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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Greenwood County

Thomas A. Russo, Circuit Court Judge

LAKENDRICK K. LEVERETTE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212506

APPENDIX

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY

J. Ernest Kinard, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAKENDRICK K. LEVERETTE,

APPELLANT

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF GREENWOOD) 2006-GS-24-1129, 1130

STATE OF SOUTH CAROLINA)
VS.) TRANSCRIPT OF RECORD
)
LAKENDRICK KENTRELL LEVERETTE)
DEFENDANT)

APRIL 7, 2008
GREENWOOD, SOUTH CAROLINA

B E F O R E:

HONORABLE J. ERNEST KINARD, JR., JUDGE

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

DEMETRIOS G. ANDREWS, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

CHAD BETTIS, ESQ.
ATTORNEY FOR THE DEFENDANT

JOY E. HOLSTON
OFFICIAL COURT REPORTER

I N D E X O F W I T N E S S E S

(IC) - DENOTES IN CAMERA
(DW) - DENOTES DEFENSE WITNESS
(SW) - DENOTES STATE'S WITNESS

(SW) BOBBY CATON

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(SW) TYRONE GOODMAN

DIRECT EXAMINATION BY MR. ANDREWS: 61
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(SW) CHIP DAVENPORT

DIRECT EXAMINATION BY MR. ANDREWS: 70
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(SW) CHRIS GRAY

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4-7-2008

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JURY SELECTIONCASE NO.: 06-GS-24 169JUDGE: KinardPL./STATE: StateDefendant: Lakendrick K. LeVeretteAttorney: Demetrius AndrewsATTORNEY Chad BettisREPORTER: Joy Feltner

	JUROR NAME	SEX	RACE	COURT	<u>State</u> PLAINT.	DEF.	ACCEPT	
64	Allen Kelly	m	w		✓	✓	✓	①
65	Andrew Kinard	m	w		✓	X	-	-
10	John Briggs	m	w		✓	X	-	-
7	Daric Bowie	F	B		✓	✓	✓	②
12A	SZORTYKA, David	m	w		✓	X	-	-
38	MYRA Gilchrist	F	B		X	-	-	-
36	TABITHA Garner	F	B		✓	✓	✓	③
143	Tina Wideman	F	w	Foreperson	✓	✓	✓	④
3	Angela Blackwell	F	w		✓	X	-	-
8	Dwight Bowling	m	w		✓	X	-	-
56	Crystal Holliday	F	w		X	-	-	-
62	Lynn Johnson	F	w		✓	X	-	-
19	Bridget Christopher	F	B		X	-	-	-
67	Jennitka Lawrence	F	w		✓	X	-	-
78	Don Miller	m	w		✓	✓	✓	⑤
86	Kayla Morrow	F	w		✓	✓	✓	⑥
47	Janice Harnack	F	w		✓	✓	✓	⑦

4-7-2008

(2)

JURY SELECTION

CASE NO.: 06-GS-24-1129

JUDGE: Kinard

PL./STATE: State

Defendant Latendrick Leverette
ATTORNEY

Attorney
DEFENDANT: Denettia Andrews

ATTORNEY Chad Bettis

REPORTER: Jay Holston

	JUROR NAME	SEX	RACE	COURT	State	DEF.	ACCEPT	
					PLAINT.			
94	Barbara Park	F	W		✓	X	-	-
33	Shandelyn Foggie	F	B		✓	✓	✓	(8)
74	Talmadge Lucke	M	W		✓	X	-	-
102	Ernestine Poice	F	W		✓	✓	✓	(9)
88	Sanford New	M	W		✓	X	-	-
63	Milton Johnson	M	W		✓	✓	✓	(10)
34	Lakasha Feller	F	B		✓	✓	✓	(11)
140	Tyler Weeks	M	W		✓	✓	✓	(12)

Alternate

132	Glasco Tolbort	M	B		X	-	-	-
80	Angela Minor	F	W		✓	✓	✓	✓

EXHIBITSSTATE'S

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1	CANE		X	78
2	PELLET GUN		X	72
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4	ORAL SWABS		X	104
5	HAT CUTTINGS		X	110
6	SWABS		X	112
7	SCALES	X	X	125
8	PAPER BAG	X	X	125
9	HAT	X		44
10	MONEY - \$46.00		X	88
11	MAP		X	89
12	CHAPSTICK, LIGHTER		X	88
13	CHANGE - \$1.68	X	X	125
14	PHOTO		X	88
15	PHOTO		X	88
16	PHOTO		X	88
17	PHOTO		X	76
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EXHIBITS

DEFENSE

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1 THE COURT: OKAY, JURORS, IF I CAN HAVE YOUR
2 ATTENTION. THE DEPUTY SOLICITOR JUST HANDED ME THREE
3 INDICTMENTS, BUT IT DOESN'T INVOLVE THREE INCIDENTS. THIS
4 ALL ALLEGEDLY HAPPENED AT THE SAME TIME AND REMEMBER
5 INDICTMENTS ARE NOT EVIDENCE, THEY CREATE NO INFERENCE OF
6 GUILT AGAINST ANYBODY CHARGED WITH A CRIME. THE DEFENDANT
7 NEVER HAS TO PROVE THAT HE OR SHE IS NOT GUILTY, THEY COME
8 INTO THE TRIAL PRESUMED INNOCENT, THE STATE HAS THE BURDEN
9 OF PROOF BEYOND A REASONABLE DOUBT ON EVERY ELEMENT THAT
10 CONSTITUTES A CRIME FOR WHICH THEY ARE CHARGED. NOW, THIS
11 FIRST INDICTMENT CONTAINS ALLEGATIONS THAT ALLEGES THAT
12 LAKENDRICK KENTRELL LEVERETTE COMMITTED THE CRIME OF ARMED
13 ROBBERY IN GREENWOOD COUNTY BY TAKING SOME PROPERTY FROM
14 BOBBY CATON BACK ON JUNE THE 9TH OF '06 WHILE ARMED WITH A
15 DEADLY WEAPON. THE SECOND INDICTMENT ALLEGES THAT AT THE
16 SAME TIME MR. LEVERETTE COMMITTED THE CRIME OF KIDNAPPING
17 IN THAT HE KIDNAPPED BOBBY CATON. THE THIRD INDICTMENT IS
18 JUST A ADD ON SITUATION, THE LEGISLATURE PASSES A LOT OF
19 ADD ON CRIMES. THIS ALLEGES THAT ON THAT SAME DATE MR.
20 LEVERETTE COMMITTED THE CRIME OF BEING ARMED WITH A
21 FIREARM OR KNIFE DURING THE COMMISSION OF A VIOLENT CRIME.
22 KIDNAPPING AND ARMED ROBBERY ARE CLASSIFIED AS VIOLENT
23 CRIMES, IT IS AN ADD ON PENALTY. YOU COULDN'T FIND MR.
24 LEVERETTE GUILTY OF POSSESSION OF A FIREARM OR A KNIFE
25 DURING THE COMMISSION OF A VIOLENT CRIME UNLESS YOU FIRST

1 FIND HIM GUILTY OF COMMITTING A VIOLENT CRIME, IF YA'LL
2 CAN UNDERSTAND THAT. AND I AM NOT SUGGESTING, OF COURSE,
3 THAT HE IS GUILTY OF ANYTHING. SO, THREE INDICTMENTS,
4 JUST ALLEGATIONS, THERE ARE THREE SPECIFIC CRIMES, THE
5 STATE HAS THE BURDEN OF PROOF BEYOND A REASONABLE DOUBT ON
6 EACH OF THE INDICTMENTS. NOW, MR. LEVERETTE IS PRESENT.
7 IF HE WILL KIND OF STAND AND FACE THE PANEL. DOES HE LOOK
8 FAMILIAR TO YOU. ANYBODY EVER GO TO SCHOOL WITH HIM, LIVE
9 IN THE NEIGHBORHOOD WITH HIM, WORK WITH HIM OR ARE YOU
10 CONNECTED TO HIM THROUGH MARRIAGE, DIRECTLY, INDIRECTLY OR
11 ARE YOU KIN TO HIM DIRECTLY OR INDIRECTLY.

12 (NO RESPONSE.)

13 THE COURT: OKAY, YOU CAN HAVE A SEAT. NOW, THE
14 STATE IS REPRESENTED BY THE EIGHTH CIRCUIT SOLICITOR'S
15 OFFICE, ONE OF THE DEPUTY SOLICITORS IS GOING TO HANDLE
16 THE CASE OR MORE, I DON'T KNOW, YOU CAN TELL US WHO YOU
17 ARE.

18 MR. ANDREWS: LADIES AND GENTLEMEN, I AM DEMETRIOS
19 ANDREWS, I AM REPRESENTING THE STATE AT THIS TIME.

20 THE COURT: OKAY. NOW, JURORS, I EARLIER ASKED YOU
21 AT THE PREVIOUS TRIAL IF YOU HAD ANY CONNECTION WITH THE
22 EIGHTH CIRCUIT SOLICITORS OFFICE, IF YOU HAVE ANY
23 CONNECTION WITH THIS SOLICITOR.

24 (NO RESPONSE.)

25 THE COURT: MR. LEVERETTE IS REPRESENTED BY AN

1 ATTORNEY, HE IS GOING TO TELL WHO HE IS.

2 MR. BETTIS: MY NAME IS CHAD BETTIS, I AM AN ATTORNEY
3 HERE IN GREENWOOD, I AM HERE ON BEHALF OF LAKENDRICK
4 LEVERETTE, HE PLEAD NOT GUILTY TO THESE CHARGES. THANK
5 YOU.

6 THE COURT: JURORS, DO YOU HAVE ANY CONNECTION WITH
7 THIS ATTORNEY, DIRECT OR INDIRECT, HAS HE EVER REPRESENTED
8 YOU ON ANY LEGAL MATTERS, HAS HE BEEN ON THE OTHER SIDE OF
9 ANY CONTROVERSY IN WHICH YOU WERE INVOLVED. DO YOU HAVE
10 ANY CONNECTION WITH HIM AT ALL, DO YOU GO TO CHURCH WITH
11 HIM, CLUB WITH HIM. OKAY.

12 JUROR: LORETTA HARTZOG, HE DID SOME LEGAL WORK FOR
13 MY PARENTS.

14 THE COURT: HAS THE LEGAL REPRESENTATION ENDED?

15 JUROR: YES.

16 THE COURT: ALL RIGHT. CAN YOU BE FAIR AND
17 IMPARTIAL?

18 JUROR: YES.

19 THE COURT: HE DIDN'T CHARGE YOU TOO MUCH FOR THE.
20 WILL, NO. ALL RIGHT, JURORS, I HAVE A LIST OF POTENTIAL
21 WITNESSES. AGAIN, ANY TIME YOU ARE CHARGED WITH THE
22 COMMISSION OF A VIOLENT CRIME WE ARE IN A SERIOUS
23 SITUATION, YA'LL UNDERSTAND THAT. YOU HAVE TO LIST ALL
24 THE POTENTIAL WITNESSES, THAT DOESN'T MEAN THEY ARE GOING
25 TO BE CALLED. IF THE WITNESS IS PRESENT I WOULD ASK FOR

1 THEM TO STAND, IF NOT, I JUST HAVE THEIR NAME. AGAIN, IF
2 YOU KNOW SOMEONE WITH THIS NAME OR A SIMILAR NAME IF YOU
3 WILL STAND. JENNIFER BASS WHO IS EMPLOYED WITH THE
4 GREENWOOD POLICE DEPARTMENT, BOBBY CATON, TRAVIS CLARK,
5 JEFF CRISP, CHIP DAVENPORT, ERIC DUNN, TYRONE GOODMAN,
6 CHRIS GRAY WITH THE GREENWOOD POLICE DEPARTMENT, ERIC
7 LEWIS ALSO WITH THE POLICE DEPARTMENT, SHINESHIA
8 PATTERSON, ROBIN TAYLOR WHO IS EMPLOYED WITH SLED, LARRY
9 ZIVKOVICH EMPLOYED BY SLED, AMY STEPHENS A SLED EMPLOYEE,
10 NIKKI PERRY WITH SLED. ZAVIUS ONTARIO JONES, JEREMIAH JAY
11 ATKINS WITH THE CITY POLICE DEPARTMENT, TERRI BURNETTE,
12 STANLEY ELAM, CAPTAIN MARSHALL WITH THE CITY POLICE
13 DEPARTMENT. MR. BETTIS, WERE YOU PRESENT, WAS YOUR CLIENT
14 PRESENT WHEN I INQUIRED OF THE JURORS ABOUT VARIOUS NEXUS
15 AND SO FORTH IN THE PREVIOUS CASE?

16 MR. BETTIS: WE WERE, YOUR HONOR.

17 THE COURT: ALL RIGHT. JURORS, IF YOU ARE SELECTED
18 ON THIS JURY YOU WOULD BE THE FACT FINDERS AND YOU HAVE TO
19 ACCEPT THE LAW AS I WOULD INSTRUCT YOU. IF YOU HAVE A
20 PRECONCEIVED IDEA ABOUT THE LAW AND YOU FEEL LIKE THAT
21 WOULD OVERRIDE ANY INSTRUCTIONS I WILL GIVE YOU FOR
22 WHATEVER ISSUE WE JUST DON'T NEED TO PUT YOU ON THIS
23 PARTICULAR JURY. SOME PEOPLE SAY THEY CAN'T JUDGE ANYBODY
24 AND THINGS LIKE THAT OR THEY DON'T BELIEVE SOMEBODY IS
25 PRESUMED INNOCENT. YOU HAVE GOT TO FOLLOW EVERY

1 INSTRUCTION THAT I GIVE YOU, IF YOU HAVE GOT A PROBLEM
2 WITH THAT YOU DON'T NEED TO SERVE. DOES ANYBODY RECALL
3 HAVING ANY CONNECTION, YOU OR IMMEDIATE FAMILY MEMBER WITH
4 LAW ENFORCEMENT OF ANY LEVEL, IF YOU DIDN'T STAND BEFORE.

5 JUROR: JANE DREYER, JUROR 29. MY HUSBAND IS RETIRED
6 FROM THE DEPARTMENT OF CORRECTIONS.

7 THE COURT: OKAY, THANKS. YES, SIR.

8 JUROR: I AM ALSO RETIRED WITH THE DEPARTMENT OF
9 CORRECTIONS.

10 THE COURT: YOUR NAME AND NUMBER.

11 JUROR: NUMBER 77, KEVIN MCGINNIS.

12 THE COURT: OKAY. THANK YOU. IS ANYTHING IN THE
13 NATURE OF THE CHARGES THAT WOULD KEEP ANYBODY FROM BEING
14 FAIR AND IMPARTIAL.

15 (NO RESPONSE.)

16 THE COURT: HAVE YOU JURORS HEARD ANYTHING ABOUT THIS
17 CASE OTHER THAN WHAT I JUST READ.

18 (NO RESPONSE.)

19 THE COURT: ANY JUROR AWARE OF ANY REASON WHY YOU
20 COULDN'T BE FAIR AND IMPARTIAL, WHETHER I HAVE INQUIRED
21 ABOUT IT OR NOT?

22 (NO RESPONSE.)

23 THE COURT: THE STATE, DO YOU NEED ANYTHING ELSE?

24 MR. ANDREWS: YOUR HONOR, IF WE CAN APPROACH FOR JUST
25 A MOMENT.

1 THE COURT: ALL RIGHT.

2 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
3 PRESENCE OF THE JURY PANEL BUT OUT OF THE HEARING OF
4 THE JURY PANEL.)

5 THE COURT: NOW, THIS CASE IS DIFFERENT FROM THE
6 OTHER CASE, YOU UNDERSTAND, BUT I HAVE FOREGONE TO ASKING
7 THE SAME QUESTIONS. IF ANYBODY REMEMBERS ANY QUESTION
8 THAT I POSED IN THE PREVIOUS TRIAL, IF YOU DIDN'T ANSWER,
9 YOU SHOULD ANSWER IT NOW, I WOULD ASK FOR YOU TO STAND
10 OTHERWISE WE ARE GOING TO CALL YOUR NAMES. YOU KNOW THE
11 DRILL BY NOW. OKAY.

12 (WHEREUPON, A BENCH CONFERENCE WAS HELD WITH TWO
13 JURORS.)

14 THE COURT: OKAY, LET'S CALL THE NAMES.

15 (WHEREUPON, THE JURY WAS IMPANELED AT APPROXIMATELY
16 11:00 A.M. LOCATED BEHIND INDEX.)

17 THE COURT: OKAY, ANYBODY NEED TO TAKE UP ANYTHING
18 CONCERNING THIS TRIAL.

19 MR. BETTIS: MAY WE APPROACH, YOUR HONOR.

20 THE COURT: ALL RIGHT.

21 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
22 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
23 JURY.)

24 THE COURT: JURORS WHO WERE NOT SELECTED ON EITHER
25 JURY, YOU HAVE THAT NUMBER TO CALL. YOU ARE ALL EXCUSED

1 TODAY AND CALL THE NUMBER TONIGHT AFTER 6:00 AND LISTEN TO
2 THE INSTRUCTIONS.

3 (WHEREUPON, THE JURY PANEL WAS EXCUSED FROM OPEN
4 COURT.)

5 THE COURT: OKAY, JURORS, HERE IS THE SITUATION, WE
6 ARE NOT GOING TO FINISH THE FIRST TRIAL TODAY. DON'T KNOW
7 NOW HOW LONG IT WILL TAKE. IF WE GET THIS CASE TO THE
8 JURY BY LUNCH TIME TOMORROW YOU WILL HAVE TO COME IN AT
9 2:00 OR 2:30, BUT THERE WILL BE A MESSAGE ON THE MACHINE.
10 THERE WILL BE TWO MESSAGES ON THE MACHINE, ONE WILL SAY
11 JURY ON THE SECOND TRIAL, THAT IS YOU. THE OTHER WILL
12 SAY, THE OTHER JURORS. AND WE WILL KNOW TONIGHT WHETHER
13 WE WILL BE ABLE TO START IT TOMORROW AT 2:00 OR 2:30 OR
14 WEDNESDAY MORNING. WHEN YOU COME IN THE BAILIFF WILL SHOW
15 YOU HOW TO COME IN. WHATEVER IT SAYS COME IN AND WE WILL
16 GET STARTED. DON'T TALK ABOUT THE CASE WITH ANYBODY, YOU
17 DON'T KNOW ANYTHING ABOUT IT YET, ALL IT IS IS THAT YOU
18 ARE ON A JURY, OKAY, DON'T TALK ABOUT IT DURING ANY BREAKS
19 AT ALL. CALL TODAY AFTER 6:00 AND THE MESSAGE WILL TELL
20 YOU WHAT TO DO NEXT, EITHER CALL BACK THE NEXT DAY OR COME
21 IN TOMORROW AT A SPECIFIC TIME. SO, IF YOU WILL FOLLOW
22 MR. WILLINGHAM HE WILL SHOW YOU HOW TO GET IN.

23 (WHEREUPON, THE JURY FOR THIS CASE WAS EXCUSED TO
24 START THE CASE THE NEXT DAY.)

25 THE COURT: OKAY, IS THE STATE READY?

1 MR. ANDREWS: YES, SIR.

2 THE COURT: THE DEFENSE?

3 MR. BETTIS: YES, SIR.

4 THE COURT: THE INDICTMENTS ALLEGE THAT ARMED ROBBERY
5 AND KIDNAPPING OCCURRED WHILE HE WAS DOING IT OR WITH
6 SOMEBODY ELSE. THE HAND OF ONE IS THE HAND OF ALL, THAT
7 IS WHAT THE INDICTMENT ALLEGES.

8 MR. ANDREWS: YES SIR, YOUR HONOR.

9 THE COURT: BRING THEM IN. MS. WIDEMAN IS THE
10 FOREPERSON AND WE ARE GOING TO SWEAR THEM IN WHEN THEY
11 COME IN. OKAY.

12 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
13 APPROXIMATELY 9:30 A.M.)

14 THE COURT: JURORS, WE ARE READY TO CRANK IT UP,
15 LET'S SWEAR THEM IN.

16 (WHEREUPON, THE JURY WAS SWORN AT 9:35 A.M.)

17 THE COURT: JURORS, WE ARE GOING TO COMMENCE THE
18 TRIAL IN JUST A SECOND. NOW HERE IS HOW WE ARE GOING TO
19 DEVELOP, IT IS NOT A TRIAL THAT WE ARE GOING TO FINISH
20 TODAY. WE WILL FINISH IT TOMORROW, WE ARE NOT GOING TO
21 MIDNIGHT TONIGHT OR ANYTHING LIKE THAT, SINCE WE CAN'T
22 FINISH WE WILL QUIT SOMETIME BETWEEN 5:00 AND 6:00. AND
23 TOMORROW WE SHOULD FINISH BY LUNCH TIME OR EARLY
24 AFTERNOON. AS YOU RECALL WHEN YOU WERE OUT THERE I HELD
25 UP THREE INDICTMENTS, INDICTMENTS ARE NOT EVIDENCE, THEY

1 JUST CONTAIN ALLEGATIONS AND THEY ALLEGE LAKENDRICK.
2 KENTRELL LEVERETTE COMMITTED THREE CRIMES ON THE SAME
3 DATE. HE IS PRESUMED INNOCENT OF ALL CHARGES, THERE IS
4 ABSOLUTELY NO OBLIGATION ON HIS PART TO PROVE THAT HE IS
5 NOT GUILTY. IN ORDER TO OBTAIN CONVICTION ON ANY OF THE
6 INDICTMENTS THE STATE MUST CONVINCE ALL TWELVE OF YOU
7 JURORS UNANIMOUSLY BEYOND A REASONABLE DOUBT THAT HE
8 COMMITTED A CRIME WITHIN ONE OF THE INDICTMENTS. THE
9 INDICTMENTS ALLEGE THE CRIMES, KIDNAPPING, ARMED ROBBERY
10 AND POSSESSION OF A DEADLY WEAPON WHILE COMMITTING A
11 VIOLENT CRIME. I BASICALLY EXPLAINED TO YOU THAT THE
12 POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF
13 A VIOLENT CRIME WHICH IS WHAT THE STATUTE IS IS AN ADD ON
14 PENALTY SITUATION. YOU FIRST HAVE TO FIND THAT HE IS
15 GUILTY, NOT THAT HE IS, OF A VIOLENT CRIME, ARMED ROBBERY
16 AND KIDNAPPING BOTH BEING VIOLENT CRIMES BEFORE YOU CAN
17 FIND HIM GUILTY OF POSSESSION OF A WEAPON. NOW, I AM NOT
18 SUGGESTING THAT YOU FIND HIM NOT GUILTY OR GUILTY. I
19 THINK WE HAVE ALREADY MARKED ALL OF THE EXHIBITS THAT WILL
20 BE INTRODUCED, THERE WON'T BE ANY HASSLE ON WHETHER THIS
21 DOCUMENT COMES IN AND SO FORTH. NOW, THE INDICTMENT
22 ALLEGES A LITTLE SOMETHING DIFFERENT THAN WHAT I TOLD YOU
23 YESTERDAY. AGAIN, IT IS NOT EVIDENCE BUT THE INDICTMENT
24 ALLEGES THAT MR. LEVERETTE ON THE ARMED ROBBERY INDICTMENT
25 ALONG WITH ANOTHER PERSON OR PERSONS, HELPING EACH OTHER,

1 WHILE ARMED WITH A DEADLY WEAPON OR ALLEGING THEY WERE
2 ARMED WITH A DEADLY WEAPON AND SO FORTH TOOK PROPERTY FROM
3 BOBBY CATON. SO, IT ALLEGES THAT MR. LEVERETTE
4 INDIVIDUALLY OR WITH ANOTHER PERSON, IF TWO OR MORE PEOPLE
5 ARE ENGAGED IN A CRIMINAL ACTIVITY AND CRIMINAL ACTIVITY
6 IS CONSUMMATED, EVERYBODY PARTICIPATES IS GUILTY AS IF
7 THEY WERE THE ONE THAT COMMITTED THE CRIME. I DON'T KNOW
8 ANYTHING ABOUT THE FACTS OF THIS CASE, THAT IS WHAT THE
9 INDICTMENTS ALLEGE. AND ON THE KIDNAPPING CHARGE, IT
10 READS THE SAME WAY. IT ALLEGES THAT ON THAT PARTICULAR
11 DATE THAT I DIDN'T MENTION BUT IT IS JUNE THE 9TH OF '06
12 MR. LEVERETTE ALONG WITH ANOTHER PERSON OR PERSONS EACH
13 HELPING EACH OTHER AIDING AND ABETTING AND ASSISTING DID
14 KIDNAP BOBBY CATON. ALL RIGHT. AND THE FINAL INDICTMENT
15 ALLEGES THAT WHILE THE VIOLENT CRIME WAS BEING COMMITTED
16 MR. LAKENDRICK LEVERETTE WAS ARMED WITH A DEADLY WEAPON.
17 ALL RIGHT. HE IS PRESUMED INNOCENT, NO BURDEN ON HIS PART
18 TO PROVE THAT HE IS NOT GUILTY AT ALL. IT TAKES A
19 UNANIMOUS DECISION OF YOU TWELVE JURORS TO REACH VERDICTS
20 ON THESE THREE INDICTMENTS. THE ALTERNATE JUROR, YOU NEED
21 TO PAY ATTENTION THROUGHOUT, A CALL MIGHT COME IN AND A
22 CHILD IS SICK AND YOU HAVE TO LEAVE, SOMETHING LIKE THAT.
23 SO, ALTERNATE JUROR STAYS WITH US UNTIL ALL THE EVIDENCE
24 IS IN, SUMMATIONS ARE MADE, INSTRUCTIONS OF LAW ARE GIVEN,
25 ONCE DELIBERATIONS COMMENCE IF ALL TWELVE JURORS ARE STILL

1 WITH US THE ALTERNATE WILL BE EXCUSED AND NOT PARTICIPATE
2 IN DELIBERATIONS. BUT YOU NEED TO PAY ATTENTION BECAUSE
3 YOU DON'T KNOW WHEN SOMEBODY MIGHT GET SICK OR SOMETHING
4 AT THE LAST MINUTE. NOW, MADAM FORELADY, YOUR VOTE OF
5 COURSE COUNTS NO MORE THAN ANYBODY'S VOTE, BUT SOMEBODY
6 HAS TO PRESIDE OVER DELIBERATION AND ONCE DELIBERATIONS
7 COMMENCE AND YOU ACT AS THE SPOKESPERSON FOR THE JURY YOU
8 WRITE DOWN ANY QUESTIONS THAT THE JURORS MAY HAVE AND PASS
9 IT OUT TO THE BAILIFF AND I WILL CONFER WITH COUNCIL AND
10 SEE IF I CAN ANSWER THE QUESTION. BUT I AM NOT A FACT
11 FINDER, YOU JURORS ARE GOING TO DECIDE IF THE STATE HAS
12 MET ITS BURDEN OF PROOF BEYOND A REASONABLE DOUBT BASED
13 UPON YOUR EVALUATION OF ALL OF THE EVIDENCE THAT IS
14 PRESENTED INCLUDING TESTIMONY, EVIDENCE, EXHIBITS, WHAT
15 HAVE YOU. YOU WEIGH ALL THE EVIDENCE IN REACHING YOUR
16 DECISION AND GIVE ALL ADMITTED EVIDENCE SUCH WEIGHT AS YOU
17 FEEL IS ENTITLED TO. OBVIOUSLY, YOU PASS UPON THE
18 CREDIBILITY AND BELIEVABILITY OF THE WITNESSES WHO TESTIFY
19 AND BASICALLY USE YOUR COMMON SENSE IN EVALUATING THE
20 TESTIMONY. YOU CERTAINLY DON'T COUNT WITNESSES IN ANY
21 TYPE OF LITIGATION OR ANY KIND OF CRIMINAL PROSECUTION.
22 IT IS UP TO YOU JURORS TO DECIDE WHICH TESTIMONY IS
23 BELIEVABLE. I MENTION THIS AT THE END, JURORS, WHEN I
24 CONCLUDE THESE REMARKS THE ATTORNEYS WILL HAVE THE
25 OPPORTUNITY TO MAKE THEIR OPENING STATEMENTS TO YOU,

1 OUTLINE THEIR RELATIVE POSITIONS, THOSE STATEMENTS WILL
2 NOT BE EVIDENCE. YOU NEED TO PAY ATTENTION, WHAT THEY SAY
3 WILL TRANSPIRE. AFTER THAT WE WILL CALL WITNESSES. NOW,
4 ARMED ROBBERY, JURORS, IS THE HIGHEST FORM OF LARCENY AND
5 LARCENY IS WHAT YOU WOULD CONSIDER JUST STEALING.
6 SOMEBODY JUST STEALS PROPERTY FROM YOU, THAT IS LARCENY,
7 OKAY. ROBBERY IS WHEN SOMEONE TAKES PROPERTY FROM THE
8 PERSON, IN THE PRESENCE OF A PERSON WITH THE USE OF FORCE
9 OR INTIMIDATION. ARMED ROBBERY IS ONE STEP UP AND IS THE
10 HIGHEST FORM OF LARCENY. ARMED ROBBERY MEANS A PERSON HAS
11 TAKEN PERSONAL PROPERTY, STOLE PROPERTY FROM A PERSON WITH
12 THE INTENT TO KEEP IT, YOU KNOW, AND WHILE DOING THAT IS
13 ARMED WITH A DEADLY WEAPON. THE STATUTE READS A LITTLE
14 DIFFERENT, IT SAYS, ARMED ROBBERY IS WHERE A PERSON
15 COMMITS ROBBERY WHILE ARMED WITH A PISTOL, SLINGSHOT,
16 METAL KNUCKLES, RAZOR OR OTHER DEADLY WEAPON OR WHILE
17 ALLEGING EITHER BY ACTIONS OR WORDS THAT HE WAS ARMED
18 WHILE USING A REPRESENTATION OF A DEADLY WEAPON OR ANY
19 OBJECT WHICH A PERSON PRESENT DURING THE COMMISSION OF A
20 ROBBERY REASONABLY BELIEVED TO BE A DEADLY WEAPON. SO,
21 FIRST A PERSON HAS TO TAKE PROPERTY FROM SOMEBODY WHILE
22 ARMED WITH A DEADLY WEAPON OR REPRESENT THAT HE IS ARMED
23 WITH A DEADLY WEAPON. THE REPRESENTATION HAS TO BE SUCH
24 THAT A REASONABLE PERSON WOULD OF BELIEVED THE PERSON HAD
25 A DEADLY WEAPON. KIDNAPPING, JURORS, YOU DON'T REALLY

1 HAVE TO BIND SOMEBODY UP AND FORCE THEM IN THE TRUNK OF
2 THE CAR AND DRIVE THEM OFF. KIDNAPPING IS THE INTENTIONAL
3 TAKING OF A PERSON AND COMPELLING THAT PERSON TO BE
4 DETAINED AGAINST THAT PERSON'S WILL. IT IS THE WILLFUL
5 AND UNLAWFUL SEIZING OF A PERSON AGAINST HIS WILL WITH THE
6 INTENT TO CAUSE THE PERSON SEIZED TO BE CONFINED IN PRISON
7 OR DETAINED. THE ESSENCE OF THE OFFENSIVE KIDNAPPING IS
8 THE UNLAWFUL DETENTION OF A PERSON AGAINST HIS WILL. AND
9 THE CRIME POSSESSION OF A FIREARM OF A KNIFE JUST MEANS
10 THAT YOU HAVE A FIREARM OR A KNIFE IN YOUR POSSESSION
11 WHILE YOU COMMIT A VIOLENT CRIME. THOSE ARE THE ELEMENTS
12 THAT THE STATE HAS TO PROVE. AT THE CONCLUSION OF THE
13 TRIAL I WILL EXPLAIN THE LAW GOVERNING THAT, THOSE THREE
14 CHARGES IN A LITTLE MORE DETAIL. NOW, PAY ATTENTION,
15 OPENING STATEMENTS WILL GO AND THEN WE WILL CALL THE
16 WITNESSES. ALL RIGHT.

17 MR. ANDREWS: THANK YOU, YOUR HONOR. THE GETAWAY IS
18 A SMALL BAR LOCATED HERE IN GREENWOOD, IT IS LOCATED ON
19 SOUTH MAIN. IT IS RIGHT NEXT TO O'REILLY AUTO PARTS. IF
20 YOU ARE DRIVING YOU MIGHT MISS IT, THEY REALLY DON'T HAVE
21 A SIGN, IT IS JUST KIND OF A OLD BILLBOARD WITH SOME
22 LETTERS ON IT. PEOPLE GO TO THE GETAWAY TO HAVE A COUPLE
23 OF DRINKS, MAYBE SHOOT SOME POOL, JUST TO FORGET ABOUT THE
24 DAY AND TIME. THAT IS PROBABLY WHY THEY CALL IT THE
25 GETAWAY, JUST A CHANCE TO GET AWAY FROM YOUR PROBLEMS JUST

1 FOR A LITTLE WHILE. ON JUNE 9TH, EARLY MORNING OF JUNE
2 10TH BOBBY CATON WAS AT THE GETAWAY AND IT IS ANYBODY'S
3 GUESS WHETHER HE WAS REALLY HAVING A GOOD TIME. BUT ONE
4 THING IS FOR SURE IS HE FORGOT ABOUT THE DAILY GRIND
5 BECAUSE HE WAS FACED WITH A WHOLE NEW SET OF PROBLEMS.
6 THAT NIGHT, JUNE 9TH WHILE AT THE GETAWAY HE MET A COUPLE
7 OF GUYS, ONES NAME WAS LAKENDRICK LEVERETTE AND THE OTHER
8 ONES NAME WAS ZAVIUS JONES, HE IS NOT HERE RIGHT NOW.
9 THESE GUYS WERE GOING OUTSIDE THE BAR SMOKING A LITTLE
10 MARIJUANA AND THEN THEY JUST CALLED IT A NIGHT. AND WHEN
11 BOBBY CATON WENT INSIDE HE WAS FORCED IN THE BACK OF AN
12 AUTOMOBILE, SITTING IN THE PASSENGER, THE FRONT PASSENGER
13 SEAT OF THAT CAR, WAS LAKENDRICK LEVERETTE. LAKENDRICK
14 LEVERETTE TURNED TOWARD THE BACK SEAT AND HAD WHAT
15 APPEARED TO BE A FIREARM POINTED IN BOBBY'S DIRECTION.
16 THE CAR WAS DRIVEN BY ZAVIUS JONES. JONES AND LEVERETTE
17 DROVE BOBBY OUT TO A FIELD, IT IS UNCLEAR WHERE THIS FIELD
18 WAS, IT WASN'T TOO FAR FROM THE GETAWAY. THERE THEY TOOK
19 OFF MOST OF HIS CLOTHES, TOOK SOME MONEY FROM HIM, HIT HIM
20 WITH A GUN, STUFFED A MUZZLE LOADER GUN INSIDE OF HIS
21 MOUTH. EVENTUALLY BOBBY WAS ABLE TO CONVINCE THESE MEN
22 THAT IF THEY TOOK HIM BACK TO THE GETAWAY HE WOULD HAVE
23 SOME MORE MONEY FOR THEM. THE THREE OF THEM WENT BACK TO
24 THE GETAWAY, BOBBY LED THE WAY WITH LEVERETTE BEHIND HIM
25 HOLDING THE FIREARM. AS BOBBY IS GOING THROUGH THE

1 GETAWAY HE IS TELLING PEOPLE, HEY, CALL THE POLICE, I AM
2 IN TROUBLE, THESE GUYS THAT ARE BEHIND ME THEY ARE GOING
3 TO HURT ME, CALL THE COPS. EVENTUALLY THE POLICE ARRIVE
4 ON THE SCENE, ON LAKENDRICK LEVERETTE THE OFFICERS FIND
5 WHAT APPEARS TO BE A FIREARM. IT TURNS OUT IT IS ONLY A
6 BB GUN AND THE OFFICER ON THE SCENE NOTICES THAT THERE
7 APPEARS TO BE BLOOD ON THE MUZZLE OF THE GUN. THAT GUN IS
8 EVENTUALLY SENT TO SLED, SLED SHOWS THERE IS A DNA MATCH
9 BETWEEN THE BLOOD FOUND ON THE GUN OF BOBBY CATON. THERE
10 IS JUST A VERY ROUGH SKETCH OF THE FACTS, LADIES AND
11 GENTLEMEN, THAT IS WHAT BRINGS US HERE TODAY. AND YOU
12 HAVE TO PAY CLOSE ATTENTION TO THE WITNESSES ON THE STAND,
13 TO THE EXHIBITS THAT ARE BEFORE YOU AND THE LAWYERS WILL
14 MAKE THEIR ARGUMENT AND THE JUDGE WILL GIVE YOU THE LAW
15 AND YOU WILL HAVE A DECISION TO MAKE. AND WE WILL ASK YOU
16 TO FIND LAKENDRICK LEVERETTE GUILTY OF ARMED ROBBERY,
17 KIDNAPPING AND POSSESSION OF A FIREARM DURING THE
18 COMMISSION OF A VIOLENT CRIME. THANK YOU.

19 MR. BETTIS: MAY IT PLEASE THE COURT?

20 THE COURT: OKAY.

21 MR. BETTIS: ASSISTANT SOLICITOR, MEMBERS OF THE
22 JURY, MY NAME IS CHAD BETTIS AND I AM HERE ON BEHALF OF
23 LAKENDRICK LEVERETTE TODAY. YOU HEARD ONE VERSION OF THE
24 EVENTS THAT THE PROSECUTION ALLEGES TOOK PLACE THAT DAY.
25 THAT IS ONE VERSION. THROUGHOUT THE COURSE OF THIS TRIAL

1 I WANT YOU TO PAY CLOSE ATTENTION TO ALL THE EVIDENCE TO
2 SEE IF THE EVIDENCE ADDS UP TO THAT VERSION. BECAUSE I
3 EXPECT WHEN YOU HEAR THE ENTIRE FACTS THEY WON'T BE JUST
4 AS SIMPLE AS WHAT YOU JUST HEARD FROM MR. ANDREWS. THERE
5 IS A LOT MORE TO THIS CASE, A LOT MORE TO THE INTERACTIONS
6 BETWEEN MR. CATON AND THIS OTHER PERSON, ZAVIUS JONES WHO
7 IS NOT HERE TODAY. THERE IS A LOT MORE TO WHAT THEY WERE
8 DOING AND WHAT THEY HAD DONE UP TO THE POINT OF THE
9 GETAWAY. I AM NOT GOING TO GET INTO WHAT THE FACTS ARE
10 AND WHAT YOU ARE GOING TO HEAR FROM THE WITNESS STAND,
11 THAT IS GOING TO BE FOR YOU TO DETERMINE. I AM GOING TO
12 LET THE WITNESSES SAY, I AM GOING TO HEAR WHAT THEY HAVE
13 TO SAY. MY OPPORTUNITY HERE IS TO KIND OF GIVE YOU AN
14 IDEA OF SOME THINGS I WANT YOU TO THINK ABOUT DURING THE
15 COURSE OF THIS TRIAL. AS SOON AS WE FINISH THESE OPENING
16 STATEMENTS THE STATE IS GOING TO START ITS CASE, THEY ARE
17 GOING TO CALL WITNESSES. AFTER THOSE WITNESSES TESTIFY I
18 AM GOING TO HAVE A CHANCE ON BEHALF OF LAKENDRICK TO
19 CROSS-EXAMINE THOSE WITNESSES, TO ASK THEM OTHER
20 QUESTIONS, THINGS THAT THEY MAY NOT BRING OUT ON THEIR
21 OPENING, DURING THEIR DIRECT EXAMINATIONS. IT IS
22 IMPORTANT THAT YOU RECOGNIZE THAT THE TESTIMONY GIVEN ON
23 CROSS-EXAMINATION IS JUST AS SIGNIFICANT, LISTEN CAREFULLY
24 TO ALL THE EVIDENCE, VERY CAREFULLY, OBSERVE THE DEMEANOR
25 OF THE WITNESSES. AND MAKE A DETERMINATION ABOUT THE

1 CREDIBILITY AND THE BELIEVABILITY BY THE WITNESSES WHO ARE
2 PUT BEFORE YOU BY THE STATE IN THIS CASE. DRAW UPON ALL
3 OF YOUR LIFE EXPERIENCES TO MAKE A DETERMINATION, AFTER
4 YOU HAVE HEARD ALL OF THE WITNESSES, ABOUT WHAT IS
5 BELIEVABLE FACTS AND WHAT IS NOT BELIEVABLE. LISTEN FOR
6 EVIDENCE OF TESTIMONY FROM THE WITNESSES ABOUT WHO
7 ACTUALLY HAS KNOWLEDGE ABOUT WHAT HAPPENED. YOU ARE GOING
8 TO SEE VERY LITTLE EVIDENCE ABOUT WHO HAS KNOWLEDGE ABOUT
9 WHAT HAPPENED THAT NIGHT. THE STATE IS HERE AND WITH
10 SEVERAL OFFICERS YOU SEE BEHIND THE PROSECUTORS, THEY ARE
11 GOING TO BE GIVING TESTIMONY. I SUBMIT TO YOU THEY ARE
12 NOT GOING TO HAVE ANY IDEA WHAT HAPPENED THAT NIGHT, THEY
13 WERE NOT THERE THAT NIGHT, THE POLICE DID COME TO THE
14 SCENE BUT THEY DIDN'T SEE WHAT HAPPENED, THEY DON'T KNOW
15 WHAT HAPPENED. LISTEN CLOSELY, LISTEN VERY CAREFULLY
16 ABOUT TESTIMONY FROM PEOPLE THAT WERE ACTUALLY THERE AND
17 YOU TEST THEIR CREDIBILITY, YOU DETERMINE ONCE YOU HEAR
18 WHETHER YOU BELIEVE THEM. THE STATE IN THIS CASE HAS THE
19 SOLE BURDEN OF PROOF, THEY HAVE THE SOLE OBLIGATION TO
20 PROVE EACH AND EVERY ELEMENT, THE JUDGE JUST WENT THROUGH
21 THE CHARGES WITH YOU, THAT IS ALL THEY ARE, CHARGES. IT
22 IS NOT EVIDENCE THAT LAKENDRICK IS GUILTY OF ANYTHING,
23 THEY ARE CHARGES, WHEN THE STATE BRINGS FORMAL CHARGES
24 THEY DO IT BY INDICTMENT, THAT IS THE ONLY WAY TO BRING IT
25 BEFORE THE COURT AND GIVE THE COURT JURISDICTION TO HAVE

1 THIS CASE HEARD. ALL THE ELEMENTS MAKE UP THESE VARIOUS
2 CHARGES AND THE STATE IS REQUIRED, THEY ARE OBLIGATED
3 UNDER THE LAW AND BY YOU, YOU ARE GOING TO MAKE, YOU ARE
4 THE JURY, YOU DECIDE THE CASE. THEY ARE OBLIGATED TO
5 PROVE EACH AND EVERY ELEMENT OF ALL THE CHARGES BEYOND A
6 REASONABLE DOUBT BEFORE THEY CAN ASK YOU TO RENDER A
7 VERDICT. SO, YOU MAKE SURE YOU HOLD THEM TO THAT BURDEN,
8 THAT IS THE MOST IMPORTANT PROCESS WE HAVE IN THE CRIMINAL
9 JUSTICE SYSTEM, THE JURY HAS TO MAKE SURE THE STATE PROVES
10 THEIR CASE, ANY PERSON THAT IS ACCUSED OF A CRIME. IF THE
11 STATE IS NOT ABLE TO SATISFY THAT BURDEN AND PROVE EACH
12 AND EVERY ELEMENT OF THESE CHARGES AGAINST LAKENDRICK THEN
13 IT WILL INCUMBENT UPON YOU TO BRING BACK A VERDICT OF NOT
14 GUILTY. THAT IS WHAT THE LAW REQUIRES. LAKENDRICK IS
15 HERE TO FACE THESE CHARGES AND HE MAINTAINS HIS INNOCENCE
16 AND UNDER THE LAW AS THE JUDGE HAS TOLD YOU AND WILL TELL
17 YOU AGAIN HE IS PRESUMED INNOCENT. HE DOESN'T HAVE AN
18 OBLIGATION TO PROVE ANYTHING IN THIS MATTER. IT IS THE
19 STATE'S ENTIRE OBLIGATION, THERE IS NOT ONE FACT THAT
20 LAKENDRICK HAS TO PROVE TO YOU TO SHOW THAT HE IS NOT
21 GUILTY, IT IS NOT HIS OBLIGATION TO TRY TO PROVE HIS
22 INNOCENCE. THIS IS A VERY SERIOUS MATTER. HE IS CLOAKED
23 IN A ROBE OF INNOCENCE THROUGHOUT THE COURSE OF THIS
24 TRIAL. THE STATE IS NOT ABLE TO RIP THAT CLOAK OFF BY
25 PROVING TO YOU BEYOND A REASONABLE DOUBT ALL OF THE

1 ELEMENTS OF THE CRIME THEN HE WILL BE NOT GUILTY AT THE
2 END OF THE CASE, ONLY IF THEY CAN RIP THE CLOAK OFF. THE
3 CREDIBLE, BELIEVABLE TESTIMONY. LAKENDRICK ONLY ASKED A
4 COUPLE OF THINGS TODAY, HE ASKED THAT HE BE GIVEN A FAIR
5 TRIAL AND THAT YOU PAY ATTENTION TO EVERYBODY, AND HE
6 ASKED THAT THE STATE BE MADE, REQUIRED BY YOU AND IS
7 REQUIRED BY THE LAW TO PROVE THEIR ENTIRE CASE BEYOND A
8 REASONABLE DOUBT. AND LET YOU SCRUTINIZE THEIR CASE
9 CAREFULLY AND HOLD THEM TO THE BURDEN OF PROOF THROUGH ALL
10 ASPECTS OF THIS CASE. THAT IS ALL HE IS ASKING FOR IS TO
11 BE GIVEN A FAIR SHOT AND THAT YOU REQUIRE THE STATE TO
12 MEETS ITS BURDEN. ASK YOURSELF THROUGHOUT THIS TRIAL WHAT
13 ACTUALLY HAPPENED IN THE EARLY MORNING HOURS AROUND 3:00
14 A.M. AT THE GETAWAY LOUNGE ON JUNE 10TH OF 2006. ASK
15 YOURSELF, AFTER THE STATE PRESENTS ALL OF ITS EVIDENCE AND
16 WITNESSES, CAN PROVIDE YOU A CREDIBLE AND A BELIEVABLE
17 TESTIMONY THAT YOU ARE GOING TO BE REQUIRED TO BE ABLE TO
18 ANSWER THAT QUESTION OF WHAT ACTUALLY HAPPENED ON THE
19 NIGHT OF JUNE THE 6TH OR JUNE 10TH OF 2006, THE EARLY
20 MORNING HOURS AT THE GETAWAY LOUNGE. I SUBMIT TO YOU,
21 LADIES AND GENTLEMEN, THAT ONCE ALL THE EVIDENCE HAS BEEN
22 BROUGHT TO YOU BY THE STATE IN THIS CASE YOU WILL NOT HAVE
23 A SUFFICIENT ANSWER TO THAT QUESTION. THAT IS GOING TO BE
24 THE BIGGEST PROBLEM. AND THE STATE WILL NOT SUFFICIENTLY
25 SATISFY ITS BURDEN OF PROOF BECAUSE YOU WILL NOT BE ABLE

1 TO ANSWER THAT QUESTION WITH THE CREDIBLE, BELIEVABLE
2 TESTIMONY THAT YOU ARE GOING TO REQUIRE IN THIS CASE. I
3 ASK RIGHT NOW THAT YOU WILL HOLD ANY THOUGHTS THAT YOU MAY
4 HAVE ABOUT LAKENDRICK OR ANY GUILT HE MAY BE ASSOCIATED
5 WITH BECAUSE OF THE INDICTMENTS, THAT IS NOT EVIDENCE.
6 GIVE HIM THE FAIR TRIAL THAT HE DESERVES AND HOLD ANY
7 THOUGHTS, PREVIOUS THOUGHTS THAT YOU HAVE IN THIS CASE.
8 HOLD YOUR JUDGMENT UNTIL YOU HAVE HEARD ALL THE EVIDENCE
9 FROM ALL THE WITNESSES. AND UPON HEARING ALL THE EVIDENCE
10 YOU WILL BE ABLE TO RENDER A VERDICT THAT IS FAIR, WE
11 EXPECT THAT AFTER YOU DELIBERATE, YOU ARE BACK THERE
12 WEIGHING THE TESTIMONY AND THE EVIDENCE AND THE
13 CREDIBILITY OF THE WITNESSES THEN YOU WILL RETURN A
14 VERDICT OF NOT GUILTY. THANK YOU.

15 THE COURT: CALL YOUR FIRST WITNESS.

16 MR. ANDREWS: THE STATE CALLS BOBBY CATON TO THE
17 STAND.

18 BOBBY CATON, AFTER BEING DULY SWORN, TESTIFIED
19 AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. ANDREWS:

22 Q PLEASE TELL US YOUR NAME.

23 A ROBERT CATON, JR.

24 Q AND WHAT DO YOU DO FOR A LIVING?

25 A I WORK AS AN AUTO MECHANIC.

1 Q LET ME TAKE YOU BACK TO THE NIGHT OF JUNE 9TH, EARLY
2 MORNING JUNE 10TH OF 2006. WHAT WERE YOU DOING FOR A
3 LIVING THEN?

4 A FRAMING HOUSES.

5 Q HOW LONG HAD YOU BEEN DOING THAT?

6 A PRETTY MUCH MY WHOLE CAREER.

7 Q HOW OLD ARE YOU?

8 A

9 Q HAPPY BIRTHDAY.

10 A THANK YOU.

11 Q YOU REMEMBER WHERE YOU WERE ON THE NIGHT OF JUNE
12 10TH, LATE NIGHT JUNE 9TH, EARLY MORNING HOURS OF JUNE
13 10TH OF '06?

14 A YES.

15 Q WHERE WERE YOU?

16 A THE GETAWAY.

17 Q WHAT TIME DID YOU GET THERE?

18 A AROUND 9:00, I AM NOT SURE THE EXACT TIME, IT HAS
19 BEEN A WHILE.

20 Q OKAY. WAS IT AFTER DARK?

21 A YES, SIR.

22 Q AT THAT TIME HAD YOU BEEN GOING TO THE GETAWAY
23 FREQUENTLY?

24 A YES.

25 Q ABOUT HOW FREQUENTLY DID YOU GO?

1 A ABOUT ONCE A WEEK.

2 Q OKAY. WHAT WERE YOU DOING THIS NIGHT AT THE GETAWAY?

3 A SHOOTING POOL.

4 Q WERE YOU DRINKING?

5 A YES.

6 Q JUST, FROM WHAT YOU REMEMBER, DESCRIBE TO ME WHAT

7 HAPPENED WHEN YOU GOT TO THE GETAWAY?

8 A I JUST WALKED IN AND ORDERED A DRINK, GOT SOME

9 CHANGE, PUT SOME QUARTERS ON THE TABLE AND STARTED PLAYING

10 POOL.

11 Q DID YOU PLAY POOL FOR MONEY?

12 A YES.

13 Q HOW WERE YOU DOING THAT NIGHT?

14 A I WAS DOING DECENT.

15 Q DID YOU FLASH SOME MONEY AROUND?

16 A NO, SIR.

17 Q OKAY. TELL ME HOW YOU MET UP WITH MR. LEVERETTE AND

18 MR. JONES?

19 A MR. LEVERETTE AND MR. JONES WERE SITTING AT A BOOTH

20 UP AGAINST THE WALL DIRECTLY BEHIND THE POOL TABLE WHERE I

21 WAS SHOOTING POOL.

22 Q DID YOU HAVE A CHANCE TO TALK TO THESE GUYS?

23 A VERY LITTLE.

24 Q HAD YOU SEEN THEM IN THERE BEFORE?

25 A NO, SIR.

1 Q HOW LONG WOULD YOU SAY THAT YOU HAD BEEN THERE BEFORE
2 YOU TOOK NOTICE OF JONES AND LEVERETTE?

3 A PRETTY MUCH AS SOON AS I WALKED IN.

4 Q WHAT WERE THEY DOING?

5 A THEY WERE SITTING SIDE BY SIDE ACROSS THE TABLE FROM
6 TWO OTHER INDIVIDUALS HAVING A CONVERSATION DRINKING
7 DRINKS.

8 Q DID YOU HAVE ANY OTHER CONTACT WITH THEM THAT NIGHT?

9 A NO, SIR.

10 Q HOW DID YOU GUYS START TALKING?

11 A I WALKED OVER AND JUST SAID HEY AND JUST KIND OF FELT
12 THEM OUT BECAUSE I DIDN'T KNOW WHO THEY WERE.

13 Q TELL ME ABOUT THE CONVERSATION.

14 A I REALLY DON'T RECALL.

15 Q AT ANY POINT WERE ILLEGAL DRUGS EVER DISCUSSED?

16 A YES.

17 Q TELL ME ABOUT THAT CONVERSATION.

18 A HE ASKED ME IF I WANTED TO GO OUTSIDE AND BURN ONE.

19 Q WHO IS HE?

20 A MR. LEVERETTE.

21 Q WHAT DO YOU MEAN BY BURN ONE?

22 A SMOKING A JOINT, MARIJUANA CIGARETTE.

23 Q OKAY. SO, IN RESPONSE TO THAT WHAT DID YOU DO?

24 A I SAID SURE.

25 Q AND THEN WHAT DID YOU DO?

1 A I WENT TO WALK OUTSIDE TO CALL MY WIFE TO TELL HER TO
2 WAIT A WHILE LONGER BEFORE SHE CAME AND PICKED ME UP.

3 Q DID YOU TELL HER YOU WERE GOING TO BE OUT IN FRONT OF
4 THE BAR SMOKING MARIJUANA?

5 A NO, SIR.

6 Q DO YOU STILL USE MARIJUANA?

7 A NO.

8 Q AT THE TIME, DID YOU FREQUENTLY USE IT?

9 A NO SIR, IT WAS MAYBE ONCE A MONTH. AN OCCASIONAL
10 THING.

11 Q SO, WHERE I CUT YOU OFF YOU WERE TALKING TO YOUR
12 WIFE?

13 A YES, SIR.

14 Q AND THEN WHAT HAPPENED?

15 A I KIND OF WENT BLANK, I STARTED SEEING STARS.

16 Q CAN YOU EXPLAIN?

17 A I FELT A BIG LUMP IN THE BACK OF MY HEAD, A BIG BANG.

18 Q WHAT HAPPENED NEXT?

19 A I WAS PUSHED INTO A CAR, THE REAR SEAT OF A CAR.

20 Q YOU GOT ANY ESTIMATES ABOUT WHAT TIME THIS WAS?

21 A NO, SIR.

22 Q NOT A CLUE?

23 A IF I WAS TO GUESTIMATE I WOULD SAY IT WAS AROUND
24 11:00, SHORTLY AROUND 11:00.

25 Q WHERE I CUT YOU OFF YOU HAD BEEN PUSHED IN THE BACK

1 OF A CAR, WHAT HAPPENED NEXT?

2 A THE DRIVERS SIDE DOOR WAS SHUT AND THEN THE PASSENGER

3 SIDE DOOR WAS SHUT AND A GUN COME BETWEEN THE TWO SEATS.

4 Q WHO WAS IN THE CAR BESIDES YOU?

5 A MR. JONES AND MR. LEVERETTE.

6 Q WHERE WERE THEY?

7 A MR. JONES WAS DRIVING AND LEVERETTE WAS IN THE

8 PASSENGER SIDE FRONT SEAT.

9 Q WAS THERE AN INTERIOR LIGHT ON, HOW COULD YOU SEE?

10 A BECAUSE THE LIGHTS FROM THE GETAWAY WAS SHINING

11 THROUGH THE CAR. WHEN YOU OPEN AND CLOSE THE DOOR THE

12 INTERIOR LIGHTS COMES ON.

13 Q TELL ME ABOUT WHO THE DRIVER AND PASSENGER WAS?

14 A MR. JONES WAS THE BOY WITH DREADLOCKS, WAS DRIVING

15 THE CAR. AND MR. LEVERETTE WAS IN THE PASSENGER SEAT.

16 Q IS MR. LEVERETTE IN THE COURTROOM TODAY?

17 A YES SIR, HE IS RIGHT THERE.

18 Q OKAY. ONE THING I FORGOT TO MENTION, THE GETAWAY, IS

19 THAT IN GREENWOOD COUNTY?

20 A YES SIR, IT IS IN GREENWOOD.

21 Q WHERE WE LEFT OFF WAS, JONES WAS DRIVING, LEVERETTE

22 WAS IN THE PASSENGER SEAT. WHAT WERE THEY DOING AT THE

23 TIME?

24 A MR. LEVERETTE WAS HOLDING A GUN ON ME TELLING MR.

25 JONES WHERE TO DRIVE TO.

1 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS
2 STATE'S EXHIBIT FOR IDENTIFICATION PURPOSES NUMBER 2. IS
3 THAT WHAT WAS POINTED AT YOU?

