

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County

Honorable George M. McFaddin, Circuit Court Judge

EBON ROBERTS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-001180

APPENDIX

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State of South Carolina		
County of Horry		In the Court of General Sessions
State of South Carolina,	)	
	)	2014-GS-26-1888/1891
Plaintiff,	)	
	)	
-vs-	)	September 15-16, 2015
	)	
Ebon Roberts,	)	
	)	Transcript of Record
Defendant.	)	

B E F O R E:

The Honorable Larry B. Hyman, Judge

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

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Attorney for the State

J.M. “Buddy” Long, Esquire
Attorney for the Defendant

Renee H. Tollison
Circuit Court Reporter

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				Ct	Pl	Def	
274	Laura Prichinelli	W	F			X	
303	Patrick Ryan	W	M				X
172	Lee Jones	B	M				X
237	Heidi Newhouser	W	F		X		
320	Edward Sharrett	W	M				X
189	John Lavalley	W	F				X
378	Anita White	W	F			X	
79	StephanieDecaro	W	F			X	
375	Patricia West	W	F				X
171	Lindsey Johnson	W	F				X
11	Jonathan Baker	W	M	X			
223	Byron Mew	W	M			X	
346	Jimmy Summers	W	M			X	
262	Robin Peters	W	F				X
121	Wendy Goins	W	F		X		
386	Tara Winans	W	F		X		
86	Mary Dunham	W	F				X
211	Stephanie Martin	W	F			X	
379	Diane Whittle	W	F			X	
2	Leanne Altman	W	F			X	
84	Mark Duelle	W	M				X
106	Sonya French	W	F				X
42	Cathy Burr	W	F			X	
37	Jeanette Brown	W	F				X
49	Michael Carr	W	M				X
78	James Days	B	M				X
95	Megan Farrell	W	F				X

1 **September 15, 2015**

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had commencing at
4 approximately 9:48 a.m.)

5 THE COURT: Call your case.

6 MR. THOMAS: The State would call the case of
7 South Carolina versus Ebon Roberts.

8 THE COURT: All right.

9 Mr. Long?

10 MR. LONG: Thank you, Your Honor. I've
11 discussed last-minute plea negotiations with my client.
12 He informs me that he wishes to proceed to trial.
13 However, due to some matters he raised back there
14 discussing that issue with him, I felt it appropriate to
15 bring him before Your Honor and let him make whatever
16 motions he deems appropriate at this time.

17 THE COURT: All right.

18 Mr. Roberts?

19 THE DEFENDANT: I want to relieve Mr. Long on
20 the services.

21 THE COURT: You want to go forward with your
22 case pro se then which means without a lawyer?

23 THE DEFENDANT: I do want to go forward, but I
24 don't know the law exact, so I would like time to get to
25 know it ---

1 THE COURT: How long has your case been
2 pending, Mr. Roberts?

3 THE DEFENDANT: Only nine months.

4 MR. LONG: December of 2014, Your Honor, was
5 the incident date.

6 THE COURT: How long's it been on this trial
7 roster?

8 MR. THOMAS: Your Honor, it's been on the trial
9 roster since the trial roster was set. I sent out a
10 notice to Mr. Long on July 24th of 2015 stating that the
11 State intended to call the case the term of September
12 14th. We brought him over for an arraignment several
13 months ago. And August 31st, we brought him over to
14 serve notice of the State's intent to seek life without
15 parole.

16 THE COURT: And it's been on the roster since
17 July?

18 MR. THOMAS: Well, Your Honor, the Defense has
19 been on notice that the State's been planning to call
20 this case since July. The trial roster just goes out ---

21 THE COURT: Tell me why you want to -- me to
22 relieve your attorney?

23 THE DEFENDANT: Well, Mr. Long has only came to
24 see me a few times when I've been at J.B. Long. And
25 since then, he has said the same as far as defense. I

1 mean, he hasn't told me nothing as far as any new rules,
2 or laws or regulation that has came up that maybe could
3 help me.

4 THE COURT: Might not be any.

5 THE DEFENDANT: That is possible. That is
6 possible. But at the same time, like I said, he has told
7 me nothing.

8 THE COURT: Who is this new attorney you've
9 been talking to?

10 THE DEFENDANT: Scott Bellamy. My family's
11 getting me Scott Bellamy.

12 THE COURT: Well, where is Mr. Bellamy?

13 THE DEFENDANT: They in the process of getting
14 him. I mean, they ---

15 THE COURT: I mean, have they hired Mr.
16 Bellamy?

17 THE DEFENDANT: I haven't been able to ---

18 THE COURT: When did they talk with Mr.
19 Bellamy? Have you talked with Mr. Bellamy?

20 THE DEFENDANT: Yes, I talked to him one time
21 previously, yes.

22 THE COURT: When was that?

23 THE DEFENDANT: This -- this was a couple of
24 months ago.

25 THE COURT: And you knew you were coming up for

1 trial? I'm not going to continue this case. Now, you
2 can -- if you want to relieve Mr. Long and you want to
3 represent yourself, we'll talk about that. But I would
4 strongly suggest that you not do it. This case is on the
5 roster and it's set for trial, and we're going to try it.
6 There's no good reason for this case not to be tried.
7 You're just speculating as to ...

8 THE DEFENDANT: So you're not -- so you're not
9 going to give me enough time to ---

10 THE COURT: No, I'm not going to continue this
11 case. You've had enough time.

12 THE DEFENDANT: He's had enough time. Like I
13 said, I'm not disputing that the man is not a good
14 lawyer. All I'm saying is the man's caseload is two
15 hundred and eight people in a year's time. There's no
16 way he could represent them all equally and adequate
17 enough to do that.

18 THE COURT: We do it every day, and he's a good
19 lawyer. And you've given me no reason at all why this
20 case should be continued. You say you want to hire
21 another lawyer, but you, from what I understand, haven't
22 done anything in that regard. You don't have Mr. Bellamy
23 here today. You haven't retained him.

24 THE DEFENDANT: Your Honor, I mean, my family's
25 back there. I mean, can I ask them have they retained

1 him or anything because, I mean, I cannot ---

2 MR. LONG: His family members are here, Your
3 Honor, and maybe they could go ---

4 THE COURT: Well, let me hear from them. Let
5 me see if anybody's paid Mr. Bellamy or why Mr. Bellamy
6 isn't here.

7 MR. LONG: Stand up and give your name first
8 and then address the Court.

9 MS. AUSTIN: My name is Monique Austin. I've
10 been trying to get up with Scott Bellamy. I'm supposed
11 to ---

12 THE COURT: You haven't talked to him?

13 MS. AUSTIN: I talked to his secretary.

14 THE COURT: All right. I'm not going to
15 continue this case.

16 Mr. Long, is there any reason why you can't go
17 forward with this case? Mr. Long, do you have a problem?

18 MR. LONG: No, Your Honor. No, Your Honor.
19 I'm prepared. I'm prepared to go forward.

20 THE COURT: All right. And we're ready to go
21 forward. I'm going to deny both motions. Okay? We're
22 ready to go forward.

23 All right. Now, have we got a jury pool? They're
24 downstairs, Mr. Roth?

25 THE BAILIFF: Yes, sir.

1 THE COURT: Can you get the jury pool up here?

2 THE BAILIFF: Yes, sir.

3 THE COURT: We're ready to select the jury in
4 this case. Bring my pool up. All right. We'll be ready
5 to go forward.

6 Yes, sir?

7 THE DEFENDANT: Your Honor, so you don't think
8 now that because we had this little disagreement that it
9 won't be effective? I mean, that he still can represent
10 me ---

11 THE COURT: Mr. Roberts, I don't know how much
12 clearer I can be.

13 THE DEFENDANT: --- in good conscience?

14 THE COURT: I don't know how much clearer I can
15 be. Mr. Long is ready to go. Mr. Long's prepared. This
16 is the eve of trial. I'm not going to continue this
17 case. I've got a jury right there. I'm ready to pull my
18 jury, and we're about to start this case. Now, we're
19 going to take about five minutes, ten minutes while the
20 jury comes up. We'll be back on the bench at five after
21 ten. All right.

22 MR. LONG: Thank you, Your Honor.

23 (WHEREUPON, court stood at recess for a short break
24 after which the jury pool entered the open court at
25 approximately 10:08 a.m.)

1 THE COURT: You have been selected, ladies and
2 gentlemen, as potential jurors on the case of the State
3 of South Carolina versus Ebon Roberts. Yesterday when I
4 qualified you generally to determine whether you met the
5 legal qualifications as jurors, I told you that the
6 selection process or the qualification process would move
7 into the second stage if you were selected as the general
8 panel to come up before the judges. And that's what
9 you're doing today. Today we're going to ask you some
10 questions about your service on the particular case that
11 we have before the Court.

12 As I said, this is the case of the State of South
13 Carolina versus Ebon Roberts. Mr. Roberts is seated here
14 with his attorney, Mr. Buddy Long. Mr. Roberts is
15 charged under three indictments.

16 And let me say this. An indictment is a document
17 handed down by the grand jury. It is not evidence.
18 Should not be considered as evidence. The fact that a
19 person may have been indicted for an alleged offense
20 should not be considered by you at all if you are seated
21 on a jury. An indictment is nothing more than a legal
22 document that tells a person what the charges are against
23 him or her. It is the document which brings the charge
24 to or before the Court. And, again, it is not to be
25 considered by you as evidence at all.

1 In this case, it is alleged -- and, again, these are
2 only allegations. The State has the burden of proving
3 its case against the defendant beyond a reasonable doubt.
4 And the defendant has no duty, no obligation, even to put
5 up a single shred of evidence. Doesn't have to prove
6 anything. And you should remember that that presumption
7 of innocence stays with the defendant throughout the
8 trial of this case.

9 But the indictments allege -- and, again, these are
10 simply allegations -- that on or about December the 8th,
11 2014, the defendant, Mr. Roberts, committed the offense
12 of kidnapping in that he did unlawfully seize, confine,
13 inveigle, decoy, kidnap, abduct, or carry away one
14 Rebecca Kennedy without authority of law. And that
15 occurred, I believe, in the city of Conway.

16 Is that correct?

17 MR. THOMAS: Yes, sir, Your Honor.

18 THE COURT: It is further alleged that on that
19 same date and time -- that is December the 8th, of 2014
20 -- that he committed a second act of kidnapping in that
21 he did unlawfully seize, confine, inveigle, decoy,
22 kidnap, abduct or carry away one Shaun Cain without
23 authority of law. And finally, it is alleged by
24 indictment that on that same date and time -- that is
25 December the 8th of 2014 -- while armed with a deadly

1 weapon, to wit a handgun, he did take and carry away
2 personal property of Shaun Cain from his immediate
3 presence with the intent to deprive Shaun Cain of
4 possession by use of force, threats, or intimidation.
5 And that offense is the offense of armed robbery.

6 These are the allegations made against Mr. Roberts.
7 This offense, I am told, allegedly occurred at the
8 Wendy's store here in Conway. And as you have heard,
9 they occurred allegedly on December the 8th of 2014.

10 I'm going to be asking you questions concerning any
11 information that you may have about this particular case
12 because it's important that we seek jurors who have no
13 prior knowledge whatsoever about the charges that will be
14 tried in this case.

15 Let me tell you a little bit about the process that
16 we follow in selecting jurors. And the type of court
17 that we're before controls how we do that. If this were
18 a civil case, that is, something like an automobile
19 accident, we have a much kinder, gentler way of selecting
20 a jury. What happens is you're brought up here. Your
21 names are placed at random on a jury selection sheet,
22 something like this. You're given a new number that you
23 don't know. And the attorneys are asked to strike from
24 that sheet. And they call out the new numbers in their
25 strike. So you don't even know if you've been considered

1 or if you were struck or not. Now, isn't that a nice way
2 to do it.

3 On the criminal side or the general sessions side,
4 the traditions of this court are different, and a
5 different process is followed. And I want to explain it
6 to you because many people find it to be intimidating.
7 Some people are embarrassed by it. They get their
8 feelings hurt. And I don't want that to happen. So let
9 me tell you how it works. On the general sessions side,
10 the clerk will call your name. And as your name is
11 called, you come forward and you stand right down here in
12 front of me. And you have to turn around and face the
13 prosecutor, the complaining witness, and the defendant
14 and his attorney and all the other jurors. And we begin
15 with the prosecutor. And the prosecutor will say
16 something like, Your Honor, present the juror, or, Your
17 Honor, excuse the juror. If the prosecutor says, excuse
18 the juror, that means he has exercised a strike, and you
19 will return to your seat and you won't be on this jury.
20 If the prosecutor, on the other hand, says, present the
21 juror, that means the juror is presented to the Defense.
22 Mr. Long, who's the attorney for the defendant will then
23 say either, swear or seat the juror, or, Your Honor,
24 excuse the juror. If he says, excuse the juror -- of
25 course, you're struck -- he has exercised a strike, and

1 you return to your seat. If he says, present or seat the
2 juror or swear the juror, you come around and have a seat
3 in the jury box.

4 Now, as I said, some people find that to be
5 intimidating. And I will tell you, as you come around
6 here and you have to stand and face the attorneys and
7 your fellow jurors, you're going to see Mr. Thomas and
8 Mr. Long make all sorts of faces and notes, and they're
9 going to whisper back and forth. They're going to look
10 just like they know what they're doing. Let me tell you,
11 after practicing for thirty-two years, I can assure you
12 of one thing. They don't have a clue what they're doing.
13 There is nothing -- and I don't mean that to reflect on
14 these fine attorneys at all. It's just that I can tell
15 you that there is nothing more difficult, there's not a
16 harder job for an attorney to do, than to look at a jury
17 panel and make decisions as to who should be on their
18 jury, how they should exercise their strikes because they
19 have little or no information about you.

20 When I first started practicing law way back then --
21 some of you weren't even born -- I would come into the
22 courthouse and look at the jury panel, and half the
23 people I knew and the other half I was related to. Knew
24 everybody. Now if I come into the court and I look at
25 the jury panel, if I know two or three people, it's an

1 unusual week. And that's just because things have
2 changed.

3 These attorneys have to rely on that little slip
4 that you sent in. It might tell them if you're married
5 or what kind of work you do. That's all the information
6 that they have. And what they're trying to do is select
7 jurors that will be more sympathetic to their position in
8 the case, whatever that position may be. In the end,
9 they want fair and impartial jurors. That's what the
10 goal is.

11 So if you are struck, please don't have your
12 feelings hurt. You know, they may have struck you, as
13 Judge Moore used to say, because you part your hair on
14 the left or you part it on the right, or you've got no
15 hair to part might be why you were struck. It's
16 basically just a gut feeling that these lawyers have.

17 Now, I tell y'all that, and you're probably sitting
18 out there thinking, I hope I get struck so I can go home.
19 I hope you, if you are seated on this jury, will come
20 away from this process with a better understanding of
21 what we do here, a better appreciation of our legal
22 system, because it is here not only to protect Mr.
23 Roberts, but you. It's here to protect the citizens
24 through the state. It's all for our benefit, and it's a
25 great system.

1 Now, before I begin to ask you the questions about
2 this particular case, I'm going to ask you to be placed
3 under oath. You know, if you end up as a juror, you have
4 to swear three times. If you're a witness, you only
5 swear once. I always found that to be ironic. But we're
6 going to ask you to take the oath again if you will
7 correctly answer these questions that I'm going to put to
8 you because, as I said, it is ultimately important that
9 we have a very impartial jury.

10 Madam Clerk?

11 (WHEREUPON, the jury panel was duly sworn.)

12 THE COURT: All right. Now, for the record, is
13 there anyone that did not affirm or take that oath?

14 (No response)

15 THE COURT: And let the record reflect that
16 there was no one.

17 You know, everything that happens in this court,
18 unlike some other courts, has to be recorded. Seated to
19 my left here is my court reporter, and she writes
20 everything down. So when I ask you a question like that,
21 did you take the oath?, I have to put your responses on
22 the record. So that's the reason that I do that.

23 Now, has anyone ever been related by blood or
24 marriage to the defendant in this case, Mr. Ebon Roberts.

25 Mr. Roberts, would you please stand up and turn

1 around and face the jury? Mr. Roberts.

2 (WHEREUPON, the defendant stood.)

3 THE COURT: Thank you, Mr. Roberts.

4 ... or any of the alleged victims in this case. And
5 you heard me a moment ago say that the victims, alleged
6 victims, would be Mr. Shaun Cain and Ms. Rebecca Kennedy.
7 Ms. Rebecca Kennedy. Anyone related by blood or marriage
8 to either the defendant or the victims in this case?

9 (No response)

10 THE COURT: And there is no response.

11 Has anyone on this jury panel ever had a close
12 personal or social relationship with either the defendant
13 or the victims in this case? Do you know them? Have you
14 ever had any contact at all with them?

15 (No response)

16 THE COURT: And there is no response.

17 Is there any member of this jury panel who has ever
18 been employed by or has any financial interest in the
19 Wendy's Company? Employed by? Work with?

20 I see one gentleman back there.

21 Yes, sir. Would you please stand and give us your
22 name?

23 THE JUROR: Todd Moran.

24 THE COURT: And Mr. Moran, what was your
25 number?

1 THE JUROR: I'm sorry. I don't remember the
2 number. It's 230 something.

3 THE COURT: Okay. Mr. Moran, you were employed
4 by or ---

5 THE JUROR: Yes, sir. I worked for Wendy's
6 back when I was in high school years ago.

7 THE COURT: Okay. Would that affect your
8 ability to be fair and impartial in this case?

9 THE JUROR: No, sir.

10 THE COURT: Could you set it aside and give
11 both the plaintiff and the defendant a fair trial?

12 THE JUROR: Yes, sir.

13 THE COURT: Thank you, Mr. Moran. I appreciate
14 your answer.

15 All right. Now, I'm going to read to you a list of
16 potential witnesses in this case. Now, as I said, these
17 are potential witnesses. They may or may not testify. I
18 asked the attorneys to provide me with the names of
19 anyone who they feel might be testifying in the case. If
20 a witness whose name you heard is not called for any
21 reason, don't draw any conclusion from that whatsoever.
22 The witnesses or the potential witnesses in this case are
23 Mr. Dale Long of the Conway Police Department; Mr.
24 William Adams, also with the Conway Police Department;
25 Mr. Michael Cavallini with the Conway Police Department;

1 Mr. Dennis Cast with the Conway Police Department, Karen
2 Johnson with the Conway Police Department; Heath
3 Reisinger, Conway Police Department; Mark Johnson, Horry
4 County Police Department; Rebecca Kennedy, Shaun Cain and
5 James Royster. They were either victims or alleged
6 victims or employees at the Wendy's store.

7 Any other potential witness that you're aware of,
8 Mr. Long?

9 MR. LONG: No, Your Honor.

10 THE COURT: All right.

11 Those are the potential witnesses that we should
12 look forward to hearing in this case. Is anyone related
13 by blood or marriage? Do you have a close personal
14 relationship with any of these witnesses? Do you know of
15 any reason why your view of these witnesses' credibility
16 or incredibility might be affected by any relationship
17 you may have had with them in the past?

18 (No response)

19 THE COURT: And there is no response to that.

20 Now, let me introduce these attorneys to you.

21 Seated over here to my left and your right is Mr. Austin
22 -- Mr. Thomas. Stand up and smile at the jury.

23 (WHEREUPON, Mr. Thomas stood and faced the jury
24 panel.)

25 THE COURT: Mr. Thomas is from over in

1 Georgetown originally. He has been working with the
2 Horry County Solicitor's Office ...

3 Three years now, Mr. Thomas?

4 MR. THOMAS: Yes, sir.

5 THE COURT: ... for about three years. And I
6 don't think that he has been in private practice. He's
7 primarily worked with the solicitor's office, and he
8 prosecutes cases for Mr. Jimmy Richardson, our solicitor
9 in Horry and Georgetown Counties.

10 Seated here with Mr. Roberts ...

11 Stand up, Mr. Long, and turn around and you smile at
12 them.

13 (WHEREUPON, Mr. Long stood and faced the jury
14 panel.)

15 THE COURT: Mr. Buddy Long. Mr. Long has ...
16 Thank you, Mr. Long.

17 ... has been an attorney here in Horry County for
18 how twenty years?

19 MR. LONG: Twenty-eight.

20 THE COURT: Twenty-eight. He has been in the
21 private sector, and he presently works for the Horry
22 County's Public Defender, Ms. Orrie West, or the
23 Fifteenth Circuit Public Defender, Ms. West. And he
24 represents defendants in here in this courtroom exclusive
25 now, I believe.

1 MR. LONG: Yes, sir.

2 THE COURT: All right. Is anyone related by
3 blood or marriage? Do you have a close personal
4 relationship with? Do you know anything about any of
5 these attorneys that might affect your ability to view
6 this case fairly and impartially?

7 (No response)

8 THE COURT: And there is no response.

9 Has anyone been represented by any of these
10 attorneys in the past or anyone associated with them that
11 you know of?

12 (No response)

13 THE COURT: And there is no response.

14 Is anyone related by blood or marriage to either of
15 the attorneys?

16 (No response)

17 THE COURT: And again, there is no response.

18 Has any member of this jury panel formed any opinion
19 about any of the issues in this case? And, of course,
20 the issue in this case will be the guilt or innocence, in
21 reality, whether or not the State is able to prove beyond
22 a reasonable doubt that the defendant committed the
23 offenses for which he is charged. Has anyone formed any
24 opinion about that? Do you know anything about it? Have
25 you discussed this case with anybody? Did you happen to

1 come by when an arrest was being made or when the
2 incident was occurring or allegedly occurred? Do you
3 know anything about this particular case?

4 (No response)

5 THE COURT: And there is no response.

6 Is any member of this jury panel aware of any bias
7 or prejudice they might have towards either the State or
8 the Defense in this case?

9 (No response)

10 THE COURT: And there is no response.

11 Does any member of this jury panel know of any
12 reason whatsoever why he or she should not serve as a
13 juror in this case with particular emphasis being placed
14 on your ability to be fair and impartial both to the
15 State and to the defendant?

16 (No response)

17 THE COURT: And there is no response.

18 Does the Defense have any additional voir dire?

19 MR. LONG: Prior victims of violent crime, Your
20 Honor.

21 THE COURT: All right.

22 Is there any member of this jury panel or a member
23 of your immediate family who has been the victim of a
24 violent crime?

25 All right. I want you to please stand, if you

1 would. All right, sir.

2 Let's begin with the lady in the brown right on the
3 front row. Yes, ma'am. And you or has there been a
4 member of your family the victim of a violent crime?

5 THE JUROR: No, sir.

6 THE COURT: You have not?

7 THE JUROR: No. A victim of a violent crime?

8 THE COURT: Yes.

9 THE JUROR: No.

10 THE COURT: You have not. Okay. I was
11 wondering why you stood then.

12 THE JUROR: Oh. I was going to sit back down.
13 You told me to sit back down.

14 THE COURT: Okay. Sit back down. We can do
15 the wave if you'd like.

16 THE JURORS: (Laughter)

17 THE COURT: On the back row, yes, sir. You've
18 been the victim of a violent crime?

19 THE JUROR: My older brother was murdered.

20 THE COURT: Your brother?

21 THE JUROR: Was murdered.

22 THE COURT: Okay. And would that affect your
23 ability to be fair and impartial?

24 THE JUROR: Yes, sir.

25 THE COURT: You could not set that aside?

1 THE JUROR: No, sir, I could not.

2 THE COURT: Okay. And your name?

3 THE JUROR: My name is Jonathan Baker, juror
4 number 11.

5 THE COURT: Number 11. Mr. Baker, you're
6 excused from further service on this case. Thank you
7 very much. You may sit down, please.

8 And, yes, ma'am?

9 THE JUROR: Tara Winans.

10 THE COURT: Miss?

11 THE JUROR: Tara Winans.

12 THE COURT: All right. And have you or a
13 member of your family been the victim of a violent crime?

14 THE JUROR: I have.

15 THE COURT: And how long ago was that?

16 THE JUROR: About fifteen years.

17 THE COURT: All right. Could you set that
18 aside and be fair and impartial in this case?

19 THE JUROR: Yes, sir.

20 THE COURT: Could you give both the defendant
21 and the State a fair trial?

22 THE JUROR: Yes, sir.

23 THE COURT: And, again, your number?

24 THE JUROR: 389.

25 THE COURT: 389. Thank you, ma'am.

1 THE CLERK: It's 386, Your Honor.

2 THE COURT: 386. Okay.

3 Yes, ma'am?

4 THE JUROR: Anita White.

5 THE COURT: And, Ms. White, have you or a
6 member of your family been the victim?

7 THE JUROR: My sister was murdered.

8 THE COURT: All right. And could you set that
9 aside?

10 THE JUROR: Yes.

11 THE COURT: And give both the State and the
12 Defense a fair trial?

13 THE JUROR: Yes.

14 THE COURT: Could you be fair to the defendant
15 as well as to the State?

16 THE JUROR: Yes.

17 THE COURT: All right. Thank you very much.
18 And your number?

19 THE JUROR: 378.

20 THE COURT: 378.

21 Anyone else?

22 (No response)

23 THE COURT: All right. Anything further?

24 MR. LONG: Nothing further, Your Honor.

25 MR. THOMAS: Nothing from the State, Your

1 Honor.

2 THE COURT: All right. Very good.

3 Okay. What we're going to do now -- I find the
4 balance of the jury panel is qualified. We're going to
5 call your names. And as your name is called, please come
6 forward and stand right down here in front of me, turn
7 and face the attorneys and your fellow jurors. And as
8 you come forward, please bring your personal bags, your
9 purse, books, your sweaters, anything you may have just
10 in case we do seat you because then we'll put you in the
11 jury box.

12 Madam Clerk?

13 THE CLERK: Juror number 274, Laura
14 Prichinelli.

15 What say the State?

16 MR. THOMAS: Please present the juror.

17 THE CLERK: Defense?

18 MR. LONG: Please excuse the juror from the
19 trial of this case.

20 THE CLERK: You're excused from this particular
21 case.

22 303, Patrick Ryan.

23 THE COURT: Ten and five, gentlemen?

24 MR. LONG: Yes, sir, Your Honor.

25 THE CLERK: What say the State?

1 MR. THOMAS: Please present the juror.

2 THE CLERK: Defense?

3 MR. LONG: Please swear the juror.

4 THE CLERK: Please be seated in the jury box.

5 172, Lee Jones.

6 What say the State?

7 MR. THOMAS: Please present the juror.

8 THE CLERK: Defense?

9 MR. LONG: Please swear the juror.

10 THE CLERK: Please be seated in the jury box.

11 237, Heidi Newhouser.

12 What say the State?

13 MR. THOMAS: Court's indulgence just one
14 minute.

15 Please excuse the juror from this case.

16 THE CLERK: You're excused from this particular
17 case.

18 320, Edward Sharrett.

19 What say the State?

20 MR. THOMAS: Please present the juror.

21 THE CLERK: Defense?

22 MR. LONG: Please seat the juror.

23 THE CLERK: Please be seated in the jury box.

24 189, John Lavalley.

25 What say the State?

1 MR. THOMAS: Please present the juror.

2 THE CLERK: Defense?

3 MR. LONG: Please swear the juror.

4 THE CLERK: Please be seated in the jury box.

5 378, Anita White.

6 What say the State?

7 MR. THOMAS: Please present Ms. White.

8 THE CLERK: Defense?

9 MR. LONG: Please excuse the juror from the
10 trial of this case.

11 THE CLERK: You're excused from this particular
12 case.

13 79, Stephanie Decaro.

14 What say the State?

15 MR. THOMAS: Please present the juror.

16 THE CLERK: Defense?

17 MR. LONG: Please excuse the juror from the
18 trial of this case.

19 THE CLERK: You're excused from this particular
20 case.

21 375, Patricia West.

22 What say the State?

23 MR. THOMAS: Please present Ms. West.

24 THE CLERK: Defense?

25 MR. LONG: Please swear the juror.

1 THE CLERK: Please be seated in the jury box.

2 171, Lindsey Johnson.

3 What say the State?

4 MR. THOMAS: Please present Ms. Johnson.

5 THE CLERK: Defense?

6 MR. LONG: Please swear the juror.

7 THE CLERK: Please be seated in the jury box.

8 223, Byron Mew.

9 What say the State?

10 MR. THOMAS: Please present the juror.

11 THE CLERK: Defense?

12 MR. LONG: Please excuse the juror from the
13 trial of this case.

14 THE CLERK: You're excused from this particular
15 case.

16 346, Jimmy Summers.

17 What say the State?

18 MR. THOMAS: Please present the juror.

19 THE CLERK: Defense?

20 MR. LONG: Please excuse the juror from the
21 trial of this case.

22 THE CLERK: You're excused from this particular
23 case.

24 262, Robin Peters.

25 What say the State?

1 MR. THOMAS: Please present the juror.

2 THE CLERK: Defense?

3 MR. LONG: Please swear the juror.

4 THE CLERK: Please be seated in the jury box.

5 121, Wendy Goins.

6 What say the State?

7 MR. THOMAS: Please excuse the juror from this
8 case.

9 THE CLERK: You're excused from this particular
10 case.

11 386, Tara Winans.

12 What say the State?

13 MR. THOMAS: Please excuse the juror from this
14 case.

15 THE CLERK: You're excused from this particular
16 case.

17 86, Mary Dunham.

18 What say the State?

19 MR. THOMAS: Please present the juror.

20 THE CLERK: Defense?

21 MR. LONG: Please swear the juror.

22 THE CLERK: Please be seated in the jury box.

23 211, Stephanie Martin.

24 What say the State?

25 MR. THOMAS: Please present the juror.

1 THE CLERK: Defense?

2 MR. LONG: Please excuse the juror from the
3 trial of this case.

4 THE CLERK: You're excused from this particular
5 case.

6 379, Diane Whittle.

7 What say the State?

8 MR. THOMAS: Please present the juror.

9 THE CLERK: Defense?

10 MR. LONG: Please excuse the juror from the
11 trial of this case.

12 THE CLERK: You're excused from this particular
13 case.

14 2, Leanne Altman.

15 What say the State?

16 MR. THOMAS: Please present the juror.

17 THE CLERK: The Defense?

18 MR. LONG: Please excuse the juror from the
19 trial of this case.

20 THE CLERK: You're excused from this particular
21 case.

22 84, Mark Duelley.

23 What say the State?

24 MR. THOMAS: Please present the juror.

25 THE CLERK: Defense?

1 MR. LONG: Please swear the juror.

2 THE CLERK: Please be seated in the jury box.

3 106, Sonya French.

4 What say the State?

5 MR. THOMAS: Please present the juror.

6 THE CLERK: Defense?

7 MR. LONG: Please swear the juror.

8 THE CLERK: Please be seated in the jury box.

9 42, Cathy Burr.

10 What say the State?

11 MR. THOMAS: Please present the juror.

12 THE CLERK: Defense?

13 MR. LONG: Please excuse the juror from the
14 trial of this case.

15 THE CLERK: You're excused from this particular
16 case.

17 37, Jeannette Brown.

18 What say the State?

19 MR. THOMAS: Please present the juror.

20 THE CLERK: Defense?

21 MR. LONG: Please seat the juror.

22 THE CLERK: Please be seated in the jury box.

23 49, Michael Carr.

24 What say the State?

25 MR. THOMAS: Please present the juror.

1 THE CLERK: Defense?

2 MR. LONG: Please swear the juror.

3 THE CLERK: Please be seated in the jury box.

4 THE COURT: We'll complete it today, you think,
5 gentlemen?

6 MR. LONG: I think most of the testimony will
7 be completed today, Your Honor.

8 THE COURT: All right.

9 Let's give them two.

10 THE CLERK: 78, James Days.

11 What says the State?

12 MR. THOMAS: Please present the juror.

13 THE CLERK: The Defense?

14 MR. LONG: Please swear the juror.

15 THE CLERK: Please be seated in the jury box.

16 95, Megan Farrell.

17 What say the State?

18 MR. THOMAS: Please present the juror.

19 THE CLERK: Defense?

20 MR. LONG: Please swear the juror.

21 THE CLERK: Please be seated in the jury box.

22 THE COURT: All right. Mr. Long, will there be
23 a challenge?

24 MR. LONG: No, Your Honor.

25 THE COURT: Very well.

1 Ladies and gentlemen, we have our jury and we have
2 the alternates selected, so the balance of the jury panel
3 is excused for the day. Please call back after six and
4 let's find out whether we'll need you for the rest of the
5 week. Thank you. You're excused. You are welcome to
6 stay if you'd like, but you may leave.

7 (WHEREUPON, the jury panel exited the courtroom.)

8 THE COURT: All right. Ladies and gentlemen of
9 the jury, a moment ago I was going through the
10 indictments. And, again, as I said, an indictment is
11 nothing more than a document to put the defendant on
12 notice of the charge that brings it officially before the
13 Court. I went through two indictments for armed -- well,
14 three indictments for armed robbery and two kidnapping.
15 But there's also one for unlawful possession of a pistol
16 that the defendant has also been indicted for that
17 offense. And we'll be going forward with it as well.

18 Is there any member of this jury panel who would
19 change any responses that you made during voir dire as
20 the result of there being this additional charge?

21 THE JUROR: Would you mind -- I did not hear
22 what -- your voice dropped.

23 THE COURT: I'm sorry.

24 THE JUROR: And I didn't hear what --

25 THE COURT: I'm sorry. When I was going

1 through the indictments, I failed to pick up on the fact
2 that there is an additional indictment which is unlawful
3 possession of a pistol. You heard me discuss the
4 indictments for two kidnappings and one armed robbery.
5 He's also indicted for the unlawful possession of a
6 pistol. And I want to again emphasize the fact that
7 these are just charges. They're the documents,
8 indictments, by which an offense is brought before the
9 Court. It's not evidence. It shouldn't be considered as
10 evidence. But would the fact that I left out that
11 indictment that I now tell you about it, would it change
12 in any way the responses you made when we were qualifying
13 you?

14 (No response)

15 THE COURT: And there's no response. Thank you
16 very much.

17 **PRELIMINARY CHARGE**

18 BY THE COURT:

19 Okay. Now, let me speak to you preliminarily about
20 a couple of issues, and then I'm going to let you take a
21 break before we get into the trial. During this trial, I
22 would like for the last two jurors seated to always
23 occupy those two seats. You will be our alternates.
24 Always occupy that.

25 Ms. Dunham, the bailiff asked you to sit in that

1 seat because I'm going to require you to serve as our
2 foreperson. In that regard, you will preside over the
3 deliberations that the jury may engage in at the end of
4 this trial. You will be the liaison between the jury and
5 the Court. If you need anything or any problems arise,
6 if there's any issue that gives you any concern, there
7 will always be a bailiff, either Mr. Roth or one of these
8 sheriff's deputies right outside the door at hand and
9 available to you. Please bring any concerns you might
10 have to their attention immediately. And they will bring
11 it to mine, and we will resolve the issue. But I'll ask
12 you always to occupy that seat.

13 The rest of you may sit in any seat that you would
14 like as we come and go from the courtroom.

15 Now, I told you yesterday that my practice in trying
16 these cases is to make sure that you are comfortable. If
17 at anytime during the trial of this case I have gone too
18 long, you need a break, you need to refresh yourself,
19 don't hesitate to just raise your hand. That'll be a
20 signal to me that you need a break. And we will at that
21 time take a break.

22 Also, please understand that a trial is nothing more
23 than the orderly presentation of evidence to a jury. The
24 jury has to determine from the evidence presented what
25 the facts are in the case, what actually took place. In

1 every case tried in this courtroom, there will be some
2 disagreement as to the facts. If there were no
3 disagreement as to the facts, we wouldn't even have to
4 have a jury. The court could simply rule on the issue.
5 So we can expect some challenge to evidence or some
6 disagreement as to the evidence presented. But you, the
7 jury, have to determine what the facts are. And
8 everything we do is geared towards presenting that
9 evidence to you.

10 So if at some time during this trial you can't hear
11 or you can't see what's going on, we're just spinning our
12 wheels. So please, if that should occur -- and I'll tell
13 you, as I said, I practiced law for a long time. And
14 it's no reflection on these lawyers. But they're going
15 to stand up there between you and the witness. I
16 guarantee you it's going to happen during this trial.
17 They're going to stand in front of you and the exhibits.
18 They just can't help it. It just happens. When you are
19 trying to present it, you're going to be in somebody's
20 way. If that occurs, raise your hand and let me know
21 that you can't see because the purpose of the
22 presentation and evidence is for you. It's not for me or
23 anyone else. It is for you. So let's do that.

24 Now, as we get into the trial of this case, you're
25 going to probably find that it's somewhat different from

1 what you may have seen on TV. How many of you have ever
2 served as a juror in high court or Circuit Court?
3 Anybody ever done that? We've got several. Several
4 veterans here, so that's good. But you'll probably see
5 that it's not like it is on TV. You know, every time you
6 turn on the TV, there's some kind of police show going on
7 or a court show, just some kind of trial going on every
8 time you turn around. And they just seem to be the most
9 exciting and action-packed things you could possibly
10 imagine. Well, I can tell you in reality that's not the
11 case because the search for the truth is often slow and
12 tedious, repetitive. And that's how most trials are.

13 But understand that we're not here for our
14 entertainment. What we're here for is to search for the
15 truth in this particular case. And that's what your job
16 is.

17 You know, during the trial of this case, these two
18 attorneys and I have taken an oath to conduct ourselves
19 professionally and ethically. But you, as a juror, also
20 will take an oath to do the same thing. And that's how
21 you should conduct yourself and how you should think
22 during the trial of this case because you, as jurors, as
23 I said a moment ago, at the end of this trial are going
24 to be asked to tell us what the facts are in this case.
25 You, as a jury, are the sole and exclusive judges of the

1 facts, that is what took place. I cannot say, comment
2 on, intimate -- and I hope I do not during this trial --
3 express to you that I have any opinion about any of the
4 evidence presented or the facts in this case. I don't
5 have the right to even have an opinion about it. That is
6 solely in your prerogative as jurors to determine what
7 the facts are in this case.

8 But at the end of the case, you're going to be asked
9 to deliberate and return a verdict. And that
10 deliberation is a process that has really three steps to
11 it. First is the finding of facts by the jury. And in
12 doing that, you will consider all of the evidence that
13 has been presented. And you will consider it fairly and
14 impartially. You may believe part of what a witness
15 says, none of what a witness says. You may believe one
16 witness over many or many witness over the single
17 witness. It's entirely up to you today. You can look at
18 a witness and determine in your mind whether that witness
19 was actually in a position to see or hear what he says he
20 saw or heard. You can consider a witness' intelligence,
21 his accuracy of memory. You can consider any interest,
22 prejudice or bias that a witness may have. You can
23 consider any interest the witness may have in the outcome
24 of the case in determining whether or not you believe a
25 witness or how much weight to give to that particular

1 witness' testimony. But once you have determined what
2 the facts are, you apply the facts to the law as I give
3 it to you.

4 Just as you are the sole and exclusive judges of the
5 facts -- you'll determine what the facts are -- you must
6 rely on the law as I give it to you. You may not agree
7 with it. You may think I'm wrong. But you are sworn as
8 jurors to follow the law precisely as I give it to you
9 because that is my job.

10 And as I said, the deliberation process is a three-
11 part process. Number one, you have to find the facts.
12 Number two, you have to take the law as I give it to you.
13 And then you have to bring them together.

14 I like to think of something that would help you
15 realize how that happens, visualize how it happens.
16 Think of a mill with great gears. One gear is the facts,
17 and one gear is the law. And it's the way these gears
18 come together and mesh that determines whether or not the
19 State has met its burden, its burden of proving to you
20 beyond a reasonable doubt that the defendant committed
21 the offenses for which he is charged.

22 And as I said a moment ago, that burden is on the
23 State. The State must prove to you beyond a reasonable
24 doubt that the defendant committed the offenses.

25 The defendant has pled not guilty to these charges.

1 And that raises an inference under the law. A very
2 important inference. That is the presumption of
3 innocence that we all have. He is presumed to be
4 innocent until such time as the State overcomes that
5 presumption by proving his guilt beyond a reasonable
6 doubt.

7 Now, from time to time in this trial, you may hear
8 one of these lawyers or see one of these lawyers jump up
9 and say, Your Honor, I object, or, Your Honor, we've got
10 a matter to take up outside the jury. And I may send you
11 outside the room while we discuss the issue that has
12 arisen. And unfortunately, most jurors think, well,
13 they're trying to keep something from us. That lawyer
14 wouldn't have jumped up if it hadn't been for that.
15 Well, let me tell you why we really send you out. The
16 lawyers have a legal duty to raise objections during a
17 trial. They can't do it later. And so they are required
18 to do that. You should not hold it against a lawyer or
19 the lawyer's client if that occurs. Usually that
20 involves the process or method or manner in which
21 evidence is presented, not the evidence itself. And in
22 ruling on those issues, many times the judge has to
23 comment or express an opinion about the evidence. And
24 that would be highly improper because it may influence
25 the way you see the evidence. So it's not appropriate

1 for you to hear what I have to say because what I think
2 about it doesn't mean a thing to you as a juror. You're
3 going to have to make the decision. So that's why we
4 take you out. We're not trying to keep anything from you.

5 Also, during the trial of the case, you're going to
6 probably reach the point where you just want to jump
7 across that bar there and just choke the living daylights
8 out of one of these lawyers because he has asked ten
9 questions leading up to what you know he's going to ask.
10 And you'll just want to say, get to it, get to it. Stop
11 wasting our time.

12 We have tried, true and tested rules for the
13 presentation of evidence that we have had hundreds of
14 years in the courts of this country and in England where
15 most of jurisprudence comes from. And these lawyers are
16 required to lay foundations and bases for questions.
17 They have to do that in presenting the question. So,
18 please, don't hold it against them. They're doing what
19 they're supposed to do, and they're doing it the way
20 they're supposed to do it when they're doing it. So
21 please don't hold that against them either.

22 I'm going to ask you to consider this. You should
23 not pre-judge this case. So many times when I'm
24 listening to a case, my trusty law clerk here, Ms.
25 Pickett, and I may walk back in my chamber and I say,

1 well, what do you think about that. Well, that's pre-
2 deliberation. I can do it. You should not. Do not go
3 back in and talk about what a witness has said or a
4 witness didn't say until you've heard all the witnesses,
5 until you've heard everybody that has testified. Wait
6 until you've got the full story before you begin that
7 deliberation process. That is an important thing,
8 particularly if we go over into tomorrow.

9 Also, I want you to please remember you try this
10 case based upon what you hear from this witness stand and
11 this witness stand only. We've got these things called
12 smart phones. And jurors will go back, and they'll look
13 up a lawyer. They'll try to find out when Mr. Austin's
14 birthday is or where he lived when he was in the sixth
15 grade or Mr. Long. Don't do any of that.

16 They will go in and try to find out where the
17 Wendy's store is or how many feet it is from some other
18 place. Don't do any of that. Don't Google it. Don't
19 look down at it on Google Earth. Don't do any of that.
20 You know, we have a tendency to want to do it because
21 we've come to rely on these things called smart phones.
22 Don't do it. You're going to have to rely solely on what
23 comes from this witness stand and this witness stand
24 alone.

25 Do not discuss the case with anyone. Do not let

1 anyone make any comments about the case in your presence.
2 If they do, you find out who that person is, and that
3 person won't be doing it again, I promise you, once I
4 find out about it. Remember, your job is to fairly and
5 truly try this case.

6 Now, let me tell you how we're going to proceed. In
7 just a moment, Mr. Thomas is going to begin what we call
8 an opening argument or opening statement. And in it he
9 is going to tell you what he believes he can prove in
10 this case. He can talk about the evidence. He may even
11 talk about the law. He may even talk about the
12 defendant. I don't know. But his purpose is to give you
13 an understanding of the State's position. Nothing he
14 says is evidence. He's not under oath, and it's not
15 coming from the witness stand. It's offered to give you
16 a preview of what to expect during the trial.

17 Following that, Mr. Long has an opportunity to do
18 the same thing. Again, what Mr. Long says is not
19 evidence. He's going to give you an overview of what he
20 sees as weaknesses in the State's case. He may talk
21 about the evidence that he intends to produce, if he
22 produces any. He doesn't have to. He may do that.

23 Following that, the State has to go forward. The
24 State must put up witnesses. And as Mr. Thomas puts up
25 his witnesses, Mr. Long has an opportunity to cross-

1 examine them. And it goes back and forth until Mr.
2 Thomas rests, that is the State rests.

3 When it does, the Defense then has the opportunity,
4 if it chooses to do so, but it certainly has no
5 obligation to do so -- it may put up witnesses, or it
6 just may rest. As I've said, it has no obligation to
7 defend in the matter.

8 Once that's done, then Mr. Thomas will have the
9 opportunity to -- or Mr. Long, depending on how the case
10 proceeds, they make closing arguments. Again, closing
11 arguments are nothing more than a summary of what's been
12 offered during the case. It is not evidence, not to be
13 considered by you as evidence. It's not coming from the
14 witness stand. It's merely their view of what you've
15 heard from the witness stand.

16 Following that, I will charge you fully and
17 completely on the law, and you must be bound by the law
18 as I charge it. And then the case will be given to you,
19 and you will retire to your jury room and you will begin
20 the deliberation process. That's the process that we
21 will follow in this case.

22 Now, I've been keeping you in here for quite some
23 time now, about an hour and a half. I want you to
24 refresh yourselves and be ready to go to trial.

25 Mr. Roth, if you would, take them in the jury room.

1 Let's give them about fifteen minutes to relax. Get them
2 familiar with their surroundings, and we'll be back in
3 the courtroom in about fifteen minutes. Okay?

4 (WHEREUPON, the jury exited the open court at
5 approximately 11:07 a.m.)

6 THE COURT: Madam Clerk, remind me to swear
7 them when they get back in. Okay?

8 THE CLERK: Yes, sir.

9 THE COURT: Anything further from the State?

10 MR. THOMAS: Your Honor, the State would have
11 one motion in limine whenever Your Honor wants to hear
12 that.

13 THE COURT: Okay. All right. But as to my
14 preliminary charge?

15 MR. THOMAS: No, Your Honor.

16 MR. LONG: No, Your Honor.

17 THE COURT: All right. Very well. You want to
18 take up a motion in limine?

19 MR. THOMAS: Yes, sir, Your Honor.

20 THE COURT: Is it your motion?

21 MR. THOMAS: Yes, sir.

22 THE COURT: Okay. Mr. Long, are you prepared
23 to address the motion in limine? Are you familiar with
24 it?

25 MR. LONG: I'm not.

1 MR. THOMAS: Your Honor, if Mr. Long and I
2 could speak -- I tried to grab him before the trial
3 started -- we might be able to resolve it.

4 THE COURT: Okay. Well, why don't y'all talk
5 about it and we'll come back.

6 MR. LONG: Your Honor, we would move to
7 sequester witnesses. I understand the lead investigator
8 and victims. However, I would ask for the victims to be
9 sequestered only for their opposite testimony.

10 THE COURT: I'll grant that, Mr. Thomas.

11 MR. THOMAS: No objection from the State.

12 THE COURT: Okay. All right. All right.
13 Thank you.

14 (WHEREUPON, court stood at recess for a short break
15 during which Court's Exhibit Number 1 was marked for
16 identification only.)

17 MR. THOMAS: Your Honor, the State just has one
18 motion in limine to place on the record.

19 THE COURT: All right.

20 MR. THOMAS: Your Honor, the State moves to
21 preclude the Defense from asking any questions about
22 certain arrests that don't meet the Rule 609
23 requirements. Your Honor, may I pass up copies of two
24 NCICs of two of the State's witnesses?

25 THE COURT: All right.

1 MR. THOMAS: The Defense has a copy of those.

2 THE COURT: When did the offense ---

3 MR. LONG: I can ask it, Your Honor. I think
4 he's saying that they are beyond ten years.

5 THE COURT: Why would you ask these questions?

6 MR. LONG: Of the State's witnesses, of the
7 victims, if they've been convicted of a crime that
8 involves more than a year or dishonesty or something of
9 that nature.

10 THE COURT: Well, if they're more than ten
11 years and they are not crimes of moral turpitude or
12 involve dishonesty, what's your position on that? That's
13 what the rule says.

14 MR. LONG: Your Honor, I agree that the rule
15 does prohibit me any convictions over ten years. And
16 neither of these witnesses have any conviction earlier
17 than ten years, older than ten years.

18 THE COURT: All right.

19 MR. THOMAS: And, Your Honor, the State's just
20 moving in limine to preclude the Defense from asking the
21 questions since they have no good-faith basis. The NCIC
22 is provided to him. They haven't provided me with any
23 sort of information that would indicate that a ---

24 THE COURT: Criminal mischief. Is that what is
25 or ---

1 MR. LONG: There was a 2001 -- I think it was
2 an arson second and 2001 criminal mischief.

3 THE COURT: And that is as to ---

4 MR. LONG: The arson was dismissed.

5 THE COURT: --- as to ---

6 MR. LONG: Mr. Cain.

7 THE COURT: Mr. Cain. Is that the only one?

8 MR. THOMAS: Your Honor, there's also -- Mr.
9 Cain has what's showing on NCIC as a 2008 arrest for
10 obstruction of a criminal investigation and burglary
11 conveyance unarmed. Your Honor, according to the witness
12 or the victim in this case, both are dismissed. The NCIC
13 shows no disposition. The State would be happy to call
14 ---

15 THE COURT: And there's no conviction for
16 those?

17 MR. THOMAS: That's correct, Your Honor.

18 MR. LONG: That's correct, Your Honor. And I
19 dislike the way other states simply -- I mean, South
20 Carolina will show dismissed or nolle prossed. Florida
21 does not do that. We've run into it time and again. But
22 for a 2008 charge, it shows no action taken. And that is
23 what we interpret to be a dismissal or a ---

24 THE COURT: Okay. And then I would then find
25 that that is not a conviction. There's no evidence of a

1 conviction, and I would not allow it. Okay?

2 MR. THOMAS: Thank you.

3 THE COURT: I will grant your motion.

4 Okay. Let's bring the jury in.

5 (WHEREUPON, the jury entered the open court at
6 approximately 11:33 a.m.)

7 THE COURT: All right. We have our jurors and
8 our alternates back in the courtroom.

9 Madam Clerk, if you would administer the oath.

10 THE CLERK: Please stand and raise your right
11 hands.

12 (WHEREUPON, the jury was duly sworn.)

13 THE COURT: Is there anyone who did not affirm
14 or take the oath?

15 (No response)

16 THE COURT: And there was no response to that
17 inquiry.

18 All right. Mr. Thomas?

19 MR. THOMAS: Thank you, Your Honor.

20 OPENING STATEMENT

21 BY MR. THOMAS:

22 Ladies and gentlemen, we're here today because back
23 in December of 2014, Ebon Roberts decided he was going to
24 rob the Wendy's, the Wendy's here in Conway. It's right
25 there on Church Street.

1 Now, how he did it is he waited for the Wendy's to
2 close. And Wendy's closes at ten, the full service
3 restaurant. Then at about two o'clock, the drive-thru
4 closes. Now, of course, when the drive-thru's open, it's
5 short staffed. Wendy's is. There's about two people
6 there generally. That was the case back in December of
7 2014.

8 What Mr. Roberts did is he waited on the female
9 victim in this case, Ms. Rebecca Kennedy, who you're
10 going to hear from shortly -- waited on her to walk out
11 the store. She walked out of the store to her
12 automobile. And this is December, so it's cold. She's
13 cranking up the car to get it going. And he holds her at
14 gunpoint. Actually tapes her up and has her in the car.
15 Gets in the back seat to wait for the second employee to
16 walk out. Now, that's Shaun Cain.

17 Actually, Mr. Cain and Ms. Kennedy are boyfriend and
18 girlfriend. They're driving in the same car. So they
19 wait on Mr. Cain to come out. And he pops out with his
20 gun. Of course, at this point, Rebecca is tied up with
21 duct tape. Holds the gun on him. Gets both of them out
22 of the car and takes them to the alarm system in front of
23 the Wendy's. Gets Mr. Cain, at gunpoint, to manipulate
24 the alarm. They get inside. Really that's when the
25 problem starts for the defendant. The first thing he

1 realizes is that he can't get into the cash safe there.
2 At Wendy's you can only get in to the cash safe from nine
3 to about nine-thirty, nine forty-five a.m. No one can
4 access it other than that time. So he realizes he's
5 going to literally just get change from this armed
6 robbery. And he tries to take off.

7 And he runs into his biggest problem is that the
8 Wendy's he tried to rob is literally a stone's-throw away
9 from the Conway Police Department. The police have this
10 place surrounded by the time he realizes he's not going
11 to get any money out of this Wendy's. He tries to go out
12 the back door, and he sees an officer on the other side
13 of the door. He tries the other two exits. Officers at
14 each exit. So at this point he's in a panic, doesn't
15 know what to do. Ends up hiding the gun, switching
16 clothes with our male victim in this case, Shaun Cain.

17 So he gets the Wendy's gear on and tries to walk out
18 with the female victim of the Wendy's. Now, of course,
19 law enforcement is there to greet him.

20 Ladies and gentlemen, this isn't a case where the
21 State's relying on circumstantial evidence or substantial
22 circumstantial evidence. A lot of times, that's what
23 you'll hear in a trial that goes to trial. You're going
24 to hear direct evidence from the victims in this case.
25 You're also going to hear from the officers who

1 surrounded the place.

2 This isn't a case where it's a whodunit where
3 there's a fingerprint or something found on some shelf in
4 a Wendy's and they say, well, this guy did it because his
5 fingerprint's there. This is a case where the defendant
6 was caught red-handed.

7 All the State asks is that you listen to all the
8 evidence that comes from that witness stand and any
9 exhibits that get put into evidence. There was a lot of
10 evidence found on scene that y'all will get to see. Just
11 pay attention.

12 It's an important case to the State, to the victims
13 in this case. It changed their lives. It's an important
14 case to the defendant in this case. The State just asks
15 that you listen and thank you for your service.

16 THE COURT: Mr. Long?

17 MR. LONG: Thank you, Your Honor.

18 OPENING STATEMENT

19 BY MR. LONG:

20 Good morning, ladies and gentlemen. It's still
21 morning, a little bit left. I'm Buddy Long with the
22 public defender's office and my client, Ebon Roberts,
23 seated here next to me.

24 I could probably waste a lot of this opening
25 statement by telling you the history of the burden of

1 proof by the State and what beyond a reasonable doubt
2 means and all these other definitions that's going to be
3 indispensable to you when you go in your jury room and
4 deliberate. His Honor covers that more than I ever
5 could. So I will let him explain those to you.

6 One thing I want you to understand, and the only
7 thing I want to bring forward on opening statement, is
8 the human condition. I'm fifty-five years old. Some of
9 you are older than me. Most of you are younger than me.
10 But it never ceases to amaze me what we, as humans, get
11 ourselves involved in. I mean, sometimes you just
12 scratch your head and you just say, what were they
13 thinking? What in the world is going on? How in the
14 world could somebody ... Okay? And there's a lot of
15 that in this case, and it's important. And I'm not going
16 to go into detail. I'm going to let you hear it from the
17 witness stand -- okay -- about what went on.

18 One thing I do want to advise you about too. His
19 Honor referred to Judge Floyd. And Judge Floyd had some
20 wise sayings. If you want to see which way the wind's
21 blowing, you don't look at the trunk of the tree. Okay?
22 You look at the little leaves, and you try to determine
23 from the direction that all the little leaves are blowing
24 which way the wind's blowing and how hard and how fast.

25 There are a lot of little leaves to pay attention to

1 in this case. Okay? They may blow past you. Okay?
2 Sometimes they blow past me. But one thing I've found
3 with jurors is that they are at least twelve times more
4 competent than I am, and, I respectfully say, as the
5 Solicitor, is about the recalling and listening to
6 testimony and determining what was said. Okay? And so I
7 defer to your judgement. But I caution to look for those
8 little leaves. I doubt any of them will blow past the
9 twelve of you, the fourteen of you now.

10 Lastly, when it comes to your deliberations, I
11 sympathize with you. You have the hardest duty in this
12 courtroom, respectfully to His Honor. He has a lot of
13 things to do to maintain this courtroom and to make sure
14 it operates in accordance with hundreds of years of rules
15 and laws. That's a tough job. But my wife and I can't
16 agree what we want to go out and eat for supper some
17 nights. Okay? And that's only two of us trying to reach
18 a unanimous decision. Okay? And we all come in with
19 different notions of what's right and what's wrong and
20 things of that nature. And you have to put those aside
21 to try to reach what happened in this case.

22 And I sympathize with you. I know you didn't
23 volunteer and say, I'll serve jury duty this week. You
24 were drafted. Okay? But you've got a hard job, and I
25 understand and I appreciate it. And that's my job, to

1 try to make your job a little easier.

2 Now, unfortunately, a lot of people say defense
3 attorneys only come to try to confuse everybody. There
4 is always three sides to most stories, your side, my
5 side, and somewhere in-between is the truth. And the
6 middle of the truth may be closer to my side or closer to
7 your side. The problem is how do you figure that out.

8 I have known people -- I hate to say -- and I won't
9 really say they lie. They exaggerate. And if I said,
10 you know, yeah, my wife and I we're shopping for a new
11 car. Her car was, you know, fifteen years old, and we
12 bought her a 2008 Nissan Altima, and we really like it,
13 they'll try to one-better us. Well, we got us a BMW, and
14 this, that and the other. Well, they're not driving a
15 BMW, but they want you to think they drive a better car
16 than you. For some reason, that's important. They
17 exaggerate. And so people can get away with it.

18 I can look somebody in the eye. They can tell me
19 something that seems outrageous. And I say, well, okay,
20 they look like they're telling the truth. Other people
21 aren't good liars. Okay? Other people, they can say
22 something like that. I'll go, you know, disregard it. I
23 don't have to pay attention to that. That's a tough job
24 too.

25 Everybody that comes in this courtroom, especially

1 witnesses who take that witness stand, are nervous.
2 Okay? So they look a little -- their voice is a little
3 quavery. Their hands are nervous. They look like --
4 what are they so nervous about? Why are they nervous
5 about what they're testifying to? Things of that nature.
6 Sometimes you have to disregard that. They're nervous.
7 They're in here in court. But you have to compare what
8 they say with what other witnesses say and try to make,
9 as His Honor said, the gears together to determine what
10 happened.

11 I wasn't there. The solicitor wasn't there. We
12 can't tell you what actually took place, how this robbery
13 came about. Okay? But we expect the twelve of you to.

14 So please pay attention. Look for all those little
15 leaves because that's where you going to find where the
16 truth is in this case. Thank you.

17 THE COURT: Mr. Thomas, call your first
18 witness.

19 MR. THOMAS: Your Honor, the State would call
20 Rebecca Kennedy.

21 THE COURT: Come around, Ms. Kennedy.

22 **REBECCA KENNEDY,**

23 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

24 **DIRECT EXAMINATION**

25 **BY MR. THOMAS:**

1 Q. Ms. Kennedy, where do you live?

2 A. I now reside in Santee.

3 Q. What do you do there?

4 A. I am a waitress at Shoney's.

5 Q. Did you work last night?

6 A. I did.

7 Q. How late?

8 A. Until about eleven.

9 Q. You a little tired this morning?

10 A. (Nodded head up and down in the affirmative)

11 Q. Where were you living back in December 2014?

12 A. On Henry C. Lane in Conway.

13 Q. And what were you doing for a job back then?

14 A. I worked for Wendy's on Church Street.

15 Q. All right. Ms. Kennedy, do you know why you're here
16 today?

17 A. I do.

18 Q. Why don't you tell the jury what happened to you
19 back in December 2014.

20 A. That night, Shaun and I was closing. We had
21 finished up our work. I left the building around three
22 a.m. I was waiting for him to come back out. And I
23 heard something at the back of my car, looked up, and Mr.
24 Roberts had a gun to my window. Forced himself inside my
25 car. Then he got in the back, and a roll of duct tape

1 showed up in-between my seats. And I just knew he was
2 going to make me drive away.

3 He waited for my boyfriend to come out. Shaun had
4 gotten right up to the car, and Mr. Roberts jumped out
5 and chased him around. I was still duct-taped at the
6 time. I don't know if Shaun fell or if he was pushed,
7 but Mr. Roberts then got him off the ground and forced us
8 into the building. Sorry.

9 He then made Shaun enter the code for the alarm
10 system. After he had entered the alarm code, he made
11 Shaun crawl on his hands and knees back to the office. I
12 was allowed to walk. I kept my head down. I never
13 looked at him. I didn't want to see him. We got back to
14 the office, and he put us on the ground and made me --
15 proceeded to try to duct-tape me and Shaun together. I
16 guess I wasn't doing it fast enough, so he ended up doing
17 it for us. He was pacing around the building, asking
18 where the money was at. And we kept telling him, "You're
19 not going to get anything. We've already dropped it, you
20 know. It's a time-locked safe. There's nothing there
21 but rolls, rolls of coins."

22 Q. Could you explain that to the jury, how that works?

23 A. I'm not too familiar with it because I was not a
24 manager. I was just a crew member.

25 Q. Okay.

1 A. I do know that there are certain times you can and
2 cannot get into that safe. At the end of the night, it's
3 procedure when you pull all of the drawers that you
4 automatically put it into the time-locked safe. You
5 can't open it. The only thing you can get to is the
6 bottom. And there's maybe two hundred dollars worth of
7 rolled coins in there. So that's all that's in the safe
8 that's available to get to. He kept telling us we were
9 lying. We were lying. He knew there was money in there.
10 And he's still pacing, pacing, pacing. We're still duct-
11 taped together.

12 Then the alarm system starts calling wanting the
13 password. Shaun intentionally did not give them the
14 password to try to alert them to what was going on.

15 Q. Who -- who called -- how did the alarm system
16 contact you?

17 A. Because he was entering the wrong code into the
18 system whenever he forced us back into the building.

19 Q. So did they call you by telephone or show up?

20 A. By telephone. They called by telephone.

21 Q. Who answered that call?

22 A. I believe he answered the phone the first time. And
23 he handed the phone to Shaun. And Shaun had given him
24 his name instead of the password to try to alert them
25 again. The alarm system, their company, just wasn't

1 catching on. So, you know, I think by the grace of God
2 the officers that were outside was what, you know, saved
3 us.

4 Q. All right. So let's go back in your testimony. You
5 talked about how you and Shaun were taped together and
6 the defendant was pacing around. What happened after
7 that?

8 A. After that? I guess after he knew that he was
9 caught. I guess he had hidden the gun because we didn't
10 see it on him anymore. So then he proceeded to take
11 Shaun's uniform to try to pretend like he was the
12 manager. Unduct-taped me to walk back out with him,
13 pretending to be the manager. But they already knew that
14 he wasn't. He wasn't. They had seen him when he put us
15 on the ground.

16 Q. All right. Now, where was Shaun during this?

17 A. Still in the office duct-taped on the floor.

18 Q. How long would you say you were in the store?

19 A. I would say the whole situation lasted maybe forty-
20 five minutes to an hour, if that.

21 Q. Now, where was this gun during that time? Who had
22 possession of that gun?

23 A. Mr. Roberts.

24 Q. And what was he doing with that gun?

25 A. Pointing it at us, repeatedly cocking it.

1 Q. Can you describe the gun at all? Do you remember
2 anything about the gun?

3 A. I remember it was chrome. I believe it was a semi-
4 automatic.

5 Q. Now, if you would, please tell the jury about when
6 you testified that he changed clothes with Shaun, the
7 defendant changed clothes with Shaun ---

8 A. Uh-huh (affirmative).

9 Q. --- and grabbed you to walk out. What happened when
10 y'all tried to walk out or he tried to walk out with you?

11 A. There's a little foyer that you go into when you're
12 going to go outside. He proceeded to tell the officers,
13 you know, that we were in the back having sex. That
14 wasn't true. He argued with them for a minute when the
15 officers were telling him to open the door. He kept
16 saying, "It's against procedure. I can't do that,"
17 pretending he's the manager. But I guess he realized,
18 you know, he was caught. So he held the keys up, and I
19 opened the door. The officers came in and put both of us
20 on the ground in handcuffs.

21 Q. Did you say anything to the officers?

22 A. No. I knew they were doing what they were supposed
23 to do to make sure, you know, I didn't have anything to
24 do with it, trying to get everything situated. I didn't
25 say anything to them until ---

1 Q. So what, if anything ---

2 A. --- you know, they had him in custody and away from
3 me.

4 Q. Then what did you tell them?

5 A. Everything that had happened from the time he duct-
6 taped me in my car until the time he walked me to the
7 front.

8 Q. Ms. Kennedy ...

9 (WHEREUPON, States Exhibit 1 through 5 were marked
10 for identification only.)

11 Q. Ms. Kennedy, I'm going to show you what's been
12 marked for identification as Court's Exhibit 1, 2, 3, 4,
13 and 5. Actually State's Exhibits 1 through 5. Would you
14 please take a minute and look through these, then I'll
15 have some questions for you.

16 (WHEREUPON, the witness reviewed the exhibits.)

17 Q. Ms. Kennedy, are you familiar with these
18 photographs?

19 A. Yes, sir.

20 Q. What are they of?

21 A. Pictures of my wrists where I was duct-taped.

22 Q. Okay. And what about this one which is State's
23 Exhibit 1?

24 A. It's a picture of myself.

25 Q. When were these taken?

1 A. December 8th.

2 Q. Are these true and accurate representations of your
3 wrists and yourself that night?

4 A. Yes, sir.

5 MR. THOMAS: Your Honor, the State would move
6 to have ---

7 THE COURT: Have you shown them to counsel?

8 MR. LONG: He has, Your Honor.

9 THE COURT: All right. Any objection?

10 MR. LONG: Yeah. She didn't take the
11 photographs. I'd like to hear who took the photographs
12 and when they were taken. She doesn't know exactly when
13 they were taken.

14 THE COURT: Form a basis. I think she said
15 that they were made that night, but ...

16 Q. When were they taken and by who?

17 A. After they had taken him away in custody, the
18 officer -- I'm not sure what his name was or her name
19 because there was a female there as well. But it was one
20 of the officers that took pictures.

21 Q. Okay. And are they true and accurate
22 representations of your wrist that night? Is that how
23 your wrists looked?

