13 statement, whether it be in court or outside of court.

14 There are several factors which you should consider in
15 arriving at your assessment or your evaluation as to a
16 witness' credibility. I'm going to list those factors for
17 you.

18 You should consider the demeanor of the witness. That
19 is how the witness appeared to you when the witness
20 testified from that witness stand.

21 Was the witness straightforward in responding to
22 questions, or was the witness hesitant or evasive in
23 responding to questions that were put to the witness?

24 Simply put, did the witness appear to you to be
25 telling the truth and to have knowledge of the facts to

Jury charge

1 which that witness has testified?

2 You should also consider whether or not the testimony
3 of a witness is consistent, or is it inconsistent, with
4 that witness' own testimony or with other testimony or
5 other evidence received during the course of the trial.

6 You should also consider how the witness came to know
7 the facts to which that witness has testified. In other
8 words, what was a witness' opportunity to perceive the
9 existence of those facts to which that witness has
10 testified, and then what is that witness' ability to be
11 able to come into court and to accurately recollect to you
12 as what they have previously perceived.

13 You should also consider any bias or prejudice or
14 interest that a witness might have with regard to the
15 outcome of the case.

16 In other words, do you find some reason that a
17 particular witness would testify one way or another to help
18 or hurt one side or the other. And you may consider any
19 interest that a witness might have in the outcome if you
20 determine that a witness does have such an interest and you
21 find that that interest would bear upon that particular
22 witness' credibility.

23 You should also consider whether or not the testimony
24 of a witness is strengthened, or is it weakened by other
25 testimony or other evidence received during the course of

Jury charge

1 the trial.

2 Now, because you are the finders of the fact and you
3 are the judges of the credibility of each witness you are
4 permitted to believe as much or as little of what a witness
5 has testified to as you deem is appropriate, and therefore
6 you may believe everything that a witness testified to.
7 You may choose to believe none of it.

8 You may believe one portion of a witness' testimony
9 and reject some other portion of that same witness'
10 testimony.

11 In a given case you could believe one witness as
12 opposed to several, or several as opposed to one. But
13 whatever your good judgment and common sense tells you is
14 the most believable and credible testimony and evidence is
15 that which you should accept. And you should reject any
16 testimony or other evidence that you find not to be
17 credible or believable.

18 Again, your sole objective is to simply render a fair
19 and impartial decision based upon the evidence, your
20 determination of fact and then your application of the law
21 as I will provided it to you.

22 Now, as you know, the defendant has been accused of
23 the crime, what's been referred to as bank robbery. It's a
24 statutory offense. And that just means it is contained in
25 these Code of Laws of South Carolina.

Jury charge

1 Every year beginning in January until June the
2 legislature meets, and they pass a number of laws and rules
3 and regulations that govern our conduct in a variety of
4 ways. But some of those laws are criminal-penalty
5 statutes, and that just means that they prohibit us
6 engaging in a particular type of conduct. And where they
7 make it criminal, that is they provide a penalty for
8 engaging in that conduct in violation of the statute, then
9 where a person is found guilty of violating that statute
10 they are subjected to some form of punishment or penalty.

11 But please understand that you are never to be
12 concerned with punishment or penalty that might result from
13 a decision that you make. Your sole obligation and duty is
14 simply to determine whether or not the defendant has been
15 proven guilty beyond a reasonable doubt of the violation of
16 this statute. And you should do that without consideration
17 being given to any consequence of that decision.

18 But, as I've stated, the defendant is charged with
19 having violated Section 16-11-380 of the South Carolina
20 Code of Laws. And that particular code section provides
21 that it is unlawful for a person to enter a building or
22 part of a building occupied as a bank, depository or
23 building and loan association with intent to steal money or
24 securities for money either by force, intimidation or
25 threats.

Jury charge

1 In order for the defendant to be found guilty of a
2 violation of this particular section of law the evidence in
3 this case must establish to your satisfaction beyond a
4 reasonable doubt that, first, Terry Cooper entered a
5 building being occupied as a bank, depository or a building
6 and loan association; that at the time he entered that
7 building he did so with an intent to steal money and
8 intended to steal money either by force, intimidation or
9 threats.

10 The term intent refers to the state of a person's mind
11 which directs his actions towards a specific object or
12 goal. To prove a crime it must be shown that the defendant
13 acted with a criminal intent.

14 Criminal intent is a state of mind that operates
15 jointly with an act in the commission of a crime. Criminal
16 intent is a mental state of conscious wrongdoing in
17 contrast to the commission of an act which is the result of
18 accident, inadvertence or mistake.

19 In this particular case it must be shown that the
20 defendant acted with the intent to steal money from a bank,
21 depository or savings and loan association.

22 To steal means to knowingly take money or property to
23 which the taker is not entitled with the intent to convert
24 that property to the taker's own use to the exclusion of
25 the rights of the true owner.

Jury charge

1 Criminal intent, just like any other element of the
2 crime, may be proven by direct evidence or circumstantial
3 evidence or a combination of evidence. And intent may be
4 inferred from acts, declarations and conduct of the
5 defendant, as well as any other circumstances shown to have
6 existed at the time of the event from which you might
7 reasonably infer the element of criminal intent, as often
8 the state of a person's mind can only be proven by
9 circumstantial evidence.

10 The intent to steal, which must be proven, must also
11 have been accompanied by either force, intimidation or
12 threats. Force, intimidation or threats means that a
13 person intends to accomplish the theft of money through the
14 use of force or the threat of the use of force. That is to
15 say by way of intimidation.

16 Taking property belonging to another with an intent to
17 steal it by forcing a person to surrender possession of the
18 property or by causing a person to surrender possession of
19 the property by putting that person in fear through
20 intimidation constitutes a stealing by force, threats or
21 intimidation.

22 I instruct you further, and I emphasize to you, that
23 the fact that a defendant does not testifying during the
24 course of the trial is not a circumstance that may be
25 considered by the jury in any way whatsoever in your

Jury charge

1 deliberations or in your determination as to whether or not
2 his guilt has been proven beyond a reasonable doubt.

3 You may not allow such a fact to weigh in the
4 slightest degree against the defendant. As I have already
5 stated, the burden is upon the state to establish his guilt
6 beyond a reasonable doubt.

7 The burden is never upon a defendant to prove that he
8 is not guilty or to prove that he is innocent, and
9 therefore you may not draw any inference nor draw any
10 conclusion from the fact that a defendant does not testify
11 during the trial of the case, nor may that fact even be
12 discussed by the jury while you are engaged in your
13 deliberations.

14 Now, Madam Forelady and ladies and gentlemen, I am not
15 in any way concerned with what your decision is, but I do
16 tell you that your verdict must be unanimous. All 12 of
17 you must be in agreement before any decision may be
18 rendered.

19 In this particular case you have two potential verdict
20 forms. Those two potential verdict forms are guilty and
21 not guilty.

22 So whatever that decision is, Madam Forelady, once you
23 have reached that unanimous decision, I'll ask that you
24 indicate that decision in the space provided in the lower
25 left-hand corner of the back of the indictment. You'll

Jury charge

1 sign your name as the foreperson. You're the only juror
2 that needs to sign the verdict form. And there's also a
3 place for the date.

4 Now, during your deliberations there may come a time
5 where you have some question about the evidence. You may
6 even wonder if there's something else out there that you
7 could have, or you may have an idea that there's something
8 that could help you and want to know if it exists if you
9 can have it.

10 Please understand that now that you're going back to
11 begin your deliberations no additional evidence may be
12 received. So even if something exists out there that you
13 think would be helpful, it can't be introduced now because
14 the case is closed. So don't inquire about any potential
15 additional evidence because I simply can't allow you to
16 have it.

17 If you think something was introduced that you don't
18 have in the jury room, you let me know. But I will have
19 the lawyers and the court reporter confirm all of the
20 exhibits which have been introduced before they go back to
21 you. But if you think for some reason you haven't received
22 something that was introduced during the trial, let me
23 know.

24 If at any time you have some question about testimony
25 of a witness, I do not have transcripts of the witnesses'

Jury charge

1 testimony. But if you need to have a witness' testimony
2 replayed in whole or in part we can bring you back into the
3 courtroom to have that witness' testimony reheard. And
4 we'll do it in its entirety or only part of it if that's
5 all you need.

6 If at any time during your deliberations you have some
7 question about the law that is applicable, I am permitted
8 to answer those questions. And so should you need to have
9 a re-instruction or you need another explanation or
10 clarification of the law that I provided, I am permitted to
11 provide you with that additional instruction or explanation
12 or clarification.

13 Madam Forelady, if at any time during your
14 deliberations you have some matter that needs to be
15 addressed to me, if you'll simply write it on a piece of
16 paper, provide it to the bailiff, he or she will provide it
17 to me, and I will address that issue or respond to that
18 question.

19 As I say, once you've decided the case you'll indicate
20 the verdict on the back of the indictment. You'll notify
21 the bailiff that you've reached a decision.

22 Don't tell him what it is and don't give him the
23 verdict form. You hold on to the indictment or the verdict
24 form. I'll receive that from you, Madam Forelady, after
25 the jury is brought back into the courtroom at the time

Jury charge

1 that we receive your verdict.

2 I don't know if we have smokers on the jury. If we
3 do, you can smoke, but you can't smoke in the jury room.
4 You have to go outside to accomplish that. But you are
5 instructed that should a juror be absent for any authorized
6 purpose the deliberations have to stop. They may only
7 resume when all 12 jurors are present in the room so that
8 all may participate in those deliberations.

9 The video that was introduced into evidence will be
10 sent back along with a computer. I just assume that
11 somebody out of the 12 can figure out how to operate that.
12 But if for some reason you can't, you let me know. I'll
13 get my three-and-a-half-year-old granddaughter to come and
14 fix it for you. I have no ability to work them myself. I
15 always get help when I need it. So if you can't work it,
16 let me know. We'll get somebody in there to help you with
17 that.

18 All right. With the exception of Mr. Green, I'll ask
19 the original 12 jurors to please retire to your jury room.
20 But do not begin your deliberations until I send you word
21 to do so.

22 (whereupon, the jury retired to deliberate at
23 2:55 p.m.)

24 (whereupon, the alternate juror was excused.)

25 THE COURT: Are there any exceptions taken to the

Jury charge

1 instruction or requests for additions to the instruction by
2 the state?

3 MR. BARNETTE: None from the state, Your Honor.

4 THE COURT: By the defendant?

5 MR. MORIN: Yes, Your Honor.

6 THE COURT: What is it?

7 MR. MORIN: When you read the indictment, while you
8 did instruct them that it's not evidence, you dropped out
9 Kimberly Cash's name from the indictment. We take
10 exception to that as it was the basis for our directed
11 verdict, or one of the bases.

12 THE COURT: Well, I understand, but the indictment
13 alleges that she is the teller of the victim, which is B B
14 & T, so.

15 MR. MORIN: I understand.

16 THE COURT: Okay. Well, note your exception.

17 MR. MORIN: Thank you.

18 THE COURT: All right. Let me ask y'all to verify the
19 exhibits before they go back, please.

20 (Pause.)

21 THE COURT: All right. All of the exhibits are
22 accounted for?

23 MR. BARNETTE: Yes, sir.

24 MR. MORIN: Yes, Your Honor.

25 THE COURT: All right. Send them back. Tell the jury

Verdict

1 to begin deliberations and notify us when they have
2 concluded.

3 We'll be at ease while is jury is deliberating.

4 (Whereupon, a recess was taken.)

5 THE COURT: I'm told the jury has reached a decision.
6 Are we ready to receive it?

7 MR. BARNETTE: The state is ready, Your Honor.

8 MR. MORIN: The defense is ready.

9 THE COURT: All right. Bring them in, please.

10 (Whereupon, the jury returned to the courtroom at
11 3:38 p.m. to report its verdict.)

12 THE COURT: Madam Forelady, have you and your fellow
13 jurors reached a unanimous decision?

14 THE FOREPERSON: We have.

15 THE COURT: Did you reflect it on the verdict form as
16 requested?

17 THE FOREPERSON: Yes, sir.

18 THE COURT: Have you signed it and dated it?

19 THE FOREPERSON: Yes, sir.

20 THE COURT: If you will, please hand that up by way of
21 the bailiff.

22 You may publish the verdict.

23 THE CLERK: Indictment No. 2015-GS-42-3353, the State
24 of South Carolina vs. Terry Cooper, indictment for bank
25 robbery, we, the jury, find the defendant guilty. Signed

Sentence

1 by the foreperson on March 15th of 2016.

2 Ladies and gentlemen of the jury, if this is your
3 verdict and still your verdict will you please raise your
4 right hand?

5 (Whereupon, all jurors responded in the affirmative.)

6 THE CLERK: So say you all.

7 THE COURT: Does the defendant wish to have the jury
8 polled?

9 MR. MORIN: No, Your Honor.

10 THE COURT: Any other matters we need to address with
11 the jury present?

12 MR. MORIN: No, Your Honor.

13 (Whereupon, the trial jury was excused.)

14 THE COURT: Any matters to address prior to the
15 imposition of sentence?

16 MR. MORIN: No, sir.

17 THE COURT: Do you want to tell me about Mr. Cooper's
18 record?

19 MR. BARNETTE: Yes, sir. I've already entered as
20 Court's Exhibits 3, 4, 5 and 6, Your Honor, and 7.

21 He was found guilty of common-law robbery, Your Honor,
22 and received a 15-year sentence. That was in 2006, Your
23 Honor.