4 A YES, SIR.

5 Q WHAT WAS YOUR BELIEF ABOUT THAT WEAPON, DID YOU THINK
6 IT WAS A REAL GUN?

7 A YES, SIR.

8 Q OKAY. WHAT HAPPENED DURING THIS TRIP?

9 A MR. LEVERETTE WAS HOLLERING AND SCREAMING FOR ME TO
10 GIVE HIM ALL OF MY MONEY.

11 Q WHAT DID YOU DO?

12 A I STARTED GIVING HIM MY MONEY.

13 Q WHAT ELSE DID YOU GIVE HIM BESIDES YOUR MONEY?

14 A MY CELL PHONE, MY WEDDING BAND, MY CHAPSTICK, MY HAT,
15 MY SUNGLASSES, CIGARETTE LIGHTER, I BELIEVE THAT IS ALL.

16 Q WAS THERE ANY TALK OF ANY DRUGS, ANY ADDITIONAL TALK
17 OF DRUGS?

18 A NO, SIR.

19 Q DID ANYBODY MENTION COCAINE THEN?

20 A NO, SIR.

21 Q HAVE YOU EVER USED COCAINE?

22 A YES, SIR.

23 Q ABOUT HOW MANY TIMES IN YOUR LIFE WOULD YOU SAY YOU
24 HAVE USED COCAINE IN THE PAST?

25 A PROBABLY TEN, FIFTEEN.

1 Q WERE YOU USING ON THAT NIGHT?

2 A NO, SIR.

3 Q DURING THIS TRIP AFTER YOU GAVE OVER YOUR MONEY AND

4 OTHER THINGS, WHAT HAPPENED NEXT?

5 A MR. LEVERETTE KEPT ASKING FOR MORE MONEY.

6 Q WHAT WAS YOUR RESPONSE?

7 A THAT WAS ALL I HAD.

8 Q HOW LONG DID THIS TRIP LAST?

9 A IT SEEMED LIKE FOREVER BUT I WOULD GUESS LESS THAN

10 FIVE MINUTES.

11 Q WERE YOU ABLE TO NOTICE ANY LANDMARKS?

12 A NO SIR, BECAUSE I WAS FORCED DOWN ONTO THE FLOORBOARD

13 OF THE BACK SEAT.

14 Q DO YOU KNOW IF A GUN WAS BEING POINTED AT YOU?

15 A YES, SIR.

16 Q HOW DO YOU KNOW A GUN WAS BEING POINTED AT YOU?

17 A BECAUSE I COULD SEE IT.

18 Q WHEN YOU STOPPED WHERE WERE YOU?

19 A IN THE MIDDLE OF A TREE CUT AREA, LIKE TIMBER HAD

20 BEEN CUT, THERE WERE BIG PILES OF LOGS AROUND, IT WAS JUST

21 A DIRT PATH.

22 Q WHAT HAPPENED NEXT?

23 A I WAS FORCED OUT OF THE CAR.

24 Q WHO FORCED YOU OUT OF THE CAR?

25 A MR. LEVERETTE.

1 Q HOW DID HE FORCE YOU OUT OF THE CAR?

2 A GUN POINT.

3 Q DID HE SAY ANYTHING?

4 A HE SAID GET THE HELL OUT OF THE CAR.

5 Q WHAT WAS MR. JONES DOING?

6 A HE WAS GETTING OUT OF THE CAR ALSO.

7 Q DO YOU REMEMBER WHICH SIDE YOU GOT OUT, DRIVERS SIDE,
8 PASSENGER SIDE?

9 A I GOT OUT ON THE DRIVERS SIDE.

10 Q THEN WHAT HAPPENED?

11 A I WAS FORCED TO THE BACK OF THE CAR, THE REAR-END OF
12 THE CAR, THE HEADLIGHTS WERE ON, RIGHT THERE OF THE
13 TAILLIGHTS. AND I WAS TOLD TO STRIP DOWN BECAUSE HE
14 BELIEVED I HAD MORE MONEY ON ME.

15 Q OTHER THAN THE LIGHTS COMING FROM THE VEHICLE, WERE
16 THERE ANY LIGHTS IN THAT FIELD?

17 A JUST THE NATURAL LIGHT COMING FROM THE SKY, IT WAS A
18 CLEAR NIGHT, IT WAS CLOUDY, IT WAS LIGHT ENOUGH.

19 Q AND YOU WERE TOLD TO STRIP DOWN, WHAT HAPPENED?

20 A HE TOLD ME TO GET ON MY KNEES.

21 Q DID YOU STRIP DOWN?

22 A YES, SIR.

23 Q DID YOU LEAVE ANYTHING ON?

24 A NOTHING.

25 Q YOU WERE TOTALLY NAKED?

1 A TOTALLY.

2 Q TELL US WHAT HAPPENED NEXT?

3 A HE FORCED A GUN IN MY THROAT AND KEPT ASKING FOR MORE
4 MONEY.

5 Q WHAT WAS YOUR RESPONSE?

6 A I DIDN'T HAVE ANY.

7 Q DID HE EVER DO ANYTHING ELSE WITH THE GUN?

8 A HE HIT ME ON THE HEAD WITH IT A COUPLE OF TIMES, HIT
9 ME ON THE SIDE AND HIT ME ACROSS THE MOUTH WITH IT ONE
10 TIME.

11 Q HOW LONG DID HE HAVE THE GUN IN YOUR MOUTH?

12 A I REALLY CAN'T RECALL, IT WAS LIKE FOREVER.

13 Q OKAY. WHAT HAPPENED NEXT.

14 A MR. LEVERETTE GRABBED MY CELL PHONE OFF OF THE TRUCK
15 OF THE CAR AND MADE A PHONE CALL AND WAS BRAGGING TO
16 SOMEBODY ON THE OTHER SIDE SAYING LISTEN TO THIS BOY
17 SCREAM, LISTEN TO THIS BOY SCREAM.

18 Q LET ME BACK YOU UP, DID THE GUN CAUSE ANY INJURY?

19 A YES, SIR.

20 Q WHAT KINDS OF INJURIES DID IT CAUSE?

21 A IT RIPPED OUT THE BACK PART OF MY THROAT AND BUSTED
22 MY LIP, BUSTED MY EAR, THE TOP PART OF MY EAR AND THAT WAS
23 PRETTY MUCH IT.

24 Q WHERE I INTERRUPTED YOU WAS, MR. LEVERETTE WAS ON THE
25 PHONE, WHAT WAS GOING ON WHEN HE WAS ON THE PHONE?

1 A WHILE HE WAS ON THE PHONE ZAVIUS JONES HELD A KNIFE
2 TO MY THROAT AND--

3 Q HANG ON JUST ONE SECOND. I AM GOING TO SHOW YOU WHAT
4 HAS BEEN MARKED AS STATE'S EXHIBIT FOR IDENTIFICATION
5 NUMBER 1. IS THIS WHAT MR. JONES HELD TO YOUR THROAT?

6 A YES.

7 Q AND BEFORE I INTERRUPTED, HE HELD THE GUN TO YOUR, HE
8 HELD THE KNIFE TO YOUR THROAT, THEN WHAT.

9 A AS LEVERETTE WAS OFF ON THE PHONE I WAS KIND OF
10 GETTING THE FEELING I COULD TRY TO TALK MY WAY OUT OF IT
11 AND I TOLD THEM I HAD A SUBSTANTIAL AMOUNT OF MONEY, I
12 DON'T REMEMBER THE NUMBER I MADE UP, BACK AT THE GETAWAY
13 IN A JACKET.

14 Q LET'S BACK UP, WHAT MADE YOU THINK YOU COULD TALK
15 YOUR WAY OUT OF IT?

16 A BECAUSE THE WAY HE WAS ACTING, HE WAS ASKING DUMB
17 QUESTIONS AND JUST VERY ERRATIC.

18 Q WHAT WAS MR. JONES DOING AT THIS TIME?

19 A MR. JONES WAS HOLDING A KNIFE TO MY THROAT.

20 Q SO, YOU DECIDED TO TALK YOUR WAY OUT OF IT, WHAT DID
21 YOU DO?

22 A I TOLD THEM I HAD A LOT MORE MONEY AT THE GETAWAY IN
23 MY JACKET.

24 Q AND THEN WHAT HAPPENED?

25 A THEY PROCEEDED TO TELL ME TO PUT MY CLOTHES BACK ON.

1 Q THEN WHAT?

2 A AND THEN HE PUT ME IN THE BACK SEAT OF THE CAR,
3 HANDED ME A BOTTLE OF WATER AND A SHIRT, SOME TYPE OF
4 CLOTH THAT WAS IN THE CAR. HE POURED WATER ON IT AND TOLD
5 ME TO WIPE THE BLOOD OFF OF MY FACE.

6 Q NOW, WHEN YOU SAID HE HANDED ME A WET CLOTH, WHO IS
7 HE?

8 A MR. LEVERETTE, MR. JONES WAS DRIVING THE VEHICLE.

9 Q WAS MR. LEVERETTE IN THE PASSENGER SEAT?

10 A YES, SIR.

11 Q WHAT WAS HE DOING?

12 A HE WAS HOLDING THE GUN ON ME AND POURED WATER ON A
13 RAG AND TOLD ME TO CLEAN THE BLOOD OFF OF MY FACE.

14 Q AND THEN WHAT?

15 A AND WE PROCEEDED TO DRIVE, WHILE MR. JONES AND MR.
16 LEVERETTE WERE TALKING ABOUT IF I WAS GOING TO SET THEM
17 UP. AND THEN I WAS HANDED A PIECE OF PAPER AND A PEN AND
18 TOLD TO WRITE DOWN DIRECTIONS TO MY HOUSE THAT WAY IF I
19 CALLED THE LAW THEY WOULD COME TO MY HOUSE AND KILL MY
20 FAMILY.

21 Q DID YOU DO THAT?

22 A YES, SIR.

23 Q I AM GOING TO SHOW YOU STATE'S EXHIBIT FOR
24 IDENTIFICATION NUMBER 11. IS THIS THE MAP THAT YOU DREW?

25 A YES, SIR.

1 Q OKAY. AFTER YOU DREW THAT MAP, WHAT HAPPENED, WHAT
2 DID YOU DO WITH THE MAP?

3 A HE TOOK IT BACK.

4 Q DID YOU SEE WHAT HE DID WITH IT?

5 A NO, SIR.

6 Q HOW COULD YOU TELL WHO WAS IN THE PASSENGER SEAT AND
7 WHO WAS IN THE DRIVERS SEAT?

8 A THE INDIVIDUAL IN THE PASSENGER SEAT HAD SHORT HAIR,
9 THE INDIVIDUAL DRIVING THE CAR HAD LONG DREADLOCKS AND
10 GOLD TEETH.

11 Q HE TOOK THE MAP BACK AND THEN WHAT HAPPENED?

12 A THEN WE PULLED INTO THE GETAWAY.

13 Q DID YOU GET ANY ADDITIONAL INSTRUCTIONS?

14 A NO, SIR.

15 Q THEN WHAT HAPPENED NEXT?

16 A I GOT OUT OF THE CAR AT THE GETAWAY, MR. LEVERETTE
17 WALKED BEHIND ME WITH A GUN, TOLD ME DON'T PULL NOTHING,
18 DON'T TRY NOTHING, JUST GET HIM THE MONEY AND HE WOULD
19 LEAVE.

20 Q MR. LEVERETTE TOLD YOU ALL OF THIS?

21 A YES.

22 Q TELL ME, DESCRIBE TO ME HOW HE FOLLOWED YOU?

23 A WALKING REAL CLOSE BEHIND ME, KIND OF BACK OFF TO MY
24 RIGHT WITH THE GUN UNDER HIS SHIRT POINTING IT IN MY BACK.

25 Q OKAY. DID YOU FEEL THE GUN?

1 A YES, SIR.

2 Q HOW LONG WAS THE WALK FROM THE CAR BACK TO THE
3 GETAWAY?

4 A LESS THAN A MINUTE.

5 Q WHERE WAS MR. JONES AT THIS TIME?

6 A SITTING ON THE DRIVERS SEAT IN THE CAR.

7 Q DID YOU EVER SEE HIM GET OUT?

8 A NO, SIR.

9 Q WAS THE CAR STILL RUNNING WHEN YOU GOT OUT?

10 A I DON'T RECALL.

11 Q DO YOU KNOW WHAT HAPPENED TO THE CAR KEYS?

12 A NO, SIR.

13 Q WHEN YOU GET INSIDE THE GETAWAY, COULD YOU SEE MR.
14 JONES FROM WHERE YOU WERE?

15 A NO SIR, HE WAS STANDING BEHIND ME.

16 Q MR. JONES WAS OR MR. LEVERETTE?

17 A MR. LEVERETTE, MR. JONES WAS STILL IN THE VEHICLE.

18 Q OKAY. DESCRIBE THE INSIDE OF THE GETAWAY FOR ME.

19 A AS FAR AS--

20 Q I MEAN, JUST TELL ME, WHEN YOU WALK IN WHAT WOULD YOU
21 SEE FROM THE ENTRANCE WHEN YOU WALK IN?

22 A YOU WALK IN THE ENTRANCE AND THERE IS A LITTLE DESK
23 ON THE RIGHT HAND SIDE WHERE YOU SIGN IN, MEMBERS AND
24 GUEST. AND YOU KEEP WALKING STRAIGHT IN FRONT OF YOU AND
25 THERE IS A LONG BAR, I GUESS, 38 OR 40 FOOT LONG. TO THE

1 LEFT IS BOOTHS UP AGAINST THE WALL AND THERE ARE THREE
2 POOL TABLES IN THE MIDDLE.

3 Q IN BETWEEN THE BAR AND THE BOOTH?

4 A YES, DIRECTLY BETWEEN THEM.

5 Q OKAY. SO, YOU WALKED IN. WAS THERE LOUD MUSIC, WAS
6 THERE NO MUSIC?

7 A THERE IS ALWAYS MUSIC PLAYING.

8 Q WAS IT LOUD?

9 A NOT TOO LOUD, YOU CAN STILL STAND THERE AND HAVE A
10 CONVERSATION.

11 Q WAS THERE A LOT OF PEOPLE IN THERE?

12 A IT WASN'T CROWDED, NO.

13 Q IF YOU HAVE TO ESTIMATE WHAT IS THE NUMBER OF FOLKS
14 IN THERE WHEN YOU WALKED BACK IN?

15 A 20.

16 Q DID YOU EVER HAVE A CHANCE TO LOOK AT A CLOCK OR
17 ANYBODY'S WRIST WATCH OR ANYTHING?

18 A NO, SIR.

19 Q HAVE A CLUE OF WHAT TIME IT WAS?

20 A NO, SIR.

21 Q WHERE IS MR. LEVERETTE?

22 A STANDING BEHIND ME.

23 Q WHERE IS THE GUN?

24 A IT IS STILL IN HIS HAND.

25 Q ANY CLUE WHERE MR. JONES IS AT THIS TIME?

1 A NO, SIR.

2 Q SO, AS YOU ARE LEADING INTO THE GETAWAY WHAT IS
3 HAPPENING?

4 A PEOPLE ARE LOOKING AT ME AND SEEING BLOOD COMING FROM
5 MY MOUTH AND COMING OUT OF MY EAR AND ASKING ME WHAT IS
6 GOING ON AND I AM TELLING THEM TO CALL THE POLICE, THAT I
7 AM BEING ROBBED.

8 Q YOU ARE JUST SAYING THIS LOUDLY, HOW ARE YOU TELLING
9 PEOPLE?

10 A I AM KIND OF WHISPERING IT TO PEOPLE WALKING UP TO ME
11 THAT ARE ASKING ME WHAT IS GOING ON.

12 Q THEN WHAT HAPPENS?

13 A WE APPROACHED THE BAR BECAUSE I TOLD HIM THE
14 BARTENDER HAD MY JACKET THAT HAD MORE MONEY IN IT. WE
15 APPROACHED THE BAR AND HE TOLD ME TO TELL THE BARTENDER TO
16 GET THE MONEY AND HE WOULD LEAVE. AND WE APPROACHED THE
17 BAR, HE SAT DOWN AND HE ORDERED A BEER AND THE BARTENDER
18 ASKED ME IF I WANTED A DRINK AND I SAID NO. I SAID,
19 PLEASE CALL THE LAW, I AM BEING ROBBED AND THIS MAN HAS A
20 GUN ON ME. AT THAT TIME THE BARTENDER DIDN'T REALLY KNOW
21 HOW TO TAKE IT AND HE WALKED BACK DOWN TO THE OTHER SIDE.
22 MR. JONES WAS APPROACHED BY SOMEBODY ELSE AND AS SOON AS
23 HE TURNED HIS HEAD AND STARTED TALKING I DASHED OFF TO THE
24 RIGHT INTO THE KITCHEN AREA.

25 Q AT THE TIME YOU TOLD THE BARTENDER TO CALL THE

1 POLICE, DID YOU SAY THIS LOUDLY, HOW DID YOU TELL THE
2 BARTENDER TO CALL THE POLICE?

3 A I JUST TOLD HIM, I SAID, PLEASE CALL THE POLICE.

4 Q WAS IT WITHIN MR. LEVERETTE'S EARSHOT?

5 A YES.

6 Q OKAY. WHAT ABOUT MR. JONES, DO YOU KNOW WHERE MR.
7 JONES IS?

8 A NO, SIR.

9 Q WHERE WE LEFT YOU NOTICED THAT MR. LEVERETTE STARTED
10 TALKING TO SOMEBODY, DO YOU REMEMBER WHO HE WAS TALKING
11 TO?

12 A NO SIR, I WASN'T PAYING ATTENTION TO IT.

13 Q AND THEN WHAT DID YOU DO?

14 A AS SOON AS HE TURNED HIS HEAD TO THE LEFT TO TALK TO
15 THE PERSON HE WAS TALKING TO I TOOK OFF TO THE RIGHT INTO
16 THE KITCHEN AREA.

17 Q AND YOU TWO WERE SITTING AT THE BAR?

18 A YES.

19 Q WHERE WAS THE GUN?

20 A THE GUN WAS STILL UP UNDER HIS SHIRT.

21 Q OKAY. BUT WHERE WAS IT POINTED?

22 A I DON'T KNOW WHERE IT WAS POINTED AT THAT TIME.

23 Q WAS HE, COULD YOU SEE BOTH OF HIS HANDS, WAS HE
24 HOLDING ON TO THE GUN?

25 A I SEEN ONE HAND UP ON THE BAR HOLDING HIS BEER.

1 Q WAS HE SITTING TO YOUR RIGHT?
2 A HE WAS SITTING TO MY LEFT.
3 Q AND YOU COULD SEE HIS RIGHT HAND?
4 A I COULDN'T SEE IT.
5 Q WHICH HAND COULD YOU SEE?
6 A I COULD SEE HIS LEFT HAND UP ON THE BAR.
7 Q AND YOU RAN OFF, WHAT HAPPENED THEN?
8 A I WAS APPROACHED BY THE BOUNCER AT THE GETAWAY WHO
9 ASKED ME WHAT WAS GOING ON.
10 Q WHERE DID YOU RUN OFF TO?
11 A INTO A KITCHEN AREA.
12 Q IS THAT, IS THAT SEPARATED FROM THE REST OF THE BAR?
13 A THERE IS A DOOR THAT GOES IN BETWEEN THE REST OF THE
14 BAR INTO THE KITCHEN AREA.
15 Q CAN YOU DESCRIBE THE KITCHEN AREA?
16 A JUST PACKED AND CLUTTERED, THERE IS A DEEP FRYER BACK
17 THERE AND JUST STOCKS OF STUFF.
18 Q YOU RAN BACK AND THEN WHAT HAPPENED?
19 A I WAS APPROACHED BY THE BOUNCER AND ASKED ME WHAT WAS
20 GOING ON.
21 Q WHO WAS THE BOUNCER?
22 A MR. TYRONE GOODMAN.
23 Q WHAT DID YOU TELL HIM?
24 A I TOLD HIM THIS GUY HAD A GUN ON ME AND HE WAS
25 ROBBING ME.

1 Q DID YOU SEE MR. GOODMAN DO ANYTHING?

2 A MR. GOODMAN APPROACHED MR. LEVERETTE AND THEY
3 PROCEEDED TO WALK OUTSIDE.

4 Q DO YOU KNOW WHERE MR. JONES WAS AT THIS POINT?

5 A NO, SIR.

6 Q WHAT ELSE DID YOU SEE, I MEAN DID YOU, DID YOU SAY
7 THAT MR. GOODMAN AND MR. LEVERETTE WALKED OUTSIDE?

8 A YES, SIR.

9 Q WERE YOU ABLE TO SEE WHERE THEY WENT?

10 A NO SIR, I STAYED IN THE KITCHEN AREA.

11 Q WHEN YOU SAY THEY WALKED OUTSIDE, DID THEY WALK
12 OUTSIDE THE BAR OR OUTSIDE THE KITCHEN?

13 A THEY WALKED OUTSIDE THE BAR ONTO THE FRONT STEP.

14 Q THEN WHAT DID YOU DO?

15 A THAT WAS IT, BY THE TIME, SHORTLY AFTER THEY WALKED
16 OUT TWO OFFICERS ARRIVED.

17 Q DID YOU HAVE AN EXCHANGE WITH THE OFFICERS?

18 A NOT IN THE BEGINNING, EVERYBODY IN THE BAR ALREADY
19 KNEW WHAT WAS GOING ON AND THEY POINTED OUT THE TWO
20 INDIVIDUALS TO THE TWO POLICE OFFICERS AND THE POLICE
21 OFFICERS STOPPED THEM.

22 MR. ANDREWS: YOUR HONOR, I NEGLECTED TO MARK SOME
23 EXHIBITS AND I WOULD LIKE TO MARK THESE.

24 THE COURT: I THOUGHT WE HAD ALREADY MARKED
25 EVERYTHING.

1 MR. ANDREWS: I APOLOGIZE, YOUR HONOR, LEFT OUT THESE
2 THREE PHOTOS.

3 Q BOBBY, LET ME GET YOU TO TAKE A LOOK AT SOMETHING,
4 SOME EXHIBITS THAT HAVE BEEN MARKED FOR IDENTIFICATION.
5 CAN YOU TELL ME WHAT THAT IS?

6 (WHEREUPON, STATE'S EXHIBIT NO. 9 WAS MARKED FOR
7 IDENTIFICATION ONLY.)

8 A THAT IS MY HAT.

9 Q WHAT DOES THAT SAY ON IT?

10 A PRECISION PLUS.

11 Q AND WHAT IS THIS ITEM?

12 A THAT IS MY WEDDING BAND.

13 Q AND WHAT IS THIS?

14 A THAT IS MY CELL PHONE.

15 Q OKAY. AND WHAT ARE THESE ITEMS?

16 A MY CHAPSTICK AND MY LIGHTER.

17 Q AND WHAT ABOUT THIS?

18 A THAT IS MONEY.

19 Q IS THAT YOUR MONEY?

20 A I CAN'T GUARANTEE IT.

21 Q OKAY, LET'S GO OVER THAT ONE MORE TIME, I NEED TO PUT
22 THOSE NUMBERS, THIS IS STATE'S EXHIBIT MARKED FOR
23 IDENTIFICATION, NUMBER 16. WHAT IS THAT?

24 A THAT IS MY HAT.

25 Q AND MARKED FOR IDENTIFICATION NUMBER 15?

1 A MY WEDDING BAND.

2 Q NUMBER 14?

3 A MY CELL PHONE.

4 Q STATE'S EXHIBIT MARKED FOR IDENTIFICATION NUMBER 12?

5 A MY CHAPSTICK AND LIGHTER.

6 Q AND THEN MARKED FOR IDENTIFICATION NUMBER 10?

7 A THAT IS MY CASH.

8 Q PLEASE ANSWER ANY QUESTIONS THAT MR. BETTIS HAS FOR
9 YOU.

10 THE COURT: ALL RIGHT.

11 CROSS-EXAMINATION

12 BY MR. BETTIS:

13 Q GOOD MORNING, MR. CATON.

14 A GOOD MORNING.

15 Q NOW YOU FREQUENTED THE GETAWAY AROUND THIS TIME YOU
16 ARE ALLEGING THIS INCIDENT OCCURRED, RIGHT?

17 A YES.

18 Q WENT THERE ON A REGULAR BASIS, CORRECT?

19 A YES.

20 Q MR. CATON, I WOULD LIKE TO SHOW YOU WHAT HAS BEEN
21 MARKED AS DEFENDANT'S EXHIBIT 1 AND TELL ME IF YOU
22 RECOGNIZE THIS?

23 A YES.

24 Q IS THAT A PHOTOGRAPH?

25 A YES.

1 Q DO YOU RECOGNIZE WHAT IS SHOWN IN THE PHOTOGRAPH?

2 A YES.

3 Q CAN YOU DESCRIBE WHAT IT IS?

4 A THE GETAWAY.

5 Q IS THAT THE SAME WAY THE GETAWAY LOOKED BACK IN JUNE
6 THE 9TH, 10TH OF 2006?

7 A YES, SIR.

8 Q THIS IS THE GETAWAY HERE IN GREENWOOD?

9 A YES, SIR.

10 Q CORRECT?

11 A YES.

12 MR. BETITS: I WOULD LIKE TO ADMIT DEFENDANT'S
13 EXHIBIT NUMBER 1 INTO EVIDENCE.

14 MR. ANDREWS: WITHOUT OBJECTION.

15 THE COURT: ALL RIGHT.

16 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 1 WAS ADMITTED
17 INTO EVIDENCE.)

18 MR. BETITS: I WOULD LIKE TO PUBLISH DEFENDANT'S
19 EXHIBIT NUMBER 1 TO THE JURY.

20 THE COURT: OKAY.

21 Q MR. CATON, YOU FREQUENTED THE GETAWAY ON A REGULAR
22 BASIS BACK THEN BECAUSE YOU PLAYED A LOT OF POOL, RIGHT?

23 A YES.

24 Q AND YOU PLAYED A LOT OF POOL FOR MONEY, RIGHT?

25 A YES.

1 Q AND YOU WON, YOU ARE PRETTY GOOD AT POOL, WEREN'T
2 YOU?

3 A DECENT.

4 Q TOOK MONEY FROM PEOPLE WHEN YOU WON AND ACTUALLY THE
5 NIGHT THAT THIS HAPPENED YOU HAD A LOT OF MONEY, DIDN'T
6 YOU?

7 A YES.

8 Q IN EXCESS OF \$400.00 BUCKS, RIGHT?

9 A YES.

10 Q AND I THINK YOU ACTUALLY CLAIMED THAT MORE THAN
11 \$400.00 DOLLARS WAS TAKEN FROM YOU IN THIS CASE, CORRECT?

12 A I HAD AVERAGED A LITTLE OVER \$400.00 DOLLARS.

13 Q AND YOU CLAIMED THAT WAS THE AMOUNT OF MONEY THAT WAS
14 TAKEN FROM YOU IN THIS CASE?

15 A YES.

16 Q BUT YOU UNDERSTAND THAT ONLY ABOUT \$47.00 BUCKS WAS
17 RECOVERED?

18 A YES.

19 Q NOW, THE REASON YOU WENT OUTSIDE IS BECAUSE YOU
20 WANTED TO GO SMOKE SOME MARIJUANA, RIGHT?

21 A YES.

22 Q AND MR. JONES WENT OUTSIDE WITH YOU, WHEN YOU WENT
23 OUTSIDE, CORRECT?

24 A YES.

25 Q HE WASN'T JUST OUT THERE, HE WAS IN THE BAR WHEN

- 1 YA'LL WENT OUTSIDE THE GETAWAY, CORRECT?
- 2 A YES.
- 3 Q YOU HAD BEEN DRINKING A GOOD BIT THAT NIGHT?
- 4 A I HAD BEEN DRINKING, YES.
- 5 Q YOU HAD BEEN THERE SINCE ABOUT 9:00 O'CLOCK?
- 6 A YES.
- 7 Q YOU SAY FROM THE TIME YOU WENT OUTSIDE, FROM THE TIME
- 8 ALL OF THIS OCCURRED WAS ABOUT TEN MINUTES OR SO, CORRECT?
- 9 YOU SAID FROM THE TIME THEY PUT YOU IN THE CAR AND BROUGHT
- 10 YOU BACK WAS ABOUT TEN MINUTES OR SO BEFORE YOU CAME BACK
- 11 INTO THE GETAWAY?
- 12 A NO.
- 13 Q ABOUT HOW LONG WENT BY, HOW MUCH TIME?
- 14 A I REALLY CAN'T GUESSTIMATE ON IT, IT HAS BEEN A GOOD
- 15 WHILE.
- 16 Q HOW LONG IS A GOOD WHILE?
- 17 A I AM NOT SURE.
- 18 Q MORE THAN THIRTY MINUTES?
- 19 A YES, SIR.
- 20 Q MORE THAN THIRTY?
- 21 A YES.
- 22 Q SO, YOU WERE GONE FROM THE GETAWAY FROM 11:00 O'CLOCK
- 23 UNTIL 3:00 A.M.?
- 24 A POSSIBLE.
- 25 Q FOR FOUR HOURS?

1 A I AM NOT SURE.

2 Q YOU REALIZE THAT WHEN THE POLICE RESPONDED TO THIS IT
3 WAS ABOUT 3:00 A.M., CORRECT?

4 A YES.

5 Q AND YOU SAY YOU WERE TAKEN ABOUT 11:00, YOU SURE IT
6 WASN'T LATER IN THE NIGHT?

7 A IT COULD OF BEEN.

8 Q EARLY MORNING HOURS?

9 A POSSIBLE.

10 Q YOU ACTUALLY KNEW ZAVIUS JONES BEFORE THIS, DIDN'T
11 YOU?

12 A NO.

13 Q DIDN'T YOU OWE MR. ZAVIUS JONES SOME MONEY?

14 A NO.

15 Q DIDN'T YOU TELL PEOPLE AT THE GETAWAY THAT NIGHT THAT
16 MR. JONES ROBBED YOU BECAUSE YOU OWED HIM MONEY?

17 A NO.

18 Q AND HE TOOK IT FROM YOU AND CONFRONTED YOU ABOUT IT?

19 A NO.

20 Q WASN'T THAT THE REASON THAT MR. JONES WANTED TO GO
21 OUTSIDE WITH YOU?

22 A NO.

23 Q BUT YOU TOLD THE OFFICERS WHEN THEY RESPONDED THAT
24 YOU WENT OUTSIDE TO SMOKE MARIJUANA, CORRECT?

25 A YES.

1 Q AND YOU ADMIT THAT MR. JONES HELD A KNIFE TO YOUR
2 THROAT, CORRECT?

3 A YES.

4 Q THIS BIG CANE SWORD KNIFE?

5 A YES.

6 Q THIS TEN INCH KNIFE AND HE HELD IT TO YOUR THROAT,
7 CORRECT?

8 A YES.

9 Q AND HE WAS THREATENING YOU WITH IT, RIGHT?

10 A YES.

11 Q AND HE WAS TALKING ABOUT WHETHER OR NOT HE SHOULD
12 KILL YOU, RIGHT?

13 A NO.

14 Q HE WASN'T THREATENING AND TALKING AND DISCUSSING
15 WHETHER OR NOT HE SHOULD KILL YOU THAT NIGHT?

16 A NO.

17 Q MR. JONES?

18 A NO.

19 Q YOU CLAIM THAT A GUN WAS PUT INTO YOUR MOUTH AND TORE
20 YOUR THROAT UP AND YOU WERE HIT BESIDE THE HEAD, CORRECT?

21 A YES.

22 Q WHEN YOU WENT BACK IN THE GETAWAY YOU HAD BLOOD
23 COMING OUT OF YOUR EAR AND YOU HAD A CUT ON YOUR MOUTH?

24 A YES.

25 Q YOU DIDN'T GO TO THE HOSPITAL FOR TREATMENT THAT

1 NIGHT, DID YOU?

2 A NO.

3 Q AND THE OFFICER ACTUALLY ASKED YOU IF YOU WANTED SOME
4 MEDICAL TREATMENT AND YOU REFUSED, CORRECT?

5 A YES.

6 Q DID YOU HAVE THE OFFICERS PHOTOGRAPH YOUR EAR WHERE
7 IT WAS BLEEDING TO SHOW THAT YOU WERE HIT ON THE SIDE OF
8 THE HEAD?

9 A THEY HAD TOOK PICTURES.

10 Q OKAY, DO YOU KNOW IF THEY TOOK PICTURES OF THE SIDE
11 OF YOUR HEAD WHERE YOU SAY YOUR EAR WAS BLEEDING?

12 A NO.

13 Q ZAVIUS JONES, YOU CLAIM TOOK YOU IN A CAR SOMEWHERE,
14 RIGHT, HE WAS THE DRIVER?

15 A YES.

16 Q WHEN YOU WENT BACK IN TO THE GETAWAY THAT NIGHT AFTER
17 BEING OUTSIDE WITH JONES AND YOU CLAIM INJURY, DIDN'T MR.
18 JONES ALSO COME BACK INTO THE GETAWAY WITH YOU?

19 A NO.

20 Q DID YOU TELL THE OFFICERS AT THE SCENE THAT MR. JONES
21 CAME BACK INTO THE GETAWAY WITH YOU?

22 A NO.

23 Q DIDN'T YOU TELL MR. GOODMAN, THE GENTLEMAN INSIDE THE
24 GETAWAY THAT MR. JONES WAS BEHIND YOU AND HE WAS THE
25 PERSON WHO WAS AFTER YOU?

1 A NO.

2 Q HE WAS ONE OF THE PERSON'S BEHIND YOU, DIDN'T YOU
3 TELL MR. GOODMAN THAT?

4 A NO.

5 Q THERE WEREN'T FIVE BLACK MEN UP AT THE GETAWAY THAT
6 NIGHT THREATENING YOU?

7 A NO.

8 Q DID YOU REPORT THAT TO ANYBODY?

9 A NO.

10 Q YOU NEVER DID?

11 A NO.

12 Q WAS THERE A GENTLEMAN WHO YOU CLAIMED HAD A HAIRSTYLE
13 OF AN AFRO, THAT HAD ANYTHING TO DO WITH THIS INCIDENT?

14 A NO.

15 Q A GENTLEMAN WITH AN AFRO THAT WAS CAUSING SOME KIND
16 OF PROBLEM FOR YOU?

17 A NO.

18 Q NOW, AFTER YOU TALKED TO THE POLICE, YOU LATER GAVE
19 ANOTHER STATEMENT ON OR ABOUT MARCH THE 29TH OF 2007,
20 DIDN'T YOU, YOU MADE ANOTHER, YOU GAVE ANOTHER WRITTEN
21 STATEMENT, RIGHT, WHERE YOU CLAIMED ZAVIUS JONES DIDN'T
22 THREATEN YOU IN ANY SAY, CORRECT?

23 A CORRECT.

24 Q YOU SAID THAT ZAVIUS DIDN'T TOUCH YOU IN ANY WAY,
25 CORRECT, IN THAT STATEMENT?

1 A RIGHT.

2 Q YET ZAVIUS JONES ACTUALLY DID THREATEN YOU, DIDN'T
3 HE?

4 A HE WAS HOLDING A SWORD AND TO ME THAT IS A THREAT.

5 Q YES, HE PUT A SWORD AGAINST YOUR THROAT, DIDN'T HE?

6 A YES.

7 Q BUT YOU SAID ON ANOTHER STATEMENT ON MARCH 29TH OF
8 2007 THAT ZAVIUS JONES NEVER THREATENED YOU, YOU SAID THAT
9 ZAVIUS JONES DIDN'T TOUCH YOU, CORRECT?

10 A HE NEVER VERBALLY THREATENED ME, NO.

11 Q I AM NOT SAYING VERBALLY, YOU SAID IN THE STATEMENT
12 HE DIDN'T THREATEN YOU, CORRECT?

13 A YES.

14 Q AND YOU GAVE THIS STATEMENT TO ZAVIUS JONES' MOTHER,
15 DIDN'T YOU AND ANOTHER PERSON?

16 A RIGHT.

17 Q VANESSA JONES. YOU RECALL GIVING THAT STATEMENT,
18 DON'T YOU?

19 A YES.

20 Q AND THAT IS DIFFERENT THAN WHAT YOU TOLD THE POLICE
21 THAT NIGHT ABOUT WHAT HAPPENED, ISN'T IT, AS FAR AS ZAVIUS
22 JONES HOLDING A KNIFE TO YOUR THROAT, CORRECT?

23 A NO.

24 Q YOU ADMIT THAT ZAVIUS JONES HELD A KNIFE TO YOUR
25 THROAT, CORRECT?

1 A YES.

2 Q BUT YOU SAID IN THE STATEMENT THAT HE DIDN'T THREATEN
3 YOU AND HE DIDN'T TOUCH YOU, CORRECT?

4 A I SAID HE HAD A KNIFE.

5 Q IN YOUR STATEMENT YOU SAID THAT HE DIDN'T TOUCH YOU
6 AND HE DIDN'T THREATEN YOU, CORRECT, IN YOUR WRITTEN
7 STATEMENT ON MARCH THE 29TH OF 2007?

8 A RIGHT, CORRECT.

9 Q YOU DIDN'T SAY THAT HE PUT A KNIFE TO YOUR THROAT IN
10 THAT STATEMENT, CORRECT?

11 A YES, I DID.

12 Q YOU DID SAY THAT?

13 A I DID SAY THAT.

14 Q OKAY, LET'S TAKE A LOOK AT YOUR STATEMENT. MR.
15 CATON, I WOULD LIKE FOR YOU TO LOOK AT DEFENDANT'S EXHIBIT
16 NUMBER 2, PLEASE READ THROUGH THAT. TAKE YOUR TIME. DO
17 YOU RECOGNIZE THAT AS A STATEMENT YOU GAVE ON MARCH 29TH
18 OF 2007?

19 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 2 WAS MARKED FOR
20 IDENTIFICATION ONLY.)

21 A YES, THIS IS WHAT SHE WROTE DOWN.

22 Q YOU SAY THIS IS WHAT SHE WROTE DOWN, ARE THEY WRITING
23 DOWN WHAT YOU WERE TELLING THEM?

24 A YES.

25 Q IF YOU WILL, TAKE YOUR TIME AND READ THROUGH THAT,

1 PLEASE.

2 A (THE WITNESS READS STATEMENT.)

3 Q MR. CATON, DOES THAT STATEMENT REFRESH YOUR MEMORY ON
4 WHAT THE STATEMENT SAID THAT YOU SIGNED?

5 A YES SIR, BUT SHE LEFT OUT A PART.

6 Q BUT NO WHERE ON THAT STATEMENT DOES IT SAY THAT
7 ZAVIUS JONES PUT A KNIFE TO YOUR THROAT?

8 A YES SIR, I JUST READ THAT.

9 Q IT DOES NOT SAY THAT.

10 A IT DOES NOT SAY THAT.

11 Q IN FACT YOU STATE IN THIS STATEMENT THAT ZAVIUS JONES
12 DID NOT TOUCH YOU?

13 A HE DID NOT PHYSICALLY TOUCH ME.

14 Q WELL, HE PUT A KNIFE TO YOUR THROAT, CORRECT?

15 A YES.

16 Q AND IN THIS STATEMENT YOU SAY THAT HE DID NOT TOUCH
17 YOU?

18 A I DID MENTION TO HER, SHE JUST DIDN'T WRITE IT DOWN.

19 Q BUT IN THIS STATEMENT YOU AGREE THAT IT SAYS ZAVIUS
20 JONES--

21 A I AGREE WITH WHAT YOU ARE SAYING, YES.

22 Q OKAY. MR. CATON, ISN'T IT TRUE THAT YOU CHANGED YOUR
23 STORY AFTER THE FACT BECAUSE OF THE MONEY YOU OWED ZAVIUS
24 JONES AND YOU WANTED TO MAKE IT RIGHT WITH HIM AND TRY TO
25 EXONERATE HIM FROM ANY RESPONSIBILITY OF THIS?

1 A NO.

2 Q ISN'T THAT WHAT HAPPENED?

3 A NO.

4 Q THAT YOU OWED HIM MONEY FOR DRUGS?

5 A NO.

6 Q YOU WENT OUTSIDE TO SMOKE DRUGS?

7 A YES.

8 Q WITH THEM THAT NIGHT?

9 A YES.

10 Q AND YOU KNEW ZAVIUS JONES THAT NIGHT?

11 A I DID NOT KNOW HIM.

12 Q THAT IS ALL I HAVE.

13 REDIRECT EXAMINATION

14 BY MR. ANDREWS:

15 Q MR. CATON, CAN YOU READ OUT LOUD THE STATEMENT THAT
16 YOU GAVE ON MARCH 29TH OF 2007?

17 A IT SAYS, I, ROBERT CATON SAYS THAT ZAVIUS JONES DID
18 NOT ROB ME, HE DIDN'T HIT ME, HE NEVER TOUCHED ME THE
19 NIGHT OF JUNE 10TH OF 2006. I WAS APPROACHED BY KENTRELL
20 LEVERETTE TO GET IN THE CAR. THE CAR WAS DRIVEN BY ZAVIUS
21 JONES BEING DIRECTED BY KENTRELL LEVERETTE. I WAS TAKEN
22 TO AN UNKNOWN LOCATION; KENTRELL LEVERETTE FORCED ME OUT
23 OF THE CAR, WAS TOLD TO EMPTY OUT OF POCKETS, ALL OF THEM,
24 LEVERETTE TOOK MY WEDDING BAND AND THEN LEVERETTE TOLD ME
25 TO GET ON THE GROUND AND HE SHOVED A GUN DOWN MY THROAT

1 AND KEPT TURNING IT IN MY THROAT. ZAVIUS JONES WAS THERE,
2 HE WAS MADE TO BE THERE. LEVERETTE EVEN HAD ME TO TAKE
3 ALL OF MY CLOTHES OFF AND CONTINUED TO SEARCH ME. I TOLD
4 LEVERETTE I DIDN'T HAVE ANY MORE MONEY. LEVERETTE SEIZED
5 \$440-\$460 DOLLARS FROM ME. LEVERETTE EVEN TOOK MY CELL
6 PHONE TO CALL SOMEONE AND HE TALKED AND LAUGHED AS IF HE
7 WAS TRYING TO IMPRESS WHOEVER HE WAS TALKING TO ON THE
8 PHONE. I TOLD LEVERETTE THAT I HAD MORE MONEY AT THE
9 GETAWAY IN MY COAT POCKET. I REALLY BELIEVE THAT JONES
10 DIDN'T WANT TO BE THERE, AND HE APPEARED TO BE SCARED. I
11 WAS TAKEN BACK TO THE GETAWAY, BECAUSE LEVERETTE THOUGHT I
12 HAD MORE MONEY THERE. WHEN WE GOT BACK TO THE GETAWAY
13 LEVERETTE AND I WENT IN THE GETAWAY, I DIPPED TO FIND
14 SOMEONE TO CALL THE POLICE FOR HELP. JONES REMAINED IN
15 THE CAR. JONES DIDN'T HARM ME OR THREATEN ME, LEVERETTE
16 IS THE GUILTY ONE, I WILL TESTIFY TO THIS STATEMENT.

17 Q IS THIS YOUR HANDWRITING?

18 A NO.

19 Q WHOSE HANDWRITING IS IT?

20 A ONE OF THE FEMALES THAT CAME TO MY HOUSE, FELICIA
21 MOTE, (PHONETIC).

22 Q DO YOU KNOW WHO FELICIA MOTE WORKS FOR?

23 A SHE IS AN ATTORNEY FOR SOMEBODY.

24 Q OKAY. DO YOU KNOW WHAT HER RELATIONSHIP IS TO ZAVIUS
25 JONES?

1 A SHE IS REPRESENTING HIM.

2 Q WHO ELSE WAS THERE THAT DAY BESIDES FELICIA?

3 A ZAVIUS' MOTHER.

4 Q IS THERE SOMETHING MISSING FROM THIS STATEMENT?

5 A YES, THE PART WHERE HE WAS HOLDING A KNIFE TO MY
6 THROAT.

7 Q DO YOU REMEMBER IF YOU TOLD THE POLICE?

8 A YES, I DID TELL THEM.

9 Q WHY IS IT NOT IN THERE?

10 A I DON'T KNOW.

11 Q WHAT WAS YOUR VIEW OF ZAVIUS JONES THAT NIGHT?

12 A HE APPEARED TO BE INTIMIDATED, HE APPEARED TO BE VERY
13 NERVOUS.

14 Q WHAT LED YOU TO BELIEVE THIS?

15 A BECAUSE HE WAS SO QUIET, WHERE MR. LEVERETTE WAS
16 SCREAMING AND THREATENING AND JUST BEING KIND OF HYPER,
17 JONES WAS JUST REAL NERVOUS ACTING, REAL QUIET AND JUST
18 KIND OF DISTANT.

19 Q THANK YOU.

20 RECROSS-EXAMINATION

21 BY MR. BETTIS:

22 Q JUST A COUPLE OF MORE QUESTIONS FOR YOU.

23 A YES, SIR.

24 Q YOU SAY THAT THE STATEMENT THAT YOU GAVE TO THE
25 POLICE THAT WAS WROTE OUT, THAT THERE WAS A PART LEFT OUT

1 ABOUT ZAVIUS THREATENING YOU WITH A KNIFE, CORRECT?

2 A YES.

3 Q THAT IS A VERY IMPORTANT PART TO LEAVE OUT OF A
4 STATEMENT, WOULD YOU SAY?

5 A YES.

6 Q AND YOU READ THAT STATEMENT, DIDN'T YOU?

7 A SHE READ IT TO ME.

8 Q YOU MADE SURE IT WAS READ, YOU ACTUALLY WENT THROUGH
9 THE STATEMENT AND MADE SOME CHANGES AND INITIALED PARTS OF
10 IT, DIDN'T YOU?

11 A SHE MADE THE CHANGES AND I INITIALED THEM.

12 Q AND SO YOU WENT THROUGH IT WITH HER AND MADE SURE THE
13 WORDS WERE RIGHT AND THINGS WERE PROPERLY PUT DOWN IN THE
14 STATEMENT, PUT YOUR INITIALS ON SOME CHANGES THAT WERE
15 MADE AND THEN YOU SIGNED IT, CORRECT?

16 A YES.

17 Q AND PUTTING A KNIFE AGAINST YOUR THROAT AND WHAT YOU
18 ALLEGED WAS A ROBBERY TO YOU AND WHAT YOU TOLD THE POLICE
19 ABOUT WAS A VERY IMPORTANT PART OF YOUR STATEMENT, I WOULD
20 ASSUME, IS THAT CORRECT?

21 A YES.

22 Q BUT IT WASN'T INCLUDED IN YOUR STATEMENT, RIGHT?

23 A NO, SIR.

24 Q INSTEAD YOU SAID HE DIDN'T TOUCH YOU, YOU LEFT IT AT
25 THAT, CORRECT.

1 A THAT IS NOT TRUE.

2 Q AND YOU TOLD THE POLICE ON THE NIGHT IN QUESTION THAT
3 ZAVIUS JONES PUT A KNIFE TO YOUR THROAT AND WAS
4 THREATENING YOU. YOU DIDN'T SAY THAT HE DIDN'T ACT LIKE
5 HE WANTED TO BE THERE, HE SEEMED SCARED OR QUIET. YOU
6 WERE SAYING ZAVIUS JONES WAS ROBBING YOU, CORRECT?

7 A HE WAS PART OF THIS ALSO, YES.

8 Q DIFFERENT THAN WHAT YOU ARE TESTIFYING TO TODAY AND
9 WHAT YOU SAID IN THAT STATEMENT. YOU WEREN'T SAYING THAT
10 ZAVIUS JONES DIDN'T WANT TO BE THERE THE NIGHT WHEN THE
11 POLICE CAME, WERE YOU?

12 A NO.

13 Q YOU TESTIFIED THAT SEVERAL ITEMS WERE TAKEN FROM YOU
14 THAT NIGHT, CORRECT?

15 A YES.

16 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS
17 DEFENDANT'S EXHIBIT 3, IT IS A PHOTOGRAPH AND SEE IF YOU
18 CAN IDENTIFY THIS PHOTOGRAPH?

19 A YES.

20 Q DOES THAT LOOK LIKE THE PROPERTY THAT WAS TAKEN FROM
21 YOU THAT NIGHT?

22 A YES.

23 Q IS THAT SOME OF THE SAME ITEMS THAT MR. ANDREWS WENT
24 THROUGH WITH YOU?

25 A YES.

1 Q AND THOSE ARE THE ITEMS THAT YOU UNDERSTAND THAT THE
2 POLICE FOUND IN THIS VEHICLE THAT YOU SAY YOU WERE IN,
3 CORRECT?

4 A YES, SIR.

5 Q IN A BAG?

6 A YES.

7 Q THANK YOU, MR. CATON.

8 THE COURT: OKAY, JURORS, WE WILL TAKE ABOUT TWELVE
9 MINUTES, DON'T TALK ABOUT THE CASE. JUST STEP BACK.

10 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
11 A SHORT BREAK.)

12 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

13 THE COURT: IS THE STATE READY?

14 MR. ANDREWS: YES, YOUR HONOR.

15 THE COURT: THE DEFENSE?

16 MR. BETITS: YES, SIR.

17 THE COURT: BRING THEM IN.

18 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
19 APPROXIMATELY 11:00 A.M.)

20 THE COURT: CALL YOUR WITNESS.

21 MR. ANDREWS: THE STATE CALLS TYRONE GOODMAN TO THE
22 STAND.

23 TYRONE GOODMAN, AFTER BEING DULY SWORN,
24 TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MR. ANDREWS:

2 Q STATE YOUR NAME, PLEASE.

3 A TYRONE GOODMAN.

4 Q HOW OLD ARE YOU, SIR.

5 A I AM 49.

6 Q YOU LIVE IN GREENWOOD?

7 A YES SIR, ALL OF MY LIFE.

8 Q AND WHERE DO YOU WORK, SIR?

9 A I AM WORKING ON HOUSES RIGHT NOW.

10 Q AND WHERE ELSE?

11 A WELL, I AM ACTUALLY A BOUNCER.

12 Q LET ME TAKE YOU BACK TO JUNE 9TH OF 2006. JUNE 9TH

13 AND 10TH, DO YOU REMEMBER WHAT YOU WERE DOING THEN?

14 A I WAS A BOUNCER UP THERE AND IF THERE WAS ANY TROUBLE

15 STARTED I WOULD ALWAYS TRY TO GET IN THE MIDDLE OF IT AND

16 KEEP IT DOWN.

17 Q WHEN YOU SAY UP THERE, WHAT DO YOU MEAN?

18 A THE GETAWAY.

19 Q DO YOU KNOW BOBBY CATON?

20 A YES, I KNOW BOBBY.

21 Q HOW LONG DO YOU SAY YOU HAVE KNOWN HIM?

22 A PROBABLY EIGHT OR NINE YEARS OR LONGER.

23 Q HOW DID YOU KNOW EACH OTHER?

24 A JUST BEING AN ACQUAINTANCE OF PLAYING POOL AND JUST A

25 BEER JOINT.

1 Q OKAY. TELL ME WHAT HAPPENED ON THAT NIGHT, JUNE 9TH,
2 EARLY MORNING OF JUNE 10TH OF '06?

3 A WELL, I DIDN'T SEE ANYBODY COME IN, THEY DIDN'T COME
4 IN AND I DIDN'T SEE HIM. BUT THEN BOBBY GOT UP FROM THE
5 BAR AND HE FLEW IN THE KITCHEN AND I SAID, WELL, YOU KNOW,
6 PEOPLE DON'T DO THAT, THEY DON'T GO IN THE KITCHEN. AND
7 SO I GOT UP AND WENT IN THE KITCHEN TO SEE WHAT WAS GOING
8 ON AND BOBBY TOLD ME THAT THEY HAD TOOK HIM OFF AND
9 STRIPPED HIM. THIS GENTLEMAN HERE WAS SITTING AT THE BAR,
10 I TURNED AROUND AND TOLD SOMEBODY TO CALL THE LAW, I SAID
11 BOBBY YOU JUST STAY IN THE KITCHEN. AND I WENT IN THERE
12 AND SAT BESIDE HIM.

13 Q SAT BESIDE, CAN YOU POINT HIM OUT?

14 A THIS GENTLEMAN HERE.

15 Q YOU KNOW HIS NAME?

16 A I DIDN'T KNOW HIS NAME, I AM NOT GOOD WITH NAMES.

17 Q HE IS SITTING ON MR. BETTIS' RIGHT?

18 A YES. SO, I TOLD BOBBY TO STAY IN THE KITCHEN AND I
19 WALKED BACK TO THE BAR AND SAT BESIDE HIM. AND I SAW AN
20 IMPRESSION OF A GUN IN HIS WASTE. AND I ASKED HIM, I SAID
21 LOOK, I DON'T KNOW WHAT YA'LL ARE DOING, I SAID LET'S GO
22 OUTSIDE AND TALK. SO ME AND HIM WALKED OUTSIDE.

23 Q YOU SAY ME AND HIM?

24 A ME AND MR. LEVERETTE, WE WALKED FROM THE BAR TO THE
25 FRONT PORCH. I SAID, MAN, WHAT ARE YA'LL DOING. I SAID

1 YOU KNOW THIS IS CRAZY, YOU ARE TALKING ABOUT KILLING
2 BOBBY, I SAID WHAT IS GOING ON. HE SAID, I AM GOING TO
3 KILL HIM. AND I SAID, WHY DON'T YOU DO IT SOMEWHERE ELSE,
4 WHY DO YOU BRING HIM UP HERE. BECAUSE IT DIDN'T MAKE NO
5 SENSE TO ME THAT HE HAD HIM OUT THERE, WHY BRING HIM UP
6 HERE TO THE GETAWAY AND DO IT. AND THEN THE LAW PULLED IN
7 AND I SAID, YOU BACK UP AND THAT IS WHEN THE LAW GOT HIM.

8 Q DID YOU EVER ASK HIM WHY HE WANTED TO KILL BOBBY
9 CATON?

10 A I ASKED HIM WHY HE BROUGHT HIM UP THERE TO DO IT AND
11 HE JUST NEVER ANSWERED ME.

12 Q DID YOU EVER SEE A GUN?

13 A I SEEN A GUN, I COULD SEE IT IN FRONT OF HIS SHIRT.
14 I KNOW HE HAD A GUN.

15 Q DID YOU ACTUALLY SEE THE WEAPON?

16 A I JUST SEEN THE BUTT OF IT, HE HAD A HAND OUT IN
17 FRONT OF ME, I NEVER SEEN IT IN THE GETAWAY. WHEN THE LAW
18 PULLED UP I SAID HE IS DOWN HERE AND THEY TOOK HIM FROM
19 THERE.

20 Q WHAT DID HE SAY?

21 A HE SAID HE WAS GOING TO KILL HIM. I DIDN'T GO INTO
22 WHY, I JUST TOLD HIM IT WASN'T A GOOD THING TO DO.

23 Q AFTER THE LAW CAME WHAT HAPPENED, DID YOU HAVE ANY
24 MORE DEALINGS?

25 A WELL, HE SAID SOMETHING ABOUT THE OTHER GUY HAVING A

1 KNIFE AND I TOLD HIM THAT A KNIFE WAS IN THAT GUY'S CANE.

2 Q WHO SAID SOMETHING ABOUT IT?

3 A IT WAS SOMEBODY OUTSIDE, IT COULD OF BEEN BOBBY, I
4 MEAN THERE WAS SO MANY PEOPLE THAT GOT OUTSIDE BY THEN,
5 THE LAW AND EVERYBODY TO SEE WHAT WAS HAPPENING. I REALLY
6 DON'T KNOW WHO SAID HE HAD A KNIFE IN THERE BUT I KNOW HE
7 HAD ONE JUST BY HEARSAY, I NEVER SEEN HIM PULL THE KNIFE
8 OUT.

9 Q WHO HAD THE GUN AGAIN?

10 A HE HAD THE GUN, MR., I CAN'T REMEMBER, I REALLY DON'T
11 KNOW HIS NAME, THE OTHER ONE HAD THE KNIFE. HE HAD BRAIDS
12 IN HIS HAIR AND GOLD TEETH. I MEAN I KNOW HIM, HE LIVES
13 DOWN BELOW ME AND THEY ENDED UP KICKING HIM OUT ABOUT TWO
14 MONTHS AGO.

15 Q OKAY. PLEASE ANSWER ANY QUESTIONS THAT MR. BETTIS
16 MAY HAVE.

17 A I WILL BE GLAD TO.

18 CROSS-EXAMINATION

19 BY MR. BETTIS:

20 Q GOOD MORNING, MR. GOODMAN.

21 A GOOD MORNING.

22 Q HOW ARE YOU DOING. YOU KNEW ZAVIUS JONES, DIDN'T
23 YOU?

24 A YEAH, I HAD SEEN HIM. I KNEW HIM JUST BECAUSE I
25 LIVED IN THAT PART OVER THERE.

1 Q HE HAD DREADLOCKS, RIGHT?

2 A YES.

3 Q AND HE WAS THERE. IN THE BAR, YOU CAME BACK IN--

4 A I DON'T THINK HE CAME BACK INTO THE BAR UNTIL AFTER
5 THE LAW GOT THERE AND HE WAS GETTING AWAY, HE WAS ACTUALLY
6 GETTING OUT OF THE CAR AND GOING INSIDE.

7 Q DIDN'T YOU TELL THE POLICE AT THE TIME THAT YOU SAW
8 MR. CATON COMING INTO THE GETAWAY AND MR. JONES WAS BEHIND
9 HIM ALONG WITH MR. LEVERETTE, ISN'T THAT WHAT YOU TOLD THE
10 POLICE?

11 A I AIN'T SURE, IT HAS BEEN TWO YEARS AGO, I COULD
12 HAVE.

13 Q BUT IF YOU DID THAT THAT PROBABLY WOULD BE MORE
14 ACCURATE BECAUSE IT WAS MORE FRESH IN YOUR MIND?

15 A YES.

16 Q IT WAS MORE FRESH IN YOUR MIND THE NIGHT THAT IT
17 HAPPENED?

18 A IT WOULD BE, THAT HAS BEEN TWO YEARS AGO.

19 Q AND THAT IS WHAT YOU TOLD THE POLICE THAT NIGHT, MR.
20 JONES WAS COMING BEHIND MR. CATON, CORRECT?

21 A NOW, I WAS TELLING WHAT I WAS TOLD AT THE TIME THAT
22 HE WENT AND TOOK OFF. HE TOLD ME IN THE KITCHEN THAT THEY
23 STRIPPED ME AND THEY ARE GOING TO KILL ME.