24 A. Yes, sir.

25 Q. And also of yourself that night?

1 A. Yes, sir.

2 THE COURT: All right. I'll admit them.

3 MR. THOMAS: Your Honor, permission to publish?

4 THE COURT: Certainly.

5 (WHEREUPON, State's Exhibit Numbers 1 through 5 were
6 admitted into evidence and published to the jury.)

7 Q. Ms. Kennedy, you mentioned that you were taped.

8 What kind of tape was used on you?

9 A. The silver duct tape, gray duct tape, whatever
10 color. Silver, gray.

11 Q. And when did you have that on you, and when was it
12 taken off of you?

13 A. When he was in my car, after he had gotten in the
14 back seat, he put it through the seats and told me to
15 duct-tape myself together. So I started doing that. And
16 my boyfriend came out and he forced us back in, and both
17 of us ended up duct-taped together. And I was duct-taped
18 up until the point where he switched clothes with my
19 boyfriend.

20 Q. And where was that?

21 A. In the office.

22 Q. Okay. And where is the office in relation to the
23 store? Where is it in the Wendy's?

24 A. It's in the back. When you come in the foyer where
25 they had taken him into custody, you come in the foyer.

1 You go around a dividing wall, behind the counter and
2 straight back to your left. There is an office there
3 close to the back door.

4 Q. Ms. Kennedy, had you ever seen Ebon Roberts before
5 that night?

6 A. Never in my life until that night. But I see him
7 every night in my head now.

8 Q. Please answer any questions that the Defense may
9 have. Thank you.

10 THE COURT: Mr. Long?

11 MR. LONG: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. LONG:

14 Q. Ms. Kennedy, how long did you work at Wendy's total?
15 How long had you worked there?

16 A. At that Wendy's, probably four months.

17 Q. Okay. And for how long were you dating Shaun Cain
18 in relation to those four months you were there?

19 A. I have been with him altogether about six years, so
20 probably about five. We've been together five years.

21 Q. Okay. And how long has he worked at that Wendy's?

22 A. That Wendy's, since they rebuilt it and opened it.
23 It's been a few years. I'm not exactly sure.

24 Q. All right. Does he live in Conway? Did the two of
25 you live in Conway?

1 A. We lived together in Conway at the time, yes, sir.

2 Q. All right. And so we're talking about the old
3 Wendy's, the one that existed prior to the new one that
4 they've built that was ---

5 A. He worked at that one as well, the old one.

6 Q. Okay. And he worked at the new one also?

7 A. Uh-huh (affirmative).

8 Q. Is he currently working there now?

9 A. Not at the one in Conway, no, sir.

10 Q. All right. And you're working at Shoney's; is that
11 right?

12 A. I am.

13 Q. Okay. Now, on that night -- what time does the
14 drive-in close?

15 A. The drive-thru closes at two a.m.

16 Q. Now, is that set company policy, or is it flexible
17 based upon the number of people that have come through?

18 A. That is set company policy to close at two a.m.

19 Q. All right. How many employees were working that
20 night up until two a.m.?

21 A. There was three of us.

22 Q. Okay.

23 A. The other girl had left probably ten minutes before
24 us.

25 Q. All right. Now, who has the responsibility for

1 cleanup, closedown, et cetera, things of that nature?

2 When does that happen?

3 A. The three people that are scheduled to work that
4 night.

5 Q. All right. And isn't it fair to assume that in the
6 fast-food business, if there's nobody coming in or no
7 orders being placed, you start or prep a lot of your
8 cleanup work before actually the closing of the store?

9 A. We do sometimes, yes, sir.

10 Q. Right. And that would involve table wiping,
11 mopping, taking out trash, turning off the fryers, et
12 cetera? Cleaning the grill, things like that?

13 A. Yes, sir.

14 Q. All right. Do you do restrooms at night, or are
15 those done in the morning by the opening crew?

16 A. Normally, the restrooms are done when the ten
17 o'clock people that run the front registers, when the
18 dining room closes.

19 Q. Right. When is the dining room done? Was that done
20 at the same time?

21 A. The dining room closes at ten o'clock.

22 Q. Okay.

23 A. So whoever is running the front cash has the
24 responsibility for cleaning the restrooms at that time.

25 Q. All right. So then the only responsibility of the

1 drive-in crew is to basically shut down those items of
2 the kitchen that were left on only to service the drive-
3 thru; correct?

4 A. Yes, sir.

5 Q. Fryer, grill, things of that nature?

6 A. Sandwich station and Frosty machines.

7 Q. All right. No restrooms? No dining room? No
8 nothing else?

9 A. No, sir.

10 Q. Okay. So then the person who gets off first or the
11 third person gets off, what was her responsibilities as
12 far as cleanup?

13 A. She was running the drive-thru, so she's responsible
14 for shutting down the Frosty machines, making sure
15 everything is stocked in drive-thru, cleaning the tea
16 urns. You know, make sure everything is clean up there
17 for when they come in in the mornings. I was on
18 sandwiches. I'm responsible for shutting that line down.

19 Q. Okay. The grill and things like that? The fryer?

20 A. No, not the grill. I don't do the grill. The
21 sandwich station, the fry station. You know, anything
22 else that people need help with that don't have it done.

23 Q. Okay. Shaun was running the grill and fryer?

24 A. The grill, the fryer, and he's responsible for the
25 floors.

1 Q. And who is the manager of that store?

2 A. The G.M. is James Royster.

3 Q. All right. And who is the -- that's the general
4 manager of that store; correct?

5 A. Yes, sir.

6 Q. Okay. Now, you say this whole process took forty-
7 five minutes to an hour as far as when you were accosted
8 at gunpoint, duct-taped, taken into the store, et cetera,
9 until police had him in custody, when police had you in
10 custody and you were finally able to tell them everything
11 that happened?

12 A. Yes, sir.

13 Q. All right. And Shaun was still in the office; is
14 that correct -- or in the back part of the store when you
15 and Mr. Roberts walked out and police apprehended the two
16 of you?

17 A. Yes, sir.

18 Q. All right. How long was it after when Mr. Cain was
19 brought out of the store or when police got to him?

20 A. I would say maybe five minutes. After they took him
21 into custody and had me seated, they went back to the
22 office.

23 Q. All right. And what clothes were Mr. Cain wearing
24 when he came out?

25 A. Just his normal white tee shirt that he wears under

1 his button-up shirt and his work pants.

2 Q. Okay. So I believe earlier you testified that Mr.
3 Roberts took his clothes, but specifically he took his
4 shirt; correct?

5 A. Took his apron, his work jacket and his work shirt
6 and his work keys.

7 Q. His shirt, jacket and apron?

8 A. And his work keys.

9 Q. Okay. Now, you said during the time -- the
10 solicitor asked you during the time what was Mr. Roberts
11 doing and whatever, and you said he was continually
12 cocking the gun. Cocking the hammer or ---

13 A. Pulling it back.

14 Q. Okay. Pulling it back. So, in other words, if you
15 weren't doing something fast enough or Mr. Cain was not
16 doing something fast enough, he would get agitated and
17 pull the slide back?

18 A. Yes, sir.

19 Q. All right. And how many times would you estimate he
20 did that over the course of this robbery, forty-five to
21 fifty minutes -- forty-five minutes to an hour?

22 A. I'm not sure. It was quite a few times.

23 Q. All right. Frequently to emphasize a point?

24 A. When he didn't get the answer or the response that
25 he wanted.

1 Q. Okay. Then he would jack the slide on the pistol?

2 A. Uh-huh (affirmative).

3 Q. Okay. Now, you say the duct tape was thrown from
4 the back seat of your car to the front of your car, and
5 you say he told you to duct-tape yourself; is that
6 correct?

7 A. Not thrown. He handed it ---

8 Q. Okay. All right.

9 A. --- in-between the seats and told me to duct-tape my
10 hands together.

11 Q. All right. Now, did he tell you to duct-tape your
12 hands together in front of you or behind you?

13 A. He didn't say. He just said duct-tape my hands
14 together.

15 Q. All right. And tell us how you did manage to try to
16 duct-tape your two hands together?

17 A. I started the tape, put it one hand and just rolled
18 it around. I was like this.

19 Q. All right. Did you use your teeth to roll it
20 around?

21 A. No. I just twirled it with my hands.

22 Q. Twirled it with your hands?

23 A. Yeah. My arms actually, my wrists.

24 Q. All right. That's sticky stuff, isn't it?

25 A. Uh-huh (affirmative).

1 Q. Okay. So anytime you tried to twirl it or whatever,
2 it would stick and gum up on itself?

3 A. Uh-huh (affirmative).

4 Q. All right. Now, then, after you say your hands were
5 duct-taped, then Shaun came out to the car?

6 A. (Nodded head up and down in the affirmative.)

7 Q. Right. And did Mr. Roberts supposedly duct-tape him
8 there?

9 A. No, sir. That was back in the office.

10 Q. Okay. So then he walked y'all back to the office or
11 went back in the office. Was the door locked at that
12 time?

13 A. No, sir.

14 Q. All right. Mr. Cain came out and left the door to
15 the store unlocked?

16 A. Are you talking about the front of the store, the
17 main entrance?

18 Q. Whatever door you entered into.

19 A. No. That was locked back.

20 Q. All right. So Mr. Roberts and you and Mr. Cain went
21 back to -- was it the main entrance of the store or the
22 employee entrance? Which one was it?

23 A. We came in through the main entrance into the dining
24 room.

25 Q. Okay. That would be the customer entrance; is that

1 correct?

2 A. Uh-huh (affirmative). Yes, sir.

3 Q. And that door was locked?

4 A. Yes, sir.

5 Q. All right. And Mr. Cain had to open that door with
6 his keys; correct?

7 A. Uh-huh (affirmative).

8 Q. All right. And then where is the security alarm pad
9 in connection with that door?

10 A. Right when you come in that door, if you take a
11 left, it's on the wall right here.

12 Q. All right. And so did Mr. Roberts hear the beeping,
13 the signal or anything of that nature? Was there
14 anything audible about that alarm pad?

15 A. He was saying he wasn't doing fast enough, to come
16 on and hurry up and put the PIN in. He was intentionally
17 putting the wrong ones in, you know, to alert the
18 company. And in the tussle, they broke the door off the
19 front of it because he kept entering the wrong one with
20 the beeping and everything.

21 Q. All right. But going back to my question, was there
22 something audible about that alarm pad that when you went
23 in the door it said, beep, beep, beep, beep, like that?

24 A. Yes.

25 Q. Okay. All right. And that's when you say Mr. Cain

1 went over to try to enter the PIN?

2 A. (No verbal response)

3 Q. I'm sorry. That's when you say Mr. Cain then went
4 over to the alarm pad; correct?

5 A. Yes, sir.

6 Q. All right. If the incorrect alarm is entered into
7 this system, what is the delay on the alarms going off?

8 A. I am not too familiar with that. Like I say, I was
9 only a crew member. So I really don't have a lot of
10 details when it comes to that.

11 Q. Have you ever opened or closed the store before?

12 A. I have always closed the store, but I never knew the
13 security codes or anything like that.

14 Q. All right. And isn't it normally like thirty
15 seconds from the time you arm the security thing that the
16 manager or whoever has the key says, all right. Y'all
17 get out. We've got to get this door closed before it
18 goes off.

19 A. Yes, sir.

20 Q. So isn't it approximately thirty seconds?

21 A. Yes, sir.

22 Q. All right. And did the alarm ever go off that
23 night?

24 A. Not that I remember.

25 Q. Okay. Now, when the three of you were in the

1 storeroom -- I know you explained about the safe. But
2 you said there was approximately two hundred dollars of
3 rolled coin that was accessible that night; is that
4 correct?

5 A. Yes, sir.

6 Q. No other cash, no other paper money, because that
7 would all be in the time-locked safe?

8 A. Yes, sir.

9 Q. Okay. Who sets the safe times?

10 A. I'm not sure.

11 Q. Do you know whether Shaun has access to the safe
12 during business hours?

13 A. Nobody has access to the time-locked safe until the
14 morning when they are opening.

15 Q. All right.

16 A. The bottom part, they do have the cash drawers when
17 they're having to switch over. But as soon as we close
18 at two a.m., there's none of that in there.

19 Q. What if you run out of fives or run out of ones
20 during the night? Who gets more fives and more ones?

21 A. There is a lot of times where we'll have to make a
22 bank run because we can't get to it.

23 Q. Right. That's if you run completely out of fives
24 and ones?

25 A. Yes, sir.

1 Q. All right. But doesn't the Wendy's keep a supply of
2 fives and ones, which are the most commonly used bills,
3 available so that you can change out a twenty, a forty or
4 whatever?

5 A. I would assume so. But like I said, I'm not a
6 manager. I don't know how those procedures work.

7 Q. All right. But when you're running your drawer and
8 your drawer gets heavy on twenties and light on ones and
9 fives, who do you call or who do you say I need ones and
10 fives?

11 A. The manager.

12 Q. The manager? And that would be Shaun?

13 A. (Nodded head up and down in the affirmative)

14 Q. And that's your boyfriend?

15 A. Yes, sir.

16 Q. Okay. And he would get a hundred dollars from you
17 or whatever and give you that for your drawer?

18 A. Yes, sir.

19 Q. Okay. So he had access to some money somewhere in
20 the store?

21 A. I'm not sure. I guess so.

22 Q. Well, if you requested that he ---

23 A. Not after two a.m., no, sir. He has no access to
24 it.

25 Q. Okay. Now, when was Shaun duct-taped?

1 A. When he took us back to the office.

2 Q. All right. And how long was this after entry into
3 the store?

4 A. Maybe ten minutes.

5 Q. All right. And the alarm had not gone off during
6 that time?

7 A. No.

8 Q. Right. And ten minutes after the two or the three
9 of you were back in the storeroom, how was he duct-taped?
10 I think you said y'all were duct-taped together?

11 A. We were together with our arms ---

12 Q. All right. Describe what that means, together?

13 A. His hands was like this as well as mine, and we were
14 duct-taped together.

15 Q. All right. So you had the existing duct tape on
16 your hands that you put on?

17 A. Uh-huh (affirmative).

18 Q. That you say you twisted and wrapped around and
19 whatever?

20 A. Yes, sir.

21 Q. And then he made Mr. Cain put his hands up to yours?

22 A. And he duct-taped us together.

23 Q. All right. Now, how was that done? Were your hands
24 out like that and Mr. Cain's hands out like that, or were
25 your hands up like this and Mr. Cain's up like that? How

1 was it done?

2 A. My hands were like this.

3 Q. Okay. And what about Mr. Cain's?

4 A. His, I believe, was like this. And he ---

5 Q. All right. Now, was that up in front of you?

6 A. It was kind of like, you know ---

7 Q. Out in front of you?

8 A. --- out in front of me.

9 Q. So in other words, y'all were taped a little
10 distance apart?

11 A. Yes, sir.

12 Q. Okay. All right. And the tape was wrapped around
13 his two wrists and your two wrists together?

14 A. Yes, sir.

15 Q. And you say Mr. Roberts did that?

16 A. Yes, sir.

17 Q. All right. And he did it tight?

18 A. Yes, sir.

19 Q. All right. And that was sticky stuff?

20 A. Yes, sir.

21 Q. All right. And it's very difficult to tear; is that
22 correct?

23 A. I don't think it's difficult to tear, no, sir.

24 Q. Okay. How many layers around was done?

25 A. Quite a few.

1 Q. What? Quite a few meaning more than five? Less
2 than five? More than two?

3 A. More than five.

4 Q. More than five? When did you first know that there
5 were police at the store?

6 A. When Mr. Roberts tried to exit the back door.

7 Q. All right. So where were you when Mr. Roberts was
8 trying to go out of the back door?

9 A. In the office.

10 Q. All right. And the back door would be the one
11 facing the building -- the part of the building away from
12 Highway 501; correct? The front of the store faces 501;
13 the back of the store, the back entrance, faces away from
14 501. Is that correct?

15 A. Yes, sir.

16 Q. All right. And you say he tried to go out of that
17 door?

18 A. Yes, sir.

19 Q. All right.

20 A. We -- I'm sorry. Go ahead.

21 Q. And then he came back in the door?

22 A. Because the officers were outside. They already had
23 the building surrounded.

24 Q. Okay. And so that's when you first knew that there
25 were police there was when he tried to go out the door

1 and came back in?

2 A. Yes, sir.

3 Q. Okay. All right. How long was it after that when
4 police officers took him and y'all into custody?

5 A. Maybe twenty, twenty-five minutes.

6 Q. Twenty to twenty-five minutes? Okay. All right.
7 And during that time, you say he got Mr. Cain's jacket,
8 shirt, and apron?

9 A. (Nodded head up and down in the affirmative)

10 Q. And he unduct-taped you and was escorting you out?

11 A. Yes, sir.

12 Q. All right. Was Mr. Cain left duct-taped?

13 A. Yes, sir.

14 Q. All right.

15 A. He had to unduct-tape Shaun to get his jacket and
16 stuff, but then he was reduct-taped.

17 Q. Then he reduct-taped him. With the same tape or ---

18 A. The same tape.

19 Q. Okay.

20 MR. LONG: The Court's indulgence just one
21 moment.

22 Q. You say you've never laid eyes on Mr. Roberts
23 before; is that correct?

24 A. Yes, sir.

25 Q. All right. Do you recall having met him at that

1 Wendy's two to three months prior?

2 A. There's a lot of people that come in Wendy's.

3 Q. Okay. All right. So, I mean, you can't keep track
4 of everybody?

5 A. No, sir.

6 Q. All right. And didn't you, in fact, meet him as
7 being an acquaintance of Shaun?

8 A. No.

9 Q. You deny that?

10 A. No, sir.

11 Q. Okay. Thank you, ma'am. No further questions.

12 MR. THOMAS: Just one followup.

13 REDIRECT EXAMINATION

14 BY MR. THOMAS:

15 Q. You were asked about the tape. And I believe you
16 testified earlier that the tape was placed in-between
17 your car seats. What happened with that roll of tape?
18 Do you know?

19 A. I don't know where he placed it afterwards. I know
20 when I was duct-taped, he never tore it. I was always
21 attached to the roll. He was pulling my hands down so I
22 could not warn him.

23 Q. Thank you. Nothing further.

24 THE COURT: All right. You may step down.

25 Thank you.

1 THE WITNESS: Thank you.

2 THE COURT: How long will your next witness be?

3 MR. THOMAS: Your Honor, probably about as long
4 as that first one.

5 THE COURT: All right. Let's go ahead. Call
6 the witness.

7 MR. THOMAS: The State would call Shaun Cain.

8 **SHAUN CAIN,**

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. THOMAS:

12 Q. Mr. Cain, where are you from?

13 A. Originally born?

14 Q. Yeah.

15 A. I was born in New York.

16 Q. Where were you living back in 2014?

17 A. Here.

18 Q. What were you doing for a job then?

19 A. Restaurant manager of Wendy's.

20 Q. Okay. And what Wendy's is that?

21 A. The one in Conway at the time.

22 Q. Okay. And what county is that? Sorry I have to ask
23 you.

24 A. Conway, South Carolina.

25 Q. Do you know what county that's in?

1 A. The county? Horry.

2 Q. Do you know why you're here today?

3 A. Yes, I do.

4 Q. Will you tell the jury what happened back on
5 December 8, 2014?

6 A. What happened was I was working, had closed. It was
7 me and Rebecca Kennedy. We were exiting the building. I
8 realized I forgot to do some paperwork -- forgot to fill
9 out my vacation form, so I let Rebecca out and I went
10 back and did it. It didn't take too long. A few
11 minutes. I don't think it -- it had to be under ten
12 minutes. I came out, entered my -- well, I entered my
13 code, and I left. I walked up towards the car, and Mr.
14 Roberts jumped out of the back seat with a gun. I just
15 was in shock. I started to run. He caught up to me. We
16 was on the floor. He had the gun on me the whole time.
17 Made me get up, go back to the store. He had her come
18 out of the car.

19 Excuse me. I'm kind of nervous reliving the whole
20 thing.

21 He had us both go in the building. I had to put my
22 code in again. I entered the wrong code intentionally at
23 first to alert the company. Then I entered the right
24 code so it could stop. He then had me -- he had us go
25 towards the back. He made me crawl on my knees -- he

1 still had the gun on me the whole time -- to the office.

2 Q. And let's back up just a little bit and go in maybe
3 to a little more detail. Where was Rebecca when you
4 first exited the building?

5 A. She was in the car in the front seat like normal.

6 Q. Correct. What, if anything, did you notice about
7 her?

8 A. Nothing. She looked plain, nothing at all. That's
9 why I was coming up to the car. It was like -- that's
10 why I was so shocked. I was so shocked it looked just
11 normal because I couldn't see him.

12 Q. Where did you first see the defendant? Where did he
13 come from?

14 A. He came from the back seat on the left side.

15 Q. Is that the passenger's side or the driver's side?

16 A. The passenger-side back seat.

17 Q. Okay. Now, did you get a good look at the gun?

18 A. Yeah.

19 Q. Can you describe it?

20 A. It was chrome, silver. It might have had a black
21 handle.

22 Q. Was it a ---

23 A. Could have been a nine ---

24 Q. --- revolver or a ---

25 A. It's a semi, I believe.

1 Q. Okay. Do you recall anything about the defendant as
2 far as what he was wearing or anything? I know it's been
3 ---

4 A. A Bulls hat with purple -- because Chicago Bulls is
5 normally red and black. I think it had a purple color.
6 I could see the Bulls symbol, but it wasn't the original
7 colors. It might have been purplish.

8 Q. Now, let's talk about getting back into the
9 restaurant.

10 A. Yeah.

11 Q. Can you just explain to the jury where were you,
12 where was the defendant and where was Rebecca as y'all
13 walked into the restaurant at gunpoint?

14 A. He had me come to the door first because I had to
15 actually unlock the door and made her get out the car and
16 pushed us -- pushed her basically against the wall next
17 to me and kind of forced us in.

18 Q. Where was the defendant's gun during this?

19 A. On me the whole time.

20 Q. Where on you?

21 A. On my back, pointing to my back. When we got into
22 the store, it was actually to my head. That's when I
23 kind of like fumbled with the code at first.

24 Q. All right. I'm going to show you what we're going
25 to mark right now. Once we mark it, if you would just

1 take a look at it and tell me whether you recognize it.

2 (WHEREUPON, State's Exhibits Number 6 and 7 were
3 marked for identification only.)

4 Q. Shaun, if you would, just take a second and take a
5 look at what's been marked for identification as State's
6 Exhibit 6 and State's Exhibit 7. I'm going to have a few
7 questions for you.

8 A. This is the alarm without the cover on it. And when
9 he was right -- on the opposite side of the entrance that
10 I have to go to when I'm leaving the building and coming
11 in, I have to put a code in there. That's the alarm.

12 Q. And is that -- are you speaking about State's
13 Exhibit Number 6?

14 A. Yeah.

15 Q. Is this a true and accurate representation of the
16 alarm system as it was that night?

17 A. No. It was actually -- the cover that's on this
18 floor right here, it's a latch that covers the keyboard.

19 Q. Okay. And you're speaking of 7. Now, what is
20 State's Exhibit 7? What's that a picture of?

21 A. That's the cover of the alarm system.

22 Q. Now, on State's Exhibit 7, that cover is on the
23 floor. Why is that?

24 A. Because when he was having me enter my code, it was
25 a lot of pushing and shoving. I was nervous. I might

1 have knocked it down, or it might have forcibly came out.
2 It's an attachment kind of. If there's any aggression or
3 something, it can just pop out.

4 Q. So is that what happened that night? It popped off?

5 A. Yeah.

6 Q. Are these photos, six and seven, are they true and
7 accurate representations of the scene at Wendy's ---

8 A. Yes, sir.

9 Q. --- the night of December 8, 2014?

10 A. That is correct.

11 MR. THOMAS: Your Honor, the State would move
12 to have 7 and 6 entered into evidence.

13 MR. LONG: Same objection, Your Honor. He
14 didn't take the photos.

15 THE COURT: I would admit them.

16 MR. LONG: Your Honor, permission to publish
17 them.

18 (WHEREUPON, State's Exhibit Numbers 6 and 7 were
19 admitted into evidence and published to the jury.)

20 Q. Mr. Cain, I believe in your testimony we'd gotten as
21 far as you manipulating the alarm system. Can you please
22 tell the jury what all happened after that? As much
23 detail as you can, please.

24 A. Okay. I'm sorry. Let me just take it slow because
25 I'm kind of still nervous reliving the whole thing.

1 After he had -- well, first of all, when he was making me
2 put in my alarm, I was saying the whole time that it was
3 a waste of time trying to even rob the store. There's no
4 money here, you know. You're not going to get nothing.
5 So he took me as I was lying. So he had Rebecca kind of
6 walk and made me crawl with the gun on me the whole time
7 to the office. And we got in the office. I had to open
8 the safe. I opened up the safe and showed him it was
9 nothing but coins. It's nothing but change in there for
10 our -- to bank in our cashiers. It's not the cash. It's
11 just the nickels, dimes, quarters, et cetera, all in
12 drawers. So when I done that, he still said I was lying.
13 I can open the safe. And I explained to him it's on a
14 time lock. I had no access to it at all. So he said I
15 was lying. He said I was lying, and -- oh, yeah. He
16 said I was lying, and then he had me basically give him
17 my wallet. He took my I.D. and the few bucks I had on
18 me. I might have had fifteen or seventeen dollars. But
19 he looked on my I.D. like in a movie, like set it off
20 like he basically knew my address kind of.

21 Q. So what did he say to you when he took your wallet?

22 A. He didn't say nothing. He just say, give me my
23 wallet. "Give me your wallet." But, you know, he looked
24 at my I.D. like he had us, like he knew where we stayed.
25 Then he taped our hands together. He made Rebecca tape

1 our hands together. So both of us had our hands taped
2 together. I think at that time -- well, let me back that
3 up. That's not what happened. After he realized there
4 was no money but change, the alarm company called. They
5 called to confirm what was going on because the alarm
6 system had been triggered. He actually answered the
7 phone and said, "Hello," and then handed it to me. So
8 they asked for the security code when they called. So I
9 said Shaun Cain, knowing that I can't just give them my
10 I.D. It's a trigger code word I'm supposed to say when
11 everything's fine. So I intentionally gave them my name
12 for about four times. Then after that, he proceeded and
13 said, "Give me your wallet." Took my few dollars. And
14 then he made Rebecca -- he made Rebecca tie -- tape our
15 hands together. Then after he had my few dollars, I
16 think he tried to just leave because he realized he
17 couldn't get nothing.

18 Once he tried to exit the back door, the police were
19 already there. So he comes back in. He started kind of
20 thinking he was already caught and saying why did he do
21 this. He shouldn't have done this. And then I think he
22 told us at one point he wasn't going to hurt us. He was
23 just trying to support his habit and feed his family.

24 He went to the left of the store. He had me --
25 well, we was still tied together, I think, taped

1 together. I think he went to the left of the store. We
2 didn't know what he was doing. He came back and told me,
3 "Give me ..." Take my jacket off and my shirt. Somehow
4 he just left me and told me to get face down on the floor
5 and came and got Rebecca. He came and got Rebecca, and I
6 think he tried to just go out the front door. I was
7 face-down on the floor. That's pretty much what I
8 remember. It might not have been in that exact order.
9 But after he tried to exit the building from the rear, he
10 came back. I think he untaped us, walked to the left of
11 the store. We didn't know what he was doing, so I guess
12 -- well, we found out that's where he was stashing the
13 gun at. He came back and asked for my top, everything I
14 had on my top, basically a jacket and a shirt, and told
15 me to get face down on the floor and exited the building.
16 He tried to exit the building. I just stayed on the
17 floor face-down until the police came. I don't know when
18 he took Rebecca what was going on then, but I was face-
19 down.

20 Q. Could you please explain to the jury how you and
21 Rebecca's hands were taped together back in that back
22 office?

23 A. Kind of like this, like a pray symbol, both of us,
24 with the duct tape basically around both our hands like
25 this, wrapped around a couple of times. It wasn't really

1 too tight, but it was tight enough that you couldn't just
2 go like this. But I mean, on my skin it really didn't
3 show much. On her's, it's slightly. You could tell she
4 was like -- her side might have been tighter than mine,
5 but she had scars on it.

6 Q. Now, you mentioned earlier about your wallet being
7 taken and your I.D. looked at. When did that happen over
8 the course of these events?

9 A. That happened in the office.

10 Q. Okay. When though? Was this -- you talked about
11 him trying to -- the defendant trying to exit the back
12 door. Was this before or after that?

13 A. I think the wallet issue might have happened right
14 when he realized he couldn't get no money before he tried
15 to exit the back door.

16 Q. Before he tried to exit the back door the first time
17 he tried to exit?

18 A. Yeah.

19 Q. Shaun, I'm going to show you a couple more
20 photographs here.

21 (WHEREUPON, State's Exhibit Numbers 8 and 9 were
22 marked for identification only.)

23 Q. I'm going to hand you what's been marked for
24 identification State's Exhibits 8 and 9. If you'd take a
25 minute and just look at them. Don't say anything. Then

1 I'll ask you a few questions about them.

2 (WHEREUPON, the witness reviewed the exhibits.)

3 Q. Do you recognize them?

4 A. Yeah, I recognize them.

5 Q. What is State's Exhibit 8 a photograph of?

6 A. Exhibit 8 is me after the police already had him
7 into custody sitting down at the table trying to write my
8 statement after it was all done, he already had my shirt,
9 my jacket, my few dollars I had. Sitting at the table.

10 Q. Now, do you know when this photograph was taken?

11 A. After they had him in custody.

12 Q. Was it the same guy?

13 A. Yeah, it's the same guy.

14 Q. A true and accurate representation of what he looked
15 like that night?

16 A. What I looked like? Yeah.

17 MR. THOMAS: Your Honor, the State would move
18 to have State's 8 entered into evidence.

19 MR. LONG: Same objection, Your Honor.

20 THE COURT: All right. I'll admit that.

21 (WHEREUPON, State's Exhibit Number 8 was admitted
22 into evidence.)

23 Q. I'm going to show you what's been marked for I.D. as
24 State's 9. Do you recognize that?

25 A. That is me with -- those are the drawers from the

1 safe which I was telling him the whole time, that's the
2 only thing in there that I had access to. There was no
3 cash. Those are the actual registers with the coins in
4 them that gets the cash the next day. The next manager
5 comes on duty and puts the cash in those drawers. The
6 change is just left in the safe overnight. The next day,
7 the manager, whoever's on duty, will come in and has the
8 access where they can open the safe and get the cash to
9 put them in those drawers.

10 Q. Okay. Now, things look a little bit disheveled. Is
11 this how these drawers usually look?

12 A. That was when he had me pulling the drawers out, you
13 know, to show him after he said I was lying and he can
14 get cash -- I can get cash.

15 Q. So is this a true and accurate representation of how
16 those drawers looked that night?

17 A. That's them on the floor after I pulled them out
18 showing that there's no cash. There's nothing but coins.

19 MR. THOMAS: Your Honor, the State would move 9
20 into evidence.

21 MR. LONG: Same objection, Your Honor.

22 THE COURT: All right. I'll admit that.

23 MR. THOMAS: Permission to publish, Your Honor.

24 THE COURT: Yes, sir.

25 (WHEREUPON, State's Exhibit Number 9 was admitted

1 into evidence and published for the jury.)

2 Q. Now, in State's 8, you're wearing a white tee shirt.

3 Is that what you wore to work that night?

4 A. No. I wore my full uniform which is a button-up

5 shirt. It might have -- it could have been charcoal or

6 burgundy that night, a apron. And I actually had a black

7 Wendy's jacket. And Mr. Roberts took my top. He still

8 had on his regular jeans with no khakis, but he took my

9 whole top. So I was left in a tee shirt.

10 Q. Now, your testimony was that you were taped up and

11 then later he got your clothes off of you; is that

12 correct?

13 A. Yeah, after ---

14 Q. How was he able to get the clothes off of you when

15 you were taped up?

16 A. After he had us untape ourselves, he asked for my

17 clothes, my top and then proceeded -- that's when he took

18 Rebecca and tried to exit the front door at this time.

19 Q. Okay.

20 A. The last thing he did with me before he had me go

21 face-down was to take my top off.

22 Q. What kind of tape was he using?

23 A. It was duct tape. A certain color, I don't remember

24 too much. It was duct tape.

25 Q. Now, in State's Evidence Number 9, the photograph of

1 the coin shelves, where is that in the Wendy's? Where
2 was that photograph taken in that Wendy's?

3 A. The coins -- when you open the safe, the coins ---

4 Q. Where was the safe?

5 A. The safe is in the office to the right of it on the
6 -- kind of -- well, bolted to the floor under our
7 computer. Our desk is bolted to the floor. The top part
8 of it is a time lock where the cash is dropped. We make
9 envelopes and make drops in there. The drop -- the time
10 lock opens in the morning like at -- if I go in at five
11 o'clock, I cannot get into that top. Basically, when I
12 start my shift if I'm closing, the bottom's going to have
13 the change. So if we've got petty cash there or
14 anything, it's going to be in the bottom. In the course
15 of the night, the dining room closes at ten. The money's
16 dropped no less than ten fifteen. The drive-thru closes
17 at two. Minutes later the money is dropped where there's
18 no access to it. Even I can't get to it. Nothing but
19 those drawers you can see I have access to because that's
20 the cash policy.

21 Q. All right. Let's talk a little bit about time.

22 When did you first exit the Wendy's outside? You
23 testified you had the gun pulled on you initially. About
24 what time was that?

25 A. It's like three in the morning, maybe a little

1 after.

2 Q. Okay. And how about this whole armed robbery? How
3 long did this whole episode take? Your best estimation.

4 A. I don't know. It really wasn't that long. But like
5 I said, it took the authorities a while to find the gun.
6 It might have been -- probably an hour.

7 Q. Okay. I'm talking about from the time you were held
8 at gunpoint to the time the defendant was taken into
9 custody.

10 A. Oh, that might have been about maybe twenty minutes.

11 Q. Okay. And you've mentioned a little bit about the
12 safe. Can you access that safe at night?

13 A. No. I can open the safe and get what's in the
14 bottom of the safe.

15 Q. Which, again, is what?

16 A. Coins at the end of the night, especially at
17 closing.

18 Q. And let's talk about the alarm for a little bit. Is
19 that alarm -- is it audible? Does it go off at any --
20 did it ever go off that night?

21 A. No.

22 Q. Is that unusual or ---

23 A. When a manager leaves the building, he has to put
24 the alarm to stay. Like when I first left out the first
25 time, I armed the alarm to stay. That means away, to go.

1 It'll beep for a few minutes. As long as nothing is
2 tampered with, doors are locked and secure, it's working.
3 As far as me coming in, I had to reenter the alarm code
4 again to enter the building. Well, after I enter the
5 building to -- because it can trick off if you do things
6 wrong. Entering and exiting you have to put a code in
7 for the alarm to stop ringing. If you put in the wrong
8 code, it'll keep beeping. If you don't put in no code,
9 it'll alarm the authorities and the alarm company.

10 Q. So what code did you put in when you were forced ---

11 A. When I was -- at first when he had the gun on me, I
12 put in the wrong code intentionally. And then when he
13 said I better put in the right code because I knew once,
14 you know, that it'll start beeping to alarm them that I
15 put in the wrong code. So I already knew I put in the
16 wrong code at first. And then I alarmed it like how it's
17 supposed to. That's why we got a call.

18 Q. Now, do y'all have a -- or did you back in December
19 of 2014 -- a video surveillance system of that Wendy's?

20 A. No. They might have one now. I'm not sure. I
21 don't work there no more.

22 Q. Please answer any questions the Defense has for you.

23 A. Okay.

24 CROSS-EXAMINATION

25 BY MR. LONG:

1 Q. Mr. Cain, are you currently working at Wendy's?

2 A. Yeah.

3 Q. All right. And how long total have you been there?

4 A. Well, for Wendy's in general?

5 Q. Yes, sir.

6 A. Maybe fifteen, sixteen years.

7 Q. All right. What Wendy's are you working at now?

8 A. A Wendy's out of town.

9 Q. Out of town?

10 A. Yeah.

11 Q. Okay. Where?

12 A. Orangeburg.

13 Q. Okay. Is that where you're living now? Orangeburg?

14 A. Yeah.

15 Q. Or that area?

16 A. Yeah.

17 Q. Now, you say you left and then you went back in
18 because you forgot to fill out a vacation form; is that
19 right?

20 A. I never left the building. I had let Rebecca out.

21 I was going to -- we was leaving together. And then I
22 forgot I had -- did not fill out my vacation form. So I
23 just let her go out to warm the car up because it was
24 cold. And I said, "I'm going to go fill out this form.
25 Give me a minute."

1 Q. All right. When you were letting her out, you
2 intended to go out with her; correct?

3 A. Yeah, at first. Then I thought about ---

4 Q. So you'd already set the alarm?

5 A. Yeah. To let her out, yeah.

6 Q. And you thought you were going out? But then you
7 remembered the vacation form. So you let her out, said,
8 "I'll be just a minute, baby," whatever, and then went
9 back in and unarmed the alarm?

10 A. Well, I had to set it back again.

11 Q. Okay. And when was your vacation scheduled for?

12 A. I can't remember off the top -- I think I had to
13 just throw something in there because my boss had told me
14 that I forgot -- I might have took it maybe the week of
15 Thanksgiving or something. I may have put in for it. I
16 forgot.

17 Q. Okay. So you have to put it in how long in advance?

18 A. Well, I already did mine, but I was getting another
19 week, which my boss, James, told me earlier that day,
20 make sure I do it before I left. So that's what I forgot
21 to do.

22 Q. All right. And were you scheduled to work the next
23 day?

24 A. Yeah, I was supposed to work the next day. I wasn't
25 even supposed to work that night really.

1 Q. How far in the future were you trying to schedule
2 this vacation time? I mean, was it in the next ---

3 A. A few months.

4 Q. A few months? Okay. And what is the deadline the
5 company says as far as when you have to request vacation
6 time? You can't just come in one day and say I'm taking
7 off next month?

8 A. No. No. It had to be in like -- that was December.
9 All of my weeks had to be in before the new year kicked
10 in.

11 Q. All right. And that's ---

12 A. I thought I was just allowed two, but my boss had
13 told me I get three this year.

14 Q. So you're saying before the end of December, you
15 have to have ---

16 A. The next year's.

17 Q. --- all your vacation for the full next year
18 requested before December?

19 A. Yeah.

20 Q. Okay. And how much time were you requesting?

21 A. I get forty hours a week. I get a hundred and
22 twenty hours. At that time, I thought I just got eighty.

23 Q. How much time were you requesting off on this form
24 you had to fill out?

25 A. Well, I just had one more week to put in. I already

1 had my two weeks in already.

2 Q. Okay. So you were just requesting one more week
3 sometime in the year of 2015?

4 A. Sometime in the year, yeah.

5 Q. What date did you pick?

6 A. I don't remember. I really don't. I think I put
7 Thanksgiving week. I really wanted Christmas or
8 Christmas week, a holiday week, I believe.

9 Q. Those are hard to get off; right?

10 A. Yeah.

11 Q. Okay. All right. Now, you say then you went back
12 in and you unarmed the code, and you were going to fill
13 out the vacation form?

14 A. Uh-huh (affirmative).

15 Q. And you say that took no more than ten minutes?

16 A. No. Ten minutes was too long. It wasn't that long.
17 It was just a -- I say ten tops.

18 Q. Well, I was just going by what you said. It took no
19 more than ten minutes; correct?

20 A. It didn't take more than ten minutes.

21 Q. All right. And for that time, Rebecca's sitting out
22 in the car warming the car up ---

23 A. Right.

24 Q. --- while you're finishing filling out the forms.

25 Did you lock the door back after you went in to fill out

1 your forms?

2 A. Yeah, I locked the door. I did the whole protocol.

3 Q. All right. But the alarm was not set off because
4 you were still in the store and could have set off a
5 motion detector or something; right?

6 A. Well, no. I armed the alarm to stay. That's what
7 you have to do when you come in. You arm it to stay.

8 Q. So it's unarmed?

9 A. It's armed to stay, means someone's in the building.
10 Unarmed. It's an off code, it's a stay code, and it's an
11 away code. When I leave, I put away.

12 Q. All right.

13 A. When I come back in, I put a stay. Like I stay ---

14 Q. So it turns off the motion detectors, but it still
15 arms the door?

16 A. Yeah, it arms the door.

17 Q. Okay. So you wouldn't set off the alarm inside?

18 A. No.

19 Q. All right. And you had to do the paperwork in the
20 office?

21 A. Right.

22 Q. But everything else was closed down?

23 A. Yeah.

24 Q. All right. How long does it normally take to close
25 down?

1 A. What, the store?

2 Q. Yes, sir.

3 A. About forty minutes. It depends on the staff I've
4 got. If they're good, it could be faster.

5 Q. All right. And that would be a total close down.
6 For example, if Wendy's closed at ten o'clock at night,
7 forty minutes later, the last employee would be leaving
8 and it would be in shape ready to reopen in the morning;
9 correct?

10 A. Forty to an hour depending on the staff.

11 Q. All right.

12 A. Like, that's why I was there until three. You know,
13 the drive-thru closes at two.

14 Q. And then when the drive-in closes later than the
15 store ---

16 A. Right.

17 Q. --- the people who are leaving when the dining room
18 closes are responsible for cleaning the dining room,
19 restocking napkins, et cetera, all that kind of good
20 stuff. Bathrooms, whatever. Okay? Anything involved
21 with the dining room, they close it and clean it; right?

22 A. The front cash person does that, the dining room.
23 They take care of that.

24 Q. Okay. All right. And so when the drive-thru
25 closes, they don't have to do the entire restaurant?

1 A. No.

2 Q. And the drive-thru closes at two?

3 A. Uh-huh (affirmative).

4 Q. All right. Now, you say then no more than ten
5 minutes, less than ten minutes, is when you came back out
6 to the car. Okay. And was the car running?

7 A. I don't remember at all.

8 Q. All right. But nonetheless, someone got out of the
9 back of the car and chased you a little bit with the gun.
10 And did you fall down? Did you -- how did it happen that
11 he caught up to you?

12 A. I think he caught up to me and might have pushed me
13 down. Like I said, it happened so fast because I was in
14 shock. And I could see outside like where the alarm code
15 is, I could look at the door and see the car. I mean, I
16 didn't see nothing out of the ordinary. Just like a
17 normal night out to me. I mean, she looked fine, but all
18 I could was just see her face. I can't see her hands
19 taped up. So I was just maybe two feet from the car
20 getting ready to come in. And Mr. Roberts jumped out
21 with his gun out, and I just started to just run. I was
22 in shock. I didn't even get far.

23 Q. You said her hands were taped, and you put your
24 hands behind her back. Where were hands taped?

25 A. She said ---

1 Q. The front or back?

2 A. She said her hands were tied behind her back.

3 Q. Okay. Hers were taped behind her back in the car?

4 A. In the car.

5 Q. All right. So then when you say Mr. Roberts caught
6 up with you, how far from the car were you when he
7 finally caught you?

8 A. Not far at all. Like I said, it was -- I was just
9 about ---

10 Q. As far as from me to you?

11 A. Maybe if you were a little closer.

12 Q. Okay. So if you are the car and I am where Mr.
13 Roberts caught up with you, it would have been as far
14 from me to you now?

15 A. Well, I say the cruiser -- I mean, I was just about
16 up to the car door getting ready to get in.

17 Q. Okay. So in other words, you were coming up to the
18 car, getting ready to get in; he come out with a gun?

19 A. Yeah.

20 Q. And that's when you turned and ran?

21 A. And I didn't get no further -- I was still on the
22 side in front of the store to the left of the car when
23 the fall ---

24 Q. That's what I'm asking you. How far did you get?
25 As far as from me to you?

1 A. (No verbal response)

2 Q. Less or more?

3 A. Maybe it's kind of close right there. Maybe around
4 where you're at.

5 Q. This far from me to you?

6 A. Approximately, about like that. In the front of the
7 car to the left of the store.

8 Q. Right. And then he -- then the two of you went back
9 to the car?

10 A. Well, he made me get up first and forced me to the
11 store and told her to get out of the car.

12 Q. Okay. So he forced you to the store and then went
13 back to the car and told her to get out of the car ---

14 A. No.

15 Q. --- or did he walk you back to the car?

16 A. He walked me to the door with the gun on me, and
17 then he pointed it to her while he had me like this to
18 the door and said, "Get the fuck out the car." So she
19 came over towards us. He pushed us against the wall.
20 Once I opened up the door, he forced us in.

21 Q. All right. So you're saying that after you ran and
22 he caught you, then he took you back to the car ---

23 A. No, he did not take me back to the car.

24 Q. He left you there?

25 A. He picked me up. Told me to get up, walked me to

1 the door. The door -- the car ---

2 Q. How far was the door from the car?

3 A. Not far at all. The door might be where he's at
4 right now. The car's probably where I'm at right now. I
5 mean, everything's right there. That's why I didn't get
6 far. I was in front of the car when he pushed me to the
7 floor and walked me probably from where Mr. Austin is at
8 -- this is the Wendy's door. The car's still right here.
9 I mean, it's a few steps away from each other. It's not
10 even far.

11 Q. So he told you to go to the door or walked you to
12 the door?

13 A. He walked me to the door with the gun on my back,
14 told me to open it up.

15 Q. All right. And then he said, "You stay right
16 there," and then went back to the car ---

17 A. No.

18 Q. --- and told her to get the F out of the car?

19 A. No. He told her to get the fuck out of the car when
20 he had the gun on my back, pushing me to unlock the door.
21 He had the gun on me the whole time. When he told her to
22 get out, he pointed the gun towards her, had me shoved
23 against the door -- I already had my key out opening it
24 up -- and told her to get over here and get here and get
25 it.

1 Q. All right. So then he had you closer to the door?

2 A. Yeah.

3 Q. And he hollered over to her, "Get out the car."?

4 A. Yeah. "Get the fuck out the car."

5 Q. All right. And he was still on you the whole time
6 while he was telling you to unlock the door or whatever?

7 A. Yeah.

8 Q. All right.

9 A. He had the gun on me the whole time.

10 Q. When she got out of the car and she was duct-taped,
11 how long did it take her to come to where you and Mr.
12 Roberts were standing?

13 A. Seconds.

14 Q. Okay. So she walked right on over? It didn't take
15 her long, did it?

16 A. It didn't take her long at all.

17 Q. All right. And he didn't have the gun on her at
18 that time; he had the gun on you the entire whole time,
19 didn't he?

20 A. He never really had the gun on her. He had it on me
21 most of the time.

22 Q. So he hollered, said, come over here, and she
23 hurried on over. And he kept the gun on you and she came
24 up to where y'all were?

25 A. Yeah.

1 Q. All right. How long was it after that that the
2 three of you were inside the store?

3 A. Seconds.

4 Q. Okay. And that's because you just simply opened the
5 lock and opened the door and were forced in or went in?

6 A. I opened the door. Once he said, "Get the fuck out
7 of the car, get over here," she same over. He put us
8 both together like to enter the building first and stayed
9 behind, like kind of behind us, but he had the gun on me.
10 Kind of like after she came over and a shove. We entered
11 the building, left and go back to the code.

12 Q. All right. And when you opened the door, did the
13 panel start beeping?

14 A. Yeah.

15 Q. All right. And what kind of beeping is it at that
16 time? It's just a reminder like, beep, beep, beep, beep?

17 A. Yeah, a beep.

18 Q. Like you'd better enter the code or something's
19 going to happen; right?

20 A. Yeah. And no one beeped.

21 Q. And how long does it beep before things start
22 happening if you don't enter the code? Thirty seconds?

23 A. It could be up to a minute or two. I'm not sure.
24 It could be up to a minute or something like that.

25 Q. All right. How many nights do you close Wendy's?

1 A. Maybe three.

2 Q. Three nights a week?

3 A. Maybe.

4 Q. All right. And don't you know when you hit your
5 code in that thing, everybody kind of knows you pretty
6 much better be out the store. And you don't have to run,
7 but you don't waste your time. You go to the door, you
8 open the door, you let yourself out and you lock it
9 because usually after thirty seconds, then that thing
10 finally goes off, says, okay, the building's secure?

11 A. I'm not sure about the seconds. But our system, we
12 get alarm away where everybody's kind of still there.
13 And we can just all leave together. I mean, we've got
14 time to exit. I'm not sure on the seconds.

15 Q. Okay. But it gives you enough time to enter the
16 code, to gather whatever, coat, purse, car keys, whatever
17 the case may be, open the door, close the door?

18 A. No, not all of that. We've got to be ready to go
19 once that code is entered. We don't have time ---

20 Q. Right. So it doesn't even last that long. Pretty
21 much once you enter the code, then you've kind of got to
22 move it. You've got to get out of there before it goes
23 off.

24 A. Yeah. You might have a minute maybe.

25 Q. All right. And when you, the three of you, came

1 back in, it was beeping. And you entered an incorrect
2 code?

3 A. Yeah.

4 Q. All right. And it continued to beep?

5 A. Yeah. But it was -- I entered the code, the
6 incorrect code. It beeped. But I mean, he's told me I
7 better enter the right code. I kind of enter the right
8 code before I started triggering some kind of something
9 was wrong.

10 Q. So that was within thirty seconds or so or however
11 long it lasts to get ---

12 A. Yeah. As soon as we came in the building -- as soon
13 as you enter or exit the building, you have a few seconds
14 to put in the code before it will trigger something off.

15 Q. All right. And so did you enter the correct code
16 within the thirty seconds or whatever period of time it
17 is before it goes off?

18 A. Yeah, I did.

19 Q. All right. Now, when were you duct-taped?

20 A. I was duct-taped when we got to the office.

21 Q. All right.

22 A. When I was taped together with Rebecca, that's when
23 I was duct-taped.

24 Q. All right. On this night when the police arrested
25 you, did you give them a statement, a written statement?

1 A. On this night when the police arrested me?

2 Q. When the police arrested him, did you give a written
3 statement to police officers?

4 A. Yeah, I did. Yeah.

5 Q. And I'll show you this and ask if you can identify
6 that?

7 A. Yeah, I can identify it.

8 Q. All right. Is that your handwritten statement from
9 that night?

10 A. Yes, it is.

11 Q. All right. Did you tell the police in that
12 statement that you were taped right after he forced you
13 to the back of the office?

14 A. No.

15 Q. That's just about the fifth line down.

16 A. I don't think I've got it down -- well, I don't have
17 it down here.

18 Q. Right. Did you say, "Forced us back to the office,
19 taped our hands together and then had me open the safe"?
20 Is that what you wrote in your statement?

21 A. Yeah. I got it. I see it. I've got it here.

22 Q. And was it fresher in your mind then when you wrote
23 that than now when you're testifying?

24 A. Well, I got a few things that's kind of not exactly
25 how it happened, but it happened, like ---

1 Q. Was it fresher in your mind then, or is it fresher
2 in your mind now nine months later?

3 A. It's kind of a little better the way detail that
4 happened because I got in here, "I walked out the
5 building. Basically, I didn't get to the car. And I was
6 pushed by a black man." I mean, I actually was almost on
7 the car, and he jumped out the back seat. I mean, it's a
8 lot of pressures on you when you have a pistol on you. I
9 could say I remember it a little more better now.

10 Q. All right. Did you in that statement ever say
11 anything about him pushing you or pushing her or anything
12 of any physical contact in your statement written
13 December 8th, 2014?

14 A. Well, I got forced. I mean, he pushed us. He
15 wasn't very aggressive. He didn't pistol whip us or
16 nothing. It was just shoving like how he kind of shoved
17 me down to the ground and forced us back in the building.
18 I mean, it was nothing like -- no kind of brutal
19 aggression.

20 Q. Listen to my question. In your statement that you
21 gave them that night, did you tell police that he pushed
22 you or pushed you against the wall or held you against
23 the wall or pushed her or in any way physically assaulted
24 you or Ms. Kennedy?

25 A. I got forced.

1 Q. Did you in your statement say that you were
2 physically assaulted in any way during any of this?

3 A. No, I wasn't physically assaulted.

4 Q. Now, you say he made y'all go back to the office and
5 tape your hands together. How did he tape the hands
6 together?

7 A. He had her tape our hands together.

8 Q. All right. So her hands were already taped
9 together; correct?

10 A. She still had some kind of tape on her hands.

11 Q. And he made her tape ---

12 A. He had her do it. At first she was doing it. He
13 told us to do it. But she started doing it. And I guess
14 she was going too slow, so he just came over and did kind
15 of the finishing touches to wrap it up faster.

16 Q. Okay. So he had her try to tape the two of your
17 hands together first. And then she didn't do it fast
18 enough or right, so then he did it?

19 A. I believe so.

20 Q. All right. And I think you said her wrists were
21 taped together, but you like just had your hands taped to
22 her wrists; is that right?

23 A. Kind of like the way it ended up coming out, I had
24 more kind of room like this where she was kind of --
25 where mine -- like she couldn't do all of this as much as

1 I could.

2 Q. All right. And ---

3 MR. LONG: Permission to approach, Your Honor?

4 THE COURT: Yes, sir.

5 Q. If you'd hold your hands up?

6 (WHEREUPON, the witness complied.)

7 Q. All right. Were your hands taped together like
8 that, or were they taped together like that?

9 A. It was at the wrist where I could do this.

10 Q. All right. Were the wrists taped together like
11 this, or were the wrists taped together like this?

12 A. I think kind of like the first one because I ---

13 Q. Okay. So in other words, her wrists were extended,
14 yours were extended, and there was a good bit of space
15 between the two of you?

16 A. Yeah.

17 Q. In other words, your wrists weren't taped together
18 so that y'all were kind of face-to-face?

19 A. Well, we were kind of diagonal from each other like
20 side-to-side, but not face-to-face.

21 Q. Correct. But both of your wrists were up?

22 A. Yeah.

23 Q. Hers were?

24 A. Yeah.

25 Q. They were not horizontal?

1 A. No.

2 Q. How much change is that? I'm looking at a picture
3 of -- and it probably looks like two hundred dollars in
4 quarters, nickels, dimes, whatever the case may be. Do
5 you recall how much change it was there?

6 A. No, but that's probably a good guess. It's four
7 drawers.

8 Q. Where do you hide your petty cash?

9 A. Well, all the cash, like I said, was in the safe in
10 the top. It has to be dropped.

11 Q. All right. During the daytime hours or even during
12 the nighttime hours, if a cashier runs short of ones or
13 fives or tens or something of that nature, do you have to
14 get them out of the safe?

15 A. Yeah.

16 Q. All. How many accesses to the safe do you have per
17 evening?

18 A. I had plenty, unlimited.

19 Q. Unlimited during the evening?

20 A. Yeah.

21 Q. Okay. And don't sometimes you simply put petty cash
22 aside somewhere so that you don't have to go in and out
23 the safe every time a cashier needs twenty ones or
24 something?

25 A. Well, everything's still in the safe, but it'll be

1 in the bottom part like where you guys saw where the
2 drawers were with the change. In the course of the
3 night, there will be cash there. But the later it gets,
4 there's more cash I'm supposed to deposit. So ----

5 Q. And whose responsibility is it to drop the cash?

6 A. Well, the cashiers drop their own cash after I
7 verify the drawer. What's ever in the safe, like the
8 remaining cash that goes to those drawers, I drop it.

9 Q. All right. So that night would Rebecca have dropped
10 the cash in her drawer?

11 A. Yeah.

12 Q. All right. You wouldn't have dropped it?

13 A. No.

14 Q. How long have you known this man?

15 A. I don't know him.

16 Q. You don't know him?

17 A. Don't know him.

18 Q. All right. Isn't it true he lives out or near
19 Conway and sometimes came by Wendy's to eat?

20 A. I don't know, but someone there knows him. I've
21 heard somebody went to school with him. That's about it.

22 Q. All right. Haven't you and he had occasion to talk
23 before this took place?

24 A. No, not at all.

25 Q. You deny that?

1 A. I've never seen -- well, if he was in Wendy's and
2 kind of knew me, I didn't know him.

3 Q. Okay.

4 A. I know his name from after the incident. He knows
5 my name because I had to tell the alarm company, to try
6 to warn them without alarming him for them to do
7 anything, my name. See, when you enter the wrong code,
8 you still get a call. I already know that. They call
9 and they want to hear the safe word. I told them my name
10 so they'd know it was me in there, and I should have told
11 them something else so they could alarm the authorities
12 or file a report.

13 MR. LONG: The Court's indulgence just one
14 moment.

15 Q. Thank you, sir. I have no further questions.

16 MR. THOMAS: Just very briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. THOMAS:

19 Q. Defense counsel made reference to a written
20 statement that you wrote the night of the incident. Do
21 you remember making that written statement?

22 A. This one right here?

23 Q. I believe it is. The one that he brought up to you?

24 A. Yeah.

25 Q. About how long is that written statement?

1 A. It's not really long. Well, kind of.

2 Q. I mean, is it a few pages? Is it a paragraph?

3 A. It might have been an extended paragraph maybe.

4 Q. Okay. Is there more detail in what happened that
5 night, in your testimony here today or that written
6 statement?

7 A. Today is more detail. I mean, it could be a little
8 more detailed. But, like I said, reliving the whole
9 thing and -- it was just that it's got me like thinking a
10 lot and scatterbrained, upset about the whole thing. I
11 had to relocate from Conway. I really didn't want to do
12 that. I don't like where I live at now. You know, fear
13 for my life, my girlfriend shaken up. She can't even
14 work at Wendy's no more. It was just a -- it took a toll
15 on my life.

16 Q. Thank you, Shaun.

17 MR. LONG: Very briefly, Your Honor, just one
18 recross.

19 RE CROSS-EXAMINATION

20 BY MR. LONG:

21 Q. You had to take time off from work. You were
22 emotionally upset about this; correct?

23 A. I might have got a week off. I needed more. I'm
24 still not over the incident, but I really couldn't afford
25 to be out of work.

1 Q. Did you file a workers' compensation claim as a
2 result of this?

3 A. I filed for -- we have something, but it was just a
4 week's pay. You know, that's all -- if I would have
5 pushed it, like I was really torn down or something,
6 probably I could have been out. But, you know, stuff
7 like that takes time. I really couldn't afford to ...

8 Q. And were you so emotionally distraught you had to
9 get sleep medications, medications, pain medications as a
10 result of this?

11 A. Well, I got a lumbar sprain from him -- like I said,
12 him pushing me to the ground. But I already had back
13 problems. That's what they diagnosed me. I had to go to
14 Doctor's Care the very next day. They didn't give me no
15 sleeping medication. What I got wasn't even -- I think I
16 got Naproxen for my back. That's about it. I didn't get
17 no sleep medication.

18 Q. Thank you, sir.

19 MR. LONG: No further questions.

20 THE COURT: All right. Thank you. You may
21 step down. I'll ask the jury to be back at two thirty.

22 Mr. Roth, will you take them to their jury room,
23 please?

24 THE BAILIFF: Certainly.

25 (WHEREUPON, the jury exited the open court at

1 approximately 1:04 p.m.)

2 THE COURT: All right, gentlemen. Two thirty.

3 MR. THOMAS: Thank you, Your Honor.

4 MR. LONG: Thank you, Your Honor.

5 (WHEREUPON, court stood at recess for a lunch
6 break.)

7 MR. THOMAS: Your Honor, may we approach?

8 THE COURT: Yes, you may.

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

11 THE COURT: Okay. Could you get me a bailiff
12 or get the jury?

13 (WHEREUPON, the jury entered the open court at
14 approximately 2:37 p.m.)

15 THE COURT: All right. We have our jurors and
16 our alternates back in the courtroom. Thank you, ladies
17 and gentlemen.

18 Mr. Thomas?

19 MR. THOMAS: The State would call James
20 Royster.

21 **JAMES ROYSTER,**

22 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

23 **DIRECT EXAMINATION**

24 **BY MR. THOMAS:**

25 **Q. Mr. Royster, where do you work?**

- 1 A. Wendy's.
- 2 Q. How long have you worked there?
- 3 A. About two and a half, three years now.
- 4 Q. Okay. And what location do you work at?
- 5 A. Conway Wendy's, 72 Church Street.
- 6 Q. All right. What's your title there?
- 7 A. General manager.
- 8 Q. Were you general manager back in December 2014?
- 9 A. Yes, sir.
- 10 Q. Do you know why you're here today?
- 11 A. Yes, sir.
- 12 Q. Okay. Now, let's talk a little bit about the
- 13 Wendy's store. What kind of security alarm system do you
- 14 have?
- 15 A. We have our monitoring through a centralized alarm
- 16 system. If something happens, they call first to get a
- 17 code word.
- 18 Q. Okay. How do you go about setting it, disarming it,
- 19 all of that business?
- 20 A. There's a panel right there by the door that you
- 21 have to enter a code.
- 22 Q. Okay. Who all knows that code?
- 23 A. Whoever closes. Whoever the managers are. Myself
- 24 and the managers that work for me.
- 25 Q. Okay. Are you familiar with Rebecca Kennedy?

1 A. Yes, sir.

2 Q. And how do you know her?

3 A. She had worked for me at one point, but she moved.

4 Q. Are you familiar with Shaun Cain?

5 A. Yes. He worked for me.

6 Q. Okay. What was his title there?

7 A. Assistant manager.

8 Q. What sort of duties do you have as assistant
9 manager?

10 A. Coach and train people and manage the money.

11 Q. Now, what about your money deposit system or your
12 safe? Can you please tell the jury a little bit about
13 how that works?

14 A. We have a safe that has two parts to it, an upper
15 half and a lower half. The upper half is on a time lock
16 that cannot be accessed unless you either -- with the
17 right time of day. It has be eight a.m. to ten a.m.

18 Q. Now, what's usually held in the top part, and what's
19 usually held in the bottom part?

20 A. The cash in the top part and the rolled change in
21 the lower part.

22 Q. When do you actually make deposits to the bank?

23 A. The Brinks machine that we have or the ---

24 Q. When do you actually deposit money that you receive
25 throughout your business? When do you actually deposit

1 that at a bank? I'm assuming that you do, if you do.

2 A. All throughout the day, a Brinks machine that we
3 have. It's a separate safe.

4 Q. Okay. And who has access to that?

5 A. The Brinks people. That's it. We have access to
6 put money in it. We can't get any money out of it.

7 Q. Understood. Do you have a camera system at that
8 Wendy's, the Conway location?

9 A. No, sir.

10 Q. Did you have one back in December 2014?

11 A. No, sir.

12 Q. I asked you earlier if you knew why you were here
13 today. Do you remember anything strange or out of the
14 ordinary happening back in December of 2014?

15 A. I received a phone call at three-thirtyish in the
16 morning telling me that there was an armed robbery in
17 progress in my store from the alarm monitoring people.
18 Said there's a robbery in progress in my store and that
19 there were fourteen or so officers on the scene.

20 Q. Okay. Now, did you at any point go out to the
21 scene?

22 A. I was told not to. And I went -- I was on my way to
23 get a shower -- because they told me not to. I knew I
24 was going to be headed that way. And I then just jumped
25 in my car and went out that way before they called me

1 back.

2 Q. Okay.

3 A. But when I got there, it was over and done with.

4 Q. Describe the scene to us when you got there.

5 A. When I first entered the building, Shaun and Rebecca
6 were fine, which I was very glad to see. There were
7 officers everywhere. And the store was pretty much torn
8 apart. They were looking for the gun.

9 Q. All right. Who found the gun?

10 A. I did.

11 Q. Where did you find it?

12 A. In a box of blue towels over by the chemical rack.

13 Q. I'm going to show you what we will mark for
14 identification ...

15 (WHEREUPON, State's Exhibit Number 10 was marked for
16 identification only.)

17 Q. I'm going to show you what's been marked for
18 identification as State's Exhibit 10. If you'll just
19 take a minute and look at that and tell me if you
20 recognize it.

21 A. Yes, sir.

22 Q. What is that?

23 A. That's the gun and the box that it was in.

24 Q. Okay. Is that how you found it that night?

25 A. That's exactly how -- well, no. It was turned

1 around. He had the box turned around and pushed back up.

2 Q. So is this a true and accurate representation of how
3 you found the gun?

4 A. Yes, sir, exactly.

5 MR. THOMAS: Your Honor, the State moves to
6 have ---

7 THE COURT: Ask him who photographed it.

8 Q. Did you photograph this yourself?

9 A. No, sir. The police did.

10 Q. Okay.

11 THE COURT: Mr. Long?

12 MR. LONG: No objection, Your Honor.

13 THE COURT: All right. Without objection.

14 (WHEREUPON, State's Exhibit Number 10 was admitted
15 into evidence.)

16 MR. THOMAS: Permission to publish.

17 THE COURT: Yes, sir.

18 (WHEREUPON, State's Exhibit Number 10 was published
19 to the jury.)

20 Q. Mr. Royster, have you ever seen Mr. Ebon Roberts
21 before?

22 A. No, sir.

23 Q. Ever been an employee for you?

24 A. No, sir.

25 Q. Ever seen him in the store before?

1 A. No, sir, not to my knowledge. People come and go
2 though.

3 Q. I'm going to show you what's already been marked as
4 Court's Exhibit Number 1. If you would, take a minute
5 and look at that and tell me if you recognize what that
6 is.

7 A. That's my store.

8 Q. Okay.

9 MR. THOMAS: Your Honor, does the victim have
10 -- I mean, does the witness have permission to let them
11 see it?

12 THE COURT: Sure.

13 MR. THOMAS: I'm going to just ask him to point
14 out some pieces of the store. We've heard testimony
15 about different parts of the store. It might help them.

16 THE COURT: Would you make reference to what
17 you're ---

18 MR. THOMAS: This is Court's Exhibit Number 1,
19 and it is a layout of the Wendy's store.

20 THE COURT: All right.

21 Q. I'm going to hold this for you. And if you would,
22 can you just kind of tell the jury what's going on here?
23 I know you have a lot of writing on here. But can you
24 just explain the different parts of the store?

25 THE COURT: Make sure that the jury can see

1 now, Mr. Thomas. Don't block them.

2 MR. THOMAS: Yes, sir.

3 THE COURT: Okay.

4 A. This is the front door. This is the side door.

5 This is the back door. The Bi-Lo parking lot's right

6 over here catty-cornered to us. There's a church right

7 over here on this side. Right here would be the new

8 restaurant that's going in. I can't think of the name of

9 it right now.

10 Q. Okay. What roads are around this store?

11 A. Church Street, 501, whatever you want to call it,

12 runs this way with the drive-thru window facing it.