24 On 88-GS-21-583, which is Court's Exhibit 4, Your
25 Honor, he pled guilty to ABWIK and burglary second degree,

Sentence

1 Your Honor. Let me make sure I read this right. Judge
2 Sydney Floyd sentenced him at that time, Your Honor. He
3 was given 18 years on the ABWIK or assault and battery with
4 intent to kill, Your Honor. And then he was given ten
5 years consecutive on the burglary second degree, so a
6 sentence of 28 years on that, Your Honor.

7 Court's Exhibit 4, Your Honor, he pled to conspiracy
8 to commit armed robbery, Your Honor. That was on March of
9 1984.

10 The other one, Your Honor, he pled guilty, the
11 previous assault and battery with intent to kill, as well
12 as the burglary second. He was sentenced on it in 1988.

13 The conspiracy to commit armed robbery was 1984, Your
14 Honor. He received five years concurrent with another
15 conspiracy to commit robbery, Your Honor, on that. So it's
16 five years concurrent on both of those charges, Your Honor.

17 And then indictment No. 83-GS-21-168, Your Honor, he
18 pled -- was found guilty. Never pled guilty to that, Your
19 Honor. Pled guilty, Your Honor, but I do not see the
20 sentence on it. I'm trying to find. But he was convicted
21 of it that year.

22 May I pass these up to you, Your Honor?

23 THE COURT: Sure.

24 Mr. Morin.

25 MR. BARNETTE: I'm sorry. According to his rap sheet

Sentence

1 he pled in 1983 to grand larceny and received six years
2 suspended to one year, plus three years probation on that.
3 Thank you, Your Honor.

4 THE COURT: Mr. Morin, anything you would like to add?

5 MR. MORIN: Your Honor, Mr. Cooper is 53 years old.
6 He's been in jail 296 days since his arrest on June the
7 4th. I was appointed to represent him on August the 15th.
8 I've met with him numerous times. He's been given a copy
9 of the discovery. We both have gone over it.

10 And as far as -- he does not have any family, as you
11 heard in the statement. His parents have passed. He does
12 not have any children. His family, some extended family,
13 lives in New York. But that's where he is.

14 His only real friend that I've been able to determine
15 is some of the people that were working with him at the
16 ministry that he also described on the statement.

17 THE COURT: Mr. Cooper, anything you want to add?

18 THE DEFENDANT: No, sir, Your Honor.

19 THE COURT: On Indictment 2015-3353, an indictment for
20 entering a bank with intent to steal, Sentence of the Court
21 is -- wherein, you have been found guilty by a jury --
22 Sentence of the Court is you, Terry Cooper, be confined to
23 the South Carolina Department of Corrections for a period
24 of 28 years.

25 Mr. Cooper, you have a right to appeal the verdict of

Sentence

1 the jury and the Sentence of the Court. You must file any
2 notice of your intent to appeal those decisions within ten
3 days of today's date. Mr. Morin will provide you with some
4 advice on that.

5 MR. BARNETTE: Thank you, Your Honor.

6 Just one other matter, Your Honor. We did not put the
7 cash into evidence. We both agreed that if we didn't do
8 that -- there's was a watch that he wanted back -- the
9 defendant. We're willing to release that watch back to the
10 defendant to be taken back in his property. We have taken
11 a picture of that watch.

12 MR. MORIN: I think we also have some pictures of the
13 cash as well.

14 MR. BARNETTE: We do.

15 THE COURT: All right.

16 (Whereupon, the watch was released to the officer to be
17 taken to jail with the defendant.)

18 END OF REQUESTED TRANSCRIPT OF RECORD

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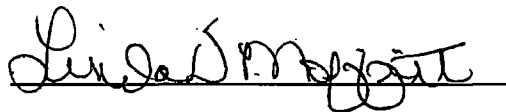
Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 14th and 15th days of March 2016.

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

June 30, 2016

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF Spartanburg)Terry Cooper, # 118061)

Full name and prison number (if any) of Applicant.)

2018CP4200868

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

Dept OF Corrections)William R. Byars, Jr.)Director.
INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Inst.
2. Name and location of Court which imposed sentence F-3 Room NO. 150 - 386 Redemption Way McCormick, SC. 29899
3. Name(s) of co-defendant(s) (if any) Court of General Sessions
4. Spartanburg County, S.C.
5. Name(s) of co-defendant(s) (if any) Brandon K. Johnson,
6. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2018-GS-42-3353 Bank Robbery
 - (b) _____
 - (c) _____
7. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 18, 2016
 - (b) NON-Violent 28 years

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. October 18, 2017
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Opinion has no Precedential Value
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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SOUTH CAROLINA COUNTY

- (a) Ineffective Assistance OF Trial Counsel
- (b) Prosecutorial Misconduct
- (c) Trial Judge Committed Error OF law

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

- (a) See "Attachment"
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. N/A
 - ii. _____
 - iii. _____

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 CLERK OF COURT
 STATE OF SOUTH CAROLINA
 J. HOPE BLACKLEY

- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- 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) Ineffective Assistance of Trial Counsel
- (b) Prosecutorial Misconduct
- (c) Trial Judge committed error of law
See "Attachment"
17. Were you represented by an attorney at any time during the course of:

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- (a) your arraignment and plea? N/A
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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

(a) the name and address of each attorney who represented you:

- i. Michael D. Morin,
- ii. Post Office Box 161903 Boiling Springs, S.C. 29316
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Jackson vs. Danna hearing
- ii. Trial
- iii. _____

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 CLERK OF COURT
 SHERBORN COUNTY

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

Reversal of conviction & Dismissal of Indictment
And also replace watch that S.C.D.C. took.

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

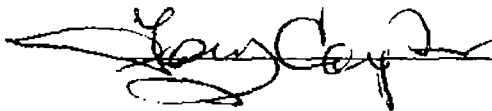
NO

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, Terry Cooper No. 118561, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 07 day of March, 2018.

 (L.S.)
Notary Public

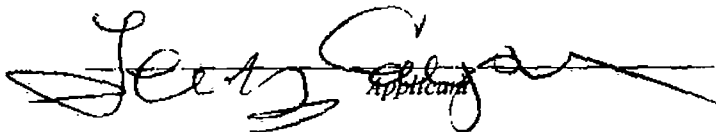
My Commission Expires: 12-16-2019

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SPARTANBURG COUNTY
M. HOPE BLACKLEY

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

I, Terry Cooper No. 118061, 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
07 day of March, 2018.


Notary Public

My Commission Expires: 12-16-2019

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SPARTANBURG COUNTY
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Facts Which Support Grounds in (10):

On August 13, 2015 Applicant, Attorney Michael D. Morin, did file with the Clerk of Court, Motion for Discovery and vs. inspection Pursuant to Criminal Practice Rules, Rule 3 and Brady Request Motion for the Production and information which may lead to evidence.

Prosecutor Barry Barnette, fail to Produce information that was requested and Applicant, Counsel fail to filed Motion to Compel any and all evidences that the Prosecutor held back.

- 1.) Check list of everything that is in the Motion For Discovery.
- 2.) Any and all written reports to the State Law Enforcement Division (SLED) Criminalistics Laboratory; Federal Bureau of Investigation Laboratory; City of Spartanburg Public Safety Dept. Criminalistics Identification Personnel, or any other Law Enforcement Agencies concerning an examination made by said laboratories and/or Personnel thereof of any physical, photographic, or written evidence concerned with the investigation of this case.
- 3.) Any and all photographs taken at the scene of the alleged crime and/or the "Victim," or otherwise relating to this case.

See EXHIBIT-A

In the Chain of Custody Report From the Spartanburg Police Dept. Item ID: NO. 4, Item submitted BY: Officer Cheryl Boyd, Statement of "Kimberly Dawn Cash," Victim of alleged crime was never in the motion for discovery.

Prosecutor Barnette fail to Produce this information and Counsel for the Applicant, failed to file Motion to Compel such info.

This "Issue" falls up under Ineffective Assistance of trial Counsel And Prosecutorial Misconduct.

In a Post-Conviction Relief action, an Applicant, has the burden of Proving the allegations in his or her Application. Butler v. State, 286 S.C. 441, 334 S.E. 2d 813 (1985).

"When an applicant alleges Ineffective Assistance of Counsel as a ground for relief, he or she 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).

4.) BRADY Violations

BRADY v. Maryland, 373 U.S. 83, 10 LEd 2d 215, 93 Sct 1194 (1963)

Suppression of favorable evidence Violates due Process (GRAND DADDY CASE).

BRADY material must be disclosed in time for its effective use at trial. U.S. v. Gil, 297 F3d 93 (2nd Cir. 2002)

3.) Prosecution's obligation under BRADY to disclose exculpatory evidence extends to impeachment evidence, and to evidence that was not requested by the defense.

PARADIS v. ARAVE, 240 F3d 1169 (9th Cir. 2001)

6.) Discovery and Inspection 42 GEO. L.J. ANN. REV. CRIM. PROC. 385 (2013) Fed. R. Crim. P. Rule 16:

Rule 16 allows the defendant to Conduct Pretrial discovery for five types of information: (1) the defendant's own oral, written, and recorded statements; (2) the defendant's Prior Criminal record; (3) Certain documents and objects; (4) Certain examination and test reports; and (5) the Content and bases of expert testimony upon which the government intends to rely.

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- 7.) Trial Counsel fail to file motion to have Applicant, mentally Evaluated Whenever he was well aware that his Client was a mentally ill defendant.
- 8.) The trial Judge erred in admitting Applicant, Statement to law enforcement where the State could not Prove by a Preponderance of evidence that Applicant, Statement was Knowingly, intelligently, and Voluntarily made since evidence suggested Applicant was under the influence of intoxicating medications.
- 9.) A Spartanburg County Grand Jury, indicted Applicant, at the August 2015 term of General Sessions for bank robbery. His case was called to trial on March 14, 2016 before the Honorable J. Derham Cole, and a jury. Barry Joe Barnette, appeared on behalf of the Prosecution and Michael David Morin, represented Applicant.
- 10.) After a jury was selected but Prior to opening statements, defense Counsel challenged the Voluntariness of Applicant's Statement under Jackson v. Denno. During the hearing that followed, Investigator Jason Tapp and Applicant, testified about the interview and at the end of the testimony, defense Counsel objected to the admission of Applicant's Written Statement, that he never wrote arguing that the Statement was not Voluntarily given.
- 11.) At the Conclusion of the trial on March 15, 2016 the jury found Applicant, guilty without Proving the allegations that they have made, in the indictment. Judge Cole, Sentenced Applicant, to Non-Violent 28, Years.
- 12.) At the time of the interview Applicant, had taken Risperidone, Seroquel, Neurontin, and also Insulin. Applicant, told Investigator Tapp, that he had been under mental health care. Right then all questioning should have stop until Investigator Tapp, got the name, and Phone number, of Applicant's mental health Counsel that been on call that day or appoint an Attorney to represent him at the time of questioning.

13.) A State may have an affirmative duty to assist the defendant in obtaining experts to Present mitigating evidence.

Particularly when a mental health expert is required.
See Ake v. Okla 470 U.S. 68, 83 (1985)

(due Process requires defendant be given access to Competent Psychiatrist at trial and Sentencing if Mental State is at issue);

14.) See TRANSCRIPT OF RECORD: 2015-GS-42-3353
March 14-15, 2016 PAGE NO. 13-15-4)
Jury Qualification: EXHIBIT-B

HON. J. DERHAM COLE The Court:

I'm going to recite a list of Potential witnesses.

(PAGE NO. 14) IN fact all of these witnesses that I'm going to call right now are employed by the Spartanburg Public Safety Department.

They also include officer Lopez, officer MacIver, officer Edwards, officer Reneker, officer Mobley, officer Tapp, officer Banks, officer Workatt, officer Bagwell, officer Kirby, officer Gallman, officer Morris, officer Guthro, officer Giolia.

(PAGE NO. 15) And the next five witnesses are employees of BBEK.

They include Jessica Horton, Kelly Ruff, Melissa Blazer, Kimberly Cash, "VICTIM" And Natsha Cheeks.

Two additional witnesses who are residents of Inman, South Carolina include Stephen Steading, and his wife.

Go back to PAGE NO. 10-3: EXHIBIT-C. The Court to the jury Panel.

MY name is Derham Cole, I'm a resident Judge here in the Seventh Judicial Circuit. I will be Presiding over A term of General Sessions court this week just as Judge Couch, is across the hall.

- 15.) The first Case that we have that's going to require some of your Participation is the Case of the State vs. Terry Cooper. Mr. Cooper, has been accused by the Prosecutor, by way of an indictment -- an indictment is like an arrest Warrant. It's the Charging Paper. It's the means by which any Person accused of a Crime where the Jurisdiction lies in this Court is brought to this Court. An indictment has to be returned, and that's the Charge that is brought against the defendant.
- 16.) In this Particular Case the defendant, Terry Cooper, is charged with the Crime of bank robbery. And the indictment alleges that on or about June 3rd of 2015 Mr. Cooper did enter a building, occupied as a bank, that Particular bank, being BB&T located at 280 North Church Street here in Spartanburg, S.C.
- 17.) And the indictment alleges that he entered that bank with the intent to steal money, securities or property by either force, intimidation or threats, and that he did, in fact, receive U.S. Currency by demanding it from the bank teller, Kimberly Cash, with the intention of depriving the true owner of its Property and to convert that Property to the taker's own use.
- 18.) Now, as to those allegations and as to that Charge the defendant has entered a Plea of Not Guilty.