24 Q BUT YOU TOLD THE OFFICER THAT YOU SAW MR. JONES COME
25 IN BEHIND MR. CATON, CORRECT?

1 A I COULD HAVE, IT HAS BEEN TWO YEARS AGO. I MIGHT
2 HAVE.

3 Q DIDN'T YOU TALK TO MR. CHIP DAVENPORT THAT DAY, DON'T
4 YOU REMEMBER TALKING TO AN OFFICER THAT NIGHT?

5 A I TALKED TO SEVERAL OF THEM. I TOLD THEM HE HAD A
6 GUN AND THEY TOOK IT OFF OF HIM.

7 Q AND YOU ALSO TOLD THEM THAT MR. JONES CAME IN BEHIND
8 MR. CATON, CORRECT?

9 A I COULD HAVE.

10 Q YOU WERE GOOD BUDDIES WITH BOBBY CATON, CORRECT?

11 A WE DON'T JUST COME BY MY HOUSE AND PICK ME UP, NO. I
12 KNOW MS. CORLEY, THAT IS HER GRANDSON.

13 Q AND YOU FREQUENTED THE GETAWAY TOO, CORRECT?

14 A I WAS LIVING UP THERE JUST ABOUT.

15 Q WHEN YOU WERE UP THERE YOU DRANK?

16 A YES, SIR.

17 Q YOU WERE DRINKING THIS EVENING, CORRECT?

18 A I AIN'T BEEN DRINKING NOTHING TODAY, I AM NERVOUS.

19 Q I AM NOT TALKING ABOUT TODAY. I AM TALKING ABOUT THE
20 DAY OF THE INCIDENT. YOU DRANK THAT EVENING?

21 A OH, YES.

22 Q IT WAS ABOUT 3:00 A.M.

23 A AS A MATTER OF FACT, I TOLD HIM I WOULD BUY HIM A
24 BEER, I THINK I DID BUY HIM A BEER WHILE WE WERE SITTING
25 THERE AT THE BAR BEFORE I GOT HIM OUT THE DOOR. BECAUSE I

1 TRY TO KEEP PEOPLE APART. YOU JUST SPLIT THEM UP AND IT
2 USUALLY JUST GOES AWAY BUT IT DIDN'T THAT NIGHT.

3 Q BUT YOU HAD BEEN DRINKING THAT NIGHT?

4 A YES.

5 Q AND WHEN YOU SAW MR. CATON HE WAS SCARED OF MR. JONES
6 THAT NIGHT TOO, WASN'T HE?

7 A HE WAS SCARED PERIOD, HE WAS CRYING. I MEAN WHAT HE
8 HAD TOLD ME I WOULD OF BEEN CRYING TOO, YOU KNOW.

9 Q YOU NEVER SAW ANYTHING HAPPEN BETWEEN MR. CATON AND
10 MR. JONES AND MR. LEVERETTE ANYTIME OUTSIDE THE GETAWAY?

11 A NO, SIR.

12 Q YOU ARE NOT HERE TO TELL THIS JURY YOU WITNESSED ANY
13 INCIDENT BETWEEN MR. LEVERETTE AND MR. CATON OR MR. JONES?

14 A NO, SIR. THE ONLY THING I WAS ANSWERING TO IS I KNOW
15 HE HAD A GUN AND WHAT WAS TOLD TO ME IN THE KITCHEN.

16 Q AND WHEN YOU SAY YOU SAW MR. LEVERETTE IN THE BAR,
17 YOU NEVER SAW THE GUN OUT, CORRECT?

18 A OH, NO.

19 Q YOU ARE NOT HERE TO TELL THIS JURY THAT YOU WITNESSED
20 ANY INCIDENT BETWEEN MR. CATON AND MR. LEVERETTE?

21 A NO, BECAUSE I CAN'T.

22 Q AND YOU DON'T HAVE ANY KNOWLEDGE OF THE GOINGS ON
23 BETWEEN MR. CATON AND MR. JONES OUTSIDE THE GETAWAY?

24 A NO SIR, I DON'T.

25 Q IT WAS COMMON FOR BAD INCIDENTS TO OCCUR AT THE

1 GETAWAY, WASN'T IT?

2 A YES.

3 Q THINGS HAPPEN ON A REGULAR BASIS THERE, CORRECT?

4 A KIND OF GOT ROUGH AT ONE TIME.

5 Q IN THE WEE HOURS OF THE MORNING?

6 A 3:00 O'CLOCK.

7 Q THAT IS WHEN PEOPLE GET A LITTLE MORE ROWDY?

8 A YES.

9 Q MR. GOODMAN, LET ME ASK YOU A COUPLE OF MORE THINGS
10 BEFORE I SIT DOWN. IN 2001 YOU HAD A CONVICTION OF
11 RESISTING ARREST, CORRECT?

12 A YES.

13 Q AND YOU WERE ALSO CONVICTED OF CRIMINAL DOMESTIC
14 VIOLENCE OF A HIGH AND AGGRAVATED NATURE, CORRECT?

15 A YES, SIR.

16 Q IN 2001, NOVEMBER THE 5TH?

17 A YES, SIR.

18 Q JUNE 17TH OF 2003 YOU WERE CONVICTED OF POSSESSION OF
19 MARIJUANA, SECOND OFFENSE, CORRECT?

20 A YES.

21 Q APRIL 10TH, I TAKE THAT BACK. POSSESSION OF
22 MARIJUANA, SECOND OFFENSE ON JUNE 17TH FOR 2003, CORRECT?

23 A THAT IS RIGHT.

24 Q THANK YOU, MR. GOODMAN.

25 THE COURT: JURORS, ANY TIME ANYBODY TAKES THE STAND

1 IF THEY HAVE GOT A RECORD THEY CAN BRING IT OUT. WHEN
2 THEY BRING IT OUT THAT IS JUST SOMETHING THAT YOU CONSIDER
3 IF YOU FEEL IT IMPACTS ON THEIR CREDIBILITY, IT DOES NOT
4 MEAN THAT YOU SHOULD DISCOUNT THEIR TESTIMONY, IT IS JUST
5 ANOTHER FACTOR THAT YOU CAN TAKE INTO ACCOUNT. SO,
6 ANYTIME ANYBODY TAKES THE STAND THEY CAN ASK ABOUT A PRIOR
7 CRIMINAL RECORD, GENERALLY SPEAKING. SOMETIMES YOU CAN'T
8 BUT GENERALLY YOU CAN. OKAY.

9 MR. ANDREWS: THE STATE CALLS CHIP DAVENPORT.

10 CHIP DAVENPORT, AFTER BEING DULY SWORN,
11 TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MR. ANDREWS:

14 Q TELL US YOUR NAME.

15 A CHIP DAVENPORT.

16 Q WHO DO YOU WORK FOR?

17 A I WORK FOR THE GREENWOOD CITY POLICE DEPARTMENT..

18 Q HOW LONG HAVE YOU BEEN WORKING THERE?

19 A SEVEN YEARS.

20 Q BEFORE THAT WHAT DID YOU DO?

21 A I WAS WORKING AT RECEIVING AND STOCKING AREA AT
22 LOWES.

23 Q WHAT IS YOUR CURRENT RANK?

24 A I AM A LIEUTENANT.

25 Q REMEMBER WHERE YOU WERE ON THE EARLY MORNING HOURS OF

1 JUNE 10TH OF 2006?

2 A YES SIR, I RESPONDED TO THE GETAWAY IN REFERENCE TO A
3 CIVIL DISTURBANCE.

4 Q TELL ME WHAT HAPPENED.

5 A UPON GETTING THERE WE ENTERED THE BAR, THERE WERE A
6 COUPLE OF INDIVIDUALS THAT INFORMED THAT THERE WAS TWO
7 PEOPLE, TWO BLACK MALES BEHIND US THAT WERE IN POSSESSION
8 OF A FIREARM. AS WE TURNED TO LOOK AT THESE SUBJECTS
9 THEY, THESE INDIVIDUALS POINTED THEM OUT, AS THEY POINTED
10 THEM OUT TO US THEY STARTED TO EXIT THE BAR. WE FOLLOWED
11 THEM OUT AND MADE CONTACT WITH THEM. BEGAN SPEAKING WITH
12 THEM OUT THERE, ONE OF WHICH WAS MR. LEVERETTE.

13 Q OKAY. CAN YOU POINT MR. LEVERETTE OUT FOR US?

14 A YES SIR, HE IS RIGHT THERE.

15 Q KEEP GOING.

16 A THE OTHER ONE WAS MR. JONES. UPON SPEAKING TO MR.
17 LEVERETTE OUT THERE IN THE PARKING LOT THE FIRST THING
18 THAT I ASKED, DOES HE HAVE ANY WEAPONS. BY HIS OWN
19 ADMISSION HE TOLD ME THAT HE HAD A PELLET GUN IN HIS PANTS
20 POCKET. I TOOK THE PELLET GUN OUT OF HIS POCKET AND TOOK
21 IT IN.

22 Q LET ME SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
23 EXHIBIT NUMBER 2 FOR IDENTIFICATION. CAN YOU TELL ME WHAT
24 THAT IS?

25 A THAT IS THE PELLET GUN THAT I HAD TAKEN OFF OF MR.

1 LEVERETTE.

2 Q AND WHERE OFF HIM DID YOU TAKE IT?

3 A OUT OF HIS LEFT FRONT PANTS POCKET.

4 MR. ANDREWS: YOUR HONOR, THE STATE MOVES TO ADMIT
5 EXHIBIT NUMBER 2 FOR IDENTIFICATION INTO EVIDENCE.

6 THE COURT: OKAY.

7 (WHEREUPON, STATE'S EXHIBIT NO. 2 WAS ADMITTED INTO
8 EVIDENCE.)

9 MR. ANDREWS: YOUR HONOR, I WOULD LIKE TO HAND THIS
10 AROUND TO THE JURY.

11 THE COURT: OKAY.

12 Q WHAT KIND OF GUN WAS IT?

13 A IT IS A PELLET GUN.

14 Q WHAT DID YOU NOTICE ABOUT IT?

15 A THE FIRST THING I TOOK IT OFF OF HIS PERSON. I
16 NOTICED WHAT APPEARED TO BE BLOOD OVER THE FRONT OF THE
17 PELLET GUN, RIGHT THERE OF THE BARREL AND THE TOP PORTION
18 OF THE SLIDE.

19 Q WHAT DID YOU DO WITH THE GUN NEXT?

20 A OF COURSE TAKE IT, I SECURED IT IN MY PELLET TO MAKE
21 SURE IT DOESN'T GET MISPLACED.

22 Q WHAT DID YOU DO NEXT WITH THE PISTOL?

23 A I SECURED IT IN MY VEHICLE, THAT WAY I COULD KEEP IT
24 FOR EVIDENTIARY PURPOSES, IT WAS INSIDE OF A PAPER BAG.

25 Q WAS THE BAG SEALED?

1 A YES SIR, IT WAS. IT WAS ROLLED OVER AND FOLDED TO
2 WHERE IT WAS SEALED THERE IN THE VEHICLE.

3 Q THEN WHAT DID YOU DO WITH IT?

4 A I HELD IT THERE UNTIL LIEUTENANT GRAY GOT THERE, HE
5 WAS ABLE TO LOOK AT IT, AFTER HE LOOKED AT IT TOOK IT AND
6 I PUT IT INTO EVIDENCE.

7 Q WHAT DOES THAT MEAN THAT YOU PUT IT INTO EVIDENCE?

8 A I ENTERED IT INTO EVIDENCE, I COMPLETED ALL OF THE
9 PAPERWORK, KEEPING THE CHAIN OF CUSTODY AND ENTERED IT
10 INTO EVIDENCE SO OUR EVIDENCE TECHNICIAN CAN GET IT THE
11 VERY NEXT DAY. AN EVIDENCE LOCKER THAT WE HAVE.

12 Q DO YOU KNOW WHO HAS ACCESS TO THAT LOCKER?

13 A LIEUTENANT TRAVIS CLARK.

14 Q CAN YOU GO OVER DESCRIBING THE PROCESS OF PUTTING
15 STUFF INTO THE EVIDENCE LOCKER?

16 A YES, SIR. WHEN WE TAKE AN ITEM INTO EVIDENCE WE KEEP
17 IT, IF IT NEEDS TO BE SEALED WE SEAL IT THERE, WE COMPLETE
18 AN EVIDENCE PROPERTY FORM. WE TAKE THAT EVIDENCE PROPERTY
19 FORM ALONG WITH THAT PIECE OF EVIDENCE AND WE PUT IT INTO
20 THE LOCKER SYSTEM THAT WE HAVE AT CITY HALL. SOME ARE BIG
21 OR SOME ARE SMALL BUT THEY ALL GET LOCKED THE SAME WAY.
22 WE COMPLETE THAT, WE STICK IT IN THERE ALL TOGETHER, WE
23 SHUT THE LOCKER AND LOCK IT. AND THEN AFTER THAT THE NEXT
24 DAY OR EVEN LATER ON THAT DAY, IT JUST DEPENDS ON WHEN
25 EVER THE EVIDENCE TECHNICIAN CAN GET THERE, HE TAKES IT

1 AND HE WILL TAKE THAT EVIDENCE THAT HE HAS GOT FROM THAT
2 LOCKER AND HE WILL PUT IT INTO OUR EVIDENCE ROOM;

3 Q LET ME ASK YOU THIS, JUST SAY YOU WANTED TO GO BACK
4 INTO THE EVIDENCE LOCKER AND RETRIEVE THAT GUN AFTER YOU
5 PUT IT IN, CAN YOU DO THAT?

6 A NO SIR, I CANNOT.

7 Q OKAY. AFTER YOU TOOK THE FIREARM AND SECURED IT THEN
8 WHAT DID YOU DO?

9 A RIGHT AFTER THAT WE WERE APPROACHED BY THE VICTIM,
10 MR. CATON, HE COMES OUT OF THE BAR, CAME WITH US AND
11 BEGINNING TO TELL US WHAT WAS HAPPENING. OF COURSE, WE
12 KEEP HIM SEPARATED FROM MR. LEVERETTE. AFTER WE GET DONE
13 SPEAKING WITH MR. CATON HE QUICKLY INFORMS ME THAT HE HAS
14 BEEN ROBBED. OF COURSE, WE SEE INJURY TO HIS MOUTH, HE
15 TELLS US THAT HE WAS INSIDE THE GETAWAY, WHILE HE WAS
16 INSIDE HE WAS APPROACHED BY MR. LEVERETTE, ASKED HIM IF HE
17 WOULD LIKE TO SMOKE A JOINT. HE SAID YEAH HE WOULD, OF
18 COURSE HE GOES OUTSIDE WITH HIM, OUTSIDE, AS THEY ARE
19 OUTSIDE MR. LEVERETTE PULLS A GUN FROM HIS PERSON, POINTS
20 IT AT MR. CATON, FORCES HIM TO GET INTO A CAR AND THEY
21 LEAVE. MR. CATON CONTINUES TO TELL US THAT HE GOES OUT TO
22 AN OPEN AREA, NOT FAR, HE SAID HE ONLY TRAVELED TWO
23 MINUTES AND HE WAS OUT IN THE OPEN AREA. WHEN HE GOT TO
24 THE OPEN AREA THEY FORCED HIM OUT OF THE VEHICLE WITH THE
25 FIREARM AND CAME OUT WITH THE KNIFE, CANE SWORD. THEY

1 FORCE HIM OUT, AS THEY GET HIM OUT, MR. LEVERETTE TAKES
2 THE PELLET GUN AND STICKS IT IN HIS MOUTH, FORCES IT ALL
3 THE WAY TO THE BACK OF HIS THROAT AND THREATENS HE IS
4 GOING TO KILL HIM, TELLS HIM HE WANTS ALL OF HIS MONEY.
5 AND MR. JONES, OF COURSE, PULLS THE CANE SWORD, A PORTION
6 OF IT TO HIS THROAT. WHILE THEY ARE DOING THAT HE CAN'T
7 TALK, HE PULLS THE GUN OUT OF HIS MOUTH AND HE SAYS I
8 DON'T HAVE ANYTHING, I DON'T HAVE ANY MONEY. AND MR.
9 LEVERETTE AND MR. JONES CONTINUE TO TALK ABOUT IT, IF THEY
10 WANT TO KILL HIM OR NOT. MR. CATON GOES FROM THERE AND
11 CONTINUES ON TELLING THEM THAT, LOOK, I HAVE GOT MY, I
12 DON'T HAVE ANY MONEY ON ME BUT I HAVE A WALLET AND MORE
13 MONEY AT THE BAR, TAKE ME THERE, I WILL BE MORE THAN GLAD
14 TO GIVE YOU THE MONEY UP THERE. THEY AGREE, BUT THEY WANT
15 HIM TO DRAW A MAP TO HIS HOUSE. SO, HE DRAWS A MAP, THEY
16 GO BACK TO THE GETAWAY. AFTER GETTING TO THE GETAWAY HE
17 GOES OUT, MR. LEVERETTE AND MR. JONES FOLLOW HIM INTO THE
18 BAR AND WHEN THEY GET IN THERE HE IS ABLE TO TELL
19 INDIVIDUALS INSIDE THERE THAT HE IS BEING ROBBED AND WE
20 WERE CONTACTED FROM THERE.

21 Q OKAY. YOU MENTIONED AN INJURY TO THE MOUTH. LET ME
22 SHOW YOU WHAT HAS BEEN MARKED STATE'S NUMBER 17 FOR
23 IDENTIFICATION. WHAT DOES THAT LOOK LIKE?

24 A THAT IS AN INJURY ON HIS MOUTH.

25 Q AND IS THIS A FAIR AND ACCURATE REPRESENTATION?

1 A YES, IT IS.

2 Q AS IT APPEARED THAT NIGHT?

3 A YES, SIR.

4 Q LET ME SHOW YOU STATE'S NUMBER 18 FOR IDENTIFICATION.
5 CAN YOU DESCRIBE WHAT THAT IS?

6 A IT IS MR. CATON, OF COURSE.

7 Q IS THAT A FAIR AND ACCURATE REPRESENTATION AS HE
8 APPEARED THAT NIGHT?

9 A YES, IT IS.

10 Q THAT MORNING?

11 A YES SIR, IT IS.

12 MR. ANDREWS: YOUR HONOR, THE STATE MOVES TO ADMIT
13 EXHIBITS MARKED FOR IDENTIFICATION, 17 AND 18 INTO
14 EVIDENCE.

15 THE COURT: OKAY.

16 (WHEREUPON, STATE'S EXHIBIT NOS. 17 AND 18 WERE
17 ADMITTED INTO EVIDENCE.)

18 MR. ANDREWS: YOUR HONOR, PERMISSION TO PUBLISH THESE
19 TO THE JURY?

20 THE COURT: YOU CAN DO IT.

21 MR. ANDREWS: THANK YOU, SIR.

22 Q LIEUTENANT DAVENPORT, WE HAVE HEARD MENTION OF A
23 VEHICLE DRIVEN BY MR. JONES AND MR. LEVERETTE AS A
24 PASSENGER. DID YOU HAVE A CHANCE TO PROCESS THAT VEHICLE
25 IN ANY WAY?

1 A NO SIR, I DID NOT. I SAW THE VEHICLE IN THE PARKING
2 LOT, I NEVER MADE IT TO THE VEHICLE.

3 Q WERE YOU ABLE TO LOOK INSIDE?

4 A I NEVER LOOKED INSIDE THE VEHICLE.

5 Q WHAT ABOUT THE KEYS?

6 A I TOOK THE KEYS OFF OF MR. LEVERETTE, AND I ACTUALLY
7 PLACED THE KEYS ON MY VEHICLE.

8 Q WHEN YOU SAY YOU TOOK THE KEYS OFF OF MR. LEVERETTE,
9 WHERE WERE THEY?

10 A THEY WERE IN HIS PANTS POCKET.

11 Q WHICH PANT POCKET?

12 A IT WAS IN HIS PANTS POCKET, I AM NOT FOR SURE EXACTLY
13 WHICH PANTS POCKET IT WAS.

14 Q HOW DID YOU GET THEM, DID HE HAND THEM TO YOU?

15 A WELL, ONCE WE PULLED EVERYTHING OUT, WE ASKED HIM
16 ABOUT THE KEYS AND EVERYTHING, HE TAKES EVERYTHING OUT OF
17 HIS POCKET, OF COURSE, AND SEARCH HIM AND MAKE SURE HE
18 DOESN'T HAVE ANY MORE WEAPONS ON HIM AND THERE ARE THE
19 KEYS THERE.

20 Q HOW DID YOU KNOW WHICH KEYS THIS VEHICLE WENT TOO?

21 A LATER WE FOUND OUT THAT THOSE KEYS TO THAT VEHICLE,
22 HE SAID THOSE WERE THE KEYS TO HIS VEHICLE AND THEY ALSO
23 MATCHED THE VEHICLE LATER ON.

24 Q OKAY. LIEUTENANT DAVENPORT, I AM GOING TO SHOW YOU
25 STATE'S EXHIBIT MARKED FOR IDENTIFICATION NUMBER 1, TELL

1 ME WHAT THIS IS?

2 A THAT IS THE CANE SWORD THAT MR. JONES HAD.

3 MR. ANDREWS: YOUR HONOR, THE STATE WOULD ADMIT THIS
4 INTO EVIDENCE.

5 THE COURT: OKAY.

6 (WHEREUPON, STATE'S EXHIBIT NO. 1 WAS ADMITTED INTO
7 EVIDENCE.)

8 MR. ANDREWS: AND WE WOULD LIKE TO SHOW THIS TO THE
9 JURY WITH THE CAUTION THAT IT CONTAINS A POINT.

10 Q WHERE DID YOU ACTUALLY RECOVER THAT CANE SWORD FROM?

11 A MR. JONES HAD IT.

12 Q WAS HE HOLDING IT?

13 A YES SIR, HE WAS.

14 Q OKAY. I HAVE NO OTHER QUESTIONS. PLEASE ANSWER ANY
15 QUESTIONS THAT THE DEFENSE MAY HAVE.

16 CROSS-EXAMINATION

17 BY MR. BETTIS:

18 Q GOOD MORNING, MR. DAVENPORT.

19 A GOOD MORNING.

20 Q I REMEMBER HIM CALLING YOU LIEUTENANT DAVENPORT, IS
21 THAT CORRECT?

22 A YES SIR, THAT IS TRUE.

23 Q MR. DAVENPORT, YOU GAVE SOME TESTIMONY JUST NOW TO
24 THE JURY WHERE YOU WERE KIND OF GIVEN A NARRATIVE TO WHAT
25 YOU WERE TOLD, CORRECT?

1 A YES, SIR.

2 Q NOW, YOU DIDN'T ACTUALLY SEE THIS EVENT OCCUR, THE
3 THINGS THAT YOU WERE TELLING, YOU DIDN'T ACTUALLY SEE ANY
4 OF THE EVENTS?

5 A NO SIR, I DID NOT.

6 Q AND YOU ARE NOT HERE TO TELL THIS JURY THAT YOU WERE
7 A WITNESS TO IT OR YOU SAW IT OR YOU CAN VOUCH FOR IT,
8 CORRECT?

9 A NO, I AM NOT HERE TO DO ANYTHING LIKE THAT. I AM
10 HERE TO TELL YOU WHAT I FOUND.

11 Q AND YOU WERE SHOWN A PICTURE OR A COUPLE OF PICTURES,
12 STATE'S EXHIBIT NUMBER 17 AND 18, OF MR. CATON, IS THAT
13 CORRECT?

14 A YES, SIR.

15 Q LET ME ASK YOU, ARE THOSE THE ONLY TWO PHOTOGRAPHS
16 THAT WERE TAKEN OF MR. CATON TO YOUR KNOWLEDGE?

17 A YES, SIR.

18 Q DO EITHER OF THOSE PHOTOGRAPHS SHOW MR. CATON'S HEAD
19 WHERE HIS EAR IS BLEEDING OR THERE IS AN INJURY TO THE
20 SIDE OF HIS HEAD OR ANYTHING LIKE THAT?

21 A NO, SIR.

22 Q THERE IS NOTHING THAT YOU REPORTED THAT EVENING THAT
23 INDICATED THAT MR. CATON HAD AN INJURY TO THE TOP OF HIS
24 HEAD OR THAT HIS EAR WAS BLEEDING, CORRECT?

25 A NO, SIR.

1 Q OFFICER DAVENPORT, WHEN YOU FIRST RESPONDED TO THIS
2 INCIDENT, THE CALL CONCERNED, YOU WERE ONE OF THE FIRST
3 OFFICERS TO RESPOND, CORRECT?

4 A YES, SIR.

5 Q YOU AND OFFICER BASS?

6 A YES, SIR.

7 Q BUT THE CALL CONCERNED FIVE BLACK MALES WITH GUNS,
8 CORRECT?

9 A THAT IS WHAT THE DISPATCHER GAVE US.

10 Q THAT IS WHAT IS ON THE REPORT, CORRECT?

11 A THAT IS WHAT DISPATCH GAVE US.

12 Q ABOUT A CIVIL DISTURBANCE AT THE GETAWAY, FIVE BLACK
13 MALES WITH GUNS. AND WHEN YOU ARRIVED YOU TALKED WITH
14 ZAVIUS JONES, CORRECT?

15 A YES, SIR.

16 Q YOU ASKED ZAVIUS JONES WHEN YOU FIRST APPROACHED HIM,
17 AS YOU NORMALLY DO THAT IS YOUR PROCEDURE, DO YOU HAVE ANY
18 WEAPONS, TO MAKE SURE YOU ARE PROTECTED AND NOTHING MORE
19 VIOLENT CAN HAPPEN, CORRECT?

20 A THAT IS RIGHT.

21 Q YOU ASKED MR. JONES THAT, CORRECT?

22 A YES, SIR.

23 Q AND HE DIDN'T PRODUCE A WEAPON FOR YOU, DID HE?

24 A NOTHING OUT OF HIS POCKET, HE SAID HE HAD THE SWORD
25 AND THAT WAS ABOUT IT, THE CANE SWORD THING.

1 Q WELL, ACTUALLY THE FIRST TIME YOU SAW HIM HE SAID HE
2 DIDN'T HAVE A WEAPON?

3 A THAT IS RIGHT. BUT LATER IT WAS THE CANE SWORD.

4 Q BUT LATER ON WHEN YOU CONFRONTED HIM AGAIN, AND YOU
5 LEARNED ABOUT THE CANE SWORD THEN HE GAVE IT TO YOU?

6 A YES, SIR.

7 Q BUT INITIALLY WHEN YOU ASKED HIM FOR A WEAPON HE
8 DIDN'T PRODUCE ANY, DID HE?

9 A NO, SIR.

10 Q BUT IN FACT MR. JONES HAD THIS TRICKY CANE WITH ABOUT
11 A TEN INCH KNIFE IN IT, CORRECT?

12 A YES, SIR.

13 Q AND THAT IS THE SAME TEN INCH KNIFE THAT MR. CATON
14 SAYS WAS PUT TO HIS NECK BY MR. JONES, CORRECT?

15 A THAT IS CORRECT.

16 Q AND YOU HAD TO GO BACK TO MR. JONES AND ASK HIM ABOUT
17 THIS KNIFE?

18 A YES, SIR.

19 Q MR. JONES DID PRODUCE THINGS OUT OF HIS POCKETS WHICH
20 INCLUDED A DIGITAL SCALE, CORRECT?

21 A YES, SIR.

22 Q A DIGITAL SCALE THAT IS USED FOR MEASURING DRUGS?

23 A YES, SIR.

24 Q THAT WEIGHS DRUGS TO COCAINE, THAT SORT OF THING?

25 A YES, SIR.

1 Q NOW, MR. CATON SAID THAT HE WENT OUTSIDE TO DO DRUGS
2 WITH MR. LEVERETTE AND MR. JONES, IS THAT CORRECT?

3 A THAT IS CORRECT.

4 Q AND YOU ALSO AGREE THAT MR. CATON AND MR. GOODMAN
5 TOLD YOU THAT WHEN CATON CAME BACK IN THE GETAWAY, JONES
6 WAS BEHIND HIM, CORRECT?

7 A YES, SIR.

8 Q THAT IS THE WAY IT IS REPORTED?

9 A YES, SIR.

10 Q MR. CATON SAID THAT AND MR. GOODMAN SAID THAT,
11 CORRECT?

12 A YES, SIR.

13 Q AND MR. CATON TOLD YOU THAT JONES PUT A KNIFE TO HIS
14 THROAT?

15 A YES, SIR.

16 Q AND THAT HE ROBBED HIM AND THREATENED HIM?

17 A ZAVIUS WAS JUST AS MUCH INVOLVED AS MR. LEVERETTE,
18 YES SIR.

19 Q DO YOU RECALL GETTING A DESCRIPTION OF THE PEOPLE
20 INVOLVED, WHAT DISPATCH CLAIMS AS FIVE BLACK MALES. A MAN
21 WITH AN AFRO AND A MAN WITH DREADLOCKS?

22 A NOT RIGHT OFF HAND.

23 Q YOU DON'T RECALL THAT?

24 A NO, SIR.

25 Q MR. LEVERETTE DIDN'T HAVE AN AFRO AT THAT TIME, DID

1 HE?

2 A NO, HIS HAIR WAS ABOUT WHAT IT IS NOW, MAYBE A LITTLE
3 MORE.

4 Q MR. CATON CLAIMED THAT MORE MONEY WAS TAKEN FROM HIM
5 THAN WAS FOUND, CORRECT, DO YOU RECALL WHETHER HE CLAIMED
6 THAT THERE WAS MORE MONEY TAKEN?

7 A NOT RIGHT OFF. HE TOLD ME THAT HE DIDN'T HAVE ANY
8 MONEY AND HE WAS GOING THERE TO GIVE THEM THE MONEY IS
9 WHAT HE TOLD ME. I DON'T REMEMBER EVER GETTING AN EXACT
10 AMOUNT OF MONEY.

11 Q SO YOU DON'T REMEMBER?

12 A NO, SIR.

13 Q BOBBY CATON NEVER ASKED TO BE TAKEN FOR MEDICAL
14 TREATMENT OR FOR AN AMBULANCE TO COME?

15 A I ASKED MR. CATON IF HE NEEDED ANY TYPE OF EMS AND OF
16 COURSE HE REFUSED AND SAID, NO I DO NOT.

17 Q SO, HE DIDN'T SEEK ANY TO YOUR KNOWLEDGE?

18 A NO, HE DID NOT, NOT TO MY KNOWLEDGE.

19 Q HE TOLD YOU THAT A WATCH AND A RING HAD BEEN TAKEN
20 FROM HIM, IS THAT RIGHT?

21 A YES, SIR.

22 Q SEVERAL ITEMS OF MR. CATON'S WERE FOUND IN A CAR,
23 CORRECT, CONTAINED IN A BAG?

24 A FROM MY UNDERSTANDING, YES, THAT IS RIGHT.

25 Q SOME MONEY, CHAPSTICK, LIGHTER, CELL PHONE, THAT KIND

1 OF THING?

2 A YES, SIR.

3 Q SOME COCAINE WAS ALSO FOUND ALONG WITH THESE ITEMS,
4 CORRECT?

5 A YES, SIR.

6 Q THREE BAGS OF COCAINE?

7 A I DON'T KNOW HOW MANY IT WAS BUT, YES SIR, I DO KNOW
8 THAT THERE WAS SOME.

9 Q IT WAS FOUND IN A BAG WITH THESE ITEMS?

10 A I KNOW SOME WAS IN A HAT.

11 Q SOME IN A HAT?

12 A YES.

13 Q MR. CATON NEVER CLAIMED ANYTHING ABOUT THE COCAINE?

14 A NO.

15 Q TO YOUR KNOWLEDGE NOBODY HAS BEEN CHARGED WITH
16 ANYTHING REGARDING ANY COCAINE THAT NIGHT?

17 A NO, SIR.

18 Q MR. DAVENPORT, JUST TO BE CLEAR, YOU DIDN'T WITNESS
19 ANY KIND OF ALTERCATION BETWEEN MR. CATON AND MR.
20 LEVERETTE OR ANYBODY ELSE THAT NIGHT, CORRECT?

21 A NO, SIR.

22 Q THANK YOU.

23 THE COURT: YOU MAY STEP DOWN.

24 MR. ANDREWS: YOUR HONOR, THE STATES CALLS CHRIS GRAY
25 TO THE STAND.

1 CHRIS GRAY, AFTER BEING DULY SWORN, TESTIFIED AS
2 FOLLOWS:

3 DIRECT EXAMINATION

4 BY MR. ANDREWS:

5 Q PLEASE STATE YOUR NAME, SIR.

6 A MY NAME IS CHRISTOPHER GRAY.

7 Q WHO DO YOU WORK FOR?

8 A GREENWOOD CITY POLICE DEPARTMENT.

9 Q HOW LONG HAVE YOU WORKED THERE?

10 A GOING ON TWELVE.

11 Q WHAT ARE YOUR CURRENT DUTIES THERE?

12 A I SUPERVISE THE INVESTIGATIONS DIVISION.

13 Q WHAT WERE YOU DOING ON JUNE 10TH OF 2006?

14 A AT THE TIME I GOT THIS CALL I WAS AT HOME.

15 Q OKAY. WHAT CAPACITY WERE YOU WORKING IN THE POLICE
16 DEPARTMENT?

17 A AS AN INVESTIGATOR.

18 Q TELL ME WHAT HAPPENED, YOU GOT A CALL AND THEN WHAT?

19 A I GOT A CALL FROM LIEUTENANT DAVENPORT, I WAS TOLD
20 THERE WAS A ROBBERY AT THE GETAWAY THAT REQUIRED
21 ATTENTION. I RESPONDED, I FOUND MR. CATON THERE AND MR.
22 JONES THERE AND MR. LEVERETTE THERE. I SPOKE WITH MR.
23 CATON, I SPOKE WITH THE TWO OFFICERS, OFFICER BASS AND
24 OFFICER DAVENPORT, A STORY ABOUT WHAT HAD HAPPENED. I WAS
25 ABLE TO DETERMINE THAT MR. CATON HAD CLAIMED HE HAD BEEN

1 ROBBED AT GUN POINT AND KNIFE POINT BY MR. LEVERETTE AND
2 MR. JONES. HE WAS ABLE TO GIVE CERTAIN INFORMATION THAT
3 WAS CORROBORATED AND THAT HE WAS ABLE TO PREDICT THAT MR.
4 LEVERETTE TO HAVE WHAT APPEARED TO BE A FIREARM ON HIM AND
5 THAT MR. JONES WOULD HAVE A SIGNIFICANT BLADE ON HIM,
6 FOUND AN INJURY TO HIS MOUTH CONSISTENT WITH THE STATEMENT
7 THAT HE HAD GIVEN. HE HAD TOLD ME THAT HE WAS IN THE CAR
8 DURING THE TIME HE HAD BEEN TRANSPORTED TO ONE PLACE,
9 ROBBED, BROUGHT BACK TO ANOTHER. HE DESCRIBED THAT THEY
10 HAD TAKEN A WEDDING RING FROM HIM, A TUBE OF CHAPSTICK, A
11 CELL PHONE, SOME CASH AND HE DESCRIBED GIVING THAT OVER TO
12 THEM. HE ALSO STATED THAT ON THE WAY BACK TO THE GETAWAY
13 THAT THEY HAD TOLD HIM, HE HAD TOLD THEM THAT IF THEY
14 WOULD GET HIM BACK TO THE GETAWAY HE COULD GIVE THEM
15 MONEY, TO APPEASE THEM AND IN AN ATTEMPT TO NOT KILL HIM.
16 WHEN THEY GOT BACK TO THE GETAWAY THEY EXPRESSED CONCERN
17 TO HIM ABOUT LETTING HIM GO BACK HIM, THAT HE MAY CONTACT
18 SOME AUTHORITIES AND THEY FORCED HIM TO DRAW A MAP OF HIS
19 HOUSE FOR THEM TO KEEP SO THEY COULD FIND HIM LATER SHOULD
20 SOMETHING HAPPEN. BASED ON THE FACT THAT HIS INJURY WAS
21 CONSISTENT AND THE STATEMENT THAT HE HAD GIVEN, BASED ON
22 THE FACT THAT HE WAS ABLE TO PREDICT THAT MR. LEVERETTE
23 WOULD HAVE A GUN ON HIM AND THAT MR. JONES WOULD HAVE A
24 KNIFE ON HIM, I BELIEVE MORE LIKELY THAN NOT WHAT HAD
25 HAPPENED WOULD BE IN THE CAR THAT HE IDENTIFIED HAVING

1 BEEN FORCED IN TO.

2 Q LET ME ASK YOU THIS. I GUESS YOU WERE IN HERE WHEN
3 LIEUTENANT DAVENPORT TESTIFIED, IS THAT CORRECT?

4 A CORRECT.

5 Q DID YOU HEAR THEM TALK ABOUT SOME CAR KEYS?

6 A I DID.

7 Q WHAT DID YOU DO WITH THOSE CAR KEYS?

8 A I ASKED LIEUTENANT DAVENPORT IF HE WAS IN POSSESSION
9 OF THE CAR KEYS, IF HE KNEW WHERE THEY WERE. HE PROVIDED
10 ME WITH A SET OF CAR KEYS THAT, I DON'T REMEMBER THE DOOR
11 BEING LOCKED OR UNLOCKED BUT I GOT THE CAR KEYS AND I
12 SEARCHED THE CAR. I KNOW THE CAR KEYS DID FIT THE CAR AND
13 I SEARCHED THE CAR THAT LIEUTENANT DAVENPORT TOLD ME THAT
14 CAME OUT OF MR. LEVERETTE'S POCKET. SO, I CONDUCTED A
15 SEARCH OF THE CAR IN AN ATTEMPT TO LOCATE FRUITS OF THIS
16 CRIME.

17 Q I AM GOING TO SHOW YOU SOME EXHIBITS THAT HAVE BEEN
18 MARKED FOR IDENTIFICATION. I AM GOING TO GET YOU TO
19 IDENTIFY, HERE IS NUMBER 12, CAN YOU IDENTIFY THAT FOR ME?

20 A THAT APPEARS TO BE THE CHAPSTICK AND THE LIGHTER
21 FOUND INSIDE OF A PAPER BAG INSIDE OF THAT CAR.

22 Q OKAY. THIS IS NUMBER 10.

23 A CURRENCY WAS FOUND INSIDE OF THAT BAG, IT WAS TURNED
24 OVER TO OUR EVIDENCE TECHNICIAN, LIEUTENANT CLARK AND
25 REQUESTED FINGERPRINTS BE ATTEMPTED TO OBTAIN OFF OF IT,

1 THAT IS THE PINK COLOR, THE CHEMICAL REACTIONS THAT HE
2 APPLIED TO IT.

3 Q OKAY. THIS IS NUMBER 15.

4 A MR. CATON WAS ABLE TO PREDICT THAT THERE WOULD BE A
5 RING INSIDE OF THE CAR THAT HAD BEEN STOLEN FROM HIM, A
6 WEDDING BAND THAT HE DESCRIBED TO FIT THIS DESCRIPTION. I
7 SEIZED THIS RING FROM INSIDE OF THE CAR, PHOTOGRAPHED IT
8 TO PRESERVE THAT WE HAD FOUND IT. I DETERMINED THAT THE
9 LIKELIHOOD OF OBTAINING FINGERPRINTS OFF OF IT BECAUSE OF
10 ITS SIZE WAS NULL AND VOID. SO AFTER PHOTOGRAPHING IT I
11 RETURNED IT TO HIM AND IT HAD SIGNIFICANT SENTIMENTAL
12 VALUE AND OF COURSE I DIDN'T WANT TO KEEP IT.

13 Q THIS IS NUMBER 16.

14 A THIS HAT WAS IN THE BACK SEAT OF THIS CAR, IT HAD
15 WHAT APPEARED TO ME TO BE POWDERED COCAINE INSIDE OF IT.

16 Q AND NUMBER 14?

17 A THIS IS THE CELL PHONE THAT WAS DESCRIBED BY MR.
18 CATON THAT HAD BEEN STOLEN FROM HIM, I FOUND THAT PHONE
19 INSIDE OF THE CAR AND DETERMINED IT TO BE HIS BY THE
20 NUMBER THAT HE TOLD ME BELONGING TO THE PHONE.

21 MR. ANDREWS: YOUR HONOR, THE STATE MOVES TO ADMIT
22 ITEMS NUMBER 12, 14, 10, 15 AND 16.

23 MR. BETTIS: NO OBJECTION, YOUR HONOR.

24 (WHEREUPON, STATE'S EXHIBIT NOS. 10, 12, 14, 15 AND
25 16 WERE ADMITTED INTO EVIDENCE.)

1 Q THIS IS NUMBER 11?

2 A I TOLD YOU IN MY INITIAL CONVERSATION WITH MR. CATON
3 HE WAS ABLE TO DESCRIBE THE AREA WHERE THEY MADE HIM DRAW
4 A MAP TO HIS HOUSE SO THEY SAID THAT THEY COULD GO BACK TO
5 HIM IF ANYTHING SHOULD HAPPEN. HE TOLD ME THAT HE DREW A
6 MAP AND HE GAVE IT TO THEM, THAT IT WOULD HAVE THE WORD,
7 BLITH, (PHONETIC), WRITTEN ON IT. BECAUSE HE HAD LIED TO
8 THEM AND TOLD THEM HE LIVED ON BLITH ROAD. I FOUND THIS
9 PAPER AND DETERMINED IT WAS THE SAME PIECE OF PAPER
10 BECAUSE IT IS APPARENTLY A HAND DRAWN MAP WITH THE WORD,
11 BLITH ROAD WRITTEN ON IT. AND IT WAS TURNED INTO EVIDENCE
12 AS WELL. THIS WAS IN THE DOOR POCKET OF THE CAR.

13 Q AND ITEM NUMBER 3?

14 A INSIDE OF THE PAPER BAG WERE FOUND THREE PLASTIC BAGS
15 CONTAINING ALMOST A GRAM OF POWDERED COCAINE EACH. THIS
16 IS THAT COCAINE SEALED AND IN THE BEST EVIDENCE PACKAGE
17 THAT I USE TO TURN IT INTO EVIDENCE.

18 MR. ANDREWS: YOUR HONOR, I WOULD LIKE TO MOVE THESE
19 INTO EVIDENCE, NUMBER 3 AND NUMBER 11.

20 MR. BETTIS: NO OBJECTION.

21 THE COURT: OKAY.

22 (WHEREUPON, STATE'S EXHIBIT NOS. 3 AND 11 WERE
23 ADMITTED INTO EVIDENCE.)

24 MR. ANDREWS: YOUR HONOR, I WOULD LIKE TO PUBLISH
25 THESE ITEMS TO THE JURY.

1 THE COURT: OKAY.

2 Q WHAT ENDED UP HAPPENING TO THE CAR?

3 A I RAN THE TAG ON IT AND FOUND OUT THE LADY THAT IT
4 BELONGED TO AND CALLED HER AND ASKED HER TO COME TAKE
5 POSSESSION OF IT.

6 Q OKAY. DO YOU, LET ME ASK YOU THIS, DO YOU REMEMBER
7 IF THE CAR WAS LOCKED OR UNLOCKED?

8 A I DON'T REMEMBER IF I GOT THE KEYS BECAUSE IT WAS
9 UNLOCKED OR LOCKED OR IF I GOT THE KEYS TO DETERMINE THAT
10 THE KEYS OUT OF HIS POCKET FIT THE CAR. SO, I DON'T
11 REMEMBER IF IT WAS LOCKED OR NOT.

12 Q WOULD IT HELP IF I SHOWED YOU THE INCIDENT REPORT,
13 WOULD THAT REFRESH YOUR MEMORY?

14 A YES. OKAY, IT WAS LOCKED.

15 Q OKAY. DID YOU REMEMBER THE NAME OF THE LADY WHO CAME
16 UP AND PICKED UP THE VEHICLE?

17 A NOT OFF HAND BUT I WROTE IT DOWN ON MY REPORT IF I
18 COULD SEE IT.

19 Q MR. GRAY, I AM GOING TO SHOW YOU WHAT IS A COPY OF
20 STATE'S EXHIBIT NUMBER 11. IF YOU COULD TELL THE JURY
21 WHAT THAT IS?

22 A THAT IS THE HAND DRAWN MAP, THE MAP WAS WRITTEN ON AN
23 EARLY PREGNANCY TEST REPORT.

24 Q THERE IS A NAME WRITTEN AT THE TOP OF THAT?

25 A THAT IS CORRECT. IT IS SHINESHIA PATTERSON.

1 Q OKAY. WAS THAT THE OWNER OF THE VEHICLE?

2 A THAT IS THE PERSON THAT THE TAGS COME BACK TO AND
3 THAT WAS THE PERSON WHO CAME TO THE GETAWAY AND TOLD ME
4 SHE WAS IN FACT THE OWNER OF THE VEHICLE.

5 Q DID SHE HAVE ANY RELATIONSHIP WITH THE DEFENDANT?

6 A SHE DESCRIBED HERSELF TO ME AS HIS GIRLFRIEND.

7 Q AT THE GETAWAY, IS THAT IN GREENWOOD?

8 A IT IS.

9 Q THAT IS ALL I HAVE. PLEASE ANSWER ANY QUESTIONS MR.
10 BETTIS MAY HAVE.

11 CROSS-EXAMINATION

12 BY MR. BETTIS:

13 Q GOOD MORNING.

14 A GOOD MORNING.

15 Q AT THE GETAWAY YOU SPOKE WITH VARIOUS PEOPLE
16 INCLUDING MR. CATON, CORRECT?

17 A YES, SIR.

18 Q AND AS PART OF YOUR INVESTIGATION IT IS YOUR JOB TO
19 ASK QUESTIONS, CORRECT?

20 A YES, SIR.

21 Q YOU ASK QUESTIONS TO VARIOUS PEOPLE THERE AND YOU
22 ASKED MR. CATON TO TELL YOU ABOUT ANYTHING HE HAD TO SAY
23 REGARDING THE INCIDENT, CORRECT?

24 A THAT IS CORRECT.

25 Q AND HE TOLD YOU HE WENT OUTSIDE INITIALLY WITH MR.

1 LEVERETTE AND MR. JONES TO SMOKE SOME MARIJUANA, CORRECT?

2 A THAT IS HOW I RECALL IT, YES SIR.

3 Q HE TOLD YOU THAT ZAVIUS JONES WAS THERE WITH HIM?

4 A WAS THERE WITH--

5 Q MR. CATON, TO SMOKE MARIJUANA, HE TOLD YOU THAT MR.
6 JONES WAS OUTSIDE TOO, CORRECT?

7 A AS I REMEMBER HE SAID THAT MR. LEVERETTE APPROACHED
8 HIM AND ASKED HIM TO SMOKE MARIJUANA OUTSIDE AND THAT HE
9 STEPPED OUTSIDE AND THEN OUTSIDE THE THREE OF THEM WERE
10 TOGETHER. I KNOW THAT HE SAID AT LEAST THE THREE OF THEM
11 WERE TOGETHER OUTSIDE.

12 Q MR. JONES WAS OUTSIDE?

13 A CORRECT.

14 Q WHEN HE WENT OUT THERE TO SMOKE MARIJUANA?

15 A CORRECT.

16 Q AND HE ALLEGED THAT HE HAD SOME CASH TAKEN, CORRECT?

17 A YES, SIR.

18 Q NOW, HE, DID HE TELL YOU HE HAD MORE THAN \$47.68
19 TAKEN?

20 A I DON'T REMEMBER HIM GIVING ME AN EXACT AMOUNT.

21 Q YOU DON'T REMEMBER THEY TOOK IN EXCESS OF \$400.00
22 DOLLARS AND SOME OF IT COULDN'T BE FOUND?

23 A THE \$400.00 DOLLARS I REMEMBER IS THE, WHAT WAS LEFT
24 BACK AT THE BAR, HE TOLD THEM HE WOULD GET THEM IN
25 EXCHANGE FOR NOT KILLING HIM. I DON'T REMEMBER HIM SAYING

1 THAT HE HAD MORE THAN \$400.00 DOLLARS.

2 Q YOU DON'T RECALL HIM CLAIMING THAT HE LOST MORE THAN
3 \$400.00 BUCKS THAT COULD NEVER BE FOUND?

4 A I DON'T REMEMBER THAT, MR. BETTIS.

5 Q THEY TOLD YOU THAT SOME CASH WAS TAKEN AND A CELL
6 PHONE AND A WEDDING RING, CORRECT?

7 A YES, SIR.

8 Q HE NEVER MENTIONED ANYTHING TO YOU ABOUT A WATCH, DID
9 HE?

10 A I DON'T REMEMBER HIM MENTIONING A WATCH, SIR.

11 Q YOU DIDN'T RECOVER A WATCH, DID YOU?

12 A NO, SIR.

13 Q AND YOU DON'T RECALL DISCUSSING WITH HIM, WELL, WE
14 CAN'T FIND YOUR WATCH, WE WILL KEEP LOOKING OR ANYTHING
15 LIKE THAT?

16 A I DON'T REMEMBER HIM REPORTING TO ME AT ALL A WATCH
17 BEING STOLEN.

18 Q HE TOLD YOU THAT MR. JONES PUT THE CANE SWORD TO HIS
19 NECK, CORRECT?

20 A HE DID.

21 Q AND THREATENED HIM WITH IT?

22 A HE DID.

23 Q HE ALSO, MR. CATON COULD NOT SHOW YOU WHERE HE WAS
24 TAKEN, HE ALLEGES HE WAS TAKEN SOMEWHERE IN THE CAR BUT HE
25 COULDN'T SHOW YOU OR BACKTRACK AND SHOW YOU WHERE HE WAS

1 TAKEN, CORRECT?

2 A WHEN I ASKED HIM ABOUT IT, I ASKED HIM WHERE HE WAS
3 TAKEN, HE SAID A SHORT DISTANCE, ONE TO TWO MINUTES AWAY,
4 WITHIN ONE TO TWO MINUTES AWAY INSIDE OF A FIELD. I ASKED
5 FOR A BETTER DESCRIPTION AND HE SAID HE WAS PAYING MORE
6 ATTENTION TO THE GUN THAN HE WAS THE STREET SIGNS.

7 Q RIGHT, HE DIDN'T SAY HE WAS IN THE FLOOR BOARD, HE
8 SAID HE WAS PAYING MORE ATTENTION TO THE GUN?

9 A YES, SIR.

10 Q THAT IS WHAT HE TOLD YOU AT THE SCENE?

11 A YES, SIR.

12 Q YOU ALSO SPOKE TO ZAVIUS JONES, CORRECT, AS PART OF
13 THE INVESTIGATION?

14 A I DID.

15 Q LEARNED THAT HE HAD A CANE KNIFE?

16 A LIEUTENANT DAVENPORT WAS IN POSSESSION OF A CANE
17 KNIFE, THAT LIEUTENANT DAVENPORT REPORTED TO ME THAT HE
18 TOOK FROM ZAVIUS JONES.

19 Q ZAVIUS JONES WAS CHARGED WITH THESE SAME CRIMES,
20 CORRECT?

21 A THAT IS CORRECT. I BELIEVE THEY ARE STILL PENDING,
22 YES SIR.

23 Q YOU ARE THE ONE WHO PUT HIM UNDER ARREST FOR THAT,
24 CORRECT?

25 A THAT IS CORRECT.

1 Q ZAVIUS JONES AND HIM AND CATON WENT OUTSIDE TO
2 DISCUSS THE \$250.00 DOLLARS THAT CATON OWED HIM, CORRECT?

3 A YES, SIR.

4 Q AND TOLD YOU THAT IS WHY HE WENT DOWN TO THE GETAWAY
5 IS TO DISCUSS A \$250.00, CORRECT?

6 A THAT IS AN ACCURATE STATEMENT, YES SIR.

7 Q FOR A PRIOR DRUG TRANSACTION, CORRECT?

8 A I BELIEVE HE SAID MARIJUANA.

9 Q YES, MARIJUANA IS DRUGS, RIGHT?

10 A YES, SIR.

11 Q AND THAT IS WHY MR. JONES WENT TO THE GETAWAY IS TO
12 CONFRONT MR. CATON ABOUT THAT?

13 A I AM NOT SURE HOW MUCH OF MR. JONES' STATEMENT I CAN
14 GET IN TO.

15 Q MR. JONES TOLD YOU THAT MR. CATON OWED HIM \$250.00
16 DOLLARS FROM A MARIJUANA TRANSACTION, CORRECT?

17 A THAT IS TRUE.

18 Q AND HE WENT TO THE GETAWAY TO DISCUSS THAT
19 TRANSACTION WITH HIM, CORRECT?

20 A THAT IS TRUE.

21 Q AND THEY WENT OUTSIDE TO DISCUSS WITH HIM OUTSIDE THE
22 BAR?

23 A THAT IS TRUE.

24 Q OKAY. MR. JONES NEVER TOLD YOU ANYTHING ABOUT
25 LAKENDRICK USING A GUN OR HAVING A GUN WITH REGARD TO MR.

1 CATON?

2 A THAT IS TRUE.

3 Q MR. JONES TOLD YOU THAT HE HAD A CANE KNIFE AND HE
4 HAD IT WHEN HE WAS TALKING TO MR. CATON OUTSIDE, CORRECT?

5 A CORRECT.

6 Q BUT HE WAS ONLY PLAYING WITH IT, TAKING IT OUT OF THE
7 SHEATH, AND WASN'T THREATENING HIM WITH IT, CORRECT?

8 A HE HAD FIRST SAID THAT HE HAD NEVER SEEN, THAT CATON
9 HAD NEVER SEEN THE KNIFE AND HE HAD NEVER SHOWED HIM THERE
10 WAS A KNIFE. I ASKED HIM HOW HE KNEW IT WAS A KNIFE AND
11 HE SAID WHILE THEY WERE DISCUSSING THAT HE WAS TAKING IT
12 IN AND OUT OF THE SHEATH AND HE TRIED TO DESCRIBE IT
13 WASN'T IN A THREATENING MANNER BUT THAT HE WAS JUST TAKING
14 IT IN AND OUT OF THE SHEATH.

15 Q JUST KIND OF PLAYING WITH IT IS THE WAY HE PUT IT?

16 A YES, SIR.

17 Q LET ME ASK YOU A COUPLE OF THINGS ABOUT THESE ITEMS
18 OF EVIDENCE THAT MR. ANDREWS DISCUSSED WITH YOU. WE HAVE
19 STATE'S EXHIBIT NUMBER 14 WHICH WAS THE CELL PHONE,
20 CORRECT?

21 A YES, SIR.

22 Q AND YOU HAVE THE LIGHTER AND THE CHAPSTICK WHICH IS
23 STATE'S EXHIBIT NUMBER 12?

24 A YES, SIR.

25 Q AND YOU HAVE STATE'S EXHIBIT NUMBER 3 WAS THE THREE

1 BAGS OF COCAINE AND THEN SOME COCAINE FOUND IN A HAT,
2 CORRECT?

3 A YES, SIR.

4 Q AND THEN STATE'S EXHIBIT NUMBER 10 WAS SOME CASH
5 FOUND, CORRECT?

6 A YES, SIR.

7 Q AND I BELIEVE THERE WAS SOME CHANGE IN ANOTHER
8 EXHIBIT. THE CASH ALONG WITH THE CHANGE, THE CHAPSTICK
9 AND THE LIGHTER AND THE CELL PHONE WERE ALL FOUND IN A BAG
10 IN THE CAR, CORRECT?

11 A IN THE FRONT SEAT.

12 Q IN A PAPER BAG?

13 A YES, SIR.

14 Q LET ME SHOW YOU WHAT IS MARKED AS DEFENDANT'S EXHIBIT
15 NUMBER 3, SEE IF YOU RECOGNIZE THAT PHOTO?

16 A THIS IS THE RESULT OF WHAT IT LOOKED LIKE WHEN I
17 EMPTIED THE CONTENTS OF THAT BAG.

18 Q OKAY. AND THIS IS A PICTURE TAKEN BY YOUR
19 DEPARTMENT?

20 A BY ME.

21 Q BY YOU AS EVIDENCE FOR THIS CASE?

22 A YES, SIR.

23 MR. BETTIS: I WANT TO ADMIT DEFENDANT'S EXHIBIT
24 NUMBER 3 INTO EVIDENCE.

25 MR. ANDREWS: NO OBJECTION.

1 THE COURT: OKAY.

2 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 3 WAS ADMITTED
3 INTO EVIDENCE.)

4 Q MR. GRAY, THIS EXHIBIT KIND OF SHOWS ALL THESE ITEMS
5 WE JUST DISCUSSED, DOESN'T IT?

6 A YES, SIR.

7 Q IT SHOWS THE LIGHTER, IT SHOWS THE CHAPSTICK, IT
8 SHOWS THE MONEY, IT SHOWS THE CELL PHONE, CORRECT?

9 A THERE IS THE WEDDING RING THAT I FOUND IN THE CENTER
10 CONSOLE AND THE COCAINE THAT WAS IN THE BAG AS WELL.

11 Q RIGHT, IN ADDITION TO THESE ITEMS THAT WERE FOUND.
12 BUT THE ITEMS FOUND IN THE BAG WERE THE CELL PHONE, THE
13 CHAPSTICK, THE LIGHTER AND THE MONEY, CORRECT, AND THE
14 COCAINE?

15 A THAT IS CORRECT.

16 Q THE RING WAS NOT THERE?

17 A THE RING WAS IN THE CENTER CONSOLE, IF I REMEMBER
18 CORRECTLY.

19 Q RIGHT. BUT THE OTHER ITEMS THAT WERE SHOWING IN THAT
20 PICTURE WERE FOUND IN THE BAG, AND THE BAG IS IN THE
21 PICTURE AS WELL, RIGHT?