13 Q. Where did you find the gun?

14 A. Let's see. H.D. bag and box shelf.

15 Q. Is that right there?

16 A. Yeah.

17 Q. Okay.

18 THE COURT: Mr. Thomas, could you have him mark
19 on the exhibit?

20 Q. If you could, just drawn an X on it.

21 (WHEREUPON, the witness complied.)

22 THE COURT: If you would, Mr. Royster, speak
23 up. My court reporter is having difficulty hearing you.

24 THE WITNESS: Yes, sir. Sorry, sir.

25 Q. Where's the counter? Where would somebody order

1 food? Can you just mark where the counter is?

2 (WHEREUPON, the witness complied.)

3 Q. Now, what is this area over here?

4 A. The dining room.

5 Q. Where is the office in this diagram? If you can
6 mark that for us.

7 (WHEREUPON, the witness complied.)

8 A. This is my desk right here.

9 MR. THOMAS: And let the record reflect he
10 marked the office with a red pen.

11 Q. Okay. Thank you. You can step back.

12 THE COURT: Mr. Royster, back on the stand
13 please.

14 (WHEREUPON, the witness resumed the witness stand.)

15 A. Thank you, sir.

16 Q. Mr. Royster, do you know what happened with that gun
17 after you found it?

18 A. The police took it.

19 Q. Did you ever touch that gun?

20 A. No, sir.

21 Q. Please answer any questions Defense has.

22 A. Yes, sir.

23 THE COURT: Mr. Long?

24 CROSS-EXAMINATION

25 BY MR. LONG:

1 Q. Mr. Royster, could I give you a free plug first? I
2 eat at Wendy's once or twice a week, the new one here in
3 Conway. The store's always clean, the employees are very
4 nice, and the food comes up fast and fresh.

5 A. Thank you, sir.

6 Q. Is that about the way you run it?

7 A. Yes, sir.

8 Q. And I agree with you.

9 That night you said you arrived approximately what
10 time at the restaurant?

11 A. Four fifteen, four thirty. Somewhere in that price
12 range.

13 Q. Okay. And the storeroom of that restaurant -- I
14 believe you marked an X where you say you found the gun
15 in the box?

16 A. Yes, sir.

17 Q. Is that the storeroom?

18 A. There is no storeroom.

19 Q. Okay. It's just a shelf where things are stored?

20 A. Open storage area, yes, sir.

21 Q. Okay. All right. And the offices are not made to
22 be big in fast-food restaurants; correct?

23 A. No, sir.

24 Q. And basically what you have is an area maybe the
25 size of this desk or maybe a little larger for a place

1 for a desk and you could just simply walk in and do your
2 paperwork. Got a telephone, maybe a computer, things
3 like that; correct?

4 A. Yes, sir.

5 Q. All right. So the office is small. Where is the
6 safe in relation to your office?

7 A. In the office.

8 Q. Okay. So it would be under your desk?

9 A. Under the desk, yes, sir.

10 Q. Okay. And it has two slots in it?

11 A. Yes, sir.

12 Q. What is the average income from Wendy's after ten
13 o'clock closing until the two o'clock drive-in closing in
14 December?

15 A. Eleven hundred to fifteen hundred at the very most.

16 Q. That would be per month, per night, per week?

17 A. Per night.

18 Q. Per night? Okay. And so the money that was in the
19 drive-in cash register was there in the store. You don't
20 know how long it was there. But you do know it was, at
21 some point in time, put in the drop safe?

22 A. Yes, sir.

23 Q. The top part of the safe?

24 A. Yes, sir.

25 Q. All right. And you don't have any records to show

1 what time that was done?

2 A. No, sir.

3 Q. Or by who?

4 A. No.

5 Q. And you say you did not touch the firearm?

6 A. I did not.

7 Q. Okay. How much of the firearm did you see in the
8 box?

9 A. The entire thing.

10 Q. Okay. It was laying right on top of the towels in
11 the box?

12 A. Yes, sir.

13 Q. Okay.

14 MR. LONG: Court's indulgence just one moment.

15 Q. How well is the parking lot lit? How many flood
16 lights or area lights do you have in the parking lot?

17 A. At least about ten.

18 Q. All right. And those would be like large flood
19 lights or smaller like halogen-type flood lights?

20 A. Large.

21 Q. The large?

22 A. Yes, sir.

23 Q. They're that big around? Okay.

24 A. We're very well lit.

25 Q. All right. And those are up on poles?

- 1 A. Yes, sir.
- 2 Q. All right. How high approximately are the poles?
- 3 A. Twenty foot.
- 4 Q. All right. So it's a very well-lit parking lot?
- 5 A. Yes, sir.
- 6 Q. At all hours of the evening and night?
- 7 A. Yes, sir.
- 8 Q. Even after closing?
- 9 A. Yes, sir. Especially after closing.
- 10 Q. How are the lights controlled inside the store?
- 11 A. They're on a timer. When it hits eight o'clock, the
- 12 lights come on; and when it hits six a.m., they go off.
- 13 Q. All right. So the entire store is lit as if it were
- 14 open all night long?
- 15 A. Not inside, but outside.
- 16 Q. That's what I'm talking about. Inside the store?
- 17 A. No, sir.
- 18 Q. All right. Are they controlled by light switches?
- 19 A. Yes, sir.
- 20 Q. All right. So whoever is the last to leave is
- 21 responsible for turning off the lights basically?
- 22 A. Yes, sir.
- 23 Q. And are those -- how many switches are there for
- 24 different areas? Is there a dining room switch or
- 25 switches and counter switch or switches and office/back

1 room switches?

2 A. Two for the back, three for the front.

3 Q. Okay. And that controls all the inside lighting?

4 A. Yes, sir.

5 Q. Thank you, sir. No further questions.

6 THE COURT: You may step down.

7 MR. THOMAS: Your Honor, the State calls

8 William Adams.

9 WILLIAM ADAMS,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. THOMAS:

13 Q. Officer Adams, where do you work?

14 A. City of Conway.

15 Q. How long have you worked there?

16 A. I've worked with the City of Conway for six and a
17 half years.

18 Q. What do you do there at the City of Conway?

19 A. I'm a patrol officer, senior master patrol officer.

20 Q. Did you have that same position back in December of
21 2014?

22 A. I did.

23 Q. Do you know why you're here today, why you're
24 summonsed here?

25 A. Yes, I do.

1 Q. Can you please tell us about the night of December
2 14th, 2008 [sic]? Or December 8th. I apologize.

3 A. I was on patrol. I was working the sector called
4 Delta across the river. I'd just finished loading my
5 camera. It was full. So I had to come down for a
6 download. I was coming down Smith Street over to the
7 police department to download the camera. And a radio
8 broadcast went out to County advising that a possible
9 armed robbery was in progress at the Wendy's. The
10 officer come on the radio and stated that ---

11 MR. LONG: Objection to hearsay, Your Honor.

12 THE COURT: Yes, sir.

13 Q. Just say what you saw, heard, observed. Just don't
14 say what anyone else told you, if you could.

15 A. Okay.

16 Q. And, also, if you could back up and tell us a little
17 bit about this camera download. Explain that to us. You
18 lost me there. A camera download?

19 A. The camera system in the car is remotely downloaded
20 once you drive up to the police station in a certain
21 area. And once it gets to a certain length, it's
22 considered full. You need to come down and upload it to
23 the records in the office.

24 Q. Where is the police station?

25 A. The police station is on 1600 9th Avenue, the corner

1 of Buck and 9th Avenue.

2 Q. About how far away is that from the Conway Wendy's
3 store?

4 A. Roughly two hundred yards.

5 Q. Okay. I didn't mean to interrupt you. You were at
6 the station downloading. You were ---

7 A. No, sir. I was on my way to the station. And I
8 heard in response to the radio -- response with a man
9 with a gun. I went to Seventh and Legion, which is
10 behind the Wendy's, to take up a position. The sergeant
11 on duty, once she heard the radio, started assigning
12 officers positions in order to surround the building.
13 The idea is to surround the building, and when the
14 perpetrator comes out, take him outside. This was to
15 eliminate possible hostages.

16 Q. Do you recall about what time this was?

17 A. Roughly, I'd say about in between two-thirty, three
18 o'clock in the morning.

19 Q. Okay. I've got here Court's Exhibit Number 1. Do
20 you recognize what this is?

21 A. Yes, sir. It looks like a sketch of the Wendy's
22 restaurant.

23 Q. Would this assist you as far as your testimony in
24 describing where you were and other parties were during
25 this investigation?

1 A. It would probably help, sir.

2 MR. THOMAS: Your Honor, may the witness ---

3 THE COURT: He can step down.

4 MR. THOMAS: Okay.

5 Q. If you would, just step down.

6 (WHEREUPON, the witness stepped down from the
7 witness stand.)

8 Q. I'm going to try to stand out of the way of the
9 jury's view. If you could try to do your best to do the
10 same. But if you could just describe what happened using
11 this poster board when necessary to show where people
12 were?

13 A. Okay, sir. I come down. And because other officers
14 had gotten closer, I notified the sergeant. And she
15 advised us to close in closer. I come in over here and
16 went back over here. Me and another officer conversed
17 right here, and he agreed to take the back. So he went
18 around, and he went here.

19 Q. Who was -- who did that?

20 A. That was Officer Reisinger. He went here.

21 Q. Okay. And that -- and you're pointing to ---

22 A. The rear of the building, yes, sir, by the freezer.
23 All right. I stayed here in this position. And this
24 position was the front of the store, the main entrance.

25 Q. Do you know who was at that position?

1 A. It was the officer from the County that come as
2 backup officer, Mark Johnson. And he was here.

3 Q. All right.

4 A. I was stationed near here looking in through the
5 window.

6 Q. Okay. What, if anything, did you see inside?

7 A. When I looked inside, I seen a gentleman in a black
8 like sweat top or a tee top or a hoodie and jeans coming
9 running from behind the store. He come around through
10 here, got behind the counter and took a defensive
11 position pointing the firearm at this door. So if
12 anybody were to come in that door, that would have been a
13 good-bye for them. But at this point, I called over the
14 radio and announced to the other officers, "Affirmative,
15 man inside. He's armed with a silver and black handgun,
16 and it looks like a Ruger." I said that over the radio.

17 Q. Okay. You sit back down now. Thank you.

18 (WHEREUPON, the witness resumed the witness stand.)

19 Q. You've already mention the gun briefly. What sort
20 of a gun was it? What style of gun?

21 A. You understand I was seeing it from a distance of
22 from me to you. I could see it was silver with a black
23 handle. The handle appeared to have ribbing in it. It
24 looked like a Ruger.

25 Q. Was it ---

1 A. It was a semi-automatic.

2 Q. Okay. Okay. How many people did you see inside
3 that store?

4 A. I saw two people. I seen the gentleman come from
5 behind the back take the defensive position. He looked
6 at me for a little bit or looked in the general direction
7 of the door. Then he went back. A period of time passed
8 by. I checked the door to see if I could get in and was
9 just getting ready to ask permission to breach, to go in,
10 because I found that the door was open. And at that
11 time, I seen the defendant and the female victim come
12 from behind the store. And at this time, I noticed he
13 was no longer wearing his black hoodie, but he was
14 wearing a Wendy's ...

15 Q. And was that the same man you saw just prior to
16 that?

17 A. That's correct.

18 Q. With a gun in his hand?

19 A. That's correct.

20 Q. Is that man in court today?

21 A. Yes, sir.

22 Q. Can you point him out for the judge?

23 A. Yes, sir. He's right here.

24 THE COURT: Let the record reflect he indicated
25 the defendant.

1 Q. Now, you indicated that you saw that one door was
2 open. What door was that?

3 A. It was the door right here beside me, the one I
4 pointed out, right where -- when they come up to the
5 door, when I checked it and pushed it back closed,
6 evidently I locked it. So when they come up to the door,
7 I told him to open the door or I'll open it for you.
8 They opened the door. I ordered them to the ground, and
9 then I handcuffed ---

10 Q. Who opened the door?

11 A. This gentleman.

12 Q. Okay. Who all was placed into handcuffs?

13 A. I handcuffed both. It's procedure.

14 Q. What was each's demeanor? How was the -- who was
15 the other person, first off, that you handcuffed other
16 than the defendant?

17 A. It was the female witness that testified earlier.

18 Q. Okay. What were each of their demeanors?

19 A. The defendant talked to me. He and I just briefly
20 exchanged verbal. I told him to put his hands behind his
21 back, get on the ground. "What part of it you don't
22 understand? Get on the ground. Get on the ground." And
23 his response was pretty much calm and polite. I
24 handcuffed him. And as soon as I handcuffed him, the
25 female just, you know, got very emotional and upset and

1 lost it, for lack of a better word.

2 Q. Now, did you do anything else to process that crime
3 scene?

4 A. No, sir. After I placed him in handcuffs, I passed
5 him out the door to awaiting officers, the arresting
6 officer, which was Mike Hevenly (phonic). And I took the
7 female inside confirming there was no weapons on her --
8 because I didn't see the weapon when I took the other one
9 down -- and at that point removed the handcuffs.

10 Q. What, if any, other involvement did you have with
11 this investigation?

12 A. At that point, my part of it was finished.

13 Q. All right. At any time was there any entrance or
14 exit of that Wendy's that wasn't -- that didn't have a
15 law enforcement presence outside of it? Was there any
16 unoccupied door of that Wendy's?

17 A. No, sir. The building was completely surrounded a
18 couple of times over. The County come in force.
19 Sergeant Johnson and the rest of the County, a couple of
20 other County units went and cleared the building.

21 Q. Okay. About how many officers would you say were
22 present?

23 A. Roughly, I would say at least twenty-five.

24 Q. Please answer any questions the Defense has for you.

25 THE COURT: Mr. Long?

1 MR. LONG: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. LONG:

4 Q. Would it refresh your memory a little bit if I told
5 you your incident report or the report you prepared said
6 December 8th, 2014, at three fourteen hours. Would that
7 be a better recollection of the time it was that you
8 responded?

9 A. I wrote a supplemental report, sir. I didn't write
10 the report.

11 Q. All right. Let me show you this document. Follow-
12 up report. Is that what you call supplemental?

13 A. Yes, sir.

14 Q. All right. And this says entered by William Adams.
15 Would that be the information contained and that was
16 entered by you?

17 A. Yes, sir.

18 Q. All right. And would that refresh your memory a
19 little better as far as the time as if you entered three
20 fourteen hours?

21 A. Yes, sir.

22 Q. Do you need to see it?

23 A. Roughly, yes, sir.

24 Q. I think you said earlier that it was between two-
25 thirty and three o'clock. I just wanted you to ---

1 A. I said approximately, sir.

2 Q. Okay. Approximately three fourteen or approximately
3 two-thirty to three?

4 A. Based on my report, sir, I would say three fourteen.

5 Q. Okay. All right. I just wanted to make sure that
6 we had the times correct. All right. So you responded
7 to the scene and were trying to get permission to get out
8 of your vehicle on foot; correct?

9 A. No.

10 Q. All right. You didn't have to receive permission to
11 get out of your vehicle and approach the store on foot?

12 A. I was stationary at Seventh and Legion. When the
13 County officer pulled up, I advised the sergeant on duty
14 that the officer had already approached the building and
15 that would it be wiser if we all went a little bit
16 closer. And with her permission, I closed in, yes, sir.

17 Q. Okay. So you obtained permission to close in and
18 approach the building?

19 A. That's correct, sir.

20 Q. All right. And you went to what is really the front
21 door of the Wendy's; correct?

22 A. I went to the front door and then went to the side
23 door, yes, sir.

24 Q. All right. The front door is the one that actually
25 faces away from Highway 501 that faces toward Legion

1 Street; correct?

2 A. Yes, sir.

3 Q. Because that's where all the parking is?

4 A. Yes, sir.

5 Q. All right. And so then you were stationed at that
6 door, and that's when you said you looked through and you
7 saw someone in a black sweater, vest, hoodie, some type
8 of sweatshirt, whatever, and jeans; is that correct?

9 A. No, sir. I said that I went back to the side door.
10 And when Officer Reisinger and I conversed momentarily,
11 basically, I told him to go cover the back. He went to
12 the back, and I covered the side door.

13 Q. Okay. And the side door would be where?

14 A. The one that faces towards Legion, the front door
15 that you're talking about, actually faces towards the
16 adjacent restaurant. I think it's now called Luigi's.

17 Q. But it used to be Pizza Hut?

18 A. Yes, sir.

19 Q. All right. That's the front -- you say that's the
20 front door?

21 A. Yes, sir.

22 Q. All right. And so then the big door with all the
23 parking lot behind it that faces Legion Street that faces
24 directly opposite of 501, that would be the side door?

25 A. Yes, sir.

1 Q. All right. And you were stationed at that side
2 door?

3 A. Yes, sir.

4 Q. All right. Let me show you ...

5 (WHEREUPON, the witness stepped down from the
6 witness stand.)

7 Q. This is Highway 501?

8 A. Yes, sir.

9 Q. All right. And this is Legion Street behind here?

10 A. Yes, sir.

11 Q. All right. And this is what you're calling the side
12 door; is that correct?

13 A. Yes, sir.

14 Q. The one that faces away from 501 and faces Legion
15 Street?

16 A. Yes, sir.

17 Q. All right. And this is the one you're calling the
18 front door?

19 A. No, sir. This is the one -- this is the front door.
20 Yes, you're correct. And this is the side door. And
21 that's the rear.

22 Q. Okay. Which door were you stationed at?

23 A. Right here, sir. The side door.

24 Q. All right. So you've got this is a solid wall
25 correct?

1 A. No, sir. This is glass. This is a little corridor
2 right here. There's another door right there. And this
3 is actually where I was at the point of arrest, put the
4 defendant in handcuffs.

5 Q. All right. Where were you standing when you saw
6 someone behind the counter, behind the machines, et
7 cetera, that had come from the back part?

8 A. Right here.

9 Q. Okay.

10 A. There's a clear view right through here. He was
11 right there.

12 Q. Okay. So behind the counter? Are these the service
13 counters and the cash registers?

14 A. Yes, sir. And this is the door that he was aiming
15 at right here.

16 Q. Okay. But you were standing right here; correct?

17 A. No, sir. Again, right there.

18 Q. All right. And you say he was aiming at this door?

19 A. Yes, sir.

20 Q. Was there anybody standing at or near that door?

21 A. No, sir.

22 Q. All right. And you said he had on a black
23 sweatshirt, hoodie, sweater, something of that nature and
24 jeans; correct?

25 A. Yes, sir.

1 (WHEREUPON, the witness resumed the witness stand.)

2 Q. And you say you clearly saw the handgun?

3 A. That's correct, sir.

4 Q. All right. Where did the two people -- which door
5 did the two people come out of when you handcuffed them?

6 A. They never left the building. They come from around
7 the counter. They come across the lobby. Once they come
8 in through that door that I told you comes to the
9 corridor, I stopped them right there and handcuffed them
10 in the corridor.

11 Q. Okay. So at the same what you call the side door,
12 where you were stationed and had a line of sight to look,
13 that's the door they came out, and you stopped them and
14 handcuffed them there at the first door; correct?

15 A. That's correct.

16 Q. There's two doors there, and you stopped them and
17 handcuffed ---

18 A. In-between. There's one door that goes actually
19 into the lobby, and then the outside door, the exterior
20 door.

21 Q. Okay. When you handcuffed both of them ---

22 A. Yes, sir.

23 Q. --- I think in your report you say, "After ensuring
24 the victims were not physically injured, I had them
25 complete a victim's assistance form and a written

1 statement." How long would that have been after that
2 instant, that moment when you placed them on the ground
3 and handcuffed them, how long after that would it have
4 been when you ensured that the victims were not injured
5 and did written statements?

6 A. I'm going to have to guess thirty minutes or so. We
7 -- the building had to be cleared to make sure. And
8 roughly thirty, thirty-four minutes.

9 Q. Okay. And when you cuff someone on the ground, are
10 their hands in front or behind?

11 A. Behind them, sir.

12 Q. All right. And was that portion of the store lit,
13 well lit?

14 A. It had exterior lighting and the interior lighting,
15 yes, sir.

16 Q. All right. And what about the store itself? Was it
17 bright as ten p.m. when the store is open, or was it dim
18 like after-hours lights?

19 A. Yes, sir, you're correct. It was dim like after
20 hours.

21 Q. It wouldn't have been as bright as this courtroom?

22 A. Not really this bright, but ...

23 Q. All right. And if you had to estimate, if you took
24 out fifty percent of the lights in here, would that have
25 been brighter or dimmer than the Wendy's that night?

1 A. If you took out fifty percent of the lights here, it
2 would be less light than there.

3 Q. Okay. You're saying it would have been brighter
4 than fifty percent of what we have here?

5 A. Right.

6 Q. Okay. You weren't involved with any of the crime
7 scene processing?

8 A. No, sir.

9 Q. Other than handcuffing the two people that came out
10 of the store?

11 A. That's correct, sir.

12 Q. All right. What about the third individual that was
13 in the store? Did you have any involvement or connection
14 with him?

15 A. No, sir. I never seen him.

16 Q. Never saw him at all?

17 A. No, sir.

18 Q. All right. When you placed cuffs on the female, did
19 she exclaim or make any sort of noise about placing cuffs
20 on her wrists?

21 A. She was too emotionally distraught to say really too
22 much. But when I placed handcuffs on her wrists, I
23 noticed that her wrists were red. So I made a special
24 effort of double locking the handcuffs.

25 Q. So that they wouldn't tighten anymore?

1 A. That's correct, sir. I did that on both. It was
2 just procedure. But I noted that they already appeared
3 -- because sometimes when you arrest people, they try to
4 say you were too rough and you hurt them, so ...

5 Q. All right. But you don't purposely leave them loose
6 for any reason?

7 A. No.

8 Q. Because they can injure themselves more with loose
9 cuffs than they can with too tight or tight cuffs;
10 correct?

11 A. You're absolutely correct, sir.

12 Q. You say when Mr. Roberts was placed in cuffs and
13 afterwards, whatever, he was calm and polite in talking
14 to you?

15 A. Yes, sir.

16 Q. Didn't appear to be agitated or on an adrenaline
17 high or, you know, mad on meth or anything of that
18 nature?

19 A. No, sir.

20 Q. Okay.

21 MR. LONG: Court's indulgence one moment?

22 THE COURT: Yes, sir.

23 Q. Who opened the door -- I believe you testified
24 earlier that when you finally realized the door may not
25 have been locked, you pushed it and it did lock. Okay.

1 Was the door locked when they were coming out?

2 A. It was locked when they were coming out.

3 Q. Okay. And who unlocked the door to go out?

4 A. The defendant. All it required was pushing on the
5 bar.

6 Q. Okay. So it's inside -- easy exit from the inside.
7 You don't need a key or anything?

8 A. That's correct.

9 Q. All right. And before he did that, did you see him
10 or anyone else at the keypad undoing the alarm system?

11 A. No, sir.

12 Q. Okay. Did the alarm system ever go off the whole
13 time you were there?

14 A. I'm unaware of that, sir.

15 Q. All right. Do you know whether or not they have
16 outdoor loud speakers or indoor speakers with the alarm
17 system, whether it's silent alarm? Do you have any
18 knowledge about that?

19 A. I have no way of knowing that knowledge, sir.

20 Q. Okay. But you didn't hear any alarms or hear
21 anything resembling a security system giving a warning or
22 anything?

23 A. No, sir.

24 Q. Okay.

25 MR. LONG: No further questions.

1 MR. THOMAS: Nothing further.

2 THE COURT: You may step down. Thank you, sir.

3 THE WITNESS: May I be excused, sir?

4 THE COURT: Any objection?

5 MR. THOMAS: No, Your Honor.

6 THE COURT: Any objection?

7 MR. LONG: No, Your Honor.

8 THE COURT: You are released from your
9 subpoena. Thank you.

10 THE WITNESS: Thank you, sir.

11 MR. THOMAS: The State would call Mark Johnson.

12 THE COURT: Come around, Mr. Johnson, please,
13 and have a seat.

14 **MARK JOHNSON,**

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. THOMAS:

18 Q. Officer Johnson, will you please tell the jury where
19 you work?

20 A. I work for Horry County Police Department.

21 Q. Okay. What do you do there?

22 A. I'm a patrol officer.

23 Q. Where were you working back December of 2014?

24 A. I worked the central area which is basically around
25 Conway.

1 Q. Okay. Do you know why you're subpoenaed to be in
2 court today?

3 A. Yes, sir, I do.

4 Q. Will you please tell the jury what happened December
5 8th, 2014?

6 A. On December the 8th, I responded to the Wendy's on
7 Church Street in the city limits of Conway in Horry
8 County in reference to a armed robbery in progress. I
9 responded to the scene. We set up a perimeter around the
10 building. I approached the building on the entrance to
11 the 501 side, but it's kind of at the new Luigi's
12 restaurant, I guess, there. Set up there. The doors
13 were locked. I seen the suspect walking out the back of
14 the building, and another officer hollered that the
15 suspect had a gun. And I drew down. And that's when
16 another suspect run back to the back of the building.

17 Q. Is that suspect present in court today?

18 A. Yes, sir, he is.

19 Q. And where is he?

20 A. He's sitting right over there in the pink shirt,
21 purple shirt.

22 MR. THOMAS: And let the record reflect he
23 identified the defendant.

24 Q. Officer, I'm going to show you what's been marked
25 for I.D. as Court's Exhibit Number 1. Could you please

1 show the jury where you were?

2 A. I was basically right here. This is -- the building
3 is parallel to Church Street. And I was standing right
4 here. There's an entrance coming in from this way. I
5 guess this is the drive-thru right here. So I was
6 standing right here. And that's when I observed the --
7 when the suspect walked out the back.

8 Q. Where was the defendant when you -- where was he in
9 the store when you saw him?

10 A. When I saw him?

11 Q. Uh-huh (affirmative).

12 A. He was basically right here right in this general
13 area because he was coming to walk back out this door
14 right here. I guess he didn't realize the police was
15 already on the scene. So when the officer hollered that
16 he had a gun, he realized that the police was there. So
17 that's when he had saw us and ran back to the back.

18 Q. Did you get a chance to see what he was wearing or
19 notice anything about him?

20 A. Yes, sir. He was wearing a black -- it was like a
21 fleece jacket with a black hat. All I really could see
22 was from his chest up is what I observed. And I seen
23 that he had a black coat on and a black hat.

24 Q. Did anyone go in or out of that front door while you
25 were posted up at that front door?

1 A. No, sir. The door was secured.

2 Q. Do you recall about what time you got on scene?

3 A. I couldn't tell you what time. I know it was
4 probably -- maybe one o'clock in the morning, two
5 o'clock.

6 Q. A long time ago?

7 A. Yeah, it was.

8 Q. Okay. Please answer any questions the Defense has
9 of you.

10 A. Yes, sir.

11 THE COURT: Mr. Long?

12 CROSS-EXAMINATION

13 BY MR. LONG:

14 Q. Maybe three fifteen or so?

15 A. That we responded to the ---

16 Q. Yeah, that this was going down?

17 A. I know it was early in the morning.

18 Q. Okay. It could have been -- it was well after three
19 o'clock; correct?

20 A. I can't say that.

21 Q. Did you prepare an incident report or supplemental
22 report or make any notes about this event?

23 A. No, sir, I didn't.

24 Q. So you're just trying to pull it from memory; right?
25 It's nine months ago?

1 A. Yes, sir, it was nine months ago.

2 Q. Now, you were stationed at one door so that you had

3 -- were you stationed at the back door?

4 A. No, sir. I was stationed at the door parallel to
5 Church Street which would be closer to the Race Pad side.

6 Q. Okay. What was it that drew your attention to the
7 back door? Was that where the suspect was trying to exit
8 the back door?

9 A. I never went to the back door.

10 Q. Okay. Where did you say the suspect entered and
11 then ran back to the back door?

12 A. I never saw him enter the store.

13 Q. Okay.

14 A. That was probably another officer that saw that.

15 Q. All right. Did you just testify that you saw
16 somebody run out the door and then run back in the door?

17 A. No, sir, I didn't say that.

18 Q. Okay. Now, did you see the suspect at any time
19 other than through a window looking in the store?

20 A. The only time I saw him was when he went to walk out
21 the door. I looked at him, and I seen what he was
22 wearing. And he saw us, and he ran back to the back.

23 Q. All right. Walk out the door? What door are you
24 talking about?

25 A. Can you repeat the question again?

1 Q. Well, I just asked you. You said you saw him walk
2 out the door and then he turned around and walked back in
3 the door.

4 A. When I was going ---

5 Q. Was that the door to the outside of ---

6 A. When I was standing at the door, I saw him walking
7 out the back of the Wendy's. So we're standing in front
8 of the -- with glass. He's still inside the store. He
9 saw the police outside the store or the business.

10 Q. Okay. All right.

11 A. Another officer hollered he had a gun. I radioed
12 across the radio that he had a gun. And when he heard
13 that, he ran to the back of the store.

14 Q. Did you, yourself, see a gun?

15 A. No, sir, I did not see a gun.

16 Q. All right. But the other officer reported it, and
17 you passed that along; correct?

18 A. Yes, sir.

19 Q. Okay. You say from your vantage point you could see
20 jacket and a hat, but you didn't see or couldn't see his
21 pants; is that correct?

22 A. No, sir, I couldn't see his pants.

23 Q. All right. And was that because of the counter
24 there?

25 A. There was, I guess, a counter there. It was about

1 chest level, and I couldn't see. It was from the waist
2 up.

3 Q. Was that the service counter where people go up and
4 make their orders?

5 A. No, sir. I think like the -- separates some tables
6 or something like that in Wendy's.

7 Q. Okay. All right. It was just a median type thing
8 in the store?

9 A. Yes, sir. Something like this right here, but it
10 was a little bit higher.

11 Q. Okay. All right. Were you responsible for taking
12 any persons in custody once this all went down?

13 A. No, sir.

14 Q. All right. Were you responsible for processing the
15 scene for any evidence or anything of that nature?

16 A. No, sir, I was not.

17 Q. How much longer did you remain on scene once the
18 scene was secure?

19 A. Maybe fifteen, twenty minutes.

20 Q. Conway's -- they've got it, they'll take care of it;
21 correct?

22 A. Right.

23 MR. LONG: The Court's indulgence just one
24 moment.

25 Q. Thank you, sir. No further questions.

1 MR. THOMAS: Your Honor, may Officer Johnson be
2 released from his subpoena?

3 MR. LONG: Without objection, Your Honor.

4 THE COURT: You are released from your
5 subpoena. Thank you, sir.

6 MR. THOMAS: Your Honor, the State would call
7 Officer Reisinger.

8 **HEATH REISINGER,**

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. THOMAS:

12 Q. Officer Reisinger, where do you work?

13 A. Conway Police Department, sir.

14 Q. How long have you worked there?

15 A. November will be two years.

16 Q. Okay. What do you do there?

17 A. Patrol.

18 Q. And what were you doing there back in December of
19 2014?

20 A. Patrol.

21 Q. Do you know why you're subpoenaed to be here in
22 court today?

23 A. Yes, sir.

24 Q. Would you please tell the jury what happened
25 December 8th, 2014?

1 A. On December 8th, I remember right where I was at. I
2 was at the Pawn Swap on Main Street speaking with another
3 fellow officer when we heard Officer Cavallini come over
4 the radio saying that he ---

5 Q. And don't say what anybody told you. Just -- you
6 can say what you did as a result of hearing something,
7 but just don't tell us what anybody told you.

8 A. Like what I heard on the radio, sir?

9 Q. Yeah. Just what did you do?

10 A. I went to the incident location. I actually came up
11 Elm Street because I could come in on the blind side of
12 the building. I came up Elm, made a right on 9th Avenue,
13 and I parked on the opposite side of a building that was
14 adjacent to the Wendy's so I wouldn't be seen. And I
15 walked in on foot from the Legion Street side of the
16 building. And as I was approaching the building, I went
17 up to the side door on the Legion Street side trying to
18 get into a position where he couldn't see me. But I
19 guess I -- my timing was off because he came to the door
20 and was getting ready to push it open when we saw each
21 other.

22 Q. Now, let's slow down a little bit. You said he.
23 Who are you referring to when you said he?

24 A. The defendant that's here.

25 Q. Now, I'm going to show you what's been marked for

1 identification as Court's Exhibit 1. Do you recognize
2 what this is?

3 A. That is the Wendy's store.

4 Q. Would this help you at all in testifying and
5 explaining to the jury where you were and where other
6 officers were?

7 A. Yes, sir.

8 Q. Where were you when you walked up on the scene
9 initially?

10 A. I was over here and across the street, across Legion
11 Street. And then I walked up. I was walking up to this
12 door here. I was trying to get behind this area right
13 here so he couldn't see me as he came out.

14 Q. What happened after that?

15 A. At that point as I was approaching this wall is when
16 he came to this door here and was pushing it open. He
17 saw me and stopped. I drew down because of what he was
18 -- I thought was going to be a gun involved. And then he
19 had started to move back inside the building. Officer
20 Adams came to me, and he said, "I have this side. Run to
21 the back." I ran to the back door. And as soon as I got
22 there, the door opened up in the rear of the store, and
23 he tried to come out there.

24 Q. And you keep on saying he. Who are you referring
25 to?

1 A. The defendant.

2 Q. And where were you when you saw him that second
3 time?

4 A. The rear door.

5 Q. Will you point that out to us?

6 A. Back here by the cooler.

7 Q. Okay. And what happened after you got to the rear
8 door?

9 A. He came -- the defendant came out the back door for
10 a flash of a second, went right back in. And then I held
11 the back door until everything up in the front of the
12 store transpired.

13 Q. Could you tell if he saw anything when he opened
14 that back door?

15 A. All I know is he went back in pretty quick, sir.

16 Q. Did you get a chance to see anything on -- did you
17 see what the defendant was wearing? Did you see anything
18 that -- identifying characteristics?

19 A. I remember dark clothing. I saw him after he was
20 taken into custody as well. So he looked like who I saw.
21 You know what I mean?

22 Q. How far away were you from him when you saw him the
23 first time?

24 A. Probably from where me and you are -- about this
25 distance.

1 Q. Okay. How about the second time you saw him? About
2 how far away were you?

3 A. About the same because I was standing behind the
4 generator which is right outside that door, using kind of
5 that area for cover. It's like a power box or a
6 generator-type thing.

7 Q. And you say you saw the defendant after he was taken
8 into custody. How did that come about?

9 A. Once the scene was cleared and everybody said that
10 -- everybody was in custody from inside the building and
11 the building was cleared, I came from my position, came
12 around where he was in handcuffs. And I walked inside.

13 Q. Did you see anybody else in that building? At any
14 time, did you see anybody else in that Wendy's?

15 A. Other than officers?

16 Q. Yeah.

17 A. Just the two victims slash witnesses.

18 Q. Before anybody was taken into custody, did you see
19 anybody else in that building?

20 A. No, sir.

21 Q. What other involvement, if any, did you have in this
22 investigation?

23 A. Other than covering that back door, none.

24 Q. Anybody go in and out of that back door while you
25 were back there?

1 A. No, sir, other than when he initially came out and
2 went back in.

3 Q. Please answer any questions the Defense has for you.

4 A. Yes, sir.

5 THE COURT: Mr. Long?

6 MR. LONG: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. LONG:

9 Q. Officer Reisinger or Reisinger?

10 A. Reisinger, sir.

11 Q. Reisinger? Okay. Did you see the suspect with a
12 weapon when he was attempting to try to come out of the
13 side door, the door that faces Legion Street?

14 A. No, sir, I never saw a weapon.

15 Q. Never saw a weapon at any time?

16 A. No, sir.

17 Q. All right. And then you say after he attempted to
18 do that, you drew down on him to let him know, I've got a
19 weapon, and this is a crime and I will use this,
20 basically; correct? Is that correct?

21 A. To protect myself, yes, sir.

22 Q. All right. And so he then immediately said, don't
23 want any part of that, and went back in the store?

24 A. Yes, sir.

25 Q. And you, being the smart officer that you are, knew

1 that he wasn't going to try to come out that door for the
2 next few minutes. He may try to come out another door;
3 correct?

4 A. Yes, sir. Yes, sir.

5 Q. So you snuck around to the back door to see if he'd
6 try to come out there?

7 A. Yes, sir.

8 Q. All right. And he started to come out the back door
9 and saw you?

10 A. I don't know that he saw me. All I know is when he
11 came out, he went right back in really quick.

12 Q. All right. Now, how far did he go out the door?
13 Did he go out the door and hold it open and look around
14 and go back in ---

15 A. No. It was like ---

16 Q. --- or did he run out the door, the door closed and
17 then he went back and opened it again?

18 A. No. It was like the door popped open, he popped out
19 and popped back in it.

20 Q. Did the door close in between him popping out and
21 popping back in?

22 A. No, sir, not that I recall.

23 Q. Okay. All right. Now, from that point in time, how
24 long was it before the property was secured and suspect
25 and victim in hostage -- I mean, victim in custody?

1 A. It felt like an eternity, sir. In fact, all I was
2 doing was watching the door. The other officers did all
3 of that, so I couldn't give you an accurate estimation.
4 I'd say ten minutes maybe. Five, ten minutes.

5 Q. So from the time he popped out the door and went
6 back in, maybe five or ten minutes. And it seemed longer
7 than it was because you're intent on the door, and that's
8 all you have?

9 A. Yes, sir.

10 Q. But it seemed like five or ten minutes ---

11 A. Seemed like.

12 Q. --- until everything was secure?

13 A. Yes, sir.

14 Q. Okay. And then you weren't responsible for going in
15 until they notified that everything was secured?

16 A. Yes, sir.

17 Q. And then you weren't there to process fingerprints
18 or photographs or evidence or anything of that nature?

19 A. No, sir, I didn't process any of the scene.

20 Q. How much longer were you there until you left that
21 scene?

22 A. It wasn't long. We walked in, made sure the
23 building was clear. That was it.

24 Q. Another ten minutes or so?

25 A. Yeah, about.

1 Q. All right. You said he had on a black shirt,
2 something of that nature. Could you tell what kind of
3 pants he had on?

4 A. I didn't really -- all I know is dark colors.
5 Because at the time, your adrenaline is pumping and
6 stuff.

7 Q. Sure.

8 A. But I wasn't even looking at his face, trying to.
9 And I remember a dark jacket and maybe a hat on his head.

10 Q. Okay. Could you see his shirt?

11 A. I don't remember a shirt.

12 Q. Like are we talking about a zippered jacket, a
13 button jacket or a pullover jacket?

14 A. If I recall correctly, it was a zippered jacket,
15 yeah.

16 Q. A zippered jacket. Okay. Did it have any insignia
17 or anything else, emblems, on it or anything?

18 A. Not that I could see. Like I said, it was kind of
19 dark, so ...

20 Q. How many floodlights outside in the parking lot?

21 A. I couldn't tell you, sir.

22 Q. Okay. Well, is it well lit or dimly lit?

23 A. At the time, I couldn't tell you. It's too long ago
24 to remember that.

25 Q. But it wasn't light enough for you to see whether or

1 not there was anything on the jacket?

2 A. No.

3 Q. When you actually received the call, I believe you
4 said you were at Pawn South?

5 A. No, sir. I was at Pawn Swap on Williams Street.

6 Q. Pawn Swap. Okay. And so that's like ---

7 A. About 17th Avenue and Main Street.

8 Q. And Main Street. All right. And so as far as
9 number of blocks, it would have been six, maybe eight
10 blocks from there to the Wendy's?

11 A. Maybe.

12 Q. Okay. So it didn't take you long to respond?

13 A. Not too long.

14 Q. And you came up the back side of the store? Not the
15 501 facing side, but the back side?

16 A. Uh-huh (affirmative).

17 Q. How long did you stay in your car before you got out
18 of car and approached on foot?

19 A. Not long. Not long because I had an idea of what I
20 was responding to.

21 Q. Okay. And so -- an idea. I mean, thirty seconds?
22 A minute? Five minutes?

23 A. As soon as I pulled up and put it in park, I got out
24 of my car.

25 Q. Okay. All right. Very good. Thank you, sir. No

1 further questions.

2 A. Yes, sir.

3 MR. THOMAS: Your Honor, may the officer be
4 released from the subpoena?

5 MR. LONG: Without objection, Your Honor.

6 THE COURT: You're relieved from your subpoena.

7 THE WITNESS: Thank you, Judge.

8 THE COURT: Thank you.

9 THE WITNESS: Yes, sir.

10 MR. THOMAS: Your Honor, may we approach
11 briefly?

12 THE COURT: Certainly.

13 (WHEREUPON, a bench conference was held off the
14 record.)

15 THE COURT: All right. This is a good time to
16 take a break, Mr. Roth.

17 (WHEREUPON, the jury exited the open court at
18 approximately 3:32 p.m. after which court stood at
19 recess for a short break.)

20 THE COURT: Can we have the jury?

21 (WHEREUPON, the jury entered the open court at
22 approximately 3:56 p.m.)

23 THE COURT: All right. We have all our jurors
24 and alternates back in.

25 Mr. Roth, you brought something to my attention,

1 didn't you?

2 THE BAILIFF: Yes, sir.

3 THE COURT: I'm sorry. You can take the jury
4 back.

5 THE BAILIFF: Yes, sir.

6 THE COURT: I'm sorry.

7 (WHEREUPON, the jury exited the open court at
8 approximately 3:56 p.m.)

9 THE COURT: All right. Gentlemen, I am
10 informed by Mr. Roth that he was approached during the
11 break by one of the jurors. And that juror indicated
12 that he does, in fact, know Mr. Royster who has already
13 testified. And I believe he said that Mr. Royster may go
14 to the church that he goes to. Now, I believe -- I think
15 that juror is Mr. Sharrett.

16 MR. LONG: I believe there was one that said he
17 used to work at Wendy's. Is that the one?

18 THE COURT: Pardon? No.

19 MR. LONG: No? Okay.

20 THE COURT: No. This is Mr. -- I think it's
21 Mr. Sharrett who's the tall gentleman sitting on the back
22 row. Now, I will entertain suggestions. You want me to
23 bring him in and examine him? Do you want to replace
24 him? What do you want to do?

25 MR. THOMAS: Your Honor, we can bring him in,

1 examine him, see if he can be fair and impartial. The
2 State's also fine with replacing him with the first
3 alternate, Your Honor. We could do that out of an
4 abundance of caution.

5 THE COURT: Well, the alternates are not first
6 or second. They have to be done by lot. Okay?

7 MR. LONG: Your Honor, I don't see the need to
8 replace him. I mean, if he were associated with, you
9 know, one of the investigators ---

10 THE COURT: He didn't recognize his name.

11 MR. LONG: Yes, sir. Okay.

12 THE COURT: And he only recognized him when he
13 saw him.

14 MR. LONG: Just a couple of questions whether
15 it would influence his ---

16 THE COURT: Tell Mr. Roth to bring that juror
17 in.

18 (WHEREUPON, the juror entered the open courtroom.)

19 THE COURT: Mr. Sharrett, is it?

20 THE JUROR: Sharrett.

21 THE COURT: Sharrett. I'm sorry. Mr.
22 Sharrett, the bailiff tells me that you approached him,
23 as you should have, and advised him that after seeing Mr.
24 Royster testify ---

25 THE JUROR: Yes, sir.

1 THE COURT: --- you believe he might go to your
2 church?

3 THE JUROR: He does.

4 THE COURT: And that you know him in that
5 regard?

6 THE JUROR: Yes, sir.

7 THE COURT: Okay. Is it just an acquaintance,
8 someone you recognize, or are you close friends? Or what
9 is your relationship?

10 THE JUROR: He's an acquaintance. Like I said,
11 we go to church. We don't hang out or anything.

12 THE COURT: Would the fact that he is an
13 acquaintance of yours affect your ability to be fair and
14 impartial in this trial?

15 THE JUROR: No.

16 THE COURT: Could you give both the State and
17 the defendant a fair trial ---

18 THE JUROR: Yes, sir.

19 THE COURT: --- regardless of the fact that you
20 may know him?

21 THE JUROR: Yes, sir.

22 THE COURT: Okay.

23 Any further questions from the State?

24 MR. THOMAS: No, Your Honor.

25 THE COURT: Any further inquiry from the

1 Defense?

2 MR. LONG: No, Your Honor.

3 THE COURT: All right. You may return to the
4 jury room momentarily.

5 (WHEREUPON, the juror exited the open court.)

6 MR. THOMAS: Your Honor, the State's satisfied
7 that he can be a fair and impartial juror.

8 MR. LONG: As is Defense, Your Honor.

9 THE COURT: All right. Very well. Let's bring
10 the jury back in then.

11 (WHEREUPON, the jury entered the open court at
12 approximately 4:01 p.m.)

13 THE COURT: Okay. We now have our jurors and
14 our alternates back in the courtroom.

15 Mr. Thomas?

16 MR. THOMAS: Your Honor, the State would call
17 Ms. Heather Lewis of the clerk's office to the stand.

18 **HEATHER LEWIS,**

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. THOMAS:

22 Q. Ms. Lewis, where do you work?

23 A. I work for the Horry County Clerk of Court.

24 Q. How long have you worked there?

25 A. I started in May of 2007.

1 Q. Okay. And what are your duties there?

2 A. I attend criminal court proceedings. I assist the
3 public with any criminal questions they may have, file
4 any documents that are relating to criminal matters.

5 Q. What sort of documents do you file?

6 A. Indictments, any motions that may be filed by the
7 prosecutor or by the defense.

8 Q. What about sentencing sheets?

9 A. Sentencing sheets also.

10 Q. And are these records kept in the ordinary course of
11 business?

12 A. They are.

13 Q. And how are they kept?

14 A. What do you mean how are they kept?

15 Q. What is your procedure for keeping these records?

16 A. Well, once a judge signs off on a sentencing sheet,
17 they're put together in a file with their warrant and any
18 miscellaneous documents. And they're just put in a file
19 and kept on a shelf and just kept in our office.

20 Q. Okay.

21 (WHEREUPON, State's Exhibit Number 11 was marked for
22 identification only.)

23 THE COURT: Mr. Long?

24 MR. LONG: Yes, Your Honor.

25 (WHEREUPON, a bench conference was held off the

1 record.)

2 Q. Ms. Lewis, I'm showing you what's been marked for
3 identification State's Exhibit Number 11. Will you
4 please take a minute to look at that?

5 A. Okay.

6 Q. What is that document?

7 A. It is an indictment and a sentencing sheet for Ebon
8 Roberts.

9 Q. And is this a certified copy of a conviction from
10 the clerk's office?

11 A. It is.

12 Q. And how do you know that?

13 A. It has our stamp on it that says certified copy, and
14 it's got the clock date on it. And it also has a raised
15 seal on it with our clerk of court's name.

16 Q. And what offense is this?

17 A. It is for kidnapping.

18 Q. Thank you.

19 MR. THOMAS: Your Honor, the State would move
20 to have State's 11 entered into evidence.

21 MR. LONG: May I see it briefly, Your Honor?

22 THE COURT: Let me look at it first. And this
23 is for an offense committed when?

24 MR. THOMAS: 2007.

25 THE COURT: 2007, okay.

1 (WHEREUPON, a bench conference was held off the
2 record.)

3 THE COURT: Mr. Roth, take the jury out for
4 just a second, please.

5 (WHEREUPON, the jury exited the open court at
6 approximately 4:08 p.m. after which a bench
7 conference was held off the record.)

8 THE COURT: All right. Gentlemen, we're on the
9 record now, and I am looking at the sentencing sheet.
10 And I wanted to make sure that there's no offense
11 indicated other than the kidnapping. My understanding
12 there's some other offenses that may have been used --
13 may have been used for the gun violation indictment or
14 charge. Clearly kidnapping would be. But I wanted to
15 make sure that there was no indication of any other
16 charge. I note that this sentencing sheet has "not a
17 sexual offense." And it also says, "no sexual offender
18 registry." Counsel for Defense has indicated that he has
19 some concerns even though it says, "not a sexual
20 offense," and "no sexual offender registry," that that
21 may indicate to the jury that that might have been a
22 consideration in that particular ---

23 MR. LONG: Correct, Your Honor. That it may
24 have been an allegation of the offense.

25 THE COURT: Exactly. Exactly. So what we will

1 do is we will redact that portion at the top that says,
2 "not a sexual offense." And on the other section of the
3 sentencing sheet above the judge's signature, we will
4 have that redacted as well where it says, "no sexual
5 offender registry."

6 MR. LONG: Your Honor, possibly just as a -- in
7 order to prevent that, if the clerk could simply testify
8 that records show he's convicted of kidnapping and
9 received a sentence of three years. That would be -- we
10 could just stipulate it that way. The jury's got it.
11 They don't need the document. They've heard the
12 testimony.

13 THE COURT: Do you have any objection to a
14 stipulation that he has been convicted of a crime of
15 violence and that it is kidnapping for which he received
16 a sentence of three years?

17 MR. THOMAS: No, Your Honor.

18 THE COURT: You have no objection?

19 MR. THOMAS: No objection to that stipulation
20 that he has a kidnapping conviction.

21 THE COURT: And that way we won't have to worry
22 about this.

23 MR. THOMAS: That way, the document won't be
24 needed.

25 THE COURT: All right. Very well.

1 MR. THOMAS: Your Honor, can the document still
2 be in evidence and not ---

3 THE COURT: I'm going to still have it marked
4 as a Court's Exhibit, not to go to the jury then. All
5 right?

6 MR. THOMAS: Thank you.

7 THE COURT: And we won't have to redact it.

8 MR. LONG: Thank you, Your Honor.

9 (WHEREUPON, State's Exhibit Number 11 was remarked
10 as Court's Exhibit Number 2 for identification
11 only.)

12 THE COURT: All right. Bring the jury back in.
13 And I'm going to tell the jury that there is a
14 stipulation. Okay?

15 MR. LONG: Yes, sir.

16 THE COURT: And if you would like, I will tell
17 them that it was simply an element of one of the offenses
18 which I will charge them more fully later.

19 MR. LONG: Thank you, Your Honor.

20 THE COURT: Okay.

21 MR. LONG: Yes, sir.

22 THE COURT: What was the date of that
23 conviction?

24 (WHEREUPON, the jury entered the open court at
25 approximately 4:12 p.m.)

1 THE COURT: Ladies and gentlemen, we apologize
2 for the interruption there. However, I think that we
3 have streamlined the process somewhat. Because one of
4 the elements of one of the offenses charged -- an element
5 is a part of a charge. It doesn't mean that a charge is
6 bullet proof. It's just one of the parts that has to be
7 proved. One of the elements of one of the charges -- and
8 I will charge you more fully at the end of this case
9 concerning that charge -- involves a question of whether
10 or not the defendant has previously been convicted of
11 what is described under this statute for this state as a
12 crime of violence. That is a question you would have to
13 answer. Sometimes in the course of a case, the parties
14 may stipulate or agree upon the existence of a particular
15 fact that the jury would otherwise have to determine.
16 And the parties in this particular case have now
17 stipulated or agreed that the defendant was, in October
18 of 2007, convicted of a crime of violence, that being
19 kidnapping, for which he received a sentence of three
20 years. That, as I said, is stipulated. It is now agreed
21 upon by the parties. You may consider that as factual in
22 your deliberations. That part of an alleged offense.
23 Okay?

24 Yes, sir?

25 MR. THOMAS: Thank you, Your Honor. Due to the

1 stipulation, may Ms. Heather step down?

2 THE COURT: You may step down. I would assume
3 you have no questions.

4 MR. LONG: No questions. No questions.

5 THE COURT: Thank you, Ms. Lewis.

6 MR. LONG: And she wanted me to ask if she had
7 permission to leave the courtroom.

8 THE COURT: No, she does not have permission.
9 She has to be with me all week long. But she's used to
10 it.

11 MR. THOMAS: Your Honor, the State would call
12 Dale Long.

13 THE COURT: All right. Mr. Long, come around.

14 **DALE LONG,**

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. THOMAS:

18 Q. Mr. Long, where do you work?

19 A. I am currently employed at the Conway Police
20 Department.

21 Q. How long you worked at Conway?

22 A. I have been with Conway for five years, and over
23 twenty-five years total in law enforcement.

24 Q. All right. What do you do over at Conway?

25 A. I am the detective sergeant. I'm the detective ---

1 excuse me. I'm the sergeant over our detective division.

2 Q. Were you working, I assume so, back in Conway
3 December 2014?

4 A. I was.

5 Q. Do you know why you were summoned to be in court
6 today?

7 A. I do.

8 Q. Will you please tell the jury what happened back
9 December of 2014?

10 A. Okay. On this weekend as the detective sergeant, I
11 was taking call. Additionally, our crime scene
12 investigator was on vacation that week and that weekend,
13 so I was responding also as our first call for any crime
14 that needed the scene to be processed, evidence
15 collected, documented, photographed, things like that.
16 So on this evening, actually morning, sometime after
17 three o'clock in the morning, I received a telephone call
18 at home. And I responded from home to the scene at 702
19 Church Street which is located within the city limits of
20 Conway in Horry County, South Carolina.

21 Once I got there, I saw the defendant, Mr. Roberts,
22 was outside. He was handcuffed. He was wearing a
23 Wendy's jacket. I then went inside. And as soon as I
24 made the turn to the left, I found both of my victims
25 were seated at a table. They were writing statements. I

1 took an opportunity to speak with them to make sure that
2 they were okay. Asked them if they needed any medical
3 attention. And at that point, I started to process the
4 scene to collect items of evidence as they were
5 identified to me by both victims and also my officers on
6 the scene.

7 Q. Who collected evidence in this case, physical
8 evidence?

9 A. I did.

10 Q. Did you collect all physical evidence in this case?

11 A. I did collect all the evidence.

12 Q. Is that part of your duties as a ---

13 A. Well, there was some evidence that was taken at the
14 jail when he was transported. Clothing. And it was
15 brought back to me. But once it was brought back to me,
16 I was the one who packaged, sealed it up and placed it
17 into evidence.

18 Q. Okay.

19 (WHEREUPON, State's Exhibit Numbers 12 through 16
20 were marked for identification only.)

21 Q. Mr. Long, will you please take a minute and look at
22 State's Exhibit 12, 13, 14, 15, and 16? If you'll just
23 take a minute and look through all of those.

24 (WHEREUPON, the witness reviewed the exhibits.)

25 Q. Do you recognize those?

1 A. I do.

2 Q. And what do you recognize them as being?

3 A. I took those photographs.

4 Q. Okay. Where were they taken?

5 A. They were taken inside of Wendy's at 702 Church
6 Street on December the 8th, 2014.

7 Q. Okay. True and accurate representations of what you
8 saw that night at that Wendy's?

9 A. They are.

10 MR. THOMAS: Your Honor, the State would move
11 to have State's Exhibit 12, 13, 14, 15, and 16 entered
12 into evidence.

13 MR. LONG: Without objection, Your Honor.

14 THE COURT: All right. Without objection, so
15 admitted.

16 (WHEREUPON, State's Exhibit numbers 12, 13, 14, 15,
17 and 16 were admitted into evidence.)

18 Q. All right. Mr. Long, let's look at what has been
19 entered into evidence as State's 12. What is that a
20 photograph of?

21 A. This was taken in the office area. This is a chair
22 that was there. This is a ball of duct tape that was
23 wadded up that I found right there beside that chair.
24 Just picked it up to put it on top of the chair because
25 you couldn't see it back up in the dark part there and

1 took that photograph.

2 Q. Okay. I've now got State's Exhibit Number 13. Will
3 you please tell the jury what that is?

4 A. Yes, sir. That is the weapon that I collected that
5 was located on a shelving unit inside a box of, like,
6 paper towels or something on the far wall across from the
7 office.

8 Q. Okay. I've now got State's Exhibit 14 or State's
9 Evidence 14. What is that?

10 A. The victims in that case or in this case identified
11 to me that that was the jacket that Mr. Roberts was
12 wearing and he left in the office when he eventually
13 tried to leave the building and was arrested outside.

14 Q. State's Evidence Number 15, what is that a
15 photograph of?

16 A. That's also a part of the clothing that they stated
17 was left in that same office there. There's the hat, and
18 also there's a shirt of some sort that was left there.

19 Q. And lastly, State's Evidence 16. What's that a
20 photograph of?

21 A. That is a partial roll of duct tape. I found that
22 in a box that was located on top of like a hot water
23 heater in a small utility room. After you go out of the
24 main part of the building, it's like a washroom,
25 cleaning, supplies. And that was where I located that

1 at.

2 MR. THOMAS: Your Honor, permission to publish.

3 THE COURT: Yes, sir.

4 (WHEREUPON, State's Exhibits Numbers 12, 13, 14, 15,
5 and 16 were published to the jury.)

6 Q. Mr. Long, did you bring anything with you to court
7 today?

8 A. I have the items of evidence that I collected as
9 well.

10 Q. And where are those items?

11 A. I have them here.

12 Q. Please give me that box.

13 (WHEREUPON, the witness complied.)

14 Q. Detective Long, do you recognize what this is?

15 A. I do. This is a bag that I sealed. It has my
16 initials on the bag, the evidence tape, and also my
17 writing on the front of it. And on the bag I have
18 written here, "the used duct tape, one fabric glove and
19 one nylon head cover." That was all recovered in that
20 same area there.

21 Q. And you sealed that bag?

22 A. I did.

23 Q. Could you please open that bag for us?

24 A. Sure. I was hoping you were going to ask me to do
25 that. That's why I was putting these gloves on.

1 That is the one with the duct tape. There was a
2 single glove and, like I say, a little small nylon head
3 cover that was found all laying right there together.

4 Q. Where were these items found?

5 A. They were found in the office.

6 Q. Excuse me.

7 A. Yes.

8 Q. I'm going to hold up Court's Exhibit Number 1. Do
9 you recognize what this is?

10 A. I do.

11 Q. Okay.

12 A. This is the office area back here. And they were
13 found in this bottom corner here back up under the -- a
14 little ledge like this. The chair was pushed up under
15 it. The safe was there. And it was kind of just laying
16 in that -- the whole area was in disarray, but it was
17 laying in that area behind the chair.

18 Q. And who collected that?

19 A. I did.

20 Q. If we could get a mark on that.

21 THE COURT: Let's place it back in the
22 receptacle. Mark the receptacle that Mr. Long had it in,
23 whatever that was. I don't know if it was a bag.

24 THE WITNESS: Just a paper bag.

25 THE COURT: And that will be?

1 (WHEREUPON, State's Exhibit Number 17 was marked for
2 identification only.)

3 MR. THOMAS: Your Honor, the State would ask
4 that Exhibit Number 17 be entered into evidence.

5 MR. LONG: Is there a chain of custody that
6 goes with that?

7 THE COURT: I think he said that he collected
8 it.

9 Ask him about his chain. Find out if anyone else
10 ---

11 Q. Who collected the contents of the bag that's been
12 marked for I.D. as State's Exhibit Number 17?

13 A. I collected those items. I sealed that bag. It is
14 still sealed. It still bears my initials on the back of
15 it. They are kept in a property and evidence room with a
16 evidence tech. And I removed those today. But the seal
17 is still intact with my initials on the bag.

18 MR. LONG: Subject to proper chain of custody
19 -- I don't have an evidence tech -- I would object at
20 this point.

21 THE COURT: I'm going to allow it. He says
22 that it was sealed.

23 Is it in the same condition as when you deposited it
24 into the evidence room?

25 THE WITNESS: Yes, sir.

1 THE COURT: Okay.

2 (WHEREUPON, State's Exhibit Number 17 was admitted
3 into evidence after which State's Exhibit Number 18
4 was marked for identification only.)

5 Q. I'm going to show you what's been marked as State's
6 18. Do you recognize what this is?

7 A. I do. This also bears my handwriting on the front,
8 and it is an inventory written on it that says it's a
9 black zip-up hooded jacket and a black, purple and red
10 hat.

11 Q. Who wrote that inventory?

12 A. I did. This is my handwriting. My evidence tape
13 with my initials is still on the bag. There's just been
14 additional tape put on it because the bag was so big.
15 But other than that, it has not been opened, and it's
16 still in the same condition as when ---

17 Q. Please open that up.

18 A. There's a black, red and purple hat that I
19 collected. There's a black zip-up hooded jacket that I
20 collected there as well.

21 Q. I'm going to hold up Court's Exhibit Number 1 again.
22 Would you please show the jury where you collected those
23 two items?

24 A. They were also in the office there. The jacket was
25 just thrown up like across a chair there. And the hat

1 was laying on the little counter.

2 Q. All right. Will you please place the jacket and the
3 hat back into that bag which is State's 18?

4 MR. THOMAS: Your Honor, the State moves to
5 have Exhibit 18 moved into evidence.

6 THE COURT: Subject to the same objection?

7 MR. LONG: Yes, sir, Your Honor.

8 THE COURT: Very well. It's noted. I'm going
9 to admit it.

10 (WHEREUPON, State's Exhibit Number 18 was admitted
11 into evidence after which State's Exhibit Number 19
12 was marked for identification only.)

13 Q. Mr. Long, I'm showing you what's been marked for
14 identification as State's 19. Please take a look at that
15 and tell us if you recognize it.

16 A. This is a Duck brand roll of duct tape that I
17 located on top of that hot water heater. This is my
18 handwriting on the front. This is the evidence tape that
19 I placed on it with my initials on the back. It has not
20 been opened. It's still in the same condition as when I
21 packaged it.

22 Q. Okay. Will you open it for us?

23 (WHEREUPON, the witness complied.)

24 Q. Is that the tape you collected from the scene?

25 A. It is.

1 Q. Please show the jury on Court's Exhibit Number 1
2 where that tape was collected?

3 A. There's this room that comes off to the back here.
4 There's a hot water heater that's located inside that.
5 It has like the sink and all that stuff for mixing the
6 chemicals for things, mopping and cleaning. And that hot
7 water heater was against the wall. There was a box on
8 top of it, and it was located inside that box.

9 MR. THOMAS: Your Honor, the State would move
10 to have 19 admitted into evidence.

11 THE COURT: Again, subject to your same
12 objection?

13 MR. LONG: Yes, sir, Your Honor.

14 THE COURT: It's noted. Entered into evidence.

15 (WHEREUPON, State's Exhibit Number 19 was admitted
16 into evidence.)

17 Q. We're about there. We've got one more bag and a
18 box.

19 (WHEREUPON, State's Exhibit Number 20 was marked for
20 identification only.)

21 Q. Mr. Long, I'm showing you now what's been marked for
22 I.D. as State's 20. Would you please tell us what that
23 is, if you recognize it?

24 A. Yes, sir. This is a bag that also has my writing on
25 the front. And it contains a black Wendy's jacket and a

1 gray Wendy's shirt. It's torn here at the top now. I
2 guess it's from being packaged in that box. But it has
3 my evidence tape with my initials on it. And this is the
4 Wendy's jacket that was provided to me as well as the
5 Wendy's shirt, work shirt.

6 Q. Where was that collected?

7 A. He was wearing these.

8 Q. Who is he?

9 A. Mr. Roberts. I actually saw him wearing the jacket.
10 I could see the jacket when I arrived on the scene when I
11 responded to the call. And I instructed the officer that
12 was transporting him to collect those items from him at
13 the detention center and to bring them back. He turned
14 those over to me. I packaged them, sealed them and
15 brought them today.

16 Q. Are they in substantially the same condition as when
17 you packaged them?

18 A. They are.

19 Q. Where was that collected? You said off the
20 defendant?

21 A. Well, when I first arrived, I came up to the side
22 where -- what I call the main entrance. You know, we've
23 been saying that kind of front door, side door. But it
24 was the main entrance on the side parking lot. He was
25 standing on the sidewalk there. An officer had him in

1 custody. He was in handcuffs. And I saw him wearing
2 that. He was transported from there to the detention
3 center. And that was where it was physically taken from
4 him and brought back to me.

5 MR. THOMAS: The State would move to have
6 Exhibit Number 20 moved into evidence.

7 THE COURT: Same objection?

8 MR. LONG: Same objection, Your Honor. Chain
9 of custody, Your Honor.

10 THE COURT: All right.

11 (WHEREUPON, State's Exhibit Number 20 was admitted
12 into evidence.)

13 Q. And the last box of surprises we've got here ---

14 THE COURT: Ladies and gentlemen, let me inform
15 you that that box contains a firearm. Whether it has any
16 relevance to this case or not will be for you to decide
17 based upon the witnesses testimony. However, I have
18 examined the exhibit and noticed that it is disabled with
19 a cable lock that passes through the ejection port and
20 the barrel making it not only inoperable but impossible
21 to load it. I do that for your safety and to assure you
22 that this firearm is no longer operable while in that
23 condition.

24 Mr. Thomas?

25 (WHEREUPON, State's Exhibit Number 21 was marked for

1 identification only.)

2 Q. All right. Mr. Long, I'm going to show you what's
3 been marked for I.D. as State's Exhibit Number 21. Would
4 you please take a look at that? And do you recognize
5 what that is?

6 A. Yes, sir. This is the firearm that was recovered.
7 It was located, like I said, inside of a box with some
8 type of wipes. We were looking for it within the
9 business. It's an open area behind the counter that has
10 shelves on the back wall, shelves in the middle of the
11 floor, shelves on another wall. We literally went
12 through virtually everything there looking for this
13 weapon. When the general manager arrived on the scene,
14 we told him -- we said, "Listen, you know your store
15 better than I do. Please, if you see something out of
16 place, bring it to my attention." Just a few moments
17 later, he came and said, "I found your gun." And I went
18 then, saw it laying in the box. Took the photographs
19 that we have marked here. I collected it. I took a
20 picture that reflects the serial number of L061422, which
21 is the serial number of this gun that I've collected
22 here.

23 Q. So you personally collected that gun?

24 A. I did. That's my hand in the photo there where I
25 collected it.

1 Q. And using Court's Exhibit Number 1, can you please
2 show the jury where that gun was located?

3 A. The office area here. Directly across the wall over
4 here is the set of shelves in this area that contained
5 the -- like I said, these cleaning supplies, cloths.
6 Things like that. So on the opposite side of the
7 building from the office towards the rear from where he
8 was taken into custody. The roll of duct tape was in the
9 room right beside it, so they were like right there
10 together.