19.) A Plea of Not Guilty Places upon the State the burden of Proving the allegations that they have made, the burden of Proving each of the essential elements that constitutes the crime that they allege against the defendant, and therefore the burden is upon the State to prove the defendant's guilt to the satisfaction of a jury beyond a reasonable doubt before any such Verdict could be returned.

20.) See Page No. 17 - 71 162: EXHIBIT-D

THE COURT: All right. Now, as I told you, this is an event which the state alleges by way of this indictment occurred on June the 3rd of 2015.

21.) They allege that the defendant, Mr. Cooper, entered the bank, a BBET location, at 290 North Church Street, which is right at the corner of Daniel Morgan Avenue and North Church Street across the street from the Marriott Hotel.

22.) They allege that he entered the bank on that day and demanded money and received money from a teller by way of force or intimidation or threats.

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M. HORE BLANKLEY
CLERK OF COURT
JUDICIAL DEPARTMENT
SECURITY

23.) Here is where the trial judge took victim, out of the indictment, Kimberly Dawn Cash, bank teller.

24.) See Page No. 77-111: EXHIBIT-E
Attorney for defendant:

MR. MORIN: One other thing, Your Honor, I'd like to do.

- 25.) Before we started it was my intention -- and I made the -- indicated that I was going to challenge the sufficiency of the indictment because of some dates.
- 26.) The Court -- Clerk of Court has provided a certified copy showing when the indictment was true billed and for that reason were not going forward on that because I'm satisfied that that covers the sufficiency of the indictment. But I wanted to put that on the record so that should it come up later we will have a record of what we did.
- 27.) See Page NO. 181-10.) : EXHIBIT-F Attorney for the defense. MR. MORIN: Your Honor, defense is going to make a motion for a directed Verdict on two points. One is there's no evidence that the BB&T qualified -- no evidence has been introduced to say that the BB&T is a bank, loan institution or what have you pursuant to the statute.
- 28.) I know that it may be common parlance, but that is an essential element to the crime the same as saying that it's in Spartanburg County to establish jurisdiction.

- 29.) He called two -- the State has called two witnesses who worked there, and they described what happened. However, the State has to prove -- and in the indictment it alleges -- that it is a bank, institution or something, and they haven't introduced any evidence to that effect either by testimony or by documentation that I'm aware of.
- 30.) In addition to that it lists the victim as Kimberly Cash. No one named Ms. Cash, has testified. No name by Ms. Cash, has been testified to. There were two other names, if Greenwood, and Cheeks, I believe.
- 31.) THE COURT: Veronica Cheeks. (There's No Veronica) MR. MORIN: Yes. -- It's (Natasha Cheeks,)
- 32.) So for that reason we would move for a directed verdict on those two things -- the victim that they allege is not here, nor was she referred to, and they have not established that it is a bank as required by the Statute.
- 33.) THE COURT: Mr. Barnette. MR. BARNETTE: Your Honor, I believe the testimony will show that this was a bank.

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34.) Obviously, it meets the requirements of the statute -- from their testimony this teller -- teller working in the bank, as an individual working in the bank, Your Honor.

35.) Kimberly Cash, was listed on there, but the actual victim is BB & T. In this situation she's listed as one of the tellers there, Your Honor, and from that standpoint, and I think it's sufficient to go forward on it from that standpoint.

36.) THE COURT: All right. Motion is denied.

37.) See: TRANSCRIPT OF RECORD

2015-45-42-3353

March 14 - 15, 2016

Jury Charge Page No. 196-17):

THE COURT: Madam forelady and ladies and gentlemen you of course have heard and seen all of the evidence.

You've now heard the final summations of the lawyers. And therefore it now becomes my duty and obligation to instruct you on the law that's applicable in this case.

38.) See PAGE NO. 197-15)

THE COURT: Now, as you know, in this case the defendant has been accused of having committed the crime of what's referred to in the indictment as bank robbery. It's actually a violation of Section 16-11-380 of the Code of Laws of South Carolina.

CLERK OF COURT
SPARTANBURG COUNTY
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M. HOPE BLACKLEY

39.) The State alleges that on or about June the 3rd of 2015 the defendant, Terry Cooper, did enter a building or part of a building which was being occupied as a bank, depository or savings and loan Association. In Particular, they allege it was BB&T located on North Church Street in Spartanburg.

40.) They further allege that he entered that building with the intent to Steal Money, Securities for money or Property by either force, intimidation or threats and that he did, in fact, receive currency by demanding it from the teller with the intent to deprive the true owner of Possession of the Property.

41.) As to those allegations and as to that charge the defendant has entered a Plea of Not Guilty. As I told you that Plea of Not Guilty has Placed upon the State the burden of Proving the allegations that they have made by way of the indictment, the burden of Proving each of the essential elements of the crime that is alleged in the indictment, and therefore the burden is upon the State to establish the defendant's guilt to the Satisfaction of you 12 jurors beyond a reasonable doubt before any Such Verdict could be returned.

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MAIL ROOM

42.) See PAGE NO. 212-5)

MR. MORIN: Yes, Your Honor.

THE COURT: What is it?

MR. MORIN: When you read the indictment, while you did instruct them that it's not evidence, you dropped out Kimberly Cash's name from the indictment. We take exception to that as it was the basis for our directed verdict, or one of the bases.

43.) THE COURT: Well, I understand, but the indictment alleges that she is the mother of the victim which is BB & T, so.

44.) MR. MORIN: I understand.

THE COURT: Okay. Well, note your exception.

MR. MORIN: Thank you.

45.) See PAGE NO. 217-5): EXHIBIT-G

MR. BARNETTE: Thank you, Your Honor.

Just one other matter Your Honor we didn't put the cash into evidence. We both agreed that if we didn't do that -- there's was a watch that he wanted back -- the defendant. We're willing to release that watch back to the defendant to be taken back in his property. We have taken a picture of that watch.

46.) MR. MORIN: I think we also have some pictures of the cash as well.

47.) MR. BARNETTE: We do.

CLERK OF DISTRICT COURT
PARLOR ROOM COURT
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M. HOPE BLACKLEY

48.) THE COURT: All right.

(Whereupon, the watch was released to the officer to be taken to jail with the defendant.)

49.) Trial Counsel for Applicant, was ineffective at the start of the trial, to the end of the trial.

50.) Trial Counsel for the State, is in violation of Prosecutorial Misconduct.

51.) Trial Judge did committed error of law.

52.) DUE PROCESS:

Due Process requires that a defendant be tried only if he is competent to assist in his own defense. 218 F.3d 910 (8th Cir. 2000).

53.) Prosecutorial Misconduct:

Prosecutorial Misconduct Every attorney has a duty to discover and comply with the rules of Practice and Professional Conduct.

Matter of Rivers, 288 S.C. 492, 331 S.E. 2d 332 (1984).

54.) Prosecutorial misconduct during closing

argument may be grounds for reversal of a conviction. U.S. V. BECKMAN, 222 F.3d 512 (8th Cir. 2000).

CLERK OF COURT
529 E. MAIN ST.
ST. LOUIS, MO 63102
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- 55.) Prosecutor's Closing Argument may be grounds for reversing Conviction. BELL V. EVATT, 72 F3d 421 (4th Cir. 1995)
- 56.) It is improper for Prosecutor to mischaracterize evidence or refer in Summation to facts not in evidence. U.S. V. ROSA, 17 F3d 1531 (2nd Cir. 1994).
- 57.) "The interest of the United States in a Criminal Prosecution is not that it shall win the Case but that Justice will be done." Jencks V. U.S. 353 US 657, 1 LE2d 1103, 77S Ct 1007 (1957).
- 58.) The Prosecution must Prove the Guilt of the accused beyond a reasonable doubt as to every element of the Crime Charged. Simmons V. State, 264 S.C. 413, 215 S.E. 2d 883 (1975); State V. Barksdale, 311 S.C. 210, 428 S.E. 2d 498 (Ch. App. 1993).
- 59.) The defense tries to establish that the Government has fallen short of its "burden of Proof," so that the Jury must find the defendant "Not Guilty." Neil V. Biggers, 409 U.S. 188, 198 (1972).
- 60.) To rise to the level of a due Process Violation, Prosecutorial misconduct must be of sufficient significance to result in the denial of the defendant's right to a fair trial. U.S. V. MAYNARD, 236 F2d 6 (10th Cir. 2000).

CLERK OF COURT
SPRINGFIELD COUNTY
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M. HOPE BLACKLEY

61.) Defendant's convictions must be reversed on due Process Grounds where the Government knowingly elicits, or fails to correct, materially false statements from its witnesses. U.S. V. HAESE, 162 F3d 359 (5th Cir. 1998). DANIELS V. LEE, 346 F3d 477 (4th Cir. 2003).

62.) Defendant may only be tried on charges alleged in an indictment, and only if Grand Jury may broaden, or alter charges in the indictment. U.S. V. BOLDEN, 325 F3d 471 (4th Cir. 2003).

63.) Purpose of Presentation Clause of the Fifth Amendment is twofold; it entitles defendant to be in jeopardy only for offenses charged by a group of his fellow citizens acting independent of either Prosecutor or the Judge; and it entitles to be apprised of charges against him so that he knows what he must meet at trial. U.S. V. FOGEL, 901 F2d 23 (4th Cir. 1990)

64.) Even under Plain error review, if constructive Amendment to indictment prejudiced defendant the conviction must be reversed. U.S. V. CHOY, 309 F3d 602 (9th Cir. 2002)

65.) Amending the indictment is Considered Prejudicial Per Se and thus demands Reversal. U.S. V. CIANCI, 378 F3d 76, (1st Cir. 2004)

66.) Code OF LAWS OF SOUTH CAROLINA 1976

§17-23-60. Accused's right to Counsel, to Produce Witnesses and Proofs, and to Confront Witnesses.

67.) Every Person accused Shall, at his trial, be allowed ~~to~~ to be heard by Counsel, may defend himself and Shall have a right to Produce Witnesses and Proofs in his favor and to meet the Witnesses Produced against him face to face.

68.) A Post-Conviction relief applicant is entitled to relief based on ineffective assistance of trial Counsel if he or she can establish that Counsel's Performance Was deficient and that this deficiency Prejudiced his or her defense GRIER V. STATE, 299 S.C. 321, 344 S.E. 2d 722. (S.C. 1989).

69.) AN abuse of discretion occurs "When the Conclusions of the trial Court either lack Evidentiary Support or are Controlled by an error of law." STATE V. PAGAN, 369 S.C. 206, 208 631 S.E. 2d at 262.

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J. HOPE BLACKLEY
SOUTH CAROLINA COURT REPORTERS & VIDEO

70.) See: TRIAL TRANSCRIPT PAGE NO. 11-3.

Judge Cole, telling the Jury, about the indictment, and the elements, inside the indictment, that Places upon the State, the burden of Proving each, of the essential elements, that Constitutes the crime that they allege against the Applicant, The Bank teller Kimberly Cash, is the Victim, See: "INDICTMENT" NO. 2015-GS-42-3353.

See: also INCIDENT Report, OF OFFICER ADORNO,

71.) A Person can be tried ONLY upon the indictment as found by the Grand Jury, and especially upon its language found in the charging part of the instrument. A change in the indictment that does not narrow its scope deprives the Court of the Power to try the accused, U.S. Constitution: Fifth Amendment. ANNOTATIONS: PAGE NO. 3, OF 9.

72.) "Crime is Contagious. IF the Government becomes the lawbreaker, it breeds contempt for the law." U.S. SUPREME COURT JUSTICE (1941).

73.) "It is just as well that Justice is blind, She might not like some of the things done in her name if she could see them."

Terry Cooper #19061

F-3 Room #236

McCormick Correctional Inst

386 Redemption Way

McCormick, S.C. 29899

April ~~27~~²⁷ 2018

Mr. Hope Blackley,

Clerk of Court,

Post Office Box 3483

Spartanburg, S.C. 29304-3483

Dear Clerk Blackley,

I am requesting that you clock stamp both the Amendment To Application For Post-Conviction Relief, And Ex Parte Petition Requesting Funds. I am also Requesting a copy for my files.

I Thank You for your time and help in this matter.

Sincerely,

Terry Cooper

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2018 MAY -8 AM 9:13
CLERK OF COURT
SPARTANBURG, SC

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

TERRY COOPER, NO. 118061
Applicant,

V.

State of South Carolina
Dept. of Corrections
William R. BYARS, JR.
Director.
Respondent.

IN THE COURT OF COMMON PLEAS

2018-CP-4200368

Amendment TO
APPLICATION FOR
POST-CONVICTION RELIEF.

The above-captioned matter is before the Court Pursuant to a Post-Conviction relief (PCR) Application filed March 12, 2018. The Applicant would like to Amen on to his Post-Conviction Relief the rest of the facts to his case.

- 1.) ON or about March 14, & 15, 2016 See Transcript Of Record 2015-GS-42-3353.
On September 2, 2015 Attorney Michael Morin, Came to see Applicant, this would be his first time ever seeing him.
- 2.) The very first thing that Attorney Morin, ask Applicant, Was Where was he at around 2:00 P.M. on June 3rd 2015 and do he have any witnesses that can back up what he was telling him at that time.
- 3.) Applicant, told him yes and start giving him Names Of witnesses, and these are the Names, that

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Applicant, gave to Attorney Morin, Shawn Parker, drop five of them off at the mission, and then Applicant, walk to the Eye Doctor, Martin & Packer on Henry Street.