22 A YES, SIR.

23 Q OKAY. THE RING, THE CHAPSTICK, THE LIGHTER, THE
24 MONEY AND THE CELL PHONE WERE ALL CLAIMED BY MR. CATON TO
25 BE HIS, CORRECT?

1 A TRUE.

2 Q BUT THE OTHER ITEM FOUND IN THAT BAG HE DIDN'T CLAIM
3 TO BE HIS, DID HE?

4 A BY THAT YOU MEAN THE THREE BAGS OF COCAINE?

5 Q THE THREE BAGS OF COCAINE.

6 A THAT IS CORRECT.

7 Q HE NEVER CLAIMED THOSE WERE HIS BUT THEY WERE FOUND
8 WITH HIS ITEMS, CORRECT?

9 A THAT IS ABSOLUTELY TRUE, YES SIR.

10 Q AND THEN THERE WAS SOME COCAINE FOUND ON A HAT IN THE
11 BACK SEAT?

12 A IT WAS LIKE SPILLED COCAINE ON THE HAT.

13 Q SPILLED COCAINE?

14 A YES, SIR.

15 Q AND THIS HAT WAS MR. CATON'S ALSO, WASN'T IT?

16 A HE DID CLAIM THE HAT, YES SIR.

17 Q LAKENDRICK HASN'T BEEN CHARGED WITH ANY KIND OF
18 COCAINE VIOLATIONS, HAS HE?

19 A I CONSIDER THE CASE AS A WHOLE, I DIDN'T FEEL
20 COMFORTABLE ASSIGNING THE COCAINE TO ANYBODY WELL ENOUGH
21 TO CHARGE THEM WITH IT. THEREFORE I DIDN'T CHARGE ANYONE.

22 Q SO, THE ANSWER IS NO, HE IS NOT CHARGED WITH IT,
23 CORRECT?

24 A THAT IS A TRUE ANSWER, YES SIR.

25 Q NOW, YOU RAN SOME FINGERPRINTS OR HAD SOME

1 FINGERPRINT ANALYSIS DONE ON SOME OF THESE ITEMS?

2 A BY FINGERPRINT ANALYSIS, IF YOU MEAN REQUEST THAT THE
3 LIEUTENANT CLARK GO FURTHER, I DID, SIR.

4 Q DO YOU KNOW IF ANY OF THE TESTS CONDUCTED ON ANY OF
5 THESE ITEMS WHETHER LAKENDRICK'S FINGERPRINTS WERE
6 RECOVERED FROM ANY OF THEM?

7 A I CAN ONLY TELL YOU WHAT WAS REPORTED TO ME BY
8 LIEUTENANT CLARK, THAT NO FINGERPRINTS WERE ATTRIBUTED TO
9 ANYBODY OFF OF ANY OF THE ITEMS.

10 Q TO ANYBODY, NOT LAKENDRICK, NOT EVEN BOBBY CATON,
11 CORRECT?

12 A NO ONE, NO USABLE PRINTS I BELIEVE IT IS.

13 Q NOW, STATE'S EXHIBIT NUMBER 2, THIS IS THE BB GUN
14 THAT WAS RECOVERED, CORRECT?

15 A YES, SIR.

16 Q YOU ASKED THAT THAT GUN BE PROCESSED FOR DNA
17 EVIDENCE, CORRECT?

18 A IT WAS CLEAR TO ME, I COULD SEE VISUALLY WHAT I
19 BELIEVED TO BE BLOOD ON THE MUZZLE AREA OF THE GUN. I
20 REQUESTED THAT LIEUTENANT CLARK PROCESS IT FOR DNA.

21 Q THERE WERE NO INSTRUCTIONS GIVEN TO ANYONE BY YOU TO
22 TEST THIS GUN FOR FINGERPRINTS, CORRECT?

23 A I WOULD OF WRITTEN IT ON THE EVIDENCE SHEET, THE
24 EVIDENCE SHEET SHOULD SAY PLEASE FINGERPRINT THESE ITEMS
25 ONE WAY OR THE OTHER. I WILL HAVE TO REFLECT BACK TO IT

1 TO DETERMINE WHETHER OR NOT I SPECIFICALLY ASKED FOR THAT
2 GUN, I KNOW I SPOKE WITH LIEUTENANT CLARK FACE TO FACE TO
3 ASK FOR THE DNA.

4 Q BUT YOU DON'T HAVE ANY INDEPENDENT RECOLLECTION THAT
5 YOU ASKED FOR PRINTS ON THIS GUN, CORRECT?

6 A NO, SIR.

7 Q AND MR. CLARK MIGHT HAVE INFORMATION OF WHETHER OR
8 NOT THAT HE DID TEST FOR FINGERPRINTS ON THE GUN?

9 A THE BEST I KNOW ONLY HE WOULD HAVE THAT.

10 Q OKAY. SO, WE CAN ASK HIM ABOUT IT?

11 A YES, SIR.

12 Q BUT YOU DON'T RECALL SPECIFICALLY REQUESTING PRINTS
13 FROM THIS GUN?

14 A THAT IS CORRECT.

15 Q YOU DON'T RECALL ANY INSTRUCTIONS TO MR. CLARK, THE
16 EVIDENCE TECHNICIAN TO PROCESS ANY PRINTS ON THE GUN?

17 A NO SIR, I DON'T.

18 Q OR ASKING SLED TO PROCESS ANY PRINTS ON THE GUN?

19 A I DON'T REMEMBER THAT INDEPENDENTLY, NO SIR.

20 Q THE GUN, EXHIBIT NUMBER 2, HAS BEEN IN YOUR
21 DEPARTMENTS CUSTODY SINCE IT WAS TAKEN ON JUNE 10TH OF
22 2006, CORRECT?

23 A IT WAS ACTUALLY SEIZED BY LIEUTENANT DAVENPORT WHO
24 WOULD OF DONE THE PAPERWORK AND PLACED IT INTO AN EVIDENCE
25 LOCKER. MY UNDERSTANDING IS THAT IT HAS BEEN IN OUR

1 POSSESSION SINCE THEN, BUT YOU WOULD HAVE TO ASK
2 LIEUTENANT CLARK, HE IS IN CHARGE OF WHAT HAPPENS TO
3 EVIDENCE, WHERE IT IS STORED, WHERE IT GOES AND
4 MAINTAINING THAT RECORD.

5 Q THERE IS NO REASON TO BELIEVE THAT IT HAS BEEN OUT OF
6 YOUR DEPARTMENTS CUSTODY?

7 A I HAVE NO INFORMATION AS TO THAT.

8 Q YOU HAD INFORMATION FROM YOUR INVESTIGATION, STRIKE
9 THAT. I AM DONE, NO FURTHER QUESTIONS.

10 REDIRECT EXAMINATION

11 BY MR. ANDREWS:

12 Q MR. GRAY, A LITTLE WHILE AGO YOU MENTIONED THAT YOU
13 REQUESTED SOME DNA WORK TO BE DONE ON WHAT APPEARED TO BE
14 BLOOD ON THAT GUN?

15 A THAT IS CORRECT.

16 Q NOW, FOR THERE TO BE A DNA MATCH, DNA SAMPLES WOULD
17 HAVE TO BE TAKEN FROM THE PERSON THAT YOU BELIEVED CAME
18 INTO CONTACT WITH THE GUN, IS THAT CORRECT?

19 A THAT IS CORRECT.

20 Q AND I WILL SHOW YOU WHAT IS MARKED AS ID EXHIBIT
21 NUMBER 4. TELL ME WHAT THAT IS.

22 A THIS IS A ORAL SWAB CONTAINER, IT COMES FROM A KIT.
23 THIS IS A PART OF A BIGGER KIT THAT IS USED FOR VARIOUS
24 TYPES OF INVESTIGATIONS. BUT INSIDE OF THIS KIT WOULD BE
25 SOME STERILE SWABS. I CALLED MR. CATON, AFTER I HAD A

1 CONVERSATION WITH LIEUTENANT CLARK ABOUT NEEDING TO
2 DETERMINE WHOSE BLOOD WAS ON THE GUN I CALLED MR. CATON
3 AND ASKED HIM IF HE WOULD MEET ME AT CITY HALL AND HE DID.
4 I TOOK THESE STERILE SWABS, I PUT ON A PAIR OF GLOVES, I
5 TOOK THESE STERILE SWABS AND ASKED HIM TO OPEN HIS MOUTH
6 AND I RUBBED THEM ON THE INSIDE OF HIS CHEEK IN ORDER TO
7 OBTAIN SALIVA AND/OR CELLS THAT WOULD COME OFF. I THEN
8 PLACED THEM INTO THE ENVELOPE IN ORDER TO PRESERVE THE
9 BIOLOGICAL EVIDENCE, PUT IT ON PAPER, READABLE MATERIAL.
10 AND THEN I PUT THIS EVIDENCE TAPE ACROSS THE BACK OF IT TO
11 DOCUMENT WHEN I SEALED IT AND INITIALED IT AND DATED IT.
12 IT WAS THEN PROCESSED INTO EVIDENCE SO THAT LIEUTENANT
13 CLARK WOULD HAVE A MEANS BY WHICH TO COMPARE THE DNA ON
14 THE GUN WITH MR. CATON'S DNA.

15 Q CAN YOU READ THE INITIALS AND THE DATE WRITTEN ON
16 THERE?

17 A CRG FOR MY INITIALS, 6/12/06.

18 Q OKAY. NOW, WHAT WOULD YOU HAVE DONE WITH THIS
19 ENVELOPE, WHERE WOULD IT GO?

20 A FILED IN EVIDENCE, A CONTRABAND SHEET TO INFORM
21 LIEUTENANT CLARK WHAT IT IS, WHAT CASE IS ATTACHED TO IT
22 AND PLACED IT INTO THE EVIDENCE LOCKER AS DESCRIBED BY
23 LIEUTENANT DAVENPORT.

24 Q AND JUST TO BE CERTAIN, COULD YOU TAKE THIS OUT OF
25 THE EVIDENCE LOCKER ONCE YOU SUBMITTED IT?

1 A NO, SIR. ONCE IT IS SUBMITTED IT IS UNDER A LOCK.
2 LIEUTENANT CLARK HAS KEYS TO THAT, LIEUTENANT AND/OR
3 SOMEONE HE HAD DESIGNATED IN CHARGE WOULD REMOVE IT,
4 DOCUMENT THAT THEY GOT IT AND THEN PLACE IT INTO THE
5 EVIDENCE LOCKER VAULT OR STORAGE.

6 MR. ANDREWS: JUDGE, WE WOULD OFFER STATE'S EXHIBIT
7 NUMBER 4 FOR IDENTIFICATION INTO EVIDENCE.

8 MR. BETTIS: NO OBJECTION.

9 THE COURT: OKAY.

10 (WHEREUPON, STATE'S EXHIBIT NO. 4 WAS ADMITTED INTO
11 EVIDENCE.)

12 MR. ANDREWS: REQUEST PERMISSION TO PUBLISH IT TO THE
13 JURY, YOUR HONOR.

14 THE COURT: YOU CAN DO IT.

15 Q NOW, DETECTIVE GRAY, MR. BETTIS, ONE OF HIS DEFENSE
16 EXHIBITS. DO YOU KNOW WHOSE BAG THIS WAS?

17 A I DO NOT.

18 Q AND DURING CROSS-EXAMINATION DID YOU SAY THAT MR.
19 JONES TOLD YOU THAT MR. CATON OWED HIM MONEY?

20 A HE DID.

21 Q HOW MUCH MONEY?

22 A \$250.00 DOLLARS IS WHAT I RECALL.

23 Q DO YOU REMEMBER ABOUT WHAT THEIR DISPUTE WAS OVER?

24 A I BELIEVE IT WAS OVER MARIJUANA, I BELIEVE MR. JONES
25 WAS SAYING THAT HE CAME HERE TO HAVE A DISCUSSION WITH MR.

1 CATON ABOUT \$250.00 DOLLARS THAT HE OWED MR. JONES.

2 Q THAT IS ALL I HAVE.

3 RE CROSS-EXAMINATION

4 BY MR. BETTIS:

5 Q MR. GRAY, ONE MORE QUESTION.

6 A YES, SIR.

7 Q DIDN'T YOU HAVE INFORMATION WHEN YOU WERE PROCESSING
8 OR ASKING, REQUESTING THESE ITEMS TO BE PROCESSED. DIDN'T
9 YOU HAVE INFORMATION THAT AT SOME POINT AND TIME DURING
10 THIS EVENING WHEN MR. CATON AND MR. JONES AND MR.
11 LEVERETTE, DIDN'T YOU HAVE SOME INFORMATION THAT MR. JONES
12 MAY OF AT SOME POINT AND TIME BEEN IN POSSESSION OF THE
13 WEAPON, OF THE GUN, DIDN'T YOU HAVE SOME INFORMATION ABOUT
14 THAT?

15 A I DON'T RECALL, MR. BETTIS. I REMEMBER THE GUN WAS
16 TAKEN FROM MR. LEVERETTE AND MR. CATON REPORTED TO ME THAT
17 MR. JONES HAD THE GUN, I AM SORRY, MR. LEVERETTE HAD THE
18 GUN POINTED AT HIM AND THAT MR. JONES HAD THE SWORD. I
19 DON'T RECALL IT.

20 Q YOU DON'T RECALL SEEING, YOU DON'T RECALL FROM THE
21 REPORT, THERE WAS SOME INDICATION TO YOU FROM SOMEWHERE AS
22 YOU WERE THERE AT THE SCENE THAT INDICATED THAT MR. JONES
23 COULD OF HAD THE GUN IN HIS HAND?

24 A IF YOU CAN BE MORE SPECIFIC MAYBE I CAN ANSWER BUT I
25 AM NOT SURE WHAT YOU ARE REFERRING TO, MR. BETTIS.

1 Q IF I SHOW YOU YOUR REPORT WOULD THAT HELP REFRESH
2 YOUR MEMORY, PERHAPS?

3 A PERHAPS.

4 MR. ANDREWS: YOUR HONOR, MAY WE APPROACH?

5 THE COURT: YOU CAN APPROACH.

6 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
7 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
8 JURY.)

9 Q MR. GRAY, I AM GOING TO WITHDRAW THE QUESTION. I
10 DON'T HAVE ANY FURTHER QUESTIONS.

11 MR. ANDREWS: NOTHING FURTHER.

12 THE COURT: YOU MAY STEP DOWN.

13 MR. ANDREWS: THE STATE CALLS TRAVIS CLARK, YOUR
14 HONOR.

15 TRAVIS CLARK, AFTER BEING DULY SWORN, TESTIFIED
16 AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. ANDREWS:

19 Q PLEASE STATE YOUR NAME, SIR.

20 A TRAVIS CLARK.

21 Q WHO DO YOU WORK FOR?

22 A I WORK FOR THE GREENWOOD POLICE DEPARTMENT.

23 Q HOW LONG HAVE YOU WORKED THERE, SIR?

24 A ABOUT TWELVE YEARS.

25 Q WHAT IS YOUR RANK, SIR?

1 A I AM CURRENTLY A LIEUTENANT.

2 Q OKAY. DID YOU HAVE OCCASION TO DEAL WITH THIS CASE
3 THAT AROSE OUT OF JUNE 10TH OF 2006?

4 A YES. AS THE EVIDENCE CUSTODIAN I CAME IN ON JUNE
5 10TH WHICH WAS A SATURDAY AT APPROXIMATELY 3:00 O'CLOCK IN
6 THE AFTERNOON AND REMOVED ALL OF THE ITEMS THAT HAD BEEN
7 PLACED INTO EVIDENCE BY LIEUTENANT DAVENPORT AND
8 LIEUTENANT GRAY. AND I THEN PLACED ALL OF THOSE ITEMS
9 INTO EVIDENCE.

10 Q LET ME SHOW YOU STATE'S EXHIBIT NUMBER 4.

11 A YES, SIR.

12 Q WHAT IS THAT AGAIN, SIR.

13 A THIS IS THE ENVELOPE CONTAINING THE SWABS THAT
14 LIEUTENANT GRAY TURNED INTO ME. I REVIEWED MY NOTES JUST
15 A FEW MINUTES AGO AND I SAW THAT I REMOVED IT FROM THE
16 LOCKER ON JUNE 14TH AND PLACED THEM INTO THE EVIDENCE
17 ROOM.

18 Q TELL ME ABOUT THE EVIDENCE LOCKER, WHO HAS GOT ACCESS
19 TO THE EVIDENCE LOCKER, TO TAKE THINGS OUT OF THE EVIDENCE
20 LOCKER?

21 A I AM THE EVIDENCE CUSTODIAN, I HAVE ACCESS TO IT.
22 THE EVIDENCE LOCKERS HAS DOORS ON THE FRONT WHICH THERE IS
23 ONLY ONE WAY YOU CAN PUT STUFF IN THERE, YOU LOCK THE DOOR
24 AND THERE IS NO OTHER WAY TO ACCESS IT FROM THE FRONT.
25 THE BACK DOORS HAVE KEYS ON THEM AND I AS THE EVIDENCE

1 CUSTODIAN HAVE THE KEYS TO IT AND MY ASSISTANCE, SERGEANT
2 ED SUDDATH HAS THE KEYS TO IT AS WELL AS MY SUPERVISOR,
3 MAJOR ERVIN MITCHELL. ONLY THE THREE OF US HAVE KEYS TO
4 THOSE LOCKERS.

5 Q OKAY. LET ME SHOW YOU STATE'S EXHIBIT 12, STATE'S
6 EXHIBIT 10 AND STATE'S EXHIBIT NUMBER 11. YOU WERE IN
7 HERE FOR DETECTIVE GRAY'S TESTIMONY, WERE YOU NOT?

8 A YES SIR, I WAS.

9 Q WERE YOU, DID YOU ATTEMPT TO GET ANY FINGERPRINT
10 IDENTIFICATION FROM THOSE ITEMS?

11 A YES, SIR. THESE ITEMS HERE, I ATTEMPTED, WHAT I DID
12 WAS I ACTUALLY USED A SUPERGLUE PROCESS IN WHICH WE APPLY
13 SUPERGLUE THROUGH A FUME INJECTOR. THE SUPERGLUE ADHERES
14 TO THE FINGERPRINTS ON THE ITEMS AT WHICH POINT WE THEN
15 APPLY A DICED, USE AN ALTER LIGHT SOURCE TO SEE IF THERE
16 IS ANY FINGERPRINTS. WITH THESE ITEMS I DID NOT SEE ANY
17 FINGERPRINTS SO AT THAT POINT I THEN APPLIED SOME BLACK
18 FINGERPRINT POWDER TO THEM AND AGAIN DID NOT FIND ANY
19 FINGERPRINTS. THIS IS THE CASH, WITH PAPER WE USE A
20 DIFFERENT PROCESS, WE DON'T USE THE SUPERGLUE. WITH THE
21 PATER THERE ARE SEVERAL DIFFERENT PROCESSES THAT WE CAN
22 USE. WITH THE MONEY I USED A MAGNETIC SORT OF A PINK
23 COLORED MAGNETIC FINGERPRINT POWDER. THE OTHER
24 FINGERPRINT POWDER I HAD WAS BLACK, I FELT THE PINK WOULD
25 HIGHLIGHT ANY FINGERPRINTS BETTER THAN THE BLACK WOULD, SO

1 I DID USE THE PINK FINGERPRINT POWDER. ON THE MAP, THERE
2 ARE SEVERAL DIFFERENT PROCESSES THAT I COULD OF USED. TWO
3 OF WHICH ARE CHEMICAL PROCESSES KNOWN AS AN HYDROGEN AND
4 ALSO A DFO, THOSE ARE BOTH CHEMICAL SPRAYS THAT YOU APPLY
5 TO PAPER BUT BOTH OF THOSE CHEMICALS THERE IS A GOOD
6 CHANCE THAT IS GOING TO RUIN THE DRAWING AND THE WRITING
7 THAT IS ON THERE. BASED ON THE FACT THAT I WAS CONCERNED
8 THAT APPLYING CHEMICALS TO THE PAPER WOULD DETERIORATE THE
9 ACTUAL WRITING ON THERE I DECIDED NOT TO USE THAT, ALL I
10 USED ON THIS PAPER WAS BLACK MAGNETIC FINGERPRINT POWDER.
11 I APPLIED IT TO ALL OF THESE ITEMS AND DID NOT FIND ANY
12 FINGERPRINTS ON THESE ITEMS.

13 Q TO SUM IT ALL UP, DID YOU TRY TO GET FINGERPRINTS ON
14 THESE ITEMS?

15 A YES SIR, I DID.

16 Q WERE YOU SUCCESSFUL?

17 A NO SIR, I WAS NOT.

18 Q IF FINGERPRINTS HAD OF BEEN RECOVERED WHAT WOULD OF
19 BEEN THE NEXT STEP?

20 A I WOULD OF SENT THEM TO THE STATE LAW ENFORCEMENT
21 DIVISION MORE COMMONLY KNOWN AS SLED TO SEE IF THEY COULD
22 MATCH THOSE FINGERPRINTS TO ANYBODY INVOLVED IN THIS
23 INCIDENT.

24 Q OKAY. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 16.
25 WHAT IS THAT, SIR.

1 A THIS IS A PICTURE OF THE HAT THAT WAS ENTERED INTO
2 EVIDENCE BY LIEUTENANT GRAY.

3 Q LET ME SHOW YOU WHAT HAS BEEN MARKED STATE'S EXHIBIT
4 FOR IDENTIFICATION PURPOSES, NUMBER 5. TELL ME WHAT THAT
5 IS?

6 A THIS IS AN ENVELOPE, I WAS ASKED TO TRY TO GET DNA
7 FROM THE HAT SO I TOOK A COUPLE OF CUTTINGS FROM THIS HAT,
8 PLACED IT IN THIS ENVELOPE AND SEALED IT UP AND
9 TRANSPORTED IT TO SLED FOR ANALYSIS.

10 MR. ANDREWS: YOUR HONOR, WE WOULD MOVE TO ADMIT
11 STATE'S EXHIBIT NUMBER 5 INTO EVIDENCE.

12 MR. BETTIS: NO OBJECTION.

13 THE COURT: OKAY.

14 (WHEREUPON, STATE'S EXHIBIT NO. 5 WAS ADMITTED INTO
15 EVIDENCE.)

16 MR. ANDREWS: IF WE CAN PASS THESE OUT TO THE JURY,
17 YOUR HONOR.

18 THE COURT: YOU CAN DO IT.

19 Q LET ME SHOW YOU STATE'S EXHIBIT NUMBER 2, MR. CLARK.
20 DO YOU KNOW WHAT THAT IS?

21 A YES, THIS WAS TURNED IN BY LIEUTENANT DAVENPORT.

22 Q OKAY. LET ME SHOW YOU STATE'S EXHIBIT MARKED FOR
23 IDENTIFICATION NUMBER 6, CAN YOU TELL ME WHAT THOSE ARE?

24 A THESE ARE THREE SWAB BOXES, THESE ARE ACTUALLY CALLED
25 SWAB DRYING BOXES. WHEN YOU SWAB SOMETHING AND THE SWAB

1 REMAINS WET YOU TRY TO PUT THEM IN SOME SORT OF DRYING
2 CABINET TO ALLOW IT TO DRY. IN THIS CASE I ACTUALLY USED
3 THE SWAB BOXES TO ALLOW THEM TO DRY.

4 Q DESCRIBE TO ME WHAT IS IN THESE BOXES?

5 A EACH OF THESE BOXES CONTAINS ONE SWAB, ONE OF THESE
6 IS ACTUALLY MARKED AS A CONTROLLED SWAB SO THERE ARE
7 ACTUALLY TWO SWABS IN THERE. I HAD MET WITH LIEUTENANT
8 GRAY, HE HAD DISCUSSED WITH ME THE POSSIBILITY THAT THERE
9 WAS DNA EVIDENCE ON THE MUZZLE OF THIS PISTOL. HE
10 REQUESTED THAT I SWAB IT FOR, TO SEE IF I COULD, DNA AND
11 SEND THAT TO SLED FOR ANALYSIS. SO, WHAT I DID WAS I TOOK
12 TWO SEPARATE SWABS, I APPLIED A LITTLE BIT OF STERILE
13 WATER TO THEM FROM A BOTTLE AND THEN I SWABBED THE BARREL
14 OF THE GUN AND THEN STUCK THEM IN TWO SEPARATE SWAB BOXES.
15 I THEN TOOK TWO MORE SWABS AND APPLIED SOME STERILE WATER
16 TO THAT, THIS COULD BE USED AS A CONTROLLED SWAB SO THAT
17 THE SLED ANALYSIS HAS THE STERILE WATER AND THE, A
18 BASELINE I GUESS YOU COULD SAY FOR THE STERILE WATER AND
19 THE COTTON SWAB THAT IS USED IN THE PROCESS.

20 Q AFTER YOU COLLECTED THOSE SWABS TELL ME AGAIN WHAT
21 YOU DID WITH THOSE?

22 A I RETAINED THEM IN EVIDENCE AND THEN I TRANSPORTED
23 THEM TO SLED FOR ANALYSIS.

24 Q OKAY. DID ANYONE ELSE HAVE ACCESS TO THOSE SWABS?

25 A NO, SIR.

1 MR. ANDREWS: YOUR HONOR, WE WOULD MOVE TO ADMIT
2 NUMBER 6 INTO EVIDENCE.

3 MR. BETTIS: WITHOUT OBJECTION.

4 THE COURT: OKAY.

5 (WHEREUPON, STATE'S EXHIBIT NO. 6 WAS ADMITTED INTO
6 EVIDENCE.)

7 Q STATE'S EXHIBIT NUMBER 4.

8 A YES, SIR.

9 Q HAVE WE BEEN OVER THIS?

10 A YES SIR, WE HAVE. THIS IS THE EXHIBIT THAT YOU
11 PRESENTED TO ME A FEW MINUTES AGO WHICH ARE THE ORAL SWABS
12 PRESENTED TO ME BY LIEUTENANT GRAY.

13 Q THOSE STAYED IN YOUR CUSTODY, DID ANYONE ELSE HAVE
14 ACCESS TO THOSE?

15 A WELL, I TOOK THESE TO SLED AND I PICKED THEM UP FROM
16 SLED AND I WOULD HAVE TO SEE MY PAPERWORK TO KNOW WHEN I
17 PICKED THEM UP. BUT ONCE I PICKED THEM UP I BROUGHT THEM
18 BACK AND SECURED THEM IN THE EVIDENCE ROOM UNTIL THIS
19 MORNING.

20 Q OKAY. TELL ME THE PROCESS OF TAKING THINGS DOWN TO
21 THE STATE LAW ENFORCEMENT DIVISION.

22 A USUALLY ONCE A MONTH OR SOMETIMES TWICE A MONTH I
23 WILL TAKE EVERYTHING, I WILL GATHER ALL THE ITEMS THAT
24 NEED TO GO TO SLED SUCH AS THE NARCOTICS THAT ARE TURNED
25 INTO BEST PACKS OR ITEMS THAT NEED TO BE, OR FINGERPRINTS

1 THAT NEED TO BE SUBMITTED FOR ANALYSIS OR ITEMS THAT NEED
2 TO BE COLLECTED, SENT FOR DNA ANALYSIS. I WILL TAKE THEM
3 DOWN PERIODICALLY AND LOG THEM IN TO THE EVIDENCE ROOM AT
4 WHICH POINT THE EVIDENCE TECHNICIAN AT SLED COMPLETES
5 THEIR PAPERWORK AND TAKES CUSTODY OF IT.

6 Q DO YOU REMEMBER WHEN YOU SUBMITTED THESE ITEMS TO
7 SLED?

8 A NOT OFF THE TOP OF MY HEAD. IF YOU SHOW ME MY YELLOW
9 FORMS I CAN TELL YOU ALL OF THAT. THESE YELLOW FORMS ARE
10 ACTUALLY THE EVIDENCE SHEETS THAT WE USE TO TRACK AND
11 CONTROL ALL OF OUR EVIDENCE THAT COMES IN AND OUT OF THE
12 GREENWOOD POLICE DEPARTMENT. MY PAPERWORK INDICATES THAT
13 I TOOK ALL THE ITEMS FOR DNA TESTING, I TOOK ALL OF THAT
14 DOWN THERE ON JULY 7TH OF 2006.

15 Q THANK YOU, MR. CLARK. PLEASE ANSWER ANY QUESTIONS
16 THAT MR. BETTIS MAY HAVE FOR YOU.

17 CROSS-EXAMINATION

18 BY MR. BETTIS:

19 Q GOOD AFTERNOON, MR. CLARK.

20 A GOOD AFTERNOON.

21 Q AS FAR AS THE HANDGUN, THE BB GUN THAT WE HAVE HERE,
22 EXHIBIT NUMBER 2, YOU WERE NEVER GIVEN ANY INSTRUCTIONS TO
23 PROCESS IT FOR FINGERPRINTS, WERE YOU?

24 A NO, SIR. I HAD DISCUSSED WITH LIEUTENANT GRAY, HE
25 HAD EXPLAINED TO ME THAT THE GUN AND THE ACTUAL CANE WITH

1 THE KNIFE IN IT WERE ACTUALLY REMOVED FROM THE PERSONS
2 THAT WERE ARRESTED. SO, WE DECIDED NOT TO FINGERPRINT
3 THOSE ITEMS SINCE THEY WERE IN THE POSSESSION OF THE
4 PEOPLE THAT WERE ARRESTED.

5 Q SO, NO FINGERPRINT ANALYSIS WERE DONE ON EITHER THE
6 GUN OR THE CANE, RIGHT?

7 A YES SIR, THAT IS CORRECT. NO FINGERPRINT ANALYSIS
8 WAS DONE.

9 Q SO, BECAUSE NONE WAS DONE YOU CAN'T SAY WHOSE
10 FINGERPRINTS WOULD OF BEEN FOUND?

11 A THAT IS CORRECT.

12 Q WHETHER IT BE MR. LEVERETTE'S, WHETHER IT BE MR.
13 JONES OR WHETHER IT BE MR. CATON?

14 A THAT IS CORRECT.

15 Q NO WAY TO DETERMINE THAT BECAUSE NO PRINTS WERE DONE?

16 A THAT IS CORRECT.

17 Q AND THE GUN HAS BEEN IN THE DEPARTMENT'S POSSESSION
18 SINCE THE EVENTS TOOK PLACE AND THE GUN WAS TAKEN?

19 A THAT IS CORRECT, IT HAS BEEN IN OUR SECURED, SECURED
20 IN OUR EVIDENCE ROOM.

21 Q LIEUTENANT CLARK, JUST TO BE CLEAR, YOU ARE THE ONE
22 WHO HANDLED THE EVIDENCE IN THE CASE AFTER THE INCIDENT,
23 CORRECT, YOU WERE NOT AT THE INCIDENT LOCATION?

24 A THAT IS CORRECT. I WAS NOT THERE.

25 Q YOU ARE NOT A WITNESS TO WHAT HAPPENED OR ANYTHING?

1 A NO SIR, I AM NOT A WITNESS AS TO WHAT HAPPENED.

2 Q YOU JUST HANG ON TO SOME OF THE EVIDENCE?

3 A YES SIR, THAT IS CORRECT.

4 Q THANK YOU, LIEUTENANT CLARK.

5 MR. ANDREWS: NOTHING FURTHER.

6 THE COURT: YOU CAN STEP DOWN.

7 MR. ANDREWS: THE STATE CALLS ROBIN TAYLOR TO THE
8 STAND.

9 ROBIN TAYLOR, AFTER BEING DULY SWORN, TESTIFIED
10 AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. ANDREWS:

13 Q PLEASE STATE YOUR NAME.

14 A ROBIN A. TAYLOR.

15 Q WHAT IS YOUR OCCUPATION?

16 A I AM A FORENSIC DNA ANALYST WITH THE SOUTH CAROLINA
17 LAW ENFORCEMENT DIVISION.

18 Q HOW LONG HAVE YOU BEEN AT SLED?

19 A MARCH WAS 18 YEARS.

20 Q WHAT DO YOU DO AT SLED?

21 A AS A FORENSIC DNA ANALYST MY DUTIES ARE TO RECEIVE
22 EVIDENCE FROM CRIME SCENES OR FROM VICTIMS OF CRIMES AND
23 COMPARE, RUN DNA ANALYSIS AND COMPARE THAT ANALYSIS TO
24 KNOWN STANDARDS OF PERSONS POTENTIALLY INVOLVED IN A
25 CRIME, DETERMINE WHETHER OR NOT THERE IS A MATCH. I

1 GENERATE A WRITTEN REPORT AND WHEN NECESSARY TESTIFY IN
2 COURT.

3 Q WHAT IS DNA?

4 A DNA STANDS FOR DEOXYRIBONUCLEIC ACID BUT BASICALLY IT
5 IS THE GENETIC MATERIAL FOUND IN ALMOST ALL OF THE CELLS
6 OF YOUR BODY. IT CARRIES GENETIC INFORMATION FROM ONE
7 GENERATION TO THE NEXT. AND YOU GET HALF OF YOUR DNA FROM
8 YOUR MOTHER AND HALF OF YOUR DNA FROM YOUR FATHER. NOW,
9 BY FAR THE MAJORITY OF DNA FROM ONE PERSON TO THE NEXT IS
10 THE SAME, IT IS WHAT MAKES US HUMAN, IT IS WHAT GIVES US
11 TWO ARMS AND TWO FEET AND SUCH AS THAT. BUT THERE ARE
12 PORTIONS OF DNA THAT ARE VERY DIFFERENT FROM PERSON TO
13 PERSON AND THOSE ARE SOME PORTIONS THAT WE LOOK AT IN
14 FORENSICS.

15 Q TELL ME ABOUT YOUR EDUCATIONAL BACKGROUND.

16 A I HAVE A BACHELOR OF SCIENCE DEGREE IN MEDICAL
17 TECHNOLOGY FROM THE UNIVERSITY OF SOUTH CAROLINA. I
18 GRADUATED FROM BAPTIST MEDICAL CENTER SCHOOL OF MEDICAL
19 TECHNOLOGY IN COLUMBIA. I AM BOARD CERTIFIED BY THE
20 AMERICAN SOCIETY OF CLINICAL PATHOLOGIST. I WORKED IN
21 CLINICAL LABORATORIES FOR APPROXIMATELY TWO AND A HALF
22 YEARS PRIOR TO ME JOINING SLED. SINCE I HAVE BEEN AT SLED
23 I HAVE COMPLETED INTENSIVE TRAINING PROGRAMS IN THE FIELDS
24 OF FORENSIC SEROLOGY, FORENSIC RFLP DNA ANALYSIS AND PCR
25 DNA ANALYSIS.

1 Q ARE YOU CERTIFIED BY SLED TO PERFORM DNA ANALYSIS?

2 A I AM.

3 Q HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT IN COURT
4 BEFORE?

5 A YES I HAVE, IN EXCESS OF 60 TIMES.

6 Q WAS THAT THIS COURT, WHICH COURTS WERE THEY?

7 A ALL OF THE COURTS AROUND THE STATE. I BELIEVE I HAVE
8 TESTIFIED HERE BEFORE, YES. BUT I HAVE TESTIFIED IN QUITE
9 A FEW COUNTIES ACROSS SOUTH CAROLINA AND NORTH CAROLINA
10 AND GEORGIA.

11 Q YOU HAVE BEEN QUALIFIED AS AN EXPERT IN GENERAL
12 SESSIONS?

13 A YES.

14 MR. ANDREWS: YOUR HONOR, THE STATE WOULD OFFER MS.
15 TAYLOR AS AN EXPERT IN DNA ANALYSIS.

16 MR. BETTIS: YOUR HONOR, NO OBJECTION TO MS. TAYLOR'S
17 QUALIFICATION OF DNA.

18 THE COURT: ALL RIGHT, SHE HAS THE QUALIFICATIONS TO
19 TESTIFY.

20 Q I AM GOING TO SHOW YOU STATE'S EXHIBITS 4, 5 AND 6.
21 CAN YOU TELL ME WHAT THOSE ARE.

22 A STATE'S EXHIBIT 4 IS WHAT IS LABELED AN ORAL SWAB
23 FROM BOBBY CATON, HERE YOU WILL SEE THE LABEL THAT WE FIX
24 WHEN WE ARE IDENTIFYING THESE PIECES OF EVIDENCE IN THE
25 LAB THAT IS GENERATED BY OUR COMPUTER SYSTEM. OUR

1 LABORATORY NUMBER IS L0609572 AND THIS WAS ITEM NUMBER 1.
2 THIS IS PRESENTED TO ME AS A KNOWN STANDARD FROM SOMEONE
3 INVOLVED IN THE CASE THAT I AM TO USE FOR COMPARISON
4 PURPOSES. EXHIBIT NUMBER 5 IS, THEY WERE PUT INTO OUR
5 EVIDENCE AS TWO DIFFERENT ITEMS. SO, I CONTINUE TO TREAT
6 THEM THAT WAY, EVEN THOUGH THEY WERE PACKAGED TOGETHER YOU
7 CAN SEE THAT THERE ARE TWO EVIDENCE ITEM LABELS GENERATED
8 BY OUR COMPUTER SYSTEM AS ITEMS NUMBERS 5 AND 6. THIS WAS
9 CUTTINGS FROM A HAT. NOW THESE ARE THREE BOXES OF SWABS
10 THAT WERE PRESENTED TO ME AND IDENTIFIED BY US AS ITEMS 2,
11 3 AND 4, THE SLED NUMBERS. THESE WERE SWABS THAT I WAS TO
12 TEST FOR DNA AND THEN COMPARE TO THE KNOWN STANDARD THAT I
13 TALKED ABOUT EARLIER.

14 Q WHEN DID YOU RECEIVE THOSE ITEMS?

15 A THEY WERE SUBMITTED TO SLED ON JULY THE 7TH OF 2006,
16 WE HAVE TECHNICIANS IN OUR DEPARTMENT WHO ROUTE EVIDENCE
17 UP TO US FROM OUR EVIDENCE AREA INTO A SECURED
18 REFRIGERATOR AND I PICKED THEM UP AND TOOK THESE ITEMS
19 INTO MY CUSTODY ON AUGUST 10TH OF 2006.

20 Q AFTER YOU GOT THEM INTO YOUR CUSTODY WHAT HAPPENED?

21 A WELL, THE FIRST THING THAT YOU DO IN TESTING THESE
22 ITEMS THAT ARE ASSOCIATED WITH THIS CASE IS TO IDENTIFY
23 WHAT BODY FLUIDS IS INVOLVED. MOST LIKELY IT IS BLOOD,
24 SEMEN OR SALIVA, THOSE ARE THE MOST COMMON BODY FLUIDS.
25 AND WE READ THE INCIDENT REPORTS SUBMITTED TO US BY AN

1 AGENCY AND LOOK AT THE INFORMATION WE HAVE TO DETERMINE
2 WHAT TESTING NEEDS TO BE DONE. BLOOD WAS THE BODY FLUID
3 IN QUESTION HERE SO I DID A PRESUMPTIVE OR A PRELIMINARY
4 TEST FOR BLOOD WHICH IS PHENOPHALENE. ALL IT IS IS JUST A
5 COLOR REACTION, JUST DROP SOME CHEMICALS ON A VERY SMALL
6 PORTION OF THE SAMPLE AND IT TURNS A BRIGHT PINK AND THAT
7 IS REPORTED AS BLOOD INDICATED. AND THEN ONCE I HAVE THAT
8 RESULT IT IS TIME TO TAKE IT ON FOR DNA ANALYSIS. AND I
9 DID THE SAME PROCEDURE ON BOTH THE EVIDENCE AND THE SWAB
10 FROM BOBBY CATON AND TOOK THEM ON FOR DNA ANALYSIS ONCE I
11 DETERMINED THE BLOOD WAS PRESENT.

12 Q SO, YOU ANALYZED THOSE FOR DNA?

13 A I DID.

14 Q WHAT RESULTS DID YOU GET?

15 A THE DNA, I WAS ABLE TO GET THE DNA PROFILE FROM ITEMS
16 3 AND 4, WHICH WOULD BE THE SWABS OUT OF TWO OF THESE
17 BOXES AND I WILL AS AN ASIDE WILL TELL YOU THAT ITEM
18 NUMBER 2 WAS SUBMITTED TO US AS A CONTROL SWAB. IT IS NOT
19 OUR NORMAL PROCEDURE AT THIS POINT AND TIME TO TEST
20 CONTROLLED SWABS UNLESS THERE IS AN UNANSWERED QUESTION
21 AND THERE IS SOME POTENTIAL CONTAMINATION OR SOME
22 POTENTIAL NEED TO DO IT. SO, INITIALLY I DID NOT TEST
23 THESE AND THERE WAS NEVER ANY NEED TO TEST THEM. SO,
24 THERE WAS NO ANALYSIS PERFORMED ON THIS PARTICULAR BOX OF
25 SWABS, THE CONTROLLED SWABS. BUT ON ITEMS 3 AND 4, THEY

1 WERE JUST MARKED 19392 TO ME AND THAT IS ALL I KNEW THEM
2 TO BE. ONCE I DETERMINED THERE WAS BLOOD I DID DNA
3 ANALYSIS AND THE DNA PROFILE DEVELOPED FROM ITEMS 3 AND 4
4 MATCHES THE DNA PROFILE OF BOBBY CATON. THE PROBABILITY
5 OF RANDOMLY SELECTING AN UNRELATED INDIVIDUAL HAVING THE
6 SAME DNA PROFILE THAT I FOUND ON THE SWABS IS
7 APPROXIMATELY IS 1 AND 480 QUADRILLION. NOW, I ALSO
8 ATTEMPTED ON THE TWO CUTTINGS FROM THE HAT. I GOT A
9 LITTLE BIT OF INFORMATION OFF OF THOSE BUT NOT ENOUGH FOR
10 ANY SORT OF INTERPRETATION. SO, I REPORTED THAT AS
11 INSUFFICIENT FOR RELIABLE INTERPRETATION.

12 Q JUST BACK UP A LITTLE BIT. SWABS 3 AND 4 HAVE BLOOD,
13 IS THAT CORRECT?

14 A THAT IS RIGHT, BLOOD WAS INDICATED TO BE PRESENT ON
15 THOSE SWABS.

16 Q AND NUMBER 1 WAS SALIVA, CORRECT?

17 A ITEM NUMBER 1 IS WHAT WE CALL A BUCKLE SWAB OR A
18 KNOWN STANDARD FROM MR. CATON, I BELIEVE IT IS PREVIOUSLY
19 DESCRIBES BEING RUBBED FROM THE INSIDE OF HIS CHEEK AND
20 THAT IS THE CORRECT PROCEDURE FOR COLLECTING THAT.

21 Q OKAY. AND I AM EXTREMELY CONCERNED ABOUT PUTTING
22 WORDS IN YOUR MOUTH. BUT COULD YOU REPEAT AGAIN WHAT
23 RELATIONSHIP YOU FOUND BETWEEN ITEMS 1, THE SWAB
24 CONTAINING SALIVA AND ITEMS 3 AND 4 THAT CONTAIN BLOOD.

25 A SWABS 3 AND 4, THE DNA PROFILE FROM THOSE SWABS

1 MATCHED THE DNA PROFILE OF BOBBY CATON. AND THE RARITY OF
2 THAT MATCH IS 1 AND 480 QUADRILLION.

3 Q PLEASE ANSWER ANY QUESTIONS THAT MR. BETTIS MAY HAVE
4 FOR YOU.

5 CROSS-EXAMINATION

6 BY MR. BETTIS:

7 Q GOOD AFTERNOON.

8 A HI.

9 Q I AM GOING TO ASK YOU A COUPLE OF QUESTIONS. YOU ARE
10 NOT HERE TO GIVE ANY TESTIMONY THAT YOU HAVE EVIDENCE THAT
11 MR. LEVERETTE WAS IN ANY INVOLVED IN ANY KIND OF CRIME,
12 CORRECT?

13 A NO, SIR. I ONLY MATCHED TO MR. CATON AND THAT--

14 Q THERE IS NOTHING SUBMITTED TO YOU REGARDING
15 LAKENDRICK'S DNA, CORRECT?

16 A NO, I DID NOT RECEIVE A STANDARD AND HAVE NOTHING
17 OTHER THAN WHAT I STATED BEFORE.

18 Q OKAY. YOU DIDN'T TEST ANY KIND OF ITEMS OF BLOOD TO
19 DETERMINE WHETHER LAKENDRICK HAD ANY KIND OF DNA RELATED
20 TO BOBBY CATON IN ANY WAY, CORRECT?

21 A IF I HAD, ON THE ITEMS OF EVIDENCE I HAD FOUND ANY
22 DNA THAT COULD NOT BE ATTRIBUTED TO MR. CATON I WOULD HAVE
23 REQUESTED KNOWN STANDARDS FROM THE OTHER PEOPLE INVOLVED
24 IN THE CASE. AND IN FACT THAT IS OUR NORMAL PROCEDURE TO
25 HAVE ALL STANDARDS BUT IT WAS REQUESTED TO MATCH THIS TO

1 THE VICTIM AND I DIDN'T FIND ANYTHING THAT COULD NOT BE
2 ATTRIBUTED TO HIM THEREFORE IT WAS NOT NECESSARY FOR ME TO
3 HAVE ANYTHING ELSE.

4 Q THANK YOU.

5 REDIRECT EXAMINATION

6 BY MR. ANDREWS:

7 Q SO, THE ONLY DNA YOU FOUND IN THE ITEMS THAT YOU
8 RECEIVED MATCHED BOBBY CATON?

9 A THE PROFILE FROM THE SWABS MATCHED BOBBY CATON.
10 THERE WAS VERY, VERY PARTIAL INFORMATION FROM THE HAT BUT
11 I WAS UNABLE TO DO ANYTHING INTERPRETABLELY WITH THAT. SO,
12 I WOULD NOT COMMIT WHO THAT CAME FROM BUT THE PROFILES
13 THAT I DID DEVELOP WERE FROM MR. CATON.

14 Q OKAY. THANK YOU.

15 THE COURT: LIKE WHAT WE KNOW WHAT QUADRILLION IS.
16 HOW MANY ZEROS WOULD THAT BE.

17 A I WISH I HAD COUNTED THAT BEFORE I CAME IN HERE,
18 QUADRILLION I BELIEVE IS ABOUT 15 ZEROS. I CAN CHECK MY
19 CASE FILE IF YOU WOULD LIKE.

20 THE COURT: HOW MANY PEOPLE ROUGHLY ARE ON EARTH
21 TODAY.

22 A ABOUT SIX AND A HALF BILLION.

23 THE COURT: SO CHANCES OF A MATCH ARE OF EVERYBODY
24 NOW LIVING.

25 A YES SIR, AND IN FACT WHAT I AM REPORTING IS A

1 PROBABILTY AND IT IS A VERY LARGE NUMBER.

2 THE COURT: YOU ARE JUST NOT THROWING THAT NUMBER OUT
3 TO ALL, THAT IS WHAT YOU CALCULATED.

4 A NO SIR, THAT WAS VERY DEFINITELY CALCULATED USING A
5 COMPUTER PROGRAM.

6 THE COURT: YOU CAN STEP DOWN.

7 MR. ANDREWS: YOUR HONOR, WE HAVE NO ADDITIONAL
8 WITNESSES, YOUR HONOR.

9 THE COURT: LET'S SEE, JURORS CAN GET TO WENDYS IN
10 ABOUT FIFTEEN MINUTES. WE WILL GIVE YOU AN HOUR AND A
11 HALF, DON'T TALK ABOUT THE CASE. BE BACK AT 2:00 O'CLOCK.

12 (WHEREUPON, THE JURY PANEL WAS EXCUSED FROM OPEN
13 COURT FOR A LUNCH BREAK.)

14 THE COURT: I TAKE IT THAT THE STATE RESTED, IS THAT
15 WHAT YOU SAID?

16 MR. ANDREWS: THAT IS WHAT I MEANT TO SAY, YOUR
17 HONOR.

18 THE COURT: THE STATE HAS RESTED. WHAT IS THE
19 DEFENSE PLEASURE.

20 MR. BETTIS: JUDGE, WE WOULD MAKE A MOTION FOR A
21 DIRECTED VERDICT BASED ON THE LACK OF SUFFICIENT EVIDENCE
22 TO GO FORTH TO THE JURY.

23 THE COURT: WELL, BEING THE SENIOR JUDGE FOR ABOUT
24 FOUR YEARS I HAVE NEVER GRANTED A PERFUNCTORY MOTION.
25 THAT MOTION IS DENIED. ANYTHING ELSE. HAVE YOU DISCUSSED

1 WITH YOUR CLIENT THE PLUSES AND MINUS, PERILS AND AWARDS
2 OF TESTIFYING?

3 MR. BETTIS: I HAVE, YOUR HONOR.

4 THE COURT: AND WHAT IS HIS PLEASURE.

5 MR. BETTIS: AT THIS POINT THERE IS NO PLAN FOR MR.
6 LEVERETTE TO TESTIFY IN THIS CASE, YOUR HONOR.

7 THE COURT: MR. LEVERETTE, HERE IS THE SITUATION. I
8 AM NOT SUGGESTING THAT YOU TESTIFY, I AM NOT SAYING YOU
9 DON'T. YOU HAVE THE ABSOLUTE RIGHT TO TESTIFY, NOBODY CAN
10 MAKE YOU TESTIFY, THE STATE CAN'T CALL YOU, THEY CAN CALL
11 WITNESSES. IF YOU DON'T TESTIFY THEY CAN'T COMMENT ON
12 YOUR FAILURE TO TAKE THE STAND OR ANYTHING LIKE THAT. IF
13 YOU TAKE THE STAND THEY CAN CROSS-EXAMINE YOU, I DON'T
14 KNOW WHETHER YOU GOT A PRIOR CRIMINAL RECORD OR NOT. BUT
15 THEY CAN BRING THAT OUT, THEY CAN ASK LEADING QUESTIONS,
16 THEY CAN TRY TO CONFUSE YOU OR YOU APPARENTLY HAVE MADE
17 SOME STATEMENTS TO LAW ENFORCEMENT, THEY CAN BRING THOSE
18 STATEMENTS OUT. THERE ARE GOOD ADVANTAGES TO TESTIFYING
19 AND GOOD ADVANTAGES FOR NOT TESTIFYING. IF YOU ELECT NOT
20 TO TESTIFY AND WANT ME TO TELL THE JURY NOT TO EVEN PURSUE
21 THE FACT THAT YOU DIDN'T TESTIFY ON THE ISSUE OF WHETHER
22 YOU COMMITTED A CRIME, I WILL BE HAPPY TO DO THAT. SOME
23 ATTORNEYS DON'T EVEN WANT YOU TO EVEN MENTION THAT, I AM
24 TALKING ABOUT THE JUDGES BUT THAT IS SOMETHING THAT I
25 COULD DO. BUT IT IS A SERIOUS SITUATION, CHOICE YOU HAVE

1 AS TO WHETHER TO TESTIFY OR NOT. MR. BETTIS INDICATES
2 THAT RIGHT NOW THAT YOU DON'T FEEL YOU WILL TESTIFY BUT
3 THINK IT OVER. I WILL ASK YOU AGAIN, NO PRESSURE NOW,
4 BEFORE WE RESUME THE TRIAL. IF YOU NEED TO TALK TO FAMILY
5 MEMBERS OR ANYBODY OVER THE LUNCH BREAK YOU CAN. WE ARE
6 AT EASE UNTIL 2:00 O'CLOCK.

7 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

8 THE COURT: ALL RIGHT, THE STATE HAS RESTED?

9 MR. ANDREWS: WE REMAIN AT REST, YOUR HONOR.

10 THE COURT: WHAT ABOUT THE DEFENSE.

11 MR. BETTIS: JUDGE, WE ARE READY TO PROCEED. I WANT
12 TO MENTION ONE THING ABOUT THREE ITEMS. WE ARE GOING TO
13 STIPULATE TO THE THREE ITEMS IN EVIDENCE, IS THAT CORRECT?

14 MR. ANDREWS: YES, SIR.

15 MR. BETTIS: THERE IS MORE ITEMS OF EVIDENCE THAT
16 HAVEN'T BEEN INTRODUCED. WE ARE GOING TO STIPULATE TO
17 THEIR INTRODUCED INTO EVIDENCE IN THE CASE. THAT IS
18 STATE'S EXHIBIT NUMBER 13, STATE'S EXHIBIT NUMBER 7 AND
19 STATE'S EXHIBIT NUMBER 8.

20 (WHEREUPON, STATE'S EXHIBITS NOS. 7, 8 AND 13 WERE
21 ADMITTED INTO EVIDENCE.)

22 THE COURT: ALL RIGHT, HAVE THEY BEEN ELUDED TO?

23 MR. BETTIS: THEY HAVE, ALL THREE OF THEM.

24 THE COURT: SO, HOW LONG DOES THE DEFENSE ANTICIPATE
25 ON TAKING WITH THEIR PRESENTATION.

1 MR. BETTIS: YOUR HONOR, THE DEFENSE WILL PROBABLY
2 NOT TAKE ANY MORE THAN TEN OR FIFTEEN MINUTES.

3 THE COURT: I TAKE IT YOU HAVE DISCUSSED OVER LUNCH
4 WHETHER OR NOT YOUR CLIENT WILL TESTIFY.

5 MR. BETTIS: WE HAVE DISCUSSED IT AGAIN, YOUR HONOR,
6 AND HE IS NOT PLANNING ON TESTIFYING.

7 THE COURT: AND MR. LEVERETTE, YOU STILL DON'T WANT
8 TO TESTIFY?

9 MR. LEVERETTE: NO, SIR.

10 THE COURT: OKAY. SO, ARE YA'LL READY TO PROCEED
11 RIGHT INTO ARGUMENTS?

12 MR. ANDREWS: YOUR HONOR, WE MAY HAVE ONE REBUTTAL
13 WITNESS.

14 THE COURT: IF YOU DON'T HAVE ONE. I AM JUST ASKING
15 YOU, I DON'T MIND SENDING THEM OUT. BUT THEY DON'T LIKE
16 TO COME OUT AND IN FIVE MINUTES GO BACK IN THERE.

17 MR. BETTIS: I BELIEVE, IF THEY DON'T HAVE ANY
18 REBUTTAL WITNESSES I BELIEVE WE CAN BE READY TO PROCEED
19 STRAIGHT INTO THE CLOSING ARGUMENTS.

20 THE COURT: DO YOU OBJECT TO THE INDICTMENTS GOING
21 BACK?

22 MR. BETTIS: YOUR HONOR, I WOULD NOT LIKE THE
23 INDICTMENTS GOING BACK.

24 THE COURT: ALL RIGHT, THEN SOMEBODY NEEDS TO PREPARE
25 A VERDICT FORM. JUST PLEAD GUILTY OR NOT GUILTY.

1 MR. HODGES: YOUR HONOR, I CAN TYPE ONE UP HERE ON
2 THE LAP TOP.

3 THE COURT: IF YOU ARE READY WE WILL BRING THEM OUT.

4 MR. BETTIS: YOUR HONOR, I WOULD ALSO REQUEST THAT
5 DURING CLOSING THAT THE STATE WOULD REQUIRE TO OPEN ON THE
6 LAW.

7 MR. ANDREWS: WE ARE READY.

8 THE COURT: THEY ARE READY TO OPEN ON THE LAW. BRING
9 THEM OUT.

10 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
11 APPROXIMATELY 2:05 P.M.)

12 THE COURT: OKAY, I UNDERSTAND THE STATE HAS
13 PRESENTED THEIR CASE AT THIS POINT, THE DEFENSE IS READY
14 TO PROCEED.

15 MR. BETTIS: THE DEFENDANT CALLS TERRI BURNETTE TO
16 THE STAND.

17 TERRI BURNETTE, AFTER BEING DULY SWORN,
18 TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. BETTIS:

21 Q WILL YOU STATE YOUR FULL NAME FOR THE RECORD, PLEASE?

22 A IT IS TERRI BURNETTE.

23 Q WHERE DO YOU LIVE?

24 A IN CALLISON.

25 Q HERE IN GREENWOOD COUNTY?

- 1 A YES.
- 2 Q DO YOU WORK AT THE GETAWAY?
- 3 A YES, I DO.
- 4 Q HOW LONG HAVE YOU BEEN WORKING OUT THERE?
- 5 A SINCE JUNE, JANUARY THIS TIME. THIS IS MY SECOND
- 6 TIME BEING AT THE GETAWAY.
- 7 Q JANUARY OF THIS YEAR?
- 8 A YES.
- 9 Q WHEN DID YOU WORK THERE BEFORE?
- 10 A I DON'T REMEMBER IF IT WAS BEGINNING OF 2005, TOWARD
- 11 THE END OF 2006.
- 12 Q WHAT DO YOU DO THERE NOW?
- 13 A BARTENDER.
- 14 Q DO YOU DO ANY MANAGING THERE AS WELL?
- 15 A YES.
- 16 Q ARE YOU THE MAIN MANAGER?
- 17 A YES, SIR.
- 18 Q WE ARE HERE ABOUT AN INCIDENT THAT OCCURRED BACK ON
- 19 JUNE 9TH, JUNE 10TH OF 2006 INVOLVING MR. BOBBY CATON. DO
- 20 YOU RECALL WHETHER YOU WERE AT THE GETAWAY ON THE EVENING
- 21 THIS INCIDENT OCCURRED?
- 22 A YEAH, I MET BOBBY UP THERE.
- 23 Q SO, YOU WERE THERE THAT NIGHT?
- 24 A YES, I WAS NOT WORKING THOUGH.
- 25 Q YOU WERE NOT WORKING THAT NIGHT?