11 MR. THOMAS: Your Honor, the State would move
12 to have State's I.D. Number 21 moved into evidence.

13 THE COURT: Same objection?

14 MR. LONG: Yes, sir, Your Honor.

15 THE COURT: All right. I will admit it. What
16 number would that be?

17 MR. THOMAS: This is State's 21, Your Honor.

18 (WHEREUPON, State's Exhibit Number 21 was admitted
19 into evidence.)

20 THE COURT: All right. I notice there's some
21 ammunition in there. Please remove the ammunition, have
22 it marked as 21A. That ammunition will remain in the
23 custody of the court reporter unless required by the
24 jury.

25 (WHEREUPON, State's Exhibit Number 21A was marked

1 for identification only.)

2 Q. Mr. Long, you just had in your hand what was marked
3 as State's Exhibit 21A?

4 A. Yes.

5 Q. What is that?

6 A. Within there, there's actually the envelope that
7 bears my writing. And these were the bullets that were
8 taken from the magazine and from the weapon. There was a
9 total of, I believe, ten bullets. Let me get them
10 flattened out here. Yeah, there's ten bullets that were
11 collected there. And I took them out of the weapon and
12 packaged them separately from that time in this envelope
13 here, and they've just been taken out and put into this
14 clear envelope.

15 Q. So the gun you found was loaded?

16 A. Yes, it was.

17 MR. THOMAS: Your Honor, the State would move
18 -- if it isn't already into evidence -- 21A into
19 evidence.

20 THE COURT: 21A. It's 21A. And that will
21 remain in the custody of the court reporter unless the
22 jury requires the same. Okay?

23 MR. THOMAS: Yes, sir.

24 (WHEREUPON, State's Exhibit Number 21A was admitted
25 into evidence.)

1 Q. Mr. Long, other than processing of the crime scene
2 and collecting evidence, what else did you do to
3 investigate this case?

4 A. I did speak with both of the victims on the scene
5 there. Basically got their account, their version, of
6 how everything went down. They were in the process of
7 taking or preparing a written statement when I arrived.
8 I allowed them to complete that statement. And after
9 they were through with that, I did have them to show the
10 different places in the building. "Show me where this
11 happened. Show me where that happened." So they did
12 walk me through the crime scene to identify those same
13 items that I collected because I don't know what coats
14 belong and don't belong. And they said this is -- the
15 items that I collected were the items that were left
16 there by the defendant, Mr. Roberts.

17 Q. Please answer any questions Defense has.

18 THE COURT: Mr. Long?

19 MR. LONG: Thank you, Your Honor.

20 THE COURT: Mr. Long?

21 CROSS-EXAMINATION

22 BY MR. LONG:

23 Q. Are we related?

24 A. I don't think so.

25 Q. Somehow way back Horry County type related,

1 somewhere way back?

2 A. Sure.

3 Q. Okay. Is it Detective Long, Investigator Long or
4 Officer Long?

5 A. Either one you prefer.

6 Q. All right. Officer Long?

7 A. Yes, sir.

8 Q. You responded to the Wendy's three sixteen or so; is
9 that correct?

10 A. I'm not sure what time I arrived. I know it was
11 after that because that was what time I had been told the
12 crime had occurred.

13 Q. Okay. Was Mr. Roberts already in custody? Had the
14 crime scene already been secured when you arrived?

15 A. Yes. He was out of the building, and he was in
16 custody.

17 Q. Okay. All right. And so these items, most of the
18 officers on scene would simply be hands off?

19 A. Correct.

20 Q. You would bring in the crime scene specialists or
21 whatever to come in and process the stuff; correct?

22 A. Correct.

23 Q. All right. And you processed all those items from
24 the scene or recovered from Mr. Roberts' clothing, et
25 cetera, when he was taken to the jail; correct?

1 A. Yes, sir.

2 Q. All right. Now, this gun was found by the manager
3 of the store in a box near a storage area; correct?

4 A. Correct.

5 Q. All right. And you asked him, "Did you touch the
6 gun?"

7 A. Correct.

8 Q. All right. And what was his response?

9 A. He did not touch the gun.

10 Q. All right. And you're trained as an evidence
11 technician so that before you touch the gun, you put
12 gloves on?

13 A. Correct.

14 Q. And what's the purpose of putting on gloves when you
15 touch it?

16 A. So that I don't cross-contaminate it with either my
17 fingerprints or any other trace evidence that might come
18 from me to that weapon.

19 Q. All right. And tell the jury, if you will,
20 concerning the magic of D.N.A. and how it is recovered
21 from firearms?

22 A. I don't know that I'm quite qualified to answer the
23 question that you're asking me there, but ----

24 Q. Do you ever send guns to be processed by SLED for
25 D.N.A. evidence?

1 A. Yes.

2 Q. All right. And is it easily recoverable, or usually
3 is it recoverable from a trigger or hand guard or
4 magazine or something that SLED will come back and say,
5 "Yeah, that gun was touched by John Doe"?

6 A. That is normally where we do recover it from, yes,
7 sir, on weapons, the touch parts.

8 Q. And this gun was not processed for D.N.A. evidence?

9 A. No, sir.

10 Q. All right. What would it have done to your case if
11 Shaun Cain's D.N.A. was on that gun?

12 A. That's not my question to answer because we had
13 officers that saw him with that gun in his hand. So that
14 was the reason I didn't take any step to collect the
15 D.N.A. or try to get the D.N.A. from it.

16 MR. THOMAS: Your Honor, I would object to this
17 line of questioning because it's speculative.

18 MR. LONG: Your Honor, he's the chief
19 investigator.

20 THE COURT: It's cross-examination. He can ask
21 the question.

22 Q. Would it have turned your case upside down if that
23 gun were registered to Shaun Cain?

24 A. Would it?

25 Q. Yes, sir.

1 A. Or could it?

2 Q. Yeah, yeah.

3 A. It could have, certainly.

4 Q. And who's that gun registered to?

5 A. I do not have the eTrace with me. The only thing
6 that I know is that the gun had been reported stolen out
7 of Horry County a year before. So it was actually a
8 stolen firearm at the time of recovery.

9 Q. All right. And at the time it was stolen, Mr.
10 Roberts was in prison, wasn't he?

11 A. I do not know.

12 Q. Okay. You say a year before?

13 A. Yeah. Do you want the date?

14 Q. Yes, sir.

15 A. It was reported stolen by Horry County Police on
16 April the 4th of 2013.

17 Q. Okay. April 4th, 2013?

18 A. Correct.

19 Q. And who was the gun registered to?

20 A. I don't know. I didn't take that report. Again,
21 that was Horry County Police had that report.

22 Q. Okay. And you did not, after you took the gun into
23 your custody, request fingerprints on it?

24 A. I did.

25 Q. When did you request fingerprints?

1 A. We actually processed it for fingerprints last week.

2 Q. Okay. So that would have been nine months or so
3 after it was taken into evidence?

4 A. Correct.

5 Q. All right. And why are -- why do you wear gloves,
6 again, when you are touching an item like that?

7 A. To prevent cross-contaminating the item.

8 Q. All right. And smudging fingerprints, is that part
9 of it as well?

10 A. I'm sorry. I don't understand that question.

11 Please ask me again.

12 Q. When you handle the weapon ---

13 A. Okay.

14 Q. --- are any fingerprints that may be on the weapon
15 could be smudged by your holding or handling the weapon,
16 especially if you did it barehanded?

17 A. Well, either way, it's possible. Barehanded or with
18 gloves, certainly.

19 Q. Is that what you mean by cross-contaminating the
20 weapon?

21 A. Well, if I did it barehanded, then certainly the
22 potential for me leaving my fingerprint. My D.N.A. or
23 even fibers or anything else that would have been on me
24 could be left on that item. So that's the reason that I
25 do not wear -- I do wear gloves so I do not cross-

1 contaminate with any of my things.

2 Q. All right. And fingerprints are not like fine wine,
3 are they? They don't improve with age, do they?

4 A. That's correct.

5 Q. All right. And the longer you wait before
6 processing fingerprints, the less chance there is of
7 having a recoverable print from that item; is that
8 correct?

9 A. No, sir, I would not say that.

10 Q. It depends on the surface?

11 A. It depends on the surface. It depends on how much
12 it's been handled. Depends on those environmental
13 factors as well, whether it had been subject to moisture,
14 been in the rain, things like that.

15 Q. All right. But certainly nine months later, there's
16 less of a chance of recovering an identifiable print from
17 the weapon; correct?

18 A. Given the circumstances that it wasn't handled, I
19 would say that it should be close to the same.

20 Q. All right.

21 A. I mean, it had not been manipulated, handled, and
22 things like that.

23 Q. All right. And were you furnished with a report of
24 any identifiable fingerprints taken from that weapon?

25 A. No. There were none.

1 Q. Right. And you didn't submit it for D.N.A.?

2 A. No, sir.

3 Q. Okay. Now, the duct tape, did you ask the manager
4 at Wendy's or did you ask Mr. Cain or anybody whether
5 Wendy's maintains duct tape in their store?

6 A. I do not recall asking that question about the roll
7 of duct tape.

8 Q. Okay.

9 A. I asked about the bundle of duct tape, and I was
10 instructed and told that that was the duct tape that came
11 off of their hands and wrists.

12 Q. Okay. All right. And so the roll itself, you can't
13 say whether Mr. Roberts brought it, whether it was -- you
14 know, belonged to the store. You just know that there
15 was a roll of duct tape found?

16 A. That was the only roll of duct tape that was found.

17 Q. All right. Well, I've got one in my house. That's
18 the only roll I've got until I run out. And then I'll
19 get another one.

20 A. Okay.

21 Q. And you can't say because it was the only roll that
22 it didn't belong to Wendy's?

23 A. No, sir, I can't say that. It was just ---

24 Q. But it was found in Wendy's?

25 A. Correct.

1 Q. All right. In a storage area?

2 A. Correct.

3 Q. All right. Did you do any comparison tests on the
4 used duct tape that was found to determine if it matched
5 tearing or match consistency or matched in brand name to
6 the roll of duct tape that you found in Wendy's?

7 A. No, sir.

8 Q. Did you attempt to try to uncover or get any
9 fingerprints off of the duct tape, the used duct tape,
10 that was found or the roll of duct tape that was found on
11 scene?

12 A. No, sir.

13 Q. And isn't it pretty common that when somebody tries
14 to tear a piece of duct tape, their fingers always stick
15 to the gummy side of the tape leaving a readily available
16 fingerprint on duct tape?

17 A. It is possible to develop a fingerprint there, yes,
18 sir.

19 Q. All right. And developing it may be sometimes just
20 applying it on a piece of glass to remove some of the
21 glue and pulling it up. And you've pretty much got a
22 print, don't you?

23 A. No.

24 Q. Or do you not do that?

25 A. No. That's not the process. There is a

1 developmental process for doing it to adhere to the tape
2 because you're taking -- basically you're trying to use
3 something sticky to take something from something sticky.

4 Q. And then a photograph is made of that ---

5 A. Yes.

6 Q. --- after you dust it?

7 A. Yes.

8 Q. Okay. Fine. And that was not done in this case?

9 A. No, sir.

10 Q. How many items of used duct tape were found at this
11 crime scene?

12 A. I didn't separate that ball to find out how many
13 individual pieces were torn. There was one ball that I
14 found. That was all I found.

15 Q. All right. And I can't tell from the photograph.
16 Does that appear to be somewhere in the vicinity of maybe
17 ten feet of duct tape?

18 A. I believe that would be a ---

19 Q. Fair guess?

20 A. That would be a reasonable estimate.

21 Q. Okay. So would that be ten feet? If I'm six feet
22 tall, add four feet to that.

23 A. Certainly.

24 Q. Would that be ten feet from my hand to your nose?

25 A. Maybe a little bit further back. Pretty close.

1 Q. All right. If I'm six feet tall, it'd be four feet
2 taller than ---

3 A. Sure.

4 Q. And you don't know whether there was one piece or
5 two pieces wadded up there together?

6 A. No, sir, I don't. I didn't separate it. I just
7 collected it as it was found.

8 Q. Understood. And so from that piece of tape, you
9 can't say whether it corroborates or contradicts the
10 allegations that two persons were separately duct-taped
11 or duct-taped together?

12 A. (No verbal response)

13 Q. You could say two people were duct-taped together
14 using that piece; correct?

15 A. Certainly.

16 Q. But you couldn't say whether one was duct-taped with
17 that piece at one time, and then later they were duct-
18 taped together or the second person was duct-taped? You
19 can't say that because you don't know if it's one piece
20 or two; correct?

21 A. Correct. As it appears in the photograph, I can't
22 tell if there are multiple pieces there or not.

23 Q. Okay. How many loose 9mm shells were found in or
24 around the floor of Wendy's?

25 A. I didn't find any on the floor.

1 Q. Okay. They were all in the clip?

2 A. In the magazine.

3 Q. In the magazine. Okay. You are a weapons trained
4 police officer; correct?

5 A. To a degree.

6 Q. All right. Well, I mean, you have to qualify.

7 A. Yes.

8 Q. And you have to have training, et cetera. All
9 right. And you shoot primarily a semiautomatic; is that
10 correct?

11 A. Yes, sir.

12 Q. All right. What happens when you jack the slide on
13 a semiautomatic weapon with a clip in the magazine?

14 A. If the magazine is loaded and seated properly, it
15 will feed a round, and any subsequently action on the
16 slide will eject that round and feed in another round.

17 Q. Okay. So, for instance, if I have a pistol with a
18 ten-round clip and none in the chamber ---

19 A. Uh-huh (affirmative).

20 Q. --- the first time I jack the weapon, it's going to
21 put a bullet in the chamber; correct?

22 A. Correct.

23 Q. Nothing's going to come out the gun?

24 A. No.

25 Q. All right. But after that, every time I jack it,

1 it's going to eject the one and take another from the
2 clip and put it in the chamber; correct?

3 A. In a normal working firearm, yes.

4 Q. As long as the extractor and everything is in proper
5 working order?

6 A. Yes.

7 Q. Okay. All right. And there were no loose shells,
8 pistol bullets found anywhere else?

9 A. I did not find any anywhere except in the magazine
10 of the weapon.

11 Q. Did you attend the bond hearing in this case?

12 A. (No verbal response)

13 Q. It was the next day, I believe, on December the 9th?

14 A. I don't believe so because we do video bond. So
15 rarely do we attend any of those bonds. It's video
16 conferences done by a closed-circuit link between the
17 jail and the ---

18 Q. All right. If Mr. Cain and Ms. Kennedy were present
19 at the bond hearing, who would have been with them from
20 the City of Conway?

21 A. If they were present at the bond hearing, they would
22 have been at city court. And they would have been with
23 our city judge because, as I say, she has an office with
24 the video conference equipment set up. And they would
25 come into that room with her during that bond.

1 Q. I show you this document and simply ask you if you
2 can tell me where it comes from? What is SOVA?

3 A. That is the State Office for Victim Assistance.

4 Q. All right. And that's done on the City of Conway
5 letterhead or stationery. Why is that?

6 A. We had a victim advocate that follows up with all of
7 our victims of violent crime or crime against a person.

8 Q. Okay. And that victim advocate most likely would
9 have been with the victims at the bond hearing?

10 A. Not necessarily. If there's anything in here that
11 says that, I wouldn't know. But I do not know. I mean,
12 that is not necessarily the common practice.

13 Q. The first full paragraph of page two, about the
14 seventh or eighth sentence down where it says Judge
15 Mackey set bond.

16 A. Okay.

17 Q. All right. These are Conway records, correct, kept
18 in the police file?

19 A. Well, these are actually kept in her victim advocate
20 file. These are not ---

21 Q. Is she employed by the City of Conway?

22 A. She is. She is.

23 Q. Is she employed by the City of Conway Police
24 Department?

25 A. She is.

1 Q. Okay. And was she present with the victims at the
2 bond hearing, according to her notes?

3 MR. THOMAS: Objection, Your Honor.

4 A. Again, I still don't know.

5 THE COURT: Just a second.

6 MR. THOMAS: He's stated he's not familiar with
7 these documents.

8 THE COURT: He's looking at a note. If he can
9 refresh his memory from that, I'll let him answer.

10 A. I do not know. And just because of her language
11 here that they were upset about the bond does not mean
12 that she was there when the bond was set.

13 Q. Okay. So she may have gotten that information from
14 someone else?

15 A. No. She could have gotten it from them, but it
16 could have been after the bond hearing.

17 Q. Okay. All right. Very good.

18 Where would Mr. Roberts have been? Do you know for
19 sure?

20 A. I do not know for sure, but our process is that he
21 would have been in a secure facility, the courtroom at J.
22 Ruben.

23 Q. Okay. All right.

24 A. And they bring them up and they stand in front of
25 the judge or actually in front of -- for our purposes,

1 it's in front of -- they can see a monitor. They have a
2 camera that's pointed at them. So it's basically a two-
3 way video link.

4 Q. What relevance to this case does the nylon headgear
5 have?

6 A. It was just laying right there beside it. And they
7 didn't think that it was theirs, so I collected it.

8 Q. In speaking with the victims, did either of them
9 indicate that he wore a mask or had his face covered with
10 nylon or anything of that nature? Anything obscuring his
11 identity, face, facial features?

12 A. No.

13 Q. All right. And in a restaurant, isn't it common
14 sometimes for long-haired male employees or female
15 employees with long hair to put their hair in nylon under
16 a cap or however, whatever, especially if they're in the
17 food preparation area?

18 A. Yeah. I've seen that routinely, yes, sir.

19 Q. And so you can't say that it has any relevance
20 whatsoever to this offense?

21 A. No, sir.

22 MR. LONG: Court's indulgence just one moment.

23 Q. Thank you, sir. No further questions.

24 MR. THOMAS: Nothing from the State.

25 THE COURT: You may step down, Mr. Long. Thank

1 you.

2 Mr. Thomas?

3 MR. THOMAS: Your Honor, at this point, the
4 State rests.

5 THE COURT: Very well.

6 Ladies and gentlemen, the State has rested. And
7 that means I have some administrative matters to take up
8 with these attorneys. So it's a great time for us to
9 break. It's five o'clock. I'm going to have Mr. Roth
10 take you out. And I'm going to ask you to be back in
11 your jury room at nine-thirty in the morning.

12 What are you going to have for them in the morning,
13 Mr. Roth?

14 THE BAILIFF: Biscuits.

15 THE COURT: You want biscuits or doughnuts?

16 THE JURORS: Biscuits.

17 THE COURT: Mr. Roth, you have biscuits for
18 them and coffee.

19 THE JUROR: And tea.

20 THE BAILIFF: Yes, sir.

21 THE COURT: All right. And I'll look to see
22 you at nine o'clock. Remember don't discuss the case
23 with anyone. I know it's hard to go home and your wife,
24 husband, significant other is going to say, what have you
25 been doing? And whenever I told her, I can't tell you,

1 that usually meant I hadn't thought of anything good yet.
2 That never satisfied my wife. But, please, tell them the
3 same. Just tell her that the judge -- or him, you know
4 -- that the judge said we couldn't talk about it. You
5 can tell them all about it when you're done with the
6 case. Just don't talk about it. Okay? Thank you.

7 (WHEREUPON, the jury exited the open court at
8 approximately 4:57 p.m.)

9 THE COURT: Okay. All right. The State has
10 rested. Mr. Long, I'm sure you want to say something.

11 MR. LONG: Yes, Your Honor. Not so much
12 connected with motions at this point in time, Your Honor.
13 I just inquire about the whereabouts of Officer Michael
14 Cavallini. He, we feel, is a necessary part. I realize
15 the State has not called him. And I just simply wanted
16 to inquire whether he was still with the force or on
17 vacation or whatever. He was the one, the officer, Your
18 Honor, who, quote, unquote, lucked up on this offense.
19 He was on patrol. He saw some people in the parking lot
20 at Wendy's as it was closing. He saw them enter Wendy's
21 in a quick fashion. He circled around and viewed from
22 across the street what looked like an armed robbery in
23 progress. Things of that nature. And he with the other
24 officers were the ones that entered and things of that
25 nature. But I just simply inquire about his whereabouts.

1 THE COURT: Well, you know, it's Mr. Thomas'
2 decision whether to call him or not. I don't know if
3 he's available or not available, but it would be Mr.
4 Thomas' choice whether to call him or not.

5 MR. LONG: Well, if he's ---

6 THE COURT: You might ask Mr. Thomas after the
7 hearing if he knows where he is if you intend to call
8 him.

9 MR. LONG: If I intend to call him, I would
10 like to know that he still has an address here or is
11 working ---

12 THE COURT: Mr. Long, is he still around
13 anywhere? Do you know where he is, Cavallini?

14 OFFICER LONG: He does still work for us.

15 THE COURT: There you go. He's available.

16 MR. LONG: All right. Very good.

17 THE COURT: You can hunt him up tonight.

18 MR. LONG: That's what I'll try to do. Of
19 course, he won't be on duty tonight. But anyway ...

20 THE COURT: Okay.

21 MR. LONG: Your Honor, for the record, a motion
22 for a directed verdict. You've heard the evidence. I
23 don't think I can in good conscience say that there's
24 been no evidence presented such that if ---

25 THE COURT: There's overwhelming evidence, Mr.

1 Long.

2 MR. LONG: Yes, Your Honor. So for the record,
3 we would make a motion for a directed verdict.

4 THE COURT: And I would respectfully deny your
5 motion as to each charge.

6 MR. LONG: Thank you, Your Honor.

7 THE COURT: All right. Mr. Long, have you
8 discussed the matter of testifying with your client?

9 MR. LONG: I have, Your Honor.

10 THE COURT: And do you -- or has he made a
11 decision as to whether or not he would testify in this
12 case?

13 MR. LONG: I believe he has, Your Honor. We do
14 have one issue concerning his prior record.

15 THE COURT: And we can take that up. But let
16 me first have him placed under oath and read him his
17 rights concerning testifying.

18 (WHEREUPON, the defendant was duly sworn.)

19 THE COURT: You are Ebon Roberts?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: At this time, Mr. Roberts, I'm
22 going to explain to you certain rights that you have.
23 And if you don't understand anything that I say, please
24 let me know. And if you want me to explain anything in a
25 more detailed fashion, let me know that. Fair enough?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Now, we've reached this
3 stage of the trial where you may present your defense.
4 And in that regard, you have the right to claim the
5 protections given you by the Fifth Amendment of the
6 Constitution of the United States which says in part, "No
7 person shall be compelled to defend any criminal case to
8 be a witness against himself." This means that you
9 cannot be required to testify in this case. I can't make
10 you testify. Mr. Thomas can't make you testify. Mr.
11 Long can't make you testify. That is your decision. You
12 have the right to testify on your own defense. No one
13 can make you testify. This is a personal right and no
14 one can waive this right except you.

15 Now, if you decide to testify, let me warn you that
16 you will be subject to the same rules that govern other
17 witnesses. And you may be examined and cross-examined on
18 any relevant issue in this case. In addition, if you
19 have any convictions involving dishonesty or false
20 statement or for crimes punishable by more than one year
21 and this Court determines that the probative value --
22 that's the evidentiary value -- of admitting this
23 evidence outweighs the prejudicial effect to you, the
24 solicitor, Mr. Thomas, will be able to introduce your
25 record to attack your credibility. That's your

1 truthfulness.

2 If you decide to testify, this decision on your part
3 must be freely, voluntarily and intelligently made with
4 knowledge of the protections given you by the Fifth
5 Amendment and the consequences of your decision to
6 testify.

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

12 So that's entirely up to you whether or not to
13 testify. Of course, you can talk with your attorney,
14 your family, your friends, anyone else. But the final
15 decision is entirely up to you. Now, do you understand
16 what I've explained to you?

17 THE DEFENDANT: Yes, I do, sir.

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

20 THE DEFENDANT: No, sir.

21 THE COURT: Okay. Now, I'm not going to ask
22 you this evening to tell me whether or not you have made
23 a decision to testify. I would assume that you have
24 discussed this with your attorney; is that right?

25 THE DEFENDANT: I have, sir.

1 THE COURT: Okay. You may want to talk to him
2 further this evening. You may have additional questions
3 for me in the morning. You may want to talk with some
4 other persons you feel comfortable with. But in the
5 morning, I will be putting the question to you, sometime
6 in the morning, as to whether or not you intend to
7 testify.

8 Please understand that until such time as the
9 Defense rests, regardless of what your decision is, I
10 will let you change your mind. That is, if you tell me
11 in the morning you do not want to testify, but later in
12 the morning you decide you do want to testify, if Mr.
13 Long has not rested, if the case has not been submitted
14 for arguments and charge, I will allow you to change your
15 mind. Do you understand?

16 THE DEFENDANT: I understand, sir.

17 THE COURT: All right, Mr. Roberts. I will be
18 discussing this further with you in the morning.

19 Anything further, Mr. Thomas?

20 MR. THOMAS: No, sir, Your Honor.

21 THE COURT: Anything further, Mr. Long?

22 MR. LONG: No, sir, Your Honor.

23 THE COURT: All right. Gentlemen, I'll see you
24 in the morning at nine thirty. Well, let's try to be
25 here by nine o'clock. I'm always here by nine o'clock.

1 Let's try to get here as soon as we can just in case we
2 have an issue that needs to be addressed before the jury
3 comes in.

4 Mr. Roth?

5 THE BAILIFF: Yes, sir.

6 THE COURT: That's my jury back there. I don't
7 want them to sit downstairs until nine thirty and then
8 have to come down and get heartburn eating a biscuit. If
9 they get ---

10 THE BAILIFF: I'm not.

11 THE COURT: Are you going to be here tomorrow?

12 THE BAILIFF: I'm going to have them up here by
13 nine fifteen.

14 THE COURT: I want you -- as soon as they
15 arrive, they're welcome to come up on this floor this
16 week.

17 THE BAILIFF: All right.

18 THE COURT: All right. We'll see you in the
19 morning.

20 MR. LONG: Thanks, Judge.

21 MR. THOMAS: Thanks, Your Honor.

22 (WHEREUPON, court stood at recess for the day at
23 approximately 5:05 p.m.)

24 **September 16, 2015**

25 (WHEREUPON, court convened with all parties present,

1 and the following proceedings were had commencing at
2 approximately 9:23 a.m.)

3 THE COURT: Before we bring in the jury --
4 where is the defendant? He was just here.

5 MR. LONG: I stepped to the restroom and came
6 back, and you were on the bench.

7 THE COURT: I just looked up a moment ago, and
8 he was here.

9 MR. LONG: Yes, sir. They said there were
10 still two jurors to come up, and I think they were just
11 ---

12 THE COURT: Well, go on and get him. If you
13 could, Mr. Long, ask them to bring him in. Is your
14 client going to testify, Mr. Long?

15 MR. LONG: Yes, sir, I believe so.

16 (WHEREUPON, the defendant entered the courtroom.)

17 THE COURT: All right. We have the defendant
18 in the court. And, gentlemen, what I wanted to do is
19 address a couple of pretrial issues or issues before we
20 bring the jury in.

21 Now, Mr. Roberts, let me go back to where we were
22 yesterday. And I remind you that you're under oath.
23 Have you made a decision as to whether or not you will
24 testify in this case?

25 THE DEFENDANT: Yes, I did, sir.

1 THE COURT: And what is that?

2 THE DEFENDANT: I will.

3 THE COURT: All right. Do you need for me to
4 reiterate or re-explain any of the matters that we
5 discussed yesterday?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: You understand -- and from what
8 I've heard so far is that you do have a prior record and
9 that they will be able to explore that record to some
10 extent. It's possible. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Very well. Thank you,
13 sir. And Mr. Roberts, just to let you know, you don't
14 have to testify. If you change your mind before you take
15 the stand, let me know. You're not bound by it. I'll
16 let you change your mind.

17 Okay. In that regard we have a rather sticky issue,
18 that being the use of a prior conviction if I allow the
19 State to explore prior convictions. As you both know, it
20 has been my practice always to provide the jury with a
21 written transcript of my charge. I always do that, and
22 you're both familiar with that. There is a specific
23 charge that I customarily give concerning the use of a
24 prior conviction.

25 Of course, the current law in this state is that

1 evidence of a prior conviction, absent Lyle factors, may
2 be used for impeachment purposes alone and not for the
3 purpose of establishing the commission of the present
4 offense. I think we can all agree on that. However, in
5 this case, there is a prior conviction which forms the
6 basis of an element of one of the charges and is properly
7 admitted for that purpose. In fact, it has been
8 stipulated.

9 So I have prepared, first of all, a proposed charge.
10 And I will be giving you, as soon as they're ready in the
11 next few minutes since I've had the chance to review all
12 of it, a copy of my charge. But I want to go over that
13 with you because I'm going to, if we get into those
14 issues, give the jury a brief preliminary charge similar
15 to what I have here concerning that. Okay? This is the
16 charge that I propose to give at the end of the trial on
17 that issue.

18 You have heard evidence that the defendant was
19 convicted of a crime other than one for which the
20 defendant is now on trial. This evidence may be
21 considered by you if you conclude it is true only in
22 deciding whether the defendant's testimony is believable
23 and for no other purpose. You must not consider the
24 defendant's prior record as any evidence of the
25 defendant's guilt of the charge we are trying today.

1 However, you will note that one of the defendant's
2 current charges is possession of a pistol by a person
3 previously convicted of a crime of violence. The State
4 and the Defense have stipulated that the defendant has
5 previously been convicted of kidnapping which is one of
6 the statutory violent crimes. This stipulation is not an
7 agreement that the defendant has committed the offense of
8 possession of a pistol by a person previously convicted
9 of a crime of violence, but merely an agreement or
10 stipulation that this particular element of the offense
11 has been proven. The State must provide proof that
12 convinces you beyond a reasonable doubt of the remaining
13 elements of the offense before the defendant may be
14 convicted.

15 Mr. Long?

16 MR. LONG: That's completely sufficient, Your
17 Honor. That covers everything.

18 THE COURT: All right. And I will give them,
19 depending on what we have -- and we'll talk about that
20 when it comes time -- to impeach.

21 Now, Mr. Thomas, do you think that charge
22 sufficiently states the law?

23 MR. THOMAS: Yes, sir, Your Honor.

24 THE COURT: All right. Now, Mr. Thomas, tell
25 me -- or have you shared with Mr. Long the offenses that

1 you will offer on cross-examination if the defendant
2 takes the stand to attack his credibility?

3 MR. THOMAS: Your Honor, the only offense is a
4 2008 conviction of a strong-arm robbery. Under the new
5 case law, Your Honor, I'm not sure how you even are
6 supposed to show that the crime goes to credibility or
7 dishonesty under this new case law. I don't know whether
8 you're supposed to present the indictment ---

9 THE COURT: I think under the rule you need
10 only establish that he has been convicted of a crime
11 involving dishonesty or a crime that involves a potential
12 penalty of greater than one year in the last ten years.
13 Isn't that the rule? Now, of course, it has to meet a
14 403 analysis.

15 MR. THOMAS: Well, then the strong-arm robbery,
16 2008 strong-arm robbery, conviction is the only
17 conviction I would seek ---

18 THE COURT: How about the kidnapping?

19 MR. THOMAS: Well, Your Honor, that's already
20 in evidence.

21 THE COURT: Well, I'm ---

22 MR. THOMAS: It's been stipulated to.

23 THE COURT: But, again, that would also go to
24 his credibility?

25 MR. THOMAS: Your Honor, I don't think a

1 kidnapping does go to his credibility.

2 THE COURT: Okay. All right.

3 MR. THOMAS: And I believe it's -- when it's
4 the accused who takes the stand, you're looking at the
5 offense under B of that 609. And that's whether it goes
6 to credibility, not the year or more a felony which you
7 would in a lay witness.

8 THE COURT: All right. If that is what you
9 intend to cross-examine him on is the strong-arm robbery
10 that previously occurred, let me first say that the issue
11 in this case ...

12 Mr. Long, I could only assume under the
13 circumstances of this case that your client will offer
14 testimony that this was not a robbery.

15 MR. LONG: Correct, Your Honor.

16 THE COURT: Is that where we're going?

17 MR. LONG: It was a conspiracy, not a robbery.

18 THE COURT: Okay. I tried to think of some --
19 I assumed that's where you were going -- that was what
20 your client was going to testify to. Okay. Then in that
21 case, the prior issue in the case will be the credibility
22 of the defendant as opposed to the credibility of the
23 victims in this case. I would assume again that the
24 conspiracy involved them.

25 MR. LONG: Correct, Your Honor.

1 THE COURT: And the only other people were the
2 police, so I assume it wasn't the police?

3 MR. LONG: No, it wasn't.

4 THE COURT: All right. So then credibility
5 becomes an issue. Who shall the jury believe? I,
6 therefore, believe that it is -- it does meet the 401 402
7 test being relevant to the inquiry the jury will have to
8 make. It will certainly help the jury in determining the
9 issues before it in deciding what actually occurred here.
10 And since credibility would be the primary issue here, it
11 has great probative value. And since we have already
12 heard evidence concerning a prior conviction for
13 kidnapping, I think that although it does have
14 prejudicial value -- certainly it has prejudicial value
15 -- that prejudicial value is substantially outweighed by
16 its probative value.

17 MR. LONG: And, Your Honor, we feel as long as
18 you stress and don't simply just, you know, say but
19 stress in some way that the fact that he's been convicted
20 of a prior crime is in no way evidentiary of whether or
21 not he committed this crime. Cannot be used, et cetera.
22 And just as long as it's stated.

23 THE COURT: I understand.

24 MR. LONG: Yes, sir.

25 THE COURT: And it's in my charge. I tried to

1 craft a charge that accurately stated the law, protected
2 the defendant, and explain at the same time why it was
3 offered. I think it covers that.

4 MR. LONG: Yes, sir.

5 THE COURT: But I will, if you tell me that he
6 is going to testify and Mr. Thomas tells me he is going
7 to impeach him ---

8 MR. LONG: Yes, sir.

9 THE COURT: --- that I will, before he
10 testifies or after he testifies -- I'll do it however you
11 want. I will, at the time the testimony is presented,
12 just before or just after ---

13 MR. LONG: Yes, sir.

14 THE COURT: --- tell the jury essentially
15 what's in my charge.

16 MR. LONG: Okay. Very good.

17 THE COURT: Okay?

18 MR. LONG: That's fine.

19 THE COURT: You want me to do it as he takes
20 the stand or we can do it after?

21 MR. LONG: Your Honor, I'll let you make that
22 call. Possibly -- I mean, during the middle of the
23 testimony when that comes up may be the appropriate time
24 to do it.

25 THE COURT: Okay. Then we'll do that then.

1 All right? Okay. Thank you.

2 All right. Gentlemen, are we ready?

3 MR. LONG: Yes, sir, Your Honor.

4 MR. THOMAS: Yes, sir, Your Honor.

5 THE COURT: Okay. Thank you.

6 (WHEREUPON, the jury entered the open court at
7 approximately 9:34 a.m.)

8 THE COURT: Good morning, ladies and gentlemen.
9 We have all of our jurors in the courtroom as well as our
10 alternates. I hope you had a nice evening and are ready
11 to go forward with this case.

12 Is the State ready?

13 MR. THOMAS: Yes, sir, Your Honor.

14 THE COURT: The Defense?

15 MR. LONG: Yes, sir, Your honor.

16 THE COURT: Now, as we concluded yesterday, you
17 will recall that the State rested. It is now that
18 portion of the trial where we will hear from the Defense.

19 As I indicated to you yesterday, the Defense has no
20 obligation to put up any evidence. No one has to
21 testify. The burden is on the State. However, the
22 Defense now has an opportunity to put up evidence.

23 Mr. Long, will you put up evidence?

24 MR. LONG: Yes, sir, Your Honor.

25 THE COURT: All right. Very well.

1 MR. LONG: Thank you, Your Honor. The Defense
2 would call Ebon Roberts to the stand.

3 **EBON ROBERTS,**

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. LONG:

7 Q. Ebon, how old are you?

8 A. Thirty-seven.

9 Q. And where were you born and raised?

10 A. Citizen for life in Horry County.

11 Q. All right. And how far did you go in school?

12 A. A year and a half of college.

13 Q. All right. What high school did you graduate from?

14 A. I didn't graduate from high school. I got my GED
15 when I was incarcerated.

16 Q. And then where did you go to college?

17 A. Horry Georgetown Technical College.

18 Q. All right. And when did you do that?

19 A. August 2013.

20 Q. Okay. And then you did a year and a half starting
21 in August 2013?

22 A. My second year.

23 Q. All right. Why were you unable to complete or
24 continue that?

25 A. I got locked up -- I was supposed to take my finals

1 for my last three courses December the 9th, and this
2 happened December the 8th.

3 Q. Okay. All right. Now, are you married?

4 A. No, I'm not, sir.

5 Q. All right. Do you have any children?

6 A. No.

7 Q. None that you know of?

8 A. No.

9 Q. Okay. What family do you have here in Horry County?

10 A. Everyone.

11 Q. Approximately how many close family?

12 A. Mother, sisters, nieces. Approximately about ten or
13 fifteen.

14 Q. Is your father living?

15 A. No. He's deceased.

16 Q. Now, what type of work have you done throughout your
17 life?

18 A. It was mostly like a cook. Mostly cook.

19 Q. All right. And you say you were in jail, in prison,
20 until 2013. When did you get out of prison?

21 A. June 1st, 2013.

22 Q. All right. And you were prison. What was your
23 sentence? How many years?

24 A. Twelve years and three years, so it was fifteen
25 years in all.

1 Q. And the twelve years, that was for a strong-arm
2 robbery?

3 A. Yes, sir.

4 Q. And the offense date of that was what? 2002?

5 A. The incident happened in 2002, but it got
6 adjudicated in 2007.

7 Q. Okay. So you went in the jail for the twelve year
8 plus three year -- it was a three-year kidnapping with
9 that?

10 A. Yes, sir.

11 Q. And you got out in June of 2013?

12 A. Yes, sir.

13 Q. All right. Lead us through after getting out of
14 jail what your life was like, what you were trying to do,
15 what you were up to leading up to this offense?

16 A. Well, I got out of jail focused, determined. Had a
17 new change of mind, new attitude and everything. And I
18 was on probation for six months because of the
19 kidnapping. They wanted me to finish that off. That was
20 for the whole three years. And so I talked to my
21 probation officer, Matt something. I forgot the last
22 name. But anyway, I told him what I wanted to do as far
23 as I wanted to get a job. I wanted to start my own
24 business. So I tried looking for a job. Couldn't find a
25 job at that point in time, but ---

1 Q. What difficulties were you having in trying to find
2 a job?

3 A. Just the -- as far as no work history, you know. I
4 mean, ten years, I'm gone. Where you been at? So that
5 and this being a working rights state, it was kind of
6 hard for me to get a job.

7 Q. Okay. And did your record have any influence on
8 whether or not you were able to seek a job?

9 A. I think it did because every time -- like I did work
10 a little bit for a temp service in 2014 for that summer.
11 And I went to work, did what I was supposed to do. And
12 they still let me go, so ...

13 Q. Would you consider yourself a hard worker?

14 A. Definitely.

15 Q. And so you weren't laid off or you weren't
16 terminated from employment because you weren't working or
17 weren't doing your job?

18 A. Oh, no, no, no, no.

19 Q. What about showing up on time, things of that
20 nature? Were there any problems ---

21 A. On time and everything. On time and everything. I
22 just chalked it up to just being a convicted felon.

23 Q. All right. So then going through 2014, I believe
24 you said you enrolled at Tech in ---

25 A. Uh-huh (affirmative). August 2013?

1 Q. August 2013. All right. What were your plans as
2 far as Tech was concerned?

3 A. Well, I wanted to gain all the knowledge I could
4 about general business, and I was trying to get my
5 associates in that. So I took the courses, passed the
6 first few semesters. Well, passed the first three
7 months. Then January came. I passed those three months.
8 And it was like my fourth -- well, third semester. This
9 was my third semester right here in August.

10 Q. All right. And while you were going to school, were
11 you working full-time or part-time or no time?

12 A. I really wasn't working because I had to study, you
13 know. So all of my time and effort really went to
14 school.

15 Q. Now, tell me how, if any, drugs played into what
16 you've just discussed as far as your life?

17 A. This past August 2014, I had to use my own resources
18 to go to school because Tech and IRS, they was asking for
19 paperwork that I didn't have. Like I say, I've been
20 locked up since really 2004. You know what I mean? I
21 didn't get back on the streets in society until 2013. So
22 they asked me for paperwork that I didn't have. So I had
23 to go around getting this and getting that and just -- it
24 held my FASFA back. So I couldn't get my government
25 resource funds to pay for what I need to do. So I got

1 depressed, you know. I mean, I borrowed from family. I
2 borrowed from friends, you know. And it just got
3 depressing because, I mean, I tried to do right. I
4 wanted to do right. And, I mean -- so it drove me to
5 either -- do I want to continue this, to be in school and
6 try to be an entrepreneur, or go back to a product of my
7 society where I really grew up in a drug-related area.
8 You know, it was really high crime there. I wasn't
9 trying to do that. That was the whole point. You've got
10 a whole focus, a different change of mind, attitude and
11 everything, you know.

12 Q. All right. Did you -- at any time, were you a drug
13 user?

14 A. Yes, I was.

15 Q. All right. And as far as selling drugs -- I mean,
16 low-level? Mid-level? High-level? What -- how much
17 drugs, if any, were you selling to friends or something
18 like that?

19 A. Well, it was just, oh, a gram here of weed or a pill
20 here when I might can find somebody that has some that
21 they wanted to get rid of, you know. Because, like I
22 say, my main focus was doing school. So, I mean, I
23 really had no time, you know, to do anything else.

24 Q. I mean, you weren't involved in trafficking drugs or
25 anything like that?

1 A. Oh, no, no, no, no.

2 Q. Just low-level where you only use a small amount?

3 A. Yeah, just -- yeah, mainly the middle man. You
4 know, if somebody wanted something, then, you know, if I
5 can make a little extra out of it, then I would try to do
6 that, you know.

7 Q. What were your expenses during this time? Where
8 were you living?

9 A. During that time -- well, I came home to my mother's
10 residence. But I think like six to eight months after
11 that, I had moved out. I was able to accomplish getting
12 my own car, got my own residence, and I was living at 807
13 Dog Bluff in Gallivants Ferry, so ...

14 Q. And that's Galivants Ferry?

15 A. Yes.

16 Q. All right. And where were you working at that time?

17 A. I still wasn't working. I was really dependent on
18 my government check to take care of me until I was able
19 to get a job or, you know ...

20 Q. And you were trying to do better?

21 A. Yes, definitely.

22 Q. But the road wasn't smooth, was it?

23 A. No, it wasn't. No.

24 Q. Now, leading up to this event -- this occurred
25 December 8th, 2014. How long before that had you met

1 Shaun Cain, if ever?

2 A. It was only a few months. I met them like the last
3 maybe week or so in October. I mean, it was really just
4 a happenstance anyway, you know, but ---

5 Q. All right. Can you give us the circumstances of
6 when you recall or where you recall that y'all first met
7 or talked and what it was about?

8 A. Well, actually, I had met Rebecca first, and it was
9 at a convenience store. You know, she was purchasing
10 some cigars, and I was purchasing some. So I just took a
11 chance that maybe she might smoke marijuana. And I'd fly
12 by the store, and I'm like, "Hey, I've got some exotic
13 marijuana." And that was it.

14 Q. All right. And did she purchase marijuana from you?

15 A. Yes. They purchased actually point five that was
16 worth ten dollars, but I gave her a whole gram.

17 Q. Okay. And did you meet Shaun through that first
18 meeting?

19 A. Yes. He was in the car too.

20 Q. He was in the car? All right. So then you became a
21 supplier for marijuana to them?

22 A. Pretty much, yes. I mean, it ---

23 Q. How often would you see them? How often would these
24 transactions take place?

25 A. It was like once in a blue moon. I might swing

1 through Wendy's when I had, like I say, some pills or
2 some marijuana and I would ask them. If they wanted to
3 get some, they got some. If not, then I'd just go about
4 my business.

5 Q. All right. And so how many occasions would you
6 estimate that they had purchased either marijuana or
7 pills from you?

8 A. Not many. About three. Three or four to the most.

9 Q. Okay. And what quantity? I mean, what dollar
10 amount are you putting on these sales?

11 A. Well, it was always small amounts like ten or twenty
12 dollars, you know. I wasn't out there trying to, you
13 know ---

14 Q. It was gas money for you?

15 A. Pretty much. Pretty much.

16 Q. Now, did there ever come a time when you met with
17 either one or both and the subject of Wendy's came up?

18 A. The last two times.

19 Q. All right. And tell us about what took place, what
20 was said, who said what, things of that nature, as far as
21 leading up to December the 8th?

22 A. Well, again, I met them on the road traveling. I
23 mean, as far as like they was at a gas station and I
24 pulled up. And I was like, "Well, what y'all doing?"
25 Like, "Ah, nothing." So, I mean, "You want to smoke?"

1 So we went to the little recreation park that was by the
2 area, and we smoked. And while we was smoking, it was
3 more like he was talking. And then I had a wife-beater
4 on. And I have a couple of tattoos. And Rebecca asked,
5 "Oh, that's nice work. Where did you get it from?" And
6 I was like, "I had got it done in prison." And she was
7 like, "Wow, that's really nice, and they look real
8 professional." And I'm like, "Yeah." So, you know, by
9 us talking like that, you know, most women they like to
10 meddle with your business, so ...

11 Q. They do pry a little bit.

12 A. Yeah, yeah. So she asked me like, "What did you do
13 time for?" And I'm like, "Strong-arm, kidnapping," you
14 know. So that was pretty much it after that. And then I
15 brought up the subject like -- I said, "Y'all ready for
16 Christmas? And they was like, "Oh, no." And saying,
17 "The kids want this," and, "I want this," and, "The
18 money's tight," you know. That's how things be. So, you
19 know, I'm just, you know, like I say, talking. We just
20 enjoying the conversation, just having general
21 conversation like that. And just all of a sudden like,
22 "Yo, would you be willing to do it again?" I'm like,
23 "What you mean?" She's like, "Rob?" I'm like, "You've
24 got to be kidding me." You know, like I'm -- I said,
25 "I'm trying to stay away from that." I even changed my

1 whole friendship base just to, you know, get away from
2 anything negative, you know. And I'm like, "Are you
3 serious?" Like "Yeah," you know. And then that's when
4 he piped in and was like, "I'm the manager." So I'm
5 like, "Okay. So are you talking about robbing the
6 business? You're the manager. You're inside people."
7 You know, I'm like, "You've got to be ..." I'm putting
8 -- analyzing, trying to calculate. I'm like, "That would
9 be easy, you know." But I'm still thinking they just
10 playing. You know, I'm not ---

11 Q. So at that meeting, was there ever a plan hatched
12 and agreed upon?

13 A. I wouldn't say that we -- "You know, if we was to do
14 it," -- you know, what I'm saying -- "I would like to do
15 it on the weekend." I was just throwing suggestions out.
16 I would do it on the weekend and, you know, I'd have to
17 tie them up. And, you know, I'm just going through like
18 the process of acting like they're actually being robbed.

19 Q. All right. And was that the agreement that was
20 talked about or discussed between the three of you?

21 A. Yes, that we would split the money. We would split
22 the money.

23 Q. Now, what kind of split? Three ways?

24 A. Actually no. It was going to be fifty/fifty. Well,
25 fifty on my half and fifty for them.

1 Q. Fifty for them, and they would split the fifty
2 percent?

3 A. Yeah.

4 Q. All right. And did either one of them talk about,
5 you know, how much is in the cash register or how much,
6 you know, is going to be available or things of that
7 nature?

8 A. They had told me twenty-five to thirty-five hundred.

9 Q. And that would be like a good -- well, did they say
10 -- why a weekend? Why was it set on weekends?

11 A. I mean, just the weekends is like the most time that
12 people just off of work and a lot of people don't want to
13 cook and stuff. And we just -- it's a good time.

14 Q. All right. Was there any discussions about them
15 being there or them being the only ones there when this
16 was to go down?

17 A. Yes. They was supposed to be there. I mean, they
18 had to be there, you know. So ...

19 Q. All right. So that was the next to the last meeting
20 you had with them; correct?

21 A. Yes, next to the last.

22 Q. All right. What happened on the last meeting or the
23 last time you saw either one of them?

24 A. From the last meeting, I think we were both like at
25 the turn light at 378. And they was going -- they was

1 about to go down 9th, and I was turning -- I was taking a
2 left. I was taking a left. And I like -- said something
3 like, "It's going down this weekend. You know what I'm
4 saying?" And he gave me the okay sign. So that was like
5 the last talk.

6 Q. Okay. A brief talk?

7 A. Yeah. Just a little brief talk, you know.

8 Q. December 8th, do you remember what day of the week
9 that was?

10 A. That was a Sunday.

11 Q. Sunday? Okay. So that was Sunday night or early
12 Monday morning?

13 A. Yes, yes.

14 Q. Okay. Now, did any of your planning include --
15 discussions with them include, you know, what time they
16 close, anything of that nature?

17 A. No, not really. I mean, I already knew like what
18 time Wendy's would close. Like so it was ---

19 Q. I believe they have it on commercials; correct?

20 A. Yeah, yeah. So it was more just being there at the
21 right time and, like I say, just going through the
22 process of it. You know?

23 Q. All right. So then the night of December 8th, what
24 time did you go to the vicinity of Wendy's?

25 A. I was there maybe about an hour and a half before it

1 closed. Well, yeah, I was there about an hour and a half
2 before it closed.

3 Q. All right. So if they close at two, you were there
4 like twelve thirty or so?

5 A. Twelve. Yeah, twelve-thirty. I was in the vicinity
6 at twelve-thirty. I mean ---

7 Q. Okay.

8 A. --- actually been there, yeah, like forty-five
9 minutes before they closed.

10 Q. How many employees were there when you arrived at
11 Wendy's?

12 A. It was -- well, really, I didn't know, but it was
13 two cars in the parking lot.

14 Q. Okay. What kind of car did Shaun and Rebecca drive?

15 A. More like a PT Cruiser type.

16 Q. Okay. All right. And so was their car in the
17 parking lot?

18 A. Yes, it was.

19 Q. All right. And there was another car in the parking
20 lot?

21 A. Uh-huh (affirmative).

22 Q. Did you know who that car belonged to?

23 A. No. No, I did not.

24 Q. How long did you wait, or what, if anything,
25 happened in relation to that other car?

1 A. Well, that car -- well, the woman, she came out like
2 ten, twenty minutes right after closing. So by that time
3 it was like two-twenty. You know what I'm saying? Two
4 ten, two twenty. And I'm just waiting now. I'm like,
5 okay, the back door's going to open and I'm going -- I'm
6 just going to just go ahead and do what I'm supposed to
7 do or whatever. But it didn't happen that way. So I'm
8 still waiting. And nothing happened until like --
9 actually, like I said, close to -- let me see. Yeah,
10 almost close to three o'clock. That's when something
11 happened.

12 Q. Now, what happened at three o'clock? Then
13 everything went down from there. What was it that
14 started? What happened?

15 A. Well, Rebecca came out, you know. And about that
16 time I went to her, "What's going on?" And she just kind
17 of like shocked to see me, you know. So I'm like, "Aw,
18 y'all forgot" or something. You know, I'm thinking like,
19 "Y'all had to forget," you know, so and so. I jumped in
20 the back seat with her, you know, and ---

21 Q. Did you have a gun on her at this time?

22 A. No.

23 Q. Did you need to have a gun on her at this time?

24 A. Uh-uh (negative). No.

25 Q. So you jumped in the car. What took place after

1 that?

2 A. I started tying her hands up. You know what I'm
3 saying? So after I tied her hands up ---

4 Q. What was the purpose of tying her hands up? She
5 wasn't going to fight you, was she?

6 A. No, she wasn't going to fight me, but that's the
7 whole point. They had to have been supposedly secured.
8 So, you know ---

9 Q. To make it look good?

10 A. Make it look good.

11 Q. Okay. All right. So then did she hold her hands
12 out and you put the tape on her hands?

13 A. Uh-huh (affirmative).

14 Q. All right. And then what happened then?

15 A. I just waited in the car for him to come out. She
16 was like, "He's coming out." And I'm like, "Oh, we
17 should just try to go back." But at the same time, she's
18 like, "He'll be out in a second." So ...

19 Q. So when Shaun came out, did you have any discussions
20 with him, or was there any type of acknowledgment by him
21 that, okay, I know what's going down, or, this is a ---

22 A. I definitely scared him because he started
23 backpedaling and fell and almost tripped over one of the
24 pavement slabs. So I definitely scared him. I'm like,
25 "Man, get up."

1 Q. After that, what was his demeanor? How was he
2 acting after that?

3 A. I mean, he was still nervous, you know, because like
4 I say, I jumped out of the back seat from the passenger
5 side. And, you know, I'm like, "Hey, man. Get up. Come
6 on. You know what you got to do, you know." So then I
7 guess it dawned on him like, "Well, I put the money up."
8 You know what I'm saying? "There's no money out there."

9 Q. All right. Now, at this time during this robbery
10 did you at any time wear any face covering?

11 A. No.

12 Q. A mask?

13 A. No.

14 Q. Did you have a hood drawn tight around your face or
15 try and pull up over you to cover any part of your face?

16 A. No. I looked like a regular person. I just had on
17 blue jeans, a plain black hoodie, boots. That was it.

18 Q. Were you wearing gloves?

19 A. I think I did. I think I did have some gloves.

20 Q. You think had gloves?

21 A. Yeah.

22 Q. Okay. All right. And why was the purpose of the
23 gloves?

24 A. I mean, just for no fingerprints from me if anything
25 was ...

1 Q. All right. Now, then after Shaun met y'all at the
2 car, what happened after that? Did y'all go back to the
3 store?

4 A. We went back to the store.

5 Q. All right. Now, did you have them at gunpoint going
6 back to the store?

7 A. I had it out, but I didn't have them at gunpoint.

8 Q. All right. Did you need to have them at gunpoint?

9 A. No.

10 Q. Okay. All right. They were basically leading you
11 in the store?

12 A. Basically leading to the store.

13 Q. All right. So when you got in the store, tell us
14 what happened from that point?

15 A. Well, you know, you got to set the alarm back, you
16 know. So -- he's a big fellow. He's bigger than me.
17 So, I mean, I felt like, I felt his hands would be bigger
18 than my hands. And the keypad is real small. So he
19 started punching the stuff. And he's already nervous and
20 stuff. And I imagine he just thought that Rebecca would
21 be in the car, you know. And I did startle him enough.
22 Enough that he almost ran. You know what I'm saying? So
23 he punched it in, and then we went back. I mean, by that
24 time, he did say, "Man, the money's been dropped." But I
25 wasn't kind of believing him. You know what I'm saying?

1 So I'm like, "Man, we done came this far. We done
2 planned this here. I been sitting out here for this
3 long." You know? So by all that time then, that's when
4 a officer supposedly had rolled by. And that's when they
5 seen us.

6 Q. They saw y'all in the parking lot or something?

7 A. He said he seen us in the parking lot, but I -- I
8 mean, if you already been in the area, you shouldn't even
9 let it go on that long unless it was so calm and
10 collected that ---

11 Q. At three o'clock in the morning?

12 A. Yeah.

13 Q. All right. So then what conversations took place
14 between you and Shaun then after you found out the money
15 had already dropped? What took place then?

16 A. I mean, after he told me the money had been dropped,
17 it was more like, "Man, I can't believe you, man. I
18 mean, I told y'all it was going down." You know what I
19 mean? "So how do you forget, you know?" But it was more
20 -- I was heated because I'm like, you know, I'm putting
21 my life on the line for really change again. But, "Come
22 on." I mean, "Come on, man. This is -- you know, I mean
23 y'all had the easiest part of the job as far as just
24 opening the door or whatever." Just, you know ...

25 Q. And the tape or the gun or whatever the case may be,

1 that was so they could tell the police that they were
2 forcibly robbed?

3 A. Yes. Yeah, so they wouldn't be -- I guess you say
4 co-conspirors (phonic).

5 Q. Did you forcibly rob either one of them?

6 A. No.

7 Q. Was this a plan with the three of you?

8 A. Yes, it was.

9 Q. All right. Now, Mr. Cain mentioned something along
10 the lines of you took money out of his wallet. Is that
11 true?

12 A. I don't remember taking no money. I mean, once I
13 seen coins, I -- like I said, that's about two or four
14 hundred dollars worth of coins, but it wasn't no purpose,
15 you know. I mean ---

16 Q. Before you could have carried off the coins, what
17 happened as far as police involvement?

18 A. They surrounded the building. And I'm trying like,
19 oh, what I'm going to do now. And they make a suggestion
20 as like, "Just calm down. Just ...". You know what I'm
21 saying? Like, "Here's my shirt," and, "Put this on and
22 put that on." I'm like, "It's not going to really work
23 because I don't have work pants on." So -- but I still
24 attempted to put the shirts on and stuff and, you know
25 ...

1 Q. Was Shaun taped at this point in time?

2 A. I'm sorry?

3 Q. When y'all are talking about putting on pants or
4 clothes or shirts or something, this, that and the other,
5 was he taped at that time?

6 A. No, he wasn't.

7 Q. All right. And was it your suggestion or their
8 suggestion about clothing?

9 A. Their suggestion. Really Rebecca's.

10 Q. All right. And what was the reason for you putting
11 on clothing?

12 A. Just to try to fit in. To be like, you know, he
13 does work here. You know, it's a little mistake -- you
14 know what I'm saying -- with the alarm system or
15 whatever. So ...

16 Q. Okay. All right. So then did you and Rebecca
17 attempt to try to leave together?

18 A. We had went to open the door and try to calm the
19 police down. Like, you know, "it's not a robbery. It's
20 just this," you know. I was her man and whatever, so ...

21 Q. Now, where was Shaun during this time?

22 A. He was still in the office.

23 Q. All right. Was he taped or restrained in the
24 office? What was up with that?

25 A. No, he wasn't taped or restrained, no. No.

1 Q. Now, you were arrested that night; correct?

2 A. Yes.

3 Q. All right. And were you questioned by any officers
4 about this robbery and/or what happened, what you've just
5 testified to, that night?

6 A. That night when they finally arrested me, I mean,
7 like I said, I didn't give them any trouble, no problems.
8 I just knew right then that I was on my own. So, I mean,
9 I just got in a depressed mode like ---

10 Q. So you didn't give a statement to them at that time?

11 A. No. No.

12 Q. All right. And you said you knew the jig was up.
13 They were against you. What do you mean -- who -- they
14 were against you?

15 A. Shaun and Rebecca.

16 Q. All right. They were protecting themselves;
17 correct?

18 A. Yes. Of course, yes.

19 Q. All right. Now, the next day -- I believe it was
20 December 9th -- you had a bond hearing; is that correct?

21 A. Yes.

22 Q. And bond was set in some high amount; correct?

23 A. Yes.

24 Q. And you haven't been able to post bond; correct?

25 A. No, sir, I haven't.

1 Q. All right. At that bond hearing, did you explain,
2 try to explain, what you've just testified to now?

3 A. Yes. I tried to tell Ms. Jane Mackey that they was
4 with me. And if they had went to the hospital and they
5 got a urine or a test to prove that they had marijuana
6 and pills in their system. But Rebecca said I was a
7 ball-faced liar, and that was pretty much ---

8 Q. She was at the bond hearing?

9 A. Yes.

10 Q. Okay. And you could hear her? You were on like a
11 TV monitor or something?

12 A. Yes, I was.

13 Q. And you could hear her statements concerning you
14 were lying about this?

15 A. Yes.

16 Q. How much detail did you go into at the bond hearing
17 on December 9th, 2014? As much as you've gone into today
18 or ---

19 A. No, no. I just told them that, you know, that was
20 my co-defendants. We, you know, we planned this
21 together. And that was it. And Ms. Jane Mackey was like
22 "Well, you're not here for that. You're just here for
23 the charge to be -- you know, how much I'm going to put
24 on your bond or whatever." So ...

25 Q. So then you remained in jail until maybe early

1 February; is that correct? At least to early February?

2 A. Yeah. I was still in there, yes. Yes.

3 Q. All right. I'll show you this document and ask you
4 if you can identify it.

5 A. Yes, I can.

6 Q. All right. And what is that document?

7 A. It's a letter I wrote to Mr. Crisco, and I wanted
8 him to pass it on to the district attorney.

9 Q. Okay. And who is Mr. Crisco?

10 A. The head public defender. Well, the -- yeah, the
11 chief public defender of Horry County.

12 Q. With the public defender's office?

13 A. Yes.

14 Q. All right. And turn that over and tell us when that
15 document was postmarked or mailed?

16 A. It was mailed from Columbia February the 2nd, 2015.

17 Q. February 2nd, 2015?

18 A. Uh-huh (affirmative).

19 Q. And that's a letter you wrote to Mr. Crisco with the
20 public defender's office?

21 A. Yes.

22 Q. All right. Now, in that letter, did you basically
23 state the same things in that letter that you've
24 testified to here today and that you told Judge Mackey on
25 December 9th, 2014?

1 A. Yes.

2 Q. All right. This is not something you've made up for
3 this trial; correct?

4 A. Correct.

5 Q. All right. This has been consistent throughout;
6 correct?

7 A. Correct.

8 Q. All right. And is what you've testified to the
9 truth?

10 A. Yes, it is.

11 Q. And the whole truth?

12 A. The whole truth.

13 Q. Now, how much money, if any, did you recover from
14 that robbery?

15 A. None.

16 Q. All right. And how much supposedly were you to be
17 able to split with Cain and Kennedy?

18 A. As I said, I thought it would at least be in the
19 vicinity of twenty-five hundred or so. So it at least
20 would have been twelve hundred for me and twelve hundred
21 for them.

22 Q. Coming out of jail, serving almost twelve years in
23 jail, were you anxious to go back in?

24 A. No, no. The opposite.

25 Q. And were you in financial hardship?

1 A. I mean, really, my first six months -- really, my
2 first six months, like I said, my family was there for me
3 and they supported me, you know. But I'm a grown man.
4 And I felt the need that, you know, I had to make my own.
5 So that's why I felt like getting in school was my best
6 option because I couldn't get a job.

7 Q. You admit that you went there for the purpose of
8 stealing money from Wendy's?

9 A. Yes.

10 Q. Is that correct?

11 A. Correct.

12 Q. And there's no doubt about that, is there?

13 A. No.

14 Q. Did you go there for the purpose of committing an
15 armed robbery on either Mr. Cain or Ms. Kennedy?

16 A. No. I mean, we were all in it together, so ...

17 Q. And what about kidnapping? Did you go there with
18 the intent to kidnap either one of them?

19 A. No.

20 Q. The duct tape was done how? By agreement?

21 A. Yes, consensual. I mean, that was the whole point.
22 It had to look real, so ...

23 Q. And that was for their protection?

24 A. Not their protection but also their security as well
25 as it would show that they was not a part of it, you

1 know. They was duct-taped, you know.

2 Q. What was your understanding -- let's say that this
3 went down the way you planned it. That they were taped,
4 left at the store. You left there with a thousand to
5 three thousand dollars in cash and they called police.
6 What was the understanding about them identifying or
7 picking out of a lineup who committed this offense?

8 A. It was just a black male. That would have been it.
9 It was a black man that had a hoodie on and just robbed
10 us as we was coming out the store.

11 Q. Was there anything said specifically whether or not
12 they would pick anybody out of a lineup or not be able
13 to?

14 A. The understanding they couldn't do it because they
15 would say, you know, that we didn't know anybody. He
16 kept a gun on us and he told us -- you know what I'm
17 saying -- just to keep down and don't look at him. Just
18 the regular stuff, you know.

19 Q. So their involvement would be protected?

20 A. Yes.

21 Q. And you, of course, wouldn't be back or come -- you,
22 of course, wouldn't be back in Wendy's, et cetera,
23 anything of that nature; correct?

24 A. Correct.

25 Q. Do you recall how you and either of them

1 communicated? Did you have cell phone numbers for them?

2 A. When I first met them, Rebecca had gave me her cell
3 phone number, but ---

4 Q. Okay. Did you have a cell phone number for Shaun?

5 A. No.

6 Q. All right. Did he have your cell phone number?

7 A. No. I just had her number.

8 Q. All right.

9 A. I just had her number.

10 Q. But you knew where to find them; correct?

11 A. Yeah, because she had a work shirt on.

12 Q. You heard testimony yesterday about pushing Shaun
13 down or jacking the gun or pushing him against the wall,
14 the keypad, or pushing or shoving her, things of that
15 nature. Were any of those things done?

16 A. No, none.

17 Q. And why was it not required?

18 A. I mean, nobody was trying to get hurt, and I wasn't
19 trying to hurt them. That was a part of the plan. It
20 was just -- like I say, when he came up, I scared him.
21 So he started backpedaling, and he fell on one of the
22 parking lot slabs.

23 Q. Thank you, sir. Answer any questions the solicitor
24 may have for you.

25 THE COURT: Mr. Thomas?

1 CROSS-EXAMINATION

2 BY MR. THOMAS:

3 Q. Mr. Roberts, where did you say you met Shaun and
4 Rebecca before?

5 A. At a convenience store.

6 Q. What convenience store was that?

7 A. I can't remember. It was on Highway 378 though. We
8 were both getting gas. Well, I was getting gas at the
9 time too, so she was -- I don't know what she was doing,
10 but I met her at a convenience store. She was in line in
11 front of me.

12 Q. Okay. How many times did you say you met them?

13 A. How many times I met them? I met them about three
14 -- I saw them about three or four times.

15 Q. And how did y'all communicate? Did you call them?
16 Did you just happen to run into them a lot at convenience
17 stores or what?

18 A. No. Like I said, I knew where they worked at. So
19 anytime I had some marijuana or some pills, I'd just go
20 by and see if they wanted some.

21 Q. Okay. Now, let's talk about this plan that you just
22 said. Did y'all ever talk any time for this?

23 A. Talk any time?

24 Q. Time. When was this -- you said the plan was that
25 you were going to rob them?

1 A. Uh-huh (affirmative).

2 Q. And you were going to get together, come to the
3 store. You're going to get out with your money and you
4 were going to split it with them; correct?