- 4.) Applicant, also told him that Lamar Valentine, is a witness as to where he was at 2:00 P. Applicant, told Attorney Morin, that he would send the rest of the names of the witnesses, to him.
- 5.) Applicant, had his cell mate, write a letter, to Attorney Morin, on his behalf giving him all the names of the witnesses.
- 6.) Applicant, also gave Attorney Morin, a list of Motions, to file on his behalf, these are the Motions, that Applicant, request to be filed.
- 7.) Motion for Discovery, Motion for a change of Venue due to being on T.V. News 7, & Fox News and also being that the Bank was on the same block the Court house on.
Motion to suppress Statement, that Applicant, did not write.
- 8.) Motion to suppress his book bag, and everything inside his book bag, like cell phone, watch, letters, I.D. card, Game cock shirt, that been obtain out of Applicant, book bag, without a search warrant, by investigator Kirby.
- 9.) Applicant, was prejudiced by his Attorney, by not doing the things that he should have did in Applicant, defense.

10-5 12:00:13
10-5 12:00:13
10-5 12:00:13

10.) Attorney Morin, was ineffective for failing to strike the following Jurors, Alissa A. Snow, Juror NO. 153, First Cousin, Work for highway Patrolman for Spartanburg County.

Theressa A. Washington, Juror NO. 167, Cousin, Work for Public Safety.

Michael T. Ddom, Juror NO. 119, First Cousin, Ronald Garrett, Work for Spartanburg County Detention Center.

Michael W. Green, Juror NO. 64, Saw something about the case on television shortly after it happened.

He also had two uncles, who were alcoholics and have a brother, who suffers from mental retardation.

11.) A Post-Conviction relief applicant is entitled to relief based on ineffective assistance of trial counsel if he or she can establish that counsel's performance was deficient and that this deficiency prejudiced his or her defense GRIER V. STATE, 299 S.C. 321, 384 S.E. 2d 722. (S.C. 1989).

12.) See: TRANSCRIPT OF RECORD: 2015-GS-42-3353
Opening Statements: PAGE NO. 90) 91) - 90-24) TO 91-12)
Attorney Morin, made this statement to the jury.
That's my job, is to make sure that I'm confronting those witnesses and making Mr. Cooper's Constitutional rights intact. And that's why we are here.

2015 MAY -8 AM 9:13

LEGAL INFO
MAIL ROOM13.) See: Trial Transcript PAGE NO. 11-3JURY Qualification:

Judge Cole, are telling the Jury about the Indictment and the elements inside the Indictment that Places upon the State the burden of Proving each of the essential elements that Constitutes the crime that they allege against the Applicant, The Bank teller Kimberly Cash, is the Victim, See Indictment No. 2018-QS-W2-3353 And also see Incident Report, of officer Adorno.

14.) See: Trial Transcript PAGE NO. 81 & 82

Judge Cole, took the Victim Kimberly Cash, Name out of the Indictment.

15.) Purpose of Presentation Clause of the Fifth Amendment is twofold; It entitles defendant to be in jeopardy only for offenses charged by a group of his fellow citizens acting independent of either Prosecutor or the the Judge; and it entitles defendant to be apprised of charges against him so that he knows what he must meet at trial.

U. S. V. Fogel, 901 F2d 23 (4th Cir. 1990)

U. S. V. FIELD, 875 F2d 130 (7th Cir. 1989)

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(16.) Even under Plain error review, if Constructive amendment to indictment Prejudiced defendant, the Conviction must be reversed.

U.S. V. AHOY, 309 F3d 602 (9th Cir. 2002)

(17.) Amending the indictment is Considered Prejudicial Per se and thus demands reversal.

U.S. V. CIANCI, 378 F3d 71 (1st Cir. 2001)

(18.) Defendant may only be tried on charges alleged in an indictment, and only the Grand jury may broaden or alter the charges in the indictment.

U.S. V. BOLDEN, 328 F3d 471 (4th Cir. 2003)

(19.) See: TRIAL Transcript PAGE No. 87, 88, & 89

Opening Statements: Prosecutor Barrette, also took the "Victim" Kimberly Cash, name out of the indictment.

(20.) To rise to the level of a due Process violation, Prosecutorial misconduct must be of sufficient significance to result in the denial of the defendant's right to a fair trial. U.S. V. MAYNARD, 236 F3d 601 (10th Cir. 2000)

(21.) Defendant's Convictions must be reversed on due Process grounds where the government knowingly elicits or fails to correct materially false statements from its witnesses. DANIELS V. LEE, 316 F3d 477 (4th Cir. 2003)

U.S. V. AHOY
309 F3d 602
9th Cir. 2002

22.) See: Trial Handbook For South Carolina
Lawyers Fourth Edition 2008.

§1:13 Integrity of Legal Profession

Lawyers have a duty to maintain the integrity of the legal profession, RPC 8.1-8.4, and must not violate or attempt to violate the Rules of Professional Conduct.

See RPC 8.4(a) Thus, a Lawyer must not engage in conduct that prejudices the Administration of Justice or involves moral turpitude, dishonesty, fraud, deceit, or misrepresentation. RPC 8.4(c) - (e).

(23.) IN the attorney's oath, lawyers Pledge to "maintain the respect due to Courts of Justice and judicial officers. They also Pledge to "Never seek to mislead the Judge or Jury by any artifice or false statement of fact prejudicial to the honor or reputation of a Party or Witness."

(24.) Every attorney has a duty to discover and comply with the rules of Practice and Professional Conduct. Matter of Rivers, 285 S.C. 492, 331 S.E.2d 332 (1984).

(25.) Applicant, Constitution Rights of the United States Was Violated by the following:

- (1.) Failure or refusal of State Court Judge to have record made of bench conference with Counsel in Criminal Proceedings.
 - (2.) Disqualification of Judge by State, in Criminal Case, for bias or Prejudice.
 - (3.) The trial Judge's error did affect the the outcome of Applicant, trial.
 - (4.) Accordingly the attorney must make timely objections and motions with specifically stated grounds and arguments.
- This Violates the Fourteenth Amendment Equal Protection Clause.

(26.) § 2:2 Presence of Parties - Criminal

As a general rule, a criminal defendant has a right to be present during the trial of the charges against him. The State Constitution guarantees this right by affording the defendant the right to be confronted by the witnesses against him... and to be fully heard in his defense by himself or by his counsel or by both. S.C. Const. of 1895, Art. 1, § 14; see also State v. Bell, 273 S.C. 391, 360 S.E. 2d 706 (1987); State v. Patterson, 367 S.C. 214, 628 S.E. 2d 239.

(27.) The Federal Constitution also Guarantees the defendant's right "to be confronted With the witnesses against him.... and to have the assistance of Counsel for his defense." U.S. Const. amend. VI;
See also State v. Caldwell, 300 S.C. 494, 388 S.E. 2d 816 (1990).

(28.) Applicant, Request the following relief:
Reversal of Conviction and Dismissal of Indictment NO. 2015-GS-42-3353
and also Replace: Gold Diamond Watch,
that was Court order that Applicant,
could keep that S.C.D.C. took.

I declare under Penalty of Perjury that the following facts are true:


APPLICANT

SWORN or affirmed to
and subscribed before
me this 01 day of May,
2018


Notary Public
My Commission Expires: 12.16.2019

LEGAL MAIL
MAIL ROOM

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Terry Cooper, #118061,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-42-0868

**RETURN AND PARTIAL
MOTION TO DISMISS**

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 AUG -3 AM 8:47
M. HOPE BLACKLEY

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on March 12, 2018, and received April 3, 2018, would respectfully show this Court:

I. Procedural History

Terry Cooper (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In April 2015, the Spartanburg County Grand Jury indicted Applicant for bank robbery (2015-GS-42-3353). Michael David Morin, Esquire, represented Applicant. Assistant Solicitor Barry Joe Barnette, Esquire, prosecuted the case. On March 14-15, 2016, Applicant proceeded to trial before the Honorable J. Derham Cole. The jury found Applicant guilty as indicted. Judge Cole sentenced Applicant to a term of imprisonment of twenty-eight years.

Applicant filed a timely notice of appeal. Taylor D. Gilliam, Esquire, of the South Carolina Commission on Indigent Defense - Office of Appellate Defense, submitted a brief and motion to be relieved pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals granted counsel's motion to be relieved and dismissed the appeal on October 18, 2017. The remittitur was returned to the circuit court on December 21, 2017.

Attached to this Return and incorporated by reference are the records of the Spartanburg

County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. Summary of Facts Adduced at Trial

Around 4:00 p.m. on June 3, 2015, Applicant and his co-defendant, Brandon Johnson, walked into a BB&T bank wearing Halloween masks. Tr. p. 92. Applicant was wearing black pants and a black hoodie. Tr. p. 92. Applicant walked up to two bank tellers and handed over a note saying he had a gun and to give him all of the money. Tr. pp. 99-100. The tellers gave him money with a red dye pack in the middle of it. Tr. pp. 99-100. Applicant and the co-defendant then left the bank, and the dye pack exploded on Applicant and money flew out. Tr. p. 104. A video from BB&T bank shows Applicant and his co-defendant entering the bank, taking the money from the tellers, and fleeing the scene. Tr. p. 94.

A witness, Stephen Steading, was in the parking lot near the bank when he saw the dye explode on Applicant. Tr. pp. 104-05. Steading then followed Applicant and watched him walk down an embankment beside a bridge. Tr. pp. 104-05. Steading watched Applicant remove his hoodie, mask and gloves, and observed money on the ground. Tr. pp. 104-05. Steading then called 9-1-1. Tr. p. 105. The police apprehended Applicant and located the hoodie, mask, and gloves used during the robbery. Tr. pp. 118-27. Money was also found along the embankment area. Tr. p. 120. Red dye was found on the mask as well as the hoodie. Tr. p. 133. After his arrest, police interviewed Applicant. Applicant confessed his involvement in the crime, as well as his co-defendant, Johnson's, involvement. Tr. pp. 163-65. When Johnson was apprehended, a book bag belonging to Applicant was found in his vehicle. Tr. p. 173.

III. Allegations Raised and Relief Sought

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. "Trial counsel fail to file motion to have Applicant mentally evaluated whenever he was well aware that his client was a mentally ill defendant."
2. "Prosecutorial Misconduct"
 - a. "Prosecutor Barry Barnette fail[ed] to produce information that was requested and applicant[']s counsel fail to filed motion to compel any and all evidence that the prosecutor [held] back."
3. "Trial judge committed error of law"
 - a. "Trial judge erred in admitting applicant[']s statement to law enforcement where the State could not prove by a preponderance of evidence that applicant[']s statement was knowingly intelligently and voluntarily made since evidence suggested applicant was under the influence of intoxicating medications."

As requested relief, Applicant states he is seeking "reversal of [his] conviction and dismissal of indictment and also [to] replace [a] watch that S.C.D.C. took."

IV. Response to Allegations of Ineffective Assistance of Counsel

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this

prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced 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 can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Response to Allegations of Prosecutorial Misconduct

Applicant also alleges prosecutorial misconduct. Applicant specifically alleges the State suppressed evidence. Brady v. Maryland, 373 U.S. 83 (1963), requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or

exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

The requirements of Rule 5, as opposed to the constitutional dictates of Brady, are judicially created discovery mechanisms for use in criminal proceedings. State v. Gullledge, 326 S.C. 220, 487 S.E.2d 590 (1997). Rule 5(a)(1)(C) requires:

Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

Id. The definition of “material” for purposes of Rule 5 is the same as the definition used in the Brady context. Fradella v. Town of Mount Pleasant, 325 S.C. 469, 482 S.E.2d 53 (Ct. App. 1997) (per curiam). In order for Applicant to prevail on a Rule 5 claim, he must show not only an actual violation, but also that he suffered prejudice as a result. State v. Wilkins, 310 S.C. 81, 425 S.E.2d 68 (Ct.App.1992); State v. Trotter, 322 S.C. 537, 473 S.E.2d 452 (1996).

Respondent submits that this ground for relief is without merit. However, the allegations concerning Brady and Rule 5 violations probably raise questions of fact that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI. Request for Summary Dismissal

Applicant further alleges there was a trial judge error. This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could

have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal, and his failure to do so has waived this allegation as grounds for relief.

This allegation should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

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S.C. Code Ann. § 17-27-20. Further, section 17-27-20(B) expressly states PCR “*is not a substitute for . . . direct review of the sentence or conviction.*” (emphasis added). PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). “In a direct appeal, the focus generally is upon the propriety of rulings made by the circuit court in response to a party’s motions or objections. In PCR, the focus usually is upon alleged errors made by trial or plea counsel. Therefore, when asserting the erroneous admission of evidence, a violation of a

constitutional right, or other errors in a proceeding, the applicant generally must frame the issue as one of ineffective assistance of counsel.” Id. at 363-64, 527 S.E.2d at 747.

Accordingly, Respondent hereby moves for summary dismissal of this allegation pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis these allegations should be dismissed as a matter of law as they are direct appellate review issues which are not cognizable in a PCR action.