1 A NO.

2 Q YOU WERE THERE WITH FRIENDS?

3 A YES.

4 Q DO YOU RECALL WHETHER BOBBY CATON MADE ANY STATEMENTS
5 TO YOU THAT NIGHT WHEN HE CAME BACK IN TO THE BAR ABOUT
6 OWING ANYBODY MONEY?

7 A HE CAME IN AND SAID THAT HE OWED SOME GUYS SOME MONEY
8 AND THEN THEY LEFT.

9 Q DID HE POINT OUT WHO HE WAS TALKING ABOUT?

10 A THEY WERE TWO BLACK GUYS AT THE DOOR THAT HE POINTED
11 OUT, SAID THAT HE OWED THEM SOME MONEY.

12 Q DID HE SAY ANYTHING ELSE?

13 A NO, WHEN HE CAME BACK HE WAS WHITE AS A GHOST AND HE
14 SAID THAT THEY HELD HIM AT GUNPOINT, NEVER SAID IF HE GIVE
15 THEM THE MONEY OR NOT.

16 Q HE WAS REFERRING TO ONE OF THE BLACK GUYS HE GAVE
17 MONEY TO?

18 A YES.

19 Q WHAT DID YOU SAY IN RESPONSE, IF ANYTHING?

20 A I TOLD HIM IF HE HAD THE MONEY GIVE IT TO HIM.

21 Q MS. BURNETTE, ARE YOU HERE UNDER SUBPOENA TODAY?

22 A YES, I AM.

23 Q THAT IS ALL I HAVE.

24 CROSS-EXAMINATION

25 BY MR. ANDREWS:

1 Q MS. BURNETTE, HOW LONG HAVE YOU KNOWN MR. CATON?

2 A JUST FROM THE BAR, ABOUT A COUPLE OF YEARS OR SO. I
3 HAVE TALKED TO HIM AT THE BAR AND THAT IS ABOUT IT.

4 Q HOW MANY TIMES WOULD YOU SAY YOU HAVE SPOKEN TO HIM
5 AT THE BAR?

6 A I REALLY DON'T REMEMBER. EVERY TIME HE COMES IN I
7 SPEAK.

8 Q WHEN WAS THE LAST TIME YOU SAW HIM?

9 A IN 2006 BECAUSE I QUIT GOING THERE FOR A WHILE,
10 MYSELF, AFTER THAT.

11 Q OKAY. I DON'T HAVE ANY ADDITIONAL QUESTINGS.

12 MR. BETTIS: NOTHING FURTHER.

13 THE COURT: YOU CAN STEP DOWN. AND YOU ARE FREE TO
14 GO.

15 MR. BETTIS: YOUR HONOR, THE DEFENSE REST, YOUR
16 HONOR.

17 THE COURT: ANYTHING IN REPLY.

18 MR. ANDREWS: YOUR HONOR, WE WANT TO RECALL BOBBY
19 CATON TO THE STAND.

20 THE COURT: STEP UP HERE.

21 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
22 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
23 JURY.)

24 THE COURT: JURORS, THAT IS ALL THE WITNESSES THAT
25 ARE GOING TO TESTIFY AND THAT IS ALL THE EVIDENCE THAT IS

1 GOING TO BE INTRODUCED. THE NEXT STAGE IS THE ATTORNEYS
2 MAKE CLOSING REMARKS TO YOU AND RATHER THAN SEND YOU OUT
3 SINCE YOU JUST GOT IN HERE WE ARE GOING TO GO AHEAD WITH
4 THAT. THE STATE GOES FIRST.

5 MR. ANDREWS: THANK YOU, YOUR HONOR, LADIES AND
6 GENTLEMEN OF THE JURY. THE DEFENDANT IN THIS CASE,
7 LAKENDRICK LEVERETTE IS FACING THREE COUNTS. THE FIRST IS
8 ARMED ROBBERY, THE SECOND IS KIDNAPPING AND THE THIRD IS
9 POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT
10 CRIME. NOW, JUST TO KEEP IT SIMPLE, I WILL JUST READ TO
11 YOU FROM THE RELEVANT STATUTES. AS TO ARMED ROBBERY, A
12 PERSON WHO COMMITS ROBBERY WHILE ALLEGING EITHER BY ACTION
13 OR WORDS AND IS ARMED WITH A REPRESENTATION OF A DEADLY
14 WEAPON OR ANY OBJECT WHICH A PERSON PRESENTLY IN THE
15 COMMISSION OF A ROBBERY REASONABLY BELIEVED TO BE A DEADLY
16 WEAPON IS GUILTY OF A FELONY. THIS IS A PELLET GUN BUT
17 SOMEONE COULD OF REASONABLY BELIEVE THAT THAT IS A DEADLY
18 WEAPON. AS TO KIDNAPPING, WHOEVER SHALL UNLAWFULLY SEIZE,
19 CONFINE, DISABLE, DECOY, KIDNAP, ABDUCT, CARRY AWAY ANY
20 OTHER PERSON BY ANY MEANS WHATSOEVER WITHOUT THE AUTHORITY
21 OF THE LAW IS GUILTY OF A FELONY. IN THIS CASE BOBBY
22 CATON WAS PUSHED INTO THE BACK, AT GUNPOINT, DRIVEN
23 AROUND, TAKEN BACK, LED BACK IN TO THE GETAWAY AT
24 GUNPOINT, HE WAS FORCED AGAINST HIS WILL. AND FINALLY THE
25 WEAPON CHARGE. IF A PERSON IS IN POSSESSION OF A FIREARM

1 VISIBLY DISPLAYS WHAT APPEARS TO BE A FIREARM OR VISIBLY
2 DISPLAYS A KNIFE DURING THE COMMISSION OF A VIOLENT CRIME,
3 ARMED ROBBERY, KIDNAPPING ARE BOTH VIOLENT CRIMES. AGAIN,
4 MR. LEVERETTE, IN THIS CASE, DISPLAYED WHAT APPEARED TO BE
5 A FIREARM. NOW, YOU MIGHT HEAR ABOUT IS THE HAND OF ONE
6 IS THE HAND OF ALL. THAT MEANS WHEN TWO PEOPLE ARE
7 ACTUALLY TOGETHER, THEY DELIVER THE ACTION OF ONE CAN ALSO
8 BE CONTRIBUTED TO THAT OTHER PERSON. THANK YOU.

9 THE COURT: MR. BETTIS.

10 MR. BETTIS: LADIES AND GENTLEMEN OF THE JURY, THIS
11 CASE LASTED A LOT SHORTER THAN PROBABLY YA'LL EXPECTED AND
12 I EVEN EXPECTED TO GO A LITTLE BIT LONGER. I AM GLAD
13 WHERE YOU ARE NOW AT THE POINT WHERE YOU ARE FINALLY
14 GETTING CLOSE TO GETTING ALL THE EVIDENCE SO YOU CAN GO
15 INTO THE ROOM AND DELIBERATE. HOPEFULLY SOME TIME SOON
16 YOU WILL BE LEAVING THIS PROCESS AND HAVE KIND OF AN
17 EDUCATION OF WHAT THIS PROCESS IS LIKE. WE APPRECIATE
18 YOUR SERVICE AND WE APPRECIATE YOU BEING HERE. LIKE I
19 TOLD YOU IN MY OPENING STATEMENTS, THIS IS A VERY, VERY,
20 VERY SERIOUS CASE FOR EVERYBODY ESPECIALLY FOR LAKENDRICK.
21 HE IS THE ONE WHO IS FACING A POWERFUL GOVERNMENT
22 BREATHING DOWN HIS NECK TRYING TO PROSECUTE HIM FOR
23 CRIMES. NOW, YOU HAVE HEARD ALL THE EVIDENCE, YOU HAVE
24 HEARD THE TESTIMONY FROM THE WITNESSES AND YOU HAVE SEEN
25 BITS AND PIECES OF DIFFERENT ITEMS OF EVIDENCE. AND ALL

1 OF THESE THINGS THAT WERE INTRODUCED INTO THE TRIAL IS
2 GOING TO BE BACK WITH YOU IN THIS JURY ROOM, YOU ARE GOING
3 TO HAVE A CHANCE TO LOOK AT SOME THINGS AND VIEW THINGS
4 AND DISCUSS IT ALL. AND IMPORTANTLY YOU ARE GOING TO BE
5 ABLE TO DISCUSS THE TESTIMONY THAT CAME BEFORE YOU DURING
6 THIS TRIAL. YOU HAVE HEARD BASICALLY WHAT THE CRIMES ARE
7 THAT ARE ALLEGED AGAINST LAKENDRICK. AND THE JUDGE IS
8 GOING TO TELL YOU A LOT MORE ABOUT THIS, HE IS GOING TO
9 GIVE YOU A FULL CHARGE OF WHAT THE LAW IS. ALL THE LAW
10 THAT YOU NEED TO CONSIDER TO ALARM YOURSELF WITH AS YOU GO
11 BACK THERE AND DELIBERATE. THIS IS GOING TO INCLUDE
12 VARIOUS THINGS, NOT ONLY THE CHARGES OF WHAT THE CRIMES
13 INCLUDE BUT ALSO DIFFERENT EVIDENTIARY THINGS FOR YOU TO
14 CONSIDER, ABOUT WEIGHING THE CREDIBILITY, THE TESTIMONY
15 FROM VARIOUS WITNESSES, THINGS YOU CAN CONSIDER WHEN YOU
16 ARE WEIGHING THE CREDIBILITY OF THOSE WITNESSES. THINGS
17 THAT CAN BE USED TO IMPEACH THE CREDIBILITY OR STATEMENTS
18 MADE, INCONSISTENT STATEMENTS THAT ARE MADE, YOU CAN USE
19 TO DECIDE WHETHER YOU BELIEVE A WITNESS OR NOT OR WHETHER
20 A WITNESS IS CREDIBLE. THE JUDGE WILL TELL YOU A LOT MORE
21 ABOUT WHAT YOU CAN CONSIDER, HOW YOU APPLY THAT TO THIS
22 CASE. NOW, AS PART OF THIS CLOSING I WANT TO MAINLY FOCUS
23 ON VARIOUS PARTS OF THE EVIDENCE, WHAT I THINK IS
24 IMPORTANT FOR YOU TO DISCUSS WHEN YOU GET BACK IN THAT
25 JURY ROOM TO BEGIN DELIBERATING. THERE IS SEVERAL

1 DIFFERENT THINGS MAINLY COMING FROM TESTIMONY, SOME THINGS
2 FROM ACTUALLY PHYSICAL EVIDENCE THAT I WOULD LIKE TO
3 DISCUSS AND CONSIDER IN THIS CASE. THE THING THAT I ASKED
4 YOU IN MY OPENING REMARKS WAS THROUGHOUT THE COURSE OF
5 THIS TRIAL, THE TESTIMONY THAT YOU HEAR IS TO ASK YOURSELF
6 WHAT REALLY HAPPENED IN THE EARLY MORNING HOURS OF JUNE
7 10TH OF 2006 BECAUSE THAT IS REALLY WHAT THIS CASE COMES
8 DOWN TO. YOU HEARD TESTIMONY FROM BOBBY CATON AND THEN
9 YOU HEARD TESTIMONY FROM MOST OF THE LAW ENFORCEMENT
10 OFFICIALS. EVERY ONE OF THOSE LAW ENFORCEMENT OFFICIALS
11 TOLD YOU SOME PARTS ABOUT THEIR INVOLVEMENT. NO ONE
12 OFFERED YOU ANY EVIDENCE THAT THEY WITNESSED ANYTHING.
13 THE OFFICERS TRY TO INVESTIGATE THE CASES BUT THEY ARE NOT
14 HERE, THEY TELL YOU WHAT HAPPENED THAT NIGHT, BUT THEY
15 DIDN'T SEE IT, THEY COLLECTED THINGS, THEY TALKED TO
16 PEOPLE AND THEY DISCUSSED THINGS. THE OFFICERS DON'T KNOW
17 REALLY WHAT HAPPENED BECAUSE THEY WERE NOT THERE. YOU
18 ONLY HEARD ONE WITNESS TALK ABOUT WHAT HAPPENED TO HIM
19 THAT NIGHT AND ALL OF THAT DEALS WITH WHETHER OR NOT A
20 CRIME WAS COMMITTED AND THAT ONE PERSON WAS BOBBY CATON.
21 LET'S TALK ABOUT BOBBY CATON'S TESTIMONY AND WHAT HE
22 OFFERED DURING THE COURSE OF THIS TRIAL. WE KNOW HE WENT
23 THROUGH THE LITANY OF WHAT HE SAID TRANSPIRED THAT NIGHT.
24 HE SAID HE DIDN'T KNOW THE FOLKS IN THE BAR, SMOKING
25 MARIJUANA, THEY ALL WALKED OUTSIDE AND THEY SMOKED

1 MARIJUANA AND THE NEXT THING YOU KNOW HE HAS BEEN ROBBED.
2 AND HE WENT ON TO TELL YOU ABOUT ALL THE GOINGS ON AND
3 GETTING IN A CAR AND GOING SOMEWHERE. DIDN'T KNOW HOW
4 LONG IT LASTED, DIDN'T TELL YOU THAT, THINGS STARTED ABOUT
5 11:00 BUT THE POLICE DIDN'T GET THERE UNTIL 3:00. HE
6 CAN'T TELL YOU ANYTHING THAT HAPPENED OR WHAT TOOK FOUR
7 HOURS AFTER. SO, MAYBE HIS MEMORY IS A LITTLE SHAKY ABOUT
8 WHEN IT ACTUALLY BEGIN, WHEN HE ACTUALLY WENT OUTSIDE WITH
9 THESE INDIVIDUALS. HE ADMITS THAT HE WENT OUTSIDE AND
10 SMOKED MARIJUANA, HE STAYS AT THE GETAWAY, HE USED TO
11 SMOKE MARIJUANA AT TIMES AND KNOWS HE USED TO DO COCAINE.
12 HE DIDN'T WANT TO ADMIT AND HE DIDN'T ADMIT THAT HE OWED
13 ANYBODY MONEY THAT NIGHT. THAT IS ONE OF THE BIG ISSUES
14 THAT I WANT YOU TO CONSIDER IN THIS CASE. YOU HEARD THERE
15 WAS EVIDENCE BESIDES HIM THAT HE OWES SOME MONEY, ABOUT
16 \$250.00 BUCKS FOR A PRIOR DRUG TRANSACTION, HE DIDN'T WANT
17 TO TELL YOU ABOUT THAT, HE DIDN'T WANT TO ADMIT THAT. YOU
18 ALSO HEARD ANOTHER PERSON WHO WORKS AT THE GETAWAY THAT
19 CAME HERE AND HE SAID THAT NIGHT THAT HE GOT ROBBED.
20 THERE ARE A LOT OF INCONSISTENCIES ABOUT WHAT BOBBY CATON
21 SAYS. THINK ABOUT WHAT HE TOLD YOU WITH ZAVIUS JONES
22 INVOLVED. HE WAS TELLING OFFICERS THAT ZAVIUS JONES DID
23 THREATEN HIM AND DID ROB HIM AND DID HOLD THIS BIG CANE
24 KNIFE TO MY THROAT. LET'S TAKE A LOOK AT THIS THING.
25 THIS IS THE BLADE, HE TOLD THE POLICE THAT NIGHT THAT

1 ZAVIUS JONES HELD THIS TO HIS NECK AND WAS THREATENING HIM
2 AND WAS GOING TO KILL HIM. LATER ON, SEVERAL MONTHS LATER
3 HE MADE A STATEMENT BASICALLY EXONERATING ZAVIUS JONES,
4 CHANGING THAT ENTIRE STORY. NO WAIT A MINUTE, ZAVIUS
5 JONES DIDN'T THREATEN ME, ZAVIUS JONES DIDN'T TOUCH ME.
6 THEN HE HAD A HARD TIME GOING OVER HIS STATEMENT EVEN
7 ADMITTING TO THAT. HE KEPT SAYING, NO, IT WAS SOMEHOW
8 LEFT OUT OF THE STATEMENT. HE WENT THROUGH THE INITIAL
9 CHANGES ON IT AND HE SIGNED IT. IF THAT HAD BEEN TALKED
10 ABOUT AND DISCUSSED AND HE PUT IN THAT STATEMENT, IT WAS
11 IMPORTANT WHAT HAPPENED TO HIM BY ZAVIUS JONES THAT NIGHT,
12 A BLADE STUCK TO HIS THROAT AND THREATEN HIM. WHY WAS THE
13 STORY CHANGED. HE TOLD, YOU HEARD OFFICER DAVENPORT
14 TESTIFY THAT WHEN HE WAS TALKING TO MR. CATON AND MR.
15 CATON WAS TELLING HIM ABOUT THE INCIDENT AND SAID THAT
16 BOTH LAKENDRICK AND JONES FOLLOWED HIM BACK INTO THE BAR
17 AFTERWARDS AND WAS BEHIND HIM AND HE WAS CLAIMING, CALL
18 THE POLICE, CALL THE POLICE, THESE GUYS ARE TRYING TO ROB
19 ME. BUT ON THE STAND HE TESTIFIED THAT MR. JONES STAYED
20 IN THE CAR, AGAIN TRYING TO EXONERATE MR. JONES. AND THAT
21 IS WHAT HE SAID IN THAT STATEMENT THAT IS DIFFERENT FROM
22 WHAT HE TOLD THE POLICE AND DIFFERENT FROM WHAT HE
23 TESTIFIED TO. WHEN HE CAME HERE AND TESTIFIED TO YOU HE
24 DID SAY, YES, ZAVIUS JONES DID HOLD THIS KNIFE TO MY
25 THROAT. BUT IN THE STATEMENT HE WAS SAYING SOMETHING

1 DIFFERENT. AND HE TOLD THE POLICE THAT JONES DID FOLLOW
2 HIM TO THE BAR THAT NIGHT. THERE ARE SEVERAL
3 INCONSISTENCIES. WHAT ABOUT THE ITEMS OF EVIDENCE THAT WE
4 LOOKED AT. DETECTIVE GRAY MENTIONED TO YOU WHEN HE WAS
5 TALKING ABOUT THE ITEMS THAT HE FOUND IN THE BAG AND THIS
6 IS DEFENSE EXHIBIT NUMBER 3. THESE ARE ALL THE ITEMS AND
7 THEY WILL BE BACK IN THE JURY ROOM SO YOU CAN LOOK AT THEM
8 CLOSER. BUT WE HAD THE MONEY, THE CHAPSTICK, THE LIGHTER
9 AND THE CELL PHONE AND THE THREE BAGS OF COCAINE WHICH
10 WERE RIGHT HERE. AND YOU HEARD CATON SAY THOSE WERE HIS
11 ITEMS, HE IS NOT NECESSARILY CLAIMING THE COCAINE IS HIS,
12 BUT THESE WERE ALL OF HIS ITEMS AND THEY WERE ALL FOUND IN
13 THIS BAG. WOULDN'T IT BE A REASONABLE INFERENCE THAT
14 COCAINE WAS ALSO TAKEN AND PUT IN THIS BAG WITH THESE
15 OTHER THINGS. HE IS NOT ABOUT TO COME UP HERE AND TELL
16 YOU THAT SOMEBODY TOOK HIS COCAINE. AND THAT GETS BACK TO
17 CREDIBILITY AND HIS REASON FROM MAKING A STATEMENT AND
18 TRYING TO EXONERATE ZAVIUS JONES. IF THE COCAINE WASN'T
19 HIS, OUT OF ALL THESE ITEMS TAKEN OUT OF THIS BAG THAT IS
20 THE ONLY THING THAT IS NOT HIS. EVERYTHING ELSE IS HIS.
21 NONE OF THESE ITEMS HAD LAKENDRICK'S PRINTS ON THEM. THEY
22 TESTED ALL THE THINGS AND NOTHING SHOWED LAKENDRICK'S
23 PRINTS ON THERE. THE JUDGE WILL TELL YOU DURING HIS JURY
24 CHARGE TO YOU ABOUT WHAT YOU CAN USE AS PRIOR INCONSISTENT
25 STATEMENTS. AND I WILL READ TO YOU WHAT THE LAW IS. OF

1 COURSE, IF I SAY SOMETHING DIFFERENT THAN WHAT YOU HEAR
2 THE JUDGE SAY LISTEN TO THE JUDGE. I AM GOING TO READ
3 WHAT I BELIEVE THE CHARGE WILL BE. IT SAYS THE TESTIMONY
4 OF A WITNESS MAY BE DISCREDITED OR IMPEACHED BY SHOWING
5 THAT HE PREVIOUSLY MADE STATEMENTS WHICH WERE INCONSISTENT
6 WITH HIS PRESENT TESTIMONY. THE EARLIER CONTRADICTORY
7 STATEMENTS ARE ALSO VISIBLE TO ESTABLISH THE TRUTH IN THE
8 STATEMENTS. IT IS THE PROVINCE OF THE JURY TO DETERMINE
9 THE CREDIBILITY, IF ANY, TO BE GIVEN TO THE TESTIMONY OF A
10 WITNESS WHO HAS BEEN IMPEACHED OR WITNESSES SHOWN EARLIER
11 WHO HAVE TESTIFIED ALSO CONCERNING, YOU MAY CONSIDER THIS
12 IN DETERMINING WHETHER TO TRUST THE WITNESS'S TESTIMONY IN
13 THOSE PARTICULARS. YOU MAY REJECT ALL THE TESTIMONY OF
14 THAT WITNESS OR GIVE ALL THE TESTIMONY OF THE WITNESS
15 CREDIBILITY YOU THINK IT DESERVES. I BELIEVE THAT IS WHAT
16 THE JUDGE WILL INSTRUCT YOU ALSO. THAT IS WHAT THIS CASE
17 IS COMING DOWN TO. LIKE I ASKED YOU BEFORE, WHAT EVIDENCE
18 WAS PRODUCED HERE AT THIS TRIAL. CAN YOU USE THE CREDIBLE
19 AND BELIEVABLE TESTIMONY TO MAKE THAT DETERMINATION ON
20 WHAT REALLY HAPPENED ON JUNE 10TH OF 2006. THAT IS THE
21 CRUX OF THIS CASE. DO YOU HAVE THE SUFFICIENT, CREDIBLE,
22 BELIEVABLE EVIDENCE YOU NEED OR IS THAT TESTIMONY YOU
23 HEARD NOT CREDIBLE, DOES IT LEAVE SOME DOUBT IN YOUR MIND.
24 THAT IS WHAT WE ARE TALKING ABOUT, REASONABLE DOUBT, DO
25 YOU HAVE A REASON TO DOUBT THAT TESTIMONY, NOT NECESSARILY

1 MEANS THAT YOU DON'T BELIEVE IT AT ALL BUT DOES IT PUT
2 SOME DOUBT IN YOUR MIND. REASONABLE DOUBT AS THE JUDGE
3 WILL INSTRUCT YOU IS, THAT DOUBT CAUSES A PERSON TO
4 HESITATE TO ACT, IT GIVES THEM PAUSE TO DO SOMETHING
5 BECAUSE THEY ARE NOT SURE, IT GIVES THEM SOME REASON TO
6 DOUBT. YOU HAVE GOT TO LOOK CLOSELY AND EVALUATE WHAT YOU
7 HAVE HEARD, THERE IS NO EVIDENCE THAT PUTS ANY LENGTH
8 BETWEEN MR. CATON'S ALLEGATION AND LAKENDRICK LEVERETTE.
9 IF ANY EVIDENCE GIVES YOU DOUBT THEN YOU NEED TO RESOLVE
10 THAT DOUBT IN FAVOR OF LAKENDRICK BECAUSE IT IS THE
11 STATE'S BURDEN. LAKENDRICK HAS NO OBLIGATION WHATSOEVER
12 TO PROVE ANYTHING, HE IS PRESUMED INNOCENT, HE DIDN'T HAVE
13 TO GET UP HERE AND TALK, HE DIDN'T HAVE TO GET UP HERE AND
14 SAY ANYTHING, HE DOESN'T HAVE TO GET UP HERE AND PUT UP
15 ANY EVIDENCE BECAUSE IT IS ALL UP TO THE STATE TO DO THAT.
16 WHAT ARE THE REASONABLE INFERENCES YOU CAN DRAW FROM THE
17 EVIDENCE THAT YOU HEARD AND SAW. YOU HEARD THE EVIDENCE
18 ABOUT ZAVIUS JONES GOING TO THE GETAWAY THAT NIGHT BECAUSE
19 HE KNEW CATON WAS UP THERE AND HE OWED HIM \$250.00 BUCKS
20 FOR A MARIJUANA TRANSACTION. SO, THAT IS THE REASON HE
21 WENT UP THERE. MR. CATON DIDN'T AGREE THAT HE OWED
22 ANYBODY MONEY BUT WE HAVE ANOTHER WITNESS SAYING THAT
23 RIGHT AFTER THE THING OCCURRED HE SAID, YES, I OWE THAT
24 GUY MONEY AND THAT IS WHY I GOT ROBBED. HOW DO YOU
25 RESOLVE THAT. WHAT DOES THAT SHOW, WHAT DOES THAT TELL

1 US. BOBBY CATON LATER CHANGED HIS STATEMENT ABOUT ZAVIUS
2 JONES' INVOLVEMENT. IS THERE A REASONABLE INFERENCE WE
3 CAN SHOW ABOUT THIS COCAINE THAT WAS FOUND WITH ALL OF
4 CATON'S OTHER BELONGINGS. HE WAS SCARED BECAUSE JONES WAS
5 GOING TO TURN HIM IN FOR THAT BECAUSE JONES TOOK IT FROM
6 HIM. AND JONES AGREED TO FORGET THE DEBT HE OWED HIM, SO
7 THEY BASICALLY JOINED FORCES. I SUBMIT TO YOU THERE IS A
8 REASONABLE INFERENCE TO BE DRAWN ABOUT THIS COCAINE AND
9 WHOSE IT WAS AND THE REASONABLE INFERENCE IS IT WAS FOUND
10 WITH ALL OF CATON'S THINGS, IT WAS CATON'S. AND THE
11 REASONABLE INFERENCE IS THAT JONES WENT DOWN TO THE
12 GETAWAY THAT NIGHT TO CONFRONT CATON ABOUT THE MONEY HE
13 OWED HIM AND THEY GOT IN A FIGHT, THEY GOT IN A SCUFFLE
14 AND GOT MAD, THINGS TURNED BAD. JONES TOOK THE STUFF FROM
15 HIM TRYING TO GET HIS MONEY. THEN WHEN THEIR MINDS
16 CLEARED, JONES WAS THINKING, WELL I AM CHARGED WITH
17 SOMETHING HERE AND THEN JONES HAD THIS COCAINE ON CATON HE
18 COULD BLAME ON HIM. THEY GOT TOGETHER AND SAID, WAIT A
19 MINUTE, MAYBE THERE IS A WAY WE CAN WORK THESE ISSUES OUT
20 BETWEEN US. LET'S JUST PUT EVERYTHING ON LAKENDRICK. IS
21 THERE SOME EVIDENCE THERE TO GIVE YOU PAUSE TO BELIEVE THE
22 STORY HAPPENED EXACTLY LIKE CATON SAID. THERE IS A LOT OF
23 REASONABLE INFERENCES YOU CAN DRAW WITH THE REST OF THE
24 EVIDENCE. THERE IS NO REFERENCE BESIDES BOBBY CATON THAT
25 PUTS LAKENDRICK DOING THE THINGS HE SAID HE DID. NO OTHER

1 EVIDENCE INVOLVED BESIDES BOBBY CATON SAYING THAT. THE
2 PRINTS, THE NONEXISTENT OF THE PRINTS FOUND ON ANY OF THE
3 ITEMS, NOTHING SHOWED THAT LAKENDRICK HANDLED THOSE ITEMS.
4 THE GUN WAS NEVER TESTED FOR PRINTS. IF THE GUN HAD BEEN
5 TESTED FOR PRINTS MAYBE WHAT IS SHOWN IS THAT ZAVIUS JONES
6 ENDED UP ENTERING SOME TIME THAT NIGHT. WE DON'T KNOW
7 THAT. BUT IT WASN'T TESTED FOR PRINTS, IF IT WERE THEN
8 THAT POSSIBILITY WOULD OF BEEN DISCRETE. MAYBE THAT WAS
9 PART OF HIS INTERACTION CONFRONTATION WITH BOBBY CATON
10 THAT EVENING, THE WHOLE REASON HE WENT UP THERE. THERE
11 ARE TOO MANY INCONSISTENCIES. THE OTHER INCONSISTENCY IS
12 MR. CATON, WHEN HE WAS TALKING TO THE OFFICERS, TOLD THEM
13 CERTAIN ITEMS WERE TAKEN FROM HIM. TOLD OFFICER DAVENPORT
14 THAT HIS RING WASN'T THERE, THE WATCH WASN'T NEVER THERE.
15 TOLD OFFICER GRAY THAT HIS RING AND HIS MONEY AND CELL
16 PHONE WERE THERE. THERE ARE TWO PEOPLE THAT WERE TOLD TWO
17 DIFFERENT THINGS BY WHAT WAS BEING TAKEN. IT WAS 3:00
18 A.M. IN THE MORNING, THEY HAD BEEN DRINKING THAT NIGHT,
19 GOING OUT TO SMOKE MARIJUANA. WERE THINGS ANY CLEAR IN
20 HIS MIND ABOUT WHAT HAPPENED. IT IS STRETCHING IT. WHEN
21 ALL OF THIS CAME OUT AND THE COCAINE GOT STOLEN AND HE WAS
22 WARNED HE MIGHT GET IN TROUBLE ABOUT IT. IS THERE A
23 REASONABLE INFERENCE ABOUT THAT, THOSE ARE THE THINGS I
24 WANT YOU TO TALK ABOUT IN THIS CASE BECAUSE THE EVIDENCE
25 IS THERE IN FRONT OF YOU. ALL WILL MAKE A DECISION IN

1 THIS CASE. ALL THAT LAKENDRICK ASK IS THAT YOU EVALUATE
2 IT CLOSELY AND FIND AND MAKE A DETERMINATION WHETHER THERE
3 IS SOME REASONABLE DOUBT. I SUBMIT TO YOU THAT WHEN YOU
4 REVIEW EVERYTHING CLOSELY AND FAIRLY AND OBJECTIVELY YOU
5 WILL FIND THAT THERE IS SOME DOUBT OF CATON'S STORY. MR.
6 GOODMAN TESTIFIED ALSO, HE IS A GOOD FRIEND OF CATON'S,
7 SURE, HE IS GOING TO COME IN HERE AND TALK ABOUT IT, YEAH
8 HE CAME IN AND HE WAS SCARED. HE SAID SOMETHING DIFFERENT
9 THAN MR. CATON. CATON SAID THE GUN WAS TO HIS BACK. MR.
10 GOODMAN SAID I DIDN'T SEE A GUN, I SAW A GUN IN HIS PANTS.
11 MR. GOODMAN ALSO TRIED TO SAY, WELL, I DON'T REMEMBER
12 SEEING MR. JONES COME IN, I JUST REMEMBER SEEING
13 LAKENDRICK COMING IN. AFTER PRESSURE, HE SAID, WELL, I
14 DON'T, THAT IS NOT WHAT YOU TOLD DAVENPORT. SO, YOU WEIGH
15 HIS CREDIBILITY, WHETHER HE IS HERE JUST TO HELP OUT.
16 WEIGH ALL OF THOSE THINGS, FOLKS. IT IS VERY IMPORTANT
17 THAT LAKENDRICK GET A FAIR TRIAL HERE. WE ARE SURE AND WE
18 EXPECT THAT ONCE YOU DO DELIBERATE AND WEIGH ALL OF THIS
19 EVIDENCE CAREFULLY, WEIGH THE CREDIBILITY CAREFULLY THAT
20 YOU ARE GOING TO BRING BACK A VERDICT OF NOT GUILTY.
21 THANK YOU.

22 MR. ANDREWS: LADIES AND GENTLEMEN, THERE WERE THREE
23 PEOPLE THAT NIGHT THAT REALLY KNOW WHAT HAPPENED. THAT IS
24 BOBBY CATON, LAKENDRICK LEVERETTE AND ZAVIUS JONES, THOSE
25 THREE PEOPLE, THEY ALL KNOW EXACTLY WHAT HAPPENED. BUT

1 YOU HAVE SOME CLUES IN FRONT OF YOU, YOU KNOW WHAT
2 HAPPENED. HERE IS WHERE WE END UP. YOU KNOW THAT
3 LAKENDRICK LEVERETTE HAD TUCKED IN HIS WAISTBAND THIS GUN.
4 AND YOU KNOW THAT GUN HAS BOBBY CATON'S BLOOD ON IT AND
5 YOU KNOW BOBBY CATON'S POSSESSIONS ARE FOUND IN A LOCKED
6 CAR TO WHICH LAKENDRICK LEVERETTE HAS THE KEYS AND WHO
7 OWNS THAT CAR, LAKENDRICK LEVERETTE'S GIRLFRIEND. THE
8 CAPTION IN THIS CASE IS THE STATE VERSUS LAKENDRICK
9 LEVERETTE, IT IS NOT THE STATE VERSUS ZAVIUS JONES.
10 ZAVIUS JONES HAS CHARGES PENDING AND HE IS GOING TO GET
11 HIS DAY IN COURT BUT IT IS NOT TODAY. TODAY YOU ARE HERE
12 ON LAKENDRICK LEVERETTE. LET'S THINK ABOUT SOME OF THE
13 DEFENSES POINTS. IT SEEMS LIKE THAT THE DEFENSES THEORY
14 IS NOT, THERE WAS NEVER A ROBBERY, IT IS THERE WAS A
15 ROBBERY OVER A DRUG DEBT, A ROBBERY AND A KIDNAPPING OVER
16 A DEBT IS STILL A ROBBERY AND A KIDNAPPING. LET'S JUST
17 SAY FOR THE SAKE OF ARGUMENT THAT BOBBY CATON DOES OWE
18 LAKENDRICK LEVERETTE, I MEAN HE DOES OWE ZAVIUS JONES
19 MONEY FOR A PRIOR DRUG TRANSACTION. LAKENDRICK LEVERETTE
20 IS AWFULLY INVESTED IN COLLECTING THAT DEBT. AGAIN, HE
21 HAS GOT THE GUN, IT HAS GOT CATON'S BLOOD ON IT. NOW,
22 THINK ABOUT BOBBY CATON'S STATEMENT AND IF IT HELPS WE
23 WILL GO THROUGH THOSE. THE REALLY BIG ONE, THE
24 INCONSISTENCY IS THAT BOBBY CATON LEAVES OUT OF HIS
25 STATEMENT THAT ZAVIUS JONES HELD THIS RIGHT IMPRESSIVE

1 BLADE TO HIM. THAT STATEMENT HOWEVER IS WRITTEN BY
2 SOMEONE WORKING WITH JONES' DEFENSE ATTORNEY AND IT IS IN
3 THE PRESENCE OF JONES' MOTHER. NOW, THAT IS A RARITY
4 INCONSISTENCY, THAT IS A PRETTY BIG THING TO FORGET. BUT
5 WHAT IS NOT INCONSISTENCE IS WHAT THAT STATEMENT REFLECTS
6 AS TO LAKENDRICK LEVERETTE, AS TO LEVERETTE'S INVOLVEMENT
7 IN THIS CASE. NEVER ONCE DOES CATON CHANGE HIS STORY
8 ABOUT BEING FORCED AT GUN POINT, OUT OF THE GETAWAY, BEING
9 SMACKED ON THE HEAD, HAVING IT STUCK IN HIS MOUTH AND THEN
10 GOING BACK TO THE GETAWAY. AND AMAZINGLY WHO HAS GOT THE
11 GUN, LAKENDRICK HAS THE GUN. AS OF THE COCAINE IN THE
12 CAR, DETECTIVE GRAY TESTIFIED THAT THOSE ITEMS WERE ALL
13 FOUND IN A BAG. DETECTIVE GRAY COULDN'T TELL YOU WHO THAT
14 KNIFE BELONGED TO BUT ONE OF THE FIRST THINGS THAT YOU
15 HEARD FROM BOBBY CATON WAS THAT HE WAS APPROACHED BY THE
16 DEFENDANT ABOUT SMOKING MARIJUANA, SMOKING MARIJUANA AND
17 USING COCAINE ARE BOTH ILLEGAL. THEY ARE BOTH ILLEGAL
18 DRUGS, I MEAN IF CATON IS WILLING TO ADMIT TO WHY HE USED
19 MARIJUANA WHY WOULD HE LIE ABOUT USING COCAINE. HE
20 ALREADY ADMITTED TO, I WENT OUTSIDE AND SMOKED ONE. AND
21 ABOUT THE TIME, THIS GUN WAS POINTED AT CATON, HIT ON THE
22 SIDE OF THE HEAD AND WAS STUCK IN HIS MOUTH. THAT IS A
23 BIT OF A STRESSFUL SITUATION SO IT IS NOT UNREMARKABLE
24 THAT HE LOST TRACK OF TIME, YOU CAN UNDERSTAND WHAT WAS
25 COMPLETELY GOING ON. TYRONE GOODMAN WAS A GOOD FRIEND OF

1 CATON'S. WHAT DID HE TESTIFY TO, HE TESTIFIED THAT WHEN
2 HE CAME OUT AND TALKED TO LAKENDRICK LEVERETTE, GUESS WHAT
3 HE FOUND, LAKENDRICK LEVERETTE HAVING A GUN. WHEN
4 OFFICERS CAME, WHERE DID THEY FIND THE GUN, ON LAKENDRICK
5 LEVERETTE. THERE ARE INCONSISTENCIES IN THIS CASE, MAYBE
6 IT WAS A DRUG DEAL. BUT WHO COLLECTED FOR THAT POTENTIAL
7 DEBT, LAKENDRICK LEVERETTE. THIS GUN WAS IN HIS WAISTBAND
8 WITH BOBBY CATON'S BLOOD, BOBBY CATON'S BELONGINGS WERE IN
9 A LOCKED CAR OWNED BY LAKENDRICK LEVERETTE'S GIRLFRIEND
10 AND LEVERETTE HAD THE KEYS. THAT IS IT. WHATEVER
11 INCONSISTENCIES THERE ARE THEY DEAL WITH THE USE OF
12 MARIJUANA OR COCAINE WAS ZAVIUS JONES' INVOLVEMENT. THIS
13 IS THE STATE VERSUS LAKENDRICK LEVERETTE, NOT ZAVIUS
14 JONES, ZAVIUS JONES WILL GET HIS DAY IN COURT. DON'T
15 FORGET WHAT THIS CASE IS ABOUT, DON'T FORGET WHO HAD THE
16 GUN, WHO HAD THE KEYS TO THE CAR WITH CATON'S GOODS, DON'T
17 FORGET WHOSE GIRLFRIEND OWNED THE CAR, IT WAS LAKENDRICK
18 LEVERETTE. FIND LAKENDRICK LEVERETTE GUILTY OF ARMED
19 ROBBERY, KIDNAPPING AND POSSESSION OF A WEAPON DURING THE
20 COMMISSION OF A VIOLENT CRIME. THANK YOU.

21 THEE COURT: OKAY, JURORS, THE FINAL STAGE OF THE
22 TRIAL, I AM GOING TO INSTRUCT YOU ON THE LAW. AND JURORS,
23 I AM GIVING YOU THE LAW IN THE ABSTRACT FORM AND YOU ARE
24 THE FACT FINDERS IN THE CASE, NOT ME. SO, WHEN I, FOR
25 INSTANCE INSTRUCT YOU ON ARMED ROBBERY I HAVE TO GO OVER

1 THE ELEMENTS THAT CONSTITUTE THE CRIME OF ARMED ROBBERY.
2 IT IS THE SAME REALLY IN EVERY CASE THAT SOMEONE IS
3 ACCUSED OF COMMITTING ARMED ROBBERY. I AM NOT BEING FACT
4 SPECIFIC IN THE CASE, I HAVE TO MENTION A FEW THINGS ABOUT
5 THE CASE AS WE GO ALONG. BUT I AM REALLY NOT COMMENTING
6 ON THE FACTS EXCEPT GIVEN FACTS BUT I HAVE TO TELL YOU IS
7 CHARGED WITH THE COMMISSION OF THE CRIME, THINGS LIKE
8 THAT. WE HAVE THREE INDICTMENTS. INDICTMENTS, OF COURSE,
9 ARE NOT EVIDENCE, NOT NECESSARILY IN ANY ORDER. THE FIRST
10 INDICTMENT ALLEGES THAT LAKENDRICK KENTRELL LEVERETTE
11 COMMITTED THE CRIME OF ARMED ROBBERY. IT SAYS HE ALONG
12 WITH ANOTHER PERSON AIDING AND ABETTING AND ASSISTING ONE
13 ANOTHER IN GREENWOOD COUNTY ON A CERTAIN DATE WHILE ARMED
14 WITH A DEADLY WEAPON OR BY ACTIONS OF WORDS INDICATING
15 THAT HE WAS ARMED WITH A DEADLY WEAPON TOOK FROM THE
16 PERSON OR PRESENCE OF BOBBY CATON BY MEANS OF FORCE OR
17 INTIMIDATION GOODS OR MONIES AND SO FORTH. THAT IS JUST
18 ALLEGATIONS THAT CONSTITUTES THE CRIME OF ARMED ROBBERY,
19 IF THE STATE CONVINCES ALL TWELVE OF YOU JURORS BEYOND A
20 REASONABLE DOUBT THAT THE CRIME WAS COMMITTED AS I WILL
21 EXPLAIN TO YOU. THE FACT THAT AN INDICTMENT HAS BEEN
22 ISSUED CREATES NO INFERENCE OF GUILT AGAINST MR.
23 LEVERETTE, HE IS PRESUMED INNOCENT OF ALL CHARGES, HE WAS
24 PRESUMED INNOCENT COMING IN, THE PRESUMPTION IS STILL
25 THERE AND IT IS ALL REMOVED IF THE STATE CONVINCES YOU

1 TWELVE JURORS UNANIMOUSLY BEYOND A REASONABLE DOUBT THAT
2 HE COMMITTED A CRIME EMBRACED WITHIN THE INDICTMENT. THE
3 SECOND INDICTMENT ALLEGES THE CRIME OF KIDNAPPING
4 INVOLVING THE SAME VICTIM, SAME TIME IN GREENWOOD COUNTY.
5 THE THIRD INDICTMENT CHARGES HIM WITH BEING EITHER ARMED
6 WITH A FIREARM OR VISIBLY DISPLAYING A FIREARM WHILE,
7 DURING THE COMMISSION OF A VIOLENT CRIME, KIDNAPPING AND
8 ARMED ROBBERY, BOTH BEING CRIMES OF VIOLENT, CALLED
9 VIOLENT CRIMES. SO, THOSE ARE THE THREE INDICTMENTS. AS
10 I MENTIONED BEFORE MR. LEVERETTE COULD BE FOUND GUILTY OF
11 ANYTHING, I AM NOT SUGGESTING THAT HE BE FOUND GUILTY.
12 THE STATE MUST CONVINCЕ EACH OF YOU TWELVE JURORS BEYOND A
13 REASONABLE DOUBT THAT HE COMMITTED ONE OR MORE OF THESE
14 CRIMES.

15 ALTERNATE JUROR, YOU STILL STAY WITH US, PAY
16 ATTENTION AND WHEN I CONCLUDE THESE REMARKS I AM GOING TO
17 ASK THE JURORS TO STEP OUT, IF THE ORIGINAL TWELVE ARE
18 STILL WITH US IF YOU WILL STAY IN THE COURTROOM AT THAT
19 PERIOD OF TIME. AND MADAM FORELADY, YOUR VOTE COUNTS NO
20 MORE THAN ANY OTHER JUROR BUT SOME PERSON HAS TO SERVE, OF
21 COURSE, AS SPOKESPERSON FOR THE JURY AND BEING THE
22 FORELADY, THAT IS YOU. SO, IF QUESTIONS OCCUR DURING
23 DELIBERATION IF YOU WOULD WRITE THEM DOWN WITH SOME
24 SPECIFICITY I WILL TRY TO CONFER WITH COUNSEL AND SEE IF I
25 CAN ANSWER THE QUESTION. BUT JUST HAVING BEEN AROUND I

1 CANNOT HELP YOU WITH ANY FACTUAL DISPUTES, I CAN'T TELL
2 YOU WHAT WEIGHT TO GIVE TO ANY ADMITTED EVIDENCE AND I
3 CAN'T TELL YOU WHETHER THE STATE HAS MET ITS BURDEN OF
4 PROOF OR NOT BEYOND A REASONABLE DOUBT. I MEAN, THAT IS
5 WHY YA'LL ARE THERE. SO, DON'T SEND OUT A QUESTION LIKE
6 THAT. IN ADDITION, I CANNOT ADD ANYTHING TO THE ADMITTED
7 EVIDENCE, ANYTHING THAT HAS BEEN INTRODUCED INTO EVIDENCE
8 YOU WILL HAVE WITH YOU WHILE YOU DELIBERATE AND YOU CAN
9 EVALUATE IT. I WOULDN'T PULL THAT KNIFE OUT AND BE
10 SWINGING IT AROUND BUT IT WILL BE BACK IN THE JURY ROOM.
11 IF YOU THINK THAT YOU WANT TO SEE MORE PICTURES OF THE
12 VICTIM, WE WOULD LIKE TO SEE MORE PICTURES, YOU HAVE TO
13 DECIDE THE CASE BASED UPON WHAT HAS BEEN ADMITTED AND THE
14 LAW. OR IF WHEN SOMEONE TESTIFIES YOU THINK THAT YOU
15 WOULD OF LIKED TO HAVE ANOTHER QUESTION ASKED OF THAT
16 PERSON, FORGET IT. THE ATTORNEYS ASK THE QUESTIONS, YOU
17 DON'T GET TO PARTICIPATE IN THAT PROCESS. SO, WE CAN'T
18 ADD ANYTHING TO THE CASE, WE CAN'T TAKE ANYTHING FROM IT.
19 YOU HAVE TO DECIDE THE CASE.

20 NOW, I MENTIONED A COUPLE OF TIMES THAT THE STATE HAS
21 THE BURDEN OF PROOF BEYOND A REASONABLE DOUBT. DON'T ASK
22 ME TO DEFINE THIS ANY FURTHER BUT IT IS JUST THE KIND OF
23 DOUBT THAT WOULD CAUSE AN ORDINARY PERSON TO HESITATE TO
24 ACT WHEN THEY WERE DOING ANYTHING. OKAY, THAT IS WHAT IT
25 IS IN A NUTSHELL. THE STATE DOES NOT HAVE TO PROVE BEYOND

1 ANY POSSIBLE DOUBT, IT JUST HAS TO PROVE GUILT BEYOND A
2 REASONABLE DOUBT AND MUST PROVE EVERY ELEMENT THAT
3 CONSTITUTES A CRIME BEYOND A REASONABLE DOUBT AND HAS TO
4 CONVINCE ALL TWELVE JURORS OF THEIR POSITION. NOW, YOU
5 JURORS AND YOU ALONE PASS UPON THE CREDIBILITY OF THE
6 WITNESSES WHO HAVE TESTIFIED. I AM NOT DIRECTING THESE
7 COMMENTS TO ANY PARTICULAR WITNESS, THEY GO TO ALL THE
8 WITNESSES THAT TESTIFIED. AMONG THE FACTORS THAT YOU
9 WOULD TAKE INTO ACCOUNT WOULD CERTAINLY BE THE DEMEANOR,
10 ANOTHER WAY OF SAYING THE APPEARANCE OF A WITNESS. YOU
11 WOULD CONSIDER WHETHER A WITNESS'S TESTIMONY IS CONSISTENT
12 OR INCONSISTENT, YOU WOULD CONSIDER WHETHER A WITNESS'S
13 TESTIMONY BECOMES WEAKER OR IS MADE STRONGER BY OTHER
14 TESTIMONY, OTHER EVIDENCES IN THE CASE. JURORS, YOU ARE
15 NOT BOUND TO ACCEPT IN ITS ENTIRETY ANY PARTICULAR
16 WITNESS'S TESTIMONY. YOU HAVE THE ABSOLUTE RIGHT TO PICK
17 AND CHOOSE PORTIONS OF TESTIMONY THAT YOU FEEL ARE
18 BELIEVABLE. AND AFTER YOU HAVE DONE THAT, THE RELATIVE
19 WEIGHT THAT YOU ATTRIBUTE TO THE BELIEVABLE TESTIMONY IS
20 ENTIRELY UP TO YOU JURORS. YOU JUST USE YOUR COMMON SENSE
21 WHEN EVALUATING TESTIMONY, JURORS. IT IS KIND OF LIKE
22 WOULD I BUY THIS USED CAR BASED ON WHAT THIS PERSON TOLD
23 ME. THAT IS KIND OF A LITTLE TEST THAT YOU MIGHT USE.
24 NOW, DURING THE TRIAL ONE PERSON WAS OFFERED AS AN
25 EXPERT WITNESS. SIMPLY BY CONVINCING OR SHOWING TO THE

1 COURT WHICH IS ME, THROUGH EDUCATION, WORK EXPERIENCE OR A
2 COMBINATION OF THOSE FACTORS AN INDIVIDUAL HAS ACQUIRED
3 MORE KNOWLEDGE IN A PARTICULAR AREA THAN YOU AND I HAVE,
4 THEY GIVE OPINIONS WITHIN THAT FIELD OF EXPERTISE. A LAY
5 PERSON IS SOMEONE WHO IS NOT AN EXPERT AND IS LIMITED IN
6 TRIALS OR OPINIONS THEY CAN GIVE. THEY CAN GIVE OPINIONS
7 WHERE EVERYBODY HAS THE SAME CHANCE. YOU DON'T NEED
8 SPECIAL TRAINING LIKE THAT CAR WAS GOING TOO FAST, THINGS
9 LIKE THAT. BUT IF YOU GET IN SPECIFIC AREAS YOU NEED TO
10 HAVE MORE EDUCATIONAL BACKGROUND OR MORE WORK EXPERIENCE
11 BEFORE YOU ARE ALLOWED TO GIVE OPINIONS, BEFORE YOU CAN
12 ACCEPT AN OPINION GIVEN BY AN EXPERT THE OPINION HAS TO BE
13 GIVEN TO A REASONABLY DEGREE OF CERTAINTY WITHIN THAT
14 FIELD OF EXPERTISE. YOU ARE NOT BOUND TO ACCEPT THAT
15 OPINION BUT THAT IS WHAT YOU KEY INTO. NOW, WHEN YOU
16 EVALUATE AN EXPERT'S TESTIMONY IT IS JUST LIKE ANY OTHER
17 PERSON EXCEPT YOU CONSIDER THEIR EDUCATION AND SO FORTH,
18 YOU CONSIDER WHETHER THAT TESTIMONY IS CONSISTENT OR
19 INCONSISTENT.

20 WHEN AN INDIVIDUAL TESTIFIES, JURORS, IN ADDITION TO
21 WHAT I HAVE TOLD YOU CERTAINLY THE OPPORTUNITY THAT A
22 WITNESS HAD TO SEE, HEAR OR OBSERVE TO WHAT A WITNESS
23 TESTIFIED TO CAN BE CONSIDERED BY YOU. OBVIOUSLY ANY
24 INTEREST OR BIASED THAT A WITNESS HAS IN THE OUTCOME OF
25 PROCEEDINGS CAN BE CONSIDERED BY YOU. ONCE AN INDIVIDUAL

1 TAKES THE STAND, JURORS, IT IS PERMISSIBLE TO BRING OUT
2 THAT AN INDIVIDUAL HAS A PRIOR CRIMINAL RECORD. ONCE THAT
3 IS BROUGHT OUT THAT IS JUST ANOTHER FACTOR FOR YOU JURORS
4 TO CONSIDER IF YOU FIND THAT THE PRIOR CRIMINAL RECORD
5 MIGHT IMPACT UPON THE CREDIBILITY OF THAT WITNESS. WE
6 ONLY HAVE ONE WHERE A CRIMINAL RECORD WAS BROUGHT OUT, I
7 AM NOT SUGGESTING YOU ACCEPT OR DISREGARD THE PERSON'S
8 TESTIMONY, YOU USE YOUR OTHER KEYS ON THAT TESTIMONY SUCH
9 AS THE Demeanor AND CONSISTENCY AND SO FORTH. BUT YOU CAN
10 CONSIDER PRIOR CRIMINAL RECORD OF A PERSON IF YOU FIND
11 THAT IT MIGHT IMPACT ON THAT PARTICULAR WITNESS'S
12 CREDIBILITY. JURORS, DURING THIS TRIAL I EXPLAINED TO YOU
13 AT THE START THAT THE DEFENDANT HAS NO BURDEN TO PROVE
14 THAT HE IS NOT GUILTY. SINCE WE ARE TALKING ABOUT
15 WITNESSES, THE FACT THAT THE DEFENDANT DID NOT TESTIFY
16 SHOULD NOT BE DISCUSSED BY YOU AT ALL WHILE YOU
17 DELIBERATE, IT CREATES NO INFERENCE OF GUILT AGAINST HIM
18 THAT HE DID NOT TAKE THE STAND. HE DOES NOT HAVE TO PUT
19 UP ANY TESTIMONY, THE STATE HAS THE ENTIRE BURDEN OF PROOF
20 OF ANY CRIME OF WHICH THE DEFENDANT WAS CHARGED WITH
21 BEYOND A REASONABLE DOUBT. HE HAS NO BURDEN TO PROVE HE
22 IS NOT GUILTY OF ANYTHING. THE FACT THAT HE DID NOT
23 TESTIFY IS JUST NOT A FACT IN THE CASE, IS NOT SOMETHING
24 THAT YOU WOULD DISCUSS WHILE YOU ARE DECIDING WHETHER THE
25 STATE HAS MET ITS BURDEN OF PROOF OR NOT.

1 JURORS, THE INDICTMENTS ALLEGE THREE CRIMES. AND THE
2 INDICTMENTS ALLEGE THAT THE DEFENDANT WAS ACTING WITH
3 SOMEONE, WITHOUT NAMING THAT PERSON, WHERE TWO OR MORE
4 PEOPLE, JURORS, ENGAGE IN A CRIMINAL ENTERPRISE AND THEY
5 BOTH ARE AIDING AND ASSISTING AND ABETTING OR HELP EACH
6 OTHER, IF ONE IS GUILTY THE OTHER IS GUILTY. THAT IS JUST
7 WHAT, IN SIMPLEST FORM IS REFERRED IS THE HAND OF ONE IS
8 THE HAND OF ALL. IF TWO PEOPLE GO INTO TO ROB A BANK AND
9 WALK OUT WITH MONEY AND ONLY HAD A WEAPON THEY ARE BOTH
10 GUILTY OF ROBBING THE BANK. I THINK YA'LL CAN UNDERSTAND
11 THAT WITHOUT GOING FURTHER. AN UNNAMED INDIVIDUAL IS NOT
12 A PARTY TO THIS ACTION, IT IS WHETHER THE STATE CONVINCES
13 YOU BEYOND A REASONABLE DOUBT THAT MR. LEVERETTE
14 PARTICIPATED AND ENGAGED IN ARMED ROBBERY, THE KIDNAPPING
15 OR POSSESSION OF A WEAPON WHILE COMMITTING A VIOLENT
16 CRIME. I WILL TELL YOU THAT ARMED ROBBERY AND KIDNAPPING
17 ARE CLASSIFIED AS VIOLENT CRIMES. THE LEGISLATURE JUST
18 NAMES MANY THINGS AS VIOLENT CRIMES. SO, WITHOUT GOING
19 OVER THE WHOLE LITANY WHAT IS CLASSIFIED AS VIOLENT
20 CRIMES, SOME THINGS LIKE DRUG TRAFFICKING IS CLASSIFIED AS
21 A CRIME OF VIOLENCE. THE DEFENDANT IS CHARGED WITH ARMED
22 ROBBERY AND KIDNAPPING, BOTH ARE VIOLENT CRIMES. NOW,
23 ARMED ROBBERY IS A STATUTORY OFFENSE, JURORS. I AM GOING
24 TO JUST BASICALLY READ THE STATUTE TO YOU. ARMED ROBBERY
25 IS COMMITTED WHEN A PERSON WHILE ARMED WITH A PISTOL,

1 DURKE, SLINGSHOT, METAL KNUCKLES, RAZOR OR OTHER DEADLY
2 WEAPON OR WHILE ALLEGING EITHER BY ACTION OR WORDS THAT HE
3 WAS ARMED WITH WHILE USING A REPRESENTATION OF A DEADLY
4 WEAPON OR ANY OBJECT WHICH A PERSON PRESENT DURING THE
5 COMMISSION OF THE ROBBERY REASONABLY BELIEVED TO BE A
6 DEADLY WEAPON WOULD BE GUILTY OF ARMED ROBBERY. SO, THE
7 DEFENDANT IS CHARGED WITH ARMED ROBBERY, TAKING INTO
8 ACCOUNT THE HAND OF ONE IS THE HAND OF ALL PROPOSITION
9 THAT I CHARGED YOU. IN ORDER TO PROVE THAT A DEFENDANT IS
10 GUILTY OF ARMED ROBBERY THE STATE MUST FIRST PROVE BEYOND
11 A REASONABLE DOUBT THAT THE DEFENDANT TOOK PERSONAL
12 PROPERTY FROM THE PERSON OR PRESENCE OF ANOTHER PERSON.
13 THE PROPERTY IS IN THE PRESENCE OF ANOTHER PERSON IF IT IS
14 WITHIN THE PERSON'S REACH, INSPECTION, OBSERVATION OR
15 CONTROL SO THAT THE PERSON COULD, IF NOT OVERCOME WITH
16 VIOLENCE OR PREVENTED BY FEAR, KEEP POSSESSION OF THE
17 PROPERTY. THE STATE MUST ALSO PROVE BEYOND A REASONABLE
18 DOUBT THAT THE DEFENDANT CARRIED THE PROPERTY AWAY
19 INTENDING TO PERMANENTLY DEPRIVE THE OWNER OF THE PROPERTY
20 AND TO KEEP THE PROPERTY FOR THE DEFENDANT'S OWN USE.
21 JURORS, THE SLIGHTEST REMOVAL OF THE PROPERTY OR THE
22 COMPLETE POSSESSION OF THE PROPERTY EVEN FOR AN INSTANCE
23 BY A DEFENDANT IS SUFFICIENT TO SHOW A TAKING AND CARRYING
24 AWAY OF THE PROPERTY. THE TAKING AND CARRYING OF
25 PROPERTY, JURORS, MUST HAVE BEEN DONE WITH VIOLENCE OR BY

1 PUTTING THE OWNER OF THE PROPERTY IN FEAR OF VIOLENCE.
2 FINALLY, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
3 THAT THE DEFENDANT WAS ARMED WITH A DEADLY WEAPON DURING
4 THE ROBBERY OR THAT THE DEFENDANT BY WORDS, ACTION OR
5 COMBINATION OF THOSE FACTORS INDICATED THAT HE WAS ARMED
6 WITH A DEADLY WEAPON DURING THE ROBBERY AND A REASONABLE
7 PERSON WOULD OF FELT THAT THE PERPETRATOR OF THE CRIME WAS
8 IN FACT ARMED WITH A DEADLY WEAPON. A DEADLY WEAPON IS
9 ANY ARTICLE, INSTRUMENT OR SUBSTANCE WHICH IS LIKELY TO
10 CAUSE DEATH OR BODILY HARM. JURORS, WHETHER AN INSTRUMENT
11 HAS BEEN USED OR IS CAPABLE TO BE DETERMINED TO BE A
12 DEADLY WEAPON DEPENDS UPON THE FACTS AND CIRCUMSTANCES ON
13 EACH ARMED ROBBERY CASE. THE FOLLOWING ARE EXAMPLES OF
14 INSTRUMENTS WHICH MAY BE DEADLY WEAPONS. PISTOL, SHOTGUN,
15 RIFLE, DAGGER, KNIFE, SLINGSHOT, METAL KNUCKLES, RAZOR OR
16 ANY OBJECT THAT COULD BE USED TO INFLICT SERIOUS BODILY
17 HARM INCLUDING AN ORDINARY OBJECT THAT IS NOT NORMALLY
18 THOUGHT OF AS BEING A DEADLY WEAPON SUCH AS A HAMMER, FOR
19 INSTANCE, OR A BIG WRENCH, A WRENCH IS USED TO TIGHTEN
20 BOLTS BUT CAN BE CLASSIFIED AS A DEADLY WEAPON. NOW,
21 JURORS, A PISTOL OR A GUN IS A DEADLY WEAPON WHETHER
22 LOADED OR NOT. NOW, IF A PERSON DISPLAYS A TOY GUN,
23 WHETHER A TOY GUN HAS AN APPEARANCE OR IS BELIEVED TO BE A
24 REAL GUN AS A DEADLY WEAPON IS A FACTUAL QUESTION FOR
25 JURORS TO DETERMINE. WHERE AN ARMED ROBBERY IS COMMITTED

1 WITH A BB GUN, FOR INSTANCE JURORS, WHETHER A BB GUN IS A
2 DEADLY WEAPON IS A FACTUAL QUESTION FOR YOU TO DETERMINE.
3 WHETHER THE INSTRUMENT ALLEGED TO BE IN THE POSSESSION OF
4 THE DEFENDANT WHILE COMMITTING ROBBERY IS A PELLET GUN,
5 WHETHER A PELLET GUN FALLS IN THE DEFINITION OF A DEADLY
6 WEAPON IS UP TO YOU JURORS TO DECIDE.