5 A. I was going to get out with the money, and I was
6 going to split it with them.

7 Q. Okay. Now, when were you supposed to do this? When
8 did you plan on coming into the store and doing this?

9 A. I told them that it was going down this weekend.
10 And this was like the first part of December.

11 Q. So that's as specific as it got, just the weekend?

12 A. Yeah, the weekend.

13 Q. Mr. Roberts, are you aware that the safe inside
14 Wendy's is time-locked?

15 A. No, I didn't know that.

16 Q. Are you aware that Shaun and Rebecca both knew that?

17 A. I imagine Shaun being the manager would have known.

18 Q. Do you think that you were set up by Shaun and
19 Rebecca here today?

20 A. I don't think I was set up. It was biased as far as
21 they wasn't going to point to how things really be. You
22 know, they forgot. So to that degree, it just kind of
23 went downhill from there.

24 Q. Well, but the whole point of this plan, as you said,
25 was to get money from the safe and later split it; right?

1 A. No. The money was supposed to be already out.

2 Q. Mr. Roberts, are you aware that Wendy's has no video
3 surveillance system?

4 A. I didn't know that.

5 Q. Is that something that Shaun, you say as your co-
6 conspirator, would have been aware of?

7 A. Probably so.

8 Q. So did you think that it did have a video
9 surveillance system? Did you think Wendy's had a video
10 surveillance system?

11 A. I imagine it being just built, I would figure, yeah,
12 it might have had one, yeah.

13 Q. Now, is that why you say you dressed it up so good
14 with the tape, having a gun on you and all that?

15 A. No. That was the whole point of me, like I say,
16 tying them up or whatever.

17 Q. But you testified that you didn't wear a mask; is
18 that right?

19 A. No, I didn't have no mask covering.

20 Q. You weren't worried about maybe a camera catching
21 your face?

22 A. I mean, I had a hat on and the hoodie. That was it.

23 Q. When did you write that first letter that Mr. Long
24 brought up to you?

25 A. It was the last part of January 2014.

1 Q. Do you remember when -- do you know what discovery
2 is?

3 A. Discovery?

4 Q. Uh-huh (affirmative).

5 A. Which one? A motion to discovery or what?

6 Q. Yeah. Do you know that the State has an obligation
7 to produce to the Defense the evidence that they have
8 against them? Are you aware of that?

9 A. Uh-huh (affirmative).

10 Q. Do you know when you received your discovery in this
11 case?

12 A. I think it was a little later. I think we were
13 still in February.

14 Q. Okay. Would it be February 2nd, 2015? That sound
15 about right?

16 A. Could have been. Could have been. I thought it was
17 later though.

18 MR. THOMAS: Mr. Long?

19 (Off record discussion between counsel)

20 THE COURT: Gentlemen, gentlemen, we've got a
21 jury sitting here.

22 MR. THOMAS: Sorry, Your Honor.

23 Q. Would it surprise you that the letter was put in the
24 mail on February 2nd, 2015?

25 A. It was put in the mail?

1 Q. Is this the letter that Mr. Long just showed you?

2 A. Yeah, that's the same letter.

3 Q. And what's the date on there?

4 A. It said it was in the post office February the 2nd.

5 Q. Okay.

6 THE COURT: Anything further?

7 MR. THOMAS: Nothing further, Your Honor.

8 THE COURT: All right. Go ahead.

9 MR. LONG: No further questions.

10 THE COURT: All right. You may step down.

11 Ladies and gentlemen, you have heard testimony
12 concerning convictions of other crime by the defendant.
13 I will instruct you further on this when I give you my
14 final instructions. But let me tell you at this point,
15 you may use the evidence of that prior conviction in
16 determining the credibility or believability of the
17 defendant in this case. However, you must not and should
18 not use evidence of that prior conviction as proof that
19 the defendant committed the crime with which he is
20 presently charged. I know that's a difficult concept
21 sometimes. But remember you may use it as a test or
22 proof or evidence of his or her believability generally,
23 but it is not proof to be used by you that, although they
24 may have committed and been convicted of another crime,
25 that that is proof that they did this crime. It is only

1 proof concerning that person's believability. And the
2 issue becomes somewhat complex because in this particular
3 case, as you have heard earlier, one of the single
4 elements of the charge of possession of a firearm is
5 possession of a pistol by a person previously convicted
6 of a violent crime. And the State was required to prove
7 that element, among other things, that he'd been
8 convicted of a violent crime.

9 Now, the parties have agreed, stipulated, that he
10 was previously convicted of kidnapping and that that is a
11 violent crime. Okay? So although generally proof of a
12 prior conviction may only be used to determine a person's
13 credibility, in this particular case there is going to be
14 a collateral or other use of that prior conviction for
15 kidnapping. It may be used by you, according to the
16 parties' stipulation, as the State's required proof on
17 the charge of possession of a pistol by a person
18 previously convicted of a violent crime. Of that fact
19 alone. And it is not proof that he generally committed
20 the offense of possession of a firearm by a person
21 previously convicted of a violent crime. They have not
22 agreed to that. They've not stipulated to that. But
23 they have stipulated that he has, in fact, been convicted
24 of a prior violent crime.

25 So, generally speaking, where the prior conviction

1 -- I think you heard Mr. Long say something about strong-
2 arm robbery and kidnapping. You may use those as a test
3 or evidence of his credibility. You may not use it as
4 evidence of commission of the present crimes. But there
5 is a side stipulation by which the parties have said as
6 to the single element of the offense of possession of a
7 pistol by a person convicted of a violent crime, it has
8 been met.

9 I hope that is not too confusing. I'm going to give
10 you a full charge on it when I charge you on the law.
11 But I tell you that now while all of this is still fresh
12 on your memory. Okay?

13 Mr. Long, anything further?

14 MR. LONG: Thank you, Your Honor. Nothing
15 further.

16 THE COURT: Okay. All right. Thank you. Mr.
17 Long, redirect?

18 MR. LONG: Your Honor, I have just a document
19 that we would offer by itself. I can get a witness from
20 the solicitor's office or from our office to authenticate
21 that this was the discovery document that the solicitor
22 sent discovery to our office. I think there was a
23 question about the time or when it was done. I've talked
24 with Mr. Thomas about it. He really doesn't have any
25 objection. I don't know if he would stipulate that we

1 can put this in as Defendant's 1. It shows the date it
2 was prepared, the date it was received.

3 THE COURT: All right. What date was the
4 discovery ...

5 Discovery is evidence that the State sends, as you
6 have heard.

7 MR. THOMAS: Your Honor, the State has no
8 objection to him putting that discovery piece of paper
9 into evidence.

10 THE COURT: All right. Very good.

11 MR. THOMAS: No objection.

12 THE COURT: All right. It is admitted as
13 Defense Number 1.

14 MR. LONG: Thank you, Your Honor.

15 Thank you, Mr. Prosecutor.

16 (WHEREUPON, Defendant's Exhibit Number 1 was marked
17 and admitted into evidence.)

18 THE COURT: All right. Mr. Long?

19 MR. LONG: Your Honor, the Defense would rest.
20 We have no further witnesses.

21 THE COURT: All right.

22 Will there be any reply or rebuttal?

23 MR. THOMAS: No, sir, Your Honor.

24 THE COURT: Very well.

25 Mr. Roth, take the jury out. I have some matters

1 that I have to address now that the Defense has rested
2 before we argue and charge. Would you please take them
3 out?

4 (WHEREUPON, the jury exited the open court at
5 approximately 10:19 a.m.)

6 THE COURT: We'll be at ease for just a moment.

7 (WHEREUPON, court stood in recess for a short
8 break.)

9 THE COURT: All right. Let's bring the jury
10 in. Wait.

11 You want to renew your motions?

12 MR. LONG: Yes, sir, renew the motions. And
13 also a question of a lesser-included offense on your
14 charges.

15 THE COURT: The ...

16 MR. LONG: Larceny or attempted larceny.

17 THE COURT: Well, what we have is armed
18 robbery.

19 MR. LONG: Correct.

20 THE COURT: And larceny -- what evidence is
21 supported or supports a charge of larceny?

22 MR. LONG: A co-conspirator on an armed robbery
23 -- if Mr. Roberts is believed by the jury -- is not being
24 forced by threat of use of force or anything of that
25 nature, they're a willing participant.

1 THE COURT: The only evidence would be the
2 taking of ---

3 MR. LONG: Or the attempt to take.

4 THE COURT: --- Mr. Cain's property. That's
5 the only thing that has been taken.

6 MR. LONG: Or the attempted larceny with ---

7 THE COURT: And your client's testimony is, "I
8 didn't do that."

9 MR. LONG: Didn't take anything from Cain.

10 THE COURT: Right. But who did they take
11 anything from then?

12 MR. LONG: Well, he was there to attempt to
13 take it from Wendy's. And I just thought if it ---

14 THE COURT: Well, isn't -- is that a lesser-
15 included of armed robbery of the two other alleged
16 victims, Cain and Kennedy?

17 MR. LONG: Well, there's only one ---

18 THE COURT: There are armed robberies of those
19 -- or, well, there's one armed robbery of Cain.

20 MR. LONG: Of Cain.

21 THE COURT: Well, attempted larceny of Wendy's
22 is certainly not a lesser-included of the armed robbery
23 ---

24 MR. LONG: Of Cain.

25 THE COURT: --- of Cain, is it?

1 MR. LONG: That's correct. No, it's not.

2 THE COURT: Okay. All right. Anything else?

3 MR. LONG: No, sir, Your Honor. We're prepared
4 to go forward.

5 THE COURT: Okay. All right. And I would
6 respectfully note that you have made the same motions.
7 And, again, I would deny it. There is substantial
8 evidence to support a jury verdict, and I would deny your
9 motion.

10 MR. LONG: Thank you, Your Honor.

11 THE COURT: Okay. Let's bring the jury in.

12 Mr. Long, will you require the State to open as to
13 the law?

14 MR. LONG: No, Your Honor.

15 THE COURT: Okay. Then you argue first.

16 (WHEREUPON, the jury entered the open court at
17 approximately 10:34 a.m.)

18 THE COURT: All right. We have all of our
19 jurors and our alternates back in.

20 Ladies and gentlemen, as you heard a moment ago,
21 both the State and the Defense have rested. As we began
22 this trial, I gave you a little outline as to how the
23 trial would proceed. And we're to that point of the
24 trial where now you will hear closing remarks by both the
25 Defense and then the State. The Defense will go first,

1 and then the State will give a final argument.

2 Remember, as I told you, what the attorneys say is
3 not evidence. They certainly may comment on the evidence
4 that you have heard and the conclusions that they feel
5 you may draw from that evidence. They even may discuss
6 the law for you. But remember, in your deliberations and
7 in your determination of the facts in the case, you will
8 base it entirely, your determination of the facts, on the
9 evidence you heard from the witness stand. And you will
10 give that evidence such weight as you, as a jury, think
11 it deserves.

12 And in the final deliberations, you will apply the
13 law as I give it to you. And I will instruct you fully
14 on the law that you will apply in this case. So remember
15 that when you listen to the attorneys make their final
16 summations.

17 I do something that I really don't think any other
18 judge is doing. I've been doing it for eight, nine years
19 now. The Supreme Court has said that I can do it. So I
20 always do. And that's this. You know, sometimes I think
21 we take advantage of or take you for granted when we
22 bring you here. You know, we take you from your everyday
23 lives and your jobs. And we bring you here. And we
24 think that -- just take for granted that you understand
25 everything that's happening here. And by virtue of the

1 fact that you are qualified as jurors, that tells me that
2 you've never been much in this process or you'd be
3 disqualified. We expect you to understand everything.
4 And the judges usually just get up and spout out law to
5 you and expect you to remember it. Some of it's very
6 complex.

7 So what I do is I always make a transcript of the
8 law that I'm going to charge you. And I provide you with
9 that transcript for your use during your deliberations.
10 It's not evidence. It's a Court's Exhibit. It's
11 provided to you to help you. You will note that I will
12 be reading from it. The Supreme Court said that I can do
13 that, but it must be a verbatim transcript. So we
14 prepare it in advance. Ms. Pipkin helps me with that.
15 That's part of her job. And I will, as I said, give it
16 to you.

17 That doesn't mean you don't have to listen to me
18 when I'm charging the law. But I want you to be assured
19 that I will provide it for you and you'll be able to use
20 it during your deliberations.

21 All right. Mr. Long, are you prepared?

22 MR. LONG: Yes, Your Honor. Thank you, sir.

23 THE COURT: All right, sir. I'll hear from
24 you.

25 CLOSING ARGUMENT

1 BY MR. LONG:

2 Good morning again, ladies and gentlemen. I hope at
3 this stage of the trial, because you heard all the
4 testimony and evidence, that you can a little more easily
5 determine what happened, who did what, who didn't do
6 what, who committed what crime, who didn't commit a
7 crime. Whatever your deliberations are, I hope that
8 you're in a better position to do it right now.

9 My statements to you in closing argument, I like to
10 think -- flatter myself -- that it's going to help you
11 somewhat. But you've heard the testimony and evidence a
12 lot more attentively I have. Because a lot of times I'm
13 looking through trying to find something else and
14 thinking about the next question or this, that and the
15 other. And I don't listen carefully. And I know y'all
16 have listened carefully. And I appreciate that. So if I
17 say anything that's different from what you recall,
18 disregard what I say. What I say is not evidence.

19 This case basically is who you believe. I would
20 imagine, as I told you in opening statements, that you
21 can't find a more tangled web woven than what you've been
22 presented with here today.

23 Now, if police had not arrived at the scene -- we
24 can only speculate as to what would have happened --
25 would Mr. Cain and Ms. Kennedy have called police and

1 reported an unknown intruder came and robbed them and
2 took money, et cetera? And that would be on the unsolved
3 list. Or had he gotten away, would they have called
4 police and they would have said, yes, I can pick him out
5 of a lineup? I saw his face. He wasn't wearing a mask
6 or anything of that nature. You know, he's the one that
7 had the gun. If they didn't have the identity, they
8 would have pulled fingerprints. They would have done
9 D.N.A. They would have done a lot of other things. But
10 because it went down the way it did, okay, they got
11 someone on the scene. Doesn't have a gun in his
12 possession, but a police officer said, "Well, yeah, I saw
13 him with a gun." The victims say, "He robbed us at
14 gunpoint. He made me tape myself up. He made us do
15 this. He taped us together. He was threatening this,
16 that, and the other." And they exaggerate some of these
17 things.

18 Now, I don't believe that I can recall with a
19 hundred percent accuracy someone's description that I
20 just passed in the hallway. I just can't do it. But if
21 you come and stick a gun in my face and rob me and, as
22 Ms. Cain [sic] said, I believe, it was forty-five
23 minutes, fifty minutes or so this ordeal took -- I think
24 Mr. Cain said it was fifteen minutes or twenty minutes,
25 you know, all this took, you know, things of that nature

1 -- I promise you -- okay -- I'm going to be able to
2 identify that person. Okay? That's going to be burned
3 in my brain.

4 Mr. Roberts didn't wear a mask. He didn't wear face
5 covering. He said he had a hat on, whatever. I believe
6 he was wearing a hoodie, you know, like a jacket or
7 something. The victims didn't testify he was wearing
8 gloves or anything of that nature. He said, "Well, he
9 might have had on gloves." I mean, it was December. But
10 he wasn't trying to conceal his identity in robbing that
11 Wendy's store that he didn't know whether or not it had
12 cameras in it. But he knew from his agreement with them
13 that he wasn't going to be picked out of a lineup. As
14 long as he splits the money with them, this, that and the
15 other, they're protected until he gives them the money.
16 They're off scot-free. Everybody's going to benefit from
17 it. Now, that's a tangled web. I would bet you a dollar
18 -- your dollar against my dime no matter what the odds
19 are -- because I can lose all day long. And I may lose
20 ten bucks. Okay? That ain't going to hurt me. I mean,
21 it's going to take my lunch money from me, but it ain't
22 going to hurt me. But you have a lot more to risk. I
23 mean, every time you lose, you're going to lose a dollar.
24 And it doesn't take long before that adds up. And that
25 may be your lunch money for a week. And why in the world

1 this man who's a reasonably intelligent man, after coming
2 out of prison and having hard times, not being able to
3 find work, would consider committing an armed robbery,
4 okay, and going right back in jail basically for the rest
5 of his life.

6 He was presented with a plan. He was presented with
7 something that seemed safe. There were other people
8 involved. He was down. That's a bad decision. Okay?
9 If they made that decision, that's a bad decision. But,
10 again, this is just -- it's just a mess. It's a mess.

11 The State calls witnesses. The State presents
12 evidence. The State has the burden of proof. His Honor
13 will tell you about that burden of proof, what a hard
14 burden it is. If someone were to come up and say, yeah,
15 I remember. I saw you at the strip club about two or
16 three weeks ago. Man, we had a good time. You were
17 throwing money around like it was just crazy. And your
18 wife is standing there with you. And you think back and
19 you say, oh, my gosh. That was the weekend she went to
20 her mother's. And you did not go to the place. How do
21 you prove you didn't do something? It's almost possible.
22 And so that's why the State puts -- I mean, the law puts
23 such a heavy burden on the State to prove beyond a
24 reasonable doubt that leaves you firmly convinced, you
25 don't scratch your head and say, hmmm. Okay. That's

1 what it takes to get a conviction. His Honor will tell
2 you about that. Is there evidence in this case, once
3 you've heard the testimony of the witnesses that were
4 presented, for you to say, yeah, he came in and robbed
5 them. He came in and did just what that said. He came
6 in and did everything. And we hadn't met him before,
7 didn't know him before, didn't have anything involved. I
8 was scared for my life. Little things. Leaves on the
9 tree. Little things.

10 I've tried to figure out -- and I haven't gotten
11 this old just to do it. How am I going to tape my wrists
12 together with a roll of duct tape? I mean, how can I do
13 that? I started to do it last night in the garage. And
14 I said, "I don't even want to try. It would be stupid.
15 I'll pull a tooth out or something trying to do it. How
16 in the world can I tape myself?" But that's some of the
17 evidence. And that's a little leaf. It's a bigger leaf,
18 but that's something. Who was taped to who when, and
19 whose tape was released when and how did they get a
20 jacket or shirt off somebody if he was taped, or was he
21 taped or wasn't he taped? The this, that and the other,
22 things of that nature. There's all kinds of little
23 twists in the story.

24 And again, if I pass somebody in the hallway, hey,
25 how you doing -- okay -- I wouldn't be able to describe

1 them. But if a robbery took place -- okay -- you know, I
2 understand there's selective amnesia and things of that
3 nature -- those details would be pretty firmly etched in
4 my memory probably for life.

5 This should be a good story -- I don't know if any
6 of you listens to the radio or hears John Boy and Billy
7 dumb crook news because it's a comedy of errors. Okay?
8 It's really not a comedy. But it's a comedy of errors.
9 If the State had called Officer Cavallini -- okay? He's
10 not called. He's still employed with the City of Conway,
11 but he wasn't called as a witness. He probably would
12 have testified from the stand and told you what took
13 place, what happened, what he saw, what he didn't saw,
14 this, that and the other. And I would imagine -- okay --
15 that what Mr. Roberts said, that we were standing in the
16 parking lot. We went into the store. They let us -- he
17 let us in the store, unlocked the store or whatever. And
18 then, you know, I was holding the gun, waving the gun,
19 this, that and the other. And made sure everything --
20 made it look like a robbery, et cetera, things of that
21 nature. He probably would have testified that he
22 happened to be on patrol that night, whatever. Rode by
23 the store. Saw three people in a parking lot. And they
24 -- he saw them rapidly enter the store. That's the
25 comedy of errors that started this case the way it is.

1 Because if it had gone off, it would have happened one of
2 two ways. The victims would not have called the police
3 -- I mean, would have called police either way. They
4 would not have been able to identify somebody if there
5 was a conspiracy or would have said, yeah, I could pick
6 that guy out of a lineup, whatever. It didn't happen
7 that way. He sat across the street in his patrol vehicle
8 and made a call. Hey, I think there's an armed robbery
9 going on. Armed robbery. Armed robbery. And then here
10 we are. Here's where we are.

11 I wish that we had a green light and a red light
12 above the witness stand. And when somebody says, hello,
13 my name is Buddy Long, blink green. Okay? I'm twenty
14 nine years old, aant (phonic) red. Okay. That's a lie.
15 Technology isn't to that point. People are imperfect.
16 But we're made in the image of our creator, and he did a
17 pretty good job. And I can speak to somebody, talk to
18 somebody, and I can start to realize this is a good
19 person or this is not a good person. Or this is a person
20 that's telling me the truth, or I don't know if I can
21 believe all of that. And we don't even realize sometimes
22 how we arrive at those conclusions.

23 Yeah, I've got a Corvette, three boats and a mansion
24 in Grand Dunes. And I'm trying to remember when I bought
25 that thing. Whether it was 2005 or 2011, I can't -- I

1 can't ... Immediately eye contact. Okay. Willingness
2 to give details to support. A bunch of other little
3 clues that we all just do automatically that we don't
4 realize. And when we hear something coming from the
5 witness stand, and, of course, understood it's rehearsed.
6 It's been said many, many times over and over and over to
7 different people, things of that nature. Okay? So
8 they've have some practice at it. Okay? But still
9 little things like willingness to answer questions and
10 answering a question and explaining when necessary. The
11 consistency of the details provided. Are those details
12 consistent with themselves and consistent with the other
13 details that other witness provide? Those are the little
14 things that help you make those decisions. Is that a
15 hundred percent believable, and can I use that, whatever
16 I heard, to convict a man? Serious crimes.

17 Now, I apologized at the beginning, and I told you
18 your job is the toughest in the courtroom. And if you
19 didn't believe me then, maybe you believe me a little
20 more because I'm making eye contact with you, and I'm
21 trying to tell you all the details. I'm trying to be as
22 credible as I can. It's tough. It's tough. And I don't
23 want to change places with any of you to make these
24 decisions. I would if I had to, but I sure wouldn't
25 volunteer for it.

1 Ebon comes forward and he says, "It was a
2 conspiracy. It was a plan. I went along with it. I'm
3 stupid." Okay? And he didn't make this up last night or
4 his attorney and he didn't say, well, that sounds good.
5 Let's see if that floats. Okay? He went to the bond
6 hearing the next day. And he says, "Judge, you know,
7 here's what happened. I mean, y'all are charging me with
8 armed robbery and kidnapping and that kind of stuff. No.
9 Look, look. We planned it." Okay? And he was up late
10 because this thing happened three o'clock in the morning.
11 It was probably four, five o'clock, six o'clock a.m.
12 before he got to the jail. Whether or not he had any
13 sleep. Then he goes in front of a judge for a bond
14 hearing. Okay? That ain't a whole lot of time to flesh
15 out the details. And the details have been consistent --
16 okay -- throughout. And that helps you kind of say,
17 well, maybe he is telling the truth.

18 He has a conviction for strong-arm robbery from a
19 2002 incident that he pled to in 2007 that he served
20 twelve years on. That's not something you want to have
21 to tell people. But he had no compunction, he had no
22 reservation about telling you that.

23 His Honor will tell you the fact that he pled to a
24 crime before has no relevance, evidentiary value, on
25 whether or not he committed this offense this time. But

1 he knows we're all human. And this is what they'll say.
2 Hmmm, he's a two-time loser instead of a one-time. If he
3 did it then, he probably did it this time. Okay? And
4 that's not what the law permits. And that's what he
5 understands he's risking by coming in and telling the
6 truth. He didn't have to do that.

7 I stole a pack of gum when I was six years old from
8 a mini-mart -- it was actually called a mini-mart -- near
9 the house. Okay? That's not something I'm going to
10 voluntarily admit. Okay? It's shameful. I was a dumb
11 little kid. And ultimately the store caught me, and they
12 told my parents. And I got my butt whipped, and I got
13 privileges taken away, and I learned not to steal
14 anymore. The fact that I did that or not is not
15 something I want to come forward and tell to a jury who's
16 trying to determine whether you're an honest person or
17 not. Okay? But he does. It's shameful to him.

18 Now, with all that said, some attorneys could stand
19 here -- and I've seen them do it -- this witness said
20 this. That's a lie. And this. You can't believe that.
21 And this. Oh, that's impossible. And then the next
22 witness said this and that and this and that and this and
23 that. And I would be wasting your time doing that. I'm
24 not going to try to do that.

25 Please in your deliberations let everybody have a

1 voice. Some things that may be important to you may not
2 register with him or even be considered by her. Or you
3 were thinking about I wonder what's for dinner tonight.
4 Things of that nature. So please pay attention to each
5 other because you all have different capabilities and
6 abilities in determining what the truth is. That's the
7 ultimate decision in this case. What the truth is. And
8 I hope you will take that with your responsibility and
9 the gravity that it deserves and reach a verdict.

10 I'm not going to tell you what your verdict should
11 be. We're asking for a verdict of not guilty, or we know
12 you should find him not guilty. Okay? That's your job.
13 That's your job. And if the State has proven everything
14 that the law says, His Honor tells you, they're required
15 to prove, then you find him guilty. If you have a doubt,
16 as His Honor will tell you, about what the facts are,
17 what happened, what took place, then it's your
18 responsibility to find him not guilty.

19 Please, take your time with your verdict. Thank
20 you.

21 CLOSING ARGUMENT

22 BY MR. THOMAS:

23 Ladies and gentlemen, Mr. Long has told you that we
24 have a tangled web here. I really couldn't disagree
25 more. Now that the defendant has taken the stand and

1 given his version of what's going on, I think that the
2 State and the Defense agree on just about everything.
3 They agree on the gun. They agree on the tape. They
4 agree on the sequence of events. They agree on where
5 everybody was and everything that happened.

6 I'd like to take a minute just to go through some of
7 the evidence. I'm not going to go through it all. I'm
8 not going through witness by witness, but just some of
9 the things that stood out to me as the trial went on.
10 And the first of that was the victims' testimony, the
11 first two witnesses the State called, the victims in this
12 case, Shaun and Rebecca. Were their stories consistent?

13 When you're looking at somebody's credibility,
14 you're looking at does the story make sense. Is the
15 witness credible? Are they believable, or did their
16 story make sense? Was it consistent with one another's
17 story? From the minute details, if you look at the
18 evidence, their stories were exact. The only difference
19 I noted was I believe Shaun said when he first saw
20 Rebecca taped up, they were in the back. Rebecca said it
21 was in the front. That's the only detail. And that's
22 impressive. This is a ten-month-old case. These
23 witnesses were sequestered while one another testified.
24 And from that whole night, that whole stressful
25 situation, that one detail is the difference in their two

1 stories?

2 Compare that now to the defendant's story -- which,
3 by the way, I heard for the first time here today -- the
4 story that it was a conspiracy to rob the Wendy's, that
5 he met these victims at a gas station. He's not sure
6 what gas station it was. One of those gas stations out
7 there. They didn't talk by phone, but he just would run
8 into them because he was selling them drugs. You have to
9 try to smear the victims now. That they just kind of had
10 this plan that over the weekend he was going to stop by
11 and they were going to do this fake robbery. So one
12 night he just stops by after the store closes.

13 How does Rebecca tape up her own hands, according to
14 his own words? Now, Mr. Long's talked a lot about the
15 tape in this case. Which the tape can go back with you.
16 And y'all are welcome to stretch it out. I don't see any
17 point in -- the defendant himself has said, yeah, the
18 tape was involved. I made Rebecca tape up her hands.
19 And this, I guess, is just all to make it look real.
20 Well, Shaun and Rebecca work at Wendy's. They know
21 there's not a video camera there at the Wendy's.

22 The defendant's convicted of a violent felony. He's
23 not allowed to carry a handgun. Why are you going to
24 risk carrying a handgun around when you're a convicted
25 felon? There's no video camera there. What's even more

1 flawed about the plan is that there's no cash that they
2 can even get to. You think Shaun and Rebecca would know
3 that? I guess, I mean, was Shaun and Rebecca trying to
4 set this guy up? Is that what the Defense is trying to
5 say? I don't know. I don't know. But I will say that
6 Shaun and Rebecca's stories have been consistent from the
7 beginning. They were consistent when they testified here
8 yesterday. They were also consistent with the other
9 evidence that you saw in this case. They're consistent
10 with the physical evidence.

11 Let's talk about the alarm system. You heard from
12 James Royster, the G.M. of Wendy's. He got a call from
13 that alarm company that night. So did the store, got
14 calls from the alarm company. If this was some plan, as
15 the defendant said, you think maybe they'd get the alarm
16 code right. You might also think that you wouldn't
17 change clothes with one of your co-conspirators, leave
18 him in a bathroom with nothing but a light undershirt and
19 try to go out leaving a trail of all of your crap all
20 behind, your gloves that you're wearing because you don't
21 want fingerprints on a gun, your clothes, your black
22 jacket that you're wearing, your hat that you're wearing.
23 You're going to leave all that behind, hide the gun and
24 try to go out as a Wendy's personnel when the person that
25 actually works at Wendy's is back in the back room.

1 Wouldn't it make more sense just to have Shaun or Rebecca
2 explain to the police officers that they were in the
3 business after hours, everything's fine with everybody?

4 We also had officers testify. I think we had three,
5 I believe, I called that actually saw the defendant in
6 the Wendy's. They didn't see Rebecca or Shaun in the
7 Wendy's. And that's because they're in a back room just
8 like they testified. They were taped up in the back room
9 when the defendant initially learned he wasn't getting
10 any money out of this and tried to bail.

11 All the doors were surrounded by law enforcement.
12 You heard Officer Adams say he was at the side door,
13 probably the door with the best view. He sees the
14 defendant with the gun in his hand. He describes the
15 gun, the same gun that they end up finding in that
16 Wendy's, the same gun that Mr. James Royster points out
17 to law enforcement, the same gun that's into evidence
18 right now. That'll be back for y'all to examine.

19 We had Officer Reisinger who saw the defendant two
20 times, first at the side door. He saw the defendant take
21 a bolt for the back. He runs around the back side, sees
22 the defendant open the door and close it again.

23 We had Officer Johnson who was at the front door.
24 He was the one that had a somewhat obstructed view of the
25 defendant, but identified him, identified the black

1 jacket.

2 Let's also talk about motive. Now, before the
3 defendant got up here and started telling his story, Mr.
4 Long was asking the victims in this case a lot about
5 whether they took any time off work or were they trying
6 to get some medicine through this whole ordeal. Mr. Cain
7 took one week off of work after this incident and went
8 straight back to work. The man's still working at
9 Wendy's today.

10 A couple things I noticed touching on Mr. Cain and
11 his testimony. I don't know if y'all caught this or not.
12 When Mr. Long asked Mr. Cain where he lived now, where he
13 was working now, there was a bit of a pause there because
14 Mr. Cain didn't want to tell him. He told you he had to
15 leave the dadgum area. He didn't want to tell him where
16 he left to. And I was trying to think of an objection,
17 but I didn't have one. The man leaves the area and then
18 has to come to court and say where he's living now, where
19 he's working now.

20 Finally, is the story believable when we're talking
21 about credibility? Listen, you heard from the victims in
22 this case. You heard how their testimony coincides with
23 the testimony from the officers. And then you've heard
24 from the defendant. I think the defendant's story speaks
25 for itself. It's the only play he had. It's his Hail

1 Mary.

2 Another thing Mr. Long liked to touch on -- and
3 listen, Mr. Long's a good lawyer. He told you in the
4 beginning of this case he's been practicing law for
5 twenty-eight years. If this is a case about who's the
6 better lawyer, then I'm self-aware and know that I'm
7 probably not going to win this case. But this case is
8 about the facts, and it's about what happened on December
9 8th. So what he did in a lot of this trial, and I think
10 you probably noticed, is he cross-examined all the
11 State's witnesses a lot of times on some minute detail,
12 something that really didn't have much of a bearing on
13 the case at all. And what he's doing there is he's
14 fishing.

15 This case happened ten months ago. It's from --
16 we're talking six or seven different witnesses. They all
17 saw different things from different points of view. And
18 he's looking for whatever inconsistency you can grab to
19 latch onto. That's one of those leaves he's talking
20 about. He wants you to just concentrate on some little
21 leaf. I want you to look at the big picture. That's the
22 job here. Look at all the evidence together. What makes
23 sense? What doesn't?

24 He also talks about the gun not being sent off for
25 D.N.A. testing. And I told y'all in the beginning of

1 this case this isn't a whodunit. I mean, in this case,
2 the defendant admits he had the gun. By the defendant's
3 own admission and by the stipulations in this case, he's
4 guilty of possessing a firearm, a felon in possession of
5 a firearm. It's stipulated that he's a violent felon.
6 And he said himself he had the gun on him.

7 Now, that gun's been in evidence since December 8th,
8 2014. And there's no -- the burden is on the State to
9 prove that his D.N.A. is on that gun. That gun's been in
10 evidence. He could have sent it off or could have
11 requested that it get sent off for D.N.A. at any time.
12 They didn't do that. He says he had the gun.

13 And then touching just on the credibility of the
14 defendant again, Mr. Long wanted to commend the defendant
15 just on how forthcoming he was because he told you about
16 some prior record. Like I said, Mr. Long's a good
17 attorney. That prior record was coming in. What Mr.
18 Long did was he went ahead and addressed it during direct
19 so I didn't do it on cross. If he didn't have to tell
20 you, he wasn't going to tell you.

21 Ladies and gentlemen, unlike Mr. Long, I'm going to
22 ask you to find the defendant guilty of all four counts
23 that he's charged with today, one being the armed
24 robbery. That's of Shaun Cain. That's from taking his
25 clothes off his body, taking the cash out of his wallet

1 at gunpoint. Also, the kidnapping of Shaun and Rebecca.
2 Forced into the Wendy's at gunpoint, taped up. I mean,
3 that's just classic kidnapping right there.

4 We've touched on possession of a weapon by a violent
5 felon. Just by the defendant's own admission, he's
6 guilty.

7 Thank you for your service. Thank you for your
8 attention throughout this trial. Thank you.

9 CHARGE

10 BY THE COURT:

11 All right. Ladies and gentlemen, I remind you that
12 during this trial, you and I have certain duties to
13 perform. And as the trial judge, it's my responsibility
14 to preside over the trial of the case. And I also have
15 the duty to rule on the admissibility of the evidence
16 offered during this trial. And you are to consider only
17 the competent evidence before you. If there was any
18 testimony ordered stricken from the record in this case
19 during this trial, you must disregard that testimony.
20 You are to consider only the testimony which has been
21 presented to you from this witness stand, any exhibits
22 which have been made a part of the record in this case
23 and any stipulations, agreements of counsel.

24 I have the additional duty to charge you the law
25 applicable to the case. As the presiding judge I am the

1 sole judge of the law of this case. And it is your duty
2 as jurors to accept and apply the law as I now state it
3 to you. If you already have an idea as to what the law
4 is or what the law ought to be and it does not agree with
5 what I now tell you the law is, you must abandon that
6 idea because you are sworn to accept the law and apply
7 the law exactly as I state it to you.

8 In every case tried in this court before a jury, the
9 jury becomes the sole and exclusive judge of the facts in
10 the case, and a trial judge cannot comment on and
11 intimate, state or make any statement to a trial jury
12 about the facts in a case.

13 Since you, the jury, are the sole judge of the facts
14 in this case, you are not to infer from what I have said
15 during the progress of this case in ruling upon the
16 admissibility of evidence or otherwise or anything that I
17 say now during the course of this instruction to you that
18 I have any opinion about the facts in the case. The law
19 does not allow me to have an opinion about the facts in
20 the case. This is a matter solely for you, the jury, to
21 determine. As jurors, it is your duty to determine the
22 effect, the value, weight and truth of the evidence
23 presented during this trial.

24 Now, the indictments charge the defendant with armed
25 robbery, unlawful possession of a pistol and two counts

1 of kidnapping. I remind you that the fact that the
2 defendant was arrested, charged and indicted in this case
3 is not evidence in the case and cannot be considered by
4 you as evidence of guilt in this case, nor does it create
5 any presumption or inference of guilt. These documents
6 are simply the formal written instruments which contain
7 the charges made against the defendant. They are the
8 formal documents by which the case is brought into this
9 court.

10 The indictments in this case allege four different
11 offenses against the defendant. The charges are
12 indictment number 2015-GS-26-1888, armed robbery; 2015-
13 GS-26-1889, kidnapping; GS-26-1890, kidnapping again; and
14 GS-26-1891, unlawful possession of a pistol.

15 Each indictment charges a separate and distinct
16 offense. You must decide each indictment separately on
17 the evidence and the law applicable to it uninfluenced by
18 your decision as to any other indictment. The defendant
19 may be convicted or acquitted on any or all of the
20 offenses charged. You will be asked to write a separate
21 verdict of guilty or not guilty for each indictment.

22 Now, the defendant has pled not guilty to these
23 indictments. And that plea puts the burden on the State
24 then to prove the defendant guilty. A person charged
25 with committing a criminal offense in South Carolina is

1 never required to prove himself innocent. I charge you
2 that it is an important rule of the law that the
3 defendant in a criminal case, no matter what the
4 seriousness of the charge may be, will always be presumed
5 to be innocent of the crime for which the indictment was
6 issued unless guilt has been proved by evidence
7 satisfying you of that guilt beyond a reasonable doubt.

8 This presumption of innocence does not end when you
9 begin your deliberations, but it accompanies the
10 defendant throughout the trial until you reach a verdict
11 of guilt based on evidence satisfying you of that guilt
12 beyond a reasonable of doubt.

13 The presumption of innocence is like a robe of
14 righteousness placed about the shoulders of the defendant
15 which remains with the defendant until it's been stripped
16 from the defendant by evidence satisfying you of the
17 defendant's guilt beyond a reasonable doubt.

18 The presumption of innocence is not a mere legal
19 theory. It is not just a legal phrase. It is a
20 substantial right to which every defendant is entitled
21 unless you, the jury, are satisfied from the evidence of
22 the defendant's guilt, again, beyond a reasonable doubt.

23 Now, the State has the burden of proving the
24 defendant's guilt, as I said, beyond a reasonable doubt.
25 Some of you may have served as jurors in civil cases

1 where you were told that it is only necessary to prove
2 that a fact is more likely true than not true such as by
3 the greater weight or preponderance of the evidence.

4 In criminal cases, the State's proof must be more
5 powerful than that. It must be beyond a reasonable
6 doubt. Proof beyond a reasonable doubt is proof that
7 leaves you firmly convinced of the defendant's guilt.

8 There are very few things in this world that we know
9 with absolute certainty. And in criminal cases, the law
10 does not require proof that overcomes every possible
11 doubt. If, based on your consideration of the evidence,
12 you are firmly convinced that the defendant is guilty of
13 the crime charged, you must find the defendant guilty.
14 If on the other hand you think there is a real
15 possibility that the defendant is not guilty, you must
16 give the defendant the benefit of the doubt and find him
17 not guilty.

18 What is a reasonable doubt in the law? A reasonable
19 doubt is the kind of doubt that would cause a reasonable
20 person to hesitate to act.

21 Now, there are two types of evidence which are
22 generally presented during a trial, direct evidence and
23 circumstantial evidence. Direct evidence is the
24 testimony of a person who claims to have actual knowledge
25 of a fact such as an eye witness. It is evidence which

1 immediately establishes the main fact to be proved.

2 Circumstantial evidence is proof of a chain of facts and
3 circumstances indicating the existence of a fact. It is
4 evidence which immediately establishes collateral facts
5 from which the main fact may be inferred. Circumstantial
6 evidence is based on inference and not on personal
7 knowledge or observation.

8 The law makes absolutely no distinction between the
9 weight or value to be given either direct or
10 circumstantial evidence, nor is a greater degree of
11 certainty required of circumstantial evidence than of
12 direct evidence. You should weigh all of the evidence in
13 the case. After weighing all the evidence, if you are
14 not convinced of the guilt of the defendant beyond a
15 reasonable doubt, you must find the defendant not guilty.

16 Necessarily, you must determine the credibility of
17 witnesses who have testified in this case. Credibility
18 simply means believability. It becomes your duty as
19 jurors to analyze and to evaluate the evidence and
20 determine which evidence convinces you of its truth.

21 In determining the believability of witnesses who
22 have testified in the case, you may believe one witness
23 over several or several witnesses over one. You may
24 believe a part of the testimony of a witness and reject
25 the remaining part of the testimony of that same witness.

1 You may believe the testimony of a witness in its
2 entirety or reject the testimony of a witness in its
3 entirety. You may consider whether any witness has
4 exhibited to you any interest, bias, prejudice or other
5 motive in this case. You may also consider the
6 appearance and manner of a witness while on the witness
7 stand.

8 Now, you have heard evidence that the defendant was
9 convicted of a crime other than the one for which the
10 defendant is now on trial. This evidence may be
11 considered by you if you conclude it is true only in
12 deciding whether the defendant's testimony is believable
13 and for no other purpose. You may not, must not,
14 consider the defendant's prior record as any evidence of
15 the defendant's guilt on the charge we are trying today.

16 However, you will note that one of the defendant's
17 current charges is the possession of a pistol by a person
18 previously convicted of a crime of violence. The State
19 and the Defense have stipulated, agreed, that the
20 defendant has previously been convicted of kidnapping,
21 which is one of the statutorily violent crimes. This
22 stipulation is not an agreement that the defendant has
23 committed the offense of possession of a pistol by a
24 person previously convicted of a crime of violence, but
25 merely an agreement or stipulation that this particular

1 element of that offense has been proved. The State must
2 provide proof that convinces you beyond a reasonable
3 doubt of the remaining elements of that offense before
4 the defendant may be convicted.

5 The defendant is charged with armed robbery. In
6 order to prove this offense, the State must prove -- must
7 first prove beyond a reasonable doubt that the defendant
8 took personal property from the person or presence of
9 another person. Property is in the presence of a person
10 if it is within the person's reach, inspection,
11 observation or control so that the person could not, if
12 not overcome by violence or prevented by fear, keep
13 possession of the property. The State must also prove
14 beyond a reasonable doubt that the defendant carried the
15 property away intending to permanently deprive the owner
16 of the property and to keep the property for the
17 defendant's own use. The slightest removal of the
18 property or the complete possession of the property, even
19 for an instant, by the defendant is sufficient to show a
20 taking and carrying away of the property. The taking and
21 carrying away of the property must have been done with
22 violence or by putting the owner of the property in fear
23 of violence.

24 Finally, the State must prove beyond a reasonable
25 doubt that the defendant was armed with a deadly weapon

1 during the robbery. A deadly weapon is any article,
2 instrument or substance which is likely to cause death or
3 great bodily harm. Whether an instrument has been used
4 as a deadly weapon depends on the facts and circumstances
5 of each case.

6 The following are examples of instruments which may
7 be deadly weapons: a pistol, a shotgun, a rifle, a dirk,
8 a dagger, a knife, a slingshot, metal knuckles, a razor,
9 gasoline, a firebomb or Molotov cocktail or lighter
10 fluid. A gun may be a deadly weapon even if it is not
11 operated.

12 The defendant is charged with two counts of
13 kidnapping. The State must prove beyond a reasonable
14 doubt that the defendant knowingly and unlawfully seized,
15 confined, inveigled, decoyed, kidnapped, abducted or
16 carried away another person without authority of law. To
17 do a thing unlawfully is to do it willfully against the
18 law. Knowingly means with knowledge, consciously, not
19 accidentally. Seize means to take hold of suddenly or
20 forcibly. Confine means to limit, restrict or enclose
21 within the bounds, imprison or shut or keep in. Inveigle
22 means to lure, entice or lead astray by false
23 representations, promises or other deceitful means.
24 Decoy means to lure by or as if by decoy. A decoy is
25 something to entice a person into a trap.

1 Kidnap is to remove a person against their will by
2 unlawful force or by fraud. Abduct means to carry off
3 secretly or by force for an illegal purpose. Carry away
4 means to remove.

5 The State does not have to prove that the defendant
6 did all of these things. Instead, if you find beyond a
7 reasonable doubt that the defendant did any of these
8 things, you may find the defendant guilty of kidnapping.
9 Something done without authority of law is something
10 which the law does not sanction, permit, allow, condone,
11 or provide justification for. Kidnapping does not have
12 to be for any personal or monetary gain or for any
13 illegal purpose but may be for any reason whatsoever.

14 The defendant is charged with unlawful possession of
15 a pistol. In order to prove this offense, the State must
16 prove beyond a reasonable doubt that the defendant had
17 been convicted of a crime of violence and was in
18 possession of a pistol. A crime of violence includes the
19 crime of murder, manslaughter, rape, mayhem, kidnapping,
20 burglary, robbery, housebreaking, assault with intent to
21 kill or commit rape or rob, assault with a dangerous
22 weapon or assault with intent to commit any offense
23 punishable by imprisonment for more than one year.

24 Now, with that said, there are two possible verdicts
25 which you may reach on each indictment in this case,

1 guilty or not guilty. And let me tell you there's no
2 significance whatsoever in the order in which I state
3 these possible verdicts. It's simply that one must be
4 stated first.

5 Ladies and gentlemen, your verdict must be a
6 unanimous verdict.

7 Madam foreperson, when the jury agrees on the
8 verdict, you will write the verdict and sign your name as
9 foreperson. Then knock on the jury room door and inform
10 the bailiff that you have reached a verdict. At that
11 time, we will receive you back into the courtroom.

12 Now, I have provided a verdict form for each
13 indictment. And the verdict form simply says, for
14 example, as to the charge of kidnapping -- and we took an
15 opportunity to write "of Shaun Cain" on this particular
16 verdict form so you'd know which one we were talking
17 about. We, the jury, unanimously find the defendant --
18 and we have two verdicts and an instruction to circle
19 one. If you unanimously reach a verdict, please circle
20 that verdict, and the foreperson will sign it.

21 There is a similar verdict form for each indictment.
22 Okay? When you have reached your verdict, as I said,
23 knock on the door. Mr. Roth or one of our sheriff's
24 deputies will be there. And we will bring you back in.

25 Now, I'm going to have you return to your jury room

1 at this time. I ask you not to begin your deliberations
2 until I instruct you to do so. I may have additional
3 charges to give you. If that's the case, I'll bring you
4 back in and charge you. If I have no additional charges,
5 I will have the attorneys and the court reporter gather
6 the exhibits in this case. The exhibits will be brought
7 to you with a copy of my charge and the verdict forms.
8 That will be your signal that no other charge is
9 necessary and that you are to begin your deliberations.
10 Clear?

11 All right. Mr. Roth, would you segregate the two
12 alternates? Take the jury into the jury room and then
13 return so that I can tell you what we will need to do.
14 All right?

15 THE BAILIFF: Yes, sir.

16 (WHEREUPON, the jury exited the open court at
17 approximately 11:26 a.m.)

18 THE COURT: All right. Madam Court Reporter,
19 would you mark my charge as a Court's Exhibit? That does
20 go to the jury.

21 Mr. Long, would you like to look at the verdict
22 forms before we submit them?

23 MR. LONG: No, Your Honor.

24 THE COURT: Okay. Mr. Long, would there be any
25 additions or deletions, corrections to the charge?

1 MR. LONG: None, Your Honor.

2 THE COURT: Mr. Thomas?

3 MR. THOMAS: No, sir, Your Honor.

4 THE COURT: All right. Very well. Get
5 together, please, the exhibits that have been introduced,
6 and let's make sure that they go in.

7 And Madam Court Reporter, again, make sure that my
8 charge is marked Court's 1 and that it does go in.

9 MADAM COURT REPORTER: Court's 3.

10 THE COURT: Court's Number 3? Okay. Well,
11 whatever it is, it goes in.

12 MADAM COURT REPORTER: Okay.

13 (WHEREUPON, Court's Exhibit Number 3 was marked for
14 identification only after which the verdict forms
15 and exhibits admitted into evidence were delivered
16 to the jury to begin deliberations at approximately
17 11:29 a.m.)

18 (WHEREUPON, the alternate jurors were excused after
19 which court stood at recess awaiting the verdict of
20 the jury.)

21 THE COURT: Do you have the defendant here?

22 THE BAILIFF: They're bringing him up as fast
23 as they can.

24 MR. LONG: Your Honor, is it necessary for his
25 presence involving a question? I understand it's a

1 question?

2 THE COURT: Yes. But I want him here.

3 MR. LONG: Okay.

4 (WHEREUPON, the defendant entered the open court at
5 approximately 3:20 p.m.)

6 THE COURT: All right. I have what's styled as
7 a jury request from the foreperson. Number one, "a
8 transcript of the defendant's testimony." Of course, we
9 have no transcript, but we're happy to replay the
10 testimony for them.

11 Number two, "Did the State have knowledge of the
12 conspiracy theory victims' involvement?" So, of course,
13 the response to that will be -- unless I hear something
14 else from you, would be that they would have to reach any
15 conclusion concerning that from the evidence presented in
16 the case.

17 Mr. Thomas?

18 MR. THOMAS: I agree, Your Honor.

19 THE COURT: Mr. Long?

20 MR. LONG: No, sir, Your Honor. I agree.

21 THE COURT: All right. Bring in the jury.

22 MR. LONG: Are we going to replay his testimony
23 here in court, or would that be done back in the jury
24 room?

25 THE COURT: We'll do it in here.

1 MR. LONG: Okay.

2 THE COURT: Can you get that up fairly quickly?

3 MADAM COURT REPORTER: Probably, yes, sir.

4 I'll be working on it.

5 (WHEREUPON, the jury entered the open court at
6 approximately 3:25 p.m.)

7 THE COURT: All right. Madam Forelady, I have
8 two requests from you. First is for a transcript of the
9 defendant's testimony. We do not have a transcript, but
10 we're happy to replay that testimony for you. And that's
11 being prepared at this time.

12 The second is whether or not the State had knowledge
13 of the conspiracy theory. Let me tell you that the
14 evidence has been closed and may not be supplemented.
15 You may draw any conclusion that you wish from the
16 testimony which has been presented to you from the
17 witness stand, but it may not be supplemented. And I
18 cannot comment on it. All right?

19 Now, are you ready to hear the defendant's
20 testimony?

21 (WHEREUPON, the jurors nodded their heads up and
22 down in the affirmative.)

23 THE COURT: If at any time during -- we'll be
24 happy to do it all. But if at any time you have reached
25 the point where you have heard what you need to hear,

1 just raise your hand, let us know, and we can stop it.
2 Or we can play it all for you. Okay?

3 Madam Court Reporter, as soon as you are ready.

4 (WHEREUPON, the defendant's testimony was replayed
5 for the jury during which Court's Exhibit Number 4
6 was marked for identification only.)

7 THE COURT: Is that it, Madam Forelady?

8 MADAM FORELADY: Yes, sir.

9 THE COURT: Thank you very much. Take them
10 back to their jury room, please.

11 (WHEREUPON, the jury exited the open court at
12 approximately 4:12 p.m.)

13 THE COURT: All right. We're at ease.

14 (WHEREUPON, the court stood at recess awaiting the
15 verdicts of the jury.)

16 THE COURT: All right. Everybody's here.
17 Let's bring our jury in.

18 (WHEREUPON, the jury entered the open court at
19 approximately 9:14 p.m.)

20 THE COURT: All right. We have our twelve
21 jurors back in the court. I would like for the record to
22 reflect that I have previously, prior to deliberations,
23 excused the alternates.

24 Now, Madam Forelady, it's my understanding that you
25 have reached a verdict. Is that correct?

1 MADAM FORELADY: Yes, we have, Your Honor.

2 THE COURT: Would you please give the verdict
3 to the clerk of court or the bailiff? And he can deliver
4 it to the clerk of court.

5 Let me see that first. Thank you.

6 All right. Madam clerk, will you publish the
7 verdict, please?

8 THE CLERK: Indictment number 2015-GS-26-1888,
9 State of South Carolina, County of Horry versus Ebon
10 Roberts, as to the charge of armed robbery, we, the jury,
11 unanimously find the defendant guilty.

12 Indictment number 2015-GS-26-1891, State of South
13 Carolina, County of Horry versus Ebon Roberts, as to the
14 charge of unlawful possession of a pistol, we, the jury,
15 unanimously find the defendant guilty.

16 Indictment number 2015-GS-26-1890, State of South
17 Carolina, County of Horry versus Ebon Roberts, as to the
18 charge of kidnapping, we, the jury, unanimously find the
19 defendant guilty.

20 Indictment number 2015-GS-26-1889, State of South
21 Carolina, County of Horry versus Ebon Roberts, as to the
22 charge of kidnapping, we, the jury, unanimously find the
23 defendant guilty.

24 Dated September 16th, 2015, signed by the
25 foreperson, Mary Dunham.

1 Ladies and gentlemen of the jury, if this is your
2 verdict, so signify by raising your right hand.

3 (WHEREUPON, all jurors' right hand was raised.)

4 THE COURT: And may the record reflect that
5 each juror has in fact indicated that is their verdict.

6 Mr. Long, will there be a request for individual
7 polling of the jury?

8 MR. LONG: No, Your Honor.

9 THE COURT: Very well. Thank you. Is there
10 any reason -- or Mr. Long, would you like to make any
11 post-trial motions?

12 MR. LONG: Yes, Your Honor. First, to the
13 jury, thank you for your hard work. Minds differ, but
14 you have found your verdict. Mr. Roberts, you have given
15 him a fair trial. You have fully listened to the
16 evidence, and that's all we could ask for.

17 Your Honor, for the record, we would move for a new
18 trial, for a mistrial. I don't think there's anything I
19 could put on the record, Your Honor. There is evidence,
20 as you have stated. There's overwhelming evidence. But
21 just for the record, we would move for, notwithstanding
22 the verdict, a new trial or not guilty notwithstanding
23 the verdict.

24 THE COURT: And Mr. Long, I appreciate your
25 zealous representation of your client. I appreciate your

1 motions. However, this record is replete with evidence
2 for this verdict. I think the verdict reached by the
3 jury after some approximately ten hours of deliberation
4 ---

5 MR. LONG: Yes, sir.

6 THE COURT: --- is certainly justified by the
7 evidence. And I would respectfully deny your motion.

8 MR. LONG: Thank you, sir.

9 THE COURT: All right. Any reason why we
10 should not proceed with the sentencing?

11 MR. THOMAS: No, Your Honor.

12 THE COURT: All right. Now, Mr. Thomas, I will
13 hear from you on the matter of life without parole.

14 MR. THOMAS: Your Honor, we served the
15 defendant with notice of life back on August 31st, 2015.
16 The State made a very reasonable plea offer to the
17 defendant prior to this trial, as Your Honor is aware.

18 As far as the prior record goes, the charges that
19 support the life without parole are the 2007 kidnapping
20 and strong-arm robbery. In 2004, he has five counts of
21 criminal conspiracy, Your Honor. Those were originally
22 all armed robbery and kidnapping charges that were pled
23 down to criminal conspiracy.

24 THE COURT: Let me ask you this. The statutory
25 basis for life without parole is a prior most-serious

1 offense. Now, is that the kidnapping?

2 MR. THOMAS: Correct, Your Honor.

3 THE COURT: All right. And that kidnapping has
4 been stipulated in this record for the purposes of trial.

5 Mr. Long, would you challenge that for the purposes
6 of sentencing?

7 MR. LONG: Your Honor, my client informs me
8 that he does in fact challenge that kidnapping
9 conviction.

10 THE COURT: All right. It's my understanding
11 that the State has already made a part of this record the
12 sentencing sheet, a certified copy of the sentencing
13 sheet, which was entered as a Court's Exhibit, as Exhibit
14 Number ...

15 COURT REPORTER: 2.

16 THE COURT: ... Number 2.

17 COURT REPORTER: It's originally State's 11.

18 THE COURT: Excuse me. State's Number 11. And
19 by stipulation, it was not entered as a State's Exhibit
20 but was entered as a Court's Exhibit not to go to the
21 jury because of comments made on that sentencing sheet.

22 Mr. Long, what says the Defense concerning that
23 issue?

24 MR. LONG: The Court's indulgence one moment.

25 THE COURT: The record would reflect that he

1 was convicted on indictment 2004-26-3184 on October the
2 10th, 2007, for the offense of kidnapping. Presiding
3 judge -- and I'm sorry. I cannot read the judge's name.

4 Ms. Lewis, can you tell me what signature that is?

5 THE CLERK: It looks like Judge Newman, but I'm
6 not positive. Just give me just a second. I can look it
7 up.

8 THE COURT: Thank you.

9 MR. LONG: Your Honor, my client informs me
10 that he doesn't have the resources of SLED or the FBI, so
11 he has no way or means of challenging or contesting that.
12 But as I understand, Your Honor, from the record, that
13 was a guilty plea; is that correct?

14 THE COURT: It is, Mr. Long. It was a guilty
15 plea as indicted, negotiated sentence of three years. I
16 have a certified copy of the record. There's been
17 testimony supporting that certification. We made it a
18 part of the record. And in addition, it has been
19 stipulated as part of the case-in-chief that he was
20 convicted of kidnapping on that date and under that
21 indictment. So I would so find.

22 Now, Mr. Long, do you contest the fact that, as
23 indicated on this sentencing sheet, that this was a most-
24 serious -- or kidnapping is a most serious violent
25 offense under the statute?

1 MR. LONG: Your Honor, the only question I have
2 as to its characterization is when the two-strike/three-
3 strike rule went into effect and whether this conviction
4 was prior to the enactment of the two-strike/three-strike
5 which would have made it a retroactive application.

6 THE COURT: All right. The statute, according
7 to the code § 17-25-45, was effective June the 11th of
8 2010.

9 MR. LONG: All right. Your Honor, this was a
10 2000 -- was it '4 conviction or '07 conviction.

11 THE COURT: It is, but this statute or this
12 offense, this present offense, was a December 8, 2004,
13 offense.

14 MR. LONG: Yes, sir.

15 THE COURT: Would you argue that it does not
16 apply or that the prior kidnapping does not apply?

17 MR. LONG: Your Honor, I would argue that the
18 prior kidnapping does not apply because it was prior to
19 the enactment of the two-strike/three-strike, as Your
20 Honor just disclosed. The three offenses that he was
21 convicted were all concurrent or concomitant offenses.
22 And I don't think the statute allows for two strikes
23 being comitant at the same time.

24 THE COURT: I understand that. But the
25 statute, that § 17-25-45, specifically states that

1 notwithstanding any other provision of law, except in
2 cases in which the death penalty is imposed, a conviction
3 or a most serious offense. Then you would agree that the
4 kidnapping as well as the armed robberies in this
5 incident case are all three most-serious offenses?

6 MR. LONG: Yes, Your Honor, per that
7 classification, I think they are specifically itemized
8 that those are the most serious.

9 THE COURT: Okay. And it goes on to say, a
10 person must be -- must be sentenced to a term of
11 imprisonment for life without the possibility of parole
12 if that person has either one or more convictions for a
13 most-serious offense or a federal out-of-state conviction
14 for an offense that would be classified as a most-serious
15 offense under this section or has two or more prior
16 convictions for a serious offense or a federal out-of-
17 state conviction for an offense that would be classified
18 as a serious offense under this section. So it is a two-
19 strike provision as it would apply to this defendant
20 because there has been -- and the Court has found that
21 there has been one or more prior convictions for a most
22 serious. And I do not consider anything other than the
23 kidnapping which would be classified as a most-serious
24 offense.

25 MR. LONG: Now, was that part of the omnibus

1 crime bill where they classified most serious, serious,
2 violent, non-violent, things of that nature? At the time
3 of this plea, was it so designated a most-serious
4 offense? I think it would behoove the State ---

5 THE COURT: Most-serious offense means murder
6 -- accessory for any offense enumerated under this item
7 that he was an accessory or an attempt of any offense
8 enumerated under the statute. And it includes murder,
9 attempted murder, voluntary manslaughter, homicide by
10 child abuse, aiding and abetting homicide by child abuse,
11 lynching first-degree, assault and battery by a mob
12 first-degree, assault and battery with intent to kill,
13 criminal sexual conduct first-degree, criminal sexual
14 conduct second-degree, criminal sexual conduct with
15 minors. And there's some exceptions, but they're
16 certainly not applicable here. Assault with intent to
17 commit criminal sexual conduct, kidnapping, conspiracy to
18 commit kidnapping, trafficking in persons, car-jacking,
19 and so forth. But clearly kidnapping as well as armed
20 robbery.

21 MR. LONG: And that was in effect at the time
22 of the 2004 kidnapping plea?

23 THE COURT: That is part of the statute for
24 life without parole.

25 MR. LONG: And so that would have been the 2010

1 enactment?

2 THE COURT: Yes.

3 MR. LONG: So they've gone back to 2004 and
4 said his conviction at that time has now become a most
5 serious for purposes of ---

6 THE COURT: It was classified as a most-serious
7 -- a violent most-serious offense under the prior
8 enactment. That was § 17-25-45.

9 MR. LONG: Okay. All right.

10 THE COURT: It is indicated on his sentencing
11 sheet.

12 All right. Then, Mr. Thomas, what is the State's
13 position on life without parole? Would it be a mandatory
14 sentence as to all three of the present most-serious
15 offenses?

16 MR. THOMAS: Yes, Your Honor. Under this
17 statute, it would be.

18 THE COURT: What do you say about that, Mr.
19 Long? Your client's looking, I believe, at three life-
20 without-parole sentences based upon his prior -- this
21 conviction and his prior conviction.

22 MR. LONG: Your Honor, to use the strike
23 analogy, you can't throw three strikes at the same time.

24 THE COURT: I understand.

25 MR. LONG: They have to be one by one by one,

1 And these same events, same occurrence, same incident
2 date resulting in multiple charges, a conviction, a
3 concurrent conviction, on those I don't think can be then
4 individualized and say those constitute three strikes or
5 two strikes for purposes of this rule.

6 MR. THOMAS: Your Honor, I agree with Mr. Long
7 on that. These three strikes would all count as one
8 strike.

9 THE COURT: I understand that. But are you
10 telling me he is subject to one sentence on all three
11 offenses?

12 MR. THOMAS: That's my understanding, Your
13 Honor.

14 THE COURT: Well, this is my position. That
15 each requires a sentence of life without parole albeit
16 they would be concurrent.

17 Now, there's also the matter of the unlawful
18 possession of a firearm or a pistol, which I believe
19 carries five years; is that right?

20 MR. THOMAS: Yes, sir, Your Honor.

21 THE COURT: All right.

22 Mr. Long, I'll hear from you on the matter of
23 sentencing. It's my opinion that it is mandatory, but I
24 will hear from you.

25 MR. LONG: Your Honor, the statute speaks for

1 itself. I'm not -- a Supreme Court justice can interpret
2 what the legislature intended. The only thing I can
3 argue is what my opinion is. My opinion may differ from
4 the expressed language of the statute itself.

5 As to sentencing, Your Honor, that pretty much takes
6 any argument, any mitigating circumstances, any decision
7 or authority on your part away as far as what you deem
8 appropriate or should deem appropriate under the
9 circumstances, whether it be more or less. And for that
10 reason, Your Honor, we would contend that it should not
11 apply. Your Honor should have the authority and
12 discretion to sentence accordingly as he sees fit. We
13 certainly would ask for that. A mandatory life is a
14 mandatory life, and that may or may -- and that certainly
15 does not offer any opportunity for the defendant to pay
16 his dues to society and hopefully return to society.

17 Your Honor, as to sentencing, if we were to be
18 sentencing under a discretionary sentence, you've heard
19 his testimony. You've heard what he said his life was
20 leading up to this. You've heard the fact that there was
21 no physical injury or harm or minor physical injury or
22 harm to anyone involved. And for those reasons, we would
23 argue for a discretionary sentence. But I think Your
24 Honor has ruled and said that you think it's mandatory.
25 I disagree. But you are Your Honor, and the statute is

1 as it says. And the Supreme Court has ruled on that.

2 THE COURT: All right.

3 Please stand, Mr. Roberts.

4 (WHEREUPON, the defendant stood.)

5 THE COURT: Mr. Roberts, this record is replete
6 with evidence to support your conviction. Let me tell
7 you what really concerns me about this case. You have
8 said that it was a conspiracy. That is your right to
9 come and present your defense, and you will not be
10 penalized for doing that. But let me tell you what
11 concerns me about this evidence.

12 There's no question that you entered the Wendy's
13 store. This jury has found that you entered with the
14 purpose of committing an armed robbery. You wore no
15 mask. You would have no way of knowing whether there was
16 going to be a video or whatever. I don't know if you
17 knew or not. But there's no question that you were going
18 to accost two people, and you did. And you were carrying
19 a gun. That leads me to conclude that you planned to
20 leave there with no witnesses. And but for the fact that
21 the prompt action of these police officers, these two
22 victims' lives were probably saved.

23 This is not your first rodeo. You knew what you
24 were doing, and you knew how to carry this out. Under
25 your version, there would have been no reason in the

1 world for you to bring a gun. Why would you bring a gun
2 if it was a conspiracy? You wouldn't need it.

3 In fact, what did they need you at all for if it was
4 a conspiracy? Why would they need you? What were you
5 there for? They could just tie themselves up and say, we
6 were robbed. You came there with a gun for a reason.
7 You brought it. You intended to use it, or you were
8 willing to use it. And I believe the sentence that you
9 deserve is the sentence that I'm about to give you.

10 That is on each of the more serious or the most-
11 serious offenses -- that's two counts of armed robbery --
12 or two counts of kidnapping and a count of armed robbery,
13 I sentence you to serve the balance of your life without
14 the possibility of parole.

15 As to the gun law violation -- as to the gun law
16 violation, the possession of a pistol, unlawful
17 possession of a pistol, I sentence you to five years. I
18 give you that. I give it to you consecutive. The other
19 three sentences are to run concurrent.

20 Good luck to you. Thank you, sir.

21 Remove him.

22 (WHEREUPON, the defendant exited the courtroom.)

23 THE COURT: Ladies and gentlemen of the jury, I
24 don't know when I've had a jury that worked harder than
25 you have. You deliberated for over ten hours. There can

1 be no question that you gave every consideration to this
2 defendant.

3 I told you when we began this trial that the
4 presentation of evidence in this case controlled by time-
5 tested and honored rules. One of those rules prevents
6 you from learning about his prior record and the things
7 that he had done because it might cause you to believe
8 that he did this too. Very few things that you could
9 know about. And they were for only limited purposes.
10 And I did everything I could to make sure that you
11 understood the limited purpose that you could apply to
12 it.

13 This defendant had engaged in very similar conduct
14 before. As I said, this was not his first rodeo, first
15 time something like this, very similar to this, had
16 happened.

17 Is that correct, Mr. Thomas?

18 MR. THOMAS: Three or four similar incidents,
19 Your Honor.

20 THE COURT: It was not proper for you to know
21 that. It was only proper for you to know that he had
22 been convicted of a more serious offense or a violent
23 offense and for you to consider it for the purposes of
24 whether or not to believe him. I think you gave him
25 every consideration based on the time that you have spent

1 on your deliberations. And I thank you for that. That
2 is what you are here for. That is why we have juries.