VII. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

VIII. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

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SPARTANBURG COUNTY
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IX. Request for an Evidentiary Hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

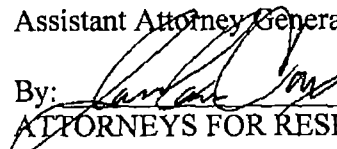
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JORDAN COX
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

August 1, 2018

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SPARTANBURG COUNTY
2018 AUG -3 AM 8:47
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

TERRY COOPER, #118061

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

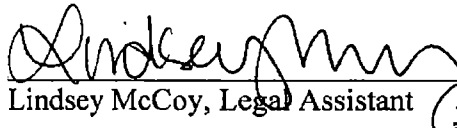
2018-CP-42-00868

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rodney Wade Richey, Esquire
Richey & Richey, PA
Post Office Box 10916
Greenville, South Carolina 29603-0916

DATED this 1st day of August, 2018.


 Lindsey McCoy, Legal Assistant

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 SPARTANBURG COUNTY
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 M. HOPE BLACKLEY

1 STATE OF SOUTH CAROLINA

2 COUNTY OF SPARTANBURG

COURT OF COMMON PLEAS NONJURY

3
4 TERRY COOPER,

5 APPLICANT,

6 VS.

7 THE STATE OF SOUTH CAROLINA,

8 RESPONDENT.

TRANSCRIPT

OF

RECORD

2018-CP-42-868

9
10 March 7th, 2019
11 Spartanburg, South Carolina
12

13 B E F O R E :

14 THE HONORABLE THOMAS A. RUSSO, Judge.

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

16 RODNEY W. RICHEY
17 ESQ.
18 Attorney for the Applicant

19 JOHNNY E. JAMES, JR. and JACOB A. ISENBERG
20 ASSISTANT ATTORNEY GENERALS
Attorneys for the Respondent

21
22
23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

I N D E X O F W I T N E S S E SWITNESSESPAGE

Motion

5

TERRY COOPER

Direct examination by Mr. Richey

7

Cross-examination by Mr. Isenberg

14

MICHAEL MORIN

Direct examination by Mr. Richey

20

Cross-examination by Mr. Isenberg

25

BARRY BARNETTE

Direct examination by Mr. James

29

Cross-examination by Mr. Richey

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Closing by Mr. Richey

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Closing by Mr. James

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Ruling by the Court

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Certificate

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E X H I B I T S

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State's Exhibits

S-1	Statement		31

P R O C E E D I N G S

MR. JAMES: All right. If it may please the Court?

THE COURT: Yes, sir.

MR. JAMES: This is the matter of Terry Cooper versus State of South Carolina. Docket Number 2018-CP-42-00868. Mr. Cooper is present here in the courtroom today, and he's represented by Mr. Rodney Richey, Esquire.

Mr. Cooper was indicted at the April, 2015 term of the Spartanburg County Grand Jury for bank robbery. Michael David Morin, Esquire, represented him on that charge, and Solicitor Barnette prosecuted the case. On March 14 to 15, 2016, Mr. Cooper proceeded to trial before the Honorable J. Derham Cole, and the jury found him guilty as indicted on that second day. Judge Cole then sentenced him to a term of imprisonment for 28 years.

He filed a timely Notice of Appeal and Taylor Gilliam, Esquire, of OAD submitted the brief pursuant to Anders seeking to be relieved. South Carolina Court of Appeals granted his motion to be relieved, and dismissed the appeal on October 18, 2017. Remittitur was returned to the Circuit Court December 21, 2017.

Your Honor, the State's understanding of the allegations is that trial counsel was ineffective for failing to have him mentally evaluated, that the State

1 committed prosecutorial misconduct in failing to produce
2 information requested and holding information back, and,
3 third, that the Trial Judge committed an error of law in
4 admitting his statement to law enforcement where the State
5 can not prove, by a preponderance of evidence, that it was
6 knowingly, intelligently, and voluntarily made.

7 Your Honor, the State has a partial Motion to Dismiss
8 in this matter that applies to that third allegation. It
9 was specifically raised in the Anders brief on direct
10 appeal. Trial Court erred in direct appeal issues are not
11 cognizable claims on a Application for Post-Conviction
12 Relief, and, therefore, we would respectfully request that
13 that allegation be dismissed, and---

14 THE COURT: What allegation is that?

15 MR. JAMES: ---proceed on the first two.

16 THE COURT: What allegation is that?

17 MR. JAMES: It is the third one of Trial Judge
18 committed error of law. Trial Judge erred in admitting
19 Applicant's statement to law enforcement where the State can
20 not prove, by preponderance of evidence, that Applicant's
21 statement was knowingly, intelligently, and voluntarily made
22 since evidence suggested Applicant was under the influence
23 of intoxicating medication. This issue was hammered out
24 pretrial, and is -- as reflected in the trial transcript.
25 And, additionally, it was raised to the South Carolina Court

1 of Appeals by the Office of Appellate Defense in the Anders
2 brief.

3 Since PCR is not a substitute for direct appeal, and
4 since the Court's have already declined to pursue further
5 that allegation, it is not appropriate for us today to,
6 again, go back over that well trotted ground. And so we
7 request to not go forward on that allegation, but, instead,
8 focus on the mental illness allegation, and the Brady
9 violation allegation.

10 THE COURT: All right. Mr. Richey, do you have any
11 position with regards to that motion?

12 MR. RICHEY: No, that matter's been addressed by the,
13 the Appellate Courts.

14 THE COURT: All right.

15 MR. RICHEY: So, we're ready to move forward.

16 THE COURT: So, we'll move forward on the remaining two
17 allegations and not that one.

18 MR. JAMES: Thank you, Your Honor.

19 THE COURT: All right. Mr. Richey.

20 MR. RICHEY: We'll call Mr. Cooper.

21 THE COURT: Mr. Cooper, sir, if you would please come
22 around to the witness stand here, and I'm gonna let you put
23 your materials up there, and then ask, if you would, place
24 your left-hand on the Bible, and raise your right. I'm
25 gonna place you under oath.

Terry Cooper - Direct examination
by Mr. Richey

1 TERRY COOPER, being first duly
2 sworn, testified as follows:

3 THE COURT: Thank you, sir. If you'd have a seat, and
4 then if you'd please just state your name for the record.

5 THE WITNESS: Terry Cooper.

6 THE COURT: All right. Mr. Cooper.

7 MR. RICHEY: I'll---

8 THE COURT: All right. Mr. Richey.

9 MR. RICHEY: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. RICHEY:

12 Q Take your stuff out. Take out what you need.

13 Okay. Are you ready?

14 A Yes, sir.

15 Q Okay. Sir, are you currently in the Department of
16 Corrections?

17 A Yes, sir.

18 Q And what are you in there for?

19 A I'm in there for bank robbery.

20 Q Okay. And you were tried in Spartanburg County?

21 A Yes, sir.

22 Q And who represented you on those cases?

23 A Michael Morin.

24 Q Okay. And you filed an Application for Post-Conviction
25 Relief because you think he ineffectively represented you.

1 Correct?

2 A Yes, sir.

3 Q And as part of that, this was supposedly a robbery at
4 the bank, correct?

5 A Yes, sir.

6 Q Okay. I'm not saying you did it, but that's what
7 supposed (sic) did it, right?

8 A Yes, sir.

9 Q And, and did you tell Mr. Morin that you were not
10 guilty of this charge?

11 A Yes, sir.

12 Q And, and in your discussions with him, did you request
13 to have a jury trial?

14 A Yes, sir.

15 Q And did you have a jury trial?

16 A Yes, sir, I did.

17 Q And, and Mr. Morin represented you at the jury trial,
18 correct?

19 A Yes, sir.

20 Q And during your -- did you talk to him about the case
21 prior to having a jury trial?

22 A Yes, sir, some of the cases, yeah, we talk about.

23 Q Okay. You didn't talk about the entire case?

24 A No, sir, cause I ain't know nothing about no mental
25 evaluation or none of that.

Terry Cooper - Direct examination
by Mr. Richey

1 Q Okay. well, I'm gonna get to that.

2 So, so, at the time, were you -- at the time that you
3 discussed the mental evaluation with your attorney?

4 A Excuse me? Excuse me?

5 Q Did you discuss a mental evaluation?

6 A (Witness nods negatively.)

7 Q You got to answer for the---

8 A No, sir.

9 Q No?

10 A No, sir. No, sir.

11 Q Okay.

12 A I didn't.

13 Q Okay. Were you having any mental health problems at
14 the time?

15 A Yes, sir, I---

16 Q Okay.

17 A I was. I did.

18 Q And what were those?

19 A That -- my psychiatry had me diagnosed as depression.
20 Major depression.

21 Q Okay.

22 A Yeah.

23 Q And was that, was that diagnosis prior to the crime
24 being committed?

25 A Got, got -- that was before the alleged crimes suppose

1 to been committed. Already been diagnosed with that.

2 Q And, and did you talk to Mr. Morin about that
3 diagnosis?

4 A No, sir, I didn't.

5 Q And, and why -- you just did -- it never came up or
6 what?

7 A It, it didn't never came up.

8 Q Okay.

9 A Ain't nobody never questioned me about it. So, I ain't
10 never -- the only one I mentioned to was the officers that,
11 that questioned me on the day of the arrest. I told them
12 I'm mentally ill. I told them -- that -- that's the only
13 one I talked to was the officer that was suppose to been
14 questioning me.

15 Q And so, in your discussion with Mr. Morin, y'all --
16 you, you didn't tell him hey, I'm going to a psychiatrist?
17 Hey, any, anything at all?

18 A No, sir.

19 Q And, and now, in looking back on this, you believe that
20 you should of had a mental evaluation, correct?

21 A Yes, sir, I should have.

22 Q And based on this -- and you gave a statement in the
23 case.

24 Correct?

25 A Yes, sir, I gave a statement, but like you know now I'm

Terry Cooper - Direct examination
by Mr. Richey

1 telling you the statement was a false statement I gave due
2 to the fact I am a diabetic, and, the day that I got
3 arrested, my sugar was low. And when they took me into
4 custody, I told the officer that I was a diabetic also, and
5 that I need food to eat or need to see a doctor.

6 The only thing they give me was water to drink. They
7 ain't never give me no food or nothing. So, I guess my
8 sugar just keep dropping that -- and I'm getting dizzy. I'm
9 just saying whatever come to my mind like hurry, get up out
10 of there.

11 Q So, so, so, do you believe that affected your mental
12 state during the, during the taking of the statement?

13 A Yes, sir, it did.

14 Q And you're asking this Court to give you a new trial,
15 aren't you?

16 A Yes, sir.

17 Q Okay. Now, did, did -- were you under -- were you
18 taking medication at this time?

19 A Yes, sir, I was.

20 Q Okay. And what medication were you taking?

21 A Remeron. I got to remember one of them. Remeron for
22 the mental illness. The Seroquel for mental illness, and---

23 MR. ISENBERG: Your Honor, I'd have to object. I know
24 that he was prescribed these medications, but he's not an
25 expert on the matter. I don't know if he can say that they

1 were for -- these medications were being taken for a "mental
2 illness."

3 THE COURT: well, I mean he can testify to what he
4 knows. I mean if he, if he was seeing a doctor for mental
5 illness, and the doctor said I need you to take these
6 medications for your depression, he can testify to that
7 that's why he was taking them.

8 So, overruled.

9 Q And, at, at any point at all, did Mr. Morin know you
10 were on medication?

11 A I don't know whether if he knowed that or not. I can't
12 say for sure. I ain't never told him.

13 Q Okay. well, can you explain to -- explain why do you
14 believe you needed a mental health evaluation?

15 A Cause I been up on the mental health all my life. Ever
16 since I was eight years old I been with mental health, and I
17 always had a depression problem. I always had some type of
18 mental problem ever since I been a kid.

19 Q Okay. And, and do you believe that this, this would of
20 assisted in mitigation, in mitigation of your case?

21 A Yes, sir, it would have.

22 Q And how so?

23 A I feel as though if the jury had knowed about it, maybe
24 my case would of came out another way. The way they see I
25 wasn't mental responsible for what they think I suppose to

Terry Cooper - Direct examination
by Mr. Richey

1 had done.

2 Q And you, you allege that the state did not forward all
3 the discovery in this case?

4 A No, sir, they didn't.

5 Q And what, what did they not provide?

6 A A statement came from the victim, alleged victim, named
7 Kimberly Cash. I never saw her statement in my motion of
8 discovery.

9 Q Okay. And that was an issue about her being in your
10 indictment?

11 A Yes, she suppose to been the victim that I suppose to
12 rob at the bank so they say. But I ain't never see the
13 indictment till the day I went to trial. And that the first
14 time I seen her name was in my indictment. And, during the
15 trial, she never took the stand. She never testified. None
16 of that there. So, I, I don't -- I still don't understand
17 how the jury find me guilty without her being there.

18 Q Well, Mr., Mr. Morin, he did object to, isn't that
19 correct---

20 A What---

21 Q ---about the indictment---

22 A Yeah.

23 Q ---and things?

24 A Yes, he did.

25 Q Okay.

1 A He did that, yes, he did.

2 Q But, but your, your position is the State forwarded the
3 information too late, correct?

4 A Yes, from -- cause the jury had knowed that, that I
5 caught on my trial would of different also with that. But
6 they didn't notify the alleged victim.

7 Q And so in, in light of even the, the -- given the
8 statement, and all, all the stuff with the case, is it your
9 position that you are not guilty, and had your counsel done
10 this, then you would of been found not guilty?