7 NOW, JURORS, THE SITUATION ON THE ARMED ROBBERY
8 CHARGE IS AS FOLLOWS. ON THE VERDICT FORM, THEY WILL BE
9 SENT BACK, I DON'T HAVE IT IN FRONT OF ME BUT THE VERDICT
10 WILL BE NOT GUILTY OR GUILTY, GUILTY OR NOT GUILTY.
11 TWELVE JURORS HAVE TO DECIDE, ONLY THE FORELADY SIGNS THE
12 VERDICT FORM. BUT YOU WILL HAVE ANOTHER CHARGE ON THE
13 ISSUE OF ARMED ROBBERY. THE CHARGE WILL BE NOT GUILTY,
14 GUILTY OF ARMED ROBBERY OR GUILTY OF STRONG ARMED ROBBERY.
15 STRONG ARMED ROBBERY IS THE LESSOR INCLUDED OFFENSE OF
16 ARMED ROBBERY AND STRONG ARMED ROBBERY CONTAINS ALL THE
17 ELEMENTS OF ARMED ROBBERY EXCEPT THE PERSON COMMITTING THE
18 ROBBERY IS NOT ARMED WITH A DEADLY WEAPON. SO, IF YOU
19 FIND THAT ROBBERY OCCURRED, THAT THE VICTIM WAS PLACED IN
20 FEAR OF BODILY, FOR FORCE OR INTIMIDATION BUT THE DEADLY
21 WEAPON WAS NOT USED AND PERSONAL PROPERTY WAS TAKEN FROM
22 HIS PRESENCE WITH FORCE OR INTIMIDATION WITHOUT THE USE OF
23 A DEADLY WEAPON HE WOULD BE GUILTY OF STRONG ARMED
24 ROBBERY, NOT ARMED ROBBERY. THE WHOLE THING IS IF YOU
25 FIND THAT HE COMMITTED A CRIME AT ALL, I AM NOT SUGGESTING

1 THAT HE DOES BUT IT COMES DOWN TO WHERE THE PELLET GUN WAS
2 A DEADLY WEAPON OR NOT AND YOU FIND IT WAS NOT A DEADLY
3 WEAPON AND YOU FIND THAT HE COMMITTED THE ROBBERY YOU
4 WOULD FIND HIM GUILTY OF STRONG ARMED ROBBERY, NOT ARMED
5 ROBBERY DEPENDING UPON YOUR INTERPRETATION OF THE PELLET
6 GUN IN QUESTION. ALL RIGHT.

7 NOW, JURORS, THE SECOND INDICTMENT ALLEGES THAT THE
8 DEFENDANT ACTING WITH SOME OTHER PERSON COMMITTED THE
9 CRIME OF KIDNAPPING. WITHOUT GOING OVER IT IN GREAT
10 DETAIL, JURORS, KIDNAPPING IS THE INTENTIONAL TAKING OF A
11 PERSON AND COMPELLING THAT PERSON TO BE DETAINED AGAINST
12 HIS OR HER WILL. IT IS A WILLFUL AND UNLAWFUL SEIZING OF
13 A PERSON AGAINST HIS WILL WITH AN INTENT TO CAUSE A PERSON
14 SO SEIZED TO BE CONFINED, IMPRISONED OR DETAINED. THE
15 ESSENCE OF THE OFFENSE OF KIDNAPPING IS AN UNLAWFUL SECRET
16 HOLDING OR IMPRISONMENT OF A PERSON. KIDNAPPING MEANS A
17 CARRYING AWAY OF A PERSON BY UNLAWFUL FORCE OR FEAR OR
18 AGAINST HIS WILL OR SEIZING AND DETAINING HIM OR HER FOR
19 THE PURPOSE OF SO CARRYING A PERSON AWAY. TAKING, LEADING
20 OR CARRYING AWAY OR TRANSPORTATION OF A VICTIM IS AN
21 ESSENTIAL ELEMENT OF THE OFFENSE OF KIDNAPPING. THE
22 OFFENSE OF KIDNAPPING COMMENCES WHEN ONE IS WRONGFULLY AND
23 UNLAWFULLY DEPRIVED OF HIS FREEDOM OF MOVEMENT AND
24 CONTINUES UNTIL SUCH FREEDOM IS RESTORED.

25 THE FINAL INDICTMENT, JURORS, CHARGES A SEPARATE

1 OFFENSE FOUND IN SECTION 16-23-490 OF THE CODE OF LAWS.
2 IT IS AN ADD ON PENALTY THAT THE LEGISLATURE HAS ENACTED.
3 WHEN A PERSON COMMITS A CRIME OF VIOLENCE, IF THEY ARE
4 ARMED WITH A FIREARM OR VISIBLY DISPLAYS A KNIFE DURING
5 THE COMMISSION OF A VIOLENT CRIME AN ADDITIONAL PENALTY IS
6 ADDED ON. SO FIRST YOU WOULD HAVE TO FIND BEFORE YOU
7 COULD FIND THE DEFENDANT GUILTY OF THIS CRIME YOU WOULD
8 HAVE TO FIND THAT HE COMMITTED A VIOLENT CRIME WHILE ARMED
9 WITH A DEADLY WEAPON. VIOLENT CRIMES BEING ARMED ROBBERY
10 AND KIDNAPPING. IF YOU FOUND THAT THE DEFENDANT AND I AM
11 NOT SUGGESTING THAT YOU FIND HIM GUILTY OF ANYTHING BUT IF
12 YOU FOUND HIM GUILTY OF STRONG ARMED ROBBERY YOU COULD NOT
13 FIND HIM ON THIS CHARGE, GUILTY OF POSSESSION OF A WEAPON
14 WHILE COMMITTING A VIOLENT CRIME. IF YOU FIND HIM GUILTY
15 OF ARMED ROBBERY YOU COULD. KIDNAPPING STANDING BY ITSELF
16 YOU COULD FIND THAT HE COMMITTED, AIDED IN THE CRIME OF
17 KIDNAPPING, KIDNAPPING IS A VIOLENT CRIME. AND YOU COULD
18 FIND THAT HE HAS POSSESSED A WEAPON. BUT IF YOU FOUND
19 THAT HE WAS NOT GUILTY OF ARMED ROBBERY THEN YOU HAVE MADE
20 A DETERMINATION THAT THE PELLET GUN IN QUESTION WAS NOT A
21 DEADLY WEAPON AND A REASONABLE PERSON WOULD NOT HAVE FELT
22 IT WAS A DEADLY WEAPON AND SO FORTH SO YOU COULDN'T FIND
23 THAT HE IS GUILTY OF THE COMMISSION OF THIS CRIME, IF YOU
24 FOUND THAT THE PELLET GUN IS NOT A DEADLY WEAPON, NOT A
25 PISTOL AND SO FORTH. I DON'T THINK I NEED TO GO BACK OVER

1 THAT AGAIN, YOU HAVE GOT TO FIND HIM GUILTY OF REALLY
2 ARMED ROBBERY BEFORE YOU CAN FIND HIM GUILTY OF POSSESSION
3 OF A WEAPON WHILE COMMITTING A VIOLENT CRIME. IF YOU
4 DON'T FIND HIM GUILTY OF ARMED ROBBERY YOU HAVE FOUND THAT
5 THE WEAPON WAS NOT A DEADLY WEAPON, THAT A REASONABLE
6 PERSON WOULD NOT HAVE FELT IT WAS A WEAPON AND SO FORTH.
7 GOING A LITTLE FURTHER, FIREARM MEANS ANY MACHINE GUN,
8 AUTOMATIC RIFLE, REVOLVER, PISTOL OR ANY WEAPON WHICH WILL
9 OR IS DESIGNED TO OR MAY READILY BE CONVERTED TO EXPEL A
10 PROJECTILE. KNIFE MEANS AN INSTRUMENT OR TOOL CONSISTING
11 OF A SHARP CUTTING BLADE WHETHER OR NOT FASTENED TO A
12 HANDLE WHICH IS CAPABLE OF BEING USED TO INFLECT A CUT OR
13 A WOUND.

14 THE COURT: DO WE HAVE VERDICT FORMS?

15 CLERK OF COURT: I WILL PRINT THEM OUT.

16 THE COURT: WHILE THEY ARE PRINTING THEM OUT, JURORS,
17 THE DEFENDANT IS ENTITLED TO AN INDEPENDENT EVALUATION OF
18 EACH OF THE THREE INDICTMENTS. THE STATE HAS THE BURDEN
19 OF PROOF ON EACH ELEMENT THAT CONSTITUTES A CRIME EMBRACED
20 WITHIN THE INDICTMENTS. WHEN I SAY, EMBRACED WITHIN THE
21 INDICTMENTS BECAUSE THE CHARGE ARMED ROBBERY INCLUDES THE
22 CHARGE OF STRONG ARMED ROBBERY ALTHOUGH IT IS NOT SPELLED
23 OUT BECAUSE IT IS WHAT IS CALLED A LESSOR INCLUDED CRIME.
24 KIDNAPPING IS KIDNAPPING OR NOT, IT HAS NO LESSOR DEGREES
25 TO IT AND POSSESSION OF A FIREARM WHILE COMMITTING A

1 VIOLENT CRIME STANDS BY ITSELF. YOU MUST FIND THAT A
2 CRIME OF VIOLENCE WAS USED AND IN THIS CASE YOU MUST FIND
3 ARMED ROBBERY BEFORE YOU COULD FIND HIM GUILTY OF THAT
4 CHARGE. I THINK THE VERDICT FORMS ARE GOING TO SAY, OR
5 KIDNAPPING FOR INSTANCE, NOT GUILTY OR GUILTY. I DON'T
6 KNOW WHICH ORDER IT WILL BE TYPED IN, IT CAN ONLY BE ONE
7 OR THE OTHER AND IT WILL HAVE NO BEARING AS TO WHICH ONE
8 WAS TYPED OR THE WAY I SAID IT. AND POSSESSION WILL BE
9 THE SAME OR A WEAPON WHILE COMMITTING A CRIME OF VIOLENCE
10 WILL BE THE SAME, NOT GUILTY OR GUILTY. AND THE ARMED
11 ROBBERY CHARGE WILL BE NOT GUILTY, GUILTY OF ARMED
12 ROBBERY, GUILTY OF STRONG ARMED ROBBERY. YA'LL CAN STEP
13 BACK AT THIS POINT, EXCEPT FOR THE ALTERNATE JUROR. DON'T
14 START DELIBERATING, AS SOON AS WE GET THE VERDICT FORMS
15 TYPED WE WILL SEND THEM BACK AND YOU WILL HAVE WITH YOU
16 EVERYTHING THAT HAS BEEN INTRODUCED INTO EVIDENCE. THE
17 ATTORNEYS WILL GO OVER ALL THE ADMITTED EVIDENCE BEFORE WE
18 SEND IT BACK TO YOU TO MAKE SURE EVERYTHING THAT WAS
19 INTRODUCED WILL COME BACK TO YOU. AND YOU WILL NOT HAVE
20 THE INDICTMENTS WITH YOU, THEY ARE JUST ALLEGATIONS
21 ANYWAY. IF YOU WILL STEP BACK.

22 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

23 THE COURT: ALTERNATE JUROR, YOU NEED TO STAY IN.
24 STATE, DO YOU NEED ANYTHING ELSE?

25 MR. ANDREWS: NOT FROM THE STATE, YOUR HONOR.

1 MR. BETTIS: NOTHING FROM THE DEFENSE.

2 THE COURT: LET'S LET THE THIRTEENTH JUROR GO FOR THE
3 WEEK. YOU COULD HAVE BEEN SITTING HOME AND WORKING
4 CROSS-WORD PUZZLES AND SO FORTH. YOU ARE FREE TO GO. AND
5 HERE IS THE DEAL, THEY WILL MAIL YOUR CHECK TO YOU BEFORE
6 CHRISTMAS. BUT IF YOU NEED A STATEMENT SAYING YOU HAVE
7 BEEN HERE YOU CAN PROBABLY GET IT FROM THE CLERK'S OFFICE
8 TODAY. THANK YOU FOR YOUR HELP.

9 (WHEREUPON, THE JURY STARTED DELIBERATING AT
10 APPROXIMATELY 3:18 P.M.)

11 (WHEREUPON, THE JURY HAS A QUESTION FOR THE COURT.)

12 THE COURT: ALL RIGHT, BRING THEM IN.

13 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
14 APPROXIMATELY 3:40 P.M.)

15 THE COURT: ALL RIGHT, JURORS, ALL I CAN DO IS TELL
16 YOU THE SAME THING. I CAN'T TELL YOU WHETHER HE IS GUILTY
17 OF ARMED ROBBERY OR NOT. I MEAN, YA'LL HEARD IT AND YA'LL
18 UNDERSTAND IT. I DON'T KNOW HOW YOU ARE CONFUSED ON IT,
19 WHETHER HE COMMITTED IT OR NOT, THAT IS WHAT YA'LL HAVE TO
20 DECIDE. IT MAY BE CONFUSING TO YOU, THE STATUTE, ARMED
21 ROBBERY IS JUST ROBBERY, ROBBERY WHILE ARMED OR APPARENTLY
22 ARMED WITH A DEADLY WEAPON. HOWEVER YOU WANT TO PHRASE IT
23 OR NOT, ROBBERY IS STEALING PROPERTY FROM THE PERSON OR
24 PRESENCE OF ANOTHER PERSON THROUGH FORCE OR INTIMIDATION.
25 THAT IS COMMON LAW STRONG ARMED ROBBERY. ARMED ROBBERY IS

1 DOING THE SAME THING EXCEPT THE PERSON IS ARMED OR APPEARS
2 TO BE ARMED, A REASONABLE PERSON WOULD OF THOUGHT THEY
3 WERE ARMED WITH A DEADLY WEAPON. OKAY. THAT IS THE
4 BOTTOM LINE.

5 A PERSON COMMITS ARMED ROBBERY IF THEY COMMIT ROBBERY
6 WHICH IS TAKING PROPERTY, STEALING PROPERTY FROM
7 SOMEBODY'S PRESENCE OR WHETHER THEY COULD OF BEEN
8 PREVENTED IT, IF THEY HAD NOT BEEN INTIMIDATED BY FORCE.
9 ROBBERY IS ACCOMPLISHED WHILE ARMED WITH A PISTOL,
10 SLINGSHOT, METAL KNUCKLES, RAZOR OR OTHER DEADLY WEAPON OR
11 WHILE ALLEGING AND THAT IS THE ROBBER, ROBBER ALLEGING
12 EITHER BY ACTIONS OR WORDS THAT HE WAS ARMED WITH WHILE
13 USING A REPRESENTATION OF A DEADLY WEAPON WHICH WOULD BE
14 LIKE A TOY GUN OR SOMETHING, OR ANY OBJECT WHICH A PERSON
15 PRESENT DURING THE COMMISSION OF THE ROBBERY REASONABLY
16 BELIEVED TO BE A DEADLY WEAPON. THAT IS ALL THAT THE
17 STATUTE SAYS. BUT AND THE OTHER WORDS MIGHT GET YOU, I
18 JUST HAVE TO DEFINE THINGS FOR YOU WHEN I INSTRUCT ON A
19 STATUTE. SO, IN ORDER TO PROVE ARMED ROBBERY THE STATE
20 MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
21 TOOK PERSONAL PROPERTY FROM A PERSON OR PRESENCE OF
22 ANOTHER PERSON. THAT IS PRETTY SIMPLE. PROPERTY IS IN
23 THE PRESENCE OF A PERSON IF IT IS ON HIS PERSON,
24 PHYSICALLY OR WITHIN THE PERSON'S REACH. THAT IS LIKE, IF
25 IT IS NOT THIS CASE IT IS LIKE SOMEONE GOES INTO A STORE

1 AND SAYS TO THE CASHIER, EMPTY THE DRAWER WHILE HOLDING A
2 SHOTGUN. THEY DON'T HAVE THE PROPERTY ON THEIR PERSON BUT
3 IT IS WITHIN THEIR REACH, THAT WOULD BE ARMED ROBBERY.
4 TAKING PROPERTY THAT THEY WOULD CONTROL FROM THEM THROUGH
5 FORCE AND INTIMIDATION WHILE ARMED WITH A DEADLY WEAPON,
6 SHOTGUN CLEARLY BEING A DEADLY WEAPON. THE STATE MUST
7 FURTHER PROVE THAT THE PROPERTY WAS STOLEN, THAT IS IT IS
8 CARRIED AWAY BY THE DEFENDANT WITH THE PRESENCE OF
9 CONVERTING IT TO THE DEFENDANT'S USE PERMANENTLY. THE
10 TAKING AND CARRYING AWAY OF PROPERTY MUST HAVE BEEN DONE
11 WITH VIOLENCE OR PUTTING THE OWNER OF THE PROPERTY IN FEAR
12 OF VIOLENCE. FINALLY, THE STATE MUST PROVE BEYOND A
13 REASONABLE DOUBT THAT WHILE THE ROBBERY OCCURRED THE
14 DEFENDANT WAS ARMED WITH A DEADLY WEAPON OR HAD THE
15 APPEARANCE OF IT AS I JUST READ THE STATUTE TO YOU
16 EARLIER, FROM THE STATUTE. A DEADLY WEAPON IS ANY
17 ARTICLE, INSTRUMENT OR SUBSTANCE WHICH IS LIKELY TO CAUSE
18 DEATH OR GREAT BODILY HARM. NOW, WHETHER AN INSTRUMENT
19 CONSTITUTES A DEADLY WEAPON DEPENDS UPON THE SPECIFIC
20 FACTS IN EACH SPECIFIC CASE. REMEMBER, I AM GIVING THE
21 LAW IN THE ABSTRACT. IN THIS CASE, THOUGH, I EXPLAINED TO
22 YOU THAT A TOY GUN MAY OR MAY NOT BE A DEADLY WEAPON, IT
23 DEPENDS UPON WHETHER A REASONABLE PERSON WOULD OF
24 INTERPRETED IT AS A DEADLY WEAPON IF IT WAS EXHIBITED TO
25 THE PERSON. A BB GUN COULD BE A DEADLY WEAPON OR NOT,

1 DEPENDING UPON THE FACTS AND CIRCUMSTANCES. IN THIS CASE
2 WE ARE TALKING A PELLET GUN, IT IS EITHER A DEADLY WEAPON
3 OR NOT AND IT IS FOR YA'LL TO DETERMINE. IF YOU FIND THAT
4 ROBBERY WAS PERPETRATED BY THE DEFENDANT AND THAT THE
5 VICTIM WAS PLACED IN FEAR THROUGH FORCE AND INTIMIDATION
6 AND THE PELLET GUN WAS NOT A DEADLY WEAPON HE WOULD BE
7 GUILTY OF STRONG ARMED ROBBERY, NOT ARMED ROBBERY. I AM
8 NOT SUGGESTING HE IS GUILTY OF ANYTHING. NOW, I CAN READ
9 THAT TO YOU 15 TIMES, IT IS GOING TO BE THE SAME THING BUT
10 YA'LL HAVE TO DECIDE WHETHER THE STATE BEYOND A REASONABLE
11 HAS CONVINCED YOU THAT THE DEFENDANT COMMITTED EACH OF THE
12 ACTS THAT CONSTITUTES ARMED ROBBERY. SO, IF WE COULD HAVE
13 MEANINGFUL CONVERSATION, THAT IS YOU COULD TELL ME WHAT IS
14 BOTHERING YOU I COULD ANSWER YOU BUT THAT IS NOT THE WAY
15 THE SYSTEM WORKS. IN ADDITION, THEY DON'T EVEN LET ME
16 SEND THE STATUTE BACK TO YOU, BUT I AM NOT HIDING ANYTHING
17 FROM YOU, THAT IS WHAT IT SAYS. YOU WANT ME TO READ IT
18 ONE MORE TIME HERE IT GOES. ARMED ROBBERY IS COMMITTED
19 WHEN A PERSON COMMITS ROBBERY IS ARMED WITH A PISTOL,
20 METAL KNUCKLES, SLINGSHOT AND SO FORTH OR OTHER DEADLY
21 WEAPON OR WHILE ALLEGING EITHER BY ACTION OR WORDS. HE
22 WAS ARMED WHILE USING A REPRESENTATION OF A DEADLY WEAPON
23 OR ANY OBJECT WHICH A REASONABLE PERSON WOULD HAVE
24 INTERPRETED AS BEING A DEADLY WEAPON. THAT IS ALL IT IS.
25 ROBBERY BY FORCE OR INTIMIDATION, ARMED WITH A DEADLY

1 WEAPON CONSTITUTES ARMED ROBBERY. ROBBERY, FORCE AND
2 INTIMIDATION NOT USING A DEADLY WEAPON, STRONG ARMED
3 ROBBERY. NOT COMMITTING A ROBBERY, NOT GUILTY. OKAY.

4 (WHEREUPON, THE JURY CONTINUES TO DELIBERATE AT
5 APPROXIMATELY 3:55 P.M.)

6 THE COURT: IS EVERYBODY READY TO BRING THEM BACK
7 OUT?

8 MR. ANDREWS: YES, SIR.

9 MR. BETTIS: READY, YOUR HONOR.

10 THE COURT: BRING THEM IN.

11 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
12 APPROXIMATELY 4:25 P.M.)

13 THE COURT: JURORS, CAN WE REREAD BOBBY CATON'S
14 TESTIMONY. SURE, YOU CAN HEAR IT ALL HOWEVER WE DON'T
15 HAVE CONTRARY TO TV, AUTOMATIC REPLAY. IT TAKES THE COURT
16 REPORTER 20 TO 25 MINUTES TO GET IT ALL KEYED BACK IN AND
17 REPLAY IT WHICH WE WILL DO THAT BUT WE ARE GOING TO DO IT
18 IN THE MORNING. SO, DON'T TALK ABOUT THE CASE TO ANYBODY
19 TONIGHT. NOBODY KNOWS ANYTHING ABOUT IT EXCEPT YA'LL AND
20 DON'T ASK ONE OF YOUR FRIENDS OR NEIGHBORS OR SPOUSE, WHAT
21 DO THEY THINK. WE DON'T CARE, YA'LL GET IN TROUBLE IF YOU
22 TALK TO ANYBODY. WE WILL START BACK AT TEN MINUTES AFTER
23 9:00 AND WE WILL HAVE IT KEYED UP AND READY TO PLAY FOR
24 YOU. DON'T CALL ANOTHER JUROR AND RETHINK EVERYTHING THAT
25 WAS SAID AND ONCE YOU HEAR THAT TESTIMONY YOU CAN KEY IN

1 WHAT YOU WANT TO HEAR, WHAT YOU WANT TO HEAR MIGHT NOT
2 EVEN BE ON THERE BUT WE DON'T EVEN KNOW THAT YET. SO, SEE
3 YA'LL IN THE MORNING.

4 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
5 THE DAY. THE CASE WILL RESUME THE NEXT MORNING AT
6 9:10.)

7 THE COURT: LET'S BRING THEM OUT.

8 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
9 APPROXIMATELY 9:20 A.M.)

10 THE COURT: OKAY, JURORS, HERE IS THE REPLAY.

11 (WHEREUPON, THE TESTIMONY OF BOBBY CATON WAS REPLAYED
12 TO THE JURY BY THE COURT REPORTER.)

13 THE COURT: OKAY, JURORS, BACK IN.

14 (WHEREUPON, THE JURY CONTINUED DELIBERATIONS AT
15 APPROXIMATELY 10:06 P.M.)

16 THE COURT: WE HAVE ANOTHER NOTE. BRING THEM IN.

17 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
18 APPROXIMATELY 1:25 P.M.)

19 THE COURT: JURORS, I HAVE THE LAST INTERESTING NOTE
20 FROM YA'LL. YOU SAY YOU HAVE A HUNG JURY, YOU RECOGNIZE
21 THAT IT IS JUST WEDNESDAY. IT IS NOT EVEN DARK. HERE IS
22 THE DEAL, YOU MAY WELL HAVE A HUNG JURY, WHO KNOWS. IT IS
23 TOO EARLY FOR YA'LL TO HAVE A HUNG JURY. HERE IS THE
24 SITUATION, EVERYBODY WANTS YOU TO REACH A VERDICT, IF YOU
25 CAN, NOBODY IS FORCING YOU TOO. SOMETIMES WE DO HAVE HUNG

1 JURYS, NOT THAT OFTEN. IF WE HAVE TO, IF YOU HAVE A HUNG
2 JURY WE HAVE TO TRY IT AGAIN, KEEP TWELVE PEOPLE JUST LIKE
3 YA'LL. ATTORNEYS SELECTED YA'LL, THEY THINK YOU ARE AS
4 GOOD AS ANY, BETTER THAN MOST JURYS THAN THEY HAVE LOOKED
5 AT. SO, IF YOU HAVE A HUNG JURY, TWELVE OTHER JURORS HAVE
6 TO LISTEN TO THE SAME THING, IT WILL BE THE EXACT SAME
7 TESTIMONY AS THIS. AND THEY WILL BE FACED WITH THE SAME
8 SITUATION. IF THE STATE HAS CONVINCED YOU BEYOND A
9 REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY ON ANY ONE
10 OF THOSE THREE INDICTMENTS YOU RETURN A VERDICT OF GUILTY.
11 IF THEY HAVEN'T HE IS ENTITLED TO A VERDICT OF NOT GUILTY.
12 HE DOES NOT HAVE TO PROVE HE IS GUILTY AT ALL. AND ON THE
13 ARMED ROBBERY CHARGE YOU CAN CONSIDER ARMED ROBBERY,
14 STRONG ARMED ROBBERY, NOT GUILTY. I AM NOT SUGGESTING YOU
15 FIND HIM GUILTY OF ANYTHING BUT EACH INDICTMENT IS
16 ENTITLED TO AN INDEPENDENT EVALUATION BY YOU. SO, GO BACK
17 AND GIVE IT ANOTHER SHOT, LISTEN TO WHAT YOUR FELLOW
18 JURORS SAY AND DECIDE WHETHER THE STATE HAS MET ITS BURDEN
19 OF PROOF BEYOND A REASONABLE DOUBT OR NOT. BUT IT IS WAY
20 TOO EARLY TO TELL ME YOU HAVE A HUNG JURY OR FOR ME TO
21 ACCEPT THAT.

22 (WHEREUPON, THE JURY CONTINUED TO DELIBERATE AT
23 APPROXIMATELY 1:26 P.M.)

24 THE COURT: THE JURY HAS REACHED A VERDICT. IS THE
25 STATE READY TO RECEIVE THE VERDICT?

1 MR. ANDREWS: WE ARE, YOUR HONOR.

2 THE COURT: WHAT ABOUT THE DEFENSE?

3 MR. BETTIS: THE DEFENSE IS READY, YOUR HONOR.

4 THE COURT: WE DON'T KNOW WHAT THE VERDICT IS GOING
5 TO BE BUT EVERYBODY HAS TO KEEP IT UNDER CONTROL, WHATEVER
6 IT IS. BRING THEM IN.

7 (WHEREUPON, THE JURY CAME INTO OPEN COURT WITH THE
8 VERDICT AT APPROXIMATELY 3:55 P.M.)

9 THE COURT: MADAM FOREPERSON, HAS THE JURY REACHED A
10 VERDICT OR VERDICTS?

11 FOREPERSON: YES WE HAVE, YOUR HONOR.

12 THE COURT: IF YOU WILL HAND THE SIGNED VERDICT FORMS
13 TO MR. WILLINGHAM, I KNOW YOU HAVE BEEN BACK THERE READING
14 IT LIKE YOU SEE ON TV BUT THAT IS NOT THE WAY WE DO IT.
15 OKAY.

16 CLERK OF COURT: THE STATE OF SOUTH CAROLINA, COUNTY
17 OF GREENWOOD, THE COURT OF GENERAL SESSIONS. INDICTMENT
18 NUMBER 2006-GS-24-1129, 1130 AND 1131, THE STATE VERSUS
19 LAKENDRICK K. LEVERETTE. AS TO THE CHARGE OF ARMED
20 ROBBERY, WE THE JURY UNANIMOUSLY FIND THE DEFENDANT,
21 LAKENDRICK K. LEVERETTE GUILTY OF THE LESSOR CHARGE OF
22 STRONG ARMED ROBBERY. AS TO THE CHARGE OF KIDNAPPING, WE
23 THE JURY UNANIMOUSLY FIND THE DEFENDANT, LAKENDRICK K.
24 LEVERETTE NOT GUILTY. AS TO THE CHARGE OF THE POSSESSION
25 OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME, WE

1 THE JURY FIND THE DEFENDANT, LAKENDRICK K. LEVERETTE NOT
2 GUILTY. SIGNED FOREPERSON, TINA L. WIDEMAN. LADIES AND
3 GENTLEMEN OF THE JURY, IF THIS IS STILL YOUR VERDICT WOULD
4 YOU RAISE YOUR RIGHT HAND.

5 (WHEREUPON, JURORS RAISED THEIR HAND.)

6 CLERK OF COURT: ALL JURORS HAVE RAISED THEIR RIGHT
7 HAND.

8 THE COURT: ANYTHING ELSE REQUIRED OF THE JURY FROM
9 THE STATE?

10 MR. ANDREWS: NOTHING FURTHER.

11 THE COURT: FROM THE DEFENSE?

12 MR. BETTIS: NOTHING FROM THE DEFENSE, YOUR HONOR.

13 THE COURT: OKAY, JURORS, THE NEXT PHASE IS
14 SENTENCING, YOU CAN GO HOME OR HANG AROUND FOR IT. HERE
15 IS THE DEAL, ARMED ROBBERY CARRIES UP TO LIKE 30 YEARS,
16 YOU HAVE 10, YOU HAVE TO SERVE AT LEAST EIGHTY-FIVE
17 PERCENT OF WHATEVER SENTENCE IS IMPOSED. KIDNAPPING
18 CARRIED UP TO 30, THE SAME THING, EIGHTY-FIVE PERCENT YOU
19 HAVE TO SERVE. STRONG ARMED CARRIES UP TO 15, IT IS NOT
20 EIGHTY-FIVE PERCENT, SERVED ABOUT A THIRD OF WHATEVER
21 SENTENCE IS IMPOSED. POSSESSION OF A WEAPON IS JUST FIVE
22 ADDITIONAL YEARS FOR EVERYTHING WHICH I DON'T EVER ADD FOR
23 ARMED ROBBERY BECAUSE HOW ARE YOU GOING TO COMMIT AN ARMED
24 ROBBERY UNLESS YOU ARE ARMED. THEY WANT TO MAKE THE
25 PENALTY GREATER THAN 30 YEARS, EIGHTY-FIVE PERCENT IS

1 ENOUGH ANYWAY. SO, YA'LL CAN HANG AROUND AND WATCH THE
2 SENTENCING OR YOU ARE THROUGH FOR THE WEEK AND YA'LL CAN
3 GO HOME. YOU FIGURED RIGHT, I WASN'T GOING TO BUY YOUR
4 SUPPER. ALL RIGHT.

5 I HEARD ALL THE FACTS, WHAT DOES THE STATE NEED TO
6 TELL ME.

7 MR. ANDREWS: YOUR HONOR, WE JUST WANTED TO PUT HIS
8 PRIOR CRIMINAL HISTORY ON THE RECORD.

9 THE COURT: SURE.

10 MR. ANDREWS: THANK YOU, YOUR HONOR. IT APPEARS THAT
11 IN FEBRUARY OF 2000 MR. LEVERETTE WAS CONVICTED OF
12 BURGLARY SECOND DEGREE, NON-VIOLENT ALONG WITH ASSAULT AND
13 BATTERY WITH A HIGH AND AGGRAVATED NATURE OR ASSAULT WITH
14 A HIGH AND AGGRAVATED NATURE. THIS WAS IN 2000, BOTH
15 SENTENCES HE RECEIVED 6 YEARS SUSPENDED TO PROBATION FOR 5
16 YEARS. HE HAS A CONVICTION FOR PETTY LARCENY IN FEBRUARY
17 OF 2001. IT IS NOT CLEAR ON WHAT THE DATE ON THIS
18 PROBATION VIOLATION WAS HOWEVER THAT AFOREMENTIONED
19 PROBATION WAS VIOLATED. HE RECEIVED A 2 YEAR SENTENCE ON
20 THAT PROBATION VIOLATION. IN 2003 HE HAD ANOTHER
21 CONVICTION FOR ASSAULT AND BATTERY OF A HIGH AND
22 AGGRAVATED NATURE. 5 YEARS SUSPENDED TO TIME SERVED
23 FOLLOWED BY 5 YEARS OF PROBATION. HE WAS ALSO CONVICTED
24 OF RESISTING ARREST OUT OF THE SAME INCIDENT, YOUR HONOR.

25 THE COURT: ALL RIGHT.

1 MR. ANDREWS: I DON'T BELIEVE MR. CATON HAS
2 ANYTHING--

3 THE COURT: HE HAS ALREADY TESTIFIED. OKAY.

4 MR. BETTIS: JUDGE, I AM GOING TO SAY A COUPLE OF
5 WORDS AND THEN I AM GOING TO ASK HIS UNCLE TO COME UP.
6 MR. LEVERETTE IS 25 YEARS OLD, HE WAS BORN IN GREENWOOD
7 AND GREW UP IN MCCORMICK. I THINK IT IS IMPORTANT FOR THE
8 COURT TO UNDERSTAND, HE REALLY HAS NO RELATIONSHIP WITH
9 HIS FATHER, HIS FATHER LIVES IN PHILADELPHIA. HIS MOTHER
10 HAS BEEN IN AND OUT OF PRISON DURING THE COURSE OF HIS
11 CHILDHOOD GROWING UP, MOST OF HIS LIFE. HE WAS RAISED BY
12 HIS GRANDMOTHER UNTIL HE WAS 14 YEARS OLD. I THINK SHE
13 DID THE BEST SHE COULD FOR HIM, SHE PASSED AWAY WHEN HE
14 WAS 14 AND THEN HE MOVED IN WITH HIS AUNT AND COUSIN WHO
15 HE LIVED WITH UNTIL HE REACHED THE AGE, AND THEN HE LIVED
16 WITH SOME COUSINS ON AND OFF. HE ONLY FINISHED NINTH
17 GRADE OF SCHOOL IN MCCORMICK. JUST DIDN'T HAVE THE
18 PARENTS, THE GUIDANCE THAT A YOUNG MAN WOULD NEED TO
19 BECOME A PRODUCTIVE MEMBER OF THE COMMUNITY. THE TYPE OF
20 WORK HE HAS DONE IS IN CONSTRUCTION FIELDS AND CARPENTRY
21 WORK. THE MAIN THING HE HAS DONE AND REALLY ENJOYED AND
22 THAT WAS WORKING WITH HORSES, TRAINING HORSES AND BREAKING
23 HORSES. HE HAD DONE THAT A LOT WITH HIS UNCLE. THAT IS
24 KIND OF HIS PASSION AND I WOULD LIKE TO ASK HIS UNCLE,
25 GEORGE LEVERETTE TO COME UP AND SAY A FEW WORDS.

1 THE COURT: OKAY.

2 GEORGE LEVERETTE: THANK YOU, SIR. MY NAME IS GEORGE
3 LEVERETTE, I AM THE UNCLE OF LAKENDRICK LEVERETTE. ON
4 BEHALF OF LAKENDRICK'S FATHER WHICH HAS NOT BEEN A PART OF
5 HIS LIFE, MY MOTHER TOOK HIM IN AS A YOUNG CHILD AND
6 RAISED HIM THE BEST SHE COULD. SHE WAS A SICK LADY, SHE
7 DID A WONDERFUL JOB, SHE PASSED AWAY. MYSELF AND MY
8 SISTERS AND MY BROTHERS, WE ALL TRIED TO TAKE PART OF
9 LAKENDRICK'S LIFE AND I RUN A SMALL CONSTRUCTION BUSINESS
10 AND I ALSO GAVE HIM SOME WORK. BUT I ASK THE MERCY OF THE
11 COURT TO HAVE MERCY ON HIM. I KNOW THERE WAS A CRIME
12 COMMITTED AND WE JUST ASK THE MERCY OF THE COURT. I
13 LOOKED AT HIM AS MY SON AS WELL AS MY OTHER THREE SONS AND
14 WANTED TO COME IN AND SUPPORT HIM TODAY. HE WAS IN CHURCH
15 WITH US AND WE DID THE BEST WE COULD. THANK YOU.

16 THE COURT: ANYTHING THAT YOU WOULD LIKE TO ADD.

17 LAKENDRICK LEVERETTE: YES, SIR. THIS GUY RIGHT HERE
18 KNOWS JUST AS WELL AS I KNOW, I AM NOT GUILTY OF THESE
19 CHARGES, I DIDN'T ROB HIM AND I DIDN'T HAVE ANYTHING TO DO
20 WITH THIS. THIS PROSECUTOR RIGHT HERE ALSO KNOWS, THE
21 FIRST MOTION I GOT FROM TOWNES JONES AND NOW ALL OF A
22 SUDDEN THEY COME UP WITH A NEW MOTION OF DNA, TOWNES JONES
23 SAID THEY HAD EVERYTHING THEY NEEDED. BUT NOW THEY COME
24 UP WITH DNA. AND I HAVE GOT BOTH OF THE MOTIONS TO SHOW
25 YOU.

1 THE COURT: HERE IS THE SITUATION. THE JURY HAS
2 FOUND YOU GUILTY SO YOU CAN SAY ANYTHING YOU LIKE ABOUT
3 THE SENTENCE THAT I CAN IMPOSE, THEY DID NOT FIND YOU
4 GUILTY OF ARMED ROBBERY. HAD THAT OF HAPPENED THE MINIMUM
5 SENTENCE I COULD OF GIVEN YOU WAS 10 YEARS AND YOU WOULD
6 OF HAVE SERVED 8 AND A HALF, EIGHTY-FIVE PERCENT OF IT.
7 IF THEY WOULD OF FOUND YOU GUILTY OF KIDNAPPING I WOULD
8 HAVE HAD TO SENTENCE YOU UP TO 30 YEARS ON THAT. YOU HAVE
9 GOT A LITTLE PRIOR RECORD, I DON'T KNOW ANYTHING ABOUT
10 YOU, YOU DIDN'T TESTIFY. SO, BASED ON YOUR PRIOR RECORD
11 THE JURY COULD OF EASILY FOUND YOU GUILTY OF ARMED
12 ROBBERY, THEY DIDN'T. STRONG ARMED ROBBERY I SENTENCE YOU
13 TO 15, I GIVE YOU CREDIT FOR THE TIME YOU HAVE BEEN HELD
14 WHICH MEANS YOU WILL PROBABLY BE OUT IN 2 YEARS IF YOU
15 DON'T GET IN ANY TROUBLE. BUT I CAN'T PROMISE YOU THAT,
16 THEY COULD KEEP YOU ALL THE WAY UP TO 15. IF IT WOULD OF
17 BEEN ARMED ROBBERY YOU WOULDN'T OF BEEN ABLE TO GET OUT
18 FOR A LONG TIME. YOU HAVE TEN DAYS TO APPEAL, APPEAL THE
19 JURYS VERDICT. IF YOU STUCK THAT PELLET GUN IN THAT GUYS
20 MOUTH YOU NEED 15 ANYWAY EVEN IF YOU DIDN'T HAVE A PRIOR
21 RECORD. OKAY, THAT IS IT.

22 MR. ANDREWS: THANK YOU, YOUR HONOR.

23 MR. BETTIS: THANK YOU, YOUR HONOR.

24 THE COURT: JURORS, THE CLERK WILL MAIL YOU YOUR
25 CHECKS ON FRIDAY. YOU CAN GET A STATEMENT FROM THE OFFICE

1 TODAY. IF NOT, YOU ARE THROUGH FOR THE WEEK. OKAY.

2 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

3 (WHEREUPON, COURT'S EXHIBIT NOS. 1, 2, 3, 4, AND 5
4 WERE MARKED FOR IDENTIFICATION ONLY.)

5 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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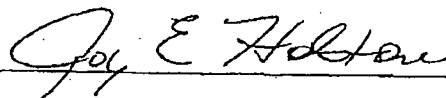
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

I, JOY E. HOLSTON, OFFICIAL COURT REPORTER FOR THE
EIGHTH 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 GENERAL SESSIONS FOR
GREENWOOD COUNTY, SOUTH CAROLINA, ON THE 7TH DAY OF APRIL,
2008.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

OCTOBER 6, 2008



JOY E. HOLSTON, COURT REPORTER

MY COMMISSION EXPIRES: MARCH 13, 2016

THE STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

INDICTMENT FOR

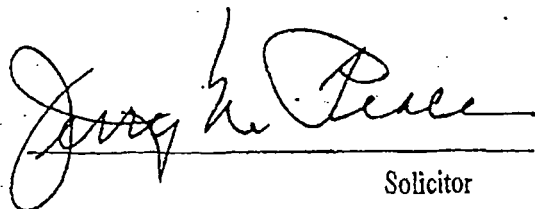
ARMED ROBBERY

At a Court of General Sessions, convened on the 25th day of August, 2006, the Grand Jurors of Greenwood County present upon their oath:

COUNT ONE

That LAKENDRICK KENTRELL LEVERETTE, along with another person or persons, aiding, abetting and assisting one another, did in Greenwood County, state aforesaid, between the 9th day of June, 2006, and the 10th day of June, 2006, wilfully and unlawfully while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon, or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take from the person or presence of Bobby Caton by means of force or intimidation, goods or monies described as follows: one (1) cellular telephone, one (1) ring, one (1) container of chapstick and United States currency, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

WITNESSES

Travis Clark

WARRANT NUMBERS

K118150

Foreman of the Grand Jury

Date:

8/29/06

VERDICT

True Bill

Guilty Strong

ARM ROBBERY

Michael L. Wideman

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

August Term, 2006

Indictment # 06GS24- 1129

THE STATE

vs.

LAKENDRICK KENTRELL LEVERETTE

INDICTMENT FOR

ARMED ROBBERY

ATTEST A TRUE COPY

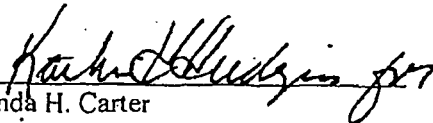
Ingram Moon

INGRAM MOON
CCCP AND IS
GREENWOOD COUNTY
S.C.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 26th, 2009


Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA)

County of GREENWOOD)LAKENDRICK K. LEVERETTE, #276349)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

10 CP-24-00787

APPLICATION FOR

POST-CONVICTION RELIEF

2010 JUN 24 PM 2 16

FIELD
8TH JUDGE
GREENWOOD CO.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 TURBEVILLE CORR. INST. POST OFFICE BOX 252 TB-277
TURBEVILLE, SOUTH CAROLINA 29162
2. Name ~~and~~ location of Court which imposed sentence GREENWOOD COUNTY COURT OF
GENERAL SESSIONS. GREENWOOD, SOUTH CAROLINA 29646
3. Name(s) of co-defendant(s) (if any) ZAVIUS O. JONES
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006-GS-24-1129 (STRONG ARMED ROBBERY)
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 4-9-08(15 YEARS)
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ~~XX~~
- (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?
~~NO, I DID NOT~~ YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A State of South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A Submitted January 4, 2010 - Filed February 23, 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A Unpublished Opinion No. 2010-UP-143
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) MY ATTORNEY DID NOT TELL ME THAT I COULD APPEAL
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: ⁽⁴⁾ Ineffective of Appellate Counsel ⁽⁵⁾ Prior Inconsistent Statement
- (a) (1) INEFFECTIVE ASSISTANCE OF COUNSEL, (2) JUDGE ERRED WHEN HE
- (b) SENTENCED DEFENDANT FOR STRONG ARMED ROBBERY WHEN HE WAS FOUND NOT
- (c) GUILTY OF ARMED ROBBERY, (3) JUDGE ABUSED HIS DISCRETION.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENTS:
- (b) SEE ATTACHMENTS:
- (c) SEE ATTACHMENTS:
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. 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.
- 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?

N/A

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) N/A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

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

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. CHAD BETTIS
PUBLIC DEFENDERS OFFICE
- ii. GREENWOOD, SOUTH CAROLINA 29646
Wanda Carter, South Carolina Indigent Defense
Division of Appellate Attorney
- iii. P.O. Box 11589, Columbia, SC. 29211-1589

(b) the proceedings at which each such attorney represented you:

- i. AT MY TRIAL / Chad Bettis.
Direct Appeal / Wanda Carter.
- ii. _____
- iii. _____

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

TO HAVE MY SENTENCE VACATED

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

NO, I AM NOT

STATE OF SOUTH CAROLINA)

County of GREENWOOD)

VERIFICATION

I, LAKENDRICK K. LEVERETTE, #276349, 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.

Lakendrick Leverette

SWORN to and subscribed before me this 23
day of June, 2010.

Susan H. Swilley (L.S.)
Notary Public

My Commission Expires: 09-29-2018

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

I, LAKENDRICK K. LEVERETTE, #276349, 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.

Lakendrick Leverette
Applicant

SWORN or affirmed to and subscribed before me this
23 day of June, 2010.

Susan H. Kirby
Notary Public

My Commission Expires: 09-29-2018

THE JUDGE ERRED WHEN THE JUDGE SENTENCED THE DEFENDANT FOR STRONG ARMED ROBBERY AFTER THE DEFENDEANT HAD BEEN FOUND NOT GUILTY OF ARMED ROBBERY PURSUANT TO THE MANDATES THAT ARE SET FORTH IN COOLEY V. STATE, 536 S.E. 2D. 666(S.C.2000).

THE APPLICANT SUBMITS THAT THE JUDGE ERRED WHEN THE JUDGE CONVICTED AND SENTENCED THE APPLICANT FOR STRONG ARMED ROBBERY WHEN THERE WAS NO EVIDENCE OFFERED DURING THE APPLICANT'S TRIAL BY THE STATE THAT WOULD HAVE SUGGESTED STRONG ARMED ROBBERY, WHICH WOULD BE IN VIOLATION OF THE MANDATES THAT ARE SET FORTH IN COOLEY V. STATE, 536S.,E.2D.666(S.C.2000). THE STATE'S ENTIRE CASE WAS BASED ON THE FACT THAT THERE WAS A WEAPON INVOLVED IN THE ALLEGED ARMED ROBBERY OF THE VICTIM. THE APPLICANT SUBMITS THAT HIS CASE IS EXACTLY IDENTICAL TO COOLEY. THE APPLICANT WAS CHARGED WITH ARMED ROBBERY. THE STATE'S ENTIRE CASE WAS BASED ON THE FACT THAT THE APPLICANT WAS ARMED WITH A WEAPON AND ROBBED THE VICTIM. THE LAW TO BE CHARGED MUST BE DETERMINED FROM THE EVIDENCE PRESENTED AT TRIAL. THE APPLICANT IS SURE THAT THIS COURT IS AWARE OF THE PROFOUND CONSEQUENCES OF REVERSING THE APPLICANT'S STRONG ARMED ROBBERY CONVICTION. AS IN COOLEY, THIS COURT IS ALSO AWARE OF THE PROFOUND CONSEQUENCES OF REVERSING THE APPLICANT'S CONVICTION. WHEN THE JURY IN THE APPLICANT'S CASE, CONVICTED THE APPLICANT OF THE LESSER-INCLUDED OFFENSE OF STRONG ARMED ROBBERY, IN ESSENCE, THE APPLICANT WAS ACQUITTED OF THE ARMED ROBBERY CHARGE. SEE BOZEMAN V. STATE, 414 S. E. 2D. 144(1992)(HOLDING THAT A CONVICTION FOR STRONG ARMED ROBBERY ACTS AS AN IMPLICIT ACQUITTAL OF ARMED ROBBERY. ON RETRIAL, THE CONSTITUTIONAL PROHIBITION AGAINST DOUBLE JEOPARDY PREVENTS APPLICANT FROM BEING TRIED AGAIN FOR ANY CHARGE BECAUSE HE DID NOT WAIVE THIS DEFENSE BY MAKING A SUCCESSFUL APPEAL OF HIS CONVICTION. SINCE THE JURY HEARD NO EVIDENCE STRONG ARMED ROBBERY, THE APPLICANT'S STRONG ARMED ROBBERY CONVICTION SUGGESTS THAT THE JURY MAY HAVE COMPROMISED BETWEEN ARMED ROBBERY AND STRONG ARMED ROBBERY OR ACCIDENT IN REACHING THEIR VERDICT.

THIS IS A CAUTIONARY TALE FOR SOLICITORS AS TO THE PITFALLS OF REQUESTING A POTENTIAL "COMPROMISE" CHARGE WHICH IS UNSUPPORTED BY THE EVIDENCE.

THE APPLICANT SUBMITS THAT THE TRIAL JUDGE ABUSED HIS DISCRETION WHEN THE JUDGE CONVICTED AND SENTENCED THE APPLICANT.

THE APPLICANT SUBMITS THAT THE TRIAL JUDGE ABUSED HIS DISCRETION WHEN THE JUDGE CONVICTED AND SENTENCED THE APPLICANT BECAUSE THE JUDGE STATED FOR THE RECORD " IF YOU STUCK THE PELLET GUN IN THAT GUYS MOUTH, YOU NEED 15 YEARS ANYWAY EVEN IF YOU DIDN'T HAVE A PRIOR RECORD". THE APPLICANT SUBMITS THAT THIS IS A BLATANT ISSUE OF ABUSE OF DISCRETION AND WILL SUPPORT HIS ASSERTION WITH THE TRIAL TRANSCRIPT PG. 172, LINES 19-21. THE WILL SUBMIT THE FOLLOWING CASELAW THAT WILL SUPPORT HIS CONTENTION: HISTORIC CHARLESTON HOLDINGS, LLC V. MALLON, 673 S.E.2D.448(S.C.2009), AN ABUSE OF DISCRETION OCCURS WHEN THE RULING OF THE COURT IS BASED ON AN ERROR OF LAW OR A FACTUAL CONCLUSION WITHOUT EVIDENTIARY SUPPORT. STATE V. MCCLINTON, 631 S.E.2D. 895(S.C.2006), AN ABUSE OF DISCRETION OCCURS WHEN THE CIRCUIT COURT'S RULING IS BASED UPON AN ERROR OF LAW, SUCH AS APPLICATION OF THE WRONG LEGAL PRINCIPLE; WHEN THE RULING IS BASED ON FACTUAL CONCLUSIONS IS WITHOUT EVIDENTIARY SUPPORT; WHEN THE CIRCUIT COURT IS VESTED WITH DISCRETION, BUT THE RULING REVEALS NO DISCRETION WAS EXERCISED; OR WHEN THE RULING DOES NOT FALL WITHIN THE RANGE OF PERMISSIBLE DECISIONS APPLICABLE IN A PARTICULAR CASE, SUCH THAT IT MAY BE DEEMED ARBITRARY AND CAPRICIOUS. SIMPLY PUT, THE APPLICANT WAS INDICTED FOR ARMED ROBBERY, KIDNAPPING, POSSESSION OF A FIREARME DURING THE COMISSION OF A VIOLAENT CRIME. THE APPLICANT WAS ACQUITTED OF ALL CHARGES AND FOUND GUILTY OF **STRONG ARMED ROBBERY**, A CHARGE OF WHICH NO ONE HEARD ANY EVIDENCE BEING OFFERED IN REGARDS TO THE STRONG ARMED ROBBERY CHARGE. NEVERTHELESS, THE JUDGE STATED THAT THE FACT THAT THE APPLICANT STUCK THE GUN IN THE ALLEGED VICTIM'S MOUTH YOU NEED 15 YEARS ANYWAY. THIS RESULTED IN AN ABUSE OF DISCRETION.

INEFFECTIVE ASSISTANCE OF COUNSEL:

THE APPLICANT SUBMITS THAT HIS ATTORNEY WAS INEFFECTIVE PURSUANT TO THE MANDATES THAT ARE SET FORTH IN GENTRY V. STATE, 610 S.E.2D.494(2005) BECAUSE HIS ATTORNEY FAILED TO MOVE TO QUASH ALL OF THE APPLICANT'S INDICTMENTS BECAUSE THE APPLICANT'S INDICTMENTS FAILED TO SHOW WHAT ACTION THE GRAND JURY TOOK. IN POST CONVICTION RELIEF, AN APPLICANT WISHING TO RAISE CHALLENGES TO THE SUFFICIENCY OF AN INDICTMENT MUST DO SO IN THE CONTEXT OF INEFFECTIVE ASSISTANCE OF COUNSEL, BASICALLY ALLEGING THAT HIS TRIAL COUNSEL FAILED TO PROPERLY MOVE TO QUASH THE INDICTMENT IN ACCORDANCE WITH S.C. CODE ANN § 17-19-90(2003). AN APPLICANT MAY STILL CHALLENGE THE SUBJECT MATTER JURISDICTION OF THE TRIAL COURT, AND SUCH A CLAIM IS ONE THAT MAY BE RAISED AT ANY TIME. THE APPLICANT'S ATTORNEY WAS ALSO INEFFECTIVE ASSISTANCE OF COUNSEL PURSUANT TO THE MANDATES THAT ARE SET FORTH IN STATE V. BEACHUM, 342 S.E.2D.597(S.C.1986) BECAUSE THE APPLICANT'S INDICTMENTS DID NOT SPECIFY THE ACTION THE GRAND JURY TOOK AT TRIAL. BUT, AFTER THE APPLICANT WAS ON DIRECT APPEAL, AND REQUESTED COPIES OF HIS INDICTMENTS, THE APPLICANT'S INDICTMENTS REFLECTED WHAT ACTION THE GRAND JURY TOOK. ALL THIS AMOUNTS TO THE APPLICANT'S ATTORNEY RENDERING INEFFECTIVE ASSISTANCE.