3 You've done your job. I want to thank you. We
4 could not resolve these cases without your presence.

5 I want to thank these lawyers for the work that
6 they've done. They did exactly what they were supposed
7 to do. Mr. Long and Mr. Thomas both represented their
8 positions admirably in this case. And we should be proud
9 to have them because without an attorney who can defend
10 the accused, there can be no prosecution. Without an
11 attorney to present and represent the State, there would
12 be no prosecution. So be proud of what the attorneys did
13 here. Be proud of what you did here.

14 And you're probably going to go home and you're
15 going to say, oh, my goodness. I heard that judge give
16 that poor man life without parole. That was a mandatory
17 sentence. That was mandatory. And it was mandatory
18 based upon his prior conduct, his prior conviction. We
19 did not put him in that position. He knew the position
20 he was in when he entered that Wendy's to commit an armed
21 robbery and he kidnapped these people. So we will not
22 have to worry about him for a while. He is where he will
23 need to be, and he will stay there.

24 Thank you again for your service. I'm proud of you.

25 Mr. Roth, make sure that they gather their things.

1 Your service has ended. Thank you very much. Hope
2 I see you out again.

3 (WHEREUPON, the jury exited the open court at
4 approximately 9:32 p.m.)

5 THE COURT: Thank you, gentlemen.

6 MR. THOMAS: Thank you, Your Honor.

7 THE COURT: Court's adjourned.

8 (WHEREUPON, court stood at recess in this case at
9 approximately 9:32 p.m.)

10 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1

CERTIFICATE OF REPORTER

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10

I, the undersigned Renee H. Tollison, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Horry County, South Carolina, on the 15th through 16th days of September 2015.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

12

13

14

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16

17

18

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

December 31, 2015

S/ Renee H. Tollison

Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Horry)ERON ROBERTS, #299062)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

17 7381

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in forma pauperis, it shall include an affidavit (attached as 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 Lee Correctional Institution, PO W. Sackley Highway, Bishopville, South Carolina 29010
2. Name and location of Court which imposed sentence Horry County Court of General Sessions, Conway, South Carolina
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-JS-26-01888, Armed Robbery
 - (b) 2015-JS-26-01889, Kidnapping

(c) 2015-93-26-01890; Kidnapping

5. The date upon which sentence was imposed and the terms of the sentence:

(a) September 16, 2015; Life without Parole

(b) September 16, 2015; Life without Parole

(c) September 16, 2015; Life without Parole

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes, I did.

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. February 15, 2017

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. 2017-UP-00085

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Denial of Effective Assistance of Trial Counsel

(b) _____

(c) _____

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

(a) Counsel failed to investigate the facts of the

(b) case; Counsel advised to Waive Preliminary

(c) Hearing; Counsel was laboring under Conflicting Int.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.

(d) any other petitions, motions or applications in this or any other Court? No.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No, they have not.

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) (10)(a), First Collateral Attack

(b)

(c)

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A

(b) your trial, if any? Yes, I was.

(c) your sentencing? Yes, I was.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes, I was.

(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. J. M. Long, III, Post Office Box 11606, Conway,
South Carolina, 29526

ii. Susan B. Hackett, Post Office Box 11589,
Columbia, South Carolina 29211

iii.

(b) the proceedings at which each such attorney represented you:

i. Trial and Sentencing

ii. South Carolina Court of Appeals

iii.

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

Based on the above, sentences VACATED
Convictions REVERSED and REMANDED for a
New Trial.

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

No, I am not.

17 7381

STATE OF SOUTH CAROLINA)

County of Horry)

VERIFICATION

I, ERON ROBERTS, #299002, 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.

Eron Roberts

SWORN to and subscribed before me this 11/06/17
 day of November, 17.

[Signature] (L.S.)
 Notary Public

My Commission Expires: 2/2/2027

FILED
 2017 NOV 9 AM 7:59
 CLERK OF COURT
 HORRY COUNTY, SC

FILED
 2017 NOV -9 AM 8:00
 CLERK OF COURT
 HORRY COUNTY, SC

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

17

7381

I, EBON ROBERTS, #299062, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, _____.

Notary Public

My Commission Expires: _____

FILED
CLERK OF COURT
HORRY COUNTY, SC
2017 NOV -9 AM 7:59

FILED
CLERK OF COURT
HORRY COUNTY, SC
2017 NOV -9 AM 8:00

ATTACHMENT

17

7381

4. d) 2015-95-26-01891; Possession of a
Weapon during the Commission of a
Violent Crime

5. d) September 16, 2015; five (5) years

FILED
HORRY COUNTY
2017 NOV -9 AM 7:59
KEENE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

FILED
HORRY COUNTY
2017 NOV -9 AM 8:00
KEENE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
Ebon Roberts,	)	Case No.: 2017-CP-26-7381
S.C.D.C. No. 299062,	)	
	)	
Applicant,	)	
	)	RETURN AND MOTION FOR MORE
v.	)	DEFINITE STATEMENT
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

HORRY COUNTY
 CLERK OF COURT
 2018 FEB 26 PM 2:23

In response to the application for post-conviction relief filed by Ebon Roberts (Applicant) on November 9, 2017, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the May 2015 term of the Horry County Grand Jury for armed robbery (2015-GS-26-01888), two counts of kidnapping (2015-GS-26-01889, -01890), and unlawful possession of a pistol (2015-GS-26-01891).

At around 3 A.M. on December 8, 2014, Rebecca Kennedy, an employee of the Wendy's in Conway, S.C., was sitting in her car outside the restaurant waiting on her co-worker and boyfriend Shaun Cain to finish closing the store. Tr. 60-61, 86. Applicant approached Kennedy's vehicle, presented a gun, forced himself into the back of the car, and duct-taped Kennedy. Tr. 60-61. When Cain approached the vehicle, Applicant jumped out, captured him, then forced Cain to grant entry into the restaurant's office, who deliberately mis-entered an access code in order to trigger a security alarm. Tr. 61, 86-88, 99-100. Applicant forced Cain to

crawl to the office, while Kennedy was made to follow by walking with her head down. Tr. 61, 91. Applicant duct-taped the two together and demanded money, but was frustrated by a largely inaccessible time-locked safe. Tr. 61-62, 91-92, 98. When security called the restaurant about the late entry, Applicant gave the phone to Cain, who deliberately gave an insufficient answer in order to raise an alarm. Tr. 62-63, 92. Applicant attempted to exit the Wendy's using Cain's uniform after realizing law enforcement was on scene, but the ruse was not successful, and Applicant was immediately taken into custody by Conway police. Tr. 63-65, 92-93, 97, 139-44, 156-58, 163-67. The weapon and duct tape were both recovered. Tr. 186-89.

J.M. "Buddy" Long, Esq. represented Applicant, and James Austin Thomas, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. Applicant proceeded to trial before the Honorable Larry B. Hyman and a jury. The jury found Applicant guilty as indicted on September 16, 2015. Pursuant to S.C. Code Ann. § 17-25-45, Judge Hyman sentenced Applicant to imprisonment for concurrent terms of life without parole for the armed robbery and kidnappings, and one consecutive term of five years for the pistol.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Susan B. Hackett, Esq. filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Roberts, Op. No. 2017-UP-085 (S.C. Ct. App. filed Feb. 15, 2017). The Remittitur was issued on March 3, 2017.

II.

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

1. "Denial of Effective Assistance of Trial Counsel"
 - a. "Counsel failed to investigate the facts of the case"

- b. "Counsel advised to waive Preliminary Hearing"
- c. "Counsel was laboring under Conflicting Interest"

Attached to and incorporated herein are the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records (including the entire trial transcript), and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth sufficient facts to “support each ground” or to explain with sufficient specificity the facts

upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Namely, the allegations set forth in the Application do not indicate to Respondent:

- Specifically what it is counsel failed to investigate; or
- Specifically the nature of the conflict of interest alleged.

Respondent respectfully submits that it is incumbent upon Applicant, *through counsel*, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP; Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

Respondent denies each allegation not expressly admitted, qualified, or explained.

VII.

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

February 23, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

2017-CP-26-7381

EBON ROBERTS, #299062)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

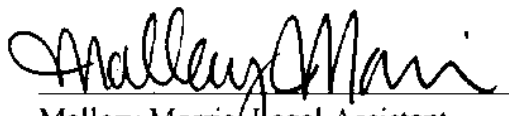
Respondent.)

RECEIVED
CLERK OF COURT
HORRY COUNTY, SC
2018 FEB 26 PM 2:22
HORRY COUNTY

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 for More Definite Statement** and in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Matthew S. Swilley, Esquire
Swilley Law Firm, LLC
300 Rainbow Drive; Suite 205
Florence SC 29501

DATED this 23rd day of February, 2018.


Mallory Morris, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
2 COUNTY OF HORRY) CASE NO. 2017-CP-26-7381
3 PCR HEARING
4

5 -----

6 November 14, 2019

7 BEFORE: The Honorable George M. McFaddin, Jr.

8 -----

9
10 Ebon Roberts, SCDC 299062,
11 Applicant,
12 vs.
13 State of South Carolina,
14 Respondent.
15

16 -----

17
18 APPEARANCES:

19 Matthew S Swilley, Esq.
20 For the Applicant.

21 Jacob A. Isenberg, Esq.
22 For the Respondent.

23 Official Court Reporter,
24 Cynthia D. Weaver
25

1	I-N-D-E-X	
2	<u>WITNESS</u>	<u>PAGE</u>
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8	J. M., "Buddy", Long	
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E-X-H-I-B-I-T-S

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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: Yes, sir.

3 MR. ISENBERG: Good morning, Your Honor. We're
4 calling the applicant from his cell now, sir.

5 THE COURT: Yes, sir.

6 MR. ISENBERG: Thank you for giving us some time.

7 THE COURT: Sure.

8 Yes, sir.

9 MR. ISENBERG: Good morning, Your Honor.

10 May it please the Court?

11 The first case of the day is Ebon Roberts versus
12 The State of South Carolina. It's Case
13 Number 2017-CP-26-7381.

14 This case is based on an application filed by Ebon
15 Roberts, the Applicant, on November 9th, 2017.

16 I'll proceed forward with the procedural issues at
17 this point. He's currently confined in the South Carolina
18 Department of Corrections. Pursuant to Orders of Commitment
19 in the Horry County Clerk of Court, he was indicted at the
20 May 2015 term of the Horry County Grand Jury for armed
21 robbery, two counts of kidnapping, and unlawful possession
22 of a pistol.

23 Buddy Long represented him and James Thomas of the
24 Fifteenth Circuit Solicitor's Office prosecuted the case.
25 He proceeded forward with a trial before the Honorable Larry

1 B. Hyman and a jury. The jury found him guilty as indicted
2 on September 16, 2015. Pursuant to South Carolina Code
3 Annotated 17-25-45. Judge Hyman sentenced him to
4 imprisonment for concurrent terms of life without parole for
5 the armed robbery and kidnappings and one consecutive term
6 for five years for the pistol.

7 He filed a timely notice of appeal. And the
8 appeal was directed -- I'm sorry -- perfected by Susan B.
9 Hackett pursuant to Anders v. California. The
10 South Carolina Court of Appeals dismissed it by an
11 unpublished opinion. And that's State v. Roberts
12 2017-UP-085. The Remittitur was issued on March 3, 2017.

13 And it's the State's understanding that
14 Mr. Roberts has filed an amended application in this case.

15 So with that being said, I will let opposing
16 counsel, Mr. Swilley, proceed forward with their case.

17 THE COURT: Mr. Swilley, sir.

18 MR. SWILLEY: Thank you, Your Honor.

19 Your Honor, actually I filed one amended
20 application for Post Conviction Relief earlier this last
21 week and earlier this week I filed a subsequent one. Your
22 Honor, I have seven grounds with which we're presenting to
23 the Court today in Paragraph 10 of the application for Post
24 Conviction Relief.

25 And, Judge, I just want to make sure that you're

1 looking at the right one. I sent the -- I sent the
2 subsequent one in two days ago. I don't know if it's
3 reached the Clerk's office.

4 THE COURT: November 12th?

5 MR. SWILLEY: Yes, sir. There should be -- it
6 should go all the way down and Number 10 should go all the
7 way down to Subsection G.

8 THE COURT: Well, I have one clocked in on
9 November 12th, 2019 at 2:20 p.m -- it looks like 1420 -- and
10 it goes down to F?

11 MR. SWILLEY: Yeah, that was the one I sent last
12 week, Judge. I sent in another one, I believe, probably was
13 on Tuesday. I notified PCR -- or counsel for the State, and
14 it just adds, just one more subsequent ground that trial
15 counsel was ineffective for failing to interview and call as
16 a witness Officer Michael Cavallini, with the City of Conway
17 Police Department.

18 THE COURT: Okay. I'm ready, sir.

19 MR. SWILLEY: All right. Thank you, Your Honor.

20 Your Honor, we call Michael Cavallini to the
21 stand.

22 THE CLERK: Do you solemnly swear or affirm that
23 the testimony you're about to give the Court in this case is
24 the truth, the whole truth, and nothing but the truth, so
25 help you God?

MICHAEL CAVALLINI - DIRECT BY MS. SWILLEY

1 THE WITNESS: Yes, ma'am.

2 THE CLERK: Please have a seat and state your name
3 for the Court.

4 THE WITNESS: Yes, ma'am. My name is Michael
5 Cavallini.

6 MICHAEL CAVALLINI, being first duly
7 sworn, testified as follows:

8 DIRECT-EXAMINATION

9 BY MR. SWILLEY:

10 Q. Mr. Cavallini, are you familiar with why you're
11 here today?

12 A. Yes, sir, I am.

13 Q. Okay. With whom were you employed back on
14 December 8th of 2014?

15 A. I worked for the Conway City Police Department.

16 Q. With whom are you employed now?

17 A. Coastal Carolina University Police Department.

18 Q. Okay. And, Mr. Cavallini, do you recall what
19 happened in the early morning hours of December the 8th of
20 2014?

21 A. Yeah. Yes, sir, I do.

22 Q. Were you on duty that day?

23 A. Yes, sir.

24 Q. Okay. And, based upon your recollection, can you
25 tell me what you recall -- what you recall observing at the

MICHAEL CAVALLINI - DIRECT BY MS. SWILLEY

1 Wendy's fast food restaurant that morning?

2 A. Yes, sir. I was on patrol. I was in my vehicle
3 and I was traveling east on Ninth Avenue. I was en route to
4 the police department, I believe, to turn in some paperwork.
5 And I peeked over to my right, which would have been the
6 back of the Wendy's parking lot, and I saw three people
7 standing out back there. At the time I just assumed
8 employees closing, car trouble, something to that nature.

9 So I made a right-hand turn to enter the parking
10 lot and then I saw the three people kind of hurrying into
11 the back of the store. And as I approached and got into the
12 parking lot, I saw a gentleman with a pistol to the back of
13 another person, it looked like he was having him manipulate
14 the alarm.

15 Q. Was that inside of the store?

16 A. Yes, sir, it was inside of the store, manipulating
17 the alarm. It looked like an alarm inside of the store.

18 Q. Okay. Please go on. Tell me what happened next.

19 A. And at that point I had about eight years of
20 experience in law enforcement and it appeared to me we had
21 an armed robbery. I could see the gun.

22 Q. Okay.

23 A. So I pulled out of the store parking lot and
24 notified dispatch what was going on. You don't want to be
25 too close in an armed robbery situation. They teach you

MICHAEL CAVALLINI - DIRECT BY MS. SWILLEY

1 that at the academy. You don't want to create a hostage
2 situation. So I don't -- I think I pulled into the BI-LO.
3 I'm not even sure if it's a BI-LO anymore. And I
4 repositioned to watch the front of the Wendy's as other help
5 arrived.

6 Q. Okay. Tell me what transpired after that.

7 A. Most of the county police assisted us, Conway, and
8 just perimeters were set up. I maintained my front, I
9 believe I was there the whole time. You know,
10 four-and-a-half years ago. Mr. Roberts was eventually
11 arrested and I transported him to the jail.

12 Q. Okay. And Officer Cavallini, I just want to
13 clarify, just for the record, when you first pulled in, you
14 saw these three individuals out in the parking lot; is that
15 correct?

16 A. Near a red car, I believe, I indicated in the
17 report. I think it was a P.T. Cruiser, a red one, I believe
18 is what I put.

19 Q. And then you said -- I think you said you saw
20 them -- you observed them kind of hurriedly or quickly run
21 into the building; is that right?

22 A. I don't know -- I wouldn't necessarily say if it
23 was a run, but it was a -- they were entering very quickly,
24 maybe a fast walk would be the best way to describe it from
25 what I recall.

MICHAEL CAVALLINI - DIRECT BY MS. SWILLEY

1 Q. And at that time, as they were outside in the
2 parking lot, you didn't see a firearm at that time, did you?

3 A. Not in the parking lot, no, I did not at that
4 time.

5 Q. Okay.

6 THE COURT: Shh. Who's talking in the back? Who
7 is it?

8 WOMAN: It was me, sir.

9 THE COURT: All right, ma'am. I'm going to ask
10 you to please be quiet. If I'm to give him a good and fair
11 hearing, I've got to be able to hear ---

12 WOMAN: Yes, sir.

13 THE COURT: Wait a minute, let me finish. I've
14 got to be able to hear everything that's said by these
15 witnesses. Now, if you're talking or someone else is
16 talking, I can't do that.

17 WOMAN: Yes, sir.

18 THE COURT: So I'm going to ask you not to do that
19 anymore, okay?

20 WOMAN: Yes, sir. I apologize, sir.

21 THE COURT: All right, ma'am.

22 Move on, sir. Thank you.

23 BY MR. SWILLEY:

24 Q. And Officer Cavallini, just so I'm clear, when you
25 saw these three people briskly walk into the Wendy's, about

MICHAEL CAVALLINI - DIRECT BY MS. SWILLEY

1 how far away from you were -- how far were you from them?

2 A. If I had to guess, sir, I would say it was
3 150 feet, 200 feet.

4 Q. Okay.

5 A. Less than 200 feet I would say.

6 Q. Okay.

7 A. Less than 200 feet.

8 Q. At that time, when you saw them run in, is that
9 when your suspicion was raised that something may be ---

10 A. Yeah, the first thing that popped in my mind, and
11 I can remember this was, the alarm must have just activated
12 as they were closing. And that's just the first thing I
13 thought, just employees, again, I thought it was employees.

14 Now, I'm thinking, to go back in that quickly, the
15 alarm was probably activated, something like that. That's
16 what I initially thought.

17 Q. And it appeared to be an armed robbery once you
18 looked inside the building?

19 A. Yes. Yes, when I saw the gun. Exactly.

20 Q. And Officer Cavallini, were you called as a
21 witness in the trial of the case of Mr. Ebon Roberts for
22 this incident?

23 A. I don't believe that I was. I might have been. I
24 had to go out of town for a funeral, if I recall correctly.
25 So I believe I made the necessary notifications that I

MICHAEL CAVALLINI - DIRECT BY MS. SWILLEY

1 couldn't be there. I don't remember, sir, to answer your
2 question, I don't remember if I was actually subpoenaed or
3 what from four years ago. I don't remember. But I do
4 remember notifying that I could not be there because of
5 having to go out of town.

6 Q. And Officer Cavallini, just so the record's clear,
7 you were not present at the trial, correct?

8 A. No, I did not. No, sir. No, I was not.

9 Q. Okay. Did anybody from the solicitor's office
10 ever talk to you about what happened that day or did y'all
11 discuss that case from what you recall?

12 A. I do not recall ever having any conversations,
13 sir. I don't remember having any.

14 Q. As far as the defense was concerned, did you ever
15 have any conversations on behalf of anybody from
16 Mr. Roberts's counsel about what you observed that day?

17 A. I don't believe so, sir.

18 Q. Okay.

19 MR. SWILLEY: One moment, please, Your Honor.

20 THE COURT: Yes, sir.

21 MR. SWILLEY: I have nothing further for this
22 witness, Your Honor.

23 THE COURT: All right. Yes, sir.

24 MR. ISENBERG: May it please the Court?

25 THE COURT: Yes, sir.

MICHAEL CAVALLINI - CROSS BY MR. ISENBERG

1 CROSS-EXAMINATION

2 BY MR. ISENBERG:

3 Q. Good morning.

4 A. Yes, sir.

5 Q. Thank you for being here today. You just
6 testified on direct that you saw three people behind the
7 Wendy's when you were passing by?

8 A. Yes, sir.

9 Q. Okay. And when you saw them, they -- you -- I'm
10 sorry, let me rephrase that. Let me rephrase that question.

11 When you saw these three individuals, did you
12 notice them look back at you or your vehicle?

13 A. I never noticed anybody looking at me.

14 Q. Okay. So in your opinion, they never saw you or
15 your car?

16 A. No, sir.

17 Q. Okay. But, even so, they walked back into the
18 Wendy's with the alarm on, correct?

19 A. I'm not sure about an alarm going off, sir, but
20 they did go back in the room very quickly.

21 Q. Okay. At what point did you hear the alarm go
22 off?

23 A. I never heard an alarm.

24 Q. Okay. I apologize for that. I must have
25 misinterpreted something.

MICHAEL CAVALLINI - CROSS BY MR. ISENBERG

1 And so you identified these people -- these three
2 people walk back in and then you immediately turned around
3 and went across the street?

4 A. Well, I pulled into the parking lot area at
5 Wendy's. And I saw -- what I said earlier, I saw three
6 people in there, looked like they were near an alarm. A
7 gentleman with a gun pointed at the back of another person.

8 Q. Okay. So you were able to identify a gentleman
9 with a gun pointed at another individual inside, correct?

10 A. Yes, sir.

11 Q. Okay. And had you been subpoenaed by the State or
12 the Defense you would have testified to that at trial,
13 correct?

14 A. Yes, I would've.

15 Q. Okay. And you eventually arrested the Applicant,
16 correct?

17 A. I transported him to the jail facility yes, sir.
18 I was the arresting officer. I don't necessarily remember
19 who physically put handcuffs on him. As I said, because
20 he -- there was a perimeter set up and I was not the one
21 that physically placed handcuffs on him, but I did transport
22 him to the jail. Yes, sir.

23 Q. Now, he wasn't wearing a hoodie or a mask when you
24 were transporting him, correct?

25 A. No, no mask.

MICHAEL CAVALLINI - REDIRECT BY MR. SWILLEY

1 Q. Okay. Was he wearing something like a hoodie or a
2 mask earlier on when you saw him first?

3 A. I believe he had on a hooded sweatshirt or a
4 hooded jacket is what I indicated in my paperwork. I don't
5 know that I ever saw a mask on anybody.

6 Q. Okay. Were you able to identify that was the same
7 sweatshirt that he was wearing when you were transporting
8 him?

9 A. I don't recall necessarily what he had -- from
10 what I remember, he had put on some Wendy's clothes at that
11 point. I don't remember what he had on exactly when I
12 transported him.

13 Q. Okay. But to the best of your knowledge, the
14 Applicant was indeed the person with the gun inside the
15 Wendy's, correct?

16 A. Yes, sir.

17 Q. And that's what you would have testified to at
18 trial?

19 A. Yes, sir.

20 Q. Okay.

21 MR. ISENBERG: No further questions.

22 MR. SWILLEY: Your Honor, just a few followups.

23 THE COURT: Yes, sir.

24 REDIRECT EXAMINATION

25 BY MR. SWILLEY:

MICHAEL CAVALLINI - RECROSS BY MR. ISENBERG

1 Q. And Officer Cavallini, just to clarify, at the
2 point where you apprehended Mr. Roberts, and I think there
3 was another individual with him at that time; is that
4 correct?

5 A. Like I said, I would -- I did not apprehend him.
6 Another officer was the one that cuffed him. When I got
7 over to them, he was already handcuffed.

8 Q. Okay.

9 A. I -- you know, because there was a perimeter,
10 there was numerous officers there, and I did not have,
11 necessarily, the backside coverage. I had to go to the
12 front of the store -- excuse me -- to watch the front of the
13 store.

14 Q. Yes, sir. And I think, just to clarify, at that
15 time when you were transporting him, he was wearing a
16 Wendy's uniform?

17 A. I think he still had it on, I believe he did. I'm
18 not one hundred percent sure.

19 Q. Thank you Officer Cavallini.

20 THE COURT: Cross, sir?

21 MR. ISENBERG: Just one question.

22 THE COURT: Yes, sir.

23 RECROSS-EXAMINATION

24 BY MR. ISENBERG:

25 Q. Were you in a marked or unmarked vehicle when you

MICHAEL CAVALLINI - RECROSS BY MR. ISENBERG

1 were passing by?

2 A. I was in a standard marked Conway City Police
3 Department vehicle.

4 Q. Okay. So in your opinion the average layperson
5 would have been able to identify that as a police car,
6 correct?

7 A. If they saw it, yeah. Yes, sir. They say
8 "Police" on them. And I believe it has the city logo on it,
9 as well.

10 Q. Okay.

11 MR. ISENBERG: No further questions. Thank you.

12 THE WITNESS: Thank you.

13 MR. SWILLEY: Nothing further, Judge, and I ask
14 that Mr. Cavallini be released from subpoena.

15 THE COURT: Okay. Any objection?

16 MR. ISENBERG: No objection, Your Honor.

17 THE COURT: Have a good day, sir. Thank you.

18 THE WITNESS: Thank you, sir.

19 MR. SWILLEY: Your Honor, I call Jefferson "Buddy"
20 Long.

21 THE CLERK: Do you solemnly swear or affirm the
22 testimony you're about to give to the Court in this case is
23 the truth, the whole truth, and nothing but the truth, so
24 help you God?

25 THE WITNESS: I do.

J.M. LONG - DIRECT BY MR. SWILLEY

1 THE CLERK: Please have a seat and state your name
2 for the Court.

3 THE WITNESS: My name is J.M. Long, III. I go by
4 Buddy.

5 J.M. LONG, III, being first duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SWILLEY:

9 Q. Good morning Mr. Long.

10 A. Good morning, Mr. Swilley.

11 Q. Mr. Long, in 2014 with whom were you employed?

12 A. Horry County Public Defender's Office.

13 Q. Okay. And as a public defender, were you
14 appointed Ebon Roberts?

15 A. Yes.

16 Q. To represent him?

17 A. Yes.

18 Q. Do you recall what charges he had at that time?

19 A. Yes.

20 Q. Can you, for the record, tell me what those were?

21 A. Two counts of armed robbery, two counts of
22 kidnapping, one unlawful possession of a firearm, I believe.

23 Q. Yes, sir. And do you recall exactly when you
24 first met with Mr. Roberts?

25 A. Not exactly, but it would have been shortly after

J.M. LONG - DIRECT BY MR. SWILLEY

1 his arrest.

2 Q. Okay. And was he incarcerated at that time?

3 A. Yes.

4 Q. Okay. Was he incarcerated the entire time you
5 represented him?

6 A. Yes.

7 Q. He never had bond?

8 A. Either bond was denied or bond was set so high he
9 couldn't post, I don't recall.

10 Q. Okay. And, Mr. Long, was there -- I want to ask
11 you about -- were there any plea negotiations that were made
12 to which you recall?

13 A. Yes.

14 Q. Can you tell me what those were?

15 A. I believe the plea offer from the solicitor was
16 for 25 years on a violent -- I think it was either one armed
17 robbery and one kidnapping. But that was the basis, that
18 was the extent of it.

19 Q. Okay. And that's -- that was the only plea offer,
20 I think, he ever received?

21 A. Correct.

22 Q. I'm sorry.

23 A. I believe so, yes.

24 Q. And you communicated that with Mr. Roberts?

25 A. Yes, sir.

J.M. LONG - DIRECT BY MR. SWILLEY

1 Q. And, Mr. Long, was there any communication between
2 you and Mr. Roberts about the LWOP Notice Provision?

3 A. I don't specifically recall. I don't remember
4 whether the solicitor served it or not. But I think this
5 would have been his third conviction for an armed robbery or
6 a violent robbery. I don't remember whether they actually
7 served the LWOP.

8 Q. Okay. Mr. Long, would it be -- would it be true
9 to say that in order for someone to be subject to the LWOP
10 provision, that they have to be served a notice with the
11 LWOP provision; is that correct?

12 A. Oh, certainly, yes.

13 Q. And I think these two -- or I guess the kidnapping
14 and the armed robbery, those are two-strike offenses, right?

15 A. Correct.

16 Q. Okay. So, and I think -- is it true -- if I'm
17 correct that Mr. Roberts actually had a previous kidnapping
18 conviction?

19 A. Kidnapping and either a strong armed robbery or
20 possibly an armed robbery.

21 Q. Okay. And -- well -- and strong armed robbery is
22 not a predicate to a three-strike offense; is it?

23 A. I don't believe so.

24 Q. Okay. And kidnapping is, right?

25 A. Yes.

J.M. LONG - DIRECT BY MR. SWILLEY

1 Q. All right. And did you apprise Mr. Roberts that
2 he was facing a potential mandatory life without parole if
3 he went forward?

4 A. I'm sure we discussed it.

5 Q. Okay. And, Mr. Long, let me -- let me just go
6 ahead and ask an open-ended question: What was -- when it
7 was decided that you were going to proceed to trial, what
8 was the theory of the defense?

9 A. He -- I don't recall whether it was the first
10 meeting or subsequent meetings -- told me that he and the
11 alleged victims were conspirators to rob the Wendy's. He
12 said that he knew them or they had bought dope from him or
13 something and he had planned with them to rob the Wendy's.

14 Q. And by "rob", do you mean steal from Wendy's?

15 A. Correct.

16 Q. Yes, sir. And as far as that theory of the case
17 goes, did you follow up with any investigation as it
18 pertained to that theory?

19 A. Yes.

20 Q. Okay. And can you tell me what you did as far as
21 a followup?

22 A. There were questions about the victims, okay, ever
23 having known Mr. Roberts. I got -- asked him to try to
24 describe, Okay, when, where, how, you know, things of that
25 nature. And he never could provide me with information

J.M. LONG - DIRECT BY MR. SWILLEY

1 concerning how he knew them. When he met with them. What
2 was discussed other than, like I say, they purchased drugs
3 from him, I think it was marijuana or something.

4 He said he told the police officers upon his
5 arrest what he was telling me. But it was not documented in
6 any of the incident reports, anything of that nature. That
7 he had said to them, Hey, they're in on it, they're --
8 they're co-conspirators.

9 Q. Okay. Mr. Long, did you receive a copy of the
10 Victim's Advocates Report along with your discovery; do you
11 recall?

12 A. I don't recall specifically, but if it was in the
13 package, I would have received it.

14 Q. Okay. And just back -- did you employ any
15 investigator or have any investigator with your office try
16 to interview any potential witnesses in the case?

17 A. There were none other than the two victims,
18 Mr. Roberts, and then the police officers.

19 Q. Okay. Did you -- did any -- did you ever send
20 anybody out or you, yourself, interview Shawn Cain and
21 Rebecca, the two alleged victims?

22 A. No, but we had their statements and provided them
23 in discovery.

24 Q. Okay. And did you try to interview anybody or
25 find anybody that could attest to -- any third party or

J.M. LONG - DIRECT BY MR. SWILLEY

1 third individual that could attest to Mr. Roberts knowing
2 these two people beforehand -- before the night at the
3 Wendy's?

4 A. That would have been something we discussed. I
5 don't recall him ever providing any names or locations or
6 dates or anything of that nature.

7 Q. Okay.

8 A. If he had, we certainly would have sent somebody
9 to talk to them.

10 Q. But you can't recall?

11 A. I don't recall.

12 Q. Okay. But would you agree with me that the
13 credibility -- in this case, the credibility of the victims,
14 then, was of paramount importance in the case?

15 A. It wasn't important as far as the State's case was
16 concerned, but it would have been important as far as the
17 Defense was concerned.

18 Q. Yes, sir. And when you cross-examined Ms. -- were
19 you given copies of NCIC reports for the two alleged
20 victims, Shawn and Rebecca?

21 A. I'm sure I probably was.

22 Q. All right. And do you recall impeaching any of --
23 impeaching either -- either witness with any conviction?

24 A. I don't recall. I don't remember if we had a
25 hearing on the record about whether or not any prior

J.M. LONG - DIRECT BY MR. SWILLEY

1 convictions they had would be admissible for impeachment or
2 not. The transcript will speak for itself, because it's
3 been four or five years ago.

4 Q. Yes, sir. And Mr. Long, did you -- if you had
5 known that Rebecca had a shoplifting conviction -- a
6 conviction for shoplifting, would you have impeached her
7 with that?

8 A. A 30-day misdemeanor shoplifting?

9 Q. Crime of dishonesty, yes, sir.

10 A. From how long ago?

11 Q. Over 20 years -- or '97. Would you have impeached
12 her with that?

13 A. I don't think I could if it was over 10 years, or
14 it wouldn't have met the standard over 10 years.

15 Q. Okay. So it's your understanding that the
16 shoplifting conviction would not have met the standard
17 under, I think, of the Rule 609?

18 A. Well, shoplifting itself would have, but I think
19 one that was over 10-years old might not have passed muster.

20 Q. And that's your understanding of the Rule?

21 A. Correct.

22 Q. Okay. And I think that, based upon your
23 recollection, isn't it true there was an issue as to a
24 conviction or charge pending with Mr. Cain, as well, Shawn;
25 is that correct?

J.M. LONG - DIRECT BY MR. SWILLEY

1 A. Well, if it was pending, it wouldn't be a
2 conviction, so.

3 Q. Well, I think there was a question as to whether
4 or not a pending charge -- there was a pending charge in
5 Florida or a conviction. Do you remember that issue?

6 A. No off the top of my head.

7 Q. Okay. Thank you.

8 And Mr. Long, did you -- do you recall ever
9 cross-examining any law enforcement officers about whether
10 or not they looked into if Mr. Roberts had known these two
11 Wendy's employees?

12 A. I don't recall. The transcript would speak for
13 itself.

14 Q. Okay, but you don't recall?

15 A. I don't recall.

16 Q. Okay. All right. I want to kind of segue into --
17 did you ever discuss -- was there ever, I guess, a
18 breakdown, in your opinion, of the attorney-client
19 relationship between you and Mr. Roberts before trial?

20 A. Mr. Roberts is an intelligent client. He's very
21 nice, but he is very demanding. And I think if he felt I
22 wasn't doing things fast enough, or getting him bond, or
23 getting this case called for trial, things of that nature --
24 I don't recall whether or not he moved to have me relieved
25 as attorney, or whether this was an issue that the Judge

J.M. LONG - DIRECT BY MR. SWILLEY

1 questioned him on and said, Okay, do you want to go pro se
2 and realize the handicap involved?

3 Yeah, there was some breakdown in some
4 communication ---

5 Q. Okay.

6 A. --- in that regard. And that was when we got
7 closer to trial.

8 Q. Did you ever have a conversation with Mr. Roberts
9 about his right to either have you represent him or proceed
10 pro se?

11 A. If that were an issue, I would have, yes.

12 Q. I mean, based on your recollection, did you have
13 that conversation?

14 A. I don't specifically recall.

15 Q. Okay. And you remember there was a -- before the
16 trial started -- I think there was a colloquy, if you will,
17 between Mr. Roberts and the Court; is that correct?

18 A. If it's in the transcript, then it occurred, yes.

19 Q. Well, I'm just asking from your recollection.

20 Do you believe that Mr. Roberts was -- based on
21 your recollection, do you believe that Mr. Roberts was
22 apprised of his right by the Court that he could represent
23 himself pro se if he wished, if his only option were to have
24 you represent him or proceed pro se?

25 A. The record would speak for itself, but that's what

J.M. LONG - DIRECT BY MR. SWILLEY

1 the Judge would have done, yes.

2 Q. Okay. But do you recall him specifically being
3 given that option by the Judge?

4 A. If that colloquy was taking place on the record,
5 yes, that would have been what the Judge would have advised
6 him.

7 Q. Okay. And do you -- did you ever -- at that
8 point, did you ever counsel Mr. Roberts that, you know, he
9 had the absolute right to represent himself under Faretta v.
10 California, if he didn't want to have you?

11 A. I don't know if I specifically did it, or the
12 Judge did it, or if both did it. I don't recall.

13 Q. Okay. I think you testified earlier that
14 Mr. Roberts had informed you that he had known these
15 individuals by him selling them, I guess, some marijuana or
16 something like that, on occasion, that's how he knew them?

17 A. Correct.

18 Q. All right. Did you cross-examine either
19 Ms. Harrington or Mr. Cain -- or, I guess, it was
20 Ms. Kennedy at the time -- about their drug use and drug
21 abuse?

22 A. I don't know if it would be admissible to question
23 them about their drug use or drug abuse. If I were able to
24 cross-examine and question them about whether or not they
25 knew Mr. Roberts because they had purchased drugs from him

J.M. LONG - DIRECT BY MR. SWILLEY

1 or used drugs with him or something, I could have gotten
2 away with it that way.

3 Q. Okay. And did you ever -- did you ever
4 cross-examine them about, you know, their drug use or their
5 drug use as it pertains to how it related with Mr. Roberts?

6 A. I don't recall. The transcript will speak for
7 itself.

8 Q. Okay. You don't recall.

9 And, in your opinion -- well, based on your
10 observation, I should ask, do you feel if that were to have
11 come in is that -- do that -- do you feel that would have
12 harmed their credibility with the jury?

13 A. You're asking me to speculate and the only thing I
14 can give you is an opinion that the jury determined they
15 were credible and Mr. Roberts was not, in so far as, his
16 defense is concerned.

17 They testified, I believe, that they didn't know
18 him, had never met him before, certainly had no involvement
19 with him, as far as drugs or planning or anything of that
20 nature. And Mr. Roberts testified that they did.

21 Q. Okay. So essentially would you agree that the
22 trial in and of itself was, I guess, a credibility contest
23 between Mr. Roberts and these two individuals, right?

24 A. That's what trials are, yeah.

25 Q. Right. And would you agree that anything --

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1 anything you could have done to impeach the credibility of
2 these two individuals would have assisted Mr. Roberts in the
3 case; is that correct?

4 A. If successful, yes.

5 Q. Okay. And Mr. Long, you've been trying cases for,
6 I think, what, 32 years?

7 A. Yes, sir, probably.

8 Q. Okay. And this wasn't your first trial that you
9 had, right?

10 A. No.

11 Q. Okay. I think you've been involved in criminal
12 defense for over 32 years, right?

13 A. Yes, sir.

14 Q. Okay. And there was no camera footage that was
15 ever placed into evidence of anything that transpired at the
16 Wendy's; is that correct?

17 A. Correct.

18 Q. Okay. So am I correct to say that all the jury
19 really had to go on -- all the evidence in the case that
20 could substantiate that these offenses did or did not occur,
21 was all testimonial, right?

22 A. Correct.

23 Q. Okay. And I think there was -- I don't think
24 there was ever a recorded interview with Mr. Roberts, was
25 there?

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1 A. I don't recall, but I don't think there was. I
2 think he, you know, stood on his Fifth Amendment grounds and
3 then did not give a statement.

4 Q. Okay. And you were never given any kind of
5 memorialized statement of Mr. Roberts, were you?

6 A. I don't believe so, no.

7 Q. And I believe the memorialized statements you were
8 given of Ms. Kennedy and Mr. Cain were written statements;
9 is that correct?

10 A. Correct.

11 Q. No audio or video statements were ever taken; is
12 that correct?

13 A. Not to my recollection.

14 Q. Okay. And I think, Mr. Long, at one point did you
15 arrange for Mr. Roberts to undergo a polygraph examination?

16 A. Yes.

17 Q. Okay. And did that -- did -- was he given a
18 polygraph?

19 A. I recall conversations about it. I don't know
20 whether or not we actually did it. I don't -- I know we
21 were offering to the solicitor's office to do it. In other
22 words, to try to prove his voracity with what he was
23 telling, as far as the defense is concerned. I don't know
24 whether the solicitor's office ever followed through on that
25 or just disregarded it.

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1 Q. If he was given a polygraph, would you have wanted
2 to be there?

3 A. Oh, certainly. I think, unless I was in a
4 conflict.

5 Q. And if he had been given one, would you have been
6 given a copy of the results?

7 A. Certainly.

8 Q. And so, just based on your recollection, you don't
9 recall, in fact, if he was ever polygraphed or not?

10 A. I don't recall. I remember we had conversations
11 and offered it to the solicitor's office, whether or not
12 they took us up on that or not, I don't recall.

13 Q. Okay. And you were here earlier when
14 Officer Cavallini testified today; is that correct?

15 A. That's correct.

16 Q. All right. Did you ever have any communication
17 with Officer Cavallini, I guess, really before today, about
18 the case?

19 A. No.

20 Q. Okay. And I think that -- Mr. Long, I think --
21 you recall Officer Cavallini testifying about the fact that
22 he saw -- the first time he saw a gun or anything was inside
23 the Wendy's?

24 A. Well, I had -- I think he filed two incident
25 reports concerning his activities that night. So we had

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1 detailed incident reports. They were multiple pages long,
2 two or three pages long.

3 Q. And now you recall -- you recall the testimony of
4 Shawn Cain and Rebecca Kennedy at the trial; is that
5 correct?

6 A. Yes, I recall they testified.

7 Q. Right. And you recall that they testified that
8 Mr. Roberts had a gun on them outside the entire time,
9 outside in the parking lot?

10 A. I believe so, yes.

11 Q. Okay. And I think they both testified that
12 Mr. Roberts had a gun pointed in their direction, or I think
13 in Mr. Cain's direction, outside, and they testified he
14 forced them inside; is that correct?

15 A. Correct.

16 Q. Okay. Now, you would agree that that testimony
17 would contradict -- or Officer Cavallini's testimony,
18 rather, would have contradicted that testimony about the gun
19 being pointed at anybody outside the restaurant?

20 MR. ISENBERG: Objection, Your Honor, this is
21 argumentative.

22 THE COURT: Sustained. Proceed.

23 MR. SWILLEY: I'm sorry, Your Honor?

24 THE COURT: I sustained his objection.

25 MR. SWILLEY: Okay. Your Honor, I will try to

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1 rephrase the question.

2 BY MR. SWILLEY:

3 Q. Mr. Long, let me ask you this: If you had known
4 that Officer Cavallini would have testified today as he did,
5 would you have called him as a witness in this trial? In
6 the trial of Mr. Roberts?

7 A. No, he was the State's witness.

8 Q. Okay. Do you believe -- based on what you heard,
9 do you believe that his testimony would have had a positive
10 impact on, or negative impact, on the credibility of the two
11 lay witnesses?

12 A. I think his testimony and the victim, slash,
13 witness's testimony would have been very similar. They
14 would have corroborated each other.

15 Q. Except for the fact of the gun being pointed at
16 them outside rather than merely inside?

17 MR. ISENBERG: Objection, Your Honor, it's
18 argumentative.

19 MR. SWILLEY: Judge, it's asking him to make an
20 observation about the difference in testimony.

21 THE COURT: Well, you're asking him to make an
22 opinion about something that he's heard today, right? And
23 to take it back four or five years ago.

24 MR. SWILLEY: Well, what I was asking the witness,
25 Your Honor, is whether or not that testimony is merely

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1 different, or does not comport with the testimony at trial
2 with the witness.

3 THE COURT: He just testified that they would
4 corroborate each other.

5 MR. SWILLEY: Okay. And my question was trying to
6 point out that they don't corroborate each other, based on
7 the transcript.

8 THE COURT: Well, have you seen the transcript,
9 sir?

10 THE WITNESS: Not in some time, Your Honor.

11 THE COURT: Okay.

12 MR. SWILLEY: I'm going to ask him to read the
13 transcript, Judge.

14 THE COURT: Okay.

15 MR. SWILLEY: All right. And just for the record,
16 Mr. Long, this is Page 86. I'm going to ask you to read
17 Lines 6 through 18. Could you do that for me, please?

18 A. Eighty-six, 6 through 18?

19 Q. Yes, sir.

20 THE COURT: What page, sir?

21 MR. SWILLEY: That's 86, Your Honor, Lines 6
22 through 18.

23 THE COURT: All right. I'm there.

24 MR. ISENBERG: And, Your Honor, just for the
25 record I'm going to put an objection to the lack of

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1 foundation to this line of questioning. Because it's the
2 State's opinion that Mr. Cavallini did not testify that he
3 didn't see a gun outside. He just simply testified that the
4 first time he saw a gun was inside.

5 THE COURT: No, I'm not so sure he said that, if I
6 go back and read my notes. I'm going to let him go ahead
7 with this, though.

8 MR. ISENBERG: Yes, sir, Your Honor.

9 THE COURT: With all respect, sir, I'll overrule
10 it. Go ahead, sir.

11 THE WITNESS: I've reviewed it.

12 BY MR. SWILLEY:

13 Q. You've reviewed it?

14 A. Yes.

15 Q. Okay. Would you mind just reading -- reading
16 that -- those lines into the record, Mr. Long?

17 A. Six through 18?

18 Q. Yes, sir.

19 A. All right.

20 Answer: What happened was, I was working, had
21 closed. It was me and Rebecca Kennedy. We were exiting the
22 building. I realized I forgot to do some paperwork, forgot
23 to fill out my vacation form, so I let Rebecca out and I
24 went back and did it. It didn't take too long, a few
25 minutes. I don't think -- it had to be under 10 minutes. I

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1 came out, entered my -- well, I entered my code and I left.
2 I walked up towards the car and Mr. Roberts jumped out of
3 the back seat with a gun. I just was in shock. I started
4 to run. He caught up to me. We was on the floor. He had
5 the gun on me the whole time, made me get up, go back in the
6 store. He had her come out of the car.

7 Q. Okay. Thank you.

8 And based on your observation -- is it your -- is
9 it -- is it your observation that that corroborates
10 Officer Cavallini's testimony?

11 A. Well, it depends on when exactly Officer Cavallini
12 saw what he testified that he saw. And it sounds to me like
13 he saw them standing in the parking lot, the three together,
14 and then exit -- I mean, enter into the building quickly.

15 So, evidently, he didn't see a chase or anything
16 on the ground.

17 Q. Okay. Just bear with me a moment, Mr. Long.

18 And would you agree with me that the -- I guess,
19 would you agree that the most important part of your job in
20 the State's case would be to cross-examine Rebecca Kennedy
21 and Shawn Cain; is that correct?

22 A. I wouldn't say that's the most important part.
23 But, yeah, that's part of doing a good job for your client.

24 Q. Yes, sir. Based on your recollection, did
25 Ms. Kennedy testify that Mr. Roberts had a gun out pointed

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1 at them in the parking lot, as well?

2 A. The transcript would speak for itself. I mean, I
3 feel sure -- recall that she said he had a gun -- had a gun
4 on her when she was in the car and he was in the car. And
5 then had a gun on them in the parking lot.

6 Q. Okay. And that was before, in her testimony, that
7 was before they entered into the Wendy's, right?

8 A. Correct.

9 Q. Okay. And I think at some point was it your
10 understanding that Mr. Roberts had at some point in time --
11 when he changed clothes into a Wendy's uniform?

12 A. Correct, in the Wendy's.

13 Q. Okay. And at the time -- did you cross-examine
14 either one of these individuals about what they were doing
15 while Mr. Roberts was changing clothes?

16 A. I think they had testified that he had taped them,
17 used some tape and taped them, and -- I think. And that he
18 took the male's shirt -- it was a Wendy's shirt -- told him
19 to give him the shirt and put the shirt on.

20 Q. Okay. And at that point was it your understanding
21 that they -- that Ms. Kennedy and Mr. Roberts proceeded out
22 the back with Mr. Roberts wearing the Wendy's uniform?

23 A. That's my understanding, yes.

24 Q. Okay. Did it strike you as important that -- that
25 this was the case in which Mr. Roberts was supposedly

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1 holding these people at gunpoint, yet was able to change
2 clothes and not have them get away? Did that ever stand out
3 to you?

4 A. I'm familiar with the scene -- visited the scene
5 of the crime, if he was pointing a gun at them, no. If he
6 was otherwise distracted or not paying attention to them,
7 whether or not they'd have the courage to try to attack him
8 or jump him or stop him or whatever while he was changing
9 his shirt, I don't know.

10 Q. Okay. Did you ever conduct any preliminary
11 hearing in this case? Or did you ever have a preliminary
12 hearing?

13 A. I don't recall.

14 Q. Okay. And can you tell me as far as, you know,
15 the investigation into the case, did you have anybody
16 assisting you, Mr. Long?

17 A. I had people assist me if I needed the assistance.
18 We have investigators with the public defenders office and
19 other attorneys there.

20 Q. Do you have an in-house investigator?

21 A. Yes.

22 Q. All right. Did you -- did you utilize him in this
23 case at all?

24 A. I don't think I did.

25 Q. Okay. At trial was -- do you recall trying to

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1 cross-examine any law enforcement officers about their
2 investigation into whether or not Mr. Roberts knew these two
3 individuals?

4 A. Based on the officers' testimony, they didn't
5 admit that he ever said anything to them about their being a
6 conspiracy between him and the alleged victims to commit
7 this robbery.

8 There was nothing in any of the incident reports
9 from any of the officers there on the scene, Mr. Cavallini
10 included, saying that Mr. Roberts said to them that the
11 victims were in on it.

12 Q. Did you cross-examine any of the officers about
13 them interviewing Ms. Kennedy or Cain or asking them or
14 delving into that issue with the two witnesses?

15 A. The transcript would speak for itself. I don't
16 recall specifically whether I asked them -- which of any of
17 them that I asked.

18 Q. Okay. Mr. Long, I'm going to ask you -- I think I
19 asked you earlier about did you -- were you given a packet
20 of the SOVA Report in your discovery from the Victim's
21 Advocate with the City of Conway? Do you recall that?

22 A. Repeat the question, please.

23 Q. Were you given a report or a narrative from the
24 SOVA, that's S-O-V-A, Department of the City of Conway? Do
25 you recall receiving that in discovery?

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1 A. If it was included in discovery, I would have
2 received it, yes.

3 Q. Okay. And if there was any reference to -- well,
4 do you recall what it says in there?

5 A. No, I don't recall.

6 Q. Okay.

7 A. Well, I do recall there being problems with the
8 victims claiming that they could not get over the stress,
9 etc. And I think one or the other of them was on a
10 prescription for nervousness or, you know, being scared, or
11 something. If that's what you're referring to, I do recall
12 that much of it.

13 Q. All right. And do you recall this making mention
14 of Mr. Roberts accusing them of being in on this ploy at the
15 bond hearing?

16 A. Which bond hearing? Was this a bond ---

17 Q. I guess, what I was referring to is the initial
18 arraignment, you know, with the municipal judge?

19 MR. ISENBERG: Objection, Your Honor, as to the
20 relevance. We already had abundant testimony and evidence
21 that Mr. Roberts indicated that he had a prior relationship
22 with the victims. I don't know if we need a SOVA Report to
23 tell us anything more than we already know.

24 MR. SWILLEY: What I was getting at, Your Honor,
25 was I was trying to -- I'm sorry.

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1 THE COURT: Go ahead.

2 MR. SWILLEY: Well, I was trying to see if he
3 followed up with -- you know, followed up as far as that
4 line of questioning, if he had been, you know, informed that
5 Mr. Roberts had perpetuated that to the authorities and
6 whether or not that wasn't followed up on.

7 THE COURT: I'll allow that, sir.

8 MR. SWILLEY: Okay.

9 MR. ISENBERG: Thank you, Your Honor.

10 THE COURT: Proceed, sir.

11 BY MR. SWILLEY:

12 Q. Mr. Long, essentially, if you were to read --
13 you -- just so we know, you did read the narrative from the
14 Victim's Advocate from the City of Conway, right?

15 A. Yes, sir.

16 Q. Okay. And you recall it making mention of
17 Mr. Roberts implicating these two individuals before law
18 enforcement; is that correct?

19 A. To me, at least, yeah. I did recall him doing it
20 to law enforcement.

21 Q. Okay. I guess it would have been based on your
22 observation that would have been in Municipal Court, right?

23 A. Most likely, yes.

24 Q. Okay. And you were aware of that, I guess, at the
25 time of the trial, since you read the discovery?

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1 A. I would have been, yes.

2 Q. Okay. Thank you, Mr. Long.

3 MR. SWILLEY: Your Honor, I don't have anything
4 further on direct.

5 THE COURT: Yes, sir.

6 MR. ISENBERG: Your Honor, may we request a short
7 recess?

8 THE COURT: Yes, sir.

9 MR. ISENBERG: Two minutes?

10 THE COURT: Sure. I will leave, so you can talk
11 freely, and then make sure you come get me.

12 MR. ISENBERG: Thank you, Your Honor.

13 (WHEREUPON, a break was held from 11:02 a.m. until
14 11:39 a.m.)

15 THE COURT: All right, sir.

16 MR. ISENBERG: May it please the Court?

17 THE COURT: Yes, sir.

18 MR. ISENBERG: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. ISENBERG:

21 Q. Good morning, Mr. Long. How are you doing today?

22 A. Very well, thank you, sir.

23 Q. Good. Good. Now, how long have you been a
24 lawyer?

25 A. Since 1987.

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1 Q. Most of that time was spent in defense -- criminal
2 defense?

3 A. Probably 75 percent of it.

4 Q. Okay. So 75 percent of your work since 1987 has
5 been in criminal defense, correct?

6 A. Yes, sir.

7 Q. Okay. Before Mr. Roberts' case, had you handled
8 an armed robbery trial before?

9 A. Many.

10 Q. Okay. Had you handled a kidnapping trial?

11 A. Several.

12 Q. Okay. So you were familiar with the elements and
13 comfortable with discussing them with clients, correct?

14 A. Yes, sir.

15 Q. Okay. So was it any different when you had
16 discussions with Mr. Roberts in regards to the elements of
17 the crime and the defenses for those crimes?

18 A. No, no different.

19 Q. Okay. So you felt like he understood after y'all
20 had that conversation?

21 A. Oh, yeah. Yeah.

22 Q. Okay. And after that, he still wanted to go with
23 the defense that he knew the victims of the crime
24 previously, before the robbery, correct?

25 A. That it was a conspiracy between he and the

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1 alleged victims.

2 Q. Okay. And at some point y'all reviewed the
3 discovery together, correct?

4 A. Correct.

5 Q. Okay. And in reviewing discovery, y'all went over
6 all the evidence that the State had against him, correct?

7 A. I don't know about all, but we would have gone
8 over all the important parts.

9 Q. Right. And I'm glad you said "important". I
10 noticed on direct examination you said "important". What
11 about this case struck you as important in regards to
12 preparing for trial?

13 A. It appeared we didn't have a lot of corroboration
14 or any corroboration for Mr. Roberts' defense. And so he
15 would have to be very credible, very polished, to present
16 that defense.

17 Q. So did y'all spend -- how much time did y'all
18 spend preparing his testimony at trial?

19 A. I couldn't tell you exactly. I don't recall.

20 Q. Okay. You said that you don't remember if he was
21 served the LWOP Notice?

22 A. Not off the top my head, no.

23 Q. Okay. Does the Fifteenth Circuit traditionally
24 serve LWOP Notice in cases where there's exposure to life
25 without parole?

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1 A. Yes. And a lot of times they'll serve them in
2 court.

3 Q. Okay. Do they do that in written form?

4 A. Yes. They can do it orally, but they also do it
5 in written form.

6 Q. Okay.

7 MR. ISENBERG: Your Honor, permission to approach?

8 THE COURT: Yes, sir.

9 MR. ISENBERG: I'll just give you a moment.

10 THE WITNESS: Okay. I've reviewed it.

11 MR. ISENBERG: Okay. You've had sufficient time
12 to review that?

13 THE WITNESS: Yes.

14 BY MR. ISENBERG:

15 Q. Okay. What document did I just hand you?

16 A. It's a Notice of Intention to seek a sentence of
17 life without parole, filed August 5, 2015, signed by the
18 Solicitor.

19 Q. Okay. And is that the normal written form that
20 the Fifteenth Circuit gives when they're serving someone
21 with life without parole?

22 A. Yes.

23 Q. Okay. So after reviewing this, to the best of
24 your knowledge, do you believe that they gave you this
25 written form before trial?

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1 A. Yes. They would have either served it on myself
2 and Mr. Roberts or presented it -- served it in Court on
3 Mr. Roberts.

4 Q. Okay. And after receiving these types of forms,
5 do you traditionally have a conversation with your clients
6 about what LWOP Notice means for their case?

7 A. Oh, absolutely.

8 Q. Okay. And when you have that conversation, you
9 talk to them about the fact that, if they go to trial, the
10 Judge has no choice but to sentence him to LWOP?

11 A. Correct.

12 Q. Okay.

13 MR. ISENBERG: Your Honor, permission to enter
14 this into evidence as State's Exhibit A?

15 MR. SWILLEY: No objection.

16 THE COURT: Without objection, yes, sir.

17 (WHEREUPON, State's Exhibit A was entered into
18 evidence.)

19 BY MR. ISENBERG:

20 Q. Okay. So as we previously touched on, your
21 strategy was to establish a prior relationship with the
22 witnesses -- between the Applicant and the witnesses,
23 correct?

24 A. A conspiracy between them to commit a theft from
25 Wendy's.

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1 Q. Okay. And what evidence or leads did the
2 Applicant offer you in regards to his relationship with the
3 victims?

4 A. None, other than his assertion.

5 Q. Okay. So he simply just told you that he had a
6 prior relationship with them, correct?

7 A. That's correct.

8 Q. He didn't offer you any previous specific
9 instances that he had with them or that he'd encountered
10 with them?

11 A. Not that I can recall.

12 Q. Okay. He didn't show you any text messages or any
13 phone calls that he had had with them before this incident
14 occurred?

15 A. Not that I recall.

16 Q. Okay. So the defense that he presented to you,
17 there was no physical evidence to corroborate it, correct?

18 A. As far as I knew, yes. It was nothing to
19 corroborate it.

20 Q. Okay. And in regards to the victims -- let's
21 start with Shawn Cain -- did you independently review the
22 statement from Shawn Cain prior to trial?

23 A. Yes.

24 Q. Okay. And based upon his statement. Did you see
25 any leads or evidence that he may have had a prior

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1 relationship with the Defendant?

2 A. No, there was nothing -- nothing in either of the
3 victims' statements or any of the officers' investigative
4 summaries that interviewed the victims or in the officers'
5 investigative summaries themselves.

6 Q. So you had no indication prior to trial that he
7 voluntarily gave his Wendy's uniform to the Applicant,
8 correct?

9 A. No.

10 Q. Okay. And at trial you testified on direct that
11 it was -- Mr. Cain made it clear that he and the other
12 victim had been duct taped during this incident, correct?

13 A. I believe so. I believe that occurred after the
14 police had arrived or while he was changing or in the
15 process of robbing them. I think he made one put duct tape
16 on themselves.

17 Q. Okay. And so, to the best of your knowledge, the
18 testimony from Mr. Cain and Ms. Kennedy indicated that they
19 couldn't stop him from changing into the uniform because
20 they were tied up, correct?

21 A. I don't recall, but it seems like that's what it
22 was about.

23 Q. Okay. Now, in regards to law enforcement, I know
24 you touched on direct examination that you didn't have any
25 indication from them that there were statements from the

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1 Defendant. What, if any, investigations did you do into law
2 enforcement in regards to this case?

3 A. I don't understand your question.

4 Q. I apologize, I'll rephrase.

5 Did you follow up with any police officers on the
6 scene of the crime about what happened?

7 A. Other than their incident reports, which they
8 filed -- I mean, we -- we can't take depositions of police
9 officers in a criminal case. And so, no, we didn't follow
10 up by reinterviewing them again, but we had all the
11 discovery material.

12 Q. Right. So you said you reviewed the incident
13 report. Is that what you traditionally do with police
14 officers?

15 A. Yes.

16 Q. Okay. So this case was not any different than all
17 of those other cases that you did in regards to reviewing
18 incident reports from police officers?

19 A. That's correct.

20 Q. Okay. Now, on direct examination you talked about
21 Mr. -- I apologize. I want to get his name right. You
22 talked about Mr. Cavallini and not calling him to testify in
23 this case, correct?

24 A. Yes.

25 Q. And you said that you thought he would give

J.M. LONG - CROSS BY MR. ISENBERG

1 favorable testimony to the State, correct?

2 A. Yes, sir.

3 Q. And that's because he said that he saw the
4 Defendant, or the Applicant have a gun pointed at the
5 victims inside the Wendy's, correct?

6 A. Correct.

7 Q. Okay. And so after reviewing everything today, if
8 you had another shot at it, would you have called him?

9 A. No.

10 Q. Okay. So your opinion then is still the same now?

11 A. Correct.

12 Q. Okay. Now, in regards to Ms. Kennedy's
13 shoplifting incident, did you believe that was relevant at
14 the time?

15 A. No.

16 Q. Okay. Are you aware that shoplifting is not a
17 crime of dishonesty?

18 A. Splitting hairs with me, but the legal definition,
19 yes, I understand it's not.

20 Q. Right. So it would not have been admissible under
21 the Rule that y'all discussed under direct examination,
22 correct?

23 A. Correct.

24 Q. Now, in regards to Ms. Kennedy's drug abuse, did
25 you do any type of investigation into that in preparation

1 for trial?

2 A. No, I don't know how you would investigate
3 somebody's drug use. That's something they keep secret.

4 Q. So there was no indication in discovery that she
5 had a drug abuse habit or anything like that?

6 A. No, nothing in discovery.

7 Q. Okay. So had you asked that question at trial,
8 you would have just been blind firing, correct?

9 A. Correct. Correct.

10 Q. Okay. And is it your practice to just blind fire
11 questions at trial?

12 A. Sometimes you have to. But no risk, no reward.
13 But, no, not unnecessarily.

14 Q. Okay. And did you believe it was unnecessary in
15 this case to just randomly ask her about her drug habit?

16 A. Yes, without having anything to back it up.

17 Q. Okay. And in regards to Mr. Cain, you testified
18 under direct examination about a pending conviction he had
19 in another state; is that right?

20 A. Well, I think it -- it had no disposition on his
21 NCIC. I think -- and I remember after Mr. Swilley asked the
22 questions -- we may have done something on the record about
23 it, but if it doesn't show a disposition, then the Judge is
24 not going to allow you to question them about that charge,
25 that criminal charge.

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1 Q. Right. So you were aware of that issue before
2 trial, correct?

3 A. Yes, we had the victims' NCICs.

4 Q. Right. And you put it on the record that you were
5 aware of it and that you were potentially going to ask about
6 it, but the Judge ruled that there was no disposition; is
7 that right?

8 A. I believe. The transcript would speak for itself.

9 Q. Okay. So after a Judge makes a decision, you
10 can't really ask a question without being, you know,
11 criticized or objected to by the other side, correct?

12 A. Well, you can, but you risk the ire of the Court
13 and that's not anything that you want to do, and not
14 anything that helps your client.

15 Q. Okay. So practically speaking you didn't want to
16 risk the ire of the Court by asking a question that had
17 already been ruled upon, correct?

18 A. Correct.

19 Q. Okay. Just want to make sure we're on the same
20 page.

21 Now, in regards to your trial strategy, can you
22 give me a brief summary of what your strategy was walking
23 into court that day in this case?

24 A. Well, for all intents and purposes, Mr. Roberts
25 was going to testify and testify credibly about his dealings

J.M. LONG - CROSS BY MR. ISENBERG

1 with the victims.

2 Q. Okay.

3 A. And their agreement. And I think it would do away
4 with one or more of the elements of an armed robbery and it
5 would do away with one or more elements of a kidnapping
6 charge. And so he could be convicted of some lesser
7 included, possibly, but it would take away elements on the
8 charges we were going to trial for.

9 Q. Okay. Can you recall if Mr. Roberts' testimony at
10 trial deviated from your conversations with him prior to
11 trial?

12 A. I can't recall.

13 Q. Okay. So in pursuing this defense, you presented
14 to the Court that Mr. Roberts had a prior relationship based
15 upon his testimony, correct?

16 A. Correct.

17 Q. And in the end, the jury found him guilty, like
18 you said on direct examination, because they essentially did
19 not find him credible, correct?

20 MR. SWILLEY: Objection, Your Honor. I think that
21 calls for him to speculate.

22 THE COURT: I think so. Sustained.

23 MR. ISENBERG: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 MR. ISENBERG:

J.M. LONG - CROSS BY MR. ISENBERG

1 Q. And in the end the jury found him guilty, correct?

2 A. Correct.

3 Q. Okay. Do you believe at that point, there's
4 anything more you could have done to present this defense
5 better at trial?

6 A. Hindsight is always 20/20 and I've never completed
7 a trial that I didn't kick myself and say, Ah, I forgot to
8 do this or should have done that or whatever. There's
9 always something, but I don't think we missed any of the
10 major things we needed to accomplish.

11 Q. And you said that prior to trial you presented him
12 with a plea offer, correct?

13 A. Correct.

14 Q. Did you advocate for him to accept that offer?

15 A. I don't advocate plea offers very often. I think
16 it was 25 years on the plea offer. I always let the client
17 make the decision, but I have to tell him, you know, Look,
18 if you're convicted of either one of these offenses, it's
19 life without parole, so you may want to strongly consider
20 that.

21 Q. So you told him you can either accept what they're
22 offering or be exposed to life without parole, correct?

23 A. If convicted, yes.

24 Q. And he decided he wanted to go trial, correct?

25 A. Yes.

J.M. LONG - REDIRECT BY MR. SWILLEY

1 Q. And you traditionally allow clients to make their
2 own decisions on whether to accept plea offers, correct?

3 A. Sometimes I try to encourage them a little bit,
4 but it's their decision.

5 Q. Okay. And in this case it was no different,
6 right?

7 A. Correct.

8 Q. Okay.

9 MR. ISENBERG: No further questions for this
10 witness, Your Honor.

11 THE COURT: Mr. Swilley?

12 MR. SWILLEY: Just a couple of follow ups.

13 REDIRECT-EXAMINATION

14 BY MR. SWILLEY:

15 Q. Mr. Long, based on your recollection, did you ever
16 ask Mr. Roberts if he knew of any individuals that could
17 attest that he knew Shawn and Rebecca, the victims?

18 A. I don't recall.

19 Q. Okay. And I think on cross-examination
20 Mr. Isenberg mentioned that if he ever showed you anything
21 in his phone or anything like that. He's not allowed to
22 have a cell phone or access to that in jail, is he?