11 A Exactly. That's right.

12 Q Thank you. Answer any questions the Attorney General
13 has for you.

14 CROSS-EXAMINATION

15 BY MR. ISENBERG:

16 Q Mr. Cooper, you testified at a pretrial hearing about
17 the statement you gave the police, correct?

18 A Yes, sir.

19 Q And you told them about how you hadn't had any food
20 that day?

21 A Yes, sir.

22 Q And you told them about the FBI communication?

23 A Yes, sir, the FBI did cell -- saw me that day.

24 Q And you, and you told the Court on, at the pretrial
25 hearing, about it being cold when you gave this statement.

Terry Cooper - Cross-examination
by Mr. Isenberg

1 Right?

2 A Yes, sir, it was cold. I was cold.

3 Q And you told the Court that you were on Remeron, the
4 medication that you just discussed previously, on the day in
5 question?

6 A Yes, sir, mental health medication.

7 Q And you rem -- you told the Court that you remembered
8 your rights being read to you on the day in question?

9 A I might of remembered. I don't know. I might have. I
10 don't know. That's what I'm saying. Now that I don't know.
11 I really don't.

12 Q You told the Court, at the pretrial hearing, that you
13 remembered signing the waiver.

14 Right?

15 A I, I could have told the Court that, but like I say, I
16 don't, I don't remember that. That's what I'm saying. I
17 don't remember. I could have and I could have not. I don't
18 know.

19 Q Okay. But you agree that you told the Court that you
20 didn't have any food that day, that it was cold, and you
21 remembered what medication you were taking on the day you
22 were arrested.

23 Correct?

24 A Yes.

25 Q Okay.

1 A That's the medication I been taking most of my life.

2 Q Okay. And so you were arrested in what, June of 2015?
3 Correct?

4 A Yes, sir, I think so. I think that's correct.

5 Q And the hearing was March of 2016?

6 A I think so.

7 Q So, if you were able to testify as to what happened in
8 June of 2015 and March of 2016, which is ten months later
9 maybe -- just, just about nine months, then what kind of
10 mental evaluation would you have needed?

11 A What kind -- I don't know what kind of mental
12 (phonetic) mental evaluation I would had needed. But I know
13 I should of had a mental evaluation of some kind, you know,
14 and they say I'll (sic) charged with a criminal case. And I
15 thought that is my right to have a mental evaluation is, is
16 going up under mental evaluation. You know, I'm taking
17 medication up under the psychiatric care.

18 Q The medication didn't affect your memory though, did
19 it?

20 A Ah, no, it did -- it probably, it probably didn't
21 affect my memory, but sometimes it do.

22 Q Did you, did you tell your lawyer---

23 A I don't know everything.

24 Q ---you needed a mental evaluation?

25 A Excuse me?

1 Q Did you tell your lawyer you needed a mental
2 evaluation?

3 A Like I say, I never did discuss it with him cause I
4 didn't really know was to discuss that with him or not. You
5 know, that's why we never talked about it, you know.

6 Q But you were able to talk, talk to him about the day in
7 question, and the statement that you gave.

8 Right?

9 A Not all of it. Some of it cause like -- I said some
10 time I do get confused. You see, like I said, my blood
11 sugar go down. I'm gonna get confused and I probably won't
12 remember what I have said. You see that thing -- that's why
13 I'm diabetic. That's what I'm trying to bring to y'all now.
14 I don't -- when my sugar drop, I really don't be remembering
15 nothing. I get blurred vision and everything. Some time I
16 even pass out. You know, I really don't know.

17 Q Right.

18 And I, I completely understand that, but what I'm
19 saying to you is you were able to testify and articulate
20 everything to the Court ten months after you gave the
21 statement.

22 Right?

23 A Well, I didn't take the witness stand at my trial.

24 Q At the pretrial hearing.

25 A Pretrial hearing?

- 1 Q Yes.
- 2 A Which one?
- 3 Pretrial hearing?
- 4 Q Yes.
- 5 A Which one you talking about?
- 6 Q The pretrial hearing about the witness statement.
- 7 A Oh, you about, about the statement.
- 8 Q Yes.
- 9 A The false statement I gave?
- 10 Q Yes.
- 11 A Oh, I told them something. I don't remember everything
- 12 I told them that day.
- 13 Q Okay. Well, I mean do you remember telling them about
- 14 your conversation with the FBI that we just went over?
- 15 A Well, we really didn't have no conversation. One
- 16 thing, the FBI just came and told me a few words, and that
- 17 was that. We, we ain't had no conversation.
- 18 Q So, you still -- so, you still remember the
- 19 conversation you had with the FBI?
- 20 A We didn't -- like I say, we didn't have no
- 21 conversation. He just came and said a few words to me and
- 22 that was it.
- 23 Q So, you would agree that your mental illness didn't
- 24 affect your memory capacity?
- 25 A Not my whole memory capacity, but some of it it have.

Terry Cooper - Cross-examination
by Mr. Isenberg

1 Q But not for the day in question?

2 A That what I'm talking about. Some of it did and some
3 of it didn't. That's why I'm trying to explain to you now.
4 I don't know. I can't really say, you know, cause some of
5 the stuff I have already forgot up until this today here
6 that some of this stuff I haven't forgotten, you know.

7 Q Well, as, as for Ms. Cash, the alleged victim---

8 A But the only reason why I remember her because, like I
9 said, the date I received the indictment was the first day I
10 went to trial, and my attorney gave me the indictment. And
11 I look at the indictment, and her name was the first thing.
12 I recall it as the victim being in it. You know, she
13 suppose to been the victim that I supposedly had robbed
14 according to the indictment.

15 That's why I remember her, and I got the indictment
16 right here inside the transcript right here from the trial
17 and everything, and I keep looking through this here. I
18 been reading this since I been, been convicted. I been
19 reading it back over and over again. That's why I can
20 remember her.

21 Q But she didn't testify, did she?

22 A No, she didn't testify. No, sir, she didn't.

23 Q But you were still found guilty?

24 A I was still found guilty sir. Yes, sir.

25 MR. ISENBERG: Okay. Your Honor, I have no further

1 questions.

2 THE COURT: All right. Anything on redirect?

3 MR. RICHEY: No, Your Honor.

4 THE COURT: All right. Thank you, sir. You may step
5 down.

6 MR. RICHEY: Call Mr. Morin.

7 THE COURT: All right, sir.

8 MICHAEL MORIN, being first duly
9 sworn, testified as follows:

10 THE COURT: Thank you. And just give your name for the
11 record please.

12 THE WITNESS: Michael Morin.

13 DIRECT EXAMINATION

14 BY MR. RICHEY:

15 Q Mr. Morin, where are you employed?

16 A I'm presently employed in the York County Public
17 Defender's Office.

18 Q And were you employed in the capacity -- in that
19 capacity on the day that, that you represented the Applicant
20 in this case?

21 A No, at that time I was in private practice here in
22 Spartanburg.

23 Q Okay. And, and do you remember or recall the
24 representation of Mr. Cooper?

25 A I do.

Michael Morin - Direct examination
by Mr. Richey

1 Q You've, you've been in the courtroom. You've heard the
2 testimony about the mental evaluation.

3 When you talked to him, did you observe anything in his
4 demeanor, his tone, or anything that would tell you that he
5 needed a mental evaluation or that he had some mental
6 illness?

7 A I didn't observe anything. We talked about the case.
8 We watched the video of his statement, and, at one point, I
9 walked around the area that this occurred, took pictures,
10 went back, showed him what the pictures, you know, so we
11 could talk about the case. I became aware that he was
12 taking some medication. And, in January of 2016, I
13 requested Spartanburg Mental Health send me the records that
14 they had regarding him. A lot of it was when he was in
15 jail, and he was receiving---

16 Q When he was what?

17 What was that?

18 A When he was in jail --

19 Q In jail. Okay.

20 A -- they were treating him at that point for
21 antidepressant, and depression is what they were treating
22 him for. Ram -- I may be mispronouncing it, but Remeron was
23 one of the ones he was taking. One was Seroquel, and
24 something else. And they sent me 30 -- I think it's 26
25 pages of, of mental -- how they have been treating him, and

1 what they were treating him for, and nothing in there
2 indicated that he would need a, a -- that he was having any
3 trouble hallucinating, remembering anything. He simply was
4 being treated for depression.

5 Q So, you -- was he able to understand the conversations
6 you-all had?

7 A I believe he did, yes, cause we talked about the case,
8 talk about the facts. Some of the things that I said during
9 the trial came from what he had -- we had developed
10 together.

11 Q Do you believe now that it would of been in his best
12 interest to have a mental evaluation?

13 A I don't know that mental evaluation would have yielded
14 anything that would have been useful at a trial, and he
15 certainly gave no indication that he didn't understand the
16 charges or didn't understand the facts.

17 Q Do you believe that the State turned over all the
18 discovery to you?

19 A I did at the time, but it's been brought to my
20 attention that I did not have Ms. Cash's statement. I've
21 gotten it recently and read it. And so there's that.

22 Q Do you believe the statement would of assisted you in
23 your case?

24 A No.

25 Q Okay. Do you believe that it would have any impact on

Michael Morin - Direct examination
by Mr. Richey

1 your client maybe pleading guilty instead of going to trial?

2 A I don't, I don't know that it would of had an impact on
3 him. Part of the statement makes me concerned that he may
4 of gotten a different charge, which would of been worse.

5 Q And so -- so you don't believe the State's withheld,
6 withheld, withholding (sic) that information was prejudicial
7 to your case?

8 A No, I -- my reading of it is it would of -- it may
9 have -- I assume the solicitor didn't know because in it he
10 mentions -- there's a, there's a statement in there
11 allegedly made by Mr. Cooper that would of made it an armed
12 robbery case, which would of then triggered life without
13 parole status on him. So, I'm -- I, I don't think that
14 would of been a good thing.

15 Q And, and this statement that he gave, and you heard him
16 discuss giving the, the -- giving of the statement of his
17 Insulin and all this stuff, when you reviewed your statement
18 and talked to him about the statement, did you find any
19 problems in the execution of the statement, his mental
20 statement (sic), mental statement (sic) at the time or --?

21 A No, I didn't, but we, obviously, had a Jackson v. Denno
22 cause it was crucial to the case, and I tried to bring those
23 things out. But I don't think that it was anything in his
24 mental health there.

25 Q And you, and you contested, at directed verdict, you.

1 contested the indictment as to the individual, and not the
2 bank.

3 Correct?

4 A I think I contested both the fact that it didn't prove
5 it was a bank even though it's sort of common knowledge, and
6 that they had a -- they alleged a victim who wasn't --
7 hadn't testified.

8 Q Did, did Mr. Cooper indicate to you that he was not
9 guilty of the charge?

10 A He, he always said he wanted a trial. There was times
11 when I know he said he wasn't guilty, but there were other
12 times we talked about facts and circumstances surrounding
13 it. Some of it was in his statements regarding the other
14 gentlemen who gave a ride, and those kind of things. But I
15 always believed that the State would -- that our, our
16 defense was gonna be the State's gonna have to prove
17 identity. That was the main thrust of it being that there
18 really wasn't any question someone had did it. And that's
19 what my defense was geared around.

20 Q So, he just said -- he didn't say I'm not guilty?

21 He just said I want to go to trial?

22 A I'm sure, at some point, he said he wasn't guilty, but
23 I --

24 Q Thank you, sir.

25 A -- don't know how much---

Michael Morin - Direct examination
by Mr. Richey

1 Q Answer any questions the Attorney General may have.

2 MR. ISENBERG: May it please the Court?

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. ISENBERG:

6 Q So, leading up to this pretrial hearing, you discussed
7 the statement with your client?

8 A Yes, I believe we reviewed the statement.

9 Q And he was able to articulate what happened on the day
10 in question?

11 A We were able to talk about -- I know we talked about
12 what happened that day. Now, specifically to the crime, I
13 don't know, but he told me where he was, and what he was
14 doing, and those kinds of things.

15 Q And, in your experience, he didn't exhibit any signs of
16 memory loss?

17 A No, he seemed like he remembered the day, and --.

18 Q And, and that was ten months or getting close to ten
19 months after it happened.

20 Correct?

21 A Yes.

22 Q So, you also said you reviewed his records from mental,
23 the mental---

24 A Spartanburg Mental Health.

25 Q ---health facility?

1 A Yes.

2 Q And you said, over the course of 26 pages, there was
3 nothing with hallucinations or memory?

4 A No, it was mostly antidepressants that he was being
5 prescribed, and some anxiety he was having, which seemed
6 somewhat normal for someone who was in jail, and could be in
7 jail for a long time. But he never -- we never really
8 discussed it other than he did tell me he was taking the
9 medication, which is what triggered my request from
10 Spartanburg Mental Health, so I could look at that, and see
11 if there's anything significant there.

12 Q And, and based upon all of that, you didn't see any
13 signs for a mental health evaluation?

14 A No, he, he, he knew where he was. We would talk about
15 the case. We were talking about how we were gonna defend
16 it, that kind of thing.