PRIOR INCONSISTENT STATEMENT:

THE APPLICANT SUBMITS THAT HIS CONVICTION SHOULD BE DISMISSED BECAUSE OF A PRIOR INCONSISTENT STATEMENT THAT WAS MADE BY THE VICTIM OF THE ALLEGED CASE. THE APPLICANT SUBMITS THAT THE VICTIM'S PRIOR INCONSISTENT STATEMENT SHOULD BE USED TO IMPEACH AND DISCREDIT THE VICTIM'S ASSERTION OF THE FACTS OF THE ENTIRE CASE. THE APPLICANT SUPPORTS HIS ASSERTION WITH THE MANDATES THAT ARE SET FORTH IN THE CASE OF STATE V. COPELAND, 300 S.E. 2D. 63(1982) WHICH STATE, THE TESTIMONY OF A WITNESS MAY BE DISCREDITED OR IMPEACHED BY SHOWING THAT HE PREVIOUSLY MADE STATEMENTS WHICH ARE INCONSISTENT WITH HIS PRESENT TESTIMONY. THE EARLIER CONTRADICTORY STATEMENTS ARE ALSO ADMISSIBLE TO ESTABLISH THE TRUTH OF THESE STATEMENTS. IT IS THE PROVINCE OF THE JURY TO DETERMINE THE CREDIBILITY, IF ANY, TO BE GIVEN THE EARLIER STATEMENTS AND TO BE GIVEN THE TESTIMONY OF A WITNESS WHO HAS BEEN IMPEACHED.

IF A WITNESS IS SHOWN KNOWINGLY TO HAVE TESTIFIED FALSELY CONCERNING ANY MATERIAL MATTER, THE COURT MAY CONSIDER IN DETERMINING WHETHER TO TRUST SUCH WITNESS' TESTIMONY IN OTHER PARTICULARS. YOU MAY REJECT ALL THE TESTIMONY OF THAT WITNESS OR GIVE ALL OR PART OF SUCH TESTIMONY THE CREDIBILITY THE THINKS IT DESERVES.

SEE, E.G. STATE V. COPELAND, 300 S.E.2D.63(1982), CERT. DENIED, 460 U.S. 1103(1983) AND 463 U.S. 1214(1983) (INCONSISTENT STATEMENTS ARE SUBSTANTIAL EVIDENCE). THE APPLICANT WILL SUPPORT HIS ALLEGATIONS WITH THE TRANSCRIPT WHICH READS AS FOLLOWS:

BOBBY CATON- CROSS BY MR. BETTIS

TR.PG.52,LINES 18-25

Q NOW, AFTER YOU TALKED WITH THE POLICE, YOU LATTER GAVE ANOTHER STATEMENT ON OR ABOUT MARCH THE 29TH OF 2007, DIDN'T YOU, YOU MADE ANOTHER, YOU GAVE ANOTHER WRITTEN STATEMENT, RIGHT, WHERE YOU CLAIMED ZAVIUS JONES DIDN'T THREATEN YOU IN ANY WAY, CORRECT?

A CORRECT.

Q YOU SAID THAT ZAVIUS DIDN'T TOUCH YOU IN ANY WAY, CORRECT, IN THAT STATEMENT?

TR.PG.53,LINES:2-13

Q YET ZAVIUS JONES DID THREATEN YOU, DIDN'T HE

A HE WAS HOLDING A SWORD AND TO ME THAT IS A THREAT.

Q YES, HE PUT A SWORD AGAINST YOUR THROAT, DIDN'T HE?

A YES.

Q BUT YOU SAID ON ANOTHER STATEMENT ON MARCH 29TH OF 2007 THAT ZAVIUS JONES NEVER THREATENED YOU, YOU SAID THAT ZAVIUS JONES DIDN'T TOUCH YOU, CORRECT?

A HE NEVER VERBALLY THREATENED ME, NO.

Q I AM NOT SAYING VERBALLY, YOU SAID IN THE STATEMENT HE DIDN'T THREATEN YOU, CORRECT?

A YES

TR.PG.55,LINES 11-15, AND 22-25

Q IN FACT YOU STATE IN THIS STATEMENT THAT ZAVIUS JONES DID NOT TOUCH YOU?

A HE DID NOT PHYSICALLY TOUCH ME.

Q WELL, HE PUT A KNIFE TO YOUR THROAT, CORRECT?

A YES.

Q OKAY. MR. CATON, ISN'T IT TRUE THAT YOU CHANGED YOUR STORY AFTER THE FACT BECAUSE OF THE MONEY YOU OWED ZAVIUS JONES AND YOU WANTED TO MAKE IT RIGHT WITH HIM AND TRY TO EXONERATE HIM FROM ANY RESPONSIBILITY OF THIS?

TR.PG.56,LINES 1-9

A NO.

Q ISN'T THAT WHAT HAPPENED?

A NO.

Q THAT YOU OWED HIM MONEY FOR DRUGS?

A NO.

Q YOU WENT OUTSIDE TO SMOKE DRUGS?

A YES.

Q WITH THEM THAT NIGHT?

Q YES.

(5) of (14)

The Applicant in this present case, Submits that His Appellate Counsel was ineffective Pursuant to the mandates that are set forth in Simpkins V. State, 303 S.C. 364, 401 S.E.2d 142 (1991). Because His Appellate Counsel failed to raise issue on Directed Appeal that constituted reversible error, in essence, Motion for Directed Verdict of Acquittal based on the lack of Sufficient Evidence, which are reversed on Record of Appeal (R.p. 123, line 18-25).

Law: State V. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). A Defendant is entitled to a directed Verdict when State fails to produce evidence of the offense charged.

ATTN: The Applicant Submits to this Court that there was no gun produce at trial and only photographs of (2) different guns were passed around to the Jury. See, Record on Appeal as followed below.

Chip Davenport - Direct By Mr. Andrews

R.p. 72, line 22-25

Q-What did you do next with the pistol?

A-I Secured it in my vehicle, that way I could keep it for evidentiary purposes, it was inside of a paper bag.

Q-Was the bag sealed?

R.p. 73, line 1-2

A-Yes Sir, it was. It was rolled over and folded to where it was sealed there in the vehicle.

Chris Gray - Cross By Mr. Bettis

R.p. 101, line 20-25

Q-The gun, exhibit number 2, has been in your

Department's custody since it was taken on June 10th of 2006, correct?

A- It was actually seized by lieutenant Davenport who would of done all the paperwork and placed it into an evidence locker. My understanding is that it has been in our

R.p. 102, line 1-9

Possession since then, but you would have to ask lieutenant Clark, he is in charge of what happens to evidence, where it is stored, where it goes and maintaining that record.

Q- There is no reason to believe that it has been out of your department's custody?

A- I have no information as to that.

Q- You had information from your investigation, strike that. I am done, no further questions.

Travis Clark - Cross By Mr. Bettis

R.p. 114, line 17-20

Q- And the gun has been in the department's possession since the events took place and the gun was taken?

A- That is correct, it has been in our Secured, Secured in our evidence room.

Under State's Version of the alleged facts, the Applicant was guilty of Armed Robbery, Kidnapping, Possession of a firearm during the commission of a Violent Crime, which were the additional three Jury Charges. See, (R.p. 121, line 14-17).

There was no evidence putting the Applicant committing any Crime at all. See Record on Appeal as followed below.

Chris Gray-Cross By Mr. Bettis

R.p. 99, line 25

Q-Now you ran some fingerprints or had some

R.p. 100, line 1-12

Fingerprints analysis done on some of these items?

A- By fingerprints analysis, if you mean request that the Lieutenant Clark go further, I did, Sir.

Q-Do you know if any of the tests conducted on any of these items whether Lakendrick's fingerprints were recovered from any of them?

A- I can only tell you what was reported to me by Lieutenant Clark, that no fingerprints were attributed to anybody off of any of the items.

Q-To anybody, not Lakendrick, not even Bobby Caton, correct?

A- No one, no usable prints I believe it is.

Law: State V. Frazier, 654 S.E.2d 280, 375 S.C. 575 (App. 2007). Evidence did not rise above the level of creating a mere suspicion that Defendant committed an armed robbery, and thus, trial court's denial of Defendant's motion for directed verdict on the charge of armed robbery was error; Victim's wallet was discovered almost a month after his murder, with no fingerprints or contents of the wallet appeared to be intact.

Law: State V. Buckman, 555 S.E.2d 402, 347 SC 316 (S.C. 2001).
 Insufficient evidence to Submit murder and attempted armed robbery cases to Jury, and no evidence place Defendant at the Scene of the Crime.

In this present case, the Sled agent (identified as Robin Taylor) testified that She did not receive a Standard with regards of the Applicant's DNA. See, Record on Appeal as followed below.

Robin Taylor - Cross-Examination By Mr. Bettis

R.p. 121, line 14-17

Q- There is nothing Submitted to you regarding Lakendrick's DNA, Correct?

A- No, I did not receive a Standard and have nothing Other than what I Stated before.

At the closing of the State's evidence, the Applicant's Attorney moved for a directed Verdict on all the Jury charges. In response to that motion, the trial Judge ruled against the Applicant's directed Verdict. See, Record on Appeal as followed below.

R.p. 123, line 18-25

The Court: The State has rested. What is the Defense pleasure.

Mr. Bettis: Judge, we would make a motion for a Directed Verdict based on the lack of Sufficient evidence To go forth to the Jury.

The Court: Well, being the Senior Judge for about

four years I have never granted a per-functory motion.
That motion is denied.

Law: State V. Cody, 180 S.E. 14304 (S.C. 1936). Doubt as to whether motion for directed verdict on grounds of insufficiency of evidence to sustain charge in indictment was properly made will be solved in favor of Appealing Defendant.

After the trial judge ruled against the Applicant's motion for a Direct Verdict, the trial judge then charged the Jury on Strong Armed Robbery as lesser included offense of Armed Robbery when there was no evidence offered during the Applicant's trial by the State that would have suggested Strong Armed Robbery. The State's entire case was based on the fact that the Applicant had a gun.

Law: State V. Cooley, 536 S.E. 2d 666, 342 S.C. 63 (2000). The law to be charged must be determined from the evidence presented at trial.

Law: State V. Hewitt, 205 S.C. 207, 31 S.E. 2d 257 (1944). The purpose of instructions is to enlighten the Jury and to aid it in arriving at a corrected verdict. It is error to give instructions which are calculated to confuse or mislead the Jury.

R.p. 160, line 11

The (where Upon, the Jury has a question for the Court.)

R.p. 160, line 15-22

The Court: All right, Jurors, all I can do is tell you the same thing. I can't tell you whether he is guilty of Armed Robbery or not. I mean, you'll heard it and you'll understand it. I don't know how you are confused on it, whether he committed it or not, that is what you'll have to decide. "It may be confusing to you, the Statute, Armed Robbery is just Robbery, Robbery while Armed or apparently Armed with a deadly weapon. However you want to phrase it

In this present case, the inclusion of the non-charged offense had the effect of confusing the jury to determined from the Statute. Should not have been read to the jury. See, e.g. State v. Woods, 189 S.C. 281, 1 S.E. 2d 190 (1939). Compare (R.p. 160, line 15-20).

Law: The evidence presented at trial determines the charged jury instruction. State v. Lee, 298 S.C. 362, 380 S.E. 2d 834 (1989). The purpose of a jury instruction is "to enlighten the jury and to aid it in arriving at a corrected verdict. It is error to give instruction which are calculated to confuse or mislead the jury." State v. Leonard, 292 S.C. 133, 137, 355 S.E. 2d 270, 273 (1987). If a jury instruction is provided to the jury that does not fit the facts of the case, it may confuse the jury. State v. Lee, Id.; State v. Hewitt, 205 S.C. 207, 31 S.E. 2d 257 (1944). Only law applicable to the case should be charged to the jury. Instruction that do not fit the facts of the case may serve only to confuse the jury. State v. Lee, Id.; State v. Fair, 209

S.C. 439, 40 S.E.2d 634 (1946); State v. Rivers, 186 S.C. 221, 196 S.E. 6 (1938).

The Applicant Submits to this Court, that His Directed Appeal would have been different if His Appellate Counsel (Wanda H. Carter with the S.C. Division of Appellate Defense) would had reviewed the Record on Appeal thoroughly, the motion for Directed Verdict.

ATTN: The State points to no evidence of the Applicant committing any crime at all, furthermore, the State erroneously focusses on Applicant pushing the alleged victim into a car the back seat of a car (R.p. 29, line 1-24), taking the alleged victim to an unknown location and making the alleged victim strip at gun point (R.p. 32, line 11-13/p. 33, line 11-21), forcing a gun down the alleged victim throat asking for more money (R.p. 34, line 2-4), then taking the alleged victim back to the bar and leading him into the bar at gun point (R.p. 37, line 12-24).

It is Self-Explanatory, that there was no gun produced at the Applicant's trial, which the inclusion of the non-charged offense (Strong Armed Robbery) had the effect of confusing the jury to determined from the Statute should not have been read to the jury. e.g., State v. Woods, 189 S.C. 281, 1 S.E.2d 190 (1939). Compare to (R.p. 160, line 15-20).

The trial Judge in this case, Should not have given a (Strong Armed Robbery) Jury Charge because the record contained no evidence to support a finding of (Strong Armed Robbery).

The Applicant Submits that His Appellate Counsel performance was deficient as measured by the Standard of reasonableness under prevailing professional norms, and that He can prove that He was prejudiced by such deficiency to the extent of there being a reasonable probability that, but for Counsel's unprofessional errors, the result of the Proceeding would have been different.

Based on the testimony presented at the Applicant's trial, and without any evidence of (Strong Armed Robbery) the Applicant cannot be retried on the charge of (Strong Armed Robbery). Thus, retrial will be limited to the charge of (Strong Armed Robbery).

eg. State V. Cooley, 536 S.E.2d 666, 342 S.C. 63 (2000).

However, in applying the federal fifth Amendment, the United State Supreme Court has ruled that double Jeopardy prevents States from retriving Defendant's for greater offense once they have ran the gauntlet on the greater offense and have not been convicted. As Stated in, State V. Cooley, 536 S.E.2d 666, 342 S.C. 63 (2000).

"The Jury in this present case acquitted the Applicant of all 3) charges, but convicted the Applicant of lesser offense Strong Armed Robbery

~~Exhibit #1~~

THE STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

INDICTMENT FOR
ARMED ROBBERY

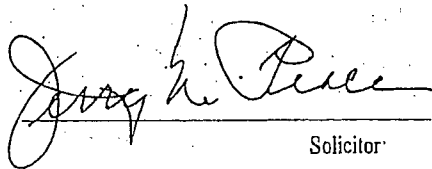
At a Court of General Sessions, convened on the 25th day of August, 2006, the Grand Jurors of Greenwood County present upon their oath:

COUNT ONE

That LAKENDRICK KENTRELL LEVERETTE, along with another person or persons, aiding, abetting and assisting one another, did in Greenwood County, state aforesaid, between the 9th day of June, 2006, and the 10th day of June, 2006, wilfully and unlawfully while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon, or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take from the person or presence of Bobby Caton by means of force or intimidation, goods or monies described as follows: one (1) cellular telephone; one (1) ring; one (1) container of chapstick and United States currency, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 of the South Carolina Code of Laws, 1976, as amended

COPY

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

203

WITNESSES

Travis Clark

WARRANT NUMBERS

118150

[Signature]

Foreman of the Grand Jury

Date:

8/29/06

VERDICT

True Bill

GUILTY STRONG

ARM ROBBERY

Michael Wideman

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

August Term, 2006

Indictment # 06GS24- 1129

THE STATE

vs.

LAKENDRICK KENTRELL LEVERETTE

INDICTMENT FOR

ARMED ROBBERY

ATTEST A TRUE COPY

Ingram Moon

INGRAM MOON
CCCP AND GS
GREENWOOD COUNTY
S. C.

Exhibit #2

THE STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

INDICTMENT FOR
KIDNAPPING

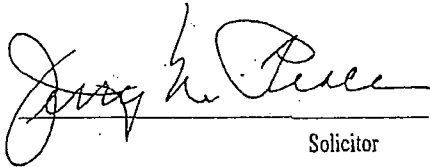
At a Court of General Sessions, convened on the 25th day of August, 2006, the Grand Jurors of
Greenwood County present upon their oath:

COUNT ONE

That LAKENDRICK KENTRELL LEVERETTE, along with another person or persons, aiding, abetting
and assisting one another, did in Greenwood County, state aforesaid, between the 9th day of June, 2006, and the
10th day of June, 2006, wilfully and unlawfully with criminal intent, seize, confine, inveigle, decoy, kidnap, abduct
or carry away Bobby Caton without authority of law, in violation of Section 16-3-910 of the South Carolina Code
of Laws, 1976, as amended

COPY

Against the peace and dignity of the State, and contrary to the statute in such cases made and
provided.


Solicitor

20

WITNESSES

Travis Clark

WARRANT NUMBERS

K118149

Foreman of the Grand Jury

Date:

9/29/06

VERDICT

True Bill

NOT GUILTY

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

August Term, 2006

Indictment # 06GS24- 1130

THE STATE

vs.

LAKENDRICK KENTRELL LEVERETTE

INDICTMENT FOR

KIDNAPPING

ATTEST A TRUE COPY

Ingram Moon

INGRAM MOON
COP AND GS
GREENWOOD COUNTY
S. C.

Exhibit #3

THE STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

INDICTMENT FOR

POSSESSION OF A FIREARM OR KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME

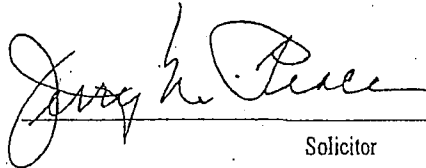
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COPY

COUNT ONE

That LAKENDRICK KENTRELL LEVERETTE, along with another person or persons, aiding, abetting
or assisting one another, did in Greenwood County, state aforesaid, between the 9th day of June, 2006, and the
10th day of June, 2006, possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a
knife during the commission of a violent offense, to wit: Kidnaping and/or, Armed Robbery, or any lesser included
violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such cases made and
provided.


Solicitor

WITNESSES

Travis Clark

WARRANT NUMBERS

K118151

Foreman of the Grand Jury

Date:

VERDICT

True Bill

Not Guilty

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

August Term, 2006

Indictment # 06GS24- 1131

THE STATE

vs.

LAKENDRICK KENTRELL LEVERETTE

INDICTMENT FOR

POSSESSION OF A FIREARM OR KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME

ATTEST A TRUE COPY

Ingram Moon

INGRAM MOON
CCCP AND GS
GREENWOOD COUNTY
S. C.

I am enclosing the following documents for the Applicant's PCR:
 1) Application for Post Conviction Relief page 1 through page 7, also the Cover Sheet.

Applicant's Issues

- 2) Error by the trial Judge for the Strong Armed Robbery Charge, Page 1 through page 2.
- 3) Abused of Discretion made by the trial Judge at Sentencing, Page 2.
- (4) Ineffective Assistance of Counsel, Page 3.
- (5) Prior Inconsistent Statement, Page 4 through 5.
- (6) Ineffective Assistance of Appellate Counsel, Page 6 through Page 13.
- (7) Exhibit #1 (Indictment for Armed Robbery), Exhibit #2 (Indictment for Kidnapping), Exhibit #3 (Indictment for Possession of a firearm or knife during the Commission of a Violent crime), Exhibit #4 (Indictment for Armed Robbery) On the Record of Appeal. (See, Record on Appeal for Exhibit #4).

Finally, please find enclosed the following documents Pursuant to the Applicant's Post Conviction Relief Application, and regards of His Issues presenting to this Court.

Finally Enclosed of this (14) Page ...
 (14) of (14)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD	)	
	)	
	)	2010-CP-24-0787
	)	
Lakendrick K. Leverette, 276349,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN AND
	)	MOTION TO DISMISS
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the Application for Post-Conviction Relief filed June 24, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenwood County. The Applicant was indicted by the August 2006 Greenwood County Grand Jury for one count of armed robbery (2006-GS-24-1129), one count of kidnapping (2006-GS-24-1130), and one count of possession of a firearm during the commission of a violent crime (2006-GS-24-1131). The Applicant was represented by Chad Bettis, Esquire. On April 7, 2008, the Applicant proceeded to a jury trial before the Honorable Ernest Kinard, Jr. With regards to the armed robbery charge, the Applicant was convicted of the lesser-included charge of strong arm robbery and sentenced to fifteen years (15) imprisonment. The Applicant was found not guilty on the charges of kidnapping and possession of a firearm during the commission of a violent crime.

A timely Notice of Appeal was filed, an Anders brief¹ was submitted on the Applicant's behalf, and the Applicant subsequently submitted a pro se brief. The South Carolina Court of Appeals dismissed the appeal. State v. Leverette, Op. No. 2010-UP-143 (S.C. Ct. App. Filed February 23, 2010). The remittitur was sent on July 22, 2010.

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

II.

In his current Application, the Applicant alleges he is being held unlawfully for the following reasons:

- 1) Ineffective assistance of counsel;
 - a. "attorney failed to move to quash all of the Applicant's indictments because the Applicant's indictments failed to show what action the grand jury took,"
- 2) "Judge erred when he sentenced Defendant for strong armed robbery when he was not found guilty of armed robbery";
 - a. "there was no evidence offered during the Applicant's trial by the State that would have suggested strong armed robbery"
- 3) "Judge abused his discretion";
 - a. "the trial judge abused his discretion when the judge convicted and sentenced the Applicant because the judge stated for the record 'if you stuck the pellet gun in that guys mouth, you need 15 years anyway even if you didn't have a prior record,'"
- 4) Ineffective assistance of appellate counsel;
 - a. "appellate counsel failed to raise issue on direct appeal that constituted reversible error, in essence, motion for directed verdict of acquittal based on the lack of sufficient evidence"
- 5) "Prior inconsistent statement";
 - a. "conviction should be dismissed because of a prior inconsistent statement that was made by the victim"

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

III.

The Respondent first submits the Applicant's claim of ineffective assistance of trial counsel is without merit. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced 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.

The Applicant's alleges his trial counsel was ineffective for failing to move to quash his indictments on the ground the indictments "failed to show what action the grand jury took." The

indictment is a notice document, and any challenges to its sufficiency must be made before the jury is sworn in accordance with S.C. Code Ann. § 17-19-90 (2003). In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with § 17-19-90.

The Respondent submits the Applicant's claim of ineffective assistance of counsel should be summarily dismissed because his allegation is conclusively refuted by the record. Pursuant to S.C. Code Ann. § 17-27-70 (1976), disposition of an application on the pleadings and record is proper if the court is satisfied the Applicant is not entitled to post-conviction relief, no purpose would be served by any further proceedings, and there exists no material issue of fact. The records before this Court establish each indictment against the Applicant was true billed on September 29, 2006. (See attached copies of indictments). The jury in the Applicant's trial was subsequently sworn on April 2, 2008. (Record on Appeal, pp. 1, 13). Therefore, the indictments clearly showed "what action the grand jury took" before the jury was sworn, and no basis for objection existed at trial. The Respondent moves for summary dismissal on the basis there is no genuine issue of material fact which would necessitate an evidentiary hearing, and this claim should be dismissed as a matter of law.

IV.

The Respondent submits the Applicant's second, third, and fifth claims raise direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1976). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974) ("[A]n application for post-conviction relief is not a substitute

for an appeal”). Further, “[e]rrors in a petitioner’s trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings.”

Simmons, 264 S.C. at 423, 215 S.E.2d at 885.

The Applicant’s second, third, and fourth claims allege trial court error, abuse of discretion by the trial court, and the sufficiency of the evidence to support his conviction. These issues could have been raised at trial and/or on appeal. Therefore, the Respondent submits these allegations should be summarily dismissed.

V.

The Applicant’s fourth claim alleges he received ineffective assistance of appellate counsel. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985); Tisdale v. State, 594 S.E.2d 166, 167 (2004). In order to show ineffective assistance of appellate counsel, the Petitioner must show that appellate counsel’s performance was (1) deficient, and (2) he suffered prejudice from appellate counsel’s deficiency. Tisdale, 594 S.E.2d at 167.

The Applicant’s appellate counsel filed an Anders brief, which the Applicant supplemented with a pro se brief. The Anders brief procedure requires the appellate court to review the record in its entirety. Here, the South Carolina Court of Appeals dismissed the Applicant’s appeal pursuant to Anders and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), finding no meritorious issues. Respondent asserts that Applicant has failed to prove deficient performance or prejudice on the part of appellate counsel. However, deficient performance is not an issue this Court needs to reach, because even assuming that the court concludes that appellate counsel’s performance was deficient, the Applicant has not shown, nor can he show, the necessary prejudice to succeed on this claim.

In this case, to establish prejudice the Applicant would have to show that the South Carolina Court of Appeals would have found prejudicial error warranting reversal of his conviction and/or sentence if appellate counsel had not filed an Anders brief. The Applicant has failed to do so. The South Carolina Court of Appeals has held, under Anders, the reviewing court is obligated to conduct a "full examination" of the record to determine whether the appeal is "wholly frivolous." See Williams, 305 S.C. 116, 406 S.E.2d 357; Anders, 386 U.S. at 744, 87 S.Ct. at 1400. After such an examination, if the reviewing court agrees with the attorney it may dismiss the appeal or proceed to a decision on the merits. Anders at 744, 87 S.Ct. at 1400. If, on the other hand, the court disagrees with the attorney's analysis of the appeal, it must afford an indigent petitioner "the assistance of counsel to argue the appeal." Id. The purpose of filing a brief under Anders is to ensure the merits of the appeal are not overlooked. "The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal." State v. McKennedy, 348 S.C. 270, 279, 559 S.E.2d 850, 854-855 (2002).

The Applicant specifically alleges his appellate counsel failed to raise the issue of the trial court's denial of his directed verdict motion on appeal. However, it should be noted the Applicant raised this directed verdict issue in his *pro se* brief. Therefore, when the South Carolina Court of Appeals denied Applicant's appeal, to the extent that an underlying issue was properly preserved for appellate review, the merits of the appeal were reached. State v. Sullivan, 282 S.E.2d 838 (1981) (objection or motion must be raised to trial judge in order to preserve issue for appellate review). Further, the opinion dismissing the Applicant's appeal reveals the Court of Appeals specifically considered the issue of whether the Applicant should have been granted a directed verdict at trial, and found the issue had no merit. Therefore, the Applicant

has not shown any prejudice due to his appellate counsel filing an Anders brief. This issue is without merit and should be summarily dismissed.

VI.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

WHEREFORE, Respondent moves to summarily dismiss the application pursuant to S.C. Code Ann. § 17-27-70 on the basis there is no genuine issue of material fact which would necessitate an evidentiary hearing, and each of these allegations should be dismissed as a matter of law.

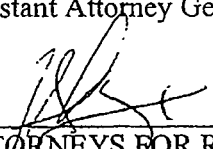
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HARRISON D. BRANT
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

January 27, 2011.

STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS

2010-CP-24-0787

LAKENDRICK K. LEVERETTE,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

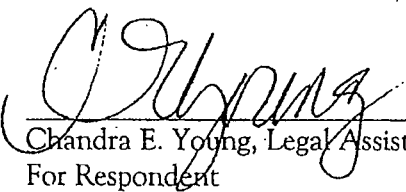
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion to Dismiss in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Robert W. Cone, Esquire
 Post Office Box 828
 Greenwood, SC 29648

DATED this 27th day of January, 2011.


 Chandra E. Young, Legal Assistant
 For Respondent

State of South Carolina)
)
 County of Greenwood)

In the Court of Common Pleas
 Eighth Judicial Circuit
 2010-CP-24-0787

Lakendrick K. Leverette,)
)
 Applicant,)

vs.)

Transcript of Record

State of South Carolina,)
)
 Respondent.)

June 5, 2012
 Newberry, South Carolina

B E F O R E:

The Honorable Thomas A. Russo, Judge

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

Robert W. Cone, Esquire
 Attorney for the Applicant

J. Rutledge Johnson, Esquire
 Attorney for the Respondent

Maryann S. Nevers, CVR-M
 Circuit Court Reporter

I N D E X

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EXHIBITS

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TRANSCRIPT OF RECORD

(WHEREUPON, the proceeding was commenced at 2:27 p.m.)

THE COURT: Okay. As far as a -- I've got the application -- the -- I -- which I -- I'm assuming was the original application?

MR. JOHNSON: Yes, sir.

THE COURT: And then, I have applicant's motion to extend time to respond; and then, a return to respondent's motion to dismiss.

MR. JOHNSON: Yes, sir. That should be construed as the amended application.

THE COURT: As the amended application?

MR. JOHNSON: Yes, sir. I'll ---

THE COURT: Okay.

MR. JOHNSON: --- give -- I'll give you a brief procedural history on that.

THE COURT: All right. Go ahead, Mr. ---

MR. JOHNSON: May it please the Court, Your Honor?

THE COURT: Yes, sir.

MR. JOHNSON: This is case of *Lakendrick Leverette v. State of South Carolina*; it's Case No. 2010-CP-24-0787. Just a -- a -- he filed an application on June 24th, 2010. The state then filed its return and motion to dismiss on a few grounds, and a conditional order of dismissal was signed. I believe -- it was by Judge Griffith. Then Mr.

1 Cone amended his application to be able to bring it here
2 and be heard today. And so -- yeah. He was -- he did that
3 timely. And now we're having the evidentiary hearing --
4 evidentiary hearing -- excuse me.

5 But Mr. Leverette was indicted the August 2006 term of
6 the Greenwood County Grand Jury for one count of armed
7 robbery; one count of kidnaping; one count of possession of
8 a firearm during the commission of a violent crime. On
9 April 7th, 2008, the applicant proceeded to a jury trial
10 before the Honorable Ernest Kinard, Jr. With regards to
11 the armed-robbery charge, the applicant was convicted of
12 the lesser-included strong-arm robbery and sentenced to 15
13 years' imprisonment. He was found not guilty of the charge
14 of kidnaping and the possession charge.

15 THE COURT: Okay.

16 MR. JOHNSON: He filed a timely notice of appeal. But
17 -- and then a -- an Anders brief was submitted on his
18 behalf, and he submitted a pro se brief. But South
19 Carolina Court of Appeals dismissed that appeal. And the
20 remittitur was issued on July 22nd, 2010.

21 He then filed the application, like I said, on June
22 4th, 2010. We filed our return motion to dismiss on
23 January 27th, 2011. And Mr. Cone amended his application
24 on September 19th, 2011. And he is represented here by
25 Robert Cone.

1 THE COURT: All right. Mr. Cone?

2 MR. CONE: Thank you, Your Honor. This -- that --
3 that is correct that the -- as far as the procedural
4 history. Mr. Leverette was indicted on -- on three charges
5 and ultimately convicted on what --

6 THE COURT: A lesser-included ---

7 MR. CONE: --- a lesser-included ---

8 THE COURT: --- offense?

9 MR. CONE: --- offense.

10 He -- however, in -- in reviewing the file and
11 discussing the case with him, he raised a number of issues
12 in his original application. But in my discussion with
13 him, he also had a number of issues that related -- that
14 related more specifically to the issue of ineffective
15 assistance of counsel, which I have addressed in our return
16 to the motion.

17 THE COURT: All right.

18 MR. CONE: And he -- he -- I -- he and I had a
19 discussion, and he still wishes to go forward and then
20 present the -- those issues to the -- to the Court today
21 for its consideration as to the ineffective assistance of
22 counsel.

23 THE COURT: All right, sir. Let me -- before we get
24 started, let me ask: Mr. Cone, if -- if you don't mind, I
25 have a few -- not Mr. Cone. You're standing. Mr.

EXAMINATION BY THE COURT - LAKENDRICK LEVERETTE

7

1 Leverette, let me ask you, if you would, sir, to -- to
2 stand. I'm going to get madam clerk to place you under
3 oath. I have a few questions to ask you before we get
4 started.

5 THE APPLICANT: Yes, sir.

6 THE COURT: Go ahead.

7 LAKENDRICK LEVERETTE, having been first duly sworn,
8 testified as follows:

9 EXAMINATION

10 BY THE COURT:

11 Q All right. Mr. -- Mr. Leverette, just -- just a few
12 questions before we get started. Is -- and I ask -- I ask
13 all applicants this. This has -- this is not particular to
14 your case; I ask everybody this.

15 Just so we're clear before we get started on what this
16 Court can do for you: You understand that as -- as -- as a
17 somewhat appellate court that sits kind of to hear your
18 application, the authority that I have is simply, if I were
19 to agree with your application, agree with your position on
20 your application, then all I could do would be to send you
21 back to where you were prior to your case being tried. In
22 other words, I guess, starting over is -- is, I guess, the
23 easiest way to put it, which means that all of the charges
24 that you were facing originally would all come back and you
25 would have -- you'd be facing those charges again. And, of

1 course, you would get another trial.

2 That's really all I could do. I -- I -- I -- I can't
3 affect your -- well, let me back up. The -- he was found
4 not guilty on those other ---

5 MR. JOHNSON: Yes, sir.

6 THE COURT: --- charges so ---

7 MR. JOHNSON: He would go back and can only be ---

8 THE COURT: So you would ---

9 MR. JOHNSON: --- indicted for ---

10 THE COURT: --- only go back on the ---

11 MR. JOHNSON: --- the strong-arm ---

12 THE COURT: --- on the ---

13 MR. JOHNSON: --- robbery.

14 THE COURT: --- armed-robbery charge. Okay? You
15 understand what I'm saying?

16 THE APPLICANT: (Gestures.)

17 THE COURT: Go ahead.

18 THE APPLICANT: All right. If I was acquitted of the
19 armed robbery, the kidnaping, and the gun charge, it would
20 be double jeopardy to retry me on either charges, other
21 than gun, I was acquitted on, which means ---

22 THE COURT: Right.

23 THE APPLICANT: --- I could ---

24 THE COURT: The -- the ---

25 THE APPLICANT: --- go back on the strong-arm robbery

1 charge.

2 THE COURT: No. You -- you were -- you were acquitted
3 on -- what was the acquittal on? That he ---

4 MR. JOHNSON: He was found lesser included of the
5 armed robbery, which is the strong-arm, and acquitted of
6 the kidnaping.

7 THE COURT: All right.

8 MR. JOHNSON: So I do believe that he can only be
9 reindicted for the strong-arm ---

10 THE COURT: Go back ---

11 MR. JOHNSON: --- robbery.

12 THE COURT: --- and -- and retried on strong-arm
13 robbery.

14 MR. JOHNSON: Yes, sir. Which he ---

15 THE COURT: So ---

16 MR. JOHNSON: --- received 15 years on.

17 THE COURT: So you understand -- but -- in other
18 words, I can't do anything about your sentence. That's --
19 I -- I guess that's what I'm trying to get you to
20 understand. And you're correct that the charges that you
21 were acquitted on, you were acquitted on. Those -- those
22 don't come back. But you would go back on the strong-arm
23 robbery charge. You understand that?

24 THE APPLICANT: Yes, sir. One more thing?

25 THE COURT: Yes, sir.

1 THE APPLICANT: The 15-year sentence that I received
2 on strong-arm robbery ---

3 THE COURT: Yes, sir.

4 THE APPLICANT: --- if you agreed, though, with me and
5 just so happened to go back to trial or whatever, that time
6 will continue on, right?

7 THE COURT: You mean -- you -- you mean that the time
you've served, you would get credit for?

9 THE APPLICANT: Yes. Long as I'm locked up.

10 THE COURT: I -- I assume you would receive credit for
11 any time that you have served ---

12 THE APPLICANT: Okay.

13 THE COURT: --- if -- if you were go back and be
14 convicted. Yeah. Of course, if you went back and you were
15 acquitted, it'd be over.

16 THE APPLICANT: Yes, sir.

17 THE COURT: But if you went back -- it -- now, again,
18 I assume you are entitled to any time that you have served.
19 So you would be given time -- credit for the time you have
20 served.

21 THE APPLICANT: Okay.

22 THE COURT: Okay?

23 THE APPLICANT: Yes, sir.

24 THE COURT: All right. And you understand that,
25 though? In other words, I can't do anything about the

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 11

1 sentence today. I could just put you back for a -- a new
2 trial.

3 THE APPLICANT: Yes, sir.

4 THE COURT: Okay. And understanding that, you still
5 wish to go forward?

6 THE APPLICANT: Yes, sir.

7 THE COURT: All right. Great. All right. Mr. Cone?

8 MR. CONE: Thank you, Your Honor. The state calls Mr.
9 Leverette to the stand.

10 THE COURT: All right. Mr. Leverette, you are -- you
11 are still under oath, sir. If you would come around and
12 take the stand and we'll go ahead and proceed.

13 (Whereupon, the applicant came forward and entered the
14 witness stand.)

15 (Off the record briefly at 2:35 p.m.)

16 THE COURT: Okay. All right. Yes, sir.

17 MR. CONE: Thank you.

18 DIRECT EXAMINATION

19 BY MR. CONE:

20 Q All right. Mr. Leverette, you are -- you're
21 Lakendrick Leverette; is that right?

22 A Yes, sir.

23 Q And you were -- you've heard the procedural history
24 that the -- Mr. Johnson from the attorney general's office
25 -- he correctly stated what you were originally charged

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 12

1 with; is that ---

2 A Yes, sir.

3 Q --- correct?

4 All right. And you, in fact -- it's correct that
5 throughout the -- throughout that trial process, you
6 maintained your innocence; isn't that correct?

7 A Yes, sir.

8 Q And -- and you maintain your innocence today; is that
9 right?

10 A Yes, sir.

11 Q All right. Now, you've -- at -- as a part of this
12 postconviction relief application, you have read -- you
13 have alleged that you -- you have alleged certain issues
14 relating to the ineffective assistance of your counsel.
15 Now, who was your trial counsel in this case?

16 A Chad Bettis, Esquire.

17 Q Okay. And Mr. Bettis, I believe, is seated over there
18 in the courtroom; is that right?

19 A Yes, sir.

20 Q Okay. And when did you retain Mr. Bettis to represent
21 you on these charges?

22 A I think it was in '07.

23 Q 2007?

24 A Uh-huh.

25 Q Okay. So probably -- I believe -- I believe the case

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 13

1 went to trial in 2008; is that right?

2 A Yes, sir.

3 Q So -- and Mr. Bettis represented you for a year, give
4 or take?

5 A Yes, sir.

6 Q Is that correct?

7 All right. But you -- you have alleged a -- a -- a --
8 a number of issues that you say that you -- that you --
9 where you say that Mr. Bettis's representation of you in
10 the case and the trial was ineffective; is that right?

11 A Yes, sir.

12 Q All right. What I'm going to do, then, is let you
13 take a -- take the Court through and explain each one of
14 those and why you think that Mr. Bettis was ineffective and
15 how you think that affected your -- the outcome of your
16 trial in this case. So let -- we'll start at the
17 beginning. Did you -- did you have a -- a -- I guess, a --
18 a complaint or an issue with how the indictments in your
19 case were handled?

20 A Yes, sir.

21 Q Could you explain what that issue was?

22 A The indictments I received was blank. They never --
23 never signed off by a foreman of a grand jury; never true-
24 billed; no indictment numbers or nothing.

25 Q All right. Do you have your -- do you have the copies

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 14

1 of those indictments there?

2 A Yes, sir. Exhibit 1, Exhibit 2, and Exhibit 3.

3 Q All right.

4 THE COURT: Now, are those -- okay. Are -- are you --
5 you're referring to the copies that you received?

6 THE APPLICANT: Yes, sir.

7 THE COURT: From your attorney?

8 THE APPLICANT: Yes, sir.

9 THE COURT: Okay.

10 MR. CONE: Yes, sir.

11 THE COURT: All right. It -- it -- is that an issue
12 as to the indictments that are actually -- were before the
13 Court?

14 MR. CONE: Well, Your Honor, I -- I understand -- Mr.
15 Leverette has brought this issue to my attention that he --
16 that the indictments he received were not true-billed. I
17 have made him -- I made him aware that in the court file,
18 the -- the copies that were -- that were provided to me and
19 that I found in the court file were, in fact, true-billed.
20 But -- but he wishes to ---

21 THE COURT: All right. Well ---

22 MR. CONE: --- to ---

23 THE COURT: --- sure. Certainly ---

24 MR. CONE: --- address this issue.

25 THE COURT: --- you -- yeah. Yeah. I was just trying

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 15

1 to ---

2 MR. CONE: Uh-huh.

3 THE COURT: --- clarify that issue. But -- okay. Go
4 ahead with these.

5 Q All right. Who -- and -- and actually, if I'm --
6 well, I'll mark those in just a moment. Mr. Leverette, do
7 you -- who provided you with those copies of those
8 indictments that you have there?

9 A My attorney, Chad Bettis, Esquire, trial attorney.

10 Q All right.

11 A I received them in motion -- in my motion discovery.

12 Q All right. You received these as part of your -- as
13 part of the discovery you ---

14 A Yes ---

15 Q --- received?

16 A --- sir. They're also the same indictments that was
17 used at trial.

18 Q All right. All right. And did you -- what did you
19 think Mr. Bettis should've done with these indictments
20 after you received them?

21 A I think he should've challenged the indictments before
22 the jury was sworn in, pursuant to *State v. Gentry*. The
23 indictments are to be challenged before the jury is sworn
24 in.

25 Q All right. And what would -- and what would've been

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 16

1 the -- what would've been the basis to challenge those:
2 the fact that they were unsigned?

3 A I mean, they was faulty. I mean ---

4 Q Okay.

5 A Because look at -- they blank: no indictment numbers,
6 no true-billed, no signature, no foreman, no grand jury,
7 nothing.

8 Q All right.

9 A And the trial judge came in the next morning and
10 stated for the record: "Now, indictments allege a little
11 something different than what I told y'all yesterday."

12 Q All right. And what did you take that to mean?

13 A Excuse me?

14 Q What -- what did -- when the judge made that
15 statement, what did you -- what did you take that to mean?

16 A Seemed like to me that's when he -- the judge changed
17 the indictments ---

18 Q All right.

19 A --- or what -- whatever you want to ---

20 Q All right. Did you -- did you discuss the -- the
21 status of the indictments with Mr. Bettis?

22 A I was unaware of the indictments or anything like
23 that. I didn't -- I didn't know too much about ---

24 Q Okay.

25 A --- indictments then.

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 17

1 Q All right. So were you aware of this -- I guess my
2 question is: Were you aware of this problem before the
3 jury was sworn in?

4 A No, sir.

5 Q All right. When did you discover -- when did you
6 discover this problem with the indictments?

7 A Upon arriving in SCDC.

8 Q All right. So after your -- after the trial?

9 A Uh-huh.

10 MR. CONE: Your Honor, at this time I would -- if I
11 can ask that the Court let us make a copy of those -- the
12 indictments he has to make as a -- Applicant's Exhibit No.
13 1.

14 THE COURT: All right.

15 MR. CONE: If I can approach, Your Honor?

16 THE COURT: Any objection to the ---

17 (Whereupon, Mr. Cone conferred with the applicant.)

18 THE COURT: --- this will be marked as Applicant's
19 Exhibit ---

20 MR. JOHNSON: No, Your Honor.

21 THE COURT: Okay. And I ---

22 (Whereupon, Mr. Cone conferred with the clerk of
23 court.)

24 MR. JOHNSON: The state would just ask you take
25 judicial notice that we have true-bill indictments, signed

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 18

1 by the foreman of the grand jury, and -- and they're
2 already ---

3 THE COURT: Yeah.

4 MR. JOHNSON: --- entered into evidence.

5 THE COURT: I've got these in the packet. Yeah.

6 MR. JOHNSON: Yes, Your Honor.

7 MR. CONE: Madam clerk is going to make a copy of
8 those.

9 (Whereupon, Mr. Cone conferred with Mr. Johnson.)

10 THE COURT: I'm going to let you go ahead and proceed
11 while she's ---

12 MR. CONE: Thank you ---

13 THE COURT: --- making ---

14 MR. CONE: --- Your Honor.

15 THE COURT: --- those copies.

16 MR. CONE: I was -- I was giving you just a second but
17 ---

18 DIRECT EXAMINATION BY MR. CONE CONTINUES.

19 Q The -- now, Mr. Leverette, did you and Mr. -- did you
20 and Mr. Bettis discuss -- have a discussion at all about
21 any kind of motion related to the indictments -- making a
22 motion to quash the indictments or otherwise -- prior to
23 trial or at the start of your trial?

24 A I remember during some part of the trial -- I'm
25 thinking at the closing of the state's argument -- I

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 19

1 remember the judge asking him do he object to the
2 indictments going back.

3 Q All right. And what -- but did you -- did you come to
4 any conclusion or any decision about what --- whether or
5 not to make a motion regarding the sufficiency of the
6 indictments?

7 A No, sir.

8 Q All right. Do you feel that you should've had more --
9 a discussion with Mr. Bettis or that he should've explained
10 that to you in greater detail?

11 A Yes, sir.

12 Q All right. All right.

13 A As a ---

14 Q Is there ---

15 A --- matter of ---

16 Q --- anything -- I'm sorry. Go ahead.

17 A As a matter of fact, that's on page -- in the
18 transcript, page 126, line 20 through 23. It's -- the
19 Court states: "Do you object to the indictments going
20 back?"

21 Mr. Bettis states: "Your Honor, I would not like the
22 indictments going back."

23 THE COURT: What page number was that again, Mr.
24 Leverette?

25 THE APPLICANT: 126.

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 20

1 MR. CONE: 126 ---

2 THE COURT: 126?

3 MR. CONE: --- Your Honor.

4 THE COURT: All right. And line -- you said line 20?

5 THE APPLICANT: Line 20 through 22.

6 THE COURT: All right. I see it. Okay.

7 Q Is there ---

8 THE APPLICANT: Did you -- you see the part where --

9 THE COURT: Yeah. I've ---

10 THE APPLICANT: --- other part ---

11 THE COURT: --- got it right ---

12 THE APPLICANT: --- I was talking about? On ---

13 THE COURT: You talking about start on line 20 and
14 going down?

15 THE APPLICANT: On page 14.

16 THE COURT: Page what, now?

17 THE APPLICANT: On -- also, on page 14.

18 THE COURT: 14?

19 THE APPLICANT: Where the judge come in and stated:

20 "The indictments look a little something different from
21 what" ---

22 THE COURT: All right.

23 THE APPLICANT: --- "I told y'all yesterday."

24 THE COURT: Page 14 -- all right. And it starts on
25 this page. Let's see. All right.

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 21

1 MR. CONE: Thank you, Your Honor.

2 DIRECT EXAMINATION BY MR. CONE CONTINUES.

3 Q All right. Other than what you've already pointed
4 out, Mr. Leverette, are there -- is there anything else
5 regarding the indictments or the -- either their -- their
6 -- their sufficiency or their submission to the Court or to
7 the jury -- is there anything else that you feel -- feel
8 Mr. Bettis should've done, he failed -- that he did not do,
9 or that Mr. Bettis did you feel he should not have done?

10 A No, sir. No -- other than he should've challenged the
11 indictments before the jury was sworn in.

12 Q All right. And did that -- and did I understand your
13 testimony? Did you have a discussion before the jury was
14 sworn in with Mr. Bettis about whether it would be
15 advisable to make a motion to quash the -- the indictments?

16 A No, sir.

17 Q All right. That was not discussed with you prior to
18 the start of your trial?

19 A No, sir.

20 Q All right. All right. You also -- you and I have
21 discussed -- did you have some -- did you have some
22 objections to the way Mr. Bettis handled or responded to
23 evidence submitted relating to a -- the gun that was
24 allegedly used in the crime in this case?

25 A Excuse me? I couldn't hear you.

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 22

1 Q You couldn't -- did you have -- did you -- you had --
2 did you feel that Mr. Bettis was ineffective in how he
3 responded to the introduction of the evidence related to
4 the gun in this case?

5 A Oh, yeah. Because it's self-explanatory that -- that
6 there was no gun produced at trial or the solicitor states
7 that this gun was used and he stated that this gun was used
8 and he stated this gun was used. He stated on page 19,
9 line 19 through 21: "There they took most of the -- most
10 of his clothes off; took some money from him; hit him with
11 a gun; stuffed a muzzle-loaded gun inside of his mouth."

12 But at trial the only testimony about a gun was a
13 pellet gun and some other kind of gun. A -- a muzzle-
14 loader was never brought up, other than what the solicitor
15 told to the grand jury about a muzzle-loader.

16 Q All right. Just to -- and -- make sure you speak up
17 so everyone can hear you. But you're saying that because
18 the solicitor made a reference to a -- it -- to the gun
19 being a muzzle-loader -- and, in fact, the gun that was --
20 later was referred to as the "pellet gun," you -- did you
21 feel Mr. Bettis didn't adequately address that
22 inconsistency in the testimony?

23 A I mean, it's -- they were speaking of three different
24 kind of guns, but no gun was produced at trial.

25 Q All right. And ---

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 23

1 A Police ---

2 Q -- how ---

3 A --- say they got a gun off me. The victim said I put
4 a pistol in his mouth. But -- and then, they speaking of
5 three different kind of pistols at trial, but no gun was
6 produced at trial.

7 Q Do you believe that Mr. Bettis should've addressed
8 that -- that -- that inconsistency in a different way or
9 handled that -- that inconsistent testimony in a different
10 way?

11 A I believe he could object to it or -- and maybe it'd
12 have helped me out in the long run or whatever through
13 appellate court.

14 Q All right. Do you believe that the failure to object
15 to that testimony prejudiced the jury against you in your
16 case?

17 A Yes. Because, I mean, he -- he made a motion for a
18 direct verdict based on lot of sufficient evidence to go
19 forward to the grand jury. But, I mean, he don't basically
20 state that the gun -- no gun was produced at trial, which
21 means I was entitled to a direct verdict of acquittal.

22 Q All right.

23 THE COURT: Let me just make it clear so the record is
24 clear: I think, in Mr. Leverette's testimony here, he was
25 referring to the testimony that appears on page 19 of the

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 24

1 trial transcript. And you referred to that as "testimony,"
2 and I believe that's opening statement.

3 MR. CONE: Of the ---

4 THE COURT: So ---

5 MR. CONE: --- the -- my mistake, Your Honor. That's
6 correct.

7 THE COURT: That's okay.

8 THE APPLICANT: What is that?

9 THE COURT: That portion on page 19 that you were
10 referring to, that is during the solicitor's opening
11 statement ---

12 THE APPLICANT: Okay.

13 THE COURT: --- that he made those comments.

14 THE APPLICANT: Okay.

15 THE COURT: Right.

16 Q Was there -- in addition to the -- all right. In
17 addition to the handling of the -- this presentation about
18 the gun, were there -- were there any other evidence that
19 you -- or that was entered that you feel Mr. Bettis either
20 didn't -- shouldn't -- should've objected to and did not or
21 that -- or failed to adequately contest before the jury?

22 A Well, I mean, he should've objected to a lot, because
23 nothing -- SLED testified they received -- no DNA, no
24 fingerprints, nothing me -- I mean ---

25 Q All right. Can you be -- can you be a little more

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 25

1 specific, as far as no fingerprints or DNA on -- on -- on
2 what items of evidence?

3 A The cane, the pellet gun, the drugs, the -- the
4 straws, the cuttings on the hats; brown paper bag, I think,
5 was tested for prints; the money, the map, lighter,
6 ChapStick. I mean, everything -- the -- the trial was
7 called the "trial of the drug that went bad between alleged
8 -- my alleged confederate and the alleged victim in the
9 case." Everything is linking back to them two.

10 Q All right. And just for the benefit of the Court:
11 Are you basically -- you're referred -- you -- you just ran
12 down a list. Is that basically the list of exhibits that's
13 contained in the transcript of your trial near the
14 beginning of ---

15 A Yes, sir. This is stuff ---

16 Q --- the document?

17 A --- that -- which majority of stuff was never produced
18 at trial no way.

19 Q Okay. And if you can, just explain to the Court what
20 you think Mr. Bettis should've done with that evidence that
21 he failed to do.

22 A I don't think he should've let it into trial.

23 Q Did you and Mr. Bettis discuss the -- the evidence
24 that might be presented against you during the course of
25 the trial?

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 26

1 A No, other than photographs.

2 Q I'm sorry. No -- other ---

3 A Nothing ---

4 Q You ---

5 A --- other than photographs.

6 Q Nothing other than photographs. I'm sorry.

7 So did you and he, prior to trial, discuss all these

8 other items that are listed in that page of exhibits and

9 that they might be entered against you?

10 A No, sir.

11 Q Okay. Do you know -- do you know if they were -- if

12 information about those exhibits was provided to him as

13 part of the state's discovery response?

14 A No, sir.

15 Q You don't -- you don't know if they were provided, or

16 you know they weren't provided?

17 A Oh. I know that I kept asking pictures of the -- of

18 the gun or whatever and the sword or whatever, but nothing

19 was never produced to me on no -- on behalf of the gun or

20 nothing like that. We get to trial; they pass around two

21 photographs of -- to the grand jury of two different kind

22 of guns. But like I said, no gun was never produced at

23 trial.

24 Q Did you have -- I mean, were there any pretrial -- do

25 you know if there were any pretrial motions regarding the

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 27

1 admissibility of evidence in your case?

2 A No, sir.

3 Q There were none?

4 All right. Did you and Mr. Bettis discuss the
5 possibility of filing pretrial motions regarding the -- the
6 admission of any of this evidence?

7 A No, sir.

8 Q Is there anything else -- other than what you've
9 already discussed regarding the -- the evidence entered
10 against you in this case, there anything else that you feel
11 Mr. Bettis should've done with that evidence that he did
12 not or should not have done that he did do?

13 A No, sir.

14 Q Okay. Did you have a concern about the directed-
15 verdict motion that Mr. Bettis made on your behalf at the
16 close of the state's case?

17 A You mean on behalf of the ineffective assistance of
18 counsel -- appellate counsel?

19 Q Well, I -- right now we're talking about Mr. Bettis.
20 What -- let -- let's just talk about Mr. Bettis for -- at
21 the moment. Was there anything related to his efforts in
22 your directed -- on the directed-verdict motion that you
23 took issue with?

24 A Yes. He made a direct -- direct verdict -- motion for
25 a direct verdict based on lack of sufficient evidence, but,

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 28

1 I mean, he didn't specify what evidence it was or . . .

2 Q All right. So your concern -- just to clarify, your
3 concern or your -- your -- your sense is that Mr. Bettis's
4 directed-verdict motion didn't have the most detail in it?

5 A Yes, sir.

6 Q All right.

7 A It's on page 123, line 18 through 22.

8 Q Did you have an opportunity to discuss with Mr. Bettis
9 -- to discuss the directed-verdict motion before he made
10 it, or was that kind of right in the course of the trial?

11 A No, sir.

12 Q Okay. All right. Anything else, other than what
13 you've just discussed, as far as problems with how -- with
14 Mr. Bettis's handling of the directed-verdict motion?

15 A No, sir. Not -- nothing else on the direct verdict.

16 Q All right. All right. Did you -- do you feel Mr.
17 Bettis was ineffective in his handling of the jury charge
18 relating to strong-arm robbery?

19 A Yes, sir.

20 Q Okay. And what were your concerns there?

21 A If Mr. Bettis had've objected to the lesser-included
22 offense, then the results of the outcome of the trial would
23 have been different. Because the record contained no
24 evidence to support a finding of a lesser-included offense
25 of strong-arm robbery.

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 29

1 Q All right. Did you and Mr. Bettis discuss the jury --
2 the judge's charge to the jury before it was given to the
3 jury?

4 A Excuse me?

5 Q Did you and Mr. Bettis discuss the charge to the jury
6 before the Court actually gave the charge to the jury?

7 A No, sir.

8 Q Did he go over it with you during a break or
9 otherwise?

10 A No, sir.

11 Q All right. Did you and Mr. Bettis have any
12 discussions about that -- that strong-arm robbery could be
13 lesser-included offense and be considered as part of the
14 case against you?

15 A I remember him saying something about they may charge
16 -- I meant, may charge the jury on strong-arm robbery.
17 Yes, I do. But as far as him objecting to it, no.

18 Q All right. Well, just to clarify, did you and -- I
19 guess, prior to trial, did -- were you aware that strong-
20 arm robbery could be -- could be brought -- it -- it could
21 be used as a lesser-included offense against you?

22 A Yeah. I mean, it -- strong-arm robbery is a lesser-
23 included offense to armed robbery. But what I'm saying:
24 Strong-arm robbery is taking something; armed robbery is at
25 gunpoint. The only testimony heard at trial was:

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 30

1 Leverette was the gunman. He put a pistol in the man
2 mouth; ripped out a back part of his throat; pull the
3 pistol out; pistol-whipped the man; took him back into the
4 bar at gunpoint. Police testified they got a gun off of
5 me. That's armed robbery -- alleged.

6 Q All right.

7 A So how do you get strong-arm robbery out of that?

8 Q All right.

9 A It -- it's not possible.

10 Q All right. And your concern is that Mr. Bettis
11 should've -- should've made that argument to the Court,
12 either before or after the jury -- the charge was given to
13 the jury, that the -- that the evidence did not support a
14 charge of strong-arm ---

15 A Yes, sir.

16 Q --- robbery?

17 A Yes, sir.

18 Q All right. All right. Did you have any other -- any
19 other concerns about the -- the charge given to the jury
20 regarding any of the other allegations?

21 A Yes. Can I speak to you for a second?

22 Q Huh?

23 A Speak to you for a second?

24 MR. CONE: My client wants to have a sidebar
25 conference with me. That's not permitted normally under

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 31

1 the rules.

2 THE COURT: Unh-unh.

3 THE APPLICANT: No.

4 THE COURT: No. He's under oath. You can't ---

5 MR. CONE: I -- I ---

6 THE COURT: --- talk -- talk ---

7 MR. CONE: --- understand.

8 THE COURT: --- to him.

9 MR. CONE: (To the applicant) I don't think I can
10 talk to you right now.

11 Q All right. Do you -- I believe there was also a
12 statement made by the trial judge during the sentencing
13 portion of your trial and that got -- caused you some
14 concern and that you think Mr. Bettis should've responded
15 to that statement in a different way?