23 A. That's correct.

24 Q. And as far as having any knowledge about any kind
25 of prior drug abuse by the victims, I think you were -- is

1 it true to say you were apprised by Mr. Roberts that he had
2 provided them with drugs at times?

3 A. Yes.

4 Q. Okay. Thank you Mr. Long.

5 THE COURT: Any other cross, sir?

6 MR. ISENBERG: Yes, Your Honor.

7 THE COURT: Okay.

8 RECROSS-EXAMINATION

9 BY MR. ISENBERG:

10 Q. Mr. Long, have you ever dealt with a case where
11 text messages came into evidence before?

12 A. Yes.

13 Q. Okay. Have you ever dealt with a case where text
14 messages came into evidence when your client was in jail or
15 in prison leading up to trial?

16 A. Yes.

17 Q. Okay. And so, your client could have made you
18 aware of text messages, correct?

19 MR. SWILLEY: Objection. Calls for speculation.

20 THE COURT: I think so. I think so. Sustained.

21 BY MR. ISENBERG:

22 Q. Okay. Your client did not make you aware of any
23 text messages corroborating his story about the prior
24 relationship, correct?

25 A. Not that I recall.

J.M. LONG - RECROSS BY MR. ISENBERG

1 Q. Okay. Or phone calls, correct?

2 A. Not that I recall.

3 MR. ISENBERG: No further questions.

4 THE COURT: Mr. Swilley?

5 MR. SWILLEY: That's all, Your Honor.

6 THE COURT: Thank you, sir.

7 MR. ISENBERG: Your Honor, I'd just like to ask
8 that Mr. Long be excused.

9 MR. SWILLEY: No objection.

10 THE COURT: Have a good day, sir.

11 THE WITNESS: Thanks, Your Honor.

12 MR. SWILLEY: I call up Monique Alston.

13 THE CLERK: Do you solemnly swear or affirm the
14 testimony you're about to give the Court is the truth, the
15 whole truth, and nothing but the truth, so help you God?

16 THE WITNESS: Yes.

17 THE CLERK: Please have a seat and state your name
18 for the Court and spell your last name for the Court
19 Reporter.

20 THE WITNESS: My name is Monique Alston,
21 A-L-S-T-O-N.

22 MONIQUE ALSTON, being first duly sworn,
23 testified as follows:

24 MR. SWILLEY: And, Your Honor, for the record, a
25 scribe's error, I misspelled Ms. Alston's last name in the

MONIQUE ALSTON - DIRECT BY MR. SWILLEY

1 application.

2 THE COURT: Okay.

3 MR. SWILLEY: I misspelled it with a "U" instead
4 of an "L".

5 DIRECT EXAMINATION

6 BY MR. SWILLEY:

7 Q. Ms. Alston, tell me, where do you reside?

8 A. Conway, South Carolina.

9 Q. How long have you been living in Conway for?

10 A. All my life.

11 Q. And you're how old?

12 A. 37.

13 Q. And Ms. Alston, if you could wait until I'm done
14 asking questions to answer just so the Court Reporter gets
15 it -- gets it down, okay?

16 A. Yes, sir.

17 Q. All right. Thank you. And make sure you give me
18 verbal answers, please.

19 A. Yes, sir.

20 Q. Thank you. Now, Ms. Alston, are you related to
21 Ebon Roberts?

22 A. Yes, sir, I am.

23 Q. Tell me how you're related to Ebon Roberts.

24 A. He's my uncle.

25 Q. He's your uncle. Okay.

MONIQUE ALSTON - DIRECT BY MR. SWILLEY

1 A. Yes, sir.

2 Q. Okay. And how long have you known Mr. Roberts
3 for?

4 A. All my life.

5 Q. Okay. Now, Ms. Alston, were you -- well, let me
6 ask you, did you know -- do you know Rebecca Kennedy?

7 A. Yeah, I had seen her before.

8 Q. Okay. And had you ever seen Shawn Cain before?

9 A. Yes, sir, I have.

10 Q. Okay. Now, tell me, based upon your recollection,
11 where had you ever seen Rebecca Kennedy and Shawn Cain.

12 A. I had seen them several times. My first incident
13 with them was at the Smith-Jones Recreation Center off of
14 378.

15 Q. That's the Smith-Jones Recreation Center?

16 A. Yes, sir. It's like a park.

17 MR. ISENBERG: Your Honor, If I may. I can't
18 understand. Do you mind just speaking a little more in the
19 microphone?

20 THE WITNESS: Yes, sir.

21 MR. ISENBERG: Thank you.

22 THE COURT: And ma'am, just slow it down a little
23 bit, okay?

24 THE WITNESS: Okay.

25 THE COURT: Thank you.

MONIQUE ALSTON - DIRECT BY MR. SWILLEY

1 MR. SWILLEY: And -- may I proceed, sir?

2 THE COURT: Sure.

3 BY MR. SWILLEY:

4 Q. Ms. Alston, did you ever have -- was there ever an
5 instance when you were around Mr. Cain or Ms. Kennedy in the
6 presence of Mr. Roberts?

7 A. Yes, sir.

8 Q. Okay. Do you recall where these instances
9 occurred?

10 A. Yes, sir.

11 Q. Can you tell me where?

12 A. The first -- when I first met them was at the
13 Smith-Jones Recreation Center right off of 378.

14 Q. Okay. And was Mr. Roberts present there?

15 A. Yes, he was with me.

16 Q. Okay. He was with you?

17 A. With me and Latasha.

18 Q. Latasha who?

19 A. Latasha Aklin.

20 Q. Aklin?

21 A. Yes, sir.

22 Q. Okay. And, again, Monique, speak up a little bit
23 for me.

24 Now, was there another occasion where you were
25 present where Ms. Kennedy and Mr. Cain were present and

MONIQUE ALSTON - DIRECT BY MR. SWILLEY

1 Mr. Roberts?

2 A. Yes, sir.

3 Q. Okay. Where was that?

4 A. They had met at the Wendy's parking lot.

5 Q. Okay. And tell me what purpose what that meeting
6 for, Ms. Alston.

7 A. For them to purchase marijuana and pills.

8 Q. Okay. From whom?

9 A. From Ebon Roberts.

10 Q. Okay. And now, Ms. Alston, were you present at
11 the trial of the State of South Carolina versus Ebon Roberts
12 in 2014?

13 A. Yes, sir, I was.

14 Q. Okay. And excuse me. It may have been 2015, if I
15 may not -- excuse me, it was 2015 -- but you were present at
16 his trial?

17 A. Yes, sir.

18 Q. Okay. Were you present during the entire time?

19 A. Yes, sir.

20 Q. Okay. And, Ms. Alston, did you ever -- did you
21 ever speak to or were you ever interviewed by anyone?

22 A. No, sir.

23 Q. Okay. Anybody on the part of Mr. Roberts' defense
24 ever reach out to you?

25 A. No, sir.

MONIQUE ALSTON - DIRECT BY MR. SWILLEY

1 Q. And do you recall the testimony of Shawn Cain and
2 Rebecca Kennedy?

3 A. No, not at this moment, no.

4 Q. I mean, were you present when they were
5 testifying?

6 A. Yes, sir.

7 Q. Okay. And were you ever placed on any kind of
8 witness list?

9 A. No, sir.

10 Q. Okay. And do you recall when they testified that
11 they didn't know Mr. Roberts?

12 A. Yes, sir.

13 Q. Okay. And at the time -- and these encounters
14 that you had had with Mr. Roberts and having them present,
15 was that before the trial?

16 A. Before, yes, sir.

17 Q. Was that before Mr. Roberts was arrested for this
18 incident?

19 A. Yes, sir.

20 Q. Okay. So, just so I'm clear, you could have --
21 with your testimony at the trial, you could have
22 contradicted them -- or you could have contradicted their
23 testimony as to whether they didn't know or knew
24 Mr. Roberts; is that correct?

25 A. Yes, sir. But I told his lawyer that I knew them

MONIQUE ALSTON - DIRECT BY MR. SWILLEY

1 and they had contact with Ebon outside of the courtroom, but
2 he never called me to the witness stand or anything.

3 Q. All right. Just so we're clear -- and speak up a
4 little for me -- you informed Mr. Long of that?

5 A. Yes, sir.

6 Q. Okay.

7 MR. SWILLEY: Beg the Court's indulgence, Judge?

8 THE COURT: Yes, sir.

9 BY MR. SWILLEY:

10 Q. And just so we're clear, Ms. Alston, the incident
11 where Ms. Kennedy, a.k.a Ms. Harrington, and Shawn Cain when
12 they were purchasing narcotics, that was before Mr. Roberts'
13 was arrested for this incident?

14 A. Yes, sir.

15 Q. Okay. And you witnessed that?

16 A. Yes, sir.

17 Q. Okay. And I think you said -- am I correct that
18 one -- one encounter in which you happened to be present
19 during all this, was at that same Wendy's?

20 A. Yes, sir.

21 Q. Okay. Approximately how long, if you know -- tell
22 me, do you know how long Ebon had known these two people?

23 A. I can't really say, but for him to be dealing with
24 them, he knew them for a pretty numerous -- maybe about -- I
25 want to say a month or maybe, he might have known them

MONIQUE ALSTON - CROSS BY MR. ISENBERG

1 longer. I just met them maybe in October.

2 Q. Okay. Okay. I understand. All right.

3 MR. SWILLEY: And, Ms. Alston, please answer any
4 questions the State has for you, okay?

5 MR. ISENBERG: May it please the Court?

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. ISENBERG:

9 Q. Good morning, Ms. Alston.

10 A. Good morning.

11 Q. I didn't get your first name. I'm sorry. What is
12 it?

13 A. Monique.

14 Q. Monique. Okay. Thank you. Appreciate that.
15 How are you doing today?

16 A. I'm doing fine.

17 Q. Good. Good. Ebon Roberts is your uncle, correct?

18 A. Yes, sir, he is.

19 Q. Okay. And you've known him your whole life?

20 A. All my life.

21 Q. Okay. And you said that -- you testified that he
22 sold weed and pills to the victims of this crime?

23 A. Yes, sir.

24 Q. In the Wendy's parking lot?

25 A. Yes, sir.

MONIQUE ALSTON - CROSS BY MR. ISENBERG

1 Q. Okay. How many times did you witness him selling
2 weed and pills throughout your life?

3 A. Throughout my life, maybe twice. But with them,
4 it was numerous of times. But out of my life, maybe twice.

5 Q. Okay. Let me break that up for a little bit.

6 So you said throughout your life you've only seen
7 him sell weed and pills twice?

8 A. Out his life, yeah.

9 Q. Okay. But you saw him do it with them numerous
10 times?

11 A. Yes.

12 Q. Okay. What do you mean by numerous?

13 A. Numerous is about like -- I meant with them I was
14 with him maybe about three times when he had served them.

15 Q. Okay. Where did the other two happen?

16 A. One happened, the first one was at 378, the second
17 one was at Wendy's, and the last one was at these apartments
18 off of 9th Avenue.

19 Q. Okay. So you didn't see them twice, you saw them
20 three times, correct?

21 A. Yes.

22 Q. Okay. So on the first occasion was at a
23 recreation center?

24 A. Yes, sir.

25 Q. Okay. Did you show up with Mr. Roberts?

MONIQUE ALSTON - CROSS BY MR. ISENBERG

1 A. Yes. I was the one took him there.

2 Q. Okay. And he had the weed and pills on his
3 person?

4 A. Yes.

5 Q. Okay. And he entered the recreation center and
6 sold weed and pills to the victims?

7 A. It's a park. It's not a building, it's a park.

8 Q. Okay. I'm sorry, I thought you said a center. I
9 apologize.

10 So when you got to the park, he sold them pills
11 and then y'all left?

12 A. Yes.

13 Q. Okay. And on the second occasion, y'all went to
14 the Wendy's, he sold them weed and pills and then y'all
15 left, correct?

16 A. Yes, sir.

17 Q. Okay. And on the third occasion, you went to
18 their apartment complex?

19 A. No. It's apartments on 9th Avenue.

20 Q. Okay. So y'all met at an apartment complex, he
21 sold them weed and pills and then y'all left, correct?

22 A. Yes.

23 Q. Okay. And you said that the next time that you
24 saw them after that was trial?

25 A. Yes.

MONIQUE ALSTON - CROSS BY MR. ISENBERG

1 Q. Okay. Did you know that they were the two victims
2 leading up to trial?

3 A. Yes.

4 Q. Okay. Did you ever reach out to Mr. Long or the
5 police about knowing that they had a previous relationship?

6 A. I reached out to Mr. Long.

7 Q. Okay. Do you remember the day that Mr. Roberts
8 got arrested?

9 A. It was in December.

10 Q. Okay. What was the next time you talked to
11 Mr. Roberts after he got arrested?

12 A. He was in jail, he called.

13 Q. He called you?

14 A. From the jailhouse.

15 Q. Okay. What did y'all talk about in those phone
16 calls?

17 A. We didn't talk about anything, because I wanted to
18 locate why did he go to jail for. And at that time I didn't
19 know, so I started calling around.

20 Q. Okay. So when he called you, y'all didn't talk
21 about why he was in jail?

22 A. No.

23 Q. Okay. And when he called you, he didn't tell you
24 that the victims were Mr. Cain and Ms. Kennedy?

25 A. No.

MONIQUE ALSTON - CROSS BY MR. ISENBERG

1 Q. Okay. So when he called you, he didn't ask you to
2 testify, did he?

3 A. No.

4 Q. Okay. So the next time, after that conversation,
5 y'all talked was trial?

6 A. I didn't talk to him since, until I seen him in
7 the courtroom. We didn't even talk then.

8 Q. Okay. So y'all had one conversation after he was
9 arrested?

10 A. Yes.

11 Q. Okay. And there was no mention of the previous
12 instances or you testifying at trial, correct?

13 A. No.

14 Q. Okay. So you were not put on a witness list, but
15 you attended trial, correct?

16 A. Yes.

17 Q. And you didn't go up to Mr. Roberts and volunteer
18 to testify did you?

19 A. No.

20 Q. Okay.

21 MR. ISENBERG: No further questions for this
22 witness, Your Honor.

23 THE COURT: Mr. Swilley?

24 MR. SWILLEY: Just one.

25 REDIRECT EXAMINATION

MONIQUE ALSTON - REDIRECT BY MR. SWILLEY

1 BY MR. SWILLEY:

2 Q. Monique, at the time -- you don't have any legal
3 training, do you?

4 A. No.

5 Q. And you don't know anything about rules of
6 evidence, do you?

7 A. No.

8 Q. All right. Were you aware of whether or not you
9 would even be allowed to testify or that you could testify
10 at the time?

11 A. I didn't know, I could have.

12 Q. Okay. Thank you Ms. Alston.

13 MR. SWILLEY: Nothing further.

14 THE COURT: Cross?

15 MR. ISENBERG: Just beg the Court's indulgence,
16 Your Honor. Nothing, Your Honor.

17 THE COURT: All right, ma'am, you may step down.

18 Mr. Swilley?

19 MR. SWILLEY: Your Honor, we call up Latasha
20 Atkins (sic) to the stand.

21 THE CLERK: Do you solemnly swear or affirm that
22 the testimony you're about to give the Court in this case is
23 the truth, the whole truth, and nothing but the truth, so
24 help you God?

25 THE WITNESS: Yes.

LATASHA AKLIN - DIRECT BY MR. SWILLEY

1 THE CLERK: Please have a seat and state your name
2 for the Court and spell your last name, please.

3 THE WITNESS: My name is Latasha Aklin, A-K-L-I-N.

4 LATASHA AKLIN, being first duly sworn,
5 testified as follows:

6 MR. SWILLEY: And, Your Honor, I just want to
7 point out for the Court, my abysmal spelling, again. I
8 misspelled Ms. Aklin's name in the application, it's the
9 same individual to whom I was referring.

10 THE COURT: Yes, sir.

11 MR. SWILLEY: Latasha is spelled correctly, at
12 least.

13 DIRECT EXAMINATION

14 BY MR. SWILLEY:

15 Q. Now, Ms. Aklin, tell me where you're from.

16 A. I'm from Conway.

17 Q. Now, you've got to speak up loud and scoot up to
18 the microphone, okay? I'm a young guy and I don't hear that
19 well.

20 Ms. Aklin, tell me, are you related to Ebon
21 Roberts?

22 A. No.

23 Q. How do you know Mr. Roberts?

24 A. He's a friend.

25 Q. Again, if you'll speak up a little for me.

LATASHA AKLIN - DIRECT BY MR. SWILLEY

1 A. He's a friend.

2 Q. He's a friend of yours? In December of 2014 or
3 around that time, was he a good friend of yours?

4 A. Yeah.

5 Q. Were y'all in a kind of a relationship-type thing?

6 A. Cool friends, yeah.

7 Q. Okay. Would it be true to say that y'all kind of
8 had a -- kind of an on-again, off-again fling-type thing?

9 A. Yeah.

10 Q. Okay. Thank you. And how long have you known
11 Mr. Roberts for?

12 A. Since 2013. When he first came, 2013.

13 Q. So 2013?

14 A. Uh-huh.

15 Q. And did you have occasion to be -- did you know
16 Rebecca Kennedy and Shawn Cain?

17 A. No.

18 Q. Okay. Did you -- had you ever seen them before?

19 A. I seen them one time when I was with him and
20 Monique when they went to the Smith-Jones Recreation Center
21 to make a sale, I guess.

22 Q. So you were present at that time?

23 A. Uh-huh.

24 Q. You have to say "Yes" or "No".

25 A. Yes, sir.

LATASHA AKLIN - DIRECT BY MR. SWILLEY

1 Q. Okay. Were you able to identify those
2 individuals -- were you present at trial in Mr. Roberts'
3 case?

4 A. Yes.

5 Q. Okay. And did you -- at the time of his case, did
6 you recognize those individuals as the same individuals that
7 you saw at the Smith-Jones Center?

8 A. Yes.

9 Q. Okay. Could you have -- could you have testified
10 to that at the time?

11 A. Yes, but I wasn't asked.

12 Q. You could have, but you weren't asked; is that
13 correct?

14 A. Uh-huh, yes.

15 Q. Okay. And were you present at the entire trial
16 for Mr. Roberts?

17 A. Yes.

18 Q. Okay. Ms. Aklin, did anybody ever reach out to
19 you about whether or not you could -- or whether or not
20 offer anything for the defense?

21 A. No.

22 Q. Okay. Were you present when Shawn Cain or Rebecca
23 Kennedy testified at trial?

24 A. Yes.

25 Q. All right. Do you recall them testifying they

LATASHA AKLIN - DIRECT BY MR. SWILLEY

1 didn't know Ebon Roberts?

2 A. Yes.

3 Q. Okay. And could your testimony at the time, could
4 it have contradicted that?

5 A. Yes.

6 Q. Okay. And, Ms. Aklin, just so we're clear, do you
7 recall when -- that Smith-Jones Recreation Center, do you
8 remember what time of year that was, what month it was in,
9 in '14?

10 A. I'm going to say it was around, like, the fall or
11 October, because me and Monique was together and our
12 birthdays are both in October. So we was planning around
13 that time what we was going to do for our birthdays.

14 Q. Okay. In the fall, in October, you think?

15 A. Uh-huh.

16 Q. Is that a "Yes"?

17 A. Yes.

18 Q. Okay. Ms. Alston (sic), did you ever voluntarily
19 go to anybody from the defense to let them know that you
20 could contradict Cain and Kennedy?

21 A. No.

22 Q. You didn't do that?

23 A. No.

24 Q. Did you know you could have at the time?

25 A. No.

LATASHA AKLIN -CROSS BY MR. ISENBERG

1 Q. Okay. And Ms. Alston -- Ms. Aklin, excuse me.

2 Do you have any legal training?

3 A. No.

4 Q. Are you familiar with South Carolina Rules of
5 Evidence?

6 A. No.

7 Q. Okay. What's your occupation?

8 A. I'm a housekeeper.

9 Q. Okay. Ms. Aklin, if you were -- well, you were --
10 you were at the trial, but you weren't subpoenaed, were you?

11 A. No.

12 Q. Okay. You appeared at trial voluntarily?

13 A. Yes.

14 Q. Okay.

15 MR. SWILLEY: Ms. Aklin, please answer any
16 questions the State has, okay?

17 MR. ISENBERG: May it please the Court?

18 THE COURT: Yes, sir.

19 MR. ISENBERG: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. ISENBERG:

22 Q. Good morning, Ms. Atkins (sic).

23 A. Good morning.

24 Q. How are you doing today?

25 A. I'm fine, how are you?

LATASHA AKLIN -CROSS BY MR. ISENBERG

1 Q. Good. Good. You said that you're a housekeeper?

2 A. Yes.

3 Q. Okay. Where are you a housekeeper at?

4 A. I work with South Beach Resort in Myrtle Beach.

5 Q. Okay. And how long have you been working there?

6 A. Around six months now.

7 Q. Just wanted to clear that up a little bit. You
8 said -- you testified that you accompanied Mr. Roberts on
9 one occasion to the recreation center, correct?

10 A. Yes.

11 Q. Okay. And you were with Monique?

12 A. Yes.

13 Q. And he went there to sell weed and pills to
14 Rebecca and Shawn, correct?

15 A. Correct.

16 Q. Okay. Why did you and Monique go with him?

17 A. She was driving.

18 Q. Okay.

19 A. And we was riding -- he needed a ride.

20 Q. Okay. So he got a ride from her to go sell those
21 drugs?

22 A. Right.

23 Q. Okay. And you said that occurred in the fall of
24 2014?

25 A. Right.

LATASHA AKLIN -CROSS BY MR. ISENBERG

1 Q. Okay. Did you traditionally accompany him on drug
2 deals?

3 A. No.

4 Q. Okay. So this was a special occasion, correct?

5 A. Yeah, we was still together and he needed a ride,
6 so she gave him a ride.

7 Q. Okay. How many times did you accompany him on
8 drug deals?

9 A. This was the only one.

10 Q. Okay. So this was the only time out of y'all's
11 entire relationship that you accompanied him on one,
12 correct?

13 A. Uh-huh. Yes.

14 Q. Okay. And so after that, next time you saw them
15 was at trial, correct?

16 A. Correct.

17 Q. And you recognize them as the same people from the
18 park, correct?

19 A. Correct.

20 Q. Okay. So at trial you testified that nobody
21 approached you to go up there and give testimony in
22 contradiction, correct?

23 A. Right.

24 Q. Okay. Do you remember the date of Mr. Roberts'
25 arrest?

LATASHA AKLIN -CROSS BY MR. ISENBERG

1 A. It was in December.

2 Q. Okay. How many times did you talk to him between
3 his arrest and his trial?

4 A. None, really.

5 Q. So he never called you from jail?

6 A. No.

7 Q. Okay. Did you ever try to contact him?

8 A. I've written letters, you know, to see how he was
9 doing, or whatever, but that was about it.

10 Q. Did he ever respond to your letters?

11 A. Yeah. He would say that he was okay and that he
12 was maintaining, basically, but that was about it.

13 Q. Okay. So y'all did have some communication, but
14 it was through writing?

15 A. Yes.

16 Q. Okay. And in his responses, did he ever talk to
17 you about the victims being the people from the recreation
18 center?

19 A. No.

20 Q. Okay. Did he ever ask you to testify?

21 A. No.

22 Q. Okay. So you've been present here today in Court,
23 correct?

24 A. Uh-huh. Yes.

25 Q. And you're aware that his attorney testified that

LATASHA AKLIN -CROSS BY MR. ISENBERG

1 their strategy was to establish previous relationship with
2 the victims, correct?

3 A. Yes.

4 Q. Okay. So don't you think it's kind of odd that he
5 never asked you to testify?

6 MR. SWILLEY: Objection, Your Honor. I think he's
7 pitting the witness's testimony ---

8 THE COURT: Yeah, sustained. Sustained.
9 Sustained.

10 BY MR. ISENBERG:

11 Q. Did you talk to him at trial, Mr. Roberts?

12 A. No.

13 Q. Okay. So you just attended, you didn't speak to
14 him?

15 A. Right.

16 Q. Okay. And did you talk to him after trial?

17 A. No.

18 Q. Okay. So today is the first time you've seen him
19 since then?

20 A. Yes.

21 Q. Okay.

22 MR. ISENBERG: No further questions, Your Honor.

23 THE COURT: Mr. Swilley?

24 MR. SWILLEY: I don't have anything else for

25 Ms. Aklin. Your Honor, I ask that she be released from the

EBON ROBERTS - DIRECT BY MR. SWILLEY

1 subpoena.

2 THE COURT: Yes, sir, she is.

3 MR. SWILLEY: Our last witness will be Ebon
4 Roberts.

5 THE COURT: Okay.

6 THE CLERK: Do you solemnly swear or affirm that
7 the testimony you're about to give the Court in this case is
8 the truth, the whole truth, and nothing but the truth, so
9 help you God?

10 THE WITNESS: Yes.

11 THE CLERK: Please have a seat and state your name
12 for the Court, sir.

13 THE WITNESS: Ebon Roberts.

14 EBON ROBERTS, being first duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. SWILLEY:

18 Q. Ebon, I'm going to ask you, do you recall when you
19 first, I guess, made contact or were contacted or met with
20 Mr. Long?

21 A. The first time was after I sent him a letter to
22 the public defender's office, at the -- like in February.

23 Q. So when you were arrested, I guess, on the 8th of
24 December '14, I guess you applied for the Public Defender's
25 Office at that time?

EBON ROBERTS - DIRECT BY MR. SWILLEY

1 A. They applied that for me.

2 Q. They filled it out for you?

3 A. Uh-huh.

4 Q. Okay. Do you recall what about -- do you recall
5 what time you actually met Mr. Long in 2015?

6 A. That's I think about February, between February
7 and March. Well, definitely February, because it was after
8 I sent the letter to them, that's when they assigned me to
9 him the next day, something like that.

10 Q. Okay. And, again, I need you to kind of sit up to
11 the microphone ---

12 A. My throat ---

13 Q. You need some water?

14 A. Yeah.

15 Q. Okay.

16 (WHEREUPON, there was a pause in the proceeding.)

17 MR. SWILLEY: I need you to sit up to the
18 microphone so the Court Reporter can get everything you say
19 down. All right?

20 BY MR. SWILLEY:

21 Q. All right. So it was February the first time you
22 saw Mr. Long?

23 A. I think so, yeah.

24 Q. Okay. And did y'all ever have a chance to go over
25 the evidence in the case?

EBON ROBERTS - DIRECT BY MR. SWILLEY

1 A. I mean, like I said, he -- he knew the story from
2 the beginning as far as they was my co-defendants, and that
3 was really my only option as far as leaning on that as a
4 defense. So I told him everything I thought I was capable.

5 Q. All right. So did you tell Mr. Long that they --
6 that you -- just so that we're clear, did you inform
7 Mr. Long the first time you met him that you were acting in
8 concert with these people to take -- just to take money from
9 the Wendy's.

10 A. Yes, I did.

11 Q. Okay. And did you -- do you ever recall giving
12 him anybody or any information that you wanted him to follow
13 up on?

14 A. I told him that I knew about Shawn's incidents in
15 Florida, but when he asked me could anybody, like,
16 corroborate, as far as the robbery part, I was like, No.
17 Like, I didn't tell anybody, you know what I'm saying. So
18 nobody could actually say that we had -- we talked about the
19 robbery and that they was around. That was just me, Shawn
20 and her.

21 Q. All right. Is that you, Shawn, and Rebecca?

22 A. Yes.

23 Q. All right. So no one -- no one would have been --
24 when he asked you if anybody knew that -- so I'm clear -- so
25 when Mr. Long asked you if anybody knew about the ploy to

EBON ROBERTS - DIRECT BY MR. SWILLEY

1 just steal the money from Wendy's, only you three had known?

2 A. Yes, that's it. Only us three.

3 Q. All right. Ebon, at the time did you know -- did
4 you have any reason to know that Shawn and Rebecca were
5 going to deny that they knew you?

6 A. I mean, it was -- it was -- should have been an
7 easy robbery because they was inside help, so it shouldn't
8 have been a problem at all, you know. I mean, I didn't even
9 think that because, like I said, it was, you know ---

10 Q. My question to you is: Did you know or did you
11 have any reason to know that they would get on this witness
12 stand and say, I don't know Ebon Roberts?

13 A. After the fact that I got caught, I mean, yeah, I
14 figured they was a couple, so obviously they were going to
15 go against me, you know.

16 Q. I'm not talking about going against you. Did you
17 know or did you have a reason to know that they were simply
18 going to deny that ever seen you before?

19 A. No, I never -- never have had an idea.

20 Q. Okay. Now, did Mr. Long ever ask you to provide
21 anybody that could attest to the fact that you just knew
22 these people in general?

23 A. No. He just asked me was anybody -- as far as,
24 knew anything about the robbery.

25 Q. Okay. Did you inform Mr. Long about these two

EBON ROBERTS - DIRECT BY MR. SWILLEY

1 individuals' drug issues?

2 A. Yes. I even told him at the bond hearing. I was
3 like, if you test them for weed or pills, then it would come
4 back dirty, you know, so.

5 Q. Okay. And, Ebon, do you recall, not the bond
6 hearing up here, but do recall the bond hearing in, I guess,
7 the arraignment in Municipal Court ---

8 A. Yes.

9 Q. --- when you were first arrested?

10 A. Yes, through the television, you know, Jane
11 Mackey, she was the Judge. And they really wasn't there to
12 hear about anything other than to set my bond.

13 Q. Okay.

14 A. But I did try to speak to her and let her know the
15 situation and what was going on.

16 Q. Okay. Did you inform -- did you make a note at
17 that time that you had acted in concert with these two
18 people?

19 A. Yes, I did.

20 Q. Okay. And have you -- did you have a chance --
21 have you had a chance today, at this point, to go through
22 all the discovery in the case?

23 A. Pretty much, yes. Yes.

24 Q. All right. Does -- does that make -- does it make
25 mention in the SOVA Report that you made that known to the

EBON ROBERTS - DIRECT BY MR. SWILLEY

1 Court?

2 A. Yes, it does.

3 Q. Okay. And -- and did you -- do you recall ever
4 asking Mr. Long to follow up and get information on these
5 two individuals?

6 A. I did, but I mean, he hasn't told me -- he hasn't
7 told me nothing. I mean, like I say, he only came up there
8 like maybe two or three times to J. Reuben Long and then
9 that was it. So everything else was just trying to get a
10 phone call or a letter.

11 Q. Okay. All right. And I know you testified at
12 trial, but I want to ask you if you could tell me, after
13 y'all hatched the plan to steal the -- just to steal the
14 money from the Wendy's, tell me what happened once you got
15 to the Wendy's.

16 A. Well, when I got to the Wendy's, I noticed that
17 things weren't as planned as they were.

18 Q. What do you mean?

19 A. I mean, they was supposed to have the door open,
20 and I was just supposed to go in, make it look real, like it
21 was a real robbery and then go, you know, just go.

22 Q. And did you ever work at that Wendy's?

23 A. No.

24 Q. Did you know that there were cameras or no cameras
25 there?

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1 A. I had no idea.

2 Q. Okay. Whether or not there were cameras?

3 A. No, I didn't know.

4 Q. Okay. Did you ever -- did you ever point a gun at
5 anybody in the parking lot?

6 A. No, I did not.

7 Q. Okay. The robbery ploy just come into affect when
8 you got into the Wendy's; is that correct? Or you started
9 acting like it was a robbery, or an armed robbery ---

10 A. I mean, the whole point was they was supposed to
11 still be, like, in the building, you know what I'm saying.

12 So outside it wouldn't even really matter as far
13 as what happened outside or whatever. But, like I said
14 things didn't go as planned, so that's why it transpired
15 like that. We were just talking.

16 But when the police came up, you know, we all just
17 ran together back in. I guess it was more of an instinct.
18 It wasn't like -- you know, it was just instinct. We was
19 together, so we just -- we just ran.

20 Q. So at that point, when y'all saw the policeman,
21 y'all ran into building?

22 A. Yeah, we all went in, as he said, in a quick
23 fashion.

24 Q. A quick fashion to the building?

25 A. Yeah.

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1 Q. At that point was the -- were you just -- at that
2 point just trying to get as much money as you can and run
3 away?

4 A. I mean, like I said -- at that point, yes, you
5 know. Because like Shawn -- it was -- I just wasn't kind of
6 believing it, you know what I'm saying. And I had already
7 told them prior, but this is -- this is -- it was wild. So
8 I mean, I was already under pressure, financially, you know.
9 And I didn't really want to do it, but I had -- I had bills
10 to pay and -- and that was the main thing.

11 Q. Was the plan that y'all were all going to split
12 the money three ways?

13 A. Two ways. I was going to get half and they was
14 going to get like 25 percent.

15 Q. Okay. And at any time did you ever -- well, let
16 me ask you: Were they in on the -- during the entire -- the
17 entire incident, were they -- were they really actually ever
18 held against their will?

19 A. No. No.

20 Q. Okay. And did you -- how was it that you got
21 changed into -- in-- to the Wendy's outfit or uniform?

22 A. I mean, like I said, once we was already in and
23 you know, Cavallini had already called for backup or
24 whatever, I was more of just -- I was just trapped in there.

25 So they was like, Well, you know, just put his

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1 clothes and, you know, try to kind of like, be like -- how
2 you say -- try to act like you work there, pretty much, you
3 know.

4 Q. Inconspicuous?

5 A. Yeah, try to -- like I say, just act like I was an
6 employee that just started the job and, you know, I didn't
7 have on my tan pants or whatever. So it was more, like I
8 said, just be like I was a part of the Wendy's crew or
9 whatever.

10 Q. Okay. Ebon going back to once you met Mr. Long,
11 did you -- was there a breakdown in the attorney-client
12 relationship?

13 A. Yes. Yes.

14 Q. Could you be more specific about that?

15 A. I was hearing words about the preliminary hearing
16 part, you know.

17 Q. Okay.

18 A. And I signed a request to the jail telling them I
19 wanted a preliminary hearing.

20 Q. Okay.

21 A. And it just so happened he came to see me, like,
22 two or three days before the preliminary hearing. So I told
23 him, I was like, I want to have a preliminary hearing,
24 because to my understanding that would be the first time
25 that I would be able to go in front of a judge and I would

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1 be able to have some type of say so. I would be able to say
2 something. And he was like, Nah, don't worry about it, just
3 waive it, you know, what I'm saying. Just pretty much
4 nothing.

5 Q. Okay. Do you know whether or not -- did you ever
6 ask Mr. Long to go interview anybody for you?

7 A. I mean, like I said, it wasn't -- there wasn't
8 really nobody that -- other than, like I say, other than
9 Shawn and Rebecca, it wasn't really anybody. Because the
10 main thing that he was asking me was like, Did anybody know
11 of the robbery plot? And the answer was, No.

12 Q. And did you -- did you ask Mr. Long to set you up
13 with a polygraph?

14 A. No, but he asked me, he say, Are you willing to
15 take one? And I was like, Yeah, I'd be willing to take one.

16 Q. Okay. And did you give a polygraph?

17 A. Yes, I did.

18 Q. All right. Where did -- when did that happen?

19 A. I think April or May at J. Reuben Long.

20 Q. Okay. And who was present at that -- that
21 procedure?

22 A. One of J. Reuben Long officers from Internal
23 Affairs.

24 Q. Okay. And who was that?

25 A. I think Ms. Macone (ph).

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1 Q. Okay. And was there a polygraph examiner there?

2 A. Yes, she was.

3 Q. All right. Was Mr. Long there?

4 A. No, he wasn't.

5 Q. Okay. Anybody else from the government there?

6 A. This tall white guy came in the beginning and then
7 he had left out. So it was just the woman that was
8 administering the test and the AI in the back.

9 Q. All right. Now, Ebon, did you ever reach out to
10 anybody with J. Reuben to see if that -- that you could
11 substantiate the fact that that polygraph exam did take
12 place?

13 A. Yes, I did. I wrote to Internal Affairs and she
14 was still working for J. Reuben Long.

15 Q. She being?

16 A. Ms. Macone.

17 Q. Now, Ebon, did you ever get a -- did you ever get
18 a written paper result of the polygraph?

19 A. Yes, I did.

20 Q. Okay. And you don't have that anymore?

21 A. It's over there on the table. Yes, I do.

22 Q. Okay. All right.

23 MR. ISENBERG: Objection, Your Honor. I fail to
24 see the relevance of this line of questioning in regarding
25 the polygraph.

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1 THE COURT: Well, somebody asked him about it
2 earlier. Was it you or you?

3 MR. ISENBERG: Your Honor, I believe it was
4 Mr. Swilley, he asked about a polygraph earlier.

5 THE COURT: Of Mr. Long?

6 MR. SWILLEY: Right. And, Your Honor, the purpose
7 of the questioning, the relevance is that one of the grounds
8 for PCR, did anybody ever follow up with law enforcement
9 about whether or not they delved into any issues or, you
10 know, basically his side of the story.

11 And I think that Mr. Long had testified that he --
12 you know, he didn't cross-examine anybody about that and
13 this would tend to prove the fact that, you know, law
14 enforcement did -- or, I guess, law enforcement did -- was
15 aware of that and never followed up on that issue. And I
16 just wanted to --

17 THE COURT: I'm going to allow it. I'm going to
18 allow it.

19 MR. ISENBERG: Your Honor, if I may, for the
20 record?

21 THE COURT: Sure. Go ahead.

22 MR. ISENBERG: Your Honor, if I may, for the
23 record. The standard that we're operating under is: Did
24 any of these allegations affect the outcome of the trial? I
25 think everyone in this courtroom is aware that a polygraph

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1 test is not admissible at trial. And Mr. Long went with the
2 defense that Mr. Roberts proffered to him. I'm just unclear
3 how this would have affected the outcome of the trial.

4 THE COURT: I think the question to Mr. Long, as I
5 recall earlier, was that the reason there was a suggestion
6 about that was to -- if it helped in the conspiracy or
7 corroboration matter that he, the attorney, could take that
8 to the solicitor's office, for whatever it was worth. I
9 know it couldn't go in at trial. So I'll allow that. Okay?

10 MR. ISENBERG: Okay.

11 THE COURT: Go ahead.

12 BY MR. SWILLEY:

13 Q. And did you ever get any correspondence
14 substantiating that that interrogation with the examiner
15 took place from J. Reuben?

16 A. Yes, I did. I had got a sworn ---

17 Q. A letter?

18 A. Yes, a sworn letter from when I was at Broad
19 River.

20 Q. Is this that letter?

21 A. (Reviewing document.) Yes, this is it.

22 Q. Is it a true and accurate copy of that letter you
23 received?

24 A. Yes, it is.

25 MR. SWILLEY: Your Honor, I would move to have

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1 this introduced as, I guess, Applicant's Exhibit 1.

2 THE COURT: It's accepted. Any objection?

3 MR. ISENBERG: Your Honor, I would -- and I will
4 say I have to put in an objection to the record that I don't
5 see the relevance of this polygraph examination, because it
6 would not have had any effect in the outcome of this trial.

7 THE COURT: Hold on, let me see here.

8 Mr. Long stated that the Defendant did get a
9 polygraph. Can't recall if -- can't recall if -- did one.
10 We offered his results -- we would have offered his results
11 for his defense.

12 So, I gather that Mr. Long was saying that if it
13 was favorable, and he thought it would be, obviously, that
14 it would be offered to law enforcement or to the solicitor's
15 office towards not that he was part of a robbery, but that
16 he was part of a conspiracy or group matter to do it.

17 So, I will allow it in over your objection, sir.

18 MR. ISENBERG: Thank you.

19 THE COURT: Not -- not for the truth of the guilt
20 or anything like that trial, but just because that he says
21 that he offered -- they were going to use the possible
22 results, if it had been favorable.

23 MR. ISENBERG: Yes, sir. Thank you.

24 THE COURT: And to clarify, when I said, Did the
25 defendant get polygraphed? That was the question that was

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1 asked of Mr. Long. His answer was, I can't recall if did
2 one. The offer regarding the voracity of his defense.

3 MR. SWILLEY: And, Judge, I just want to put on
4 the record that I put that in just to -- just to
5 substantiate that there -- you know, that law enforcement
6 had not -- had not explored into Mr. Roberts' -- that they
7 were aware of his side of the story, so to speak, and it was
8 never investigated into. And that was one of the issues in
9 the PCR petition that the trial counsel failed to bring out.

10 I'm not -- I -- what the results were, doesn't
11 matter to me. Just the fact that it was taken place, they
12 were put on notice of his side of the story, and they did
13 nothing. And that was not perpetuated -- or that was not
14 shown at the trial.

15 THE COURT: Yes, sir.

16 MR. ISENBERG: Again, You Honor, I'm just -- for
17 the -- for the record, for my own purposes, for the State's
18 purposes, I would have to object to the exhibit for hearsay,
19 just based upon the person who wrote that letter is not in
20 court today to testify or authenticate it.

21 So I would say that there is no one to
22 authenticate the fact that it may have been a business
23 record, but -- so I would just have to put that on the
24 record for the sake of the State.

25 THE COURT: What say you, Mr. Swilley?

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1 MR. SWILLEY: Your Honor, I think Mr. Roberts has
2 authenticated that -- that record. And I would that say
3 it's a correspondence to an inmate, and I think it would
4 qualify as a business record, and it does not contain an
5 opinion. So I think, thus, it's admissible, as it contains
6 a matter of fact on J. Reuben Long letterhead.

7 THE COURT: I don't know about that. I don't know
8 about that. He's testified that there was a polygraph, we
9 know there was one. So, I will sustain his objection on
10 that.

11 THE WITNESS: Your Honor, may I speak?

12 THE COURT: You got a good lawyer, sir.

13 MR. SWILLEY: And, Your Honor, I just put that
14 objection for the record. I think that document -- may I
15 just ask for it to be marked for identification only?

16 THE COURT: Yes, sir.

17 MR. SWILLEY: Thank you, Judge.

18 MR. ISENBERG: Thank you, Your Honor.

19 THE COURT: Yes, sir.

20 (WHEREUPON, Applicant's Exhibit Number 1 marked
21 for identification purposes only.)

22 BY MR. SWILLEY:

23 Q. And, Mr. Roberts, I want to go back and -- now,
24 when you were talking to Buddy there, Mr. Long that is, in
25 the jail, you said you had an attorney-client, kind of,

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1 breakdown in that relationship. Tell me what else, other
2 than the preliminary hearing, caused some discord between
3 you and Mr. Long.

4 A. I mean, he told me nothing. Every time I'd ask
5 him, I'd be like, Did you -- did you -- again, did you have
6 any new leads? Did you find out anything? He just -- he
7 just said nothing. He told me nothing.

8 I mean, he was more concerned about, I guess, kind
9 of, maybe his relationship with his wife. Because that was
10 the whole point of why he wouldn't have been at the
11 preliminary hearing, because he was going out of town then.

12 Q. Okay. As it pertains to you and he, did you ever
13 make it known to Mr. Long that you didn't want him to
14 represent you?

15 A. It be like a month-and-a-half, two months, I was
16 trying to get in contact with him. And every time I called
17 the public defender's office, he was out or, you know, the
18 secretary or receptionist, she was like, I'll leave a
19 message. But nobody never got back to me. And I didn't
20 really see him until that Friday before Monday the trial
21 started.

22 Q. Now, ultimately were you ever -- were you ever
23 even able to come close to being able to hire a private
24 counsel?

25 A. Say again?

EBON ROBERTS - DIRECT BY MR. SWILLEY

1 Q. Were you ever -- were you ever able or had -- did
2 you ever have the means to hire a private counsel?

3 A. No. No, what my family did was going to try to --
4 try to make something work, you know. And, if possible,
5 they was trying to make something work.

6 Q. Okay. And I want to go back and kind of forward,
7 tell me what else -- what else do you feel that Mr. Long
8 should have done that he didn't do in preparation?

9 A. If he was prepared for the case, then he was going
10 to use SOVA Advocates Written Statement, then they had to
11 validate it, then, yes, she should have been -- she should
12 have been subpoenaed. So she could have said, Yes, I
13 overheard when Ms. Rebecca said that he -- he didn't know
14 him or -- I mean, she didn't know him or whatever, you know.

15 So, I mean, that -- that struck me as odd, as that
16 part. And, like I said, Mr. Michael Cavallini, he was the
17 first officer on the scene. I mean, without him being
18 there, then...

19 Q. Let me ask you, did you -- did you expect -- did
20 you -- and you had a chance to -- I think you testified you
21 read the discovery; is that correct?

22 A. Say again?

23 Q. You read the discovery; is that correct?

24 A. Yes, I did. Yes.

25 Q. All right. And -- and did you expect

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1 Mr. Cavallini -- Officer Cavallini to be at trial?

2 A. Yes, I thought he was going to testify because,
3 like I said, all the other officers, they had already put
4 him as first officer in response as far as ---

5 MR. ISENBERG: Objection, Your Honor. This is
6 speculation as to what the officers decided to do with other
7 officers.

8 THE COURT: Sustained.

9 MR. ISENBERG: Thank you.

10 BY MR. SWILLEY:

11 Q. Based on your observation, just "Yes" or "No", did
12 you think Officer Cavallini was going to be there?

13 A. Yes, I was. Yes, I did.

14 Q. All right. Did you believe or did you know, based
15 on what -- or based on what you knew at the time -- what --
16 that's what was I was going to put in -- I'm not going to go
17 there.

18 Let me ask you: When it came to the day of the
19 trial, I think you were trying to hire private counsel, but
20 weren't able; is that correct?

21 A. Correct.

22 Q. Okay. And, Ebon, did you -- did you ever talk
23 with Buddy about whether or not you could just represent
24 yourself or have him represent you?

25 A. On the day of the trial I told him that I didn't

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1 think he did a adequate investigation. That he did nothing
2 as far as to strengthen his case. And, like I said, it was
3 a credibility issue, it was their word against mine. So I
4 felt like he didn't do anything. And then he had told me
5 that his caseload was already doubled, so.

6 Q. My question to you is: Did you ever have a
7 conversation with Mr. Long as to whether or not you could
8 represent yourself rather than have him represent you?

9 A. I told him -- I told him -- I mean, like I said,
10 in the end, like, yeah, I would rather represent myself.

11 I didn't -- I didn't -- like I said, I didn't feel
12 like he had ---

13 Q. Ebon, just -- just so we're clear here: Did you
14 tell Mr. Long that you would rather represent yourself than
15 have him represent you; is that correct?

16 A. I told him I would rather -- yes, I would rather
17 pro se.

18 Q. Okay. Did you -- did -- did he communicate that
19 with the Court?

20 A. He did tell the Judge. Yes, he did tell
21 Judge Hyman, that as far as -- he told Judge Hyman that me
22 and my client, we're having a situation and stuff. And
23 then, that's pretty much it. Then Judge Hyman had said
24 something -- and said, I'll advise you to keep him and all
25 this here -- I mean, he's prepared and everything.

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1 Q. Okay. Ebon -- Ebon, if you were actually given
2 the option to have represented yourself pro se, as opposed
3 to having Mr. Long, would you have done that?

4 A. Yes, I would.

5 Q. Okay. Did you feel as though that was ever --
6 that option was ever given to you?

7 A. No, it was completely denied.

8 Q. Okay.

9 A. Can I also say that if I would have known that I
10 could have represented myself and have him, like, sit to the
11 side, as far as like assist me, that's -- that's what I
12 would have done. But I -- they just said, like, if you're
13 not going to have him, then you got to do it yourself. And
14 that's why I told him, like, can I have a couple of months
15 to get familiar with the law. And he was like, No, the case
16 is going to trial now, so.

17 Q. Okay. And were you ever able to make that known
18 that you wanted to proceed pro se to the Judge?

19 A. Yes, I did.

20 Q. All right. I mean, did you ever -- were you ever
21 able to make that known to Judge Hyman?

22 A. I mean, yes, I told him. I was like, I would
23 rather pro se, but like he said, the case was already been
24 in like nine months or whatever, so I'm not going to
25 continue it any longer.

EBON ROBERTS - DIRECT BY MR. SWILLEY

1 Q. Okay. Do you feel Judge Hyman ever gave you the
2 opportunity to communicate to him that you wanted to go pro
3 se?

4 A. No, he didn't.

5 Q. Okay. So you -- were you -- were you able to tell
6 him at the appropriate time that you wanted to proceed pro
7 se as opposed to having Mr. Long?

8 A. I tried to tell him, but like I said, he did not
9 have both motions.

10 Q. Okay. All right. And did you ever make it known
11 to Mr. Long that these two individuals, Mr. Cain and
12 Ms. Kennedy were drug addicts? Or were -- habitually used
13 drugs?

14 A. Yeah. I mean, I told him how I met them and they
15 buy weed and pills, prescription pills, little narcotics or
16 whatever, so.

17 Q. Okay. And that was made known to Mr. Long by you?

18 A. Yes, it was.

19 Q. Okay. Now, today, Ebon, did you -- did -- I mean,
20 do you -- what's -- what's your occupation? What are you by
21 trade?

22 A. By trade, career, I was -- I planned to be an
23 entrepreneur.

24 Q. Well, I mean, what I'm asking you is: Did you
25 have any kind of legal training or knowledge at the time of

EBON ROBERTS - DIRECT BY MR. SWILLEY

1 this trial?

2 A. No.

3 Q. All right. Did you know anything or -- were -- or
4 did you know the South Carolina Rules of Evidence?

5 A. No, I did not.

6 Q. All right. Did you even know whether or not
7 Monique and Ms. Aklin's testimony would even have been
8 admissible at trial?

9 A. No, I didn't know anything about character
10 witnesses. And then my lawyer asked me, Did anybody know
11 anything the robbery, so.

12 Q. Okay. My question is: Did you -- did you know
13 that their testimony as presented today could have come into
14 play or could have come in at your trial?

15 A. No, I did not.

16 Q. Okay. And it's true to say, you didn't -- you
17 don't know -- at the time, you didn't know what's admissible
18 and what's not?

19 A. No.

20 Q. Okay. You relied on ---

21 A. His expertise.

22 Q. Okay. Right. And you -- did you inform Mr. Long
23 at the trial that when they testified -- when Shawn and
24 Rebecca testified that they didn't know you, that that was
25 false?

EBON ROBERTS - DIRECT BY MR. SWILLEY

1 A. Yes, he knew.

2 Q. Okay. He was aware -- did you make him aware of
3 that?

4 A. Since day one, yes.

5 Q. Okay. So -- what -- and not to get into the
6 polygraph, but who -- what was your understanding as far as
7 who set that up?

8 A. I figured the State set it up.

9 Q. Okay. And do you know -- do you know why the
10 State set it up?

11 A. I mean, probably because they had doubts. I mean,
12 it really didn't make -- see, when I came home, I didn't --
13 I didn't plan on going back to prison. I changed my whole
14 base of friends and I tried to go to Tech for, you know -- I
15 tried to change my life. It wasn't -- it wasn't like I was
16 still trying to get in trouble or anything. So, I mean...

17 Q. Ebon, the question I was asking you was: Did --
18 was it your -- was it your understanding or based on your
19 observations and what you knew had the State -- had the
20 government, that is, the police and the prosecutors and all,
21 had been presented with your side of the story?

22 A. Nobody got a -- nobody ever got a statement from
23 me or anything. They just -- they assumed what was actually
24 what they saw. So, I mean...

25 Q. Okay. And just so -- just so we're clear, did you

EBON ROBERTS - DIRECT BY MR. SWILLEY

1 try to tell -- I mean, did you -- did you ask for a lawyer
2 when they tried to interview you? When the police -- when
3 the police captured you?

4 A. The police never interviewed me. The only thing
5 they asked about was where the gun was at and I told them I
6 think it was in the office, but when they looked for it, it
7 wasn't in the office.

8 Q. Did they ever sit you down and try to interrogate
9 you?

10 A. No.

11 Q. Okay. Did -- so what I'm asking you is: At the
12 time, I guess, based on your information, was somebody --
13 was the government informed as to your side of the story,
14 based on your observation?

15 A. No. No, sir.

16 Q. Okay. Okay. And let me ask you: Is there
17 anything else that you feel as though, or that you believe,
18 based on your observations and what you know, is there
19 anything else that you think that Mr. Long should have done
20 that he didn't do?

21 A. When the jury came back with the stylus (sic)
22 question.

23 Q. With the what question now?

24 A. The stylus (sic) question.

25 Q. What do you mean by that?

EBON ROBERTS - DIRECT BY MR. SWILLEY

1 A. They had two questions. One of them they wanted
2 to hear my testimony again about something. And the second
3 one was, did the -- did the State have prior knowledge that
4 it might have been an inside job.

5 Q. Okay. And that was the question that the jury had
6 during deliberations?

7 A. Yes, sir.

8 Q. And, for the record, how long was that jury
9 deliberating for?

10 A. Close to about 10 hours.

11 Q. And straight through, nobody went home?

12 A. Straight through.

13 Q. Okay. All right. Now -- and the question was
14 about whether or not the State had any information it was an
15 inside job; is that correct?

16 A. Yes. The State -- the question was, Did the State
17 have prior knowledge, before trial, that it might have been
18 an inside job?

19 Q. Okay. And based on your recollection, was that
20 ever -- any evidence of that introduced at the trial?

21 A. As far as the SOVA lady's -- the SOVA lady's
22 written statement, but because she didn't come to testify, I
23 mean...

24 Q. Okay. Just so we're clear, for the record, Ebon,
25 I'm going to ask ---

EBON ROBERTS - DIRECT BY MR. SWILLEY

1 A. And my letter, too. My letter right here. My
2 letter was entered into trial.

3 Q. What now?

4 A. My letter that I sent to the public defender's
5 office ---

6 Q. Uh-huh.

7 A. It was entered -- well, they let it be, I guess,
8 accepted. They let it be accepted. And that also had it in
9 there that, you know -- and I thought, 'cause in the letter
10 I told them, I was like, Pass that on to the solicitor,
11 because I told them it was a crazy mistake. I told them it
12 was a crazy mistake, and I tried to resolve it, as far as I
13 told them I would take 10 years drug court and 10 years
14 probation and pay restitution. But the letter was never
15 passed on.

16 Q. Okay. Now, Ebon, I'm going to ask you, and -- I'm
17 going to ask you to refer to Page 304 of the transcript
18 about the two questions that the jury asked. That's Lines 6
19 through 16 on Page 304.

20 Do you recall what those questions were?

21 A. I think that was like the two -- two jury stylus
22 questions.

23 Q. Okay. I'm going to ask you to read Lines 6
24 through 16 on Page 304 of the trial transcript.

25 A. It says: The Court: All right. I have what's

EBON ROBERTS - DIRECT BY MR. SWILLEY

1 styled as a Jury's request from the Jury Foreperson.

2 Number 1, a transcript of Defendant's testimony.

3 Of course, we have no transcript, but we'll be happy to
4 replay the testimony for you.

5 And Number 2 is: Did the State have knowledge of
6 the conspiracy theory victim's involvement?

7 So, of course, the response to that would be:
8 Unless I hear something else from you, that will be they
9 have to reach an inconclusion concerning that from the
10 evidence presented in the case.

11 Q. Okay. Now, Ebon did they -- did they get to hear
12 your -- your testimony again when they requested it?

13 A. They heard part of it, as far as what they was
14 looking for.

15 Q. So the testimony was replayed?

16 A. Yes, part of it.

17 Q. Okay. Ebon, is there anything else you feel as
18 though -- that was not done on your behalf by Mr. Long?

19 A. I mean, I just -- I just -- I just felt like if
20 the right questions were asked, then it would have took
21 more -- it would have took out the doubt, as far as, you
22 know, like -- for number one, how was I -- if I had the gun,
23 how was -- the police wasn't able to find the gun. And how
24 did I know that they smoke weed and pills and all this
25 stuff?

EBON ROBERTS - CROSS BY MR. ISENBERG

1 It just -- it was just a lot of things that it
2 would have -- would have made known -- it just would have
3 came out better, as far as, Yes, he had to know them. It
4 wasn't just, like, a coincidence like he could have threw it
5 out the air or something.

6 Q. Okay.

7 A. Or he could have brought out the air.

8 Q. Okay. All right.

9 MR. SWILLEY: Ebon, please answer any questions
10 that the State has for you.

11 MR. ISENBERG: May it please the Court?

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. ISENBERG:

15 Q. Good afternoon, Mr. Roberts.

16 A. Good afternoon.

17 Q. How are you doing today?

18 A. Considering this cough, I'm all right.

19 Q. Allergies?

20 A. Nah, just like a little tickle in my throat. Dry
21 cough.

22 Q. I can certainly appreciate that, especially this
23 time of the year.

24 You testified on direct that you had a previous
25 relationship Mr. Cain and Ms. Kennedy, correct?

EBON ROBERTS - CROSS BY MR. ISENBERG

1 A. Yes.

2 Q. How many times had you sold them drugs before this
3 instance?

4 A. Just a few times. No more than about a handful.

5 Q. Okay. So you sold them drugs a handful of times?

6 A. Yes.

7 Q. Okay. Was that both weed and pills every single
8 time?

9 A. No. Sometimes it was just weed. Sometimes it was
10 just pills. But, like I said, I didn't have pills like
11 that. I got the pills from someone else and I was just the
12 middleman, just getting maybe a couple dollars off of each
13 one for myself.

14 Q. Okay. When did y'all begin planning this robbery?

15 A. I guess around the middle of November. As far
16 as -- like I said, like the last -- the last two or three
17 times that I seen them, we were talking about, you know,
18 Christmas coming up and stuff like that. So, you know,
19 money was tight and it started from there.

20 Q. Okay. What was the original plan?

21 A. That we would split the money. I would get
22 50 percent and then they would split the other 50 percent
23 up.

24 Q. What was the original plan to rob Wendy's?

25 A. They would just have the door open, then I would

EBON ROBERTS - CROSS BY MR. ISENBERG

1 go through the process, as far as, tying them up, making it
2 look real and just nobody would be able to identify who did
3 it or what.

4 Q. Okay. And why did you plan to tie them up if
5 there were no security cameras?

6 A. Well, that's the point, I didn't know if there was
7 any security cameras. But I figured they would know, and
8 then regardless, if I didn't tie them up, then who knows how
9 the police would have went about it to me.

10 Q. Okay. So when you proposed the idea of tying them
11 up, they didn't say anything about security cameras?

12 A. No. Like I said, that was -- tying up was a part
13 of the -- as far as making it look real. That way if they
14 was tied, then you couldn't say they was, kind of, like,
15 part of it or whatever.

16 Q. Okay. So you show up that night and you expect
17 the door to be open with the money just sitting out,
18 correct?

19 A. Not just sitting out, but it should have been on
20 the desk, yes. It should have been on desk or the -- before
21 it dropped or whatever. See, I mean, that's -- that's what
22 made me believe that Shawn had went in back that last time
23 to go put it up or whatever.

24 Q. Okay. Did you know whether the money was coming
25 from a safe or a cashier's box at that point?

EBON ROBERTS - CROSS BY MR. ISENBERG

1 A. I think it was from the drawers from that night.

2 Q. Okay. And you show up, y'all were all three out
3 in the parking lot, correct?

4 A. Uh-huh.

5 Q. And at that point are y'all discussing how you're
6 going to do this?

7 A. No, we weren't discussing it. I mean, I was -- I
8 was kind of mad at the fact that I felt like either they,
9 you know, I guess, kind of, forgot. And you forgetting, at
10 this point in time, when I have pretty much everything to
11 lose and you have nothing to lose, yes, I was -- I was kind
12 of upset.

13 So we were -- we were talking about that. And
14 then I asked, I was like, Well, why did you go back inside?
15 Why didn't you just come the first time with Rebecca and
16 just leave? And that's when he said, Well, I had to go do
17 something. So that's why I took it as, he was going to go
18 put the money up as far as putting it in the drop box or
19 whatever.

20 Q. Okay. So when you got there and talked to him,
21 you realized the money was not available?

22 A. No. It's more of, I didn't believe him, I mean.

23 Q. Okay. And so the door wasn't open for you to get
24 into Wendy's when you got there?

25 A. No, by that time I think it was already locked.

EBON ROBERTS - CROSS BY MR. ISENBERG

1 He had already locked it up.

2 Q. So the door was locked and both of them were
3 outside, correct?

4 A. Yeah, they came back out, yes.

5 Q. Okay. Did they agree to let you go inside with
6 them when y'all reentered?

7 A. Yes, we all went back inside.

8 Q. Okay, and ---

9 A. It's more of -- it wasn't even agreed, because
10 when the police came, we all just ran together. I mean, I'm
11 not going stay out -- I'm not about to stay out when y'all
12 two go in.

13 Q. Okay. And so who unlocked the door?

14 A. I can't recall. I think is Shawn did.

15 Q. Okay.

16 A. I think Shawn did.

17 Q. Okay. So after Shawn locked the door, what
18 happened?

19 A. After he unlocked the door?

20 Q. Uh-huh.

21 A. He went to the alarm system and tried to punch it
22 in.

23 Q. And what happened when he tried to punch it in?

24 A. He punched it in.

25 Q. Did the alarm go off?

EBON ROBERTS - CROSS BY MR. ISENBERG

1 A. No, there was no alarm.

2 Q. Okay. And at that point were you still upset with
3 Mr. Shawn?

4 A. No, it wasn't that I was upset, but now it was
5 just -- police was there. So, you know, it was more of how
6 we going to get out of this right here? I was -- I was
7 thinking of how I'm going to get out, because, I mean,
8 they -- they worked there, so.

9 Q. Right. Did you have any bad blood with Shawn or
10 Rebecca before you arrived that night?

11 A. No. I mean, I didn't know Shawn felt me as a
12 threat or anything or something like that. I mean -- I
13 mean, I wasn't trying to flirt or anything.

14 Q. Okay. So in your mind, y'all were all three in
15 this together, and you were ---

16 A. Yes.

17 Q. --- going to go grab the money and y'all were
18 going to split it, correct?

19 A. Yes.

20 Q. Okay. So why did you bring the gun?

21 A. Again, to make it look real, because like I said,
22 I didn't know, regardless of what. I mean, if they would
23 have got the gun verified, I mean, I don't even know who
24 prints been on the gun, you know what I'm saying. I don't
25 know if they even checked the gun to see who prints been on

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1 it, because it was supposedly should have been in the
2 office, but it wasn't. So somebody had to move it from the
3 office and hide it or whatever.

4 Q. Okay. So you brought the gun to make it look
5 real, correct?

6 A. (Witness nodding.)

7 Q. Okay. So why did you pull the gun out in the
8 parking lot?

9 A. The gun was never pulled out in the parking lot.

10 Q. Okay. Did you ever expose it to Shawn or Rebecca?

11 A. No. If anything, I -- I think it might have -- it
12 might have fell as -- out of the pocket, when we went in.
13 And that's probably when the officer saw it, you know.
14 Because it was bright and shiny, so that's probably when he
15 saw it.

16 Q. Okay. So you never had it out?

17 A. There wasn't no need to really have it out.

18 Q. Okay. Do you remember testifying at trial?

19 A. I do.

20 Q. Do you remember testifying at trial that you had
21 the gun out?

22 A. I think I had it out to the side, if anything.
23 Yeah, it might have been out, but it wasn't pointed at them
24 or whatever.

25 Q. Okay. So you're all in cahoots. You see the

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1 police officer. You panic. You still go inside. You still
2 tie them up. You still pull the gun out. Why?

3 A. Well, again, the gun was already out, if I'm not
4 mistaken, but it wasn't pointed at them. And the whole
5 point was to tie them up and make it look -- I think Rebecca
6 was already tied up, so.

7 Q. Right. Why did you still go through with the
8 plan, even after the police -- you realized the police were
9 on ---

10 A. I mean, really afterwards, like I said, Rebecca
11 was already tied up. So the only thing going through the
12 plan now was just trying to get Shawn's clothes, to try to
13 blend in, as far as saying I work there.

14 Q. Okay. So the part about you working there,
15 that -- that just kind of came about?

16 A. Yeah, I think -- I think she suggested like, Well,
17 just give him his clothes, try to blend in, try to act like
18 you work here. But that was after ---

19 Q. Okay.

20 A. --- I was pacing a little bit and stuff.

21 Q. Okay. How did you get Wendy's uniform -- a
22 Wendy's uniform?

23 A. Shawn gave me his coat and his shirt.

24 Q. Okay. So Shawn gave you his Wendy's uniform?

25 A. His coat and shirt.

EBON ROBERTS - CROSS BY MR. ISENBERG

1 Q. Okay. So if the police arrive and you're wearing
2 a Wendy's uniform and Shawn isn't, how were you going to
3 explain that?

4 A. Like I say, for number one, I mean, police was
5 never supposed to even be there. And I didn't know if he
6 had any extra shirts, you know, or whatever.

7 Q. But you decided to put the uniform on after you
8 realized the police were aware of your presence, correct?

9 A. Yes.

10 Q. Okay. So the police -- after you realized the
11 police were aware, you still put the uniform on and Shawn
12 was not with a uniform, why?

13 A. I didn't -- I didn't know if he had an extra shirt
14 or whatever going on. I didn't -- I didn't look around, you
15 know what I'm saying. Like I said, it was just suggested,
16 just put this on, so I put it on.

17 Q. Okay. So you didn't know if there were cameras.
18 You didn't know about the safe. And you didn't know if
19 Shawn had an extra uniform, correct?

20 A. Extra shirt or whatever.

21 Q. Okay. But y'all did thoroughly plan this out?

22 A. I mean, see that what happens when you just --
23 it's -- it wasn't that much communication as far as -- I
24 mean, it really -- it really shouldn't have been like that.
25 Because if the door would have been open, then I could have

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1 easily went in and went out. I mean, if you think about it,
2 I mean, the police station is like, you can holler, you can
3 yell, and they can hear you.

4 So for the police station to be right there and me
5 still try it, knowing that, if nobody wasn't part of it, I
6 mean, that's kind of mental, right?

7 Q. Right. Okay. Well -- and you communicated this
8 whole story to your lawyer, correct?

9 A. Yes, he knew everything.

10 Q. You told him about the drug deals?

11 A. I told him everything in person and in the letter.

12 Q. Okay. And you told him that Monique and
13 Ms. Alston accompanied you on the drug deals?

14 A. No, he didn't ask about that. He asked if anybody
15 knew about the robbery. So, of course, nobody knew about
16 the robbery.