17 Q And that's not the reason you didn't put him on the
18 stand, right?

19 A Right.

20 Q He was -- he wasn't put on the stand because of---

21 A Well, it was a multitude of reasons. One of them is,
22 is---

23 MR. RICHEY: I'm gonna object cause I, I -- how is that
24 relevant?

25 THE COURT: What was the question?

Michael Morin - Direct examination
by Mr. Richey

1 MR. ISENBERG: I'll withdraw the question.

2 THE COURT: All right.

3 Q As for the statement of Ms. Cash, you said that
4 statement wouldn't of been exculpatory for him?

5 A No, I have a -- I'm, I'm just gonna, if it's all right,
6 I have a copy of it here, and I can tell you why
7 specifically that it jumped out at me if I can get to it. I
8 believe that the statement, in the second page of, of the
9 statement, Ms. Cash says that the person that was committing
10 the robbery said I have a gun, and put his hand in his
11 pocket.

12 Q And, in, in your opinion, what charge could he of
13 gotten for that?

14 A That, that certainly could of triggered an armed
15 robbery.

16 Q And you think that could of triggered LWOP?

17 A It would have cause he had a prior conviction for armed
18 robbery.

19 Q And that's all based upon this statement---

20 A Yeah.

21 Q ---of Ms. Cash?

22 A That would of been based on Ms. Cash. She's the only
23 one who said anything about a gun or, or a threat to that
24 nature.

25 MR. ISENBERG: No further questions, Your Honor. I, I

1 think my co-counsel's going to get Mr. Barry Barnette.

2 THE COURT: That's fine.

3 MR. ISENBERG: No questions.

4 THE COURT: Anything on redirect?

5 MR. RICHEY: No other questions.

6 THE COURT: All right. Thank you very much, Mr. Morin.

7 You may step down, sir.

8 THE WITNESS: Thank you.

9 MR. JAMES: My apologies, Your Honor. I am trying to
10 reacquire the State's next witness --

11 THE COURT: Sure.

12 MR. JAMES: -- Solicitor Barry Barnette.

13 THE COURT: That's fine. We'll just be at ease while
14 they're getting Solicitor Barry Barnette.

15 (Pause.)

16 MR. JAMES: State calls as its witness Solicitor Barry
17 Barnette.

18 THE COURT: All right, Solicitor.

19 SOLICITOR BARNETTE: I apologize, Your Honor.

20 THE COURT: No problem.

21 If you would place your left-hand on the Bible, and
22 raise your right-hand, sir.

23 BARRY BARNETTE, being first duly
24 sworn, testified as follows:

25 THE COURT: Thank you, sir.

Barry Barnette - Direct examination
by Mr. James

1 THE WITNESS: Thank you.

2 THE COURT: If you would give your full name for the
3 record.

4 THE WITNESS: Barry Barnette.

5 DIRECT EXAMINATION

6 BY MR. JAMES:

7 Q All right. Mr. Barnette, how are you doing today?

8 A Doing fine. Thank you, sir. Hope you are.

9 Q I'm doing mighty fine.

10 What is your position with the Seventh Circuit
11 solicitor's office?

12 A Circuit solicitor.

13 Q All right. And did you prosecute the case of Terry --
14 the State versus Terry Cooper?

15 A Yes, sir.

16 Q All right. During -- let me rephrase that question.

17 At what point in time did you come into possession of a
18 statement of witness Kimberly Dawn Cash?

19 A It was after I was contacted by you. We went through
20 the file, and realized that it was referenced to it, but
21 the, the statement was never turned over from the Department
22 of Public Safety or from Spartanburg Police Department.
23 Cookie Peeler, my secretary, contacted immediately when we
24 got it. Obviously sent it to you once we -- once you asked
25 for that statement.

1 Q All right. If you had had this statement in your
2 possession prior to or during trial, would you have turned
3 it over to---

4 A Oh, definitely. We'd turn everything over, you know,
5 prior to trial. Even though we weren't calling her as a
6 witness, and I know what the rules say. You can actually
7 hold the statement after. We always give that up front.

8 MR. JAMES: All right. If I may approach the witness,
9 Your Honor?

10 THE COURT: Yes, sir.

11 Q Could you please describe for me the document that I'm
12 showing to you right now, sir?

13 A This is a witness interview from the Public --
14 Spartanburg Police Department or Public Safety Department,
15 and it consists of two pages from Kimberly Dawn Cash.

16 Q All right. And is this a statement that you recovered
17 from the Department of Public Safety in the last week or
18 two?

19 A Yes, sir.

20 Q All right. And then is this statement that you
21 surrendered to me in which was thereafter surrendered to Mr.
22 Cooper?

23 A Yes.

24 Q All right. I respectfully request to move this into
25 evidence as State's Exhibit No. 1.

Barry Barnette - Direct examination
by Mr. James

1 THE COURT: Any objection?

2 MR. RICHEY: No objection.

3 THE COURT: All right. Without objection, State's 1.

4 (WHEREUPON, the statement was marked as State's Exhibit
5 No. 1 and received into evidence at this time.)

6 Q Were there any other materials that were not disclosed
7 to Mr. Cooper?

8 A No, everything else was, to the part (sic) of my
9 knowledge, has been disclosed to him.

10 MR. JAMES: All right. Thank you very much, Judge. I
11 have no further questions.

12 THE COURT: Cross.

13 MR. RICHEY: Yes.

14 CROSS-EXAMINATION

15 BY MR. RICHEY:

16 Q This, this statement was down at Public Service --
17 Public Safety?

18 A It was. There (sic) were Spartanburg Police Department
19 they call it now.

20 Q All right. And, and---

21 A It's also---

22 Q ---this is a statement that you routinely give to the
23 defense.

24 Correct?

25 A Yes, sir, we do.

1 Q And, and in reading this -- reviewing this statement,
2 did you find anything in the statement exculpatory?

3 A No, sir.

4 MR. RICHEY: One moment, Judge.

5 (Pause.)

6 Q During that trial, did you, did you have the
7 opportunity to observe Mr. Cooper?

8 A I did, yes, sir.

9 Q And, and did, did you find anything odd about him in
10 terms of his, his communication, his speech, or anything?

11 A No, sir.

12 Q Thank you.

13 MR. JAMES: Nothing further from the State, Your Honor.

14 THE COURT: All right. Thank you, Solicitor.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: You may step down.

17 MR. JAMES: That will be the State's presentation, Your
18 Honor.

19 THE COURT: All right. Mr. Richey, I'll be happy to
20 hear from you, sir.

21 MR. RICHEY: Thank you, Judge.

22 Judge, knowing the, the shortcomings that we have of my
23 client, he felt like cause his -- the medication that he was
24 on, that counsel should of gave him a mental evaluation. I
25 understand he never expressed that to counsel, but I guess,

1 in this case, hindsight in his eyes is 20/20.

2 Also, as to the statement, I think it's clear the
3 statement was not given up -- given over to the defense. I
4 think Mr. Barnette gave an explanation why. The statement,
5 although it's not exculpatory, I don't know if that's the
6 kind of thing that will get you to plead guilty saying this
7 lady's going to say this and that. But my client
8 specifically thought the State should of gave him that
9 statement, and that's all we have, Your Honor.

10 Thank you.

11 THE COURT: All right.

12 MR. JAMES: I will be brief, Your Honor.

13 The record demonstrates that Mr. Cooper was calm, cool,
14 cogent, and collected in his interactions with his attorney,
15 and his recollection of the events that occurred on the day
16 in question during the pretrial hearing.

17 Additionally, Mr. Barnette gave the explanation as to
18 why the statement was not surrendered to Mr. Cooper prior to
19 his trial. A review of the statement itself, as has been
20 indicated by the original trial counsel, by Solicitor
21 Barnette, by Mr. Richey, and by Your Honor, if you choose to
22 read it here shortly, it shows that in no way, shape, or
23 form is it exculpatory to Mr. Cooper, and that's the first
24 thing -- most important prong of any Brady allegation. And
25 so Mr. Cooper can not sustain his burden of proof under

1 Strickland versus Washington.

2 As to the mental health allegation, since -- on top of
3 everything else, he hasn't introduced any expert testimony
4 or report to show that he was of -- not, not of sound mind
5 at the time of the trial, and he can not meet his burden as
6 to the Brady allegation. And, for those reasons, we would
7 respectfully request that the allegations -- the Application
8 for Post-Conviction Relief be denied.

9 THE COURT: All right, sir. I am gonna respectfully
10 deny the Application. I don't think there's been any
11 showing -- if I understood the testimony, he never, he never
12 shared with Mr. Morin that, that he was a mental health
13 patient or that he needed any mental health evaluation. Mr.
14 Morin's -- it appeared that Mr. Morin's communications and
15 discussions with Mr. Cooper, he was lucid and was able to
16 assist in his defense, and there wasn't anything that would
17 of triggered any concern for Mr. Morin to even seek a, a, a
18 mental health evaluation.

19 The statement, as, as the solicitor mentioned, Ms. Cash
20 was not called -- wasn't called as a witness in the case,
21 didn't appear as a witness in the case. I did read the
22 statement. It's not very lengthy. It's about a page and a
23 half, and I, I would, would agree with the assessment that
24 Mr. Morin testified to that, that the statement is not
25 exculpatory. As a matter of fact, the statement very well

1 could of, could of lead to a -- an armed robbery charge,
2 which would of exposed Mr. Cooper to a life without parole
3 situation. Since she wasn't used as a witness, there was no
4 obligation to turn the statement over unless it was
5 exculpatory, which it, it clearly is not. I just -- there
6 just hasn't been any showing here today to support the
7 allegations of Mr. Cooper's Application.

8 I'm gonna respectfully deny that.

9 MR. JAMES: Thank you, Your Honor.

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12 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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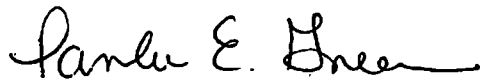
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh 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 evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 7th day of March, 2019.

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

August 28th, 2019



PAMELA E. GREEN, Court Reporter

PUBLIC SAFETY DEPARTMENT

CITY OF SPARTANBURG
P.O. BOX 1748 - 145 W. BROAD ST.
SPARTANBURG, S.C. 29304

CASE NUMBER

6-0079-15

WITNESS INTERVIEW FORM

Name: Kimberly Dawn Cash Address: [redacted]Duncan, S.C. 29334Telephone Number: (864) 255-7525 Social Security Number: [redacted]Date of Birth: [redacted] Today's Date: 06-03-15 Time: 4:17 p.m.

The following is a statement taken from Kimberly Dawn Cash on 6-3-15.
This statement was taken at BB&T Bank located at [redacted] North Church Street.
This statement was written by Tro. C.A. Boyd.

A man came into the bank through the front door. My back was to the door because I was running money. I turned around as he was walking through the door. Natasha said "What in the world". I turned around and there was an individual about 5'6", small built, had a black cape that came over head, his hands and down to the floor. He had on a white mask with the eyes, nose and mouth outlined in black.

I said "Sir what are you" and he came fast to the teller line. He said come here and handed me a note. I looked at the note because it was paragraphs. He said "Hurry up, give it all to me." I emptied out all of my drawer and gave it to him. He said "I said give it all to me. Natasha said "Do you

Time Interview Began: 4:17 p.m. Time (Statement/Interview) was completed: 4:33 p.m.

I have read this statement consisting of 2 page(s), and I swear or affirm that the facts contained therein are true and correct.

I further state that I have received a copy of this statement.

SWORN TO AND SUBSCRIBE TO BEFORE ME

THIS DAY OF , 20

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES:

Signed: [Signature]Witness: [Signature]Witness: [Signature]

VOLUNTARY STATEMENT

PAGE 2 OF 2

CASE NUMBER

NAME: Kimberly Dawn Cash6-0079 -15

want mine too?" He reached into to his right side pocket and said "I got a gun hurry up give it all to me." When he said that Natasha had given him hers. He said it again and I held up my drawer showing it to him.

He walked to the front door and started running. I yelled at Kelly to lock the door. He got half way and stopped. Then he took off running. He went behind the brick building and back to the right like he was heading to the railroad tracks. I called 911 to report what had happened.

The note he handed me I gave it back. He left the note on the counter. EUS

WITNESS: C. R. [Signature]WITNESS: [Signature]

[Signature]
Signature of person giving voluntary statement

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Terry Cooper,
S.C.D.C. No. 118061,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-42-00868

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief filed by Terry Cooper ("Applicant") on March 12, 2018. Respondent made its return on or about August 1, 2018. The Court convened an evidentiary hearing into the matter on Thursday, March 7, 2019, at the Spartanburg County Judicial Center in Spartanburg, South Carolina. Applicant was present at the hearing and represented by Rodney W. Richey, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Michael D. Morin, Esq. ("Counsel"), and Solicitor Barry J. Barnette also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's direct appeal records (including the complete trial transcript), and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to the order of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the April

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2015 term of the Spartanburg County Grand Jury for bank robbery (2015-GS-42-03353).

Michael D. Morin, Esq. represented Applicant, and Barry J. Barnette, Esq., Solicitor for the Seventh Judicial Circuit, prosecuted the case. On March 14, 2016, Applicant proceeded to trial before the Honorable J. Derham Cole and a jury. The jury found Applicant guilty as indicted on March 15, 2016. Judge Cole sentenced Applicant to imprisonment for a term of 28 years.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Taylor D. Gilliam, Esq. filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967), which offered the following issue:

Whether the trial judge erred in admitting Appellant's statement to law enforcement where the State could not prove by a preponderance of the evidence that Appellant's statement was knowingly, intelligently, and voluntarily made since evidence suggested Appellant was under the influence of intoxicating medications?

The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion, State v. Cooper, Op. No. 2017-UP-390 (S.C. Ct. App. filed Oct. 18, 2017). The Remittitur was issued on December 21, 2017.