16 A Yes, sir. I think Mr. Bettis should've objected for
17 -- objected to the -- to it. Because if he had objected to
18 it, then maybe the results on direct appeal would have been
19 different.

20 Q And this is a statement, I believe, that's found on
21 page 172 of the transcript, beginning at line -- well, I
22 guess, going back before it, beginning line 16 and
23 continuing through line 21?

24 MR. JOHNSON: (To Mr. Cone) You say 172?

25 MR. CONE: Yes, page 172.

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 32

1 MR. JOHNSON: Thanks.

2 Q What -- what -- Mr. Leverette, what was it the judge
3 said that you found was objectionable?

4 A The judge stated for the record that: "Since -- if
5 you stuck that pellet gun in that guy's mouth, you need 15
6 years anyway, even if you didn't have a prior record."

7 Q And what was your -- what was your issue with that
8 statement?

9 A Abuse of discretion.

10 Q And did you feel Mr. Bettis should've raised some kind
11 of objection to that statement at the time?

12 A Yes, sir.

13 Q Did you discuss the judge's statement after -- after
14 the trial was over with Mr. Bettis?

15 A No, sir.

16 Q Is there any particular reason you didn't talk with
17 him about it?

18 A Nothing was never said.

19 Q Okay.

20 MR. JOHNSON: Your Honor, just for the record: I know
21 he's bringing this as ineffective assistance of counsel for
22 not objecting to that. But abuse of judicial discretion is
23 a direct-appeal issue, and we would ask that that be
24 stricken from the record.

25 THE COURT: All right. I'm going to sustain that.

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 33

1 That is a direct-appeal issue.

2 Q All right. Mr. Leverette, do you -- Mr. Leverette, do
3 you understand the state's objection on that point?

4 A Yes. But as a matter of fact, the Court of Appeals
5 did brief something on that.

6 THE COURT: That was -- that -- I think that was
7 covered in the Anders brief. That was -- went -- that went
8 to the Court of Appeals. So that -- I think that issue was
9 decided during the appellate ---

10 MR. CONE: It ---

11 THE COURT: --- process.

12 MR. CONE: It was represent --

13 MR. JOHNSON: Yes, sir.

14 MR. CONE: It was referenced in the -- in the ---

15 THE COURT: Yeah.

16 MR. CONE: --- appellate brief.

17 Q All right. Mr. Leverette, you -- and you also made --
18 you made a couple of allegations that your appellate
19 counsel, who was not Mr. Bettis -- is that correct?

20 A Uh-huh.

21 Q Who was your appellate counsel in this case?

22 A Wanda H. Carter with the South Carolina Division of
23 Appellate Defense.

24 Q Okay. And you've alleged that her assistance to you
25 was ineffective. Could you relate to the Court how you

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 34

1 think her assistance was ineffective?

2 A "The applicant in this present case submits that his
3 trial counsel was ineffective pursuant to the mandates that
4 are set forth in *Simpkins v. State*, 401 S.E.2d 142 because
5 his appellate counsel failed to raise issue on direct
6 appeal that constitute reverse error and instance motion
7 for directed verdict of acquittal based on lack of

8 sufficient evidence, which were preserved on record of

9 appeal, page 123 -- -3, line 18 through 25. *Law State v.*

10 *McHoney*, 544 S.E.2d, page 30 through 36, 2001 case: 'A

11 defendant is entitled to a directed verdict when the state

12 fails to produce evidence offense charged.' Attention:

13 The applicant submits that -- the applicant submits to this

14 Court that there was no gun produced at trial. And only

15 photographs of two different guns was passed around to the

16 grand jury. See record on appeal as follow" ---

17 Q All right. Mr. Leverette, let -- let me stop you.

18 You -- you're just reading, I believe, part of your -- a --

19 a -- an -- an exhibit that was attached to your application

20 for ---

21 A Uh-huh.

22 Q --- postconviction relief; is that right?

23 A Uh-huh.

24 Q Well, I believe the Court has a copy of that as part

25 of the record in this case. Let me just ask you: Is there

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 35

1 any -- as -- as far as your testimony today, is there -- is
2 there -- and you -- you -- is there any additional
3 information you want to present to the Court that's not set
4 out in this application that you want the Court to know
5 about, relating to how you think your appellate counsel was
6 ineffective?

7 A Yes. Because the -- like I say, the directed verdict
8 was objected to -- I meant, the motion for a directed
9 verdict was made at trial. But, I mean, she didn't -- she
10 didn't try to raise no issues on the directed verdict of
11 acquittal or -- which mean if she had've, then results of
12 the outcome could've been different ---

13 Q Okay.

14 A --- on direct appeal.

15 Q All right. So just -- and again, not -- I'm just
16 trying to summarize your -- your -- or your objection with
17 your appellate counsel is very similar to the objection you
18 had about Mr. Bettis: that there was not much detail or
19 any -- or any -- any information, really, regarding the
20 directed verdict -- or in support of the directed verdict
21 that was presented, either at the trial or in your
22 appellate brief; is that ---

23 A Yes, sir.

24 Q --- that what your argument -- that ---

25 A Yes, sir.

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 36

1 Q --- that your concern?

2 MR. JOHNSON: Your Honor, just for the record -- and
3 if you want me to do this during closing, I can certainly
4 do that. But this was an Anders brief, which means, as you
5 know, the Court of Appeals has reviewed all the errors that
6 were objected to. And so this would've been a direct-
7 appeal issue. Mr. Bettis -- there's testimony and in the
8 record that he objected to the -- or -- with a directed-
9 verdict motion; and therefore, the appellate court would
10 have reviewed this. And it's not proper for this Court.

11 THE COURT: All right, sir. I'll sustain that.

12 MR. CONE: Thank you.

13 Q All right. All right. Mr. Leverette, you've gone
14 over a number of -- we've identified a number of things
15 where you say -- said that the efforts of your attorneys
16 that represented you in this case were ineffective. Is
17 there anything else that you have not yet discussed that
18 you think -- where you -- that you think demonstrates that
19 Mr. Bettis did something he should not have done in the
20 context of representing you or that he failed to do
21 something he should've done as part of his representation
22 of you in the trial of this case?

23 A The prior inconsistent statement.

24 Q Prior inconsistent statement?

25 A Uh-huh.

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 37

1 Q Could you explain for the Court what you mean by
2 "prior inconsistent statement"?

3 A Prior inconsistent statement -- it's, like, when you
4 said something out of court but you are testifying today in
5 court to something totally different.

6 Q Okay. Whose -- whose -- whose statement are you
7 talking about that was inconsistent in this case?

8 A The alleged victim.

9 Q All right.

10 MR. JOHNSON: Can you give me a reference page,
11 please, sir?

12 MR. CONE: Let's see. I believe it's at . . .

13 Q I think the first reference to -- you're -- you're
14 referring to the -- a statement given Mr. Caten, who was
15 the alleged victim in this case; is that ---

16 A Yes, sir.

17 Q --- right, Mr. Leverette?

18 And I believe there was some cross-examination
19 relating to that statement, beginning on page 52 of the
20 trial transcript, beginning about line 18 and it continues
21 on for about two pages into -- that continues into page --
22 well, really, into page 50 -- basically, it was page 56,
23 about ---

24 MR. JOHNSON: All right.

25 Q --- through the top of page 56.

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 38

1 MR. JOHNSON: All right. Thanks.

2 Q Is that the statement you're referring to?

3 A Page 52, line 18 through 25; on through page 55, line
4 11 through 15, and 22 through 25; page 56, line 1 through
5 9.

6 Q All right. And clarify: That is -- that -- that is
7 some testimony where Mr. Bettis was cross-examining the
8 alleged victim, Mr. Caten; is that right?

9 A Yes, sir.

10 Q And -- and in court he was cross-examining him as to a
11 -- apparently, Mr. Caten made two -- made -- gave -- made a
12 statement to the police, but later made a statement to a --
13 someone else, an investigator or someone else, that
14 differed from the statement he'd given to the police; is
15 that right?

16 A Yes, sir.

17 Q And what was the -- what was the major difference
18 between the two statements?

19 A At the crime scene, he told the cops that my alleged
20 confederate, Jones, held a knife to his throat and was
21 threatening him -- something like that. And then later on,
22 he gave a statement to a investigator -- I think, Jones
23 investigator -- that -- far as attorney or whatever, and
24 said that Jones never threatened him; he never touch him;
25 Leverette did this; Leverette did -- Leverette basically

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 39

1 did everything; Jones didn't do nothing.

2 Q All right. And were you and Mr. Bettis -- you were
3 aware of this second statement; is that correct? You were
4 -- you were aware that he'd given a second statement that
5 differed from his first statement?

6 A Yes, sir, I was aware of that.

7 Q All right. What is it you think -- what is it that
8 you say Mr. Bettis failed to do with regard to that second
9 statement that he should've done?

10 A He should've objected to it.

11 Q He should've objected to the statement being entered?

12 A No. He should've objected to the prior inconsistent
13 statement.

14 Q All right.

15 A If he ---

16 Q So he ---

17 A --- had objected to it, then the Court of Appeals
18 could reviewed it.

19 Q All right. And when you say the "prior statement,"
20 are you -- with -- you're talking about the statement that
21 Mr. Caten gave to the police earlier or the second
22 statement he gave later to the investigator?

23 A I mean, both of them. You use -- both of them was
24 used as ---

25 Q Okay.

DIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 40

1 A --- prior inconsistent statement. That's how you get
2 a prior inconsistent statement.---

3 Q All right.

4 A --- two different statements.

5 Q All right. But when the state entered it -- so your
6 objective -- it's -- your concern is that Mr. Bettis did
7 not object to the entry of these statements or -- and did
8 not -- or did not present any argument regarding the fact
9 that they were inconsistent?

10 A Yes, sir. Basically, that ---

11 Q Okay. All right. Other than that issue, is there
12 anything else that you -- we haven't already discussed that
13 you feel that has rendered Mr. Bettis's assistance to you
14 ineffective in the trial of this case?

15 A No, sir.

16 Q Okay. Anything else we haven't already discussed
17 regarding the -- the actions of your appellate counsel in
18 this case?

19 A No, sir.

20 Q All right. Is there anything else you think the Court
21 needs to hear from you regarding, you know -- in -- in
22 support of your petition today?

23 A No, sir.

24 MR. CONE: Thank you. Please answer any questions Mr.
25 Johnson has on behalf of the attorney general's office.

CROSS-EXAMINATION BY MR. JOHNSON - LAKENDRICK LEVERETTE 41

1 THE COURT: Mr. Johnson?

2 MR. JOHNSON: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. JOHNSON:

5 Q Mr. Leverette, I just had a few questions for you, if
6 you don't mind. And I just need yes-and-no answers from
7 you. Are you aware that your indictments were, in fact,
8 true-billed? Have you ever seen copies of those?

9 A For -- on -- on direct appeal. I seen one that they
10 put on the direct appeal. But ---

11 Q But are you ---

12 A --- far as trial, they was blank.

13 Q Are you aware the actual ones that were given to the
14 trial judge ---

15 A Yeah. The blank ones.

16 Q --- were true-billed?

17 And they were true-billed way before your trial date
18 ever occurred?

19 A No.

20 THE COURT: What do you base that on, Mr. Leverette?

21 THE APPLICANT: Sir?

22 THE COURT: What do you base that on?

23 THE APPLICANT: Meaning?

24 THE COURT: Based on the -- I mean, your -- your
25 position is that those indictments were not true-billed

CROSS-EXAMINATION BY MR. JOHNSON - LAKENDRICK LEVERETTE 42

1 prior to your trial.

2 THE APPLICANT: Yes, sir.

3 THE COURT: What do you base that on: the copies you
4 received?

5 THE APPLICANT: Yes, sir.

6 THE COURT: Okay.

7 THE APPLICANT: And then the trial judge basically
8 come in the next day and said, "The indictments allege a
9 little something different from what I told y'all
10 yesterday," which is self-explanatory that they stopped the
11 jury and read them the indictments. Then he turn around
12 and asked Mr. Bettis later on in the trial, "Do you object
13 to the indictments going back?" It's self-explanatory that
14 something wasn't ---

15 THE COURT: That ---

16 THE APPLICANT: --- right with the indictments.

17 THE COURT: That -- that's a standard question.

18 THE APPLICANT: Yeah?

19 THE COURT: That's a standard question in every
20 criminal trial. And usually -- and as a matter of fact,
21 I've stopped asking it, because I don't send the
22 indictments back.

23 THE APPLICANT: Yes, sir.

24 THE COURT: So -- but I was just wanting to -- I
25 wanted to know if there was anything other than your copies

CROSS-EXAMINATION BY MR. JOHNSON - LAKENDRICK LEVERETTE 43

1 of the indictments, which are blank, that you -- that you
2 base that that on, that they were not true-billed.

3 THE APPLICANT: No, sir.

4 THE COURT: And you state it's your copies, plus the
5 statement that the judge made?

6 THE APPLICANT: Yes, sir.

7 THE COURT: Okay.

8 CROSS-EXAMINATION BY MR. JOHNSON CONTINUES.

9 Q All right. I'll move on. You have a complaint about
10 the evidence that your attorney should've objected to
11 evidence coming in at the trial; isn't that correct?

12 A Excuse me?

13 Q You -- you -- you have testified here today that your
14 attorney, Mr. Bettis, should've -- should have objected to
15 some of the evidence that came in at trial; isn't that
16 right?

17 A Yes, sir.

18 Q And -- and one of the things that you say he should've
19 objected to, DNA evidence coming -- or that there was no
20 DNA evidence that -- that came in at trial; isn't that
21 right?

22 A No, sir.

23 Q That's not your testimony?

24 Are you aware that DNA evidence did come in, in the
25 trial?

CROSS-EXAMINATION BY MR. JOHNSON - LAKENDRICK LEVERETTE 44

1 A Yes, sir.

2 Q And it was taken -- I guess, Travis Clark, on page
3 111, testified that there was a DNA swab from the muzzle of
4 a gun from the -- that came back as the victim's blood --
5 or the victim's DNA. Are you aware of that?

6 A Yes, sir, I am aware ---

7 Q Okay.

8 A --- of that.

9 Q You're saying he should've objected to that coming in?

10 A Yes, sir.

11 Q Okay. You also say that he should've made a motion
12 for directed verdict, but you do admit that he had made
13 that motion for directed verdict and preserved it for
14 appeal?

15 A Excuse me?

16 Q You are aware that your attorney made the directed-
17 verdict motion and preserved it for appeal?

18 A Yes.

19 Q Okay. You say that he should've objected to this
20 prior inconsistent statement?

21 A Yes.

22 Q But are you aware that your attorney used those to
23 discredit the victim's testimony in your trial?

24 A Yes.

25 Q So he used those effectively in the trial; isn't that

REDIRECT EXAMINATION BY MR. CONE - LAKENDRICK LEVERETTE 45

1 right? He used both inconsistent statements to discredit
2 the victim?

3 A I mean, he didn't object to it.

4 Q But used those against the victim, did he not?

5 A Yeah, he did use them. But, I mean . . .

6 MR. JOHNSON: That's all I have right now, Your Honor.

7 THE COURT: All right. Anything further, Mr. Cone?

8 MR. CONE: Just -- just very briefly.

9 REDIRECT EXAMINATION

10 BY MR. CONE:

11 Q Mr. ---

12 THE COURT: All right, sir.

13 Q --- Leverette, just one clarification: When you
14 testified earlier about that there was no DNA evidence,
15 were you -- were you saying that there -- you -- I believe
16 you -- were you testifying there was no -- there was no DNA
17 evidence entered linking you to ---

18 A Yes, sir.

19 Q --- the weapon? Is that -- is that ---

20 A Exactly.

21 Q --- the point you were trying to make in your earlier
22 testimony?

23 A Yes, sir.

24 Q All right.

25 A SLED testified they received no standard of DNA or

1 fingerprints on me.

2 Q Not -- not that there was never any DNA evidence
3 entered at trial, but ---

4 A Exactly.

5 Q --- there was none linking you to the alleged weapons
6 in this case?

7 A Yes, sir.

8 Q All right.

9 MR. CONE: That's all I have, Your Honor.

10 THE COURT: All right. Thank you very much, Mr.
11 Leverette. You may step down, sir.

12 (Whereupon, the applicant exited the witness stand.)

13 THE COURT: Anything further, Mr. Cone?

14 MR. CONE: Nothing further from the applicant, Your
15 Honor.

16 THE COURT: All right. Mr. Johnson?

17 MR. JOHNSON: Yes, sir. Call Mr. Bettis to the stand.

18 THE COURT: Mr. Bettis, if you would please come
19 around and be sworn, sir.

20 (Whereupon, the clerk of court conferred with the
21 Court.)

22 THE COURT: Yeah. Mr. Cone, the copies that -- that
23 she made of Mr. Leverette's copies of the indictments, you
24 wanted those marked as an exhibit, correct?

25 MR. CONE: That's correct, Your Honor.

1 THE COURT: All right. And what -- if it's all right,
2 we're going to mark those as a group as a ---

3 MR. CONE: As one exhibit? I think that's fine.

4 THE COURT: All right.

5 CLERK OF COURT: I think these are his actual copies.

6 Did you ---

7 MR. CONE: Oh.

8 CLERK OF COURT: Did it matter? I mean ---

9 MR. CONE: I -- I don't think we really care if she
10 made a copy. (

11 (Whereupon, Mr. Cone conferred with the applicant.)

12 MR. JOHNSON: Your Honor, may I run to the restroom
13 real fast?

14 THE COURT: I'm sorry?

15 MR. JOHNSON: Take a brief break?

16 THE COURT: Yeah. Before we get started with the
17 state's position, we'll go ahead and take a short break.

18 MR. JOHNSON: Couple -- thank you, Your Honor.

19 THE COURT: Take about two or three minutes.

20 (Off the record from 3:19 p.m. until 3:22 p.m.)

21 (WHEREUPON, Plaintiff's Exhibit 1 was marked off the
22 record.)

23 THE COURT: All right. Y'all ready to go? Go ahead.

24 W. CHAD BETTIS, having been first duly sworn,
25 testified as follows:

1 DIRECT EXAMINATION

2 BY MR. JOHNSON:

3 Q Afternoon, Mr. Bettis. Just start with the basics:

4 How long have you been practicing law?

5 A I think I'm in the middle of my 17th year.

6 Q And how -- what percentage is -- is criminal law in
7 your practice?

8 A Probably 10 percent at the most.

9 Q And have you had a chance to try a criminal case
10 before?

11 A I have.

12 Q And do you know how many you've -- you've tried?

13 A I'd estimate at least a half a dozen to eight.

14 Q And were you appointed or retained in this case?

15 A Appointed.

16 Q Was that 608 appointment?

17 A Yes, it was.

18 Q Do you remember receiving or -- or did you receive
19 discovery from the state?

20 A Yeah. I received discovery probably about a month
21 after I got appointed.

22 Q Did that have indictments in it?

23 A What I recall, the discovery I received did have
24 indictments, and those indictments were similar to what
25 Lakendrick, I think, has presented today. They didn't have

1 any notation on them from the foreman or true-bill marked
2 on them, the ones ---

3 Q Did you ---

4 A --- initially received.

5 Q Did you ever receive ones that were true-billed?

6 A I don't know if I ever received one from him, but I
7 know I saw them.

8 Q So you were aware that they were actually true-billed
9 by a grand jury?

10 A Yes.

11 Q So did you have any problems with them -- with going
12 forward on those indictments?

13 A There -- there were no issues that I saw from the
14 indictments when I reviewed them, nothing irregular about
15 them.

16 Q Would you have objected if there would've been
17 something -- or would -- would've been issues with these
18 indictments?

19 A I -- I certainly would've made an objection to quash
20 the indictments if there -- if the original indictments
21 that I reviewed were not true-billed or not properly
22 executed. But then, I'm sure it'd have went through a
23 procedure where we looked at the index to see -- or the log
24 to see what was done in the log for the grand jury.

25 Because I've done that before at a trial. Actually,

1 that's the first motion I made. And first thing we did is
2 got the log out, because they weren't actually stamped or
3 marked true-billed. But when we went to the log, the log
4 showed they were actually true-billed and the trial
5 proceeded.

6 So yes, I would have.

7 Q Did you discuss the offenses with Mr. Leverette in
8 this case?

9 A I'm sorry. Could you ---

10 Q Did you discuss the offenses?

11 A Sure.

12 Q And the elements of those offenses?

13 A I did.

14 Q And the charges that they carried ---

15 A I ---

16 Q --- potential sentences?

17 A Yes, I did.

18 Q And did you engage in any plea offerings with the
19 state?

20 A You know, the -- there were some plea discussions in
21 the state between the solicitor's office and Mr.
22 Leverette's former attorney. I think Mr. Jones represented
23 him for about two years before I was appointed. I was
24 appointed late '07, representing him about five months from
25 the date I was appointed till the date we tried the case.

1 Before that, from the -- from the file I saw, there
2 were some plea negotiations between the state and Mr.
3 Leverette through his prior counsel. But as far as me and
4 the state, I think the only thing I ever approached them
5 with was that -- a possible plea offer with probation only.
6 And that was completely unacceptable, and that's the reason
7 we went to trial.

8 But I can't remember exactly what we were offering to
9 plead to, whether it was strong-arm robbery or some other
10 charge. But it was for probation only, is what our offer
11 was.

12 Q And you said the state rejected that outright?

13 A Yes. There -- there was no negotiations, based on
14 that.

15 Q Did you discuss the state's burden of proving him
16 beyond a reasonable doubt with him in this case?

17 A Yes. I -- just ---

18 Q And did ---

19 A --- like I do with all my clients.

20 Q Did you form an opinion on the state's evidence in
21 this case?

22 A Certainly, I thought the state had, you know,
23 sufficient evidence to get a conviction on all the charges
24 that were brought against him. But I thought also, based
25 on all the evidence that I reviewed, I thought we could

1 have a pretty good trial strategy to create an issue for
2 the jury.

3 Q And what ---

4 A And ---

5 Q --- was that trial strategy?

6 A Primarily, based on a lot of the inconsistencies of
7 the victim's testimony and -- well, just so happens his
8 testimony in trial, what we anticipated it would be, as
9 well as statements he had given to police on the night of
10 the incident, as well as statements he had made later,
11 about a year after the incident. There were a lot of
12 inconsistencies. I thought there were a lot of holes we
13 could poke in his story to try to discredit the victim.
14 And -- and as well as the codefendant, there were
15 inconsistencies and material in -- contained in his
16 statements that, I thought, would provide a good defense
17 for us to show that the primary culprit in this case was
18 Mr. Jones, the codefendant, and not my client. And that
19 was the trial strategy we employed during the entire trial.

20 But there was -- there was, you know, certainly
21 evidence there that could convict both defendants. But I
22 felt like we had a -- a good argument, much better than Mr.
23 Jones would have, to point the blame at Mr. Jones, which --
24 which is what we did.

25 Q Let's see. Did you interview any of these witnesses?

1 A The -- when you say "witnesses," which ones you
2 referring to?

3 Q Did you ever get to interview the codefendant?

4 A I never interviewed him. I mainly had all the -- the
5 statements contained from him in the narrative. I did
6 interview the victim. I talked with different law
7 enforcement officers involved.

8 I had an investigator who went out and tried to locate
9 potential witnesses whose names I was given who were at the
10 bar that night, where -- where the incident began. The
11 investigator didn't really get any relevant information,
12 besides coming up with one -- one witness who actually, I
13 think, became important at the end of the trial.

14 But -- but as far as interviewing other witnesses, I
15 think the ones I mentioned to you are about it. I don't
16 think I ever talked to Mr. Jones directly. I think he was
17 represented by an attorney, and -- and that probably was
18 what prevented me from -- from having discussions with him.
19 I'm not -- I -- I can't remember exactly.

20 But I didn't feel like I needed to really talk to him.
21 I had plenty of material that I was going to be using in
22 case he testified in the case.

23 Q And, in fact, you used this defense witness in the
24 trial; isn't that right?

25 A The -- yeah. I think her name was Ms. Burnett --

1 Terri Burnett, if that's who you're referring to. I think
2 she was the only witness we called.

3 Q And -- and -- and just explain, I guess, to the Court
4 how you utilized Ms. Burnett as a -- as a witness in ---

5 A Okay.

6 Q --- this case.

7 A Well, the trial strategy, again, was trying to show
8 that Mr. Jones and Mr. Caten, the victim -- Mr. Jones being
9 the codefendant -- had a prior drug deal that Mr. Jones was
10 owed money for, for Mr. Caten. There was evidence of that.
11 And it was our -- our theory of the case and our strategy
12 that -- that Mr. Jones had gotten Mr. Caten outside the bar
13 to -- to discuss with him that prior drug money that was
14 owed and that they were potentially going to do another
15 drug deal outside and that things got out of hand because
16 Mr. Jones wanted his money from the prior drug deal.

17 Mr. Caten -- obviously, his testimony was he didn't
18 know Mr. Jones at all. And he also testified that he
19 didn't go outside to -- to do any drugs with anyone,
20 although his statement to the police on the night it
21 occurred was directly that he was asked to go out and smoke
22 a joint with Mr. Leverette and Mr. Caten. But
23 nevertheless, our -- our argument was that Mr. Jones and
24 Mr. Caten got into -- got into an argument -- mainly, Mr.
25 Jones getting into it with Mr. Caten, trying to get money

1 back -- and that that's when everything kind of got out of
2 hand and that Mr. Jones was the -- the instigator of
3 anything that took place that night with regard to Mr.
4 Caten's injuries or his allegations or the responsibility
5 of Mr. Jones.

6 I can't remember, you know, all the details right now,
7 because it was over four years ago. But essentially, the
8 -- the witness we ended up calling helped establish -- her
9 testimony was that Mr. Caten, inside the bar that night
10 before he went out, told her that he owed Mr. Jones money.
11 And -- and that was part of our whole argument during the
12 state's case in chief. And that was what -- the type of
13 information was I was trying to get in front of the jury
14 through every witness, whether it be through inconsistent
15 statements, cross-examining Mr. Jones about it, cross-
16 examining Mr. Caten about it.

17 And she kind of was the icing on the cake to say,
18 "Yes. Mr. Caten, the victim, did say, when he was in the
19 bar before any of this happened, that he was -- he owed
20 this guy" -- meaning Jones -- "money." So that helped
21 buttress our position that Mr. Jones and Mr. Caten were the
22 problem: basically, a drug deal gone bad, where Mr. Caten
23 is getting my client, Mr. Leverette, involved in something
24 really that was between him and Mr. Jones, with Mr. Jones
25 being the primary culprit, again.

1 Q And so this witness testified -- in your professional
2 opinion, did presenting this witness outweigh having the
3 last argument?

4 A I think it did. I think it kind of was -- kind of was
5 the icing on the cake. Because we had to make sure we
6 persuaded the jury that Mr. Jones was the person who did
7 everything Mr. Caten says that Mr. Leverette did. Because
8 Mr. Caten was very inconsistent in who he said was
9 involved. Initially, he said both of them did various
10 things: one putting the gun at his throat, one holding the
11 knife to his throat. Later, he said Mr. Jones was forced
12 to be there; that he didn't touch him; that he never
13 threatened him; that it was all Mr. Leverette.

14 So, you know, I had to -- I had to make sure the jury
15 was persuaded that it was just the opposite and they were
16 both lying, because now they were trying to cover up from
17 one another. Because there was also cocaine found at the
18 scene.

19 You know, our argument to the jury was, you know, Mr.
20 Caten owed Mr. Jones the money initially. Well, now, this
21 cocaine had been found. Mr. Jones was going to get in
22 trouble for it. So Mr. Caten and Mr. Jones got together
23 and basically said, "Look, if you forgive my 250 or 300
24 dollars you owe me, I'll make sure they understand that it
25 wasn't your cocaine."

1 You know, that was kind of a part of the -- that --
2 that wasn't the biggest part of our theory. But that was
3 an innuendo argument that we made also. So yeah. I -- I
4 think that her testimony -- our witness's testimony was
5 kind of icing on the cake.

6 And -- and we needed that to -- to help -- because she
7 was totally independent. She didn't know anybody from
8 Adam, except, really, Mr. Caten. If she knew any of them,
9 she knew Mr. Caten, because he was a frequent patron of the
10 bar where everything began.

11 So -- so I -- I -- I feel like it really helped
12 buttress our -- our case and our argument to the jury.

13 Q And just to reiterate: You did, in fact, use these
14 prior inconsistent statements of the victim against him in
15 the cross-examination?

16 A Oh, of course. That was the main -- main reason we
17 used them.

18 Q Now, Mr. Leverette said you didn't object to these
19 prior inconsistent statements.

20 A It was -- I wouldn't -- I -- I wouldn't want to object
21 to them. I -- the solicitor may want to object to them,
22 but we don't want to. We need to use them.

23 Q Let me just make sure I cover my bases, Mr. Bettis.
24 You also said that you didn't object to the DNA evidence
25 coming in. Is there a reason for that?

1 A Well, again, you know, we -- we -- we wanted to kind
2 of approach the -- or my trial strategy was: I wanted to
3 approach the trial -- you know, because there was evidence
4 of a robbery. There was evidence that Mr. Caten's watch
5 was taken. There was evidence that his lighter was taken.
6 There's evidence that his cell phone was taken.

7 Now, there's inconsistencies on whether they were
8 taken off of him by defendants or whether he took them off
9 himself and gave him -- his own inconsistent statements,
10 which, again, helped us. But -- but there was evidence
11 that he -- there -- he -- money was taken from him,
12 personal property. The jury was going to believe somebody
13 took something from him, because it was all recovered by
14 the police and there was -- there was some proof that --
15 that at least some of the items were his.

16 Again, he was saying that my client put the barrel of
17 the gun -- the muzzle of the gun down his throat. That's
18 what he was telling the jury. And that's what Mr. Jones
19 was telling the jury: that my client was sticking the gun
20 down his throat when he was robbing him out in a field
21 somewhere.

22 The gun was coming in to evidence. I don't think that
23 any objection I made would've kept the gun out, considering
24 that it did have direct evidence of the gun being used to
25 -- to injure Mr. Caten, because it did have his DNA.

1 And again, my argument to the jury was: Okay. Yeah.
2 He got robbed. Mr. Jones robbed him. Mr. Jones was
3 responsible. If anybody stuck the gun down his throat, it
4 was Mr. Jones. You know, if anybody put a knife to his
5 throat, it was Mr. Jones.

6 So we really weren't trying to keep that out. That
7 wasn't our strategy to keep evidence out. Our strategy was
8 to blame Mr. Jones for doing everything.

9 MR. JOHNSON: Court -- Court's indulgence, Your Honor.

10 THE COURT: Yes, sir.

11 Q Just to make sure we have -- I know Your Honor has
12 covered this. But, Mr. Bettis, you actually stated that
13 you didn't want the indictments going back to the jury?

14 A I -- I'm sorry. Could you repeat that?

15 Q Did you state that you didn't want the indictments
16 going back to the jury?

17 A That I did not?

18 Q Yes.

19 A I -- I'm really not sure. I don't ---

20 Q Okay.

21 A --- to -- to the judge, when -- when he was inquiring
22 of me of that, I don't remember whether I said I did not or
23 -- I may have. I -- I mean, whatever's in the record, I'll
24 have to rely on that. I don't -- I do not remember. I
25 probably did say I didn't want it going back, but I don't

1 know.

2 Q And you, in fact, made the directed-verdict motion at
3 the end of the state's case?

4 A Yes. Just to preserve the issue. I knew -- I -- I'm
5 sorry. I -- I knew there was enough evidence to -- for the
6 case to go to the trial -- to -- to the jury. I knew that.
7 But -- but I still made the motion, just to protect the
8 record in case there were an appellate issue down the road.

9 Q And Mr. Leverette alleges that you should've objected
10 to the charge of armed -- the strong-arm robbery as a
11 lesser-included. Is there a reason why you didn't?

12 A Well, you know, I -- I didn't feel like this was a
13 case -- and, you know, who knows? I don't -- I didn't feel
14 like it was a case of all or nothing. I felt like, you
15 know, that the right strategy to use was to give the jury
16 another option, because there was considerable evidence,
17 you know, being presented against Mr. Leverette.

18 If -- if the jury believed Mr. Caten, the victim, or
19 Jones or part of both of their stories, you know, they
20 could easily have convicted him of the kidnaping,
21 possession of a weapon, and armed robbery. But I felt like
22 if there was something else, you know, for them to -- to
23 convict him of that was a lot less, as far as the -- the --
24 or the seriousness of the offense, as well as the -- the
25 sentencing potential, you know, that was the right strategy

1 to employ. Because they could -- they could find that he
2 didn't use the weapon on -- on Mr. -- I knew that they
3 could find that he didn't use the weapon on Mr. Caten; that
4 he -- if -- if they decided he didn't put the gun in his
5 mouth.

6 There was evidence that he had the gun initially,
7 okay; and that -- that Mr. Jones then got it -- if I
8 remember correctly, Mr. Jones then got it from him. So
9 they could've found: Well, everything that Mr. Jones did
10 after he got the -- the gun from Mr. Leverette -- Mr.
11 Leverette was there with him, maybe not putting the gun
12 down his throat. But he was there with him from the time
13 everything started all the way till they went back to the
14 bar -- when the police finally arrived at the bar.

15 And I kind of felt like if the jury believed, even
16 though -- even if they believed he didn't have the gun,
17 they may have felt like he was still there, using force and
18 intimidation to help his friend rob the guy, even if he
19 wasn't doing it armed with a deadly weapon. He may have
20 been using -- they -- they could've found he was using
21 force and intimidation. And -- and I didn't want them to
22 have to decide, Well, you know, we're going to convict him
23 of armed robbery and nothing else, as opposed to being able
24 to go to strong-arm robbery as an option.

25 You know, and it was one of those things where you

1 feel like you're doing the -- the right thing at the time.
2 And I -- and I still feel like it was. I mean, I think if
3 I were going -- doing this trial all over again at that
4 same time, I would still want the lesser-included-offense
5 charge, because I don't think it was an all-or-nothing
6 case. Again, that was trial strategy.

7 Q Let me ask you, Mr. Bettis, if you remember -- the
8 jury did, in fact, come back and ask the judge to, I guess,
9 go over the armed-robbery charge again ---

10 A Yes.

11 Q --- didn't they?

12 A Yes. The -- as I recall, they did.

13 MR. JOHNSON: Your Honor, I don't think I have any
14 questions -- further questions at this time. But please
15 answer any question Mr. Cone has. Thank you.

16 CROSS-EXAMINATION

17 BY MR. CONE:

18 Q Mr. Bettis, you said you -- I believe your testimony
19 was that you felt that it was better to have the strong-
20 arm-robbery charge presented to the jury to give them an
21 alternative to, you know, going -- going forward on the
22 armed-robbery and the kidnaping charge; is that -- is that
23 basically ---

24 A Sure.

25 Q --- the -- the ---

1 A Well, what ---

2 Q --- issue there?

3 A --- what we wanted was an acquittal, which we got on
4 basically two charges -- or 2 1/2, so to speak. But yeah.
5 In -- in case they weren't going to acquit him at all on
6 everything, you know, that's the reason to have a strong-
7 arm-robbery charge. Sure.

8 Q Did you -- but ---

9 A And there was evidence of it.

10 Q All right. Did you -- you -- you believe there was
11 evidence ---

12 A I believe ---

13 Q --- of a ---

14 A --- there ---

15 Q --- strong-arm robbery?

16 A I certainly believe there was evidence presented
17 sufficiently for a jury to convict him on strong-arm
18 robbery. Yes.

19 Q Did you -- did you talk with Mr. Leverette about, you
20 know, that choice, you know, whether to -- to leave -- to
21 let the strong-arm-robbery charge stay in or to object --
22 you know, or to -- you know, to object to it being
23 presented? Did -- was that a discussion you had with Mr.
24 Leverette prior to the judge actually charging the jury?

25 A I -- I couldn't tell you if I did or not. I really

1 don't know.

2 Q Okay.

3 A I -- I don't know if I discussed that particular part
4 with him.

5 Q All right. Did you -- going back to some of the
6 evidence that was presented, like -- you -- you stated you
7 felt there was a great deal of evidence that was going to
8 come in. Did you -- did you discuss with Mr. Leverette the
9 -- the evidence that was likely to be entered against him
10 and what your prospects were of keeping it out?

11 A Certainly, we talked about the evidence that the state
12 had, you know, with regard to the gun, the sword, who was
13 using what, as far as what they were alleging or claiming
14 in their -- in their case. Actually, he and I went over
15 with one of the detectives and looked at the evidence
16 together. So he -- he knew what the evidence was. And we
17 -- we had pictures of it. We looked at the pictures.

18 But again, my -- my theory of the case was that Mr.
19 Jones robbed the guy. We -- we wanted the jury to know the
20 guy got robbed and that Mr. Jones did it. That -- that was
21 the way I was approaching the case.

22 Q Well, with that -- that being the strategy ---

23 A Uh-huh.

24 Q --- did you and -- did you talk to Mr. -- did you have
25 a conversation at some point to discuss that with Mr.

1 Leverette and said, "You know, the way that we can -- we
2 can go after this -- you know, we can -- with regard to the
3 evidence, try to get it suppressed, try to keep it out and
4 not let it get in at all; or we can go -- you know, or we
5 can let all this evidence in and use it to, you know,
6 allege that it was Mr. Jones who was the real wrongdoer
7 here"? Did you -- did you discuss the implications of that
8 with Mr. Leverette before trial?

9 A I discussed with him -- yes -- certainly, what our
10 strategy was -- what my strategy was going to be. He was
11 -- he was well aware of that.

12 We -- we talked -- you know, I mean, I was -- I was
13 only represented him -- representing him about five months.
14 The case got called to trial initially, you know, a month a
15 -- two months after I started representing him. I wasn't
16 near ready to go forward. The judge gave us another term.
17 Ended up being called about a month and a half after that.

18 We met nine times in jail to go over the case. You
19 know, I was getting prepared for the case, you know, for a
20 good three weeks to a month, once we knew when we were
21 going. We -- we went over what the strategy I was going to
22 use in trial many times.

23 As far as trying to suppress evidence, you know, there
24 weren't any real grounds to suppress any of the evidence.
25 I mean, if -- even if I had wanted to -- yeah. I -- I

1 would've made motions to suppress if I had wanted to. They
2 probably wouldn't have been granted because there really
3 weren't any grounds to suppress any of the -- the evidence
4 that did come -- did come in, you know, anyway. So I don't
5 think it would've mattered, one way or another.

6 But that -- that wasn't anything I was planning on
7 doing.

8 Q Okay.

9 A And I don't think it would've mattered if I did.

10 A And I believe you said -- well ---

11 (Whereupon, Mr. Cone conferred with the applicant.)

12 Q But you think that -- well, based on -- after all the
13 testimony was admitted by the state, you believe that there
14 was -- you believe there was at least some evidence the
15 jury could rely upon of the -- the strong-arm robbery?

16 A Yeah. I think if the jury believed our theory, the
17 jury could still have easily believed -- found by the
18 evidence that Mr. Leverette was still -- even if Mr. Jones
19 was doing all the damage to Mr. Caten, so to speak, that
20 Mr. Leverette was still right there with him, you know, and
21 -- as another body, intimidating Mr. Caten, you know. And
22 they could've found through that that he was strong-arm-
23 robbing him, as opposed to armed-robbing him ---

24 Q Okay. Even though ---

25 A --- certainly.

1 Q You believe that, even though I don't believe there
2 was any evidence introduced -- or at least under your --
3 under the theory you argued, that everything was hand --
4 done by Mr. Jones; Mr. Leverette was just there and never
5 actually took anything from Mr. Caten. You still felt
6 there was some basis to -- to sustain a strong-arm-robbery
7 charge?

8 A Are you saying there -- that there was no evidence
9 that Mr. Jones took anything from him?

10 Q That Mr. Leverette -- that Mr. Leverette took
11 anything.

12 A Well, there was evidence that Mr. Leverette took
13 something from him.

14 Q All right.

15 A Yeah. Mr. -- Mr. Jones's testimony and Mr. Caten's
16 testimony both indicated that Mr. Leverette was the primary
17 aggressor and was taking things -- money, personal property
18 -- from Mr. Caten. So yeah. There -- there was evidence
19 of taking things.

20 But -- but again, our theory was Jones was the
21 aggressor with the gun and the knife; Leverette was there
22 also, which, you know, we really -- unless -- unless Mr.
23 Leverette decided to testify and our testimony was he
24 wasn't there at all -- we didn't have a good basis for
25 that; there wouldn't have been a reason to do that -- you

1 know, the jury was going to believe that he was there, okay
2 -- that Mr. Leverette was there. We needed to make them
3 believe that Mr. Jones was the -- doing all the damage with
4 weapons.

5 But they were still going to know Mr. Leverette was
6 there and he was with Mr. Jones. We just needed to make
7 them understand that he wasn't being the one who was
8 aggressive. But I think, even if they believed that, they
9 could still find that he was kind of the right-hand man and
10 that, by doing that -- using his, you know, presence and
11 his intimidation with his presence, that they could --
12 still could've found him guilty of strong-arm robbery.

13 And I think there was -- I -- so yeah. I think there
14 was evidence of that, no question.

15 Q All right. At sentencing I believe Judge Kinard made
16 a -- a statement basically that: "If you stuck -- if you
17 stuck that pellet gun in the guy's mouth, you should get
18 15" -- anywhere -- words to that effect. Did -- did those
19 -- did the judge's statement cause you some concern that he
20 was considering -- he was considering evidence that
21 basically the jury would've -- had essentially acquitted
22 him of, since they found him not guilty of armed robbery?

23 MR. JOHNSON: Your Honor, that's already been
24 sustained. That -- that's ---

25 THE COURT: Right.

REDIRECT EXAMINATION BY MR. JOHNSON - W. CHAD BETTIS 69

1 MR. JOHNSON: --- already been taken ---

2 THE COURT: That was ---

3 MR. JOHNSON: --- care of on ---

4 THE COURT: --- a direct-appeal issue that was ---

5 MR. JOHNSON: Right.

6 THE COURT: --- dealt with by the Court of Appeals.

7 MR. CONE: All right. Thank you, Your Honor. If I
8 could have just a moment.

9 (Whereupon, Mr. Cone conferred with the applicant.)-

10 MR. CONE: Mr. Bettis, thank -- thank you for your
11 testimony. I have nothing ---

12 THE WITNESS: All right.

13 MR. CONE: --- further, Your Honor.

14 MR. JOHNSON: Couple redirect questions.

15 REDIRECT EXAMINATION

16 BY MR. JOHNSON:

17 Q Mr. Bettis, do you feel that you adequately prepared
18 this case?

19 A I -- I do. Yes.

20 Q And do you feel that you adequately conferred with
21 your client?

22 A I -- I do.

23 Q And would you also agree with me that Judge Kinard
24 instructed the jury on the "hand of one, hand of all" ---

25 A Yes.

1 Q --- concept?

2 A Yes.

3 MR. JOHNSON: All right. No further questions.

4 THE COURT: All right. Thank you very much, Mr.
5 Bettis. You may step down, sir.

6 (Whereupon, the witness exited the witness stand.)

7 MR. JOHNSON: The state has no further witnesses.

8 THE COURT: All right. Mr. Cone, would you like to
9 make any closing remarks, sir?

10 MR. CONE: Just very briefly, Your Honor. I think
11 what's been presented here and -- and is that Mr. Leverette
12 -- and there's been discussion about this -- there were
13 things that went on during the trial of this case that I
14 think -- and I -- where his counsel perhaps -- he -- you
15 know, and nothing against Mr. Bettis; he's a fine attorney.
16 But I think there's a -- there may have been a real
17 breakdown of communication here in that at some -- some key
18 junctions and some key strategic decisions, he didn't
19 really explain to Mr. Leverette what he was, you know,
20 looking at.

21 He didn't explain to Mr. Leverette what was -- you
22 know, what were the potential consequences or potential
23 outcomes of some of these decisions, particularly decisions
24 to allow the admission of evidence; that he was -- or that
25 pursuing a trial strategy that rather than opposing the

1 admission of evidence and the admissibility of it, they
2 were going to let it in and, you know, then use that to try
3 to impeach and -- and point the finger at a codefendant.
4 That -- I think the problem is that Mr. -- you know, he did
5 not really explain that strategy to Mr. Leverette.

6 In particular with the strong-arm-robbery charge going
7 forward, I think there's, you know, testimony that that
8 really wasn't discussed with Mr. Leverette. Mr.
9 Leverette's in a situation where the jury essentially
10 acquitted him of the -- of the charges that were originally
11 brought against him. And the strong-arm robbery, you know,
12 I mean, at least his feeling is that there really was no
13 evidence submitted that supported the strong-arm-robbery
14 charge; and had that charge not gone forward, he -- you
15 know, he could've walked out a free man; and that -- that
16 he didn't have an opportunity, prior to the judge charging
17 the jury or afterwards, to discuss with his lawyer the --
18 the significance or implications of that.

19 And again, Your Honor, I think we've -- Your Honor's
20 heard the other argument, so I'm not going to rehash
21 everything we -- you know, Mr. Leverette brought up today.
22 But he did have concerns. He'd had, you know, issues that
23 -- that he felt could've been addressed better; could've
24 been addressed differently; and that where he -- where he
25 has very strong opinions on -- I -- I've been talking with

1 him -- that he -- we really felt like he should've been
2 consulted a little more during -- you know, during -- as --
3 as part of this process. Because he's ended up doing 15
4 years, when he doesn't feel he didn't anything wrong; and
5 that that he should -- and when -- particularly given that
6 he was acquitted of the other major, you know, charges
7 brought against him, I think it's understandable how he
8 might feel that way.

9 So on that basis and on the evidence that's been --
10 that we've presented today, Mr. Leverette just asks that
11 the Court consider granting his application for
12 postconviction -- for conviction relief and remand him for
13 a new trial.

14 THE COURT: All right, sir.

15 MR. JOHNSON: Your Honor, just ---

16 THE COURT: Mr. Johnson?

17 MR. JOHNSON: --- briefly, the state position that Mr.
18 Bettis certainly did provide adequate assistance of
19 counsel. As Mr. Bettis's testimony, he met with him nine
20 times and discussed all the consequences; discussed the
21 charges and the penalties. Mr. Leverette was facing 65
22 years if you were to do all the consecutive of kidnaping,
23 armed robbery, and the possession of a firearm. Mr. Bettis
24 explained his trial strategy: that it was to give -- the
25 strong-arm-robbery charge was to give the jury an

1 alternative to just the armed-robbery charge. And
2 obviously, the jury believed Mr. Bettis's view of the case.

3 Also, Mr. Leverette has -- he -- he alleges that his
4 -- there should've been more communication. But yet he's
5 failed to prove at this -- more communication would have
6 changed the outcome of the trial. He's got to prove
7 prejudice, and the state would submit that he has failed to
8 meet his burden of proof.

9 The indictments -- you have them in front of you.
10 They're true-billed. I don't think that's an issue. I
11 don't think the appellate -- appellate-counsel argument is
12 an issue.

13 And so the state would submit that Mr. Bettis, once
14 again, provided effective assistance of counsel and that --
15 that Mr. Leverette has failed to meet his burden of proving
16 that and proving any prejudice resulting therefrom.

17 THE COURT: All right, sir. Well, I'm going to take
18 it under advisement, because I've got this trial transcript
19 that I need to go through. And -- and I didn't have,
20 obviously, an opportunity to do that before today. So I'm
21 -- I'm going to do that.

22 I -- I do want to make one comment, though, so that no
23 one leaves ---

24 MR. JOHNSON: So ---

25 THE COURT: I -- I just was going to say: I do want

1 to make one comment ---

2 MR. JOHNSON: Oh.

3 THE COURT: --- that -- so that ---

4 MR. JOHNSON: I'm sorry.

5 THE COURT: --- you understand that -- and that -- and
6 again, I don't know what I'm going to do, because I need to
7 review this transcript. But let's -- let's not -- let's
8 not leave here with -- with the -- with the understanding
9 that because the jury in this case did not find him guilty
10 of armed robbery but of strong-arm, that that means that if
11 they didn't have the strong-arm option, he would've walked.
12 Because it may very well have been that if they didn't have
13 the strong-arm option, they would've found him guilty of
14 armed robbery. Because there was evidence, based on the
15 little bit that I saw, of -- there's DNA of the victim's --
16 DNA on the gun.

17 So let's not make the mistake that because the jury
18 found him guilty on strong-arm, that had that not been
19 available, they would've acquitted him altogether. And I
20 think that's what we're talking about when we talk about
21 trial strategy: that it -- it -- it may have been that the
22 jury may have settled on armed robbery and acquitted him on
23 the other two. I don't know. That's just all speculation.

24 But -- but I do want to review the transcript, because
25 I think it would help me in -- in fleshing out all the

1 issues. And I'm going to do that, and then I'll have an
2 answer for y'all. Okay?

3 MR. JOHNSON: Thank you, Your Honor.

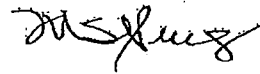
4 (WHEREUPON, the proceeding was concluded at 3:54 p.m.)

5 --- END OF TRANSCRIPT OF RECORD ---
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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, OFFICIAL COURT REPORTER
FOR THE EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH
CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD IN
THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO
APPEAL, IN THE CIRCUIT COURT FOR GREENWOOD COUNTY,
SOUTH CAROLINA, ON THE 5TH DAY OF JUNE, 2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 19, 2012

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT
)
)

Lakendrick K. Leverette, #276349,

) 2010-CP-24-0787
)

) Applicant,
)

) **ORDER OF DISMISSAL**
)

) v.
)

) State of South Carolina,
)

) Respondent.
)
_____)

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 24, 2010 and amended on September 16, 2011. Respondent made its Return on January 27, 2011. An evidentiary hearing into the matter was convened on June 5, 2012, at the Newberry County Courthouse. Robert W. Cone, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, Applicant testified on his own behalf. Chad Bettis, Esquire also testified. This Court had before it a copy of the records of the Greenwood County Clerk of Court, records from the South Carolina Department of Corrections, and the trial transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenwood County. Applicant was indicted by the August 2006 Greenwood County Grand Jury for one count of armed robbery (2006-GS-24-1129), one count of kidnapping (2006-GS-24-1130), and one count of possession of a firearm during the commission of a violent crime (2006-GS-24-1131). Applicant was represented by Chad Bettis,

Esquire. On April 7, 2008, Applicant proceeded to a jury trial before the Honorable Ernest Kinard, Jr. With regards to the armed robbery charge, Applicant was convicted of the lesser-included charge of strong arm robbery and sentenced to fifteen years (15) imprisonment. Applicant was found not guilty on the charges of kidnapping and possession of a firearm during the commission of a violent crime.

A timely Notice of Appeal was filed, an Anders brief was submitted on Applicant's behalf, and Applicant subsequently submitted a *pro se* brief. The South Carolina Court of Appeals dismissed the appeal. State v. Leverette, Op. No. 2010-UP-143 (S.C. Ct. App. Filed February 23, 2010). The remittitur was sent on July 22, 2010.

In his original Application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel;
 - a. "attorney failed to move to quash all of the Applicant's indictments because the Applicant's indictments failed to show what action the grand jury took"
2. "Judge erred when he sentenced Defendant for strong armed robbery when he was not found guilty of armed robbery"
 - a. "there was no evidence offered during the Applicant's trial by the State that would have suggested strong armed robbery"
3. "Judge abused his discretion";
 - a. "the trial judge abused his discretion when the judge convicted and sentenced the Applicant because the judge stated for the record 'if you stuck the pellet gun in that guys mouth, you need 15 years anyway even if you didn't have a prior record'"
4. Ineffective assistance of appellate counsel;
 - a. "appellate counsel failed to raise issue on direct appeal that constituted reversible error, in essence, motion for directed verdict of acquittal based on the lack of sufficient evidence"
5. "Prior inconsistent statement"
 - a. "conviction should be dismissed because of a prior inconsistent statement that was made by the victim"

Respondent filed a Return and Motion to Dismiss arguing Applicant's claims were either refuted by the record, were direct appeal issues, or were meritless because appellate counsel filed an Anders brief and the Court of Appeals reviewed the entire record and found no reversible error.

Applicant, through counsel, filed a Return to Respondent's Motion to Dismiss (construed as an amended Application) alleging:

1. "[T]rial counsel was ineffective due to his failure to properly object to or move to quash the indictments against Applicant prior to trial."
2. "[T]rial counsel failed to object to the court's charging of the lesser-included offense of strong-armed robbery on the basis that there was insufficient evidence in the record to support a charge of strong-armed robbery."
3. "[C]ounsel was ineffective in failing to adequately cross-exam(sic) the state's chief witness against him, Bobby Caton."

At the PCR hearing, Applicant proceeded on the claims of ineffective assistance of counsel as listed in the Return to Respondent's Motion to Dismiss.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he

burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.”

Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.

Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to move to quash the indictments

Applicant alleges Counsel failed to move to quash the indictments pre-trial. Applicant testified Counsel should have moved to quash the indictments because they were not true-bill indicted by the grand jury and thus, faulty. He also stated Counsel never discussed the indictments

with Applicant. Counsel testified he received Applicant's discovery with copies of the indictments that were not originally true-billed. He also stated he later received copies of the true-billed indictments. Counsel testified he discussed the indictments along with the charges and penalties with Applicant. Counsel further stated he did not see any deficiencies in the indictment or else he would have moved to quash them pre-trial.

This Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. This Court had a copy of the Clerk's records, including the indictment, and has read the trial transcript, all of which assists the Court in judging the witnesses' credibility. This Court finds Applicant's testimony, regarding Counsel's ineffectiveness, is not credible while also finding Counsel's testimony credible.

As a general principle, indictments are sufficient when they allege time and place, as required by law, and charge the crime substantially in the language of the statute or the common law which prohibits the crime or so plainly that the offense charged may be easily understood and, if the offense is statutory, that the offense is contrary to the statute involved. S.C. Code Ann. § 17-19-20 (2003). All indictments must be viewed with a "practical eye" to determine whether they fulfill their function to notify the accused of the charge he must answer, notify the court of what judgment and sentence to pronounce, and present a bar to subsequent prosecution. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d

494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

The indictments in this case were, in fact, true billed by the Greenwood County Grand Jury on September 29, 2006. Counsel testified he did not move to quash the indictments because he had no reasonable basis as there were no issues with the indictments. This Court finds counsel was effective in his representation of Applicant. Additionally, no prejudice resulted as the indictments were clearly true-billed by the grand jury and contained the necessary information to give notice to Applicant of the charges against him and to confer subject matter jurisdiction on the trial court. Applicant has failed to meet his burden of proof and thus, this allegation is denied.

Failure to object to jury instruction

Applicant claims Counsel was ineffective for failing to object to the trial court charging the jury with strong-armed robbery as a lesser included offense of armed robbery. This Court finds Applicant's testimony concerning the strong-armed robbery charge not credible, while finding Counsel's testimony credible. Applicant testified if Counsel would have objected to this charge, the outcome of his trial would have been different. He stated Counsel discussed this charge prior to trial, but because the only evidence was for armed robbery, Counsel should have made an argument against charging the jury with strong-armed robbery. Counsel, however, testified he did not object to the jury instruction because he wanted the jury to have another option other than armed robbery. He also stated it was part of his trial strategy to have strong-armed robbery as a jury charge. Counsel further stated there was sufficient evidence for a charge of strong-armed robbery.

Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). *See*

also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003).

Counsel articulated valid strategic reasons for not objecting to the strong-armed robbery jury instruction. At the hearing, Applicant seemed to indicate because the jury did not convict him of armed robbery, then they would not have convicted him of anything had Counsel successfully objected to the strong-armed robbery charge. This is simply not the case. Based on the review of the record, the jury could have easily found Applicant guilty of armed robbery, had there not been a charge for strong-armed robbery. Applicant has not shown Counsel was deficient in that choice of tactics. Further, no prejudice resulted from Counsel's decision not to object to the strong-armed robbery charge. In fact, this Court finds the strong-armed robbery charge benefitted Applicant by giving the jury another option other than armed robbery, which carries a stiffer penalty than strong-armed robbery. Applicant has failed to meet his burden of proof and thus, this allegation is denied.

Failure to properly cross-examine witness

Applicant alleges Counsel inadequately cross-examined the State's chief witness (Victim) in the case. Applicant stated Counsel should have used the Victim's prior inconsistent statements during the cross-examination. On cross-examination of Applicant at the PCR hearing, Applicant acknowledged Counsel did, in fact, use Victim's prior inconsistent statements to undermine Victim's credibility. Counsel testified, as part of his trial strategy, he cross-examined Victim using a statement Victim made to law enforcement on the night of the incident and other subsequent statements to challenge Victim's memory and credibility. Counsel also testified he tried to place the blame on Applicant's co-defendant and show this incident stemmed from a prior drug deal between Victim and co-defendant, not Applicant.

The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation, and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). Applicant did not proffer any questions Counsel allegedly failed to ask, and did not present any testimony showing the Victim's answers at trial would have been different. Accordingly, Applicant has not shown that a different approach to cross-examination would have been beneficial to the defense. Applicant has failed to meet his burden of proof and thus, this allegation is denied.

I further find that Counsel was effective in all respects concerning his representation of Applicant at trial, and Applicant was not prejudiced in any way by Counsel's actions.

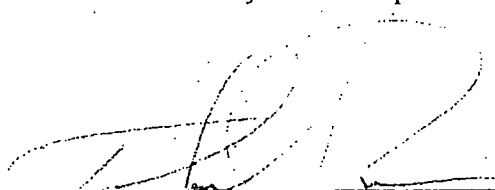
CONCLUSION

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 (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 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 Respondent.

AND IT IS SO ORDERED!

Thomas A. Russo
Presiding Circuit Court Judge
Eighth Judicial Circuit

6/28, 2012

Florence, South Carolina