17 Q. Okay.

18 A. Because I didn't -- I mean ---

19 Q. So you didn't tell him that they saw you talking
20 to the victims prior to the incident because he never asked?

21 A. Yeah, the only thing he asked me was, like, Did
22 anybody know about the robbery? He didn't ask me, Did
23 anybody knew them. That was the whole point, you know.

24 I mean, if he had said, Well, do you know anybody
25 that know them or anything like that? Then I could have

EBON ROBERTS - CROSS BY MR. ISENBERG

1 said something, or at least could have thought back.

2 Q. So you had all this in the chamber, and he should
3 have just asked better questions?

4 MR. SWILLEY: Objection, Your Honor. Calls for
5 him to speculate.

6 THE WITNESS: Like I said, it's -- it's more --
7 like I said ---

8 THE COURT: Sir, let me finish talking please.
9 I'll let him answer that. Go ahead, sir.

10 MR. ISENBERG: Thank you.

11 THE WITNESS: It's more, like I said, if he would
12 have asked the right questions in trial, then he would have
13 got a more clear understanding of what was going on.

14 BY MR. ISENBERG:

15 Q. Well, how did you expect him -- based upon what
16 happened, how did you expect him to know that you had
17 witnesses if you never told him that somebody witnessed you
18 having drug deals with the victims?

19 A. Because the same way, the way he worded the
20 question. He was like, Anybody know about the robbery plot?
21 I said, No, the only person that knew was me, Shawn and her.

22 Q. Well, if you don't offer him a witness, how do you
23 expect him to present witnesses on your behalf?

24 A. Well, I know I didn't tell anybody. So if
25 somebody would have told them, it would have had to been

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1 them two.

2 Q. Okay. And you never talked to them about it after
3 you were arrested, correct?

4 A. Who? Shawn and Rebecca?

5 Q. You never talked to Monique or Ms. Alston about
6 their prior meeting with the victims after you were
7 arrested, correct?

8 A. Yeah, I didn't know the law. So, I mean, no, I
9 didn't talk about that.

10 Q. Well, you told your lawyer that you had a prior
11 relationship with them, right? You told your lawyer you had
12 a prior relationship with the victims, Shawn and Rebecca,
13 right?

14 A. Okay, yes.

15 Q. And you said, I've been dealing drugs -- drugs to
16 them, I've done it multiple times, correct?

17 A. I met them in, like, the last part of October.
18 Yeah, the last two weeks of October, something like that.

19 Q. And at that point, did your lawyer ever ask you,
20 How can you prove that?

21 A. He didn't ask me that.

22 Q. Okay.

23 A. He had asked me, Did anybody know about the
24 robbery with them? That's what he had asked me.

25 Q. Okay. Did he ever ask you if you had any

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1 witnesses that you could offer him to corroborate your
2 story?

3 A. At that point in time, no. Not about the robbery,
4 no.

5 Q. Okay. So you're saying right now that you told
6 him about this prior relationship, and you decided that it
7 wasn't relevant that two people that you know saw you
8 dealing drugs to the victims before the incident?

9 A. That's the point. I didn't -- I didn't know what
10 was relevant or not, because I didn't know the law. If I
11 knew I could have had a character witness or anybody that
12 said they knew of them, then, yes, I would have told him
13 that.

14 Q. Did you see Mr. Cain and Ms. Kennedy testify at
15 trial?

16 A. Yes, I seen them testify.

17 Q. And you heard both of them testify that they
18 didn't know you?

19 A. Uh-huh.

20 Q. At that point, did you go over to your lawyer and
21 say, Monique and Ms. Alston are in the courtroom, they saw
22 me deal drugs to Mr. Cain and Ms. Kennedy. Did you ever say
23 anything like that to him?

24 A. At that point in time, I mean, when your life is
25 on the line, and they're talking about giving you life

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1 without parole, you're not thinking straight. I wasn't even
2 really -- I didn't even feel like I was in my body, at that
3 point in time. I mean, that's why -- I was numb.

4 THE COURT: Sir, would you answer the question for
5 us, then you could explain.

6 THE WITNESS: Well, no. No. I didn't even -- it
7 didn't even recollect to me.

8 BY MR. ISENBERG:

9 Q. Okay. So, I just want to get this straight.
10 You never told your lawyer about them in
11 preparation, correct? "Yes" or "No".

12 A. Never asked me, no.

13 Q. You never asked them to testify on your behalf
14 before trial, correct? "Yes" or "No".

15 A. I didn't know they could testify.

16 Q. Okay. And you never said anything to your lawyer
17 at trial about them being able to testify on your behalf,
18 correct?

19 A. I still didn't know I could have character
20 witnesses.

21 Q. Okay. And so, at that point, when trial was over,
22 your lawyer still has no idea that this occurred, correct?

23 MR. SWILLEY: Objection, Your Honor. This calls
24 for him to speculate as to what Mr. Long had known.

25 MR. ISENBERG: I'll rephrase, Your Honor. I'll

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1 withdraw.

2 THE COURT: Yes, sir, please.

3 BY MR. ISENBERG:

4 Q. And by the time the verdict had been reached you
5 still had not told your lawyer about the instance where you
6 dealt drugs with Monique and Ms. Alston, correct?

7 A. No, I didn't tell him, no.

8 Q. Okay.

9 A. I mean, but like I said, I didn't even hear when
10 the jury said, did the solicitor -- I mean, Did the State
11 have prior knowledge that it might have been an inside job?

12 Q. Okay.

13 A. Like I said, I was numb.

14 Q. So that begs the question: Why were you
15 chastising your lawyer for not investigating if you weren't
16 offering up relevant witnesses?

17 A. Well, he has expertise. I mean, if I had knew the
18 law, then I wouldn't have needed him.

19 Q. Okay. If he has expertise, then why did you try
20 to relieve him?

21 A. Again, I felt like he wasn't doing nothing.
22 That's why I told the Judge, I was like, Well, can we
23 continue this case? I would like to proceed myself, but I
24 needed a couple months to understand the law.

25 Q. Well, if he wasn't doing anything, why didn't you

1 offer him up any witnesses?

2 A. I didn't know. And then, again, he asked about
3 the robbery. None of them knew about the robbery. The only
4 three people that knew about the robbery was me and those
5 two.

6 Q. Okay.

7 A. So, I mean, I ask them questions about a robbery
8 and they didn't know -- I mean, it's not like I wanted to
9 tell my family that I was going to do something else like
10 this right here. I mean, they didn't want me to do it. I
11 didn't want to do it, you know. I just -- I needed money at
12 the time to pay my bills or whatever, so.

13 MR. ISENBERG: Okay. May I beg the Court's
14 indulgence for just one moment?

15 THE COURT: Yes, sir.

16 MR. ISENBERG: All right. I have no further
17 questions for this witness.

18 THE COURT: Yes, sir.

19 MR. SWILLEY: Just two, Judge.

20 REDIRECT EXAMINATION

21 BY MR. SWILLEY:

22 Q. Ebon, it's true, you didn't know that Monique and
23 Latasha's testimony was admissible -- would have been
24 admissible or even relevant, did you?

25 A. I had no idea. And, like I said, it was never

EBON ROBERTS - REDIRECT BY MR. SWILLEY

1 even asked.

2 Q. Okay. And, Ebon, you didn't know at the time
3 Shawn and Rebecca were going to deny ever having seen you
4 before; is that correct?

5 A. No, not at that point in time, no.

6 Q. Okay. That's all.

7 THE COURT: Any redirect?

8 MR. ISENBERG: Nothing, Your Honor.

9 THE COURT: You may step down, sir. Thank you.

10 MR. SWILLEY: Your Honor, that would conclude all
11 the witness testimony for today -- or for period.

12 THE COURT: Yes, sir.

13 Anything to be offered by?

14 MR. ISENBERG: Yes, Your Honor, I just want to ask
15 Mr. Long a few more questions.

16 THE COURT: Okay.

17 MR. ISENBERG: It'll take two minutes. If I may
18 call him back to the witness stand.

19 THE COURT: Anybody else besides him? And if you
20 do, that's fine. I'm just trying to plan the day out.

21 MR. ISENBERG: Your Honor, maybe five questions
22 for him.

23 THE COURT: Okay.

24 MR. ISENBERG: If I may call Mr. Long back to the
25 stand?

J. M. LONG -- FURTHER CROSS BY MR. ISENBERG

1 THE COURT: Yes, sir. Thank you.

2 You're still under oath, sir.

3 THE WITNESS: Thank you, Your Honor.

4 MR. ISENBERG: Thank you, Your Honor.

5 FURTHER CROSS-EXAMINATION

6 BY MR. ISENBERG:

7 Q. Mr. Long, do you -- do you recall your trial when
8 you represented Mr. Roberts?

9 A. Yeah, most of it.

10 Q. Okay. Do you recall any witnesses approaching you
11 during the trial to testify on his behalf?

12 A. No, if they had, I would have been tickled to
13 death. It would have been manna from heaven to have
14 somebody just show up and be there and to corroborate what
15 he was saying.

16 Q. Okay.

17 A. I would have certainly called them as a witness.

18 Q. And before the guilty verdict was reached, were
19 you ever made aware of an instance where Monique and
20 Ms. Alston accompanied Mr. Roberts to a drug deal with the
21 victims?

22 A. No, I don't recall ever having heard their names
23 or those situations before.

24 Q. Okay.

25 MR. ISENBERG: I have no further questions, Your

J. M. LONG - FURTHER DIRECT BY MR. SWILLEY

1 Honor.

2 THE COURT: Mr. Swilley?

3 MR. SWILLEY: Just one.

4 FURTHER DIRECT EXAMINATION

5 BY MR. SWILLEY:

6 Q. Mr. Long, you heard the testimony of Monique and
7 Latasha here today, right?

8 A. Yes.

9 Q. And if you had known that was what they could
10 attest to, you would have called them as witnesses, correct?

11 A. Absolutely.

12 Q. All right. Thank you, Mr. Long.

13 MR. SWILLEY: That's all I have.

14 THE COURT: Anything from the State?

15 MR. ISENBERG: No, nothing, Your Honor. Thank
16 you.

17 THE COURT: That's your case?

18 MR. SWILLEY: That's it, Your Honor.

19 THE COURT: The State?

20 MR. ISENBERG: The State rests, Your Honor.

21 THE COURT: All right. As I've said many times
22 this week, here in Conway and Georgetown, I took lots of
23 notes. I have listened carefully. I try to avoid what I
24 call drive-by, fast-by rulings.

25 So I'll ask you for your patience. And let me get

1 a ruling out to you by email. And you're going to say, Well
2 when are you going to do that? Well, I've only got five
3 ahead of you on this round of PCRs, so it will be soon, but
4 not too long.

5 All right?

6 MR. ISENBERG: Okay. Thank you, Your Honor.

7 THE COURT: Okay. Thank you all.

8 MR. SWILLEY: Thank you, Judge.

9 (WHEREUPON, the proceedings concluded.)

10 END OF REQUESTED TRANSCRIPT

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CERTIFICATE OF REPORTER

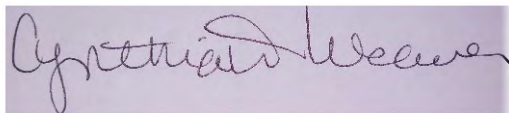
State of South Carolina)

County of Horry)

I, Cynthia D. Weaver, Official Court Reporter for 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 matter of the captioned case, relative to appeal, in the Court of Common Pleas for Horry County, South Carolina, on the 14th of November, 2019.

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

May 5, 2020

A handwritten signature in dark ink, appearing to read "Cynthia D. Weaver", is written over a light purple rectangular background.

Cynthia D. Weaver,
Official Court Reporter
State of South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Ebon Roberts, #299062)
Applicant,)

Case No.: 2017-CP-26-7381

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

FILED
HORRY COUNTY
2020 AUG 20 PM 2:06
RENEE N. J. VIGOR
CLERK OF COURT
HORRY COUNTY, SC

This matter comes before this Court by way of Applicant's post-conviction relief application filed November 9, 2017. Respondent made its Return on February 26, 2018, requesting an evidentiary hearing be convened. An evidentiary hearing was held on November 14, 2019, at Horry County Courthouse. Matthew S. Swilley, Esquire, represented Applicant. Assistant Attorney General Jacob A. Isenberg represented Respondent. At the hearing, Applicant testified on his own behalf. Officer Michael Cavallini, Counsel J.M. "Buddy" Long, and character witnesses Monique Alston and Latasha Aklin also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. During the May 2015 term, the Horry County Grand Jury indicted Applicant for Armed Robbery (2015-GS-26-01888), two counts of Kidnapping (2015-GS-26-01889 and -01890), and Unlawful Possession of a Pistol (2015-GS-26-01891). J.M. "Buddy" Long, Esquire represented Applicant. Assistant Solicitor James Austin Thomas, Esquire prosecuted the case. On September 15-16, 2015, Applicant

proceeded to trial before the Honorable Larry B. Hyman, circuit court judge, and a jury. Applicant was found guilty as indicted on September 16, 2015. Judge Hyman sentenced Applicant to imprisonment for concurrent terms of life without parole for the armed robbery and kidnappings, and one consecutive term of five years for unlawful possession of the pistol.

Applicant filed a timely Notice of Appeal that was perfected by Susan B. Hackett, Esquire, through filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Roberts*, Op. No. 2017-UP-085 (S.C. Ct. App. filed Feb. 15, 2017). The Remittitur was issued on March 3, 2017.

Summary of Relevant Facts

Around three in the morning on December 8, 2014, Rebecca Kennedy, a Wendy's employee in Conway, South Carolina, was sitting in her car outside the restaurant waiting on her co-worker and boyfriend Shaun Cain to finish closing the store. (Trial Tr. 60-61, 86.) Applicant approached Kennedy's vehicle, pointed a gun at him, forced himself into the back of the car, and duct-taped Kennedy. (Trial Tr. 60-61.) When Cain approached the vehicle, Applicant jumped out, captured him, and forced Cain to grant entry into the restaurant's office, who deliberately entered an access code incorrectly to trigger a security alarm. (Trial Tr. 61, 86-88, 99-100). Applicant forced Cain to crawl to the office, while Kennedy was made to follow by walking with her head down. (Trial Tr. 61, 91). Applicant duct-taped the two together and demanded money, but was frustrated by a largely inaccessible time-locked safe. (Trial Tr. 61-62, 91-92, 98). When security called the restaurant about the late entry, Applicant gave the phone to Cain, who deliberately gave an insufficient answer in order to raise an alarm. (Trial Tr. 62-63, 92). Applicant attempted to exit the Wendy's using Cain's uniform after realizing law enforcement

was on scene, but the ruse was not successful, and Applicant was immediately taken into custody by Conway police. (Trial Tr. 63-65, 92-93, 97, 139-44, 156-58, 163-67). The weapon and duct tape were both recovered. (Trial Tr. 186-89).

Current Action Before This Court

In his initial PCR Application, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "Denial of effective assistance of counsel."
 - a. "Counsel failed to investigate the facts of the case."
 - b. "Counsel advised to waive preliminary hearing."
 - c. "Counsel was laboring under conflicting interest."

Through Counsel, Petitioner, in his first amended application dated November 7, 2019, alleged:

1. "Trial Counsel was ineffective for failing to call witnesses favorable to Applicant that would have substantiated his testimony at trial that Applicant knew Shaun Cain and Rebecca Kennedy prior to the incident involving the alleged robbery and kidnapping despite Cain and Kennedy's claim of not knowing Applicant, specifically Monique Alston and Latasha Atkins could attest to the aforementioned."
2. "Trial Counsel was ineffective for failing to cross-examine a lay witness, Rebecca Kennedy (a.k.a. Rebecca Harrington) concerning a prior criminal conviction which was admissible under the rules of evidence. (Shoplifting, Myrtle Beach Municipal Court Case No.: 34168AO)."
3. "Trial Counsel was ineffective for failing to cross-examine all law enforcement officers as to whether they undertook any investigation into Applicant's side of the sequence of events that led to his being charged with the crimes for which he was convicted."
4. "Trial counsel was ineffective for failing to advise Applicant that he had absolute right to proceed pro se if he did not wish to have trial counsel represent him at trial or advise the trial judge of Applicant's request."
5. "Trial counsel was ineffective for failing to communicate to the Court that Applicant wished to proceed pro se if he had to choose between representing himself pro se and having trial counsel represent him."
6. "Trial counsel was ineffective in failing to cross-examine witnesses Cain and Kennedy about their prior drug use and abuse."

In his second amendment to the PCR application, dated November 12, 2019, Applicant, through PCR Counsel, added another allegation: "[t]rial counsel was ineffective for failing to

interview and call as a witness Officer Michael Cavallini with the City of Conway Police Department.”

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Failure to call Officer Cavallini as a witness at trial.
2. Failure to call character witnesses Monique Alston and Latasha Atkins to testify at trial.
3. Failure to cross-examine Kennedy regarding a twenty year old misdemeanor shoplifting conviction and alleged drug use.
4. Failure to cross-examine Cain regarding a pending criminal conviction in Florida and alleged drug abuse.
5. Failure to cross-examine law enforcement officers regarding Applicant's version of the story.
6. Failure to investigate the evidence and discovery.
7. Failure to investigate, prepare and properly assert Applicant's defense that Cain and Kennedy bought drugs from Applicant and were his co-conspirators in his plan to rob Wendy's.
8. Failure to request a preliminary hearing when Applicant stated he wanted one.
9. Failure to adequately advise Applicant and communicate to the court that Applicant wanted to proceed *pro se*.
10. Failure to communicate with Applicant concerning updates on the case and new information.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Michael Cavallini Testimony

Cavallini testified he was employed with the Conway City Police Department on December 8, 2014. (PCR Tr. 7). Cavallini stated he was on patrol and noticed three people standing in the back of Wendy's parking lot. (PCR Tr. 8). Cavallini stated he promptly pulled in to the parking lot. (PCR Tr. 8). He testified that when he observed the individuals, the three individuals were moving quickly moving to get inside the building and saw a gentleman, whom he thought was Applicant, with a pistol to another person's back. (PCR Tr. 8-9, 15). Cavallini also testified that it looked like Applicant forced a victim to manipulate the alarm inside the



store. (PCR Tr. 8). Cavallini stated that, based on his eight years in law enforcement, it looked like an armed robbery. (PCR Tr. 8).

Cavallini did not think anyone spotted his police car. (PCR Tr. 13). Cavallini stated he pulled out of the lot, notified dispatch, and pulled into a nearby gas station, justifying this by stating that he was trained not to get too close to an armed robbery incident to avoid creating a hostage situation. (PCR Tr. 8-9). Cavallini testified that most of the county police showed up to assist him with the incident and Applicant was eventually arrested and transported back to jail. (PCR Tr. 9). Cavallini testified he did not remember being called or subpoenaed as a witness at trial, but stated he had to go out of town for a funeral that day. (PCR Tr. 11-12).

J.M. "Buddy" Long ("Counsel") Testimony

Counsel testified that in 2014 he was employed with the Horry County Public Defender's Office and was appointed as Applicant's Counsel. (PCR Tr. 18). Counsel testified that he began practicing law in 1987, about three quarters of his practice is criminal defense, and has handled many armed robbery cases and several kidnapping cases over the years. (PCR Tr. 42-43).

Counsel testified he first met with Applicant shortly after the arrest. (PCR Tr. 18-19). Counsel testified that Applicant was in custody throughout the entirety of his representation. (PCR Tr. 19). Counsel stated he was familiar with the elements and defenses of each charge Applicant was charged with and felt comfortable discussing it with Applicant. (PCR Tr. 43). Counsel testified that he did not remember having a preliminary hearing. (PCR Tr. 38).

Regarding potential defenses, Counsel testified that the Applicant told Counsel that the victims bought dope from him before and were his co-conspirators. (PCR Tr. 21). Counsel stated that Applicant told him that he told the responding officers this the night of the incident, but the idea that they were co-conspirators was not in the incident reports or other discovery paperwork.

(PCR Tr. 22). Counsel stated he did not remember if he asked Applicant if he knew of anyone who could attest to the alleged pre-existing relationship and did he not remember Applicant providing him with information from a third party who could testify to the existing relationship between the victims and Applicant. (PCR Tr. 22-23, 55, 124). Counsel testified that when he asked follow up questions, Applicant never provided evidence supporting the defense other than his own assertions. (PCR Tr. 21-22, 47). Counsel stated that if this information was provided, someone from the office would have investigated the potential witness. (PCR Tr. 23). Counsel testified that other attorneys in his office assisted with the case, but did not remember utilizing the in-house investigator. (PCR Tr. 38). Counsel stated that no character witnesses approached him at trial to testify, but that he would have called them as witnesses if he knew they existed and could corroborate Applicant's story. (PCR Tr. 124).

Counsel stated that Applicant did not offer specific instances he had with them, nor did Applicant show Counsel text messages, phone calls, or any other physical evidence supporting this contention. (PCR Tr. 47). Counsel noted that inmates are not allowed to have cell phones in prison, but testified that he has previously tried cases where other incarcerated clients had text messages come into evidence while the client was in jail. (PCR Tr. 56).

Counsel testified to remember conversations about subjecting Applicant to a polygraph test, but does not remember whether or not one was taken. (PCR Tr. 30). Counsel stated if Applicant was subjected to a polygraph test, he would have been there, absent a conflict and he would have received a copy of the results. (PCR Tr. 31).

Counsel stated that he reviewed discovery with Applicant. (PCR Tr. 44). Though Counsel stated he was unsure if he reviewed all discovery with Applicant, he said they reviewed the important parts together. (PCR Tr. 44). Counsel testified he did not recall receiving a report from



the State Office of Victim Assistance specifically, but stated if it was in the discovery, he received it. (PCR Tr. 39-40). Counsel stated he remembered reading about how the victims were impacted long-term and on anxiety medication. (PCR Tr. 40).

Counsel testified there was no audio or video evidence implicating Applicant at the Wendy's and all evidence presented at trial was testimonial by nature. (PCR Tr. 29-30). Counsel stated that, when asked to give a statement, Applicant asserted his Fifth Amendment right to remain silent. (PCR Tr. 29-30). Counsel testified he was given memorialized statements only in writing from the victims. (PCR Tr. 30).

Counsel stated he never interviewed the alleged victims, but both individuals provided statements to the police included in discovery. (PCR Tr. 22). Counsel stated he independently reviewed these statements prior to trial and did not find any leads or evidence indicating a prior relationship. (PCR Tr. 47-48). Counsel stated there was no indication Cain voluntarily gave his shirt to Applicant. (PCR Tr. 48). Further, Cain's trial testimony made it clear that the victims were duct taped. (PCR Tr. 48). Counsel testified to remembering the victims testifying at trial, including their testimony that Applicant had a gun on him the entire time they were in the parking lot, which he pointed at them and used to force them inside. (PCR Tr. 32).

Counsel testified that he did not remember communications with Cavallini concerning the incident prior to the PCR hearing. (PCR Tr. 31). Counsel stated he remembered Cavallini filing two incident reports concerning his activities that night. (PCR Tr. 31-32). Counsel testified after hearing Cavallini's testimony at the PCR hearing, he would not have called him at trial because he was favorable to the State and would have corroborated the victims' testimonies. (PCR Tr. 33, 49-50). Counsel stated Cavallini's testimony that he saw Applicant with a gun pointed at the victims inside the Wendy's was problematic for the defense. (PCR Tr. 50).

Counsel testified to a break down in attorney-client privilege, stating that Applicant was very intelligent, demanding, and made clear that the process was not moving fast enough for him. (PCR Tr. 25). Counsel testified he did not remember whether or not Applicant moved to have him relieved as attorney or if a Judge addressed this issue, but remembered a breakdown in communication between Counsel and Applicant around the time of trial. (PCR Tr. 25-26). Counsel testified he did not remember speaking with Applicant about the possibility of Applicant proceeding *pro se*. (PCR Tr. 26). Counsel also testified that he did not remember if a colloquy regarding this issue occurred. (PCR Tr. 26-27).

Counsel testified that plea negotiations occurred, which included an offer of twenty five years on a violent charge of an armed robbery or kidnapping. (PCR Tr. 19). Counsel testified that he communicated this to Applicant. (PCR Tr. 19). When asked if he advocated that Applicant take the plea offer, Counsel stated he generally does not advocate for his clients to take plea offers, but told him that if it proceeds to trial he will be sentenced to life without parole instead of the twenty five years stated in the offer, and encouraged him to take that into account when making his decision. (PCR Tr. 54). Applicant decided he wanted to go to trial. (PCR Tr. 54).

Counsel did not specifically recall discussing a Life without Parole (hereafter "LWOP") provision or Applicant being served with a LWOP notice, but thought it was Applicant's third conviction for an armed or violent robbery. (PCR Tr. 20). Counsel testified that for someone to be subject to LWOP, a notice must be served and is traditionally served on defendants, usually when in court, orally or in writing. (PCR Tr. 20, 44-45). When asked if he told Applicant that he would face life without parole if found guilty at trial, Counsel answered "I'm sure we discussed it." (PCR Tr. 21, 46). When shown a copy of the notice, Counsel stated he thought it was either served or presented to Applicant in court and before trial. (PCR Tr. 45-46). Counsel also stated

that he usually talks to clients after the notice is served about how if they go to trial, the Judge has no choice but to sentence them to LWOP once convicted. (PCR Tr. 46).

Counsel stated the strategy at trial was for Applicant to testify credibly about prior dealings with the victims and their agreement to rob the Wendy's which, hopefully, would get rid of one or more of the elements of an armed robbery and kidnapping charges. (PCR Tr. 52-53). Counsel stated that since Applicant's defense could not be readily corroborated, Applicant would have to seem credible and polished to present the defense effectively. (PCR Tr. 44). Counsel did not remember how much time they spent preparing Applicant's testimony at trial. (PCR Tr. 44). Counsel stated that he did not remember whether Applicant's actual testimony deviated from the anticipated testimony. (PCR Tr. 53). When asked if he thought there was something he should have done differently at trial, retrospectively, Counsel stated that there is in every case, but he thought the main things were accomplished. (PCR Tr. 54).

Counsel testified he did not remember impeaching the alleged victims at trial, but if he did it would be reflected in the trial transcript. (PCR Tr. 23-24). Counsel testified he did not think he impeached Kennedy by bringing up a twenty year old misdemeanor shoplifting conviction because it was irrelevant and barred by the Rules of Evidence. (PCR Tr. 24, 50). When asked if there was an issue regarding Cain's out-of-state criminal charge concerning whether he was already convicted at the time, Counsel stated he could not recall. (PCR Tr. 25, 51-52). However, Counsel stated he put the charge and desire to question concerning the issue on record, but the Judge ruled that there was no disposition. (PCR Tr. 52). Counsel stated that after the Judge rules on an issue, raising it again risks "ire of the court", which Counsel tried to avoid. (PCR Tr. 52).

Counsel testified that he thought it was admissible to ask the victims if they purchased

drugs from Applicant. (PCR Tr. 27-28). Counsel testified he did not remember cross-examining them about drug use as it relates to Applicant. (PCR Tr. 28). Counsel stated he did not investigate potential drug abuse histories on the victims because he was unaware of what an investigation would look like, since drug use is something people keep private. (PCR Tr. 50-51). Counsel also stated that there was nothing in discovery indicating the victims' drug use. (PCR Tr. 51). Counsel stated asking about a supposed history of drug abuse at trial without evidence to back it up would be unnecessary. (PCR Tr. 51). Counsel conceded that a successful impeachment of the victims would have favored the defense. (PCR Tr. 28-29).

Counsel testified he did not remember cross-examining the alleged victims about a pre-existing relationship with Applicant consisting of a drug buy. (PCR Tr. 27). Counsel stated that the victims testified that they did not know Applicant prior to the robbery and that Applicant testified to the contrary. (PCR Tr. 28). When asked if he thought cross-examining the victims would have undermined their credibility, Counsel stated that at trial, the jury decided that the victims were credible and Applicant was not. (PCR Tr. 28).

Counsel testified that the officers never indicated that the victims stated they had connection to Applicant before the robbery. (PCR Tr. 39). Counsel testified he did not remember cross-examining law enforcement officers about whether Applicant knew the alleged victims, but it would be reflected in the trial transcript if he did. (PCR Tr. 25). Counsel stated that no additional follow up of officers was conducted because depositions of officers cannot be taken in criminal cases, but stated he obtained all of discovery materials from the officers, including incident reports. (PCR Tr. 49).

Monique Alston Testimony

Alston testified that Applicant is his uncle and has known Applicant all of his life. (PCR



Tr. 58, 64). He stated he thought Applicant knew Kennedy and Cain for probably a month before he was arrested and that Alston personally knew them since the October prior to the incident. (PCR Tr. 63-64). Alston stated that Applicant sold drugs to the alleged victims probably three times: first, at a Smith-Jones Recreation Center; second, at the Wendy's; and, third, at an apartment complex. (PCR Tr. 65).

Alston stated he first saw Applicant and the victims together was at the Smith-Jones Recreation Center. (PCR Tr. 59). Alston stated he drove Applicant to the center and Applicant entered to sell weed and pills to the victims. (PCR Tr. 60, 66). He also stated he was present at a second meeting between the victims and Applicant in the Wendy's parking lot, where the victims met with Applicant to purchase marijuana and pills. (PCR Tr. 60-61, 64). Alston stated the third occurrence was at an apartment complex where he and Applicant arrived, sold the victims drugs, and left. (PCR Tr. 66).

After Applicant was arrested, Alston stated he received a call from him from inside the jailhouse. (PCR Tr. 67). Applicant did not tell Alston who the alleged victims were and did not ask Alston to testify. (PCR Tr. 67-68). Alston testified this call was the only conversation Alston had with Applicant prior to trial. (PCR Tr. 68).

The next time Alston saw Kennedy and Cain was at trial. (PCR Tr. 66). Alston stated he was present throughout the entirety of Applicant's trial. (PCR Tr. 61). Alston stated he remembered being present at trial during Kennedy's and Cain's testimonies. (PCR Tr. 62). Though he stated he did not remember exactly what they testified to, he remembered them stating that they did not know Applicant prior to the incident. (PCR Tr. 62). Alston stated he could have contradicted their testimonies if he was asked to testify and his testimony would have corroborated Applicant's defense theory. (PCR Tr. 62-63).



Alston stated he reached out to Counsel prior to trial regarding the previous relationship between the parties once he realized they were the alleged victims. (PCR Tr. 67). Alston stated that no one reached out to him for an interview or to testify and he was never on a witness list. (PCR Tr. 61-62). Alston stated he did not approach Applicant or Counsel at trial and volunteer to testify because he did not know he could volunteer to testify. (PCR Tr. 68-69).

Latasha Aklin Testimony

Aklin stated she was Applicant's friend and they had an on- and off-again relationship. (PCR Tr. 70-71). Aklin stated she saw Kennedy and Cain one time when they met Applicant and her at the recreation center so Applicant could sell the victims drugs. (PCR Tr. 71, 75). During this incident, she and Applicant rode with Alston because Applicant needed a ride to sell the drugs. (PCR Tr. 75). Aklin testified that the recreation center incident occurred in the fall of 2014, probably around October. (PCR Tr. 73, 75).

Aklin testified Applicant was arrested in December 2014. (PCR Tr. 76-77). Aklin did not talk to Applicant while he was in prison awaiting trial beyond writing letters. (PCR Tr. 77). Aklin testified that he never asked her to testify and never wrote to her concerning the victims. (PCR Tr. 77). She testified that she never spoke to Applicant at the trial or after the trial and the PCR hearing is the first time she saw Applicant since. (PCR Tr. 78).

Aklin stated the next time she saw the victims was at trial. (PCR Tr. 76). Aklin stated she observed the trial voluntarily and was not subpoenaed to appear. (PCR Tr. 74). She stated she recognized both victims and could have testified that they were the same people at the center, but stated she was not asked to testify and did not know volunteering to testify was an option. (PCR Tr. 72-74). She testified to recalling Cain and Kennedy saying they did not know Applicant and that she could have contradicted that statement. (PCR Tr. 73).



Ebon Roberts Testimony

Applicant stated the first time he made contact with Counsel was when he sent Counsel a letter in February and that their first meeting occurred in February or March. (PCR Tr. 79-80).

Applicant stated that he sold Kennedy and Cain drugs a handful of times and they had an amiable relationship before the robbery. (PCR Tr. 108, 112). Applicant stated he and the victims conspired together to rob the Wendy's. (PCR Tr. 108). He stated the plan was for the victims to open the door and Applicant to tie them up in case there were cameras in the building. (PCR Tr. 108-09). Applicant stated that he expected for the money from the drawers to be sitting on the counter. (PCR Tr. 109-10). Applicant stated the plan was for him to get half the money and the other two to get a quarter each. (PCR Tr. 86).

Applicant stated he took the gun to make the allegedly staged hostage situation look realistic. (PCR Tr. 112-13). He stated that he never pulled the gun out in the parking lot and never exposed it to the victims, but thought it might have fallen out of his pocket when they entered Wendy's. (PCR Tr. 113). When asked if he remembered testifying that he took the gun out, he said he may have had it on his side, but never pointed it at them. (PCR Tr. 113).

When Applicant arrived, both victims were in the parking lot. (PCR Tr. 110). Applicant stated he was angry because the money was not readily available and the door unopened. (PCR Tr. 110). Applicant stated that the victims did not agree to let Applicant inside because at that time the police showed up and they all instinctually ran inside. (PCR Tr. 111). Applicant stated that he thought Cain unlocked the door and went to the alarm system to try to punch it in, but the alarm never went off. (PCR Tr. 111-12). Applicant stated that because the police were there, he was preoccupied with trying to figure out how to get away and decided that the best plan of action was to put on Cain's clothes and try to pretend to be an employee. (PCR Tr. 112, 114).



Applicant stated Cain voluntarily gave him his clothes when asked because Applicant was unsure if Cain had an extra uniform available. (PCR Tr. 114-15). Applicant stated he never held the victims against their will. (PCR Tr. 86).

During their first meeting, Applicant stated he told Counsel his only defense was that the victims were his co-conspirators. (PCR Tr. 80-81). Applicant stated he told Counsel the victims' testimonies regarding the potential ties to Applicant prior to the robbery were false. (PCR Tr. 101-02). Applicant stated that once he was caught, he figured Kennedy and Cain would testify against him, but did not expect them to deny knowing him prior to the incident. (PCR Tr. 82). When asked if anyone could corroborate his theory, Applicant stated he told Counsel no because only he, Cain, and Kennedy knew of the planned robbery. (PCR Tr. 81-82). Applicant never told Counsel that Alston and Aklin accompanied him on drug deals and could attest to the prior relationship between the victims and Applicant because Counsel never asked. (PCR Tr. 82, 116-17). Applicant stated that if Counsel had asked the "right questions" he would have better understood what information to give him. (PCR Tr. 117).

Applicant stated that he submitted, in writing, that he wanted a preliminary hearing. (PCR Tr. 87). When he told Counsel he wanted one, Applicant testified that Counsel told him that he should waive the hearing. (PCR Tr. 87-88). Applicant stated that Counsel told him he could not attend the preliminary hearing because he was out of town. (PCR Tr. 95).

Applicant stated he told Counsel and the bond hearing judge that both victims had drug issues. (PCR Tr. 83). Applicant stated that he told Counsel at the meeting about Cain's charges in Florida. (PCR Tr. 81). Applicant stated he asked Counsel to further investigate into the alleged victims, but Counsel never followed up with Applicant on whether the investigation occurred. (PCR Tr. 84). Applicant stated he told Counsel at trial that he did not think he adequately



investigated the case or try to strengthen the case. (PCR Tr. 97-98).

Applicant stated that he had a chance to go through all of the discovery in the case, including the SOVA report. (PCR Tr. 83-84). Applicant stated he reviewed the discovery, expected Cavallini to testify at trial, and was upset Counsel did not call him so Applicant could cross-examine his accuser. (PCR Tr. 96-97).

Applicant stated he would submit to a polygraph test and a test was scheduled as a result. (PCR Tr. 88). Applicant stated that he assumed the State set up the test because they had doubts about his narrative. (PCR Tr. 102). Applicant stated that no one took his statement and, instead, assumed what happened based upon their officers' observations. (PCR Tr. 102). Applicant stated that the police never interviewed him and only asked where the gun was. (PCR Tr. 103). Applicant said he told the officers that it was in the office, but they did not find it there. (PCR Tr. 103). Applicant stated that the police never interrogated him. (PCR Tr. 103). Applicant stated he thought that the State was never informed of his account of what happened. (PCR Tr. 103).

Applicant testified that there was a breakdown in the attorney-client relationship. (PCR Tr. 87). Applicant stated that Counsel only visited him in jail two or three times and all other communication between them consisted of a phone call or letter. (PCR Tr. 84). Applicant stated that Counsel did not regularly communicate with him about the case and never offered a response when Applicant asked if there were new leads or information discovered. (PCR Tr. 95). Applicant stated he spent one and a half to two months trying to contact Counsel and Counsel never responded. (PCR Tr. 95). He stated that he did not see Counsel until the Friday or Monday before trial. (PCR Tr. 95).

Before trial, Applicant stated Counsel told the judge that they were "having a situation" and the Judge advised that Counsel maintain representation of him, because Counsel was there



and already prepared. (PCR Tr. 98). Applicant testified that he would have proceeded *pro se* if given the option, but would have rather his attorney sit off to the side and assist him with the case, but was told either Counsel represented him or he would have to represent himself. (PCR Tr. 99). Applicant stated he asked for a couple months continuance so he could familiarize himself with the law, but Counsel denied the continuance because it was already pending for nine months. (PCR Tr. 99).

Applicant stated that the jury deliberated for a continuous ten hours or so. (PCR Tr. 104). Thereafter, Applicant testified that they wanted to hear his testimony again about something and also asked if the State had prior knowledge that it may have been an inside job. (PCR Tr. 104). Applicant stated that when the jury asked for a replay of Applicant's testimony they heard part of it. (PCR Tr. 106). Applicant stated that the SOVA report was admitted at trial, but the lady who drafted the report did not testify. (PCR Tr. 104). Applicant stated that he felt like if Counsel asked the "right questions" at trial, the jury would have concluded that a pre-existing relationship between him and the alleged victims existed. (PCR Tr. 106-07).

Additionally, Applicant stated he drafted a letter that he sent to the public defender's office concerning his version of the story that was admitted into evidence. (PCR Tr. 105). Applicant testified that in the letter he said this action was a mistake and stated that he would take ten years in drug court and ten years of probation and pay restitution, but the letter was never passed on to the State. (PCR Tr. 105).

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 and arguments presented at the PCR hearing. Before this Court are the Horry County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial



transcript, direct appeal records, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of

representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.”

Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Failure to Call Witnesses

Here, Applicant’s allegations that Counsel was ineffective for failing to call character witnesses Alston and Aklin and Officer Cavallini are without merit. At a minimum, counsel must

interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. *Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007). To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing or their testimony must otherwise be presented, consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995).

“In most PCR cases in which the applicant seeks relief for trial counsel’s failure to call witnesses, the PCR court’s analysis—and the analysis by the appellate court—is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks.” *Buckson v. State*, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018). Thus, counsel’s performance is not deficient if he decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial. See e.g. *Smith v. State*, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner); *Edwards v. State*, 392 S.C. 449, 457-58, 710 S.E.2d 60, 65 (2011) (stating that counsel was not ineffective because the witness could not withstand cross-examination due to his prior vacillation and the cumulative nature of his testimony and he knew the petitioner’s statement to the police would be entirely consistent with the supposed witness’s statement at trial); *Glover*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that counsel was in deficient by failing to call all alibi witnesses when two witnesses who testified did not establish the alibi).

Further, prejudice will generally be found if the testimony was significant and favorable enough to the Applicant so that the trial proceedings results may have been different because of the testimony. See e.g. *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that

counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may corroborated with the defendant or bolstered his credibility so that the findings at trial could have been favorable to the defendant); *Thomas v. State*, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that uncalled witness' testimony would have cast doubt on the sole witness' identification of the petitioner and, thus, would have made a difference at trial).

Officer Cavallini

Applicant's allegation that Counsel was ineffective for failing to call Officer Cavallini, the arresting officer, to testify is without merit. Counsel was not deficient because he utilized a valid trial strategy in deciding not to call Officer Cavallini as a witness. At the PCR hearing, Cavallini testified that he was on patrol when he drove past the Wendy's, saw Applicant with a gun to Cain's back, forcing Cain to manipulate the alarm and that, based on his eight years in law enforcement, it looked like an armed robbery was underway and Applicant was the perpetrator. (PCR Tr. 8, 15). When Counsel was asked if, after hearing the testimony, he would have called the Officer to testify, Counsel stated he would not have called him because he was a State witness, he corroborated the victims', not Applicant's, narrative of what happened, he stated he saw Applicant with a gun to the victim's back, and that this testimony would have hurt the defense. (PCR Tr. 33, 49-50). This Court finds that Counsel was correct in his assessment that Cavallini's testimony would have been favorable to the State, not the defense, and, thus, choosing not to call Cavallini as a defense witness was a valid trial strategy. Thus, because the decision not to call Cavallini was a part of a valid trial strategy, Counsel was not deficiently.

Further, Applicant was not prejudiced by Counsel's alleged failure to call the officer as a witness. This court finds that Counsel's assertion that, if this testimony had an impact at trial it would be negative towards the defense and would not have changed the proceeding's results.

Neither deficiency nor prejudice can be found here and, consequently, Counsel was not ineffective in his decision not to call Officer Cavallini to testify.

Character Witnesses

Counsel was not ineffective for failing to call the character witnesses, Monique Alston and Latasha Aklin, who allegedly would have testified that the victims and Applicant had a prior relationship. This Court finds Aklin's, Applicant's, and Alston's testimonies incredible.

Counsel credibly testified that Applicant never told him about any potential witnesses who could testify to the existing relationship between the victims and Applicant. (PCR Tr. 22-23, 55). Counsel stated that Applicant did not offer specific instances he had with them, nor did Applicant show Counsel text messages, phone calls, or any other physical evidence supporting this contention. (PCR Tr. 47). Counsel also stated that if this information was provided, someone from the office would have investigated the potential witness, but could not recall if this information was provided. (PCR Tr. 23). Counsel stated that no character witnesses approached him at trial to testify, but he would have called them as witnesses if he knew they existed and could corroborate Applicant's story. (PCR Tr. 124).

Counsel was not expected to know of witnesses that could corroborate Applicant's theory without being inform that such witnesses exist. Further, this Court finds it highly unlikely that if a relationship did exist between the parties, that Applicant would not have mentioned it to Counsel or the judge at trial. Additionally, if both character witnesses attended the trial proceedings and heard information from State's witnesses that directly contradicted what they knew, this Court finds it implausible that neither character witness nor Applicant felt behooved to set the record straight at the time. Thus, this Court finds that the theory presented was presumably not made known to the character witnesses until after trial proceedings and,



consequently, this Court finds their testimonies incredible. Accordingly, because these witnesses were not made known to Counsel leading up to trial, presumably because the testimonies presented at the PCR hearing were incredible and later fabricated through the PCR process, Counsel was not deficient for failing to call them to testify.

Further, because Aklin's and Alston's testimonies presumably did not exist before the conclusion of trial and are otherwise incredible, Applicant was not prejudiced by any alleged failure on Counsel's part. This is particularly true given the contradictory statements presented by the victims and officer and the absence of any connection between the two parties in all physical evidence and reports. Additionally, because Applicant repetitively claimed that the character witnesses knew of an alleged connection between the parties and that connection ultimately culminated into a plan to commit an armed robbery, the witnesses presented would have no impact on the jury's finding that Applicant was guilty of armed robbery and unlawful possession of a pistol because this point is inherently conceded due to the nature of the defense presented. Thus, because deficiency nor prejudice can be found, Counsel was not ineffective.

Failure to Cross-Examine Witnesses

Applicant's allegations that Counsel was ineffective for failure to cross-examine law enforcement officers and the alleged victims are without merit. "Where trial counsel articulates a valid reason for employing a certain trial strategy, counsel will not be deemed ineffective."

McKnight v. State, 378 S.C. 33, 43, 661 S.E.2d 354, 359 (2008) (citing *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995)). Counsel can be deficient when examining witnesses if they fail to elicit testimony key to a petitioner's defense. *Miller v. State*, 379 S.C. 108, 116, 665 S.E.2d 596, 600 (2008), abrogated on other grounds by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (finding counsel was deficient in failing to elicit testimony about similarities

between armed robberies from a witness who could corroborate where the applicant's key defense was third party guilt).

To prove prejudice, a petitioner must first provide evidence of what testimony would have been revealed absent Counsel's ineffectiveness without speculation. *See Glover v. State*, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995).

Law Enforcement Officers

Applicant's allegation that Counsel was ineffective for failing to cross-examine law enforcement officers about if they investigated Applicant's side of the story while on scene is without merit.

Counsel was not deficient for failing to cross-examine officers concerning Applicant's theory of defense. Counsel stated he did not recall cross-examining officers regarding the potential relationship between Applicant and victims. (PCR Tr. 39). Counsel stated that no additional follow up of officers was conducted because depositions of officers cannot be taken in criminal cases, but stated they had all of the discovery materials from the officers, including incident reports. (PCR Tr. 49). Counsel stated he remembered Applicant implicating both victims to law enforcement and was aware of Applicant's allegation that the alleged victims were involved in the incident since reading over the discovery. (PCR Tr. 41-42). Counsel stated that he independently reviewed discovery prior to trial and did not find any leads or evidence indicating a prior relationship with Applicant. (PCR Tr. 47-48). Counsel stated that Applicant told him that he told the responding officers this the night of the incident, but the idea that they were co-conspirators was not in the incident reports or other discovery paperwork. (PCR Tr. 22). Based upon Counsel's review of the discovery, only Applicant's unsubstantiated statements supported the defense itself. Cross-examining officers about this issue when nothing in the



discovery indicated Applicant's claim could be corroborated would presumably draw further attention, by the jury, to the fact that Applicant's theory was unsubstantiated. Further, because the discovery from that night strongly indicated that the victims and Applicant did not know each other before the robbery, asking about a potential relationship would presumably undermine Applicant's defense. Not wanting to draw attention to the fact that Applicant's allegations were otherwise unsubstantiated is a valid strategy and Counsel is not deficient for utilizing it.

Regarding prejudice, the jury found Applicant's theory of the defense, as presented at trial, incredible. Cross-examining law enforcement officers about this theory that no one other than Applicant substantiated would not have made a difference at trial. The jury found the defense incredible and most likely do so again, even if Counsel cross-examined law enforcement officers to elicit a response that, at most, would have led to an officer restating Applicant's defense that was not communicated to the officers by anyone else on scene. Thus, this cross-examination would not have made a difference at trial and, consequently, Applicant was not prejudiced by any alleged deficiency by Counsel. Because deficiency nor prejudice can be found, Counsel was not ineffective on this ground.

Cain and Kennedy

Applicant's allegation that Counsel was ineffective for failing to cross-examine and impeach Cain and Kennedy is without merit. Counsel's decision not to impeach Cain and Kennedy was a strategic decision.

Counsel decision not to cross-examine the victims about alleged drug use and abuse issues was not deficient. Though Counsel stated that a successful impeachment of Kennedy and Cain would be favorable to the defense, he stated that nothing in the discovery indicated drug use on behalf of either victim and that, at trial, the victims were already deemed more credible than



Applicant, which presumably would not be undermined by a fishing expedition during cross-examination for damning evidence on an issue that the record did not show existed. (PCR Tr. 28-29, 51). Thus, this decision not to cross-examine was strategic by nature and, as a result, Counsel was not deficient for executing it.

Additionally, Counsel's decision not to impeach Kennedy based on her criminal history was strategic. Counsel testified he did not impeach Kennedy by bringing up a twenty year old misdemeanor shoplifting conviction because it was irrelevant and inadmissible according to the Rules of Evidence. (PCR Tr. 24, 50). His recollection of this rule of evidence is accurate. *See* S.C.R. Evid. 609(b). Refusing to explore a line of questioning that is inadmissible and barred by the Rules of Evidence does not constitute deficient performance.

Counsel's decision not to impeach Cain based upon his out-of-state criminal charge was strategic and, thus, Counsel was not deficient. Counsel stated that he put it on record that he was aware of the charge and was going to potentially ask about it, but the Judge ruled against allowing admission. (PCR Tr. 52). Counsel's decision not to disobey a direct holding of the court was strategic and not deficient.

Applicant failed to call the witnesses or otherwise present evidence indicating what the cross-examination would have entailed, absent his own speculation. Thus, Applicant has failed to established he was prejudiced by Counsel's alleged failure to cross-examine Kennedy and Cain concerning the three issues addressed above.

Failure to Investigate, Assert a Defense, and Prepare for Trial

Applicant alleges ineffective assistance of counsel for failure to investigate and assert a defense. *Strickland* makes clear that counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691.



When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim's validity is evaluated for "reasonableness [under] all the circumstances" with "a heavy measure of deference to counsel's judgments" applied. *Id.* That said, counsel is required to, at minimum, "interview potential witnesses and make an independent investigation of the facts and circumstances of the case", *Ard v. Catoe*, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007) (quoting *Troedel v. Wainwright*, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), *aff'd*, 828 F.2d 670 (11th Cir.1987)), including aggressively re-examining all the government's forensic evidence and conducting analyses of all other available forensic evidence." *Id.* (quoting *American Bar Association Guidelines For The Appointment And Performance Of Defense Counsel In Death Penalty Cases*, reprinted in 31 Hofstra L.Rev. 913, 1015 (2003) (emphasis added)).

Counsel is not obligated to "investigate lines of defense that he has chosen not to employ at trial." *Strickland*, 466 U.S. at 682 (quoting *Washington v. Strickland*, 693 F.2d 1243, 1255 (5th Cir. 1982)). Further, "[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

This Court finds that Counsel properly investigated and reviewed the discovery provided to him. Counsel stated he remembered Applicant implicating both victims to law enforcement and was aware of Applicant's allegation that the alleged victims were involved in the incident since reading over the discovery. (PCR Tr. 41-42). Counsel testified that other attorneys in his office assisted with the case, including conducting investigations, but did not remember utilizing the in-house investigator. (PCR Tr. 38). Counsel stated that he independently reviewed victims' statements prior to trial and did not find any leads or evidence indicating a prior relationship with



Applicant. (PCR Tr. 47-48). Counsel testified he did not recall receiving a report from the State Office of Victim Assistance specifically, but stated if it was in the discovery, he received it. (PCR Tr. 39-40). Thus, this Court finds Counsel properly requested and investigated all evidence before him and advised Applicant of the contents, when appropriate.

Counsel was not deficient in any alleged failure to investigate Applicant's chosen defense that Applicant allegedly knew the victims because they bought dope from him a couple times and that he and the alleged victims were co-conspirators in a plan to rob the Wendy's. (PCR Tr. 21). Counsel credibly testified that when he asked follow up questions, Applicant never provided information regarding how he knew the alleged victims besides stating that they previously bought drugs from him. (PCR Tr. 21-22). In fact, the only evidence supporting Applicant's theory, according to Counsel, were Applicant's unsubstantiated assertions themselves. (PCR Tr. 47). Both Counsel and Applicant stated that Applicant never gave Counsel a name of a potential witness who could testify to the alleged relationship between Applicant and the victims. (PCR Tr. 22-23, 55, 116-17). Counsel also stated that if this information was provided, someone from the office would have investigated the potential witness, but could not recall if this information was provided. (PCR Tr. 23).

Further, as stated above, because Applicant's defense of how the victims were conspirators in the armed robbery, the defense Applicant claims Counsel was ineffective for failing to assert would have inherently caused Applicant to concede he was guilty of all crimes, besides the kidnapping charges. Counsel's decision not to pursue a defense that would cause Applicant to admit guilty to half of his charges was inherently tactical and, thus, not deficient.

Thus, Counsel was not deficient in his investigations of this claim. As addressed above, Counsel appropriately asked Applicant, seemingly several times, if he had any witnesses or



evidence that corroborated his theory. This court finds Applicant's excuse that he did not provide names of character witnesses throughout the entirety of the trial process because Counsel did not ask the question in a certain way implausible. Counsel was not expected to act clairvoyantly when investigating into such theories, but, instead, was required to act reasonably. He did so through conversations with Applicant and cannot be found deficient now for no other reason than that Applicant did not feel compelled to share evidence, if existent, with Counsel until after trial.

Additionally, though Applicant alleged that Counsel failed to properly investigate the case, he failed to show what would have been uncovered if further investigation occurred, other than the character witnesses addressed about that this court deems incredible. Applicant has failed to establish Counsel was deficient or Applicant prejudiced and, thus, Counsel is not ineffective on this ground.

Waiver of Preliminary Hearing

Applicant also claims Counsel was ineffective for waiving the preliminary hearing. In South Carolina, there is no constitutionally protected right to a preliminary hearing. *State v. Keenan*, 278 S.C. 361, 296 S.E.2d 676 (1982). Additionally, a preliminary hearing is not held if the defendant is indicted by a grand jury or waives presentment before the preliminary hearing occurs. Rule 2(b) SCRCrimP. Further, a preliminary hearing can be waived through "[p]lea negotiations and silence before the trial court regarding the desire for a preliminary hearing when entering a guilty plea. *O'Neil v. State*, 277 S.C. 230, 231, 285 S.E.2d 352, 353 (1981) (citing *Bonnettee v. State*, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981)).

Though Counsel testified that he did not remember having a preliminary hearing, Applicant testified that he requested one in writing. (PCR Tr. 38, 87-88). Applicant stated that when he told Counsel he wanted a preliminary hearing, Applicant testified that Counsel told him

that he should not worry about scheduling preliminary hearing and should waive it. (PCR Tr. 87-88). Applicant did not produce the document he allegedly signed, requesting a hearing.

This Court finds that this allegation is without merit. First, as per *Keenan* there is no constitutionally protected right to a preliminary hearing. *Keenan*, 278 S.C. 361, 296 S.E.2d 676. Additionally, Applicant proceeded to trial without notifying the trial judge about his desire for a hearing and, thus, was waived. Because Applicant waived his right by proceeding to trial, he cannot reassert this claim now. Applicant's allegation on this ground lacks merit and is denied.

Failure to Advise to Proceed Pro Se

Applicant's allegations that Counsel was ineffective for failure to advise Applicant on his right to proceed *pro se* and failure to inform the judge on Applicant's intent to proceed *pro se* are without merit. "It is well-established that an accused may waive the right to counsel and proceed *pro se*." *State v. Reed*, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998). This right must be honored even if it is to the defendant's detriment and must be asserted prior to trial. *Id.* If asserted after trial has begun, the grant or denial to proceed *pro se* is within the judge's discretion, who is then required to weight the prejudice to the legitimate interests of the defendant against the potential disruption of proceedings in process. *State v. Winkler*, 388 S.C. 574, 586, 698 S.E.2d 596, 602 (2010) (citing *United States v. Wesley*, 798 F.2d 1155, 1155-56 (8th Cir. 1986); *United States v. Stevens*, 83 F.3d 60, 66-67 (2d Cir. 1996)). The right to counsel must be waived knowingly and intelligently, with an understanding of the consequences. *Id.* The trial judge has the responsibility to guarantee the waiver of Counsel is done knowing and intelligently. *State v. Barnes*, 407 S.C. 27, 36, 753 S.E.2d 545, 550 (2014). Further, a defendant competent enough to stand trial is competent enough to waive the right to counsel. *Reed*, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998). Additionally, a trial judge is not required to permit hybrid representation, a situation

where applicant proceeds partially *pro se* and partially by counsel. *Id.* at 43, 503 S.E.2d at 751.

Counsel testified he did not remember whether or not Applicant moved to have him relieved as attorney or if a Judge addressed this issue, but remembered a breakdown in communication between Counsel and Applicant around the time of trial. (PCR Tr. 25-26). Counsel testified he did not remember speaking with Applicant about the possibility of Applicant proceeding *pro se*, but Applicant stated Counsel told the judge that they were “having a situation” and the Judge advised that Counsel maintain representation of him, because Counsel was there and already prepared. (PCR Tr. 26, 98). Applicant testified that he would have proceeded *pro se* if given the option, but would have rather his attorney sit off to the side and assist him with the case, but was told either Counsel represented him or he would have to represent himself. (PCR Tr. 99).

This testimony is supported by the trial transcript. (Trial Tr. 6-7). When Applicant requested to relieve Counsel and proceed *pro se*, the judge refused to continue the case and strongly suggested Applicant not proceed *pro se*. (Trial Tr. 9). Ultimately, because Applicant did not provide a sufficient enough reason to allow him to proceed *pro se* and continue the case, the Judge denied Applicant’s motions to relieve Counsel and to proceed *pro se*. (Trial Tr. 10). The judge seemingly weighed the prejudices against Applicant but, because he could not give a valid reason for why he wanted to withdraw representation and the continuance Applicant alleged was required for him to familiarize himself with the law to represent himself would have been very disruptive to the trial set to take place on that date, the judge acted within his discretion when denying Applicant’s motions.

Regardless, Counsel was not ineffective for failure to inform the Court or Applicant of his right to proceed *pro se*. Applicant clearly knew this right existed when he attempted to assert



it on trial day. Further, the right allows for Applicant to petition the court for the right to proceed *pro se*; not for Counsel to assert the right on Applicant's behalf. Additionally, when Applicant attempted to assert this right, the judge denied the motion, leaving the matter out of Counsel's hands altogether. Finally, though Applicant stated he wanted hybrid representation, this is not a right that the judge must honor. Thus, Applicant has failed to show Counsel was ineffective on this point and, thus, this Court finds the argument lacks merit.

Failure to Communicate

Applicant's allegation that Counsel was ineffective for failure to maintain regular contact with him lacks merit. Applicant alleged that Counsel failed to regularly communicate with him about the case, never discussed new leads with him or stated if there was more information revealed. (PCR Tr. 95). Additionally, Applicant stated that he spent a couple months trying to get in contact with Counsel, but Counsel did not respond until a couple of days before trial. (PCR Tr. 95). Applicant did not, however, specifically state what they would have discussed or how further communications would have affected his decision making concerning proceeding to trial or the outcome at trial.

"[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating "how additional preparation or communication would have resulted in a different outcome." *Id.* See *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective



assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

This court finds that Applicant's allegation concerning failure to communicate is without merit. Counsel was not deficient in failing to communicate with Applicant. Counsel met with Applicant shortly after the arrest, went over all the important parts with Applicant. (PCR Tr. 18-19, 44). Counsel communicated the plea offer to Applicant, including telling him he would get twenty five years imprisonment with a plea and life imprisonment at trial, but Applicant decided to go to trial. (PCR Tr. 54). Counsel also stated that he took part in plea negotiations, which included an offer of twenty five years on a violent charge of an armed robbery or kidnapping that he discussed with Applicant. (PCR Tr. 19). A notice of an intent to seek life without parole was served on Applicant and Counsel stated he was "sure [they] discussed it." (PCR Tr. 21, 45-46).

Even if the time spent together was brief, this fact alone does not render Counsel ineffective for failing to communicate. This Court finds that Counsel communicated the discovery, evidence, plea offers, defenses and strategies to Applicant. Thus, Counsel was not deficient in communicating with Applicant. Further, because Applicant did not show what impact, if any, further communication would have had on the outcome of the proceedings, prejudice is not found. Thus, Applicant failed to show deficiency or prejudice existed and, as such, Counsel was not ineffective regarding this issue.

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 PCR application must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within

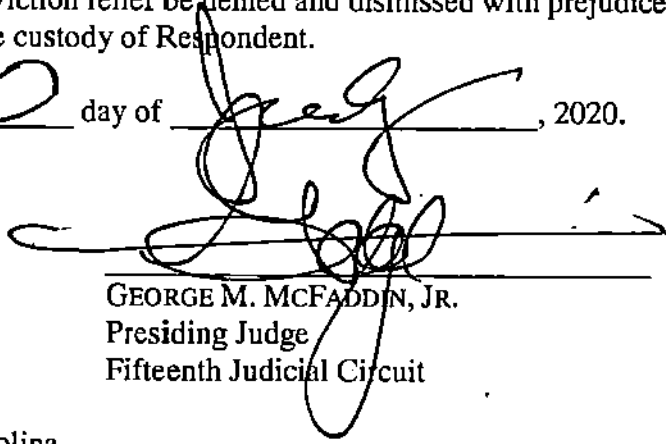


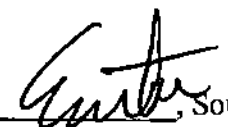
thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. 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 appellate procedures.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 10 day of July, 2020.


 GEORGE M. MCFADDIN, JR.
 Presiding Judge
 Fifteenth Judicial Circuit


 _____, South Carolina.

WITNESSES

Dale Long Conway Police Department

DOCKET NO. 2015-GS-26- 01888

CH

The State of South Carolina

County of Horry

J. Austin Thomas

14H05516

COURT OF GENERAL SESSIONS

May, 2015 TERM

ARREST WARRANT NUMBER

2014A2620400754

CDR: 0139 16-11-0330(A)

DOA: 12/8/2014

ACTION OF GRAND JURY

TRUE BILL

Buddy L. Whitton
Foreperson of Grand Jury
Date: MAY 28 2015

VERDICT

Foreperson of Petit Jury
Date:

Ebon Roberts
B/ M
1740 JOHN ST
CONWAY, SC 29526
DOB: [REDACTED]
SSN: [REDACTED]

ATTORNEY: J. M. "Buddy" Long, III

Indictment for

ARMED ROBBERY

Jimmy A. Richardson, II, Solicitor

FILED
HORRY COUN.

2015 MAY 29 AM 10:14

MELANIE HUBBINS-WARD
CLERK OF COURT

DATE RECEIVED FROM
GRAND JURY

(ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on May 28, 2015, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Ebon Roberts did in Horry County on or about December 8, 2014, while armed with a deadly weapon, to wit: a hand gun, take and carry away personal property of Shawn Cain from or in the immediate presence of Shawn Cain with intent to deprive Shawn Cain of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR

FILED
 Horry County
 2015 SEP 16 PM 10:09

WITNESSES

Dale Long Conway Police Department

DOCKET NO. 2015-GS-26- 01889

The State of South Carolina

County of Horry

J. Austin Thomas

14H05516

COURT OF GENERAL SESSIONS

May, 2015 TERM

ARREST WARRANT NUMBER

2014A2620400755

CDR: 0095 16-03-0910

DOA: 12/8/2014

ACTION OF GRAND JURY

TRUE BILL

Justin L. Whitten
Foreperson of Grand Jury

Date: **MAY 28 2015**

VERDICT

Foreperson of Petit Jury

Date:

THE STATE

vs.

Ebon Roberts
B/ M
1740 JOHN ST
CONWAY, SC 29526
DOB: [REDACTED]
SSN: [REDACTED]

ATTORNEY: J. M. "Buddy" Long, III

Indictment for

KIDNAPPING

Jimmy A. Richardson, II, Solicitor

2015 MAY 29 AM 10:14

MELANIE JOHNSON
CLERK OF COURT

DATE RECEIVED FROM

GRAND JURY

(ORIGINAL)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on May 28, 2015, the Grand Jurors of Horry County present upon their oath:

KIDNAPPING

CDR: 0095 16-03-0910

That Ebon Roberts did in Horry County on or about December 8, 2014, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Shawn Cain, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR

FILED
 HORRY COUNTY
 2015 SEP 16 PM 10:09
 CLERK OF COURT
 PLED GUILTY/TRIAL

WITNESSES

Dale Long Conway Police Department

DOCKET NO. 2015-GS-26- 01890

The State of South Carolina

County of Horry

J. Austin Thomas

14H05516

COURT OF GENERAL SESSIONS

May, 2015 TERM

ARREST WARRANT NUMBER

2014A2620400756

CDR: 0095 16-03-0910

DOA: 12/8/2014

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: MAY 28 2015

VERDICT

Foreperson of Petit Jury
Date:

Ebon Roberts
B/ M
1740 JOHN ST
CONWAY, SC 29526
DOB: [REDACTED]
SSN: [REDACTED]

ATTORNEY: J. M. "Buddy" Long, III

Indictment for

KIDNAPPING

Jimmy A. Richardson, II, Solicitor

FILED
HORRY COUNTY

2015 MAY 29 AM 10: 14

MELANIE HUGGINS-WARD
CLERK OF COURT

DATE RECEIVED FROM
GRAND JURY

(ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on May 28, 2015, the Grand Jurors of Horry County present upon their oath:

KIDNAPPING

CDR: 0095 16-03-0910

That Ebon Roberts did in Horry County on or about December 8, 2014, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Rececca Kennedy, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR

FILED
 Horry County
 2015 SEP 16 PM 10:09
 MELANIE HODGSON
 CLERK OF COURT
 COURT DATE
 PLED GUILTY/TRIAL

WITNESSES

Dale Long Conway Police Department

DOCKET NO. 2015-GS-26- 01891

The State of South Carolina

County of Horry

J. Austin Thomas

14H05516

COURT OF GENERAL SESSIONS

May, 2015 TERM

ARREST WARRANT NUMBER

2014A2620400757

CDR: 2364 16-23-0030, 0050(A)(1)

DOA: 12/8/2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: MAY 28 2015

VERDICT

Foreperson of Petit Jury

Date:

vs.

Ebon Roberts

B/ M

1740 JOHN ST

CONWAY, SC 29526

DOB: [REDACTED]

SSN: [REDACTED]

ATTORNEY: J. M. "Buddy" Long, III

Indictment for

FELON IN POSSESSION OF FIREARM

Jimmy A. Richardson, II, Solicitor

FILED
HORRY COUNTY

2015 MAY 29 AM 10:14

MELANIE L. GOSSETT
CLERK OF COURT

DATE RECEIVED FROM

GRAND JURY

(ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on May 28, 2015, the Grand Jurors of Horry County present upon their oath:

UNLAWFUL POSSESSION OF A PISTOL

CDR: 2364 16-23-0030(B), 16-23-50

That Ebon Roberts did in Horry County on or about December 8, 2014 knowingly possess or acquire a pistol after having been convicted of a crime of violence defined in Section 16-23-10, S. C. Code of Laws, 2003, as amended, in violation of Section 16-23-0030(B), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

FILED
Horry County
2015 SEP 16 PM 10:09
MELANIE HODGES, WARD
CLERK OF COURT
COURT DATE
PLED GUILTY/TRIAL