Present Application

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

1. "Ineffective Assistance of Counsel"
 - a. "Trial counsel fail to file motion to have Applicant mentally evaluated whenever he was well aware that his client was a mentally ill defendant."
2. "Prosecutorial Misconduct"
 - a. "Prosecutor Barry Barnette fail[ed] to produce information that was requested and applicant['s] counsel fail to filed motion to compel any and all evidence that the prosecutor [held] back."
3. "Trial judge committed error of law"
 - a. "Trial judge erred in admitting applicant['s] statement to law enforcement where the State could not prove by a preponderance of evidence that

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applicant[‘s] statement was knowingly intelligently and voluntarily made since evidence suggested applicant was under the influence of intoxicating medications.”

Applicant requests relief as follows:

- “reversal of [his] conviction and dismissal of indictment and also [to] replace [a] watch that S.C.D.C. took.”

At the evidentiary hearing, Applicant proceeded forward only on the above allegations of ineffective assistance of counsel and prosecutorial misconduct.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she 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.” Butler, 286 S.C. 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

“[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler, 286 S.C. at

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442, 334 S.E.2d at 814 (quoting Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694).

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. Strickland, 466 U.S. at 696. 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.

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if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

1. Failure to Subject Applicant to Mental Evaluation

The Court finds no merit in Applicant's contention that Counsel was ineffective for failing to have him professionally evaluated for his mental health issues. "Due process of law prohibits the conviction of a person who is mentally incompetent." *Jeter v. State*, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992). An accused is competent to stand trial if he or she has sufficient capability to consult with his or her lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him. *Id.*, 308 S.C. at 232, 417 S.E.2d at 596. "The focus of a competency inquiry is the defendant's mental capacity; the question is whether he has the *ability* to understand the proceedings." *Garren v. State*, 423 S.C. 1, 14, 813 S.E.2d 704, 711 (2018) (quoting *Godinez v. Moran*, 509 U.S. 389 (1993)).

As to the deficiency prong under *Strickland*, an attorney may reasonably rely upon his or her own perceptions of a defendant in determining whether or not their client should be mentally evaluated. *Jeter*, 308 S.C. at 233, 417 S.E.2d at 596. When establishing *Strickland* prejudice in the context of counsel's failure to request a mental competency evaluation, the applicant need only show a reasonable probability that he was incompetent at the time of the original proceeding. *Garren*, 423 S.C. at 12, 813 S.E.2d at 710 (citing *Ramirez v. State*, 419 S.C. 181, 795 S.E.2d 841, 845 (2017)). As is the case with any other allegation that a defense attorney failed to adequately investigate some matter, an applicant must present some proof of identifiable mental health issues which undermine his or her competency; mere speculation and conjecture by the applicant is insufficient to establish prejudice. *Id.*, 423 S.C. at 13-14, 813 S.E.2d at 711.

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An applicant alleging incompetence *in fact* must show by a preponderance of the evidence that he was incompetent at the time of his original proceedings. *Id.*, 423 S.C. at 16, 813 S.E.2d 704, 713; Hall v. Catoe, 360 S.C. 353, 358, 601 S.E.2d 335, 338 (2004). If an applicant claims he was rendered incompetent due to medication, he or she must show that his or her mental faculties were so impaired by drugs during the original proceedings that he or she was incapable of full understanding of the proceedings. Garren, 423 S.C. at 15, 813 S.E.2d at 712 (quoting United States v. Truglio, 493 F.2d 574, 578 (4th Cir. 1974)). "A PCR court must consider 'objective data' about the nature and effect of the medication the defendant had taken and evaluate whether such medication 'had the capability to produce a sufficient effect on his mental faculties to render him incompetent[.]'" *Id.* (quoting United States v. Damon, 191 F.3d 561, 565 (4th Cir. 1999)).

At trial, Applicant testified *in camera* during a Jackson v. Denno hearing regarding the conditions of his interrogation. (R. 49-76). Applicant testified that he told law enforcement he was "up under mental health observation and everything." (R. 52, ll. 2-7). Applicant recalled taking Remeron,¹ Seroquel, and Neurontin. (R. 52, ll. 5-11). Applicant explained the medications were for depression, nerves, and anxiety. (R. 52, ll. 12-17). On cross-examination during the Denno hearing, Applicant asserted that at the time of his arrest he was on his way to "mental health on Dewey Avenue" to pick up a prescription. (R. 59-60). Applicant conceded law enforcement retrieved insulin for him, but denied being provided his mental health medications. (R. 60, ll. 9-21). Pressed by the State, Applicant listed his prescribed medications in full, including the three previously mentioned, insulin, aspirin, and unidentified blood pressure medication he couldn't name "because I'm on so much medication." (R. 60-62). Applicant

¹ The trial transcript reflects Applicant's pronunciation of the drug as "Ramrod," but the Court is aware of no such medication. The Court infers from Applicant's claim of depression that he is referring to Remeron, which is an antidepressant.

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explained he had been on mental health medication since he was eight years old, that he had previously attempted suicide by running out in front of a tractor-trailer, and that if provided a gun he would "blow my own brains out right here." (R. 62, ll. 15-25). Pressed on his prior convictions, Applicant testified he could remember them, then explained that without his medication he would "act a certain way." (R. 63-64). After a lunch break prompted by Applicant's complaint of a headache, the State further inquired as to Applicant's medications during prior crimes and proceedings. (R. 67-73). Applicant ultimately conceded that law enforcement got all of his medications. (R. 73-76). Applicant concluded his testimony and the trial court promptly found his statement to law enforcement was freely and voluntarily made. (\$ 77, ll. 6-12).

At the evidentiary hearing, Applicant testified he and Counsel discussed his case, but never discussed the possibility of a mental health evaluation. Applicant asserted he suffered from mental health problems at the time and that he was diagnosed with major depression. Applicant admitted that he never told Counsel about his mental health issues, but testified he told law enforcement at the time of his arrest. Applicant noted he was diabetic, and that his confession to law enforcement was influenced by the medications he was taking at the time. Applicant claimed he was taking Remeron and Seroquel, but never told Counsel about the medications. Applicant recalled struggling with mental health issues since he was eight years old. Applicant opined that, had the jury known of his issues, the trial could have turned out differently. However, on cross-examination, Applicant could not articulate what sort of mental health evaluation he needed, and admitted that his condition probably had no impact on his memory.

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Counsel testified he became aware Applicant was on medications and that, as a result, he obtained from Spartanburg Mental Health some twenty-six pages of records. Counsel recalled the records revealed no memory issues or hallucinations, and were generally not helpful. Counsel testified that Applicant was able to talk to him and assist at trial, and gave no indication of any confusion during the course of his representation. Counsel testified that he perceived no memory issues in Applicant, and perceived nothing in Applicant's conduct to prompt further investigation into Applicant's mental health. Counsel confirmed that he and Applicant never really discussed his mental health.

The Court finds Applicant has failed to meet his burden of proof as to this allegation. First, Applicant presents *no* objective evidence in support of his claimed mental health issues, or that the medications he was prescribed were such that they could have rendered him incompetent at the time of trial. Second, there is no sign of any insanity defense, as Applicant does not assert he was unable to control himself, but rather that he is innocent. Third, Counsel's credible testimony demonstrates that he reasonably relied upon his own perceptions of Applicant and perceived no reason to investigate Applicant's competence to stand trial. To the extent Counsel did have a reason to investigate Applicant's mental health, he did so by obtaining records from Spartanburg Mental Health, which he found to be unhelpful. Fourth, Applicant never shared with Counsel his concerns regarding his own mental health. Fifth, as appears to have been indicated by Applicant during the Denno hearing, the medications he was prescribed served to make him more lucid, not less. Sixth, the trial record, alongside this Applicant's conduct at the evidentiary hearing, show a lucid, cogent individual who was well aware of his surroundings, understood the proceedings, and was amply capable of assisting in them. Altogether, this Court can find absolutely no basis to even speculate as to Applicant's competence—he is and was

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clearly competent—or any reason for Counsel to have investigated the subject further.

Accordingly, Applicant's request for relief upon this ground is **DENIED**.

B. Brady Violation

The Court finds Applicant's allegation that the State failed to disclose evidence in its possession in violation of Brady v. Maryland, 373 U.S. 83 (1963), such that he should be granted a new trial is without merit because the evidence in question was not favorable to Applicant. "Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment." Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993). "A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). The mandate of Brady extends to evidence "that is not in the actual possession of the prosecution but known by others acting on the government's behalf in the particular case, including the police." State v. Kennerly, 331 S.C. 442, 452-53, 503 S.E.2d 214, 220 (Ct. App. 1998) (citing Kyles v. Whitley, 514 U.S. 419 (1995)). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing United States v. Bagley, 473 U.S. 667 (1985)).

At the evidentiary hearing, Applicant asserted that although Kim Cash was originally identified as the victim in the bank robbery, and that she gave a statement, he never got any such statement in his discovery. Applicant acknowledged that Cash did not testify at his trial.

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Counsel testified that he had an opportunity to review Cash's statement to law enforcement prior to the evidentiary hearing and concluded that it was not helpful to Applicant. If anything, Counsel opined, the statement provided the State a basis to additionally charge Applicant with armed robbery.

Solicitor Barnette testified that he did not receive Cash's statement from law enforcement until just prior to the evidentiary hearing. In the statement, Cash recalled the events of the robbery and the demands made by the perpetrator, including his threat: "I got a gun hurry up give it all to me." Solicitor Barnette testified that there was nothing exculpatory in Cash's statement and that he found nothing exculpatory in his review of the file.

The Court finds Applicant's Brady claim is without merit. Applicant cannot meet the first requirement of proving a Brady claim: that the evidence was favorable to him. To the contrary, the statement was entirely inculpatory and could have resulted in an additional charge for armed robbery had it been in the possession of the prosecution prior to trial. In that regard, it is likely to Applicant's benefit that Counsel did not recognize and press the issue of Cash's missing statement. The Court additionally notes Cash did not testify at trial, such that it had no use for impeachment purposes. Accordingly, Applicant's demand for relief under Brady is **DENIED.**

[Conclusion and signature on following page]

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III. CONCLUSION

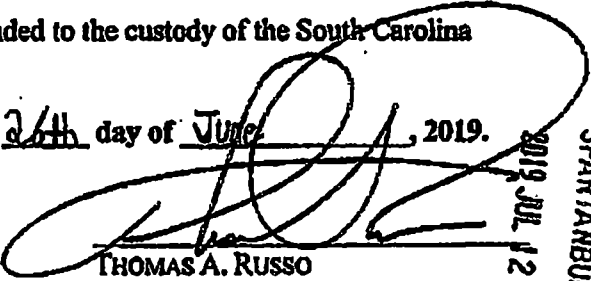
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 24th day of June, 2019.


THOMAS A. RUSSO
Presiding Judge
Seventh Judicial Circuit

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_____, South Carolina

WITNESSES

Spartanburg City Police Department

Angie M. DeGroot, Jr.

1. REPORT MADE

2. REPORT INDEXED

3. CASE NUMBER

4. INDEXED **COMPUTER**

5. ARREST WARRANT NUMBER

6. CHECKED SIGNATURE

7. ARRESTMENT AND
FINE CARD MADE

8. ACTION OF GRAND JURY

COMPUTER
ACTION OF GRAND JURY

LeRoy
Foreperson of Grand Jury
Date: JUL 20 2015

VERDICT

Guilty

Kathy Bowen
Foreperson of Petit Jury
Date: 3/15/16

DOCKET NO.

15-GS-42-3353

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 03 2015

TERM

THE STATE
v.

TERRY COOPER

Indictment for

BANK ROBBERY

SC Code: 16-11-380(A);

CDR Code: 0257

Class: FEL/A

2015 JUL 31 AM 9:47

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

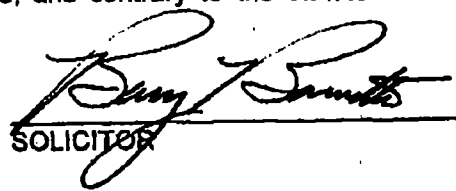
JUL 29 2015

At a Court of General Sessions, convened on _____ the Grand
Jurors of Spartanburg County present upon their oath:

BANK ROBBERY

That the Defendant, Terry Cooper, did in Spartanburg County on or about June 3, 2015, enter a building or part of a building occupied as a bank, depository, or savings and loan association named BB & T located at 280 North Church Street, Spartanburg, SC with the intent to steal money, securities for money, or property, by either force, intimidation, or threats and received U.S. Currency by demanding it from the teller, Kimberly Cash, with intent to deprive the owner permanently of such property, goods or monies in violation of Section 16-11-0380, THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG

STATE VS.

Terry Cooper

AKA:

Race: BLACK Sex: M Age: 53

DOB: SS#:

Address: N Forest St

City, State, Zip: Spartanburg, SC 29301-2253

DL#: 100725844 SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

INDICTMENT/CASE#: 2015GS4203353

A/W#: 2015A4210201797

Date of Offense: 6/3/2015

S.C. Code §: 16-11-0380(A)

CDR Code #: 0257

SENTENCE SHEET

TO: Robbery / Entering bank, depository or bldg and loan association with intent to steal

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0380(A) of the S.C. Code of Laws, bearing CDR Code # 0257

☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

BARNETTE, BARRY

SC Bar# 13039

Defendant

Attorney for Defendant

SC Bar# 65094

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$300	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCIA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

March 10, 2016

